

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OAH CASE NO. 2010020005

PARENTS on behalf of STUDENT,

v.

COMPTON UNIFIED SCHOOL DISTRICT
AND LOS ANGELES COUNTY OFFICE OF
EDUCATION.

DECISION

June R. Lehrman, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on April 26, 27, and 28, 2010, in Compton, California.

Pamela Daves, Attorney at Law, of the law firm Adams, Esq., represented Parents on behalf of Student. Parents attended the hearing on all days.

Daniel Gonzales, Attorney at Law, of the law firm Littler Mendelson, represented Compton Unified School District (District). Zakkiyah McWilliams, District Program Administrator, and Jennifer O'Malley, District Program Specialist, attended the hearing on all days.

Sung Yon Lee, Deputy General Counsel for Los Angeles County Office of Education (LACOE), represented LACOE. Dr. Gary Levin, LACOE Project Director III, attended the hearing on all days.

Parent filed the Due Process Hearing Request (complaint) on January 29, 2010. On March 4, 2010, OAH ordered the hearing continued for good cause. Sworn testimony and documentary evidence were received at the hearing. At hearing, the

parties were granted a continuance to file written closing arguments by May 12, 2010. The parties each timely filed their closing briefs on that date. Upon receipt of the written closing arguments, the record was closed and the matter was submitted.

ISSUES¹

1. Did Respondents deny Student a free appropriate public education (FAPE) by failing to implement Student's prior September 28, 2007 Individualized Education Program (IEP) from Torrance Unified School District when Student transferred into District on January 30, 2008?

2. Did Respondents deny Student a FAPE in or around March 2008 by failing to provide prior written notice of refusal to enroll Student in Torrance Unified School District's "Launch" program, as requested by Parents?

3. Between January 30, 2008, and April 28, 2008, did Respondents fail to assess Student in all areas of suspected disability, specifically by failing to conduct occupational therapy (OT), physical therapy (PT), health and nursing, or assistive technology evaluations?

4. Did Respondents deny Student a FAPE by failing to have the proper persons attend the April 28, 2008 IEP team meeting?

¹ The ALJ has combined and rephrased the issues in the complaint for clarity. In addition, one issue stated in the complaint ("Did [Respondents] deny Student a FAPE by failing to convene a timely and appropriate IEP meeting") was withdrawn by Student's counsel at the April 19, 2010 Pre-hearing Conference, and is dismissed. In addition, the following issue stated in the complaint — "If [Respondents] denied [Student] a FAPE, is he entitled to compensatory education" — is addressed in the Remedies section of this Decision.

5. Did Respondents deny Student a FAPE in the April 28, 2008 IEP by:
 - (a) failing to base their offers of a FAPE on appropriate assessments;
 - (b) failing to identify appropriate IEP goals;
 - (c) offering inappropriate classroom placement;
 - (d) failing to offer: (i) full-time qualified nursing staff and specialized health services; (ii) a full-time qualified 1:1 aide; (iii) appropriate speech and language services; (iv) OT and PT; and (v) assistive technology?
6. Between April 28, 2008, and April 24, 2009, did Respondents fail to conduct an appropriate audiological evaluation?
7. Did Respondents deny Student a FAPE at the April 24, 2009 IEP team meeting by:
 - (a) failing to have the proper persons attend;
 - (b) conducting the meeting without Parents?
8. Did Respondents deny Student a FAPE in the April 24, 2009 IEP by:
 - (a) failing to base their offers of a FAPE on appropriate assessments;
 - (b) failing to identify appropriate IEP goals;
 - (c) offering inappropriate classroom placement;
 - (d) failing to offer: (i) full-time qualified nursing staff and specialized health services; (ii) a full-time qualified 1:1 aide; (iii) appropriate speech and language services; (iv) OT and PT; (v) assistive technology and (vi) appropriate audiological services?
9. Between September 24, 2009, and October 30, 2009, did Respondents deny Student a FAPE by:
 - (a) conducting an inappropriate psycho-educational assessment;
 - (b) conducting an inappropriate speech and language assessment?
10. Did Respondents deny Student a FAPE in the October 30, 2009 IEP by:

- (a) failing to base their offers of a FAPE on appropriate assessments;
- (b) failing to identify appropriate IEP goals;
- (c) offering inappropriate classroom placement;
- (d) Failing to offer: (i) full-time qualified nursing staff and specialized health services; (ii) a full-time qualified 1:1 aide; (iii) appropriate speech and language services; (iv) OT and PT; (v) assistive technology and (vi) appropriate audiological services?

FACTUAL FINDINGS

BACKGROUND

1. Student is a six-year-old boy who resides with Mother within District's boundaries. Father is a sometimes-resident in the family home and is intimately involved with Student's upbringing. Student qualifies for special education and related services under the Multiple Disabilities eligibility category. Currently he attends kindergarten in the special day class (SDC) operated by LACOE at District's Bursch Elementary School (Bursch).

2. Student has multiple medical challenges, including chronic lung disease, hydrocephalus, shunt placement, tubes in his ears to drain fluid, and acid reflux post G-tube placement. Student's G-tube feeding schedule is 7:00 a.m., 11:00 a.m., 4:00 p.m. and before bedtime between 8:00 and 8:30 p.m. He can eat some soft foods. He is not verbal. He receives assistance for all activities of daily living. He cannot hold a pencil, kick or throw a ball, put on shoes or button a shirt, or brush his teeth by himself. He can stand, but is unsteady on his feet while in motion, and has balance issues that may cause him to fall. He is in diapers. He mouths objects, and cannot play with puzzle pieces or blocks. He makes eye contact and exhibits loving behavior to his family, but is

solitary while at school. Although Student is non-verbal, he understands his daily schedule. For example, he knows when it is time to leave the house to go to school.

3. Student has a home-duty nurse, Elizabeth Agbelusi, provided by the South Central Los Angeles Regional Center (SCLARC). She has cared for Student since August 2005. She assesses him daily for drainage, infections, and mobility. She gives him nebulizer treatments for lung ailments, and administers anti-seizure medications. She does not attend school with Student, but provides for his needs before and after school while Parents are at work.

4. From shortly after birth, Student obtained services through SCLARC as a result of global developmental delays. From May to September 2006, he received therapy from Pediatric Therapy Network (PTN) through a SCLARC program called Leaps and Bounds. The therapy focused on speech and language, social skills, oral motor skills for feeding, and self-care skills. During that time, Student displayed significant delays in receptive and expressive language, required hand-over-hand assistance to perform most tasks including self-care tasks, presented with decreased muscle tone and muscle strength throughout his trunk, had unstable gait limited to flat surfaces, and had difficulty with overall motor functioning. PTN developed goals and objectives in the areas of speech and language, social skills, oral motor, self-care, cognitive/fine motor skills, sensory processing/organization of behavior, and gross motor skills. PTN recommended that Student's educational team consider speech and language therapy, OT and PT as part of his future educational program, as "delays in these areas directly impact his ability to safely and independently interact with his peers and participate within his educational program."

5. On August 25, 2006, when he was approximately two years and nine months old, Student was referred by SCLARC to Clinical Psychologist Victor Sanchez, Ph.D. for assessment for diagnostic clarification and program planning. Dr. Sanchez

reported that Student could not place pegs in a board, identify picture vocabulary items, did not say any words, did not imitate pencil strokes, could not use a spoon, blow his nose, scribble with a pencil, did not imitate sounds, could not swallow well, was not toilet-trained and could not wash and dry his own hands. Dr. Sanchez's clinical impression was that Student's cognitive skills fell within the severe range of retardation, most closely resembling that of the average nine-month-old child. Dr. Sanchez diagnosed Student with expressive language disorder and severe mental retardation. Dr. Sanchez strongly recommended reassessment at approximately age five, stating: "It is very important to maintain a conservative approach when attempting to measure the cognitive abilities with children who exhibit significant physical impairments and language deficits – like those exhibited by [Student]."

6. District administered Student's initial psycho-educational assessment for special education on or around November 7, 2006, when he was two years, eleven months old. The results placed Student in the very-low range in all cognition categories — visual reception, fine motor, receptive language and expressive language. The assessors concluded that Student's reasoning ability was in the very-deficient range in both verbal and non-verbal domains, and noted Student's multiple medical challenges. The report took note of Dr. Sanchez's findings, and also noted that Student had been receiving in-home early intervention services through SCLARC since he was six months old, and OT from PTN once a week.

7. Student's initial IEP took place on November 27, 2006. At an Addendum IEP on April 20, 2007, Respondents offered placement in a LACOE preschool special day class (SDC) at Bursch. Parents asked Respondents for services such as had been provided through SCLARC. Through those services, Parents were familiar with a Torrance school-based program called Launch, and they asked Respondents either to permit an

inter-district transfer to allow Student to attend Launch, or to provide comparable services. Despite their concerns, Parents consented to the November 27, 2006 IEP.

8. Parents observed the Bursch placement and did not like it. Mother and Nurse Agbelusi observed that in this classroom, Student was given no direction or activities, no class work at all, no circle time, and no structure of any kind. He simply sat on a sofa by himself. Mother believed this classroom was simply a warehouse for special needs children.

STUDENT'S MOVE TO TORRANCE

9. In or around the late summer/early fall of 2007, Mother and Student moved to Torrance, where they lived with Mother's older son at his apartment. Student's and Mother's residency in Torrance was not a sham.

10. Mother enrolled Student in the Torrance Unified School District at or around that time. Torrance conducted a Trans-disciplinary Preschool Assessment that resulted in a report dated September 28, 2007. The assessment team included a school psychologist, speech language pathologist Elizabeth Soriano, and a special education teacher. They conducted a parent interview, reviewed prior records, observed Student, and conducted a Developmental Play-Based Assessment (an adaptation of the Carolina Curriculum, Brigance Inventory of Early Development, Peabody Developmental Motor Scales, Rossetti Infant-Toddler Language Scales, and Ordinal Scales of Cognition). The speech language pathologist administered a PreSchool Language Scale, Fourth Edition (PLS-4).

11. The Developmental Play-Based Assessment measured concept development, pre-academic skills, fine and gross motor skills, self-help skills, and play and social skills. This assessment revealed that Student did not play with blocks or sort objects, and exhibited below age-range skills in concept development, visual perception, and pre-academics. The assessors were unable to assess Student's fine and gross motor

skills because the assessment tasks (holding a pencil, using scissors, throwing and catching a ball) were too difficult for Student. Student had no self-help skills, requiring assistance for all activities of daily living.

12. The PLS-4 measured receptive and expressive language skills. The results indicated severe receptive and expressive language disorder. Ms. Soriano recommended Student for individual speech and language therapy to support his receptive understanding and expressive language use in the classroom.

13. Torrance conducted an IEP meeting for Student on September 28, 2007. The IEP team developed eleven goals. In the area of need of receptive language, Student was given goals to "consistently respond to his name and/or objects presented to him as demonstrated by turning his head and making eye contact for approximately 2-3 seconds with minimum verbal and gesture cues (0-1 cue) in 3/5 trials as measured by SLP observation and data collection" and to "imitate a hand movement or gesture (e.g. clap hands, stomp feet, touch head) during structured treatment activities provided an adult model with minimal verbal and tactile cues (0-1 cue) at 70% accuracy in 3/5 treatment session as measured by SLP observation and data collection." In the area of need of expressive language, Student was given the following goal: "given single preferred object (toy or edible), [Student] will request the preferred object with a gestural point or single-switch activation with 70% accuracy and minimum verbal or gestural cues (0-1 cue) in 3/5 treatment sessions as measured by SLP observation and data collection." In the area of need of attention and memory, Student was given the following goals: "given a familiar, age-appropriate task (such as large pegs and peg board), [Student] will work on the specific task for 4 minutes, independently, as measured by teacher observation" and "given the structure and routine of the classroom, [Student] will follow 1 routine (e.g. checking in, going to circle, put snack in the basket, picking up toys, waving goodbye) 4 out of 5 times as measured by teacher

observation." In the area of need of toy play, Student was given the following goal: "given appropriate objects (e.g. toys, kitchen utensils, toys with a button or switch), [Student] will explore objects (e.g. pushing, pulling, waving, turning object over, poking) independently 4 out of 5 times as measured by teacher observation." In the area of need of interpersonal skills, Student was given the following goal: "given a familiar game, [Student] will initiate continuation of a simple game-playing (e.g. Peek-a-boo, This little piggy went to market, or activities such as handing someone else a toy) after one trial, 4 out of 5 times as measured by teacher observation." In the area of need of social skills, Student was given the following goal: "given a structured situation, [Student] will make eye contact in response to his name, independently, 4 out of 5 times as measured by teacher observation." In the area of need of fine motor skills, Student was given the following goal: "given a writing implement (e.g. crayon, pencil) and piece of paper, [Student] will make at least 3 marks on the presented paper, independently, 4 out of 5 trials, as measured by teacher observation and work sample." In the area of need of self-regulation, Student was given the following goal: "given a classroom setting, [Student] will remain seated 5 minutes, given tangible reinforcements, 4 out of 5 times, as measured by teacher observation." In the area of need of self-help, Student was given a toileting goal: to "follow an established toileting routine (e.g. being taken at regular times, pulling down pants, sitting on the toilet, pulling up pants) with verbal prompts and physical assistance as needed, 4 out of 5 times, accuracy as measured by teacher-charted observation."

14. Torrance offered placement in the special day class at Launch preschool, a separate classroom located within a general education facility. In addition, Torrance offered the following related services: speech and language services (one fifteen-minute group session each week, one ten-minute consultation session each week, and one twenty-minute individual session each week); transportation; extended school year;

assistive technology consisting of a single-switch device to make requests as stated in the speech and language goals; specially designed physical education once per week for twenty minutes; and 1:1 supervision at all times. In the IEP Meeting Comments, the school nurse noted that although Student was to be fed at home, she requested Mother to bring emergency feeding supplies in case of emergency, and that on Student's first day at school, Parent or his nurse should demonstrate how to use the G-tube.

15. After the IEP meeting, in October 2007, Torrance also referred Student to PTN for an OT assessment. PTN conducted a parent interview, clinical observations, and the Peabody Developmental Motor Scales, Second edition (PDMS-2), with Fine Motor Subtests used in an un-standardized manner. The results measured: Student's fine motor skills, which involve precise movements by small muscles of the hands to do activities such as drawing and buttoning; sensory processing, which refers to the child's perception of information through sensory channels including visual, auditory, tactile, proprioceptive (input from muscles and joints) and vestibular (movement and gravity); and praxis and ideation, which refer to the ability to form an idea about motor action, plan the sequence and timing of the action and then execute it. The assessment found Student had significant deficits in all the above areas. With regard to his fine motor skills, Student could not assume or maintain grasp on writing utensils, and required hand-over-hand assistance to imitate scribbling. With regard to sensory processing, Student was reported to have difficulties with sensory input from lights, appeared not to hear certain sounds, and was bothered by touch. With regard to praxis and ideation, Student required maximal physical assistance and hand-over-hand assistance to engage in all activities. The assessment found Student eligible for educationally-related OT, and recommended that he would benefit from OT services in a specialized clinic with suspended equipment. Torrance thereafter provided Student with weekly group OT sessions conducted by PTN, consisting of both weekly fine motor group sessions for

forty-five minutes, and weekly sensory arousal group sessions of thirty minutes. In addition, each Launch SDC class had access to an on-site occupational therapist.

16. Parents and Nurse Agbelusi were happy with Student's progress in the Launch placement. Launch provided a comprehensive program including classroom time integrated with general education students, which helped Student with socialization skills. At Launch, Student had his own cubicle with his name on it, and was being trained to carry his own backpack. He was learning to go each day to his own cubicle and put his backpack where it belonged. He had his own folder containing classroom papers that he brought home with him after school each day in his backpack. Launch had toilet training incorporated into its daily routine. There was a bathroom with potties next door to the classroom. Student's 1:1 aide was working on potty-training Student, and on hand-washing skills before beginning each school day, and after toileting. Parents were also happy with the OT and PT services Student obtained through PTN, which was working with Student on balance, mobility and weakness in his trunk. PTN had ordered a special chair for Student to allow him to sit up straight. PTN was also working on feeding skills, training him to hold a spoon and bring it to his mouth. Launch requested an in-service training from Nurse Agbelusi to learn how to do G-tube feedings.

17. LACOE is a service provider that contracts with certain school districts to provide special education services. The particular services LACOE provides to a school district are determined on a contract-by-contract basis. LACOE operates its special education services through geographical entities called "principal administrative units" (PAUs). The PAU that provides services to District is called the Avalon PAU. Avalon operates placements, programs and services using its own LACOE-employed teachers and administrative personnel. It does not have its own facilities; therefore Avalon LACOE programs use District facilities, and operate on the physical premises of District schools,

in this case Bursch. While District was responsible for the provision of a FAPE, it delegated its responsibilities to LACOE through contract. LACOE provided all of the District educational programs, placement and services that are at issue in this case.

18. Although LACOE has a contract with Torrance, it did not provide any of the Launch program services. Torrance and Compton are in different Special Education Local Plan Areas (SELPA). Torrance is in the Southwest SELPA. Compton is in the Mid-Cities SELPA.

STUDENT'S MOVE BACK INTO DISTRICT

19. Prior to January 30, 2008, Mother and Student moved back to District from Torrance. Upon moving, Parents re-enrolled Student back into District. On the Student Registration form dated January 30, 2008, Father noted Student's hearing problems, muscle problems and speech problems.

20. At or around this time, Parents and Nurse Agbelusi observed the LACOE SDC placement at Bursch. As in 2006, they considered this placement to provide only a warehousing facility where Student was not engaged, and sat alone in his own world. Parents and LACOE SDC teacher Williams-Armstrong discussed Launch, but at hearing they had different accounts of what was said. Parents credibly recall Ms. Williams-Armstrong admitting that she did not have the resources necessary to provide services comparable to the Launch program.

21. On March 4, 2008, District, through LACOE Avalon PAU personnel, convened its Administrative Intake IEP. The attendees were District Program Specialist Jennifer O'Malley, a school nurse, Father, and the Principal of the Avalon PAU program at Bursch, Principal Dixon. Respondents confirmed Student's eligibility under the Multiple Disabilities category. They noted his previous placement at Launch in Torrance. Respondents, however, were not in possession of the Torrance September 28, 2007 IEP nor the September 28, 2007 Torrance Trans-Disciplinary Preschool Assessment Report.

District/LACOE did not obtain Torrance's records when Student transferred back into District, or at any time thereafter.

22. At the March 4, 2008 intake IEP meeting, Respondents did not make any specific offer of placement or services. The IEP stated simply that the IEP team would meet after 30 days "to revisit this placement."

23. At this IEP, Father requested that Student be placed back in the Launch program in Torrance. Principal Dixon told Father he would investigate this request and respond within thirty days; however, Father never received a response.

APRIL 28, 2008 IEP

24. On April 28, 2008, the 30-day review IEP meeting occurred. The following persons attended: Father, Avalon PAU administrator Dr. Denise Nunley, LACOE special education teacher Williams-Armstrong, and District Program Specialist Jennifer O'Malley.

25. The April 28, 2008 IEP did not indicate that the team reviewed any assessments. The IEP team did not have, and did not review the assessments that had been conducted by Torrance (Torrance Trans-disciplinary Preschool Assessment dated September 28, 2007) nor PTN's October 2007 OT assessment. The team reviewed a school nurse's report dated March 4, 2008, which recorded Student's medical history. The IEP notes indicated that Student's "most current IEP" was dated November 27, 2007. This was a typo. There was no document actually dated November 27, 2007. The only prior IEP document in Respondents' possession was District's initial November 27, 2006 IEP. Respondents did not have, and did not review, Student's September 28, 2007 IEP from Torrance.

26. The IEP stated the following four goals, prepared by Ms. Williams-Armstrong: Student's English/Language Arts goal was: "When transitioning between activities throughout the school day, [Student] will be exposed to pictures for specific

activities being prompted to the next activity on the daily picture schedule without resisting 80% of the time over (10) consecutive days as observed and recorded by staff." His History/Social Science goal was: "When using classroom objects/toys, [Student] will refrain from putting objects/toys in his mouth and will use items for intended purpose 80% of the time in (4) out of (5) occurrences as observed and charted by staff." His Health goal was: "While participating in an activity, [Student] will orient towards speaker by turning head any distance toward speaker (3) times during the activity (8) out of (10) trial days as observed and recorded by staff." His Physical Education goal was: to "demonstrate a physical reaction to sensation on a body part by looking toward that body part where tactile stimulation is being provided (4) out of (5) trials (8) out of (10) days as observed and charted by staff." No goal was stated for toileting skills. In Ms. Williams-Armstrong's opinion, a toileting skills goal would not have been appropriate for Student because he did not have the necessary precursor skills such as pulling his pants down or up, or indicating the need to go to the toilet. Student was in diapers; diapering him was one of Ms. Williams-Armstrong's teacher responsibilities during the school day. Parents believed that a toileting goal would have been appropriate, as Student had one and was making progress on it while at Launch.

27. The April 28, 2008 IEP offered Student placement in the LACOE preschool SDC at Bursch, five times weekly, three hours per day, stating that 10% of his time would be in the general education environment. The SDC was a small class, taught by Ms. Williams-Armstrong, aided by an adult parent educator who was in the classroom full-time.

28. With regard to qualified nursing staff, the IEP team made no specific offer. A school nurse was available at Bursch for emergencies. With regard to specialized health services, the IEP team made no offer. Respondents were aware of Student's multiple medical issues, which were all managed at home. The team noted that Student

“has specialized health care procedures which are taken care of at home not at school,” and that he took medications at home. The team also noted that “parent has expressed interest in assistance for [Student] with eating/feeding,” but the team made no offer of services to address this. Father recalled that although there was some discussion of training an aide to assist Student with feeding and with medications, the IEP team never offered this. As a result, Student could not attend a full day of school, because while other children eat at school, Student had to be fed at home and brought to school after breakfast and brought home in time for afternoon feeding. The length of his school day and his feeding schedule at home were organized around the fact that G-tube feeding services were not offered at school. At hearing, Nurse Agbelusi expressed her opinion that Student should have had a nebulizer available to him at school in case of emergencies to open up his airways, and that if Student got sick he should have had the ability to be fed at school through his G-tube.

29. With regard to OT and PT, the IEP team made no offer, noting that Student could not hold a crayon, and that Father “agreed APE services can be a start and watch [Student’s] progress before investigating the need for other PT assessments related (sic) gