

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

COMPTON UNIFIED SCHOOL  
DISTRICT.

OAH Case No. 2015110718

**DECISION**

Parent on behalf of Student filed a due process request with the Office of Administrative Hearings on November 13, 2015, naming Compton Unified School District. OAH granted a continuance on December 21, 2015.

Administrative Law Judge Caroline A. Zuk heard this matter in Compton, California, on January 7, 19, 20, 21, 25, 26, and 27, 2016.

Ben Conway, Attorney at Law, represented Student. Parent attended the first five days of hearing. Student did not attend the hearing.

Elliot Field, Attorney at Law, represented District. Dr. Laura Kincaid, District's Director of Special Education, was present for the entire hearing.

The record closed on February 17, 2016, upon receipt of written closing briefs from the parties.

## ISSUES<sup>1</sup>

1. Did District deny Student a free appropriate public education from September 2011 through October 2013, by:<sup>2</sup>

- (a) failing to offer assistance to Student's parent to make her verbal requests for an assessment in writing;
- (b) failing to provide Student's parent with required written notice regarding procedural safeguards;
- (c) failing to provide Student's parent with prior written notice regarding District's refusal to assess Student; and
- (d) failing to satisfy District's child find duty by failing to assess Student for a suspected specific learning disability?

2. Did District deny Student a FAPE from November 2011 through October 2013, by failing to find Student eligible for special education because of a specific learning disability and develop an individualized education program for her?

3. Did District deny Student a FAPE between November 13, 2013, and June 2014, by:

- (a) failing to offer assistance to Student's parent to make her verbal requests for an assessment in writing;
- (b) failing to provide Student's parent with required written notice regarding procedural safeguards;
- (c) failing to provide Student's parent with prior written notice regarding District's refusal to assess Student; and
- (d) failing to satisfy District's child find duty by failing to assess Student for a suspected specific learning disability?

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<sup>1</sup> 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.) Issues argued in Student's closing brief that exceed these issues are not addressed in the Decision. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *County of San Diego v. California Special Education Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1465.)

<sup>2</sup> Student alleged an exception to the two-year statute of limitations.

4. Did District deny Student a FAPE between November 13, 2013, and July 28, 2014, by failing to find Student eligible for special education because of a specific learning disability and develop an IEP for her?
5. Did District deny Student a FAPE between November 13, 2013, and May 2015, by failing to conduct a speech and language assessment?
6. Did District deny Student a FAPE from November 13, 2013 through November 13, 2015, by failing to conduct appropriate assessments in the areas of auditory processing?
7. Did District's July 29, 2014, October 9, 2014, June 3, 2015, and October 14, 2015 IEP's deny Student a FAPE by predetermining Student's placement?
8. Did District's July 29, 2014, and October 9, 2014 IEP's deny Student a FAPE by failing to include a determination that no additional data was needed to determine Student's unique needs?
9. Did District deny Student a FAPE between October 2014 through November 13, 2015, by failing to provide independent educational evaluations, or initiate a due process hearing to defend its assessments, in the areas of cognition, auditory processing, executive functioning, academic achievement, speech and language, and audiology?
10. Did District deny Student a FAPE by failing to materially implement Student's October 9, 2014 IEP, between March 28, 2015 and October 20, 2015, by failing to fully implement resource specialist program services, and implement any IEP goals?
11. Did District deny Student a FAPE by failing to provide her parent with copies of service logs and standards-based testing in response to parent's March 2015 request for a copy of all educational records?
12. Did District's June 3, 2015 IEP team meeting deny Student a FAPE by failing to ensure that the IEP team included a general education teacher?
13. Did District's July 29, 2014, and October 9, 2014 IEP's deny Student a FAPE by failing to include appropriate statements regarding Student's present levels of academic achievement and functional performance in the areas of:
  - (a) reading;
  - (b) math;
  - (c) writing;

- (d) communication; and
- (e) social emotional/behavioral?

14. Did District's July 29, 2014, and October 9, 2014 IEP's deny Student a FAPE by failing to include appropriate goals in the areas of:

- (a) reading comprehension;
- (b) reading fluency;
- (c) math;
- (d) communication;
- (e) attention and focus; and
- (f) organization?

15. Did District's June 3, 2015, and October 14, 2015 IEP's deny Student a FAPE by failing to include appropriate statements regarding Student's present levels of academic achievement and functional performance in the areas of:

- (a) reading;
- (b) math;
- (c) writing;
- (d) communication;
- (e) social emotional/behavioral; and
- (f) vocational?

16. Did District's June 3, 2015, and October 14, 2015 IEP's deny Student a FAPE by failing to include appropriate goals in the areas of:

- (a) reading comprehension;
- (b) reading fluency;
- (c) math;
- (d) receptive language;

- (e) attention and focus; and
- (f) organization?

17. Did District's July 29, 2014, October 9, 2014, June 3, 2015, and October 14, 2015 IEP's deny Student a FAPE by failing to offer appropriate speech and language services?

18. Did District's July 29, 2014, October 9, 2014, June 3, 2015, and October 14, 2015 IEP's deny Student a FAPE by failing to offer extended school year services?

### SUMMARY OF DECISION

Student contends that she should have been found eligible for special education under the category of specific learning disability prior to her initial IEP on July 29, 2014. Student contends several procedural violations relating to the IEP process, and substantive violations relating to present levels of performance, goals, and services in the July 29, 2014, October 9, 2014, June 3, 2015, and October 14, 2015 IEP's. Student seeks remedies for the procedural and substantive violations alleged in this case.

District contends that it offered Student a FAPE, and that Parent's lack of cooperation, including refusal to consent to Student's IEP's, impeded District's ability to provide a FAPE to Student.

The Decision concludes that Student prevailed in part, and District prevailed in part. Student established that District committed violations, resulting in a denial of FAPE, on various procedural and substantive grounds. Student is therefore entitled to reimbursement for two independent evaluations and tuition at The Prentice School, as well as compensatory language services.

### FACTUAL FINDINGS

#### *Jurisdiction*

1. Student was an 11-year-old girl who resided within District's boundaries during the applicable time frame. Beginning on July 29, 2014, she was eligible for special education under the eligibility categories specific learning disability and other health impairment.

2. Student attended District schools until October 20, 2015, when Parent unilaterally placed Student at The Prentice School, a nonpublic school located in Tustin, California. Mother placed Student at Prentice because she did not think that District's June 3 and October 14, 2015 IEP's offered Student a FAPE. Student was still attending Prentice during the hearing.

*The 2011-2012 School Year: First Grade*

3. During the 2011-2012 school year, Student attended first grade at Kennedy Elementary School, a District school, in Matthew Poodiack's class. Due to Parent's work schedule, Parent's mother was actively involved in Student's education on behalf of Parent. At the beginning of the school year, Grandmother observed Student in Mr. Poodiack's class, and remained concerned that Student had difficulty focusing. Mr. Poodiack, whom Grandmother described as a "wonderful" teacher, sat Student at the front of the class in response to Grandmother's request.

4. On September 8, 2011, Grandmother requested a meeting with school staff to discuss Student's difficulty in reading, writing and focusing while in class. School staff, including the school principal, met with Grandmother and agreed to monitor Student's educational progress. School staff also agreed to provide a home-school daily report regarding Student's progress, and preferential seating.

5. Student's achievement level fluctuated during the first grade. She was far below standard and below standard in reading, writing, and math, and was at risk for retention during the second and third report periods, but not the fourth and final reporting period.

6. Parent had a positive relationship with Mr. Poodiack, because he kept an open line of communication with her, and stayed on top of Student's performance. However, Parent was extremely frustrated with Kennedy, because it did not hold a student study team meeting during the 2011-2012 school year, and Parent felt that the school was ignoring Grandmother's requests for help.

7. Student did not call Mr. Poodiack, Ms. Brown-Henry or counselor Austin as a witness, or offer any documentary evidence regarding Parent's and Grandparent's requests, and District's response, except for the Student Conference Record. While Student established that Parent and Grandmother were sincerely concerned about her education and asked for help during the year, Student did not establish that Parent or Grandmother requested an initial assessment for special education during the 2011-2012 school year.

*The 2012-2013 School Year: Second Grade*

8. During the 2012-2013 school year, Student attended second grade at Laurel Street Elementary, a District school, taught by Ms. Ojelabi. Student transferred from Kennedy to Laurel based on Parent's request, because Parent felt that her daughter was falling further behind, and Kennedy was not addressing Parent's concerns.

9. Student struggled in Ms. Ojelabi's class. Student dreaded going to school and resisted completing homework. Student was at risk of being retained during the entire year. She performed "Far Below Basic" in English language arts and math on the spring 2013 administration of the California Standards Tests.

10. On April 11, 2013, Parent delivered a letter to Principal Frank Lozier, wherein she stated her concerns regarding Student's lack of progress, behavior at school, and requested that District provide Student an independent educational evaluation.

11. District's school records contained objective test data that substantiated Parent's concerns about Student's lack of progress. For example, Student's spring 2013 objective benchmark score in reading fluency was at the well below average level as measured by AIMsweb, a standardized assessment performed by District. Based upon this testing, Student was at the same level in reading fluency as her spring 2012 benchmark score. Student remained at the well below average level in reading fluency and reading comprehension between spring 2012 and spring 2013.

12. Dr. Lozier did not recall receiving the April 11, 2013 letter. However, Parent's testimony that she delivered the letter to Dr. Lozier was more persuasive, because she diligently advocated for Student, and was a careful record keeper regarding her requests. Parent's letter put District on notice that Student was experiencing significant academic deficits that might warrant an assessment for special education services, especially requesting an independent educational evaluation, which is a specific type of special education assessment. Therefore, Parent's request for an independent evaluator to determine Student's current performance levels, as requested in Parent's April 2013 letter, triggered District's obligation to provide Parent with a copy of procedural safeguards as a fair interpretation of the letter is a request for a special education assessment.

13. In response to Parent's written request for an assessment on April 11, 2013, District did not provide Parent with any kind of written response. District did not provide Parent with a copy of procedural safeguards. Therefore, an extension of the statute of limitations to April 11, 2013 is warranted.

*Parent's April 2013 Oral Request for an Assessment*

14. After Parent sent the April 11, 2013 letter, she met with Dr. Lozier to discuss her concerns and orally renewed her request for an assessment. Dr. Lozier did not recall the specifics of the conversations, but knew that Student was at risk of retention, and encouraged

Student's participation in District's after-school tutoring program. Prior to the end of the school year, District recommended that Student be retained in second grade. Parent reluctantly agreed to retention, believing that Student needed to be retained before she could be referred for a special education assessment.

15. In response to Parent's oral request for an assessment during her follow-up meeting with Dr. Lozier in April 2013, District did not help Parent to put her request in writing, or provide her with a copy of her procedural safeguards.

*Child-Find: April 11, 2013 Through October 2013*

16. Student alleged that District failed its child find obligation by failing to assess Student for a suspected learning disability between September 2011 and October 2013. As discussed above, the statute of limitations extends back to April 11, 2013. Therefore, Student's child find allegation is limited to the period of April 11, 2013 through October 2013.

17. Parent's April 11, 2013 request for an assessment, coupled with District's knowledge of Student's attention problems, delayed academics, and risk of retention, were sufficient to put District on notice that Student had a suspected disability that might make Student eligible for special education services as of April 11, 2013. District did not provide Parent with an assessment plan between April 11, 2013 and the last day of the 2013-2014 school year.

18. Beginning August 26, 2013, Student repeated second grade at Laurel Street Elementary in Joey Stewart-Guillory's class. District did not provide Parent with an assessment plan between August 26, 2013 and October 2013.

*Eligibility for Special Education (April 2013 Through October 2013)*

19. Student alleged that District denied her a FAPE following Parent's April 2013 request for an assessment, through October 2013 by failing to find her eligible for special education, because of a specific learning disability and develop an IEP for her.

20. Student offered no evidence of Student's eligibility for special education under the category of specific learning disability following Parent's April 2013 request for an assessment through October 2013. Student's evidence for this period was limited to facts relating to a suspected disability that would cause District to assess her, not find her eligible. District did not admit that Student was eligible for special education prior during this time period, and Student did not call any expert witnesses who provided testimony regarding Student's eligibility for special education under the category of specific learning disability prior to her initial July 29, 2014 IEP.

*Parent's April 22, 2014 Written Request for an Assessment*

21. On April 22, 2014, Parent delivered a detailed letter to Dr. Lozier, again expressing concerns about Student's underachievement and, again, requesting an assessment.

22. As of April 2014, District knew that Student had attention problems in the general education classroom, had repeated second grade, and was again at risk of retention during her second year of second grade. While Student's academic performance improved in Ms. Stewart-Guillory's class, given her excellent instruction and a positive working relationship between Parent and her, District was nevertheless still on notice of a suspected learning disability, dating back to April 2013.

23. On May 29, 2014, District faxed an assessment plan to Parent, offering to assess Student in the areas of academic achievement, intellectual development, auditory processing, visual processing, speech and language, social-emotional functioning, adaptive behavior, and health. As to auditory processing, District's assessment plan offered to conduct psychological tests of auditory processing by a school psychologist to determine if Student had a specific learning disability based on a psychological auditory processing deficit. District's assessment plan did not offer to conduct an auditory processing assessment by an audiologist. Parent immediately signed and faxed back the assessment plan on May 29, 2014.

24. Student did not offer any evidence at hearing regarding whether District failed to provide Parent with a copy of the procedural safeguards along with the assessment plan.

*Student's May 31, 2014 Lindamood-Bell Assessment*

25. On May 31, 2014, Parent proceeded with a private assessment of Student at Lindamood-Bell Learning Processes in Los Angeles, California. The two-page testing summary listed a series of scores from Lindamood-Bell's standard battery of tests. The report, signed by Allison Purdy, center director, concluded that Student would benefit from intervention to develop her language and literacy skills, and recommended four hours per day, five days per week of Lindamood-Bell instruction, for a total of 160 to 200 hours of instruction over the course of eight to 10 weeks.

26. Student attempted to establish foundation for the validity of the test scores and instructional recommendations through the testimony of Dan Yoczik, executive center director at Lindamood-Bell's location in Los Angeles, California. Mr. Yoczik had worked at Lindamood-Bell for 10 to 11 years in the positions of clinician, consultant, associative director and director. He did not have any professional degree, credential or license or professional experience in special education, psychology or speech and language pathology. He received on-the-job training from Lindamood-Bell staff on how to administer, score, and

interpret Lindamood-Bell's standard battery of tests, and implement Lindamood-Bell's instructional programs. Lindamood-Bell used the scores to identify a child's strengths and weaknesses in sensory cognitive functions, and develop an instructional plan based on their specific needs.

27. Mr. Yoczik was not involved in the May 2014 assessment. He did not know the names of the Lindamood-Bell staff that administered, scored, and interpreted the test results, and prepared the report. It is impossible to determine the validity of the Lindamood-Bell test scores, and diagnostic interpretations and instructional recommendation flowing from those scores based on Mr. Yoczik's testimony. While Mr. Yoczik's in-house training may meet standards for Lindamood-Bell, Student did not establish that Mr. Yoczik had the professional qualifications and experience to interpret psychoeducational data. Even if Mr. Yoczik were qualified to interpret the data, it was impossible to determine the validity of the Lindamood-Bell test scores without knowing whether the person or persons who administered the tests were qualified to do so, and whether those individuals administered the tests in conformity with the manuals for the tests. Accordingly, Student did not establish foundation for the content of the May 2014 Testing Summary and, therefore, the contents of the report, as well as Dr. Lucker's interpretation of the test scores, were not reliable.

#### *District's Initial June 30, 2014 Psycho-educational Assessment*

28. On June 30, 2014, District prepared a comprehensive Psychological Educational Assessment Report, reflecting the assessment findings of school psychologist Alphonso Davis, Psy.D.; school psychologist Bryan Wilson; general education teacher Ms. Stewart-Guillory; and district nurse Ms. Collier. At hearing, the parties did not call Dr. Davis, Mr. Wilson or any other psychologist to interpret the findings in the assessment report. Therefore, there was minimal evidence in the record regarding Student's psychoeducational functioning, except that there was no dispute that Student had average range cognitive ability.

29. During its assessment, District considered a two-page report, dated May 12, 2014, provided by Parent regarding the findings of Raafat Iskander, M.D., St. Mary Pediatric Neurology Clinic. Student did not call Dr. Iskander to interpret his report. The report stated that Student had attention deficit disorder, and recommended medication

#### SPEECH AND LANGUAGE ASSESSMENT

30. District decided not to conduct a speech and language assessment, because Dr. Davis's informal observations of Student's communication skills indicated to him that Student's receptive and expressive communication skills were adequate. Parent agreed not to proceed with the assessment, because she relied on Dr. Davis's informal observations. However, Parent, as a lay person, did not have the expertise to rule out a suspected speech or language deficit. When District prepared the assessment plan, it suspected that Student's ability to understand and use language were areas of suspected disability, because of her underachievement in language arts. Dr. Davis's informal observations were insufficient to

rule out a speech or language impairment based on the information that caused District to recommend this assessment. Student needed to be appropriately assessed by a speech and language pathologist to determine whether she had unique needs in the area of speech and language processing.

#### AUDITORY PROCESSING ASSESSMENT

31. Student alleged that District failed to conduct an appropriate auditory processing assessment as part of its initial assessment of Student.

32. District administered two standardized tests of auditory processing, the Test of Auditory-Processing Skills, and the Comprehensive Test of Phonological Processing, Second Edition. Student did not challenge the validity of the scores obtained from these tests. Student did not dispute that Student was eligible for special education, because of a specific learning disability manifested by a psychological auditory processing deficit in the area of phonological processing.

33. Ray R. Lucker, Ed.D., CCC-A/SLP, FAAA,<sup>3</sup> an expert in audiology and speech and language pathology, credibly explained the components of an audiological auditory processing, including an assessment of auditory sensitivity, auditory hypersensitivity, auditory overloading, auditory extraction. District did not conduct an appropriate audiological auditory processing assessment, because its assessment was incomplete as only three out of nine subtests on the Test of Auditory Process Skills, and three out of seven subtests on the Comprehensive Test of Phonological Processing assessed auditory processing. Dr. Lucker opined that District failed to assess in several other areas of auditory processing, including, but not limited to auditory sensitivity, auditory overloading, phonological integration, lexical integration, and temporal speed of processing. District did not rebut Dr. Lucker's testimony.

34. While it is true that District did not conduct an audiological auditory processing assessment as part of its initial assessment, Student did not establish that District was on notice that Student required an audiological auditory processing assessment when it conducted its initial assessment as there was no evidence that Student had difficulty hearing in the classroom. District suspected an auditory phonological processing deficit based on

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<sup>3</sup> Dr. Lucker was an associate professor in the Department of Communication Sciences and Disorders at Howard University in Washington, D.C. He has published extensively in the field of audiology, and taught numerous graduate level courses. He earned a bachelor of arts in speech pathology and audiology in 1969 from the City University of New York, a master of arts in communication sciences/audiology in 1972 from the City University of New York, and a doctorate in education in audiology/auditory processing in 1979 from Columbia University. He has a Certificate of Clinical Competence in audiology and speech and language pathology, and is a Fellow of the American Academy of Audiology.

Student's reading difficulties, and appropriately recommended that a school psychologist assess Student's auditory processing. Dr. Lucker was not an expert in school psychology, and Student did not establish that District's psychological auditory processing assessment was inappropriate.

*The Initial July 29, 2014 IEP Team Meeting*

35. The IEP team convened on July 29, 2014 to review the assessment report and determine Student's eligibility for special education. The IEP team consisted of administrator Jennifer O'Malley, Dr. Davis, Parent, and Parent's then-attorney Ms. Kelman. A general education teacher and special education teacher were not available due to the District's summer recess, and Parent agreed to waive their participation in the meeting so that she could proceed with the meeting.

36. Dr. Davis reviewed the Psychological Educational Assessment Report during the initial IEP team meeting. District determined that Student was eligible for special education under the categories of specific learning disability and other health impairment. Student qualified for special education under the category of specific learning disability due to phonological processing. She qualified under other health impairment as a secondary disability due to attention deficit hyperactivity disorder.

NEED FOR ADDITIONAL DATA

37. Student alleged that the July 29, 2014 IEP denied her a FAPE by failing to include a determination that no additional data was needed to determine Student's unique needs. Considering that Student's scores on the Auditory Reasoning and Word Discrimination subtests of the Test of Auditory Processing Skills, and her verbal ability score on the Differential Ability Scales, respectively at the 1st, 9th and 13th percentile, as well as Student's low Woodcock-Johnson scores on language-based academic subtests (reading fluency, reading decoding, and writing), District should have known that additional data was needed to determine Student's needs in the area of speech and language through a formal speech and language evaluation. District took no action as of July 29, 2014, to obtain that data. However, during the October 9, 2014 IEP team meeting, District offered to conduct a speech and language assessment.

PREDETERMINATION

38. During the IEP team meeting, the IEP team considered various placement options, including general education; resource specialist program support; and special day classes. Of these options, District offered Student placement in a general education classroom with six hours per month of specialized academic instruction, individually and in small groups. These placement options were discussed again at the follow-up IEP meeting on October 9, 2014. Parent was overwhelmed with the amount of assessment information discussed during the IEP team meeting, and did not fully understand the IEP process because it was her first IEP team meeting. Parent relied on her then-attorney, Ms. Kelman, to assist

her with the IEP process. Parent did not recall a discussion about Student's placement and conclusorily stated that it was presumed that Student would remain at Laurel. Parent's conclusory presumption did not establish that District predetermined Student's placement, especially based on District's consideration of various placement options.

#### PRESENT LEVELS OF PERFORMANCE

39. Student alleged that the July 29, 2014 IEP denied Student a FAPE, because it failed to include appropriate statements regarding Student's present levels of academic performance and functional performance in the areas of reading, math, writing, social-emotional, behavioral functioning, and communication.

40. During the two-hour, July 29, 2014 IEP team meeting, Parent received, and District reviewed, the comprehensive, twenty-page, Psychological Educational Assessment Report, providing detailed information regarding Student's present levels of performance. Parent provided a copy of a private testing summary from Lindamood-Bell Learning Processes, dated May 31, 2014, and requested that District provide Student with intensive services based on Lindamood-Bell's recommendation.

41. As to reading, writing, and math, the present levels of performance summarized the June 2014 results of the Woodcock-Johnson III – Tests of Achievement in the areas of reading decoding, reading fluency, reading comprehension, writing fluency, spelling, writing samples, math fluency, math reasoning, and math calculations by stating Student's grade equivalent scores and the corresponding performance level, such as below average, low or very low. The Woodcock-Johnson's grade equivalent scores, standard scores, and percentile scores indicated that Student was not performing within the average range in any academic area. Student questioned whether the grade equivalent scores overestimated her skills, because Student had repeated the second grade. However, Student did not establish that any of the test scores were invalid, including the grade equivalent scores.

42. In response to Parent's concerns regarding the grade equivalent scores, District provided Parent with a revised Psychological Educational Assessment Report, containing the age equivalent scores for all of the subtests of the Woodcock-Johnson. The age equivalent scores ranged from 6 years 5 months to 7 years 9 months compared to Student's then-chronological age of 9 years 3 months, confirming Student's significant academic delays.

43. The IEP, along with the revised Psychological Educational Assessment Report, indicated that Student's reading decoding, fluency, and reading comprehension skills fell at the 6th (low), 8th (low), and 9th (below average) percentile, respectively. Student's math fluency, math reasoning, and calculation skills fell at the 3rd (low), 4th (low), and 14th (below average) percentile, respectively. Student's spelling, writing fluency, and writing skills fell at the 2nd (very low), 7th (low), and 11th (below average) percentiles, respectively.

These objective scores confirmed Parent's long-standing concerns that Student was behind academically, especially considering that she had repeated second grade. The present levels of performance for reading, writing and math were appropriate.

44. As to social-emotional functioning, the present level of performance stated that Student did "not exhibit inappropriate social emotion [sic] behavior in the classroom." Ms. Stewart-Guillory's observations of Student in her classroom throughout the 2013-2014 school year were consistent with the present level. Student was outgoing, displayed a positive attitude, socialized with her friends, helped her teacher, and was confident with her day to day activities. The present level was appropriate.

45. As to behavioral functioning, the present level of performance stated that Student's "mother reports that she has difficulty maintaining attention to tasks." The IEP's eligibility and meeting notes sections also acknowledge Student's attention deficits by noting her diagnosis of attention deficit hyperactivity disorder, and her eligibility under other health impairment, because of attention deficits. The IEP did not include any other specific information regarding Student's attention deficits.

46. Since Ms. Stewart-Guillory had taught Student from August 2014 to June 2015, her personal knowledge of Student's functioning in a general education classroom setting was particularly persuasive. Student had difficulty paying attention in her general education second grade classroom, and difficulty with completing and returning homework. However, Student's attention deficits were effectively addressed through simple strategies, such as tapping Student's shoulder, saying her name, pointing to her work, removing reading books and scraps of paper from her desk that distracted her, teaching Student in small groups, pairing Student with a classmate to help her focus, allowing Student to complete written work while sitting in a bean bag chair, and providing headphones for Student to listen to classical music to help her relax and focus. The present level's lack of specificity did not harm Student because District offered appropriate accommodations to address this need.

47. As to communication, Student's IEP contained a brief statement regarding her present level of performance: "Based on this examiner's [school psychologist Dr. Davis] informal observation, receptive communication skills and expressive communication skills appear to be adequate." Since District did not conduct a formal assessment in the area of speech and language, or include a speech or language pathologist to be informally involved in the initial assessment, Student's IEP did not include a present level of performance based on input from a speech and language pathologist, considering the information that existed that prompted District from initially proposing a speech and language assessment.

48. Dr. Lucker, an expert in speech and language pathology, reviewed District's Psychological Educational Assessment Report, and found that District's data revealed significant concerns in communication. Specifically, on the Auditory Reasoning subtest of the Test of Auditory Processing Skills, Student's score fell at the first percentile (very low), on the Word Discrimination subtest of the Test of Auditory Processing Skills, her score fell

at the ninth percentile (below average), and on the Differential Ability Scales – Second Edition, Student’s verbal reasoning score fell at the 13th percentile (below average). The present level was not appropriate, because it failed to capture these weaknesses and, instead, left the incorrect impression that Student’s communication skills were “adequate.”

#### GOALS

49. Student alleged that the July 29, 2014 IEP denied her a FAPE, because it failed to include appropriate goals in reading fluency, reading comprehension, math, receptive language, attention and focus, and organization. Student did not challenge the measurability of the goals.

50. As to reading fluency, Student performed in the low range based on the recent, objective results of the Woodcock Johnson. Student’s second grade report card, prepared by Ms. Stewart-Guillory, indicated that her fluency skills were far below standard at the beginning of the 2013-2014 school year, and below standard by the end of the school year. While Student had made progress during the year, Ms. Stewart-Guillory estimated Student’s fluency score to be between 50 and 60 words per minute, whereas the target for second grade was 125 words per minute. Fluency is a building block for reading comprehension. Student needed a goal to address her unique need in the area of fluency, and District failed to offer any goal to address this need.

51. As to reading comprehension, District identified this skill as an area of unique need, and developed a baseline and an annual goal. The goal’s baseline is not an actual baseline but a reading comprehension strategy: “After reading texts, [Student] should be quizzed by asking ‘who, what, when, where, [and] how type of questions as well as asking questions about what the author was implying about the book or passage story.” However, special education teacher Grenellya Hannah, who informally provided direct instruction to Student during the 2014-2015 school year (third grade), observed that Student’s reading comprehension skills were around the second grade level at the beginning of the third grade, which was consistent with the present level of performance.

52. The reading comprehension goal, based on a third grade general education standard, stated:

By 7/29/2015 after completing an activity on points of view (e.g., a quick-write describing the first day of school from the teacher’s point of view vs. the students’ point of view), [or] after reading an autobiographical grade level text [Student] will write (2-3) sentences after using a Venn Diagram to identify at least (1) similarity and (1) difference between the character and the author in the areas of background, generation, social class, race, or location in (4 out of 5) texts.

53. Dr. Lucker opined that this goal was not appropriate, because reading comprehension relates to input (ability to take in and understand information) whereas this goal requires output (requiring Student to write sentences). Dr. Lucker is not a special education teacher, he did not observe Student during reading lessons, and he did not provide direct reading instruction to Student. For these reasons, his testimony regarding this goal was not as persuasive as the testimony of Student's teachers.

54. Student's teachers disagreed with Dr. Lucker's opinion. Ms. Stewart-Guillory observed that Student liked to write in class, and could get her thoughts on paper, given scaffolding, such as direct, simplified, detailed instructions with visual thinking maps. Ms. Hannah similarly observed that given direct, specialized academic instruction with scaffolding, Student had the ability to attain the goal, and District expected Student to progress beyond her present level of performance. Ms. Stewart-Guillory's and Ms. Hannah's expertise as educators, coupled with their direct personal experience teaching reading to Student, established that District offered Student an appropriate reading comprehension goal.

55. As to a math goal, District identified math as an area of unique need, and developed a baseline and one annual math goal. The baseline stated: "[Student] was able to add and subtract simple one-digit problems; however, adding and subtracting multiple numbers exhibit[s] weakness." Ms. Hannah corroborated that Student could add and subtract single digits, but had difficulty borrowing and regrouping.

56. The math goal, based on a third grade general education standard, stated:

By 7/29/2015, when given 10 word problems involving the addition and subtraction of time intervals in minutes and a printed face of a clock without hands for each problem, [Student] will correctly draw the problem using the clock faces and write the new time or the time interval (e.g., 20 minutes passed from start to finish of recess, 8:35 pm is when recess ended) scoring 8/10 in 4 out of 5 time word problem activities.

57. Student criticized the goal, because it did not address regrouping numbers. While it is true that the goal did not explicitly use the word "regrouping," the task of solving word problems by adding and subtracting time intervals in minutes would necessarily tap into borrowing and regrouping numbers, and would help build skills that Student needed to access the general education third grade curriculum.

58. As to a goal to address receptive language, Dr. Lucker's expert testimony established that Student had significant language processing deficits in the areas of semantics and syntax at the beginning of the 2014-2015 school year. Student needed goals to address this area of need, but the IEP did not offer any communication goals.

59. As to a goal to address Student's attention deficit, there was no dispute that this was an area of need. Dr. Lucker opined that Student's IEP was inappropriate, because it did not include a goal to address attention/self-regulation. Student's attention problems in

the general education setting were effectively addressed through simple strategies, such as redirection, and not so significant to require a goal. Student's IEP listed several accommodations to address this need, including allowing extra time for classroom tasks, breaking assignments into chunks, using visual supports, giving her preferential seating, assigning modified homework, and listening to classical music on headphones during tests and independent work.

60. As to a goal to address organization, Student had difficulty with completing and returning homework. Parent acknowledged that Student had a smoother homework experience during the 2013-2014 school year, because Ms. Stewart-Guillory was a "good teacher." Ms. Stewart-Guillory had a very caring and positive attitude, acknowledged Parent's concerns, worked extra hard with Student, organized Student's weekly homework, maintained an open line of communication between home and school, and posted helpful, colorful charts in the classroom. Ms. Stewart-Guillory's general education strategies, coupled with Parent's support of Student at home, caused Student to be more willing to complete homework. Accordingly, as of July and October 2014, Student did not need a goal to address organization, because general education strategies addressed the need.

61. Although Parent did not consent to the July 29, 2014 IEP, until March 28, 2015, District still implemented accommodations during the 2014-2015 school year in Marlene Veliz's general education third grade classroom to support Student. For example, Ms. Veliz provided prime seating for Student by having Student sit right by Ms. Veliz and next to the projector. Student also wore headphones to listen to music, helping her to block out distractions, relax and focus. Ms. Hannah provided direct instruction to Student in Ms. Veliz's classroom, observed the implementation of the accommodations, and found them useful for Student.

#### SERVICES

62. Student alleged that the July 29, 2014 IEP denied Student a FAPE, because it failed to offer appropriate speech and language services. The July 29, 2014 IEP did not offer any speech and language services. Based on the Lindamood-Bell Testing Summary, dated May 31, 2014, District's Psychological Educational Assessment Report, dated June 2014, and Dr. Lucker's comprehensive speech and language assessment of Student on December 15, 2014, language processing had been a consistent problem for Student, extending back to the beginning of the 2014-2015 school year. Student needed speech and language services as of the July 29, 2014 IEP team meeting, and District failed to offer any services to her. This failure denied Student a FAPE.

63. Student alleged that the July 29, 2014 IEP denied Student a FAPE, because it did not offer any services for the extended school year. The July 29, 2014 IEP had a checkmark in the "Yes" box for extended school year services. However, District's offer was not clear, because the IEP was in effect, beginning July 29, 2014, but District was not in

session between July 29 and the first day of the 2014-2015 school year. Therefore, it was not clear how District was going to implement any extended school year services during the summer of 2014, prior to the beginning of the 2014-2015 regular school year.

64. Regardless of problems with the clarity of District's extended school year offer, Student's concern regarding extended school year services was that District did not offer any speech and language services. Student did not offer any evidence that Student needed speech and language services during an extended school year program to prevent regression during the summer. Rather, Student's evidence targeted her need for services during the regular school year. Therefore, Student failed to establish that she needed speech and language services during the extended school year.

*Student's Eligibility for Special Education Prior to July 28, 2014*

65. Student alleged that District denied Student a FAPE prior to the initial July 29, 2014 IEP team meeting by failing to find her eligible for special education under the category of specific learning disability, and failing to develop an IEP for her. Student did not establish that she was eligible for special education under the category of specific learning disability prior to July 29, 2014, or that an IEP should have been developed for her. Student erroneously presumed that she could meet her burden of proof by extrapolating eligibility prior to July 29, 2014, based on the date of her initial eligibility for special education. Student did not offer any expert testimony to support that extrapolation.

*General Education Interventions Prior to the October 9, 2014 IEP Team Meeting*

66. At the beginning of the 2014-2015 school year, Ms. Hannah knew that Student was on her special education caseload, and diligently contacted Parent to obtain her consent to the July 29, 2014 IEP. Parent declined to provide consent to the IEP because she did not believe that it offered Student a FAPE. While Parent had the right to withhold her consent, her decision was troubling. On the one hand, she criticized District for not helping Student, dating back to kindergarten. On the other hand, she did not allow Student to receive any special education services when District offered her the services, even if Parent did not believe what was offered was sufficient.

67. Ms. Hannah was concerned that she did not have Parent's written consent to implement the goals and specialized academic instruction services in Student's July 29, 2014 IEP. Ms. Hannah wanted to support Student's academics in Ms. Veliz's third grade classroom by informally providing her with direct instruction in the general education core curriculum, and consulting with Ms. Veliz on a daily basis. Ms. Hannah, or sometimes her assistant, went into Ms. Veliz's classroom two times per week, for approximately 90 to 120 minutes per week. They worked with Student and another child at a separate table in the back of the classroom during reading, writing, or math lessons. Parent knew that Ms. Hannah was supporting Student in the classroom.

68. Student became excited when Ms. Hannah or her aide came into the room. Student responded very well to verbal praise, and proudly shared her work with them. Ms. Hannah helped Student by making sure that she was on task, that she was on target with the lesson, and that she had her homework in her backpack. Student's self-confidence grew in Ms. Veliz's classroom. She performed in class, and accepted constructive feedback on how to improve her work.

*The October 9, 2014 IEP Team Meeting*

69. The IEP team reconvened on October 9, 2014, at Laurel Elementary to address Parent's concerns regarding the July 29, 2014 IEP, and to obtain Parent's written consent to the IEP. Prior to the IEP team meeting, Ms. Hannah had phoned Parent several times to obtain Parent's written consent but was not successful.

70. The IEP team members were Parent, special education administrator Jennifer O'Malley, school psychologist Dr. Davis, principal Dr. Francisca Owoaje, special education teacher Ms. Hannah, general education teacher Ms. Stewart-Guillory, District's speech and language teacher D. German,<sup>4</sup> and audiologist and speech and language pathologist Dr. Lucker. Student's attorney Eric Morris, and District's attorney Angela Gordon, also attended the meeting.

71. Student alleged that she was denied a FAPE, because District predetermined Student's placement. Parent wanted Student to return to Kennedy Elementary, because she felt that Laurel staff were ignoring her deep concerns about Student's education, and failing to meet her daughter's needs. Prior to the IEP team meeting, Parent contacted District's Pupil Services Department, requesting a transfer back to Kennedy, which District granted on October 3, 2014.

PREDETERMINATION OF STUDENT'S PLACEMENT

72. During the October 9, 2014 IEP team meeting, Parent expressed her concerns regarding Student's experience at Laurel, and explained that District had already authorized Student's transfer to Kennedy. District informed Parent that the IEP team still needed to discuss Student's needs and discuss placement options before recommending Kennedy. District's stance frustrated and confused Parent. During the meeting, Ms. Hannah reviewed the concept of least restrictive environment based on her understanding of the law, and placement options for Student, including general education with no supports, general education with supplemental services, such as resource specialist program services, speech and language services or response to intervention strategies, and special day class if a child's needs could not be met in a general education placement with services. District offered Student placement in a general education third grade classroom at Laurel Elementary with 360 minutes per month of individual and small group specialized academic instruction.

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<sup>4</sup> The parties did not provide a first name for this individual.

## DETERMINATION REGARDING NEED FOR ADDITIONAL DATA

73. Student alleged that the October 9, 2014 IEP denied Student a FAPE by failing to determine whether additional data was needed to understand Student's unique needs. During the IEP team meeting, Dr. Lucker had an opportunity to provide his input regarding his recent record review, and recommended a speech and language assessment, an audiological auditory processing assessment, and a clinical psychological assessment in the areas of attention/self-regulation, executive functioning, and emotional functioning. Parent agreed with Dr. Lucker's recommendations, and requested an independent educational evaluations by a speech and language pathologist, an audiologist, and a clinical psychologist. On October 20, 2014, Ms. O'Malley sent a detailed, follow-up letter to Parent, offering to fund an IEE in the area of clinical psychology and to conduct assessments by District staff in the areas of speech and language and audiology. District listened and responded to Dr. Lucker's input, and timely offered to obtain additional data regarding Student's needs. Therefore, District satisfied its obligation to determine if additional data was needed to understand Student's needs.

## PRESENT LEVELS OF ACADEMIC ACHIEVEMENT AND FUNCTIONAL PERFORMANCE

74. The present levels in the October 9, 2014 IEP were identical to those in the July 29, 2014 IEP and, for that reason, Student alleged that District failed to state appropriate present levels of performance.

75. The IEP team meeting notes reflected Ms. Stewart-Guillory's and Dr. Lucker's input regarding Student's present levels of functioning in attention and communication, respectively, which was consistent with their credible testimony regarding Student's needs as of July 29, 2014.<sup>5</sup> Student did not establish that her needs had changed between July 30 and October 9, 2014. The present levels in the areas of reading, math, writing, social-emotional functioning and behavioral functioning continued to be appropriate for the reasons discussed above as to the July 29, 2014 IEP. The present level in the area of communication continued to be inappropriate for the reasons discussed above as to the July 29, 2014 IEP.

## GOALS

76. The goals in the October 9, 2014 IEP were identical to those in the July 29, 2014 IEP, and, for that reason, Student alleged that District failed to offer appropriate goals in the areas of fluency, reading comprehension, math, attention and focus, and organization.

77. Student did not establish that Student's needs had changed between July 30 and October 9, 2014. The IEP team meeting notes reflected Dr. Lucker's opinion that Student needed a goal in the area of attention, which was his same concern regarding the

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<sup>5</sup> The first page of IEP Team Meeting Notes contain a typographical error. The notes state that Student's "[h]omework was done consistently." The note should state that "[h]omework was done inconsistently."

July 29, 2014 IEP. The goals in the areas of reading comprehension and math were appropriate for the reasons discussed above as to the July 29, 2014 IEP. Student had needs in the areas of fluency and communication, and District failed to offer any goals in those areas. Student did not need a goal to address attention and organization.

#### SPEECH AND LANGUAGE SERVICES

78. Student alleged that the October 9, 2014 IEP denied Student a FAPE, because it failed to offer appropriate speech and language services for the regular school year. Student's needs in the area of communication did not change from July to October 2014. As of the October 2014 IEP team meeting, Student still needed speech and language services during the regular school year, and District failed to offer any services to her.

#### EXTENDED SCHOOL YEAR SERVICES

79. Student alleged that the October 9, 2014 IEP denied Student a FAPE, because it did not offer any services for the extended school year. Unlike the July 29, 2014 IEP, the October 9, 2014 IEP indicated that Student did not require extended school year services. The IEP did not clarify whether District's determination applied retroactively to the 2014 extended school year or prospectively to the 2015 extended school year.

80. Regardless of this lack of clarity, Student did not offer any evidence that she needed any services during an extended school year program to prevent regression. Therefore, Student failed to establish that she needed any extended school year services.

#### *Parent's October 9, 2014 Request for Three Independent Educational Evaluations*

81. Student alleged that District denied Student a FAPE, beginning October 2014 through November 13, 2015, the date of filing, by failing to fund independent educational evaluations, or initiate a due process hearing to defend its assessments, in the areas of cognition, auditory processing, executive functioning, academic achievement, speech and language, and audiology.

82. During the October 9, 2014 IEP team meeting, Dr. Lucker recommended three independent educational evaluations, because he believed District did not have sufficient information to develop an appropriate IEP. He recommended a comprehensive speech and language IEE to evaluate Student's language processing, a comprehensive audiological IEE to evaluate Student's auditory processing, and a comprehensive clinical psychological IEE to evaluate attention, self-regulation, executive functioning, and emotional functioning. Dr. Lucker did not request IEE's in the areas of cognition and academic achievement.

83. During the October 9, 2014 IEP team meeting, Parent requested three IEE's consistent with Dr. Lucker's recommendations, but did not request IEE's in the areas of cognition and academic achievement.

84. Ms. O'Malley responded to Parent's request for IEE's in a letter dated October 20, 2014. District declined to provide Student an independent educational evaluation in the areas of speech and language and auditory processing because District had not yet assessed Student in these areas. Rather, District offered Student a speech and language assessment by District staff, and included an assessment plan for this assessment. District also offered to assess Student in the area of auditory processing after it identified an assessor. District did agree to Parent's request for an independent educational evaluation in the areas of attention, self-regulation, executive functioning, and emotional functioning.

85. Parent responded to District's October 2014 letter in a letter dated November 7, 2014. Parent restated her requests for the IEE's in the areas of language processing, auditory processing, attention, self-regulation, executive functioning, and emotional functioning. Parent also acknowledged her receipt of District's proposed assessment plan, but did not consent to District's speech and language assessment. Parent's letter did not request IEE's in the areas of cognition and academic achievement. While Student established that she requested IEE's in the areas of language processing, auditory processing, attention, self-regulation, executive functioning, and emotional functioning, Student did not establish that she requested IEE's in the areas of cognition and academic achievement.

#### IEE IN THE AREA OF LANGUAGE PROCESSING

86. As to Parent's request for an IEE in the area of language processing, District's October 20, 2014 letter contained the following response:

A condition of a parent's right to an IEE at public expense is the existence of a District assessment with which the parent disagrees, as was the case with the [District's] psychoeducational assessment. The District has not yet conducted an assessment of [Student] in the area of speech and language. Accordingly, in response to your request for a speech and language assessment, the District agrees to conduct a comprehensive speech and language assessment, including the areas of concern outlined by Dr. Lucker.

87. District's letter also included an assessment plan, dated October 20, 2014, offering to conduct a speech and language assessment. At hearing, Parent testified that she did not receive the assessment plan until some time in 2015. Parent's testimony was not credible, because Parent's detailed November 7, 2014 letter acknowledges that District "agree[d] to conduct said [speech and language and auditory processing] assessments but fail[ed] to identify any appropriate assessors, nor publish agency criteria for proposed IEE."

88. Parent did not provide written consent to District's assessment plan. Instead, Parent and Student flew to Washington, D.C., and on December 15, 2014, Dr. Lucker conducted an IEE of Student in the area of language processing in his office in McLean, Virginia. Dr. Lucker did not assess Student's speech, which was not an area of suspected disability.

89. Dr. Lucker summarized his language processing assessment results in a report entitled “Auditory Information Processing & Language Assessments, dated December 2014.” Dr. Lucker’s IEE provided helpful information regarding Student’s language processing needs, including recommendations for goal areas and direct services. Parent paid Dr. Lucker \$1,500 for the IEE, consisting of a \$500 fee for the language processing assessment, and a \$1,000 fee for the auditory processing assessment. She also paid \$632.40 for the roundtrip airfare.

90. District’s initial assessment of Student did not include any formal assessment of Student’s speech and language skills even though it was an area of suspected disability and on the assessment plan as an area for District to assess, which Parent signed. Therefore, District did not conduct an appropriate initial assessment in the area of speech and language, and it should have offered to fund an IEE in response to Parent’s request. Parent acted reasonably by obtaining a language processing assessment from Dr. Lucker.

91. In October 2015, Parent provided a copy of Dr. Lucker’s report to District speech and language pathologist Tavia Arnett.

#### IEE IN THE AREA OF AUDITORY PROCESSING

92. As to Parent’s request for an IEE in the area of auditory processing, District wrote the following response:

As is the case with the speech and language assessment, the District hasnot yet conducted an assessment of [Student] in the area of auditory processing beyond those test instruments utilized by the school psychologist. The District agrees to conduct an assessment in the area of auditory processing. The District is in the process of identifying an appropriate assessor.

District did not follow through on its offer to conduct its own auditory processing assessment, and it did not offer to fund an IEE in the area of auditory processing. Parent therefore acted reasonably by obtaining an auditory processing assessment from Dr. Lucker.

#### IEE IN THE AREAS OF ATTENTION, SELF-REGULATION, EXECUTIVE FUNCTIONING, AND EMOTIONAL FUNCTIONING

93. As to Parent’s request for an IEE in the areas of attention, self-regulation, executive functioning, and emotional functioning, District’s October 20, 2014 letter stated its position that it had conducted an appropriate initial psychoeducational evaluation. The letter also offered to fund an IEE:

However, in an effort to work collaboratively with you and to address your concerns, the District is willing to fund an IEE in the area of psychoeducation. In order to assist you in identifying an appropriately qualified IEE assessor[,] I

have attached the curriculum vitae (resume) of Dr. Veronica I. Olvera for your review and consideration. The District is also willing to consider any independent evaluator you would like to propose.

94. Parent's November 7, 2014 letter to Ms. O'Malley restated her request for an IEE by a psychologist, and specifically requested that Roger Kenneth Light, Ph.D., psychology, diplomate in clinical neuropsychology, conduct the IEE.

95. Parent received no response from District regarding her proposed assessor Dr. Light. District did not initiate a due process hearing to defend its June 2014 psychoeducational assessment. Parent acted reasonably by obtaining an psychoeducational IEE. Parent and Student went to the University of California, Los Angeles, on January 14 and 23, 2015, for an IEE, entitled "Comprehensive Psychoeducational Assessment," consisting of 36 pages. The UCLA report, dated March 11, 2015, stated that Willa Marquis, M.A., was the examiner, and that Eric Miller, Ph.D., was the supervisor. Parent paid UCLA \$405.00 for the IEE.

96. Student did not call Ms. Marquis or Dr. Miller to testify at hearing. Student failed to establish foundation for the findings and recommendations in the report except for certain limited interpretations of the report by Dr. Lucker, specific to his areas of expertise, discussed below.

97. In October 2015, Parent shared the IEE with District for the first time.

*Dr. Lucker's December 14, 2014 IEE in Language Knowledge and Processing*

98. Dr. Lucker conducted a language processing assessment, primarily using the Comprehensive Assessment of Spoken Language, a standardized test, the Rapid Naming subtests on the Comprehensive Test of Phonological Processing, Second Edition, as well as clinically observing Student's understanding and use of language during the assessment in his office. Dr. Lucker's assessment of Student's auditory processing, discussed below, also provided insight into Student's language processing. Dr. Lucker did not observe Student in a public school setting. He did not interview Student's current or former teachers regarding Student's language processing or functioning at school or otherwise obtain input from them, such as asking them to complete questionnaires similar to the ones provided to Parent.

99. Dr. Lucker easily developed rapport with Student. She was not taking medication for her ADHD, and presented with hyperactive behaviors, such as fidgeting with her hands, constantly swinging her feet, and playing with objects. However, in the one-to-one setting with a highly experienced and competent assessor, Student was very cooperative and attentive, given prompts to stay on task. The assessment consisted of two parts: (1) Student's knowledge of language; and (2) Student's processing of language.

## KNOWLEDGE OF LANGUAGE

100. Dr. Lucker assessed Student's knowledge of the meaning of words (semantics), using the synonyms (receptive vocabulary) and antonyms (expressive vocabulary) subtests of the Comprehensive Assessment of Spoken Language. Student's scores on the synonyms and antonyms subtests fell at the 12th and 19th percentile, respectively. Dr. Lucker found that Student failed the test on receptive vocabulary, but passed the test on expressive vocabulary. Student's profile was atypical, because usually receptive vocabulary is stronger than expressive vocabulary.

101. Dr. Lucker assessed Student's higher level knowledge of the meaning of words, using the nonliteral language subtest of the Comprehensive Assessment of Spoken Language. It assessed, for example, whether Student knew the meaning of a sentence like "it's raining cats and dogs." Student's score fell at the first percentile, revealing severe deficits.

102. Dr. Lucker assessed Student's knowledge of grammar at the word level (morphology) using the grammatical morphemes subtest of the Comprehensive Assessment of Spoken Language. It assessed, for example, whether Student knew the difference in meaning between "cat" and "cats." Student's score fell at the 21st percentile, which was normal.

103. Dr. Lucker assessed Student's knowledge of grammar at the sentence level (syntax), using the syntax construction subtest of the Comprehensive Assessment of Spoken Language. For example, given a picture of a barking dog and flying bird, and the prompt "this dog is barking," she would need to say something like, "these birds are flying." Student's score fell at the fifth percentile, which was very deficient.

## PROCESSING OF LANGUAGE

104. Language processing refers to the ability to use language knowledge to understand and formulate linguistic responses.

105. Based on Student's difficulty completing grammatically correct sentences, Dr. Lucker investigated whether she had difficulty finding words to express herself. Student's ability to find words was normal based on the results of the Rapid Naming subtests from the Comprehensive Test of Phonological Processing.

106. Dr. Lucker assessed Student's ability to understand and use language, using the nonliteral language and pragmatic judgment subtests on the Comprehensive Assessment of Spoken Language. Student's scores fell at the second and sixth percentile, respectively. These subtests targeted figurative language knowledge and social language communication skills, but they also revealed Student's inability to rapidly and appropriately formulate answers.

107. Dr. Lucker further assessed Student's ability to understand and use language, using the Auditory Reasoning subtest on the Test of Auditory Processing Skills, Third Edition, and the Inference subtest on the Comprehensive Assessment of Spoken Language. Student's scores fell at the fifth and ninth percentile, respectively, indicating severe deficits in reflective thinking on linguistic information. Student's expressive language deteriorated when she needed to organize and express her thoughts.

108. Student had needs in the areas of word meanings (semantics), grammatical knowledge and use at the sentence level, and organization of her thoughts and language to express herself appropriately.

109. Dr. Lucker recommended the following goal in the area of word meanings:

[G]iven a new word [Student] does not know, she will demonstrate ability to figure out the meaning of the words by (a) using the context in which the word is presented, (b) use pictures associated with the word, (c) use a grade level appropriate dictionary, and (d) ask appropriate questions to gain the definition of the word.

110. Dr. Lucker recommended the following goal in the area of grammar:

[G]iven any word [Student] will construct grammatically appropriate sentences using the word and change the grammatical structure when one element of the original sentence is changed.

111. Dr. Lucker recommended a goal in the area of organization to be implemented by a speech and language pathologist and educational resource professional:

[G]iven a topic or question to which [Student] must provide a verbal (or written) response increasing in length of the response, [Student] will independently use an organization strategy she has learned to organize her thoughts and language and express herself appropriately.

112. Dr. Lucker's report concluded that Student needed direct language therapy but did not specify the type or intensity of services. At hearing, Dr. Lucker opined that Student needed at least 30 minutes per day of small group (total of two students), "pull-out" language therapy services during the 2014-2015 school year. Student language processing needs would not have changed between December 2014 and the date of the hearing.

113. Dr. Lucker's report did not provide an opinion regarding compensatory education services for Student. At hearing, Student did not elicit testimony from Dr. Lucker regarding Student's need for compensatory education or the type of compensatory services, if any, should be provided to Student. However, Dr. Lucker's testimony regarding Student's need for direct therapy, dating back to the beginning of the 2014-2015 school year, was relevant and helpful to craft a compensatory education remedy for Student.

*Dr. Lucker's December 14, 2014 IEE in the Area of Auditory Processing*

114. Dr. Lucker assessed Student's hearing auditory processing, using tests specific to the field of audiology to rule out a hearing loss, and determine whether Student had auditory processing deficits. He did not interview Student's current or former teachers regarding Student's auditory processing or functioning at school or otherwise obtain input from them, such as asking them to complete questionnaires similar to the ones provided to Parent.

115. Student had no deficits in hearing, word and sentence recognition in quiet and noisy environments, auditory sensitivity (listening to loud sounds), auditory overloading (feeling overwhelmed when system cannot handle volume of auditory information to process), auditory extraction (listening to auditory stimuli and pulling out specific phonemes, words or verbal messages), and auditory distractibility (getting primary, relevant verbal information in the presence of competing auditory messages and sounds).

116. Student had problems with sustaining auditory attention, organizing and sequencing auditory-verbal information, retrieving information from working memory, and integrating auditory information.

117. As to sustaining auditory attention, Student was asked to indicate whether she heard a particular word during a 12-minute period. Student responded well at the beginning of the test but as time passed, her attention drifted off, such that Dr. Lucker found that she had a significant deficit in general sustained auditory attention. Dr. Lucker's finding was consistent with Student's OHI eligibility, because of her previously identified attention deficits. Student's behavior on this test indicated that she could easily drift off in a large group instructional setting, which was consistent with Ms. Stewart-Guillory's and Ms. Hannah's observations of student at school.

118. As to organizing and sequencing auditory-verbal information, Student was asked to listen and organize strings of verbal information. Student performed two standard deviations below the mean, which was a severe deficit. Dr. Lucker hypothesized that the deficit could be related to an underlying deficit in executive functioning.

119. As to auditory memory, which is actually a process beyond pure auditory processing, Student had a weakness, but not a deficit, in retrieving auditory information from short term memory. Dr. Lucker hypothesized that the weakness could be related to an underlying deficit in executive functioning.

120. As to auditory integration, Student was asked to listen to pieces of messages, and put the pieces together to form a unified whole to comprehend what she heard. Student's performance revealed a weakness for integrating phonological information, and a significant deficit for integrating words.

121. Dr. Lucker concluded that Student's auditory processing weaknesses and deficits were primarily due to underlying listening attention deficits which, in turn, may be related to underlying attention, self-regulation, and executive functioning problems. He recommended further assessment in these areas.

122. Dr. Lucker recommended the following goal to address Student's deficit in auditory integration:

[Student] will demonstrate faster and more accurate ability to take pieces of verbal information and put the pieces together to form the meaningful whole for comprehension of linguistic material she hears and reads.

123. Based on the language processing and auditory processing assessment, Dr. Lucker recommended three accommodations: extra time to comprehend and provide an appropriate response; organizational strategies, such as a graphic organizer, and pre-teaching.

124. At hearing, Dr. Lucker provided examples of additional accommodations that would help Student to attend: monitoring and prompting her, providing a distraction-free environment, and breaking assignments down into chunks.

#### *Parent's March 2015 Request for Student's School Records*

125. Student alleged that District denied her a FAPE by failing to provide Parent with copies of service logs and standards-based testing in response to Parent's March 20, 2015 request for a copy of all educational records.

126. On March 20, 2015, District received Parent's written request for a copy of all of Student's school records. On April 20, 2015, Parent picked up Student's records. District produced 12 pages of records, consisting of Student Data Printout, spring 2013 California Standards Test scores, Student Standard Base Grades for the 2014-2015 school year, Language Assessment Data for the 2012-2013 school year, and elementary transcript.

127. District did not provide copies of service logs for Student's specialized academic instruction services, because as of March 20, 2015, Parent had not provided written consent to implement these services.

128. During hearing, District produced copies of Student's AIMSweb data, consisting of Reading Improvement Reports for the 2013-2014 and 2014-2015 school years. These reports contained valuable benchmark comparisons for fall, winter, and spring of Student's reading comprehension and reading fluency scores compared to national standards. The reports dated back to the fall of 2011 (first grade). Dr. Lozier, Principal Dr. Francisca Owoaje, Ms. Stewart-Guillory and Ms. Hannah all used AIMSweb data to evaluate a child's academic progress. Dr. Lozier credibly testified that objective data, such as the AIMSweb data, was helpful, because grades from report cards could be subjective.

129. District failed to produce a complete copy of standards-based data in response to Parent's records request. Reading comprehension and reading fluency were areas of need for Student. District's failure to disclose the AIMSweb data deprived Parent of valuable, objective information regarding Student's reading achievement.

*Parent's March 28, 2015 Consent to the October 2014 IEP and Assessment Plan*

130. On March 28, 2015, Parent provided written consent to implement the goals and specialized academic instruction services in the October 9, 2014 IEP, even though she did not think that the District's previous assessments or the services were sufficient to meet Student's needs.

131. Due to the eight month delay in consenting to the IEP, Student missed 48 hours of individual and small group specialized academic instruction in reading and math.

132. On March 28, 2015, Parent also provided written consent to proceed with District's speech and language assessment, offered five months prior. As discussed below, in May 2015, Tavia Arnett, clinical fellow speech language pathologist, conducted a comprehensive speech and language assessment of Student.

IMPLEMENTATION OF THE OCTOBER 9, 2014 IEP

133. Student alleged that District denied Student a FAPE by failing to materially implement Student's October 9, 2014 IEP between March 28 and October 2015 by failing to fully implement resource specialist program services, and failing to implement any goals.

134. The October 9, 2014 IEP was an amendment to the July 29, 2014 IEP, and both were in effect until July 29, 2015.

135. Prior to the expiration of the July 29 and October 9, 2014 IEP's, District convened an IEP team meeting on June 3, 2015, to offer a new IEP to Student. Parent did not provide written consent to the new IEP. Therefore, the July 29 and October 9, 2014 IEP's were still in effect between August 17, 2015, the first day of school, and October 20, 2015, the last day that Student attended public school in the District.

136. District was obligated to implement three goals and 360 minutes per month of specialized academic instruction pursuant to the July 29 and October 9, 2014 IEP, as soon as possible after receiving Parent's written consent on March 28, 2015.

137. District assigned special education teacher Ms. Hannah to implement specialized academic instruction to Student.<sup>6</sup> Ms. Hannah was responsible for implementing academic goals and specialized academic instruction at Laurel. Ms. Hannah was eager to implement Student's initial IEP, and contacted Parent many times during the 2014-2015 school year to ask her when she was going to sign the IEP. Ms. Hannah was concerned that Parent did not provide consent until March 2015, resulting in a loss of approximately eight months of specialized academic instruction.

138. Ms. Hannah was ready to implement Student's academic goals and provide specialized academic instruction to Student as soon as she received Parent's written consent. Ms. Hannah credibly testified that she fully implemented Student's July 29 and October 9, 2014 IEP, until Student's last day of school on October 20, 2015. Ms. Hannah's recollection of her delivery of services was credible, because she adjusted Student's special education schedule when she participated in District's spring 2015 standardized testing program to ensure that Student received all of her instructional minutes. Student did not offer any evidence to rebut Ms. Hannah's testimony. Therefore, District did not fail to materially implement Student's July 29 and October 9, 2014 IEP's.

#### *May 13, 2015 Lindamood-Bell Assessment*

139. On May 13, 2015, Parent proceeded with a private reassessment of Student at Lindamood-Bell Learning Processes in Los Angeles, California. Lindamood-Bell's testing summary report contained the same battery of tests as the May 31, 2014 assessment. The report, signed by Mr. Yoczik, executive center director, concluded that Student would benefit from intervention to develop her language and literacy skills, and recommended four hours per day, five days per week of Lindamood-Bell instruction for a total of 240 to 280 hours of instruction over the course of 12 to 14 weeks.

140. Mr. Yoczik did not test Student in May 2015. He did not recall meeting Student. He spoke with Parent on the phone, and learned that she was concerned about Student's reading comprehension. He did not know who administered and scored the battery of tests. Mr. Yoczik reviewed the May 2015 test protocols and testing summary, and compared the scores from May 2014 and May 2015 reports, to develop his recommendations. He increased the intensity of services from May 2014, because the test scores did not indicate to him that Student had made one year's growth in one year. In contrast, Dr. Lucker's comparison of the reports indicated that Student had made one year's growth in reading decoding.

141. The May 2015 scores, diagnostic interpretations, and instructional recommendations share the same evidentiary problems as the May 2014 report. Once again, it is impossible to determine the validity of the scores without knowing whether the person or

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<sup>6</sup> Specialized academic instruction meant the same as District's informal term of "resource specialist program" services or "RSP services," and Ms. Hannah was also referred to as a "RSP teacher."

persons who administered the tests were qualified to do so, and whether those individuals administered the tests in conformity with the manuals for the tests. While Mr. Yoczik's testimony provided a helpful overview of Lindamood-Bell's procedures and programs, his testimony was not helpful in establishing the validity of the data in the report. Accordingly, Student did not establish foundation for the content of the May 2015 Testing Summary and, therefore, the contents of the report, as well as Dr. Lucker's interpretation of the test scores, will not be relied upon here.

*District's May 2015 Speech and Language Assessment*

142. On May 5, 13 and 18, 2015, Ms. Arnett conducted a comprehensive speech and language evaluation of Student. In 2007, she earned a bachelor of arts from San Diego State University in linguistics. In 2014, she earned a master of arts from California State University, San Marcos, in communicative sciences and disorders. When Ms. Arnett assessed Student, she held a preliminary speech, language, hearing credential, and was designated as a clinical fellow speech and language pathologist. She has conducted between 100 and 200 assessments, and conducts about five assessments per week within District.

143. Dr. Lucker suggested that Ms. Arnett was not qualified to conduct the assessment, because she had not yet been licensed by the State as a speech and language pathologist. However, Ms. Arnett presented as an articulate, knowledgeable and competent assessor, who was well trained in school-based speech and language therapy assessments and services. Her assessment was more thorough than Dr. Lucker's, her findings aligned with Dr. Lucker's, and her impressions and recommendations were credible and helpful.

144. Ms. Arnett first met Parent and Student when she started the assessment process.

145. Ms. Arnett used multiple tools to gather information about Student. She reviewed Student's file; provided Parent and Ms. Veliz observational rating scales; reviewed Parent's concerns; administered three standardized tests; and she made clinical observations of Student's behavior during the assessment. She interviewed Parent and Ms. Veliz before, during and after the assessment.

146. Parent's highest areas of concern were auditory processing, decoding related to reading, spelling, and auditory comprehension, phonological processing, language, communication, attention, self-regulation, sensorimotor skills, social and behavioral. Student's teacher's highest areas of concern concerned Student's problems paying attention, using complete sentences when talking, saying something another way when someone did not understand, understanding what was read, remembering details, following directions, and writing down thoughts.

147. When Ms. Arnett first met Student, Student was friendly. She readily took to the testing room at Laurel, and was not shy or nervous. Ms. Arnett did not have difficulty getting Student's attention. She took breaks during the testing, during which Student wanted to draw on the white board. Student was easily redirected back to task.

148. Ms. Arnett conducted the first formal assessment of Student's speech by administering a standardized test, the Goldman Fristoe Test of Articulation, Second Edition. Student's score fell within the average range, indicating that there were no articulation or phonological processes that were present at the word level. Informal, clinical observations indicated that Student's vocal pitch, voice quality and loudness were appropriate for her age and gender. She demonstrated spontaneous speech intelligibility of 80 percent or higher. Student did not have unique needs in the area of speech.

149. Ms. Arnett assessed Student's receptive and expressive language abilities using two standardized tests, the Clinical Evaluation of Language Fundamentals, Fifth Edition, and the Test of Language Development, Intermediate, Fourth Edition.

150. On the Clinical Evaluation of Language Fundamentals, Student's subtest score fell within the "Very Low/Severe" range on three subtests: Formulated Sentences (0.1 percentile rank), Sentence Assembly (0.4 percentile rank), and Semantic Relationships (second percentile rank).

151. The Formulated Sentences subtest assessed Student's ability to formulate complete, semantically, and grammatically correct spoken sentences of increasing length and complexity. Student's very low/severe score indicated that she could have difficulty forming simple, compound, and complex sentences, and using them in her writing.

152. The Sentence Assembly subtest assessed Student's ability to formulate grammatically acceptable and semantically meaningful sentences by manipulating and transforming given words and word groups. Student's very low/severe score indicated that she could have difficulty describing events and actions, responding to questions, and participating in conversations by rephrasing or using variations of sentences.

153. The Semantic Relationships subtest assessed Student's ability to interpret sentences that make comparisons, identify locations or directions, specify time relationships, include serial order, and are expressed in passive voice. Student's very low/severe score indicated that she could have difficulty interpreting verbal or written concepts.

154. Student performed in the average range on the Pragmatics Profile subtest, indicating that she did not have difficulty with social communication skills. However, Student's Core Language Score for the entire test was "Very Low/Severe" (second percentile), indicating receptive and expressive language impairments.

155. On the Test of Language Development, Student performed in the “Poor” range on the Picture Vocabulary (fifth percentile) and Relational Vocabulary (second percentile) subtests, and “Very Poor” on the Word Ordering (first percentile) and Sentence Combining (below first percentile) subtests.

156. The Picture Vocabulary subtest assessed Student’s ability to understand the meanings of spoken utterances, such as pointing to a picture of a dog, given the prompt “tail wagger.” The Relational Vocabulary subtest assessed Student’s ability to identify the abstract relationship among a set of spoken words (e.g., identifying “animals” for “dog, horse, cat”). The Word Ordering subtest assessed Student’s ability to organize a series of randomly ordered words and form a complete, correct sentence (e.g., given “home, go, let’s,” creating “let’s go home”). The Sentence Combining subtest assessed Student’s ability to form compound or complex sentences, given two or more orally presented sentences (e.g., form the sentence “I like cookies and milk,” given the sentences “I like milk” and “I like cookies.”).

157. Student performed in the average range on the Multiple Meanings subtest, which assessed her ability to provide different meanings for a spoken word, such as “scent” and “cent.” She performed in the superior range on the Morphological Comprehension subtest, which assessed her ability to listen to sentences and identify whether they had correct or incorrect grammar.

158. The Test of Language Development yielded five composite scores for Listening (50th percentile, average), organizing (first percentile, very poor), speaking (sixth percentile, poor), grammar (ninth percentile, below average), semantics (sixth percentile, poor), and spoken language (fifth percentile, poor). The spoken language index combined all of the subtest scores, providing the most comprehensive estimate of Student’s overall ability, including receptive and expressive language skills.

159. District’s assessment indicated that Student had a receptive and expressive language impairment in the areas of semantics (word meanings) and syntax (sentence structure), which was consistent with Dr. Lucker’s findings.

#### *June 3, 2015 IEP Team Meeting*

160. On June 3, 2015, the IEP team convened to review Ms. Arnett’s assessment and conduct Student’s annual IEP review.

#### GENERAL EDUCATION TEACHER’S PARTICIPATION

161. Ms. Veliz did not attend the meeting, because of an extended absence. Instead of postponing the meeting, District invited general education teacher Ms. Kelly to attend the meeting to provide input on goals, thereby ensuring that a general education teacher attended the meeting. The IEP team had access to Ms. Veliz’s input through her recent completion of the Teacher Rated Observational Rating Scale, summarized in Ms. Arnett’s recent speech

and language report. Ms. Hannah attended the meeting, and provided input regarding her weekly observations of Student in Ms. Veliz's class, and her regular consultations with Ms. Veliz during the 2014-2015 school year regarding Student's performance. District offered to reconvene the IEP team meeting to obtain the input of Student's then-current general education teacher, Ms. Whitmer, and did so on October 15, 2015.

162. District invited a general education teacher, Ms. Kelly, to the June 3, 2015 IEP meeting. Student did not offer any evidence as to how Student was harmed by Ms. Kelly's presence or Ms. Veliz's absence. The IEP team reconvened on October 14, 2015, to review Student's June 3, 2015 IEP, and Student's then-current fourth grade general education teacher, Ms. Whitmer, attended the meeting. For these reasons, Student failed to establish that she was denied a FAPE by District's failure to include a general education teacher at her IEP team meetings.

#### PREDETERMINATION OF STUDENT'S PLACEMENT

163. Student failed to offer any evidence that District failed to discuss placement options, or otherwise predetermined its offer, during the June 3, 2015 IEP team meeting. Student therefore failed to meet her burden of proof to establish that District predetermined her placement.

#### PRESENT LEVELS OF ACADEMIC ACHIEVEMENT AND FUNCTIONAL PERFORMANCE

164. Student alleged that the June 3, 2015 IEP denied her a FAPE, because it failed to include appropriate present levels of performance in reading, math, writing, communication, social emotional/behavioral, and vocational.

165. District contended that it had limited opportunity to obtain updated present levels of performance, because Parent did not authorize District to implement the October 9, 2014 IEP until March 28, 2015. Principals Dr. Lozier and Dr. Owoaje testified about the multiple sources of data to monitor children's academic achievement at Laurel Elementary, including AIMSweb data and Achieve 3000 data. The IEP team also had access to work samples from Ms. Veliz's general education classwork, and work samples from Ms. Hannah's specialized academic instruction sessions. Therefore, District's argument fails, because it had access to other sources of data to update Student's present levels.

166. As to reading, District copied the present level from Student's July 29 and October 9, 2014 IEP's. The baselines for the two reading goals were vague and, therefore, did not fill in the gap left by the old present level of performance. As to reading comprehension, the goal's baseline stated: "When reading materials at school, [Student's] reading improved. She is able to read to herself and aloud with comprehension and reflection. This was using 3rd grade level text." As to reading fluency, goal's baseline states: "She will receive [common core] standards at the appropriate grade level in the area

of reading fluency.” District knew that as of June 2015, Student was at least two years behind in reading but this important information was not captured in the IEP. The present level was not appropriate, because it was based on old data, and the new input was vague.

167. As to math, District copied the present level from Student’s July 29 and October 9, 2014 IEP’s. The baseline for the math goal was vague and, therefore, did not fill in the gap left by the old present level of performance. The baseline stated: “[Student] worked with adding and subtracting simple one digit problems, when adding and subtracting multiple numbers she did experience some difficulty.” The present level was not appropriate, because it was based on old data, and the new input was vague.

168. As to writing, District copied the present level from Student’s July 29 and October 9, 2014 IEP’s. District added new information but it was vague: “[Student] has been working in the general education setting. She performs classroom assignment[s] in a timely manner and works well with her peers. Push in was the model also used last year.” The present level was not appropriate, because it was based on old data, and the new input was vague.

169. As to communication, District updated the present level based, summarizing key information from Ms. Arnett’s speech and language assessment, as well as input from IEP team members. The baselines for the new receptive and expressive language goals also provided objective, current information regarding Student’s levels. The present level was appropriate.

170. As to social emotional/behavioral, District copied the present level from the July 29 and October 9, 2014 IEP’s, but also updated the present level by stating that “[Student] continues to not exhibit inappropriate social emotional behavior in the classroom.” Ms. Hannah’s and Ms. Arnett’s observations of Student at school were consistent with the present level as to Student’s social-emotional functioning. Ms. Hannah observed that Student presented as a happy, affectionate, outgoing child at school. Student got along well with adults and peers. She socialized and giggled with her friends in the cafeteria, and played with her friends on the playground. Ms. Arnett similarly observed, as captured in the present level regarding communication, that “[Student] is very social and is able to interact with adults and other children appropriately.”

171. Parent shared that Student enjoyed playing with her friends, and was a very sociable and friendly person. However, Parent was very concerned about Student’s anxious behaviors at home, requiring a hospital visit to address Student’s anxiety. Dr. Lucker also noted that the March 20, 2015 UCLA report referenced Student’s difficulties with emotional regulation. However, Dr. Lucker’s interpretations of the report did not provide foundation for the report. Student did not rebut District’s persuasive evidence that Student did not exhibit social-emotional difficulties at school. The present level was appropriate regarding Student’s social-emotional functioning.

172. As to behavior, the present level section of the IEP did not contain any updated information on Student's attention deficits. However, the baseline for the attention and focus goal stated that Student was able "to focus for 15 minutes during a preferred activity." The "Strengths/Preferences/Interests" section of the IEP provided examples of Student's preferences, including art, music, math (given an external motivator), being a classroom helper, and playing with her friends. Therefore, taken as a whole, the IEP provided an appropriate present level regarding Student's behavioral functioning.

173. As to vocational, Student did not present evidence at hearing as to why the present level was inappropriate. Student therefore did not establish that the present level was inappropriate.

#### GOALS

174. Student alleged that the June 3, 2015 IEP denied her a FAPE, because it failed to include appropriate goals in reading comprehension, reading fluency, math, receptive language, attention and focus, and organization.

175. As to reading comprehension, District identified this skill as an area of unique need, and developed the following annual goal based on a fourth grade general education standard:

By 06/03/2016, when asked to formulate predictions about text, [Student] will use prior knowledge and ideas from illustrations, titles, topic sentences, key words and clues to make and confirm predictions with 80% accuracy in 2 or 3 trials as measured by teacher-charted observations/student work samples.

The goal designated the general education teacher and special education teacher as being responsible for implementing the goal. District updated Student's previous goal by increasing the content standard from third to fourth grade, and by targeting specific comprehension skills to help Student be involved in the general education curriculum. District offered an appropriate reading comprehension goal.

176. As to reading fluency, District correctly identified this skill as an area of need. Student's third grade report card reflected the lowest level of achievement ("1") for reading with accuracy and fluency across the first, second, third, and fourth reporting periods during the 2014-2015 school year.<sup>7</sup> Student obtained a "Well Below Average" rating for fluency on the fall 2014, winter 2015, and spring 2015 AIMSweb benchmark assessments. District's proposed fluency goal was actually an appropriate reading comprehension goal, requiring Student to formulate why, what-if, and how questions when given a grade level story. District failed to offer an appropriate reading fluency goal.

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<sup>7</sup> The other achievement levels were: approaching standard (2), meets standard (3), and exceeds standard (4).

177. As to math, District identified word problems as an area of unique need, and developed the following annual goal based on a fourth grade general education standard:

By 06/03/2016, when given a mixture of 20 math problems requiring both simple and multi-step solutions, [Student] will determine how and when to break a problem into simpler parts with 80% accuracy in 2 of 3 trials as measured by student work samples.

The goal designated the general education teacher and special education teacher as being responsible for implementing the goal. Student contended that the goal was not appropriate, because the baseline was vague as it stated that Student “did experience some difficulty with adding and subtracting multiple numbers.”

178. While it is true that the baseline was vague, District and Parent knew from Student’s report card that she was below standard in solving two-step word problems, and she needed to build upon that skill to access the general education fourth grade curriculum. District updated Student’s previous goal by increasing the content standard from third to fourth grade, by targeting multi-step word problems to help Student be involved in the general education curriculum, and by including objective, measurable criteria to evaluate progress during the year through progress reports and an annual review. District offered an appropriate math goal.

179. As to receptive language, District through Ms. Arnett, correctly identified this as an area of need, and developed a baseline and related goal based on Ms. Arnett’s recent assessment, and input from Ms. Hannah. Student contended that the goal was not appropriate, because the baseline was vague and did not cite a source. The baseline states that “[c]urrently, [Student] has difficulty pulling meaningful information from text and verbally communicating it to others; she demonstrates problem-solving skills with 45% accuracy.”

180. At hearing, Ms. Arnett explained the context for the baseline and goal. During the IEP team meeting, the team discussed Student’s academic performance in the general education curriculum, relying on Ms. Hannah’s direct work with, and observations of, Student in Ms. Veliz’s classroom where Student struggled academically. The team discussed the demands of next year’s general education curriculum, including the need for Student to listen to grade level stories, comprehend and draw inferences from the story, and communicate her comprehension. While the baseline standing alone may not be a model of clarity, there was no harm to Student, because District explained the rationale for the baseline and goal in the meeting, and there was no showing that Parent did not understand.

181. The receptive language goal stated:

By June 2016, using grade level literacy materials provided orally, [Student] will demonstrate problem solving skills by making inferences with 80%

accuracy, during a structured activity, across 3 consecutive sessions, as measured by the speech provider.

182. The goal addressed a need arising out of Student's disability, and targeted listening and inferencing skills that will help Student be involved in and progress in the general education curriculum. The goal included objective, measurable criteria to evaluate progress during the year through progress reports and an annual review. The goal also included three, measurable short-term objectives although not required by law. District offered an appropriate goal.

183. As to attention and focus, District identified this as an area of unique need, and developed the following annual goal:

By Annual Review 6/2016: In a structured elementary school activity, [Student] will attend to and engage in adult-directed activities for 30 minutes without abandoning the activity, receiving no more than three prompts (verbal, visual, or gestural), in 4 out of 5 trials over a consecutive two-week period as measured by teacher data collection and observations.

184. Student contended that the goal was inappropriate because the baseline did not cite a source for the data and did not provide data on teacher-directed activities. Student did not challenge the actual goal. As discussed above, taken as a whole, the IEP provided an appropriate present level regarding Student's behavioral functioning. The goal addressed a need arising out of Student's disability, and targeted attending skills that will help Student be involved in and progress in the general education curriculum. The goal included objective, measurable criteria to evaluate progress during the year through progress reports and an annual review. The goal also included two, measurable short-term objectives although not required by law. District offered an appropriate attention and focus goal.

185. Even if District had not offered an attention and focus goal, the IEP appropriately addressed Student's attention deficits by offering an extensive list of accommodations and supports for Student, including providing extra time for classroom tasks, using visual supports, providing preferential seating, allowing Student to practice hands-on learning of new skills to enhance concentration, giving assignments that involve immediate, short-term tasks, using graphic organizers, and using picture diagrams, whiteboard, and gestures when delivering information to maintain her attention.

186. As to organization, District identified this as an area of unique need, and developed the following annual goal:

By Annual Review: In the elementary school setting, [Student] will improve her organizational skills. [Student] will prioritize and complete assignments, with 90% accuracy maintaining 4 out of 5 trials over a consecutive two-week period, and as measured by teacher data collection and observations.

187. Student contended that the goal was inappropriate, because the baseline did not indicate a level of support or source of observations. Student did not challenge the content of the actual goal. The baseline appropriately stated that Student had a 40 percent success rate organizing and prioritizing her school work and homework. The goal addressed a need arising out of Student's disability, and targeted organization skills that will help Student be involved in and progress in the general education curriculum. The goal included objective, measurable criteria to evaluate progress during the year through progress reports and an annual review. The goal also included two, measurable short-term objectives although not required by law. District offered an appropriate organization goal.

188. Even if District had not offered an organization goal, the IEP appropriately addressed Student's organization deficits by offering a homework planner, and organizational interventions for the classroom, including making certain that all directions, explanations, and instructions were delivered in the most clear and concise manner, providing time at the beginning of the day to help Student organize her materials, time, and minimize the amount of materials Student would need for assignments.

#### SPEECH AND LANGUAGE SERVICES

189. Student alleged that the June 3, 2015 IEP denied her a FAPE, because it failed to offer her appropriate speech and language services. Based on Ms. Arnett's comprehensive speech and language assessment, and IEP team discussions regarding Student's academic challenges in the classroom, District offered six sessions per month, 30 minutes per session, of small group speech and language services, consisting of two to three students. At hearing, Ms. Arnett opined that Student needed services two times per week, which did not align with the level of service offered on the IEP. In contrast, Dr. Lucker opined that Student needed at least 30 minutes per day of small group speech and language therapy, because of her severe deficits.

190. Ms. Arnett based her recommendation on her assessment results, California's objective eligibility criteria for speech and language services, Student's attention span, and the benefits, which include speech and language development, Student receives from being in a general education classroom. Ms. Arnett did not want Student to be pulled too much from the general education curriculum, because Student benefited from accessing the general education curriculum, modeling typically developing peers, and building upon her social communication strengths.

191. Ms. Arnett's opinion regarding the intensity of services was given more weight than Dr. Lucker's for three reasons. First, her assessment was more thorough, because she administered two comprehensive standardized tests of language development whereas Dr. Lucker only administered one. Ms. Arnett's assessment obtained input from Parent and Ms. Veliz where Dr. Lucker did not obtain any input from Student's teacher. Third, Ms. Arnett applied California's objective, eligibility criteria for determining if a child is eligible for speech and language services, whereas Dr. Lucker did not.

192. Dr. Lucker's recommendation was too high because he did not apply California's objective eligibility criteria for language therapy services, and he did not factor in Student's schedule for general and special education instruction, and the general education teacher's ability to teach skills directly related to the language goals in the classroom. Ms. Arnett's recommendation was too low because she overemphasized Student's need to be in the general education classroom, and did not give appropriate weight to Student's severe deficits. Student's ability to benefit from general and special education instruction was inextricably linked to Student's underlying language processing abilities. Student could not be expected to obtain meaningful educational benefit in reading and writing if her severe language processing deficits were not appropriately addressed through direct, small group, language therapy services from a qualified speech and language pathologist. Therefore, this decision finds that the June 3, 2015, and October 9, 2015 IEP's should have offered Student at least three sessions per week, 30 minutes per session, of small group, language therapy services to balance Student's need to receive appropriate services while also having sufficient time to access the general education curriculum, and receive specialized academic instruction services.

#### EXTENDED SCHOOL YEAR SERVICES

193. Student alleged that the June 3, 2015 IEP denied her a FAPE, because District failed to offer any extended school year services. The June 3, 2015 IEP offered Student 360 minutes per month of specialized academic instruction, and 180 minutes per month of speech and language services for the regular school year, but did not offer any services for the extended school year.

194. Student criticized the IEP, because it did not explain whether Student needed ESY or explain why data was not collected over summer break between the June and October IEP's. Simply pointing out that the IEP did not offer extended school year services, and criticizing District's procedures, did not satisfy Student's burden of proof. Student did not offer any evidence as to why she needed extended school year services. Therefore, Student failed to meet her burden of proof.

#### *October 14, 2015 IEP Team Meeting*

195. The IEP team reconvened on October 14, 2015, to continue the discussion regarding Student's annual review. Parent provided a copy of Dr. Lucker's IEE, UCLA's IEE, Dr. Lucker's updated record review of the UCLA report, and Lindamood-Bell's May 2015 assessment. Parent expressed deep concerns regarding Student's emotional development, reporting that Student suffered from anxiety, requiring a trip to the hospital in May 2015. Parent wanted an intensive reading program for Student, consistent with the Lindamood-Bell's recommendation of 180 to 200 hours of one-to-one instruction.

196. Dr. Lucker participated telephonically in the meeting, and shared his opinions regarding his May 28, 2015 review of UCLA's March 11, 2015 psychoeducational assessment. He opined that the assessment revealed that Student had difficulty with verbal

comprehension, significant problems with attention and executive functioning that needed to be treated, and emotional regulation problems, which may have been related to Parent's concerns regarding Student's anxiety.

197. Dr. Lucker's opinion regarding Student's difficulty with verbal comprehension fell within his area of expertise, and was consistent with Ms. Arnett's and his findings. However, Dr. Lucker's opinions regarding Student's need for treatment for attention and executive functioning deficits, and her emotional regulation problems, were outside his area of expertise, and not relied upon here.

#### PRESENT LEVELS OF PERFORMANCE AND GOALS

198. Student's October 9, 2015 IEP contained the same present levels of performance, and goals as her June 3, 2015 IEP. Student's allegations regarding the present levels and goals for the October 9, 2015 IEP were identical to those for the June 3, 2015 IEP. Student did not establish that her needs had changed between June 3 and October 9, 2015. Therefore, the factual findings regarding the appropriateness of the present levels and goals in the October 9, 2015 IEP are identical to factual findings regarding the June 3, 2015 IEP, and are incorporated here.

#### *October 2015 Unilateral Placement at The Prentice School*

199. On October 2, 2015, Parent delivered a letter to District's office and Laurel, notifying District of her intention to place Student in an unspecified non-public school on October 21, 2015, because she did not think that the June 3 and October 14, 2015 IEP's offered Student a FAPE.

200. On October 21, 2015, Student enrolled at Prentice. She attended Micki Simon's split fourth/fifth grade classroom, consisting of nine students. Ms. Simon has been a teacher at Prentice for five years. She earned a clear multiple subjects credential, and was working on her special education credential at the time of the hearing.

201. Ms. Simon updated Student's reading fluency and reading comprehension levels in November 2015, December 2015, and January 2016, using a reading program called "A to Z," which was aligned to the Common Core standards. She informally tested Student's reading fluency and reading comprehension every two weeks, and used that data to adjust the level of reading materials.

202. Ms. Simon also obtained standardized data through Student's December 2015 participation in the AIMSweb benchmark testing program, the same program used by District. The AIMSweb data ("Winter 2015") indicated that Student's reading fluency score fell at the fifth percentile (well below average), reading comprehension at the first percentile (well below average), math calculations at the first percentile (well below average), and math concepts at the 17th percentile (below average) based on national norms.

203. Ms. Simon estimated that Student's reading skills were at the beginning second grade level, writing skills were at the first grade level, and math skills were at the second to third grade level, depending on the concept.

204. Student received daily, small group, specialized academic instruction at Prentice, using a multisensory teaching method, called the Slingerland Approach, where she simultaneously processed concepts through visual, auditory, and kinesthetic pathways. Student received educational benefit at Prentice. On November 16, 2015, her fluency score was 40 words per minute on a level "L" passage (beginning of second grade), and on January 7, 2016, her fluency score was 68 words per minute on a level L passage. On November 16, 2015, her reading comprehension score was 30 percent correct on a level L passage, and on January 7, 2016, her comprehension score as 85 percent correct on a level L passage.

205. Student did not receive any language therapy services at Prentice, because Parent could not afford to pay for them on top of the tuition, which was a financial hardship to Parent.

206. Parent paid \$4,842.90 for tuition at Prentice. Student received a scholarship from Prentice in the total amount of \$7,748.63. Prentice did not seek reimbursement from Parent for the scholarship.

## LEGAL CONCLUSIONS

### *Introduction: Legal Framework Under the IDEA*<sup>8</sup>

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et seq.; 34 C.F.R. § 300.1 (2006) et seq.<sup>9</sup>; 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 free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for 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 the parent or guardian, which meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) "Special

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<sup>8</sup> Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

<sup>9</sup> All references to the Code of Federal Regulations are to the 2006 version.

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 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 “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 Island*) [In enacting the IDEA 1997, 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. 951, fn. 10.)

4. There are two parts to the legal analysis of a school district's compliance with the IDEA. First, the tribunal must determine whether the district has complied with the procedures set forth in the IDEA. (*Rowley, supra*, 458 U.S. at pp. 206-207.) Second, the tribunal must decide whether the IEP developed through those procedures was designed to meet the child’s unique needs, and was reasonably calculated to enable the child to receive educational benefit. (*Ibid.*) An IEP is not judged in hindsight; its reasonableness is evaluated in light of the information available at the time it was implemented. (*J.G. v. Douglas County School Dist.* (9th Cir. 2008) 552 F.3d 786, 801; *Adams v. State of Oregon* (9th Cir. 1999) 195 F.2d 1141, 1149 (*Adams*).) In determining the validity of an IEP, a tribunal must focus on the placement offered by the school district, not on the alternative preferred by the parents. (*Gregory K. v. Longview School Dist.* (9th Cir.1987) 811 F.2d 1307, 1314.)

### *Burden of Proof*

5. In an administrative proceeding, the burden of proof is ordinarily on the party requesting the hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].) Student requested the hearing and, therefore, Student has the burden of proof related to the issues of FAPE.

### *Preliminary Procedural Matter: Exception to the Two-Year Statute of Limitations*

6. Congress recognized that it is critical to assure appropriate education for handicapped children at the earliest time possible. Failure to act promptly could irretrievably impair a child's educational progress. (*Alexopolous v. San Francisco Unified Sch. District* (9th Cir. 1987) 817 F.2d 551, 555.) Congress' desire to obtain timely and appropriate education for handicapped children by conferring substantial substantive and procedural rights on parents and guardians on behalf of their children clearly indicates that it is not intended to authorize filings of claims on behalf of or by children many years after the alleged wrongdoing occurred. It is reasonable to assume Congress expected and intended the child's representative to file actions and apply for hearings on his behalf near the time the contested event occurred. The child may not later come before a court and invoke the tolling provisions of state statute. (*Id.* at p.556.)

7. Education Code section 56505, subdivision (1), provides that any request for a due process hearing shall 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. (See also, 20 U.S.C. §1415(f)(3)(c).) The two year limitations period does not apply if the parent was prevented from filing a due process request due to either (1) specific misrepresentations by the local educational agency that it had solved the problem forming the basis of the due process hearing request, or (2) the local educational agency withheld information from the parent which is required to be provided to the parent. (Ed. Code, § 56505, subd. (1)(1),(2); 20 U.S.C. § 1415 (f)(3)(D).)

8. The narrow exceptions of misrepresentation and withholding of information require that a school district's actions be intentional or flagrant rather than merely a repetition of an aspect of determining whether a student received a free appropriate public education. (See *M.M. & E.M. v. Lafayette School District* (N.D.Cal. February 7, 2012, Nos. CV 09-4624, 10-04223 SI) 2012 WL 398773, \*\*17 – 19, *affd.* in part & *revd.* in part (9th Cir. 2014) 767 F.3d 842.)

9. The IDEA provides that a notice of procedural safeguards must be given by a school district to a particular parent of a child with a disability a minimum of once a year and/or: 1) upon initial referral for assessment or parent request for assessment; 2) upon filing a request for a due process hearing; or 3) upon parent request. (20 U.S.C. § 1415(d)(1)(A); 34 C.F.R. § 300.504(a).) There is no provision in either State or federal law that district personnel explain the notice of procedural safeguards to a parent in the absence of an affirmative request by the parent.

10. Student alleges that the two-year statute of limitations, commencing on November 13, 2013, should be extended to September 2011, because District allegedly failed to provide Parent with a copy of procedural safeguards in response to Parent's and Student's Grandmother's requests for an assessment between September 2011 and October 2013. Student established that Student's Grandmother and Parent made multiple requests for help between September 2011 and October 2013. However, the only request that triggered District's obligation to provide Parent with a copy of procedural safeguards was Parent's April 11, 2013 written request for an independent assessment given to Dr. Lozier on April 11, 2013. In response to Parent's written request for an assessment, District did not provide Parent with a copy of procedural safeguards. District's withholding of this required information warrants an extension of the statute of limitations to April 11, 2013.

#### *Procedural Requirements of a FAPE*

11. The Supreme Court has recognized the importance of adherence to the procedural requirements of the IDEA. (*Rowley, supra*, at pp. 205-06.) However, a procedural error does not automatically require a finding that a FAPE was denied. A procedural violation results in a denial of a FAPE only if the violation: (1) impeded the child's right to a FAPE; (2) significantly impeded the parent's (Student's) opportunity to participate in the decision-making process; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); see, Ed. Code, § 56505, subd. (f)(2); *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484; *E.P. v. San Ramon Valley Unified School Dist.* (N.D.Cal., June 21, 2007, Case No. C05-01390) 2007 WL 1795747, pp. 10-11.)

#### *Issue 1(a): Responding to Verbal Request for an Assessment*

12. Student alleged that District denied Student a FAPE by failing to offer assistance to Parent to put her April 2013 verbal request for an assessment in writing.

13. All referrals for special education and related services shall initiate an assessment process and shall be documented. (Cal. Code Regs., tit. 5, § 3021, subd. (a).) If the referral is verbal, the school district shall offer to assist the individual making the request to put the request in writing. (*Ibid.*) A proposed assessment plan shall be developed within 15 calendar days of the referral for assessment. (Ed. Code, § 56043, subd. (a).) Parents have at least 15 calendar days from receipt of the proposed assessment plan to arrive at a decision and an IEP meeting must be held within 60 days of receiving parental consent to the assessment plan. (Ed. Code, § 56043, subds. (b), (c).)

14. District did not help Parent put her April 2013 verbal request for an assessment in writing. This was a procedural violation, resulting in a denial of FAPE, because it significantly impeded Parent's ability to participate in the decision-making process regarding Student's education.

*Issue 1(b): Providing Parent with a Copy of Procedural Safeguards*

15. Student alleged that District denied her a FAPE from April 11, 2013 through October 2013, by failing to provide Parent with required written notice regarding her procedural safeguards

16. A notice of procedural safeguards must be given by a school district to a particular parent of a child with a disability a minimum of once a year and/or: 1) upon initial referral for assessment or parent request for assessment; 2) upon filing a request for a due process hearing; or 3) upon parent request. (20 U.S.C. § 1415(d)(1)(A); 34 C.F.R. § 300.504(a).)

17. During the period of April 11, 2013 through October 2013, District did not provide Parent with a copy of procedural safeguards in response to her written and verbal April 2013 requests for an assessment. District's failure to provide Parent with a copy of procedural safeguards was a procedural violation, resulting in a denial of FAPE, because it significantly impeded Parent's ability to participate in the decision-making process regarding Student's education as Parent did not have information as to whether Student qualified for special education services based on assessment information.

*Issue 1(c): Providing Prior Written Notice*

18. Student alleged that District denied her a FAPE from April 11, 2013 through October 2013, by failing to provide Parent with prior written notice regarding its refusal to assess Student.

19. 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.)

20. During the period of April 11, 2013 through October 2013, District did not provide Parent with prior written notice regarding its decision not to assess Student. District's failure to provide Parent with written notice was a procedural violation, resulting in a denial of FAPE, because it significantly impeded Parent's ability to participate in the decision-making process regarding Student's education.

*Issue 1(d): Satisfying Child Find Obligation Between April and October 2013*

21. Student alleged that District should have known that Student was a child who might be eligible for special education because of a suspected learning disability from April 11, 2013 through October 2013.

22. A school district's child find obligation toward a specific child is triggered when there is knowledge of, or reason to suspect, a disability and reason to suspect that special education services may be needed to address that disability. (*Department of Education, State of Hawaii v. Cari Rae S.* (D. Hawaii 2001) 158 F. Supp. 2d 1190, 1194.) The threshold for suspecting that a child has a disability is relatively low. (*Id.* at p. 1195.) A school district's appropriate inquiry is whether the child should be referred for an evaluation, not whether the child actually qualifies for services. (*Ibid.*)

23. The actions of a school district with respect to whether it had knowledge of, or reason to suspect a disability, must be evaluated in light of information that District knew, or had reason to know, at the relevant time. It is not based upon hindsight. (See *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrmann v. East Hanover Bd. of Education*. (3rd Cir. 1993) 993 F.2d 1031, 1041.) Violations of child find are procedural violations of the IDEA and the Education Code. (*Cari Rae S., supra*, 158 F.Supp. 2d 1190 at p.1196.)

24. Parent's April 11, 2013 request for an assessment, coupled with District's knowledge of Student's attention problems, delayed academics, and risk of retention, were sufficient to put District on notice that Student had a suspected disability as of April 11, 2013. District did not provide Parent with an assessment plan between April 11, 2013 and the last day of the 2013-2014 school year, resulting in a child find violation. This procedural violation resulted in a denial of FAPE, because it significantly impeded Parent's ability to participate in the decision-making process regarding Student's education.

*Issue 2: Finding Student Eligible for Special Education (April Through October 2013)*

25. Student alleged that District denied her a FAPE following Parent's April 2013 requests for an assessment, through October 2013, by failing to find her eligible for special education, because of a specific learning disability and develop an IEP for her.

26. A child with a specific learning disability, who requires special education services as a result, is eligible for special education services. (20 U.S.C. § 1401(3)(A); 34 C.F.R. § 300.8(a); Ed. Code, § 56026.) A specific learning disability is a disorder in one or more of the basic psychological processes involved in understanding or using spoken or written language, which manifests itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. (20 U.S.C. § 1402(30)(A); 34 C.F.R. § 300.8(c)(10); Ed. Code, § 56337, subd.(a).) A specific learning disability includes conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. (20 U.S.C. § 1402(30)(B); 34 C.F.R. § 300.8(c)(10); Ed. Code,

§ 56337, subd. (a).) A specific learning disability does not include a learning problem that is primarily the result of visual, hearing, or motor disabilities, mental retardation, emotional disturbance, or environmental, cultural or economic disadvantage. (20 U.S.C. § 1402(30)(C); 34 C.F.R. § 300.8(c)(10); Ed. Code, § 56337, subd. (a).)

27. Student offered no evidence of Student's eligibility for special education under the category of specific learning disability following Parent's April 2013 request for an assessment, through October 2013. Student's evidence for this period was limited to facts relating to a suspected disability that warranted a special education eligibility assessment. District did not admit that Student was eligible for special education prior during this time period, and Student did not call any expert witnesses, such as a school psychologist or clinical psychologist, who could establish that Student was eligible for special education under the category of specific learning disability prior to her initial July 29, 2014 IEP. Student erroneously assumed that eligibility in 2013 could be extrapolated from Student's eligibility in 2014. Student failed to meet her burden of proving that Student was eligible for special education following Parent's April 2013 request for an assessment, through October 2013.

*Issue 3(a): Responding to Verbal Requests for an Assessment*

28. Student alleged that District denied her a FAPE between November 13, 2013 and June 2014, by failing to offer assistance to Parent to put her verbal requests for an assessment in writing.

29. Student established that on April 22, 2014, Parent made a written request for an assessment. However, Student did not establish that Parent made any verbal requests for an assessment between November 13, 2013 and June 2014. Therefore, Student did not establish a procedural violation.

*Issue 3(b): Providing a Copy of Procedural Safeguards*

30. Student alleged that District denied her a FAPE between November 13, 2013 and June 2014, by failing to provide Parent with a copy of her procedural safeguards

31. A notice of procedural safeguards must be given by a school district to a particular parent of a child with a disability a minimum of once a year and/or: 1) upon initial referral for assessment or parent request for assessment; 2) upon filing a request for a due process hearing; or 3) upon parent request. (20 U.S.C. § 1415(d)(1)(A); 34 C.F.R. § 300.504(a).)

32. During the period of November 13, 2013 and June 2014, the only event that triggered District's obligation to provide Parent with a copy of procedural safeguards was her April 22, 2014 written request for an assessment. On May 29, 2014, District faxed an assessment plan to Parent, and she promptly signed the plan and faxed it back to District that

same day. However, Student did not offer evidence regarding whether District gave Parent a copy of the procedural safeguards along with the assessment plan. Student failed to establish that District denied her a FAPE by failing to give Parent a copy of procedural safeguards.

*Issue 3(c): Providing Prior Written Notice*

33. Student alleged that District denied her a FAPE between November 13, 2013 and June 2014, by failing to provide Parent with prior written notice regarding its refusal to assess Student.

34. District did not refuse to assess Student between November 13, 2013 and June 2014. In response to Parent's April 22, 2014 written request for an assessment, District provided Parent with an assessment plan on May 29, 2014. Student failed to establish that District denied her a FAPE by failing to provide Parent with prior written notice regarding District's alleged refusal to assess Student.

*Issue 3(d): Satisfying Child Find Obligation (November 2013 Through June 2014)*

35. Student alleged that District should have known that Student was a child who might be eligible for special education because of a suspected learning disability between November 2013 and June 2014.

36. As discussed above, Parent's April 11, 2013 request for an assessment, coupled with District's knowledge of Student's attention problems, delayed academics, and risk of retention, were sufficient to put District on notice that Student had a suspected disability as of April 11, 2013. District did not provide Parent with an assessment plan until May 29, 2014, resulting in a child find violation. This procedural violation resulted in a denial of FAPE, because it significantly impeded Parent's ability to participate in the decision-making process regarding Student's education.

*Issue 4: Finding Student Eligible for Special Education Between November 13, 2013 and July 28, 2014*

37. Student alleged that District denied her a FAPE between November 13, 2013 and July 28, 2014, by failing to find her eligible for special education, because of a specific learning disability and develop an IEP for her.

38. A student is eligible for special education and related services if he is a "child with a disability" such as an emotional disturbance, other health impairment, or specific learning disability and, as a result thereof, needs special education and related services that cannot be provided with modification of the regular school program. (20 U.S.C. § 1401(3)(A); 34 C.F.R. § 300.8(a)(1); Ed. Code, § 56026, subs. (a) & (b) [uses term "individual with exception needs"].) A student shall not be determined to be a child with a disability if the prevailing factor for the determination is a lack of appropriate instruction in reading or mathematics or if the student does not otherwise meet the eligibility criteria under

federal and California law. (20 U.S.C. § 1414(b)(5); 34 C.F.R. § 300.306(b); Ed. Code, § 56329, subd. (a)(2).) California further specifies that a student whose educational needs are primarily the result of a temporary physical disability, social maladjustment, or environmental, cultural, or economic factors, is not an individual with exceptional needs. (Ed. Code, § 56026, subd. (e).)

39. Student offered no evidence of Student's eligibility for special education under the category of specific learning disability between November 13, 2013 and July 28, 2014. District did not admit that Student was eligible for special education prior during this time period, and Student did not call any expert witnesses, such as a school psychologist or clinical psychologist, to establish that Student was eligible for special education under the category of specific learning disability prior to her initial July 29, 2014 IEP. Student erroneously assumed that eligibility between November 13, 2013 and July 28, 2014, could be simply extrapolated from Student's initial eligibility on July 29, 2014. Student failed to meet her burden of proving that Student was eligible for special education between November 13, 2013 and July 28, 2014.

*Issue 5: Failing to Assess in the Area of Communication*

40. Student alleged that District denied Student a FAPE between November 13, 2013 and May 2015, by failing to conduct a speech and language assessment.

41. A school district's failure to conduct appropriate assessment or to assess in all areas of suspected disability may constitute a procedural denial of a FAPE. (*Park v. Anaheim Union High School Dist., et al.* (9th Cir. 2006) 464 F.3d 1025, 1031-1033.)

42. Student did not establish that communication was an area of suspected disability until Parent submitted her written request for an assessment on April 22, 2014. Parent's letter expressed concern about Student's academic underachievement in reading. As Dr. Lucker credibly explained, when a child is underachieving in reading, one must consider whether a child has an underlying language processing disorder.

43. On May 29, 2014, District offered to conduct a speech and language assessment pursuant to its May 29, 2014 assessment plan. District's offer to conduct a speech and language assessment reflected District's acknowledgement that communication was an area of suspected disability. In June 2014, District's school psychologist Dr. Davis commenced his psychoeducational assessment of Student. Dr. Davis's informal observations of Student's communication skills during his assessment indicated to him that Student's communication skills were adequate. He concluded that a speech and language assessment was not necessary as part of Student's initial assessment in June 2014 and, therefore, District did not conduct a speech and language assessment as part of its initial assessment of Student

44. At Student's October 9, 2014 IEP team meeting, Dr. Lucker recommended that Student receive an IEE in the area of speech and language, and Parent agreed with that request. In response, on October 20, 2014, District offered to conduct its own speech and

language assessment pursuant to an assessment plan. Parent did not consent to the plan because she pursued an IEE from Dr. Lucker in December 2014. On March 28, 2015, Parent consented to District's October 20, 2014 assessment plan, and on May 5, 13, and 18, 2015, District conducted its first speech and language assessment of Student.

45. District committed a procedural violation when it failed to implement its own May 29, 2014 assessment plan between May 29, 2014, and October 19, 2014. Dr. Lucker's credible expert testimony established that Student had significant deficits in language processing in the areas of semantics and syntax, dating back to the beginning of the 2014-2015 school year. Student needed the assessment to identify and address her language processing needs. District's decision to not implement its own May 29, 2014 assessment plan was a procedural violation, resulting in a denial of educational benefits to Student.

*Issue 6: Failing to Conduct an Appropriate Auditory Processing Assessment*

46. Student alleged that District denied her a FAPE between November 13, 2013 and November 13, 2015, by failing to conduct an appropriate assessment in the area of auditory processing.

47. Student did not establish that auditory processing was an area of suspected disability until Parent submitted her written request for an assessment on April 22, 2014. Parent's letter expressed concern about Student's academic underachievement in reading. As Dr. Lucker credibly explained, when a child is underachieving in reading, one must consider whether a child has an underlying processing disorder causing the underachievement.

48. On May 29, 2014, District offered to conduct an auditory processing assessment by a school psychologist pursuant to its May 29, 2014 assessment plan. District's offer to conduct an auditory processing assessment reflected District's acknowledgement that auditory processing was an area of suspected disability. As part of Student's June 2014 initial assessment, District administered two standardized tests of auditory processing, the Test of Auditory-Processing Skills, and the Comprehensive Test of Phonological Processing, Second Edition. Student did not call an expert psychologist to challenge the appropriateness of District's June 2014 psychological auditory processing assessment. Student did not dispute that Student was eligible for special education, because of a specific learning disability manifested by a psychological auditory processing deficit in the area of phonological processing. Therefore, Student did not establish that District failed to conduct an appropriate auditory assessment prior to June 2014.

49. During the October 9, 2014 IEP team meeting, Dr. Lucker recommended a comprehensive audiological IEE to evaluate Student's auditory processing because he did not believe that the June 2014 psychoeducational assessment identified all of Student's needs. Dr. Lucker credibly explained the components of an audiological auditory processing assessment, including an assessment of auditory sensitivity, auditory hypersensitivity, auditory overloading, auditory extraction, phonological integration, lexical integration, and temporal speed of processing. District did not rebut Dr. Lucker's testimony.

50. District's initial assessment did not include an audiological auditory processing assessment, but it was not required to do so. District conducted an auditory processing assessment by its school psychologist, which was sufficient based on the information available to it at the time it drafted the May 29, 2014 assessment plan. However, Dr. Lucker's expert input during the October 9, 2014 IEP team meeting put District on notice that there may be other types of auditory processing deficits affecting Student's academic delays.

51. On November 7, 2014, District offered to conduct further assessment in the area of auditory processing, but failed to provide Parent with an assessment plan. Consequently, District did not conduct additional assessment in the area of auditory processing. The failure to conduct an assessment resulted in a procedural violation. The procedural violation did not result in a denial of educational benefits to Student, because her July 29, 2014, October 9, 2014, June 3, 2015, and October 14, 2015 IEP's contained accommodations, modifications, and supports that appropriately addressed her auditory processing needs. However, the procedural violation deprived Parent of the opportunity to be involved in the decision-making process and, therefore, resulted in a denial of FAPE.

#### *Issue 7: Predetermining Placement*

52. Student alleged that District predetermined her placement at the July 29, 2014, October 9, 2014, June 3, 2015, and October 14, 2015 IEP team meetings.

53. A school district may not predetermine its IEP offer. Predetermination occurs when an educational agency has decided on its offer prior to the IEP team meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives. (*Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004) 392 F.3d 840, 858.) A district may not arrive at an IEP team meeting with a "take it or leave it" offer. (*JG v. Douglas County School Dist.*, *supra*, 552 F.3d at p. 801, fn. 10.)

54. As to the July 29, 2014 IEP team meeting, Student's evidence consisted of Parent's conclusory testimony that she did not recall a discussion about placement, and that it was presumed that Student would remain at Laurel. The IEP team document reflects that District discussed general education, general education with related services, and a special day class. Of those options, District offered general education with three hours per month of specialized academic instruction. Laurel had been Student's school of attendance for two years prior to the IEP meeting.

55. As to the October 9, 2014 IEP team meeting, the IEP team discussed Parent's request to transfer Student from Laurel to Kennedy. Special education teacher Ms. Hannah reviewed the concept of least restrictive environment based on her understanding of the law, and placement options for Student, including general education with no supports, general education with services, and special day class.

56. As to the June 3 and October 14, 2015 IEP team meetings, Student's only evidence of predetermination was that District allegedly offered a placement that was identical to the July 29, 2014 IEP. District's offer was not identical, because the IEP team considered the need for additional supports and services in the general education setting. District offered additional supports for attention and organization skills in the general education setting, and speech and language services. Even if the placement were identical to a prior IEP, that fact without more does not establish predetermination.

57. Student did not establish that District predetermined Student's placement at the July 29, 2014, October 9, 2014, June 3, 2015, and October 14, 2015 IEP team meetings.

*Issue 8: Determining Need for Additional Data*

58. Student alleged that the July 29, 2014, and October 9, 2014 IEP team meetings denied her a FAPE, by failing to include a determination that no additional data was needed to determine Student's unique needs.

59. As part of an initial evaluation, if appropriate, the IEP team and other qualified professionals, as appropriate, shall review existing data on the student including evaluations and information provided by the parents, current classroom-based, local, or state assessments, and observations by teachers and related services providers. (20 U.S.C. § 1414(c)(1)(A); 34 C.F.R. §300.305(a)(1); Ed. Code, § 56381(b)(1).) Based upon that review, with input from the student's parents, the IEP team shall identify what additional data, if any, are needed to determine: (i) whether the student continues to have a disability and related educational needs; (ii) the present levels of academic achievement and related developmental needs of the student; (iii) whether the student continues to need special education and related services; and (iv) whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the IEP and to participate, as appropriate, in the general education curriculum. (20 U.S.C. § 1414 (c)(1)(B); 34 C.F.R. § 300.305(a)(2); Ed. Code, § 56381, subd. (b)(2).) This review of existing data may be conducted without a meeting. (34 C.F.R. § 300.305(b); Ed. Code, § 56381, subd. (g).)

60. During the July 29, 2014 IEP team meeting, District reviewed the results of its auditory processing assessment. Considering Student's scores on the Auditory Reasoning and Word Discrimination subtests of the TAPS-3, and her verbal ability score on the Differential Ability Scales, respectively at the first, ninth, and 13th percentile, as well as Student's low Woodcock-Johnson scores on language-based academic subtests (reading fluency, reading decoding, and writing), District knew or should have known that additional data was needed to determine Student's needs in the area of speech and language through a formal speech and language evaluation. District took no action as of July 29, 2014, to obtain that data.

61. During the October 9, 2014 IEP team meeting, District determined that it needed additional data regarding Student's speech and language, and offered to conduct a speech and language assessment. District provided Parent with an assessment plan on October 20, 2014.

62. Student established that District committed a procedural violation during the July 29, 2014 IEP team meeting, by determining that no additional data was needed to determine Student's speech and language needs. Student failed to establish that District committed a procedural violation during the October 9, 2014 IEP team meeting, because District determined the need for additional speech and language data by offering to conduct a speech and language assessment. Accordingly, District committed a procedural violation between July 29 and October 8, 2014 only.

63. Dr. Lucker's expert testimony established that Student had language processing needs at the beginning of the 2014-2015 regular school year. If District had determined that it needed additional data at the July 29, 2014 IEP team meeting, then it could have offered to assess Student in July 2014 instead of October 2014. Student needed a speech and language assessment as part of her initial June 2014 assessment. District's failure to determine that additional data was needed during the July 2014 IEP meeting compounded its failure to assess her in June 2014. Therefore, District's procedural violation deprived Student of educational benefits.

*Issue 9: Responding to Request for Independent Educational Evaluations*

64. Student alleged that District denied her a FAPE between October 2014 and November 13, 2015, by failing to provide independent educational evaluations, or initiate a due process hearing to defend its assessments, in the areas of cognition; audiology; auditory processing; executive functioning; academic achievement; and speech and language.

65. The procedural safeguards of the IDEA provide that under certain conditions a student is entitled to obtain an independent educational evaluation at public expense. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502 (a)(1); Ed. Code, § 56329, subd. (b) [incorporating 34 C.F.R. § 300.502 by reference]; Ed. Code, § 56506, subd. (c) [parent has the right to an IEE as set forth in Ed. Code, § 56329]; see also 20 U.S.C. § 1415(d)(2) [requiring procedural safeguards notice to parents to include information about obtaining an independent educational evaluation].) "Independent educational assessment means an assessment conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question." (34 C.F.R. § 300.502(a)(3)(i).) To obtain an independent educational evaluation, the student must disagree with an assessment obtained by the public agency and request an independent educational evaluation. (34 C.F.R. § 300.502(b)(1), (b)(2).)

66. When a student requests an independent educational evaluation, the public agency must, without unnecessary delay, either file a request for due process hearing to show that its assessment is appropriate or ensure that an independent educational assessment is

provided at public expense. (34 C.F.R. § 300.502(b)(2); Ed. Code, § 56329, subd. (c).) The public agency may ask for the parent's reason why he or she objects to the public assessment, but may not require an explanation, and the public agency may not unreasonably delay either providing the independent educational assessment at public expense or initiating a due process hearing. (34 C.F.R. § 300.502(b)(4).)

67. If an independent educational evaluation is at public expense, the criteria under which the assessment is obtained, including the location, limitations for the assessment, minimum qualifications of the examiner, cost limits, and use of approved instruments must be the same as the criteria that the public agency uses when it initiates an assessment, to the extent those criteria are consistent with the parent's right to an independent educational evaluation. (34 C.F.R. § 300.502(e)(1).)

68. During the October 9, 2014 IEP team meeting, Parent requested IEE's in the areas of speech and language, auditory processing by an audiologist, speech and language, and attention, executive functioning, self-regulation, executive functioning, and emotional functioning. Parent did not request IEE's in the areas of cognition and academic achievement.

69. District did not initiate a due process hearing to defend its June 2014 psychoeducational assessment. At hearing, District did not challenge Parent's IEE's from Dr. Lucker and UCLA on the ground that they did not satisfy District's IEE criteria.

70. As to the IEE in the area of auditory processing, on November 7, 2014, District offered to conduct its own auditory processing assessment, but needed time to identify an appropriate assessor. District never provided Parent with an assessment plan, or offered to fund an IEE in the area of auditory processing. Parent acted reasonably by obtaining an IEE in the area of processing from Dr. Lucker in the amount of \$1,000.00 but did not need to travel out-of-state to locate a competent assessor.

71. If District had prepared an assessment plan, offering to conduct an auditory processing assessment by an audiologist, it would not have been obligated to fund an IEE, because it was not on notice of this area of suspected disability until the October 9, 2014 IEP meeting. However, District's failure to follow through on its offer to conduct the assessment opened the door to an IEE, because the failure to conduct any assessment is an inappropriate assessment. Accordingly, District committed a procedural violation by failing to fund an IEE. The procedural violation impeded Parent's participation in the IEP process and, therefore, resulted in a denial of a FAPE. Parent is entitled to reimbursement of the cost of the IEE.

72. As to the IEE in the area of speech and language, on October 20, 2014, District offered to conduct its own speech and language assessment instead of funding an IEE. While District had not yet conducted its own speech and language assessment as of the October 2014 IEP team meeting, District does not get a second bite of the apple. District's initial assessment of Student did not include any formal assessment of Student's speech and

language skills even though it was an area of suspected disability to be assessed on the initial assessment plan. Therefore, District did not conduct an appropriate initial assessment in the area of speech and language, and it should have offered to fund an IEE but failed to do so. Parent acted reasonably by obtaining a language processing assessment from Dr. Lucker in the amount of \$500.00. District committed a procedural violation by failing to fund an IEE. The procedural violation impeded Parent's participation in the IEP process and, therefore, resulted in a denial of a FAPE. Parent is entitled to reimbursement of the cost of the IEE.

73. As to the IEE by a psychologist in the areas of attention, executive functioning, self-regulation, executive functioning, and emotional functioning, District offered on November 7, 2014, to fund an IEE by a psychologist, and informed Parent that it would consider any assessor. Parent requested a specific assessor, Dr. Light, but District never responded to her request. Parent acted reasonably by obtaining a psychoeducational evaluation in January 2015 from UCLA in the amount of \$405.00. District committed a procedural violation by failing to fund the psychoeducational IEE. The procedural violation impeded Parent's participation in the IEP process and, therefore, resulted in a denial of a FAPE. Parent is entitled to reimbursement of the cost of the IEE.

*Issue 10: Implementing the October 9, 2014 IEP*

74. Student alleged that District denied her a FAPE by failing to materially implement Student's October 9, 2014 IEP, between March 28 and October 2015, by failing to fully implement resource specialist program services, and failing to implement any goals.

75. The IEP is the "centerpiece of the [IDEA's] education delivery system for disabled children" and consists of a detailed written statement that must be developed, reviewed, and revised for each child with a disability. (*Honig v. Doe* (1988) 484 U.S. 305, 311 [108 S.Ct. 592, 98 L.Ed.2d 686]; 20 U.S.C. §§ 1401 (14), 1414 (d)(1)(A); Ed. Code, §§ 56032, 56345.) The IDEA requires that an IEP contain a projected date for the beginning of special education services and modifications, and "the anticipated frequency, location, and duration of those services and modifications." (20 U.S.C. § 1414(d)(1)(A)(VII); see also 34 C.F.R. § 300.320(a)(7) ; Ed. Code, § 56345, subd. (a)(7).)

76. A school district violates the IDEA if it materially fails to implement a child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP. (*Van Duyn v. Baker School Dist.* (9th Cir. 2007) 502 F.3d 811, 815, 822.) However, "[T]he materiality standard does not require that the child suffer demonstrable educational harm in order to prevail." (*Ibid.*) The *Van Duyn* court emphasized that IEP's are clearly binding under the IDEA, and the proper course for a school that wishes to make material changes to an IEP is to reconvene the IEP team pursuant to the statute, and "not to decide on its own no longer to implement part or all of the IEP." (*Ibid.*)

77. District assigned special education teacher Ms. Hannah to implement specialized academic instruction to Student. Ms. Hannah was responsible for implementing academic goals and specialized academic instruction at Laurel. She was ready to implement Student's academic goals and provide specialized academic instruction as soon as she received Parent's written consent.

78. Ms. Hannah credibly testified that when she received Parent's written consent on or about March 28, 2015, she fully implemented Student's July 29 and October 9, 2014 IEP, until Student's last day of school on October 20, 2015. Ms. Hannah's recollection of her delivery of services was credible, because she adjusted Student's special education schedule when she participated in District's spring 2015 standardized testing program, to ensure that Student received all of her instructional minutes. Student did not offer any evidence to rebut Ms. Hannah's testimony. Student did not establish that District materially failed to implement the October 9, 2014 IEP.

#### *Issue 11: Providing a Copy of Student's School Records*

79. Student alleged that District denied her a FAPE by failing to provide Parent with copies of service logs and standards-based testing in response to Parent's March 20, 2015 request for a copy of all educational records.

80. California 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."

81. District did not provide copies of service logs for Student's specialized academic instruction services, because as of March 20, 2015, Parent had not provided written consent to implement these services pursuant to the July 28 and October 9, 2014 IEP's. Therefore, Student did not establish that District committed a procedural violation as to copying service logs.

82. However, District failed to produce a complete copy of standards-based data in response to Parent's records request. Parent first received Student's AIMSweb data at the due process hearing. The AIMSweb data contained objective, standardized information about Student's reading comprehension and reading fluency skills.

83. District's failure to timely disclose the AIMSweb data constituted a procedural violation, resulting in a denial of FAPE, because it deprived Parent of valuable, objective information regarding Student's reading achievement, and impeded her ability to participate in the decision-making process.

#### *Issue 12: Requiring Attendance of a General Education Teacher at IEP Team Meetings*

84. Student alleged that District denied Student a FAPE by failing to ensure that a general education teacher attended the June 3, 2015 IEP team meeting.

85. An IEP team must include at least one parent; a representative of the local educational agency; a regular education teacher of the student if the student is, or may be, participating in the regular education environment; a special education teacher or provider of the student; an individual who can interpret the instructional implications of assessment results; and other individuals who have knowledge or special expertise regarding the pupil, as invited at the discretion of the district or parents; and, when appropriate, the student. (20 U.S.C. § 1414(d)(1)(B)(i), (iv-vi); Ed. Code, § 56341, subds. (b)(1), (5-6).)

86. Student's then-current third grade general education teacher, Ms. Veliz, could not attend the June 3, 2015 IEP team meeting, because of an extended absence. Instead of postponing the meeting, District invited general education teacher Ms. Kelly to attend the meeting to provide input on goals, thereby ensuring that a general education teacher attended the meeting. Ms. Kelly had never taught Student. The IEP team had access to Ms. Veliz's input through her recent completion of the Teacher Rated Observational Rating Scale, summarized in Ms. Arnett's May 2015 speech and language report. Ms. Hannah attended the meeting, and provided input regarding her weekly observations of Student in Ms. Veliz's class, and her regular consultations with Ms. Veliz during the 2014-2015 school year regarding Student's performance. District offered to reconvene the IEP team meeting to obtain the input of Student's then-current general education teacher, Ms. Whitmer, and did so on October 15, 2015.

87. Student did not offer any evidence as to how Student was harmed by Ms. Kelly's presence, and Ms. Veliz's absence. As discussed below, the IEP team reconvened on October 14, 2015 to review Student's June 3, 2015 IEP. Student's then-current fourth grade general education teacher, Ms. Whitmer, attended the meeting. Student did not establish that District failed to ensure that a general education teacher attended the IEP team meeting.

*Issue 13: Present Levels of Performance in the July 29, 2014, and October 9, 2014 IEP's*

88. Student alleged that the July 29, 2014 and October 9, 2014 IEP's denied her a FAPE, because they failed to include appropriate present levels of performance in the areas of reading, math, writing, communication, and social emotional/behavioral.

89. An annual IEP must contain, among other things, a statement of the individual's present levels of academic achievement and functional performance, including the manner in which the disability of the individual affects her involvement and progress in the regular education curriculum. (20 U.S.C. § 1414(d)(1)(A)(i)(I); 34 C.F.R. § 300.320 (a)(1); Ed. Code, § 56345, subd. (a)(1).) The statement of present levels of performance creates a baseline for designing educational programming and measuring a student's future progress toward annual goals.

90. Student did not challenge the statement in the IEP's on how Student's specific learning disability and other health impairment affected the manner in which her disability affected her involvement and progress in the regular education curriculum. The July 29 and October 9, 2014 IEP's contained identical present levels of performance. Student's needs did not change between July 29, 2014, and October 9, 2014.

91. The present levels for reading, math, and writing were appropriate, because they were based on recent assessment data from the June 2014 psychoeducational assessment.<sup>10</sup> The present levels included objective data regarding Student's performance in the areas of reading decoding; reading fluency; reading comprehension; writing fluency; spelling; writing samples; math fluency; math reasoning; and math calculations. The present levels confirmed Parent's long standing concern that Student was two years behind academically. Student did not establish that the present levels in reading, math, and writing were inappropriate.

92. The present level for communication in the July 29 and October 9, 2014 IEP was not appropriate, because it misrepresented that Student's communication skills were adequate. District's June 2014 psychoeducational assessment revealed weaknesses in Student's communication skills, including Student's percentile rank of one on an auditory reasoning subtest. Student established that the present level in communication was inappropriate.

93. The present level for social-emotional functioning, stating that Student did not exhibit social-emotional difficulties in the classroom, was consistent with Ms. Stewart-Guillory's observations of Student in her classroom throughout the 2013-2014 school year. Student was outgoing, displayed a positive attitude, socialized with her friends, helped her teacher, and was confident with her day to day activities. The present level was appropriate.

94. The present level for behavioral functioning provided minimal information regarding Student's attention problems at school. However, the present level's lack of specificity did not deny Student a FAPE, because the IEP included appropriate accommodations to address this area of need, and given those accommodations, Student's attention problems were adequately addressed in the classroom.

*Issue 14: Goals in the July 29, 2014, and October 9, 2014 IEP's*

95. Student alleged that the July 29, 2014, and October 9, 2014 IEP's, denied her a FAPE, because they failed to include appropriate goals in the areas of reading fluency; comprehension; math; communication; attention and focus; and organization.

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<sup>10</sup> Student challenged the baseline for the reading comprehension goal, because it did not contain information regarding Student's present level of performance. However, the legal analysis focuses on appropriate present levels of performance. Therefore, the analysis of the appropriateness of the present levels of performance focused on all of the information stated in the IEP, along with the testimony at hearing, not simply the baseline for the goal.

96. An annual IEP must also contain a statement of measurable annual goals designed to: (1) meet the individual's needs that result from the individual's disability to enable the pupil to be involved in, and make progress in the general curriculum; and (2) meet each of the pupil's other educational needs that result from the individual's disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); Ed. Code, § 56345, subd. (a)(2).) For a student assessed using alternative assessments aligned to alternative achievement standards, the goals must be broken down into objectives. (20 USC § 1414 (d)(1)(A)(i)(I)(cc).)

97. In addition, the IEP's statement of goals must include "appropriate objective criteria, evaluation procedures, and schedules for determining, on at least an annual basis, whether the annual goals are being achieved," and a statement of how the student's progress toward the goals will be measured. (Ed. Code, § 56345, subd. (7), (9); 20 U.S.C. § 1414(d)(1)(A)(i)(III).)

98. Student did not challenge any of the goals based on their objective criteria, evaluation procedures, or schedules of achievement. Rather, Student challenged the content of the goals or the failure to offer a goal to address an area of unique need.

99. Reading fluency was an area of need. Student's then-current teacher, Ms. Stewart-Guillory, estimated that Student's fluency score was between 50 to 60 words per minute, whereas Ms. Stewart-Guillory's target was 125 words per minute. On a standardized measure of fluency, Student's score was low, falling at the eighth percentile. Student needed a fluency goal but District failed to offer her one. Student established that the IEP failed to offer an appropriate reading fluency goal.

100. Reading comprehension was an area of need, and District offered an appropriate goal based on a third grade general education standard, requiring Student to demonstrate comprehension of similarities and differences by using a graphic organizer (Venn Diagram) and writing sentences. Dr. Lucker criticized the goal, because it contained a writing component, but Ms. Stewart-Guillory persuasively testified that Student enjoyed writing. Student did not establish that the goal was inappropriate.

101. Math was an area of need, and District offered an appropriate goal based on a third grade general education standard, requiring Student to use addition and subtraction to solve word problems involving time. Student criticized the goal, because it allegedly did not address regrouping, but the task of solving word problems by adding and subtracting time intervals would require borrowing and regrouping numbers. Student did not establish that the math goal was inappropriate.

102. Dr. Lucker's expert testimony established that Student had significant language processing deficits in the areas of semantics and syntax at the beginning of the 2014-2015 school year. Student needed goals to address this area of need, but the IEP's did not offer any communication goals. Student established that the IEP's failed to offer appropriate communication goals.

103. Attention was an area of unique need for Student, and the IEP's did not offer a goal in this area. However, the IEP included several accommodations to address the need, such as providing preferential seating and giving Student headphones to listen to classical music during seatwork and tests, which adequately addressed her attention issues. Therefore, a goal was not needed to address attention. Student did not establish that the IEP's failed to offer an appropriate goal in the area of attention and focus.

104. Organization was an area of unique need for Student. She had difficulty completing and returning homework. Ms. Stewart-Guillory implemented several general education strategies to help with homework completion, such as maintaining an open line of communication with Parent, and organizing Student's weekly homework to provide structure for Student. Parent acknowledged that Ms. Stewart-Guillory's good teaching, along with Parent's efforts at home, helped Student to be more willing to complete homework. As of July and October 2014, Student did not need a goal to address organization, because general education strategies addressed the need. Student did not establish that the IEP's failed to offer an appropriate goal in the area of attention and focus.

*Issue 15: Present Levels of Performance in the June 3, 2015, and October 14, 2015 IEP's*

105. Student alleged that the June 3, 2015 and October 14, 2015 IEP's denied her a FAPE, because they failed to include appropriate present levels of performance in the areas of reading; math; writing; communication; social emotional/behavioral; and vocational.

106. Student did not challenge the statement in the IEP's on how Student's specific learning disability and other health impairment affected the manner in which her disability affected her involvement and progress in the regular education curriculum.

107. The June 3, 2015, and October 15, 2015 IEP's, contained identical present levels of performance. Student's needs did not change between the IEP team meetings.

108. Reading continued to be an area of unique need for Student. District simply copied the present level from Student's July 29 and October 9, 2014 IEP's. District contended that it had limited data, because it only had an opportunity to implement the goals between March 28, 2015, and June 3, 2015. However, Laurel gathered benchmark data during the school year to monitor progress for all of its students. The IEP team had access to Student's work samples from Ms. Veliz's general education lessons and Ms. Hannah's special education sessions to update Student's reading present levels. Therefore, District could have updated Student's present level but failed to do so. District knew that Student was at least two years behind in reading but this information was not captured in the IEP, including the specific present level of performance for fluency, reading decoding, and reading comprehension. The baselines for the two new reading goals were vague (e.g., Student's "reading improved"). Student established that District denied her a FAPE by failing to state an appropriate present level of performance in the area of reading.

109. Math continued to be an area of unique need for Student. District copied the present level from Student's July 29 and October 9, 2014 IEP's. The baseline for the math goal was vague (e.g., ". . . when adding and subtracting multiple numbers she did experience some difficulty"). Student established that District denied her a FAPE by failing to state an appropriate present level of performance in math.

110. Writing continued to be an area of unique need for Student. District copied the present level from Student's July 29 and October 9, 2014 IEP's. There was no baseline information for a goal, because the IEP did not include a writing goal.<sup>11</sup> Student established that District denied her a FAPE by failing to state an appropriate present level of performance in the area of writing.

111. Communication continued to be an area of unique need for Student. District updated the present level based upon information from Ms. Arnett's May 2015 speech and language assessment, as well as input from IEP team members. The baselines for the new receptive and expressive language goals also provided objective, current information regarding Student's levels. The present level was appropriate. Student did not establish that District denied her a FAPE by failing to state an appropriate present level of performance in the area of communication.

112. As to social emotional/behavioral, District copied the present level from the July 29 and October 9, 2014 IEP's, but also updated the present level by stating that "[Student] continues to not exhibit inappropriate social emotional behavior in the classroom." Ms. Hannah's and Ms. Arnett's observations of Student at school were consistent with the present level as to Student's social-emotional functioning. Ms. Hannah observed that Student was a happy, affectionate, outgoing child at school. She got along well with adults and peers. She socialized and giggled with her friends in the cafeteria, and played with her friends on the playground. Ms. Arnett similarly observed, as captured in the present level regarding communication, that "[Student] is very social and is able to interact with adults and other children appropriately." Parent shared that Student enjoyed playing with her friends, and was a very sociable and friendly person.

113. While the present level regarding Student's social emotional functioning at school could have contained more detail, it did not deny her a FAPE, because it correctly reflected Student's functioning in the school setting. Student did not establish that District denied her a FAPE by failing to state an appropriate present level in the area of social emotional functioning.

114. As to behavior, the present level section of the IEP did not contain any updated information on Student's attention deficits. However, the baseline for the attention and focus goal stated that Student was able "to focus for 15 minutes during a preferred activity." The "Strengths/Preferences/Interests" section of the IEP provided examples of

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<sup>11</sup> Student's issues did not allege that District had denied her a FAPE by failing to offer a writing goal.

Student's preferences, including art, music, math (given an external motivator), being a classroom helper, and playing with her friends. Therefore, taken as a whole, the IEP provided an appropriate present level regarding Student's behavioral functioning. Student did not establish that District denied her a FAPE by failing to state an appropriate present level in the area of behavior.

115. As to vocational skills, Student did not present evidence as to why the present level was inappropriate. Student did not address this present level in the closing brief. Student did not establish that District denied her a FAPE by failing to state an appropriate present level in the area of vocation.

*Issue 16: Goals in the June 3, 2015, and October 14, 2015 IEP's*

116. Student alleged that the June 3, 2015 and October 14, 2015 IEP's denied her a FAPE, because they failed to include appropriate goals in the areas of reading comprehension; reading fluency; math; receptive language; attention and focus; and organization.

117. Student did not challenge any of the goals based on their objective criteria, evaluation procedures, or schedules of achievement. Rather, Student challenged the baselines for the goal, the content of the goals, or the failure to offer a goal to address an area of unique need.

118. Reading comprehension continued to be an area of unique need. Student contended that the goal was not appropriate because it did not indicate that Student needed one-to-one specialized academic support to perform near grade level.<sup>12</sup> There is nothing in the law that requires a goal to reference intensity of services. Therefore, the goal was not appropriate based on that argument. However, Student established that the present level for the goal was inappropriate. The goal, standing alone, was appropriate but without an appropriate present level of performance, the goal had no context to measure progress. For that reason, Student established that District denied her a FAPE by failing to offer an appropriate goal in the area of reading comprehension.

119. As discussed above, reading fluency continued to be an area of need for Student. Student's third grade report card reflected the lowest level of achievement ("1") for reading with accuracy and fluency across the first, second, third, and fourth reporting periods during the 2014-2015 school year.<sup>13</sup> Student obtained a "Well Below Average" rating for fluency on the fall 2014, winter 2015, and spring 2015 AIMSweb benchmark assessments. While the IEP's labeled a goal as a reading fluency goal, it was actually an appropriate

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<sup>12</sup> Student's clarified issues for hearing did not claim that District denied her a FAPE by failing to offer one-to-one, specialized academic instruction.

<sup>13</sup> The other achievement levels were: approaching standard (2), meets standard (3), and exceeds standard (4).

reading comprehension goal, requiring Student to formulate why, what-if, and how questions when given a grade level story. Student established that District denied her a FAPE by failing to offer an appropriate goal in the area of reading fluency.

120. Math continued to be an area of need. District identified word problems as an area of unique need, and developed a new goal based on a fourth grade general education standard. Student contended that the goal was not appropriate, because the baseline was vague. While the baseline was vague, District and Parent knew from Student's report card that she was below standard in solving two-step word problems, and she needed to build upon that skill to access the general education fourth grade curriculum. District appropriately updated the goal by increasing the content standard from third to fourth grade, and by targeting multi-step word problems to help Student be involved in the general education curriculum.

121. Receptive language continued to be an area of need for Student. Based on Ms. Arnett's assessment, District offered a new receptive language goal. Student contended that the goal was not appropriate, because the baseline was vague and did not cite a source. As discussed above, District stated an appropriate present level of performance in the area of communication. The goal's baseline provided additional information, stating that "[c]urrently, [Student] has difficulty pulling meaningful information from text and verbally communicating it to others; she demonstrates problem-solving skills with 45% accuracy." There is no requirement in the law that a goal's baseline must cite to a particular source.

122. The receptive language goal was based on the demands of the fourth grade general education curriculum, including the need for Student to listen to grade level stories, comprehend and draw inferences from the story, and communicate her comprehension. The goal appropriately targeted listening and inferencing skills that would help Student be involved in and progress in the general education curriculum. Student did not establish that District denied her a FAPE by failing to offer her an appropriate goal in the area of receptive communication.

123. Attention and focus continued to be an area of need for Student. District added a new appropriate goal, addressing Student's attention during structured, adult-directed activities, which would help her be involved in and progress in the general education curriculum. Student contended that the goal was inappropriate, because the baseline did not cite a source for the data, and did not provide data on teacher-directed activities. Student did not challenge the actual goal. Taken as a whole, the IEP provided an appropriate present level regarding Student's behavioral functioning, and did not impede the development of an appropriate goal. The IEP's accommodations and supports for attention would have met Student's needs even if the IEP did not offer an appropriate goal. Student did not establish that District denied her a FAPE by failing to offer an appropriate goal in the area of attention and focus.

124. Organization continued to be an area of need for Student. District added a new, appropriate goal, targeting Student's skills in prioritizing and completing assignments,

which would help her be involved in and progress in the general education curriculum. Student contended that the goal was inappropriate, because the baseline did not indicate a level of support or source of observations. Student did not challenge the content of the actual goal. There is nothing in the law that requires a goal's baseline to state a level of support or source of observations. The baseline stated Student's current rate of success (40 percent) in this skill area, and the goal set a high target for improvement (90 percent). Even if District had not offered an organization goal, the IEP appropriately addressed Student's organization deficits by offering a homework planner, and helpful organizational interventions for the classroom. Student did not establish that District denied her a FAPE by failing to offer her an appropriate goal in the area of organization.

*Issue 17: Speech and Language Services*

125. Student alleged that the July 29, 2014, October 9, 2014, June 3, 2015, and October 14, 2015 IEP's denied Student a FAPE, by failing to offer appropriate speech and language services.

126. Student did not have needs in the area of speech. However, Dr. Lucker's December 2014 language processing assessment and testimony, as well as Ms. Arnett's May 2015 language assessment and testimony, established that Student had severe deficits in receptive and expressive language in the areas of semantics and syntax. Dr. Lucker's expert testimony established that these deficits had been consistent, dating back to the beginning of the 2014-2015 school year. Student needed small group, language services during the 2014-2015 school year, and District failed to offer her any services until the June 3, 2015 IEP team meeting. Therefore, Student established that District denied her a FAPE, because the July 29, 2014, and October 9, 2014 IEP's failed to offer her any language services.

127. As discussed above, District first offered language therapy services at the June 3, 2015 IEP team meeting, and continued to offer them at the October 14, 2015 IEP team meeting. Dr. Lucker and Ms. Arnett agreed that Student needed small group, pull-out, therapy services, and agreed upon the areas of need (semantics, syntax). However, they disagreed on the intensity of services. Dr. Lucker recommended 30 minutes per day or 10 hours per month, whereas Ms. Arnett recommended three hours per month.

128. Based on the evidence at hearing, Dr. Lucker's recommendation was too high, because he did not apply California's objective eligibility criteria for language therapy services, and he did not factor in Student's schedule for general and special education instruction, and the general education teacher's ability to teach skills directly related to the language goals in the classroom. Ms. Arnett's recommendation was too low, because she overemphasized Student's need to be in the general education classroom, and did not give appropriate weight to Student's severe deficits. Student's ability to benefit from general and special education instruction was inextricably linked to Student's underlying language processing abilities. Student could not be expected to obtain meaningful educational benefit in reading and writing if her severe language processing deficits were not appropriately addressed through direct, small group, language therapy services from a qualified speech and

language pathologist. Therefore, this decision finds that the June 3, 2015, and October 9, 2015 IEP's should have offered Student at least three sessions per week, 30 minutes per session, of small group, language therapy services to balance Student's need to receive appropriate services while also having sufficient time to access the general education curriculum, and receive specialized academic instruction services. Student established that District denied her a FAPE by failing to offer appropriate language services.

#### *Issue 18: Extended School Year Services*

129. Student alleged that July 29, 2014, October 9, 2014, June 3, 2015, and October 14, 2015 IEP's denied her a FAPE, because they did not offer her extended school year services.

130. Extended school year services are required when "interruption of the pupil's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her handicapping condition." (Cal. Code Regs. tit. 5, § 3043.)

131. Student's July 29, 2014 IEP offered extended school year services, consisting of three hours of specialized academic instruction. However, given District's instructional calendar, it was questionable whether District had checked the "Yes" box for extended school year services in error. Student's October 9, 2014, and June 3, 2015 IEP's did not offer any extended school year services. As of the October 14, 2015 IEP team meeting, it was too early to determine extended year services for the summer of 2016.

132. In any event, Student did not establish that she needed extended school year services by offering evidence regarding Student's potential for regression and limited recoupment capacity. Student erroneously presumed that eligibility for services during the regular school year automatically translated into eligibility for services during the extended school year. Student did not establish that District denied her a FAPE by failing to offer her appropriate extended school year services.

#### *Remedies*

133. Student has requested an extensive list of remedies, including (1) placement in a nonpublic school, preferably Prentice; (2) participation in the federal free lunch program or development of a system for providing free school lunches to Student; (3) transportation between home and a preferred nonpublic school through a nonpublic agency; (4) an IEP containing appropriate present levels performance and goals; (5) one hour per week, each, of individual and group speech and language therapy provided by a nonpublic agency at a nonpublic school, such as Prentice; (6) educationally related mental health services, counseling, and/or positive behavioral supports, and educational therapy in reading and mathematics, to be provided after school in the home or another location convenient to parents provided by a nonpublic agency; (7) extended school year services; (8) compensatory

education, including prospective placement at Prentice for at least two years, including transportation; 75 hours of speech therapy by Parent's preferred nonpublic agency; 50 hours of tutoring in mathematics by Parent's preferred nonpublic agency; and at least 200 hours of intensive reading intervention, such as the Lindamood Bell program; and (9) reimbursement for Parent's private educational expenses, including tuition; meals; mileage; airfare; and evaluation fees.

134. Under federal and state law, courts have broad equitable powers to remedy the failure of a school district to provide FAPE to a disabled child. (20 U.S.C. § 1415(i)(1)(C)(iii); Ed. Code, § 56505, subd. (g); see *School Committee of the Town of Burlington, Massachusetts v. Dept. of Education* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996, 85 L.Ed.2d 385].) ALJ's in special education cases have broad equitable powers. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230 [129 S.Ct. 2484, 174 L.Ed.2d 168].)

135. Parents may be entitled to reimbursement for the costs of placement or services they have procured for their child when the school district has failed to provide a FAPE, and the private placement or services were appropriate under the IDEA and replaced services that the district failed to provide. (20 U.S.C. § 1412(a)(10)(C); *Burlington, supra*, 471 U.S. at pp. 369-71.) Parents may receive reimbursement for their unilateral placement if the placement met the child's needs and provided the child with educational benefit. (*C.B. v. Garden Grove Unified School Dist.* (9th Cir. 2011) 635 F.3d 1155, 1159.) However, the parents' unilateral placement is not required to meet all requirements of the IDEA. (*Florence County School Dist. Four v. Carter* (1993) 510 U.S. 7, 13-14. [114 S.Ct. 361, 126 L.Ed.2d 284].)

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

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

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

139. The compensatory education award must be "reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." (*Reid supra*, 401 F.3d at p. 524.) In determining the equitable remedy, the ALJ may consider the school district's failure to update an outdated IEP and refusal to cooperate. (*Anchorage Sch. Dist. v. M.P.* (9th Cir. 2012) 689 F.3d 1047, 1059-1060; *T.B. ex rel. Brenneise v. San Diego Unified School Dist.* (S.D.Cal, March 30, 2011, No. 08CV28-MMA (WMc)) 2011 WL 1212711, p. 3.)

140. Student established that she is entitled to reimbursements for Dr. Lucker's IEE in the amount of \$1,500, and UCLA's IEE in the amount of \$405.00, because District did not initiate a hearing to defend its assessments or timely offer to fund Parent's requests for the IEE's.

141. Student established that she is entitled to reimbursement for her expenses for the Prentice school in the amount of \$4,842.90 through January 27, 2016 only, the last day of hearing, as compensatory education. Student was two years behind in reading and writing, and needed complete and accurate present levels and goals to monitor her progress and adjust instruction. Prentice staff regularly collected data on Student's reading skills and adjusted instruction accordingly. Student obtained benefit from the data-driven approach to instruction, coupled with daily, small group, specialized academic instruction. Student did not establish that Prentice should be reimbursed by District for its scholarship, because Prentice did not seek reimbursement for the scholarship from Parent. Further, Student did not establish that Student required prospective placement at a non-public school, like Prentice, to receive a FAPE, as while District's IEP offers did not provide a FAPE, Student did not establish that her unique needs could not be met at a District school.

142. Student established that she is entitled to additional language services on her June 3 and October 14, 2015 IEP, because the offer of services was inappropriate. As discussed above, the appropriate level of service as of June 3, 2015, was three sessions per week, 30 minutes per session, of small group, pull-out, language therapy sessions.

143. Student established procedural and substantive violations relating to the assessment of her language processing needs, present levels, goals, and services. Student is entitled to compensatory education services. Dr. Lucker did not provide testimony regarding compensatory education services, but based on his December 2014 language processing

assessment, he credibly opined that Student had severe language deficits at the beginning of the 2014-2015 school year. Therefore, Student is entitled to compensatory language services for the period of August 14, 2014, the first day of the 2014-2015 school year, through January 27, 2016 only, the last day of hearing.

144. As discussed above, the evidence established that Student needed 90 minutes per week of language therapy services as of June 3, 2015. District offered three hours per month of language services as of June 3, 2015, but Parent failed to avail herself of those services, which was factored into a compensatory education remedy. Since Student had not yet received any language therapy services, it was impossible to determine her rate of learning.

145. Given that Student's revised IEP pursuant to this Order will offer 90 minutes per week of small group, language therapy services, an additional 30 minutes per week, or two hours per month, of therapy is appropriate to compensate her for the denial of FAPE between August 14, 2014, and January 27, 2016. During this period, there were 62 weeks of school according to District's instructional calendar, yielding a total of 31 compensatory hours. The combination of Student's IEP services (six hours per month), and the compensatory services (two hours per month), was consistent with Dr. Lucker's recommendation for intensive language therapy services. The service provider may use his or her discretion to adjust the length of the compensatory sessions (e.g., one, 60 minute session instead of two, 30 minute sessions), the type of compensatory services (e.g., individual or small group), and the goal areas according to the service provider's professional opinion.

## ORDER

1. District shall prepare an amendment to Student's June 3 and October 14, 2015 annual IEP, and change the level of Student's speech and language services to three sessions per week, 30 minutes per session, small group ("pull out"), with the same end date of June 3, 2016. District does not need to schedule an IEP team meeting to prepare the amendment. The amendment shall be prepared within 10 calendar days of District's receipt of this Decision, and shall be mailed to Parent via regular U.S. mail or electronic mail on the same date of the amendment. District shall implement the new IEP if Student returns to District prior to June 3, 2016.

2. District shall reimburse Parent in the amount of \$1,500.00 for Dr. Lucker's IEE in the areas of language processing and auditory processing within 30 calendar days from the date of this Decision. Documents submitted in this hearing constitute adequate proof of payment by Parent.

3. District shall reimburse Parent in the amount of \$405.00 for UCLA's IEE in the area of psychoeducation within 30 calendar days from the date of this Decision. Documents submitted in this hearing constitute adequate proof of payment by Parent.

4. District shall reimburse Parent in the amount of \$4,842.90 for tuition at Prentice within 30 calendar days from the date of this Decision. Documents submitted in this hearing constitute adequate proof of payment by Parent.

5. District shall provide Student with 31 hours of small group, compensatory speech and language services in addition to the speech and language services to be provided under Student's IEP, as follows:

a. The compensatory services are to be provided by a District speech pathologist if Student attends a District school. The services shall be in addition to any speech and language services called for in Student's IEP, as amended by this Decision. District will provide Student with a monthly report, documenting the amount of compensatory services provided each week.

b. If Student does not return to a District school, Student will be entitled to procure services through a speech language pathologist of Student's choice and to bill the District for the cost of the services, provided that all speech and language services are to be provided and a bill submitted to the District by August 30, 2017. District will pay any bill submitted within 30 days of receipt of proof of payment by Parent. If Student procures services through a private provider, District shall be entitled to receive copies of any assessments, goals, and progress reports prepared by the service provider, and consult with the service provider regarding Student's needs and progress.

c. Any compensatory education time awarded by this Decision must be used by August 30, 2017, or it will be forfeited.

6. All other requests 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.

Student prevailed on the following issues: 1(a), 1(b), 1(c), 1(d), 3(d), 5, 6 (partial)<sup>14</sup>, 8 (partial),<sup>15</sup> 9, 13(d), 14(a), 14(d), 15(a), 15(b), 15(c), 16(a), 16(b), and 17.

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<sup>14</sup> Student prevailed as to District's failure to conduct an audiological auditory processing assessment following its November 7, 2014 offer to do so. District prevailed as to its June 2014 psychological auditory processing assessment.

<sup>15</sup> Student prevailed as to the July 29, 2014 IEP team meeting, and District prevailed as to the October 9, 2014 IEP team meeting.

District prevailed on the following issues: 2, 3(a), 3(b), 3(c), 4, 6 (partial), 7, 8 (partial), 10, 11, 12, 13(a), 13(b), 13(c), 13(e), 14(b), 14(c), 14(e), 14(f), 15(d), 15(e), 15(f), 16(c), 16(d), 16(e), 16(f) and 18.

#### RIGHT TO APPEAL THIS DECISION

The parties in this case have the right to appeal this Decision by bringing a civil action in a court of competent jurisdiction. (20 U.S.C. § 1415(i)(2)(A); 34 C.F.R. § 300.516(a); Ed. Code, § 56505, subd. (k).) An appeal or civil action must be brought within 90 days of the receipt of this Decision. (20 U.S.C. § 1415(i)(2)(B); 34 C.F.R. § 300.516(b); Ed. Code, § 56505, subd. (k).)

DATE: March 21, 2016

/s/

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CAROLINE A. ZUK  
Administrative Law Judge  
Office of Administrative Hearings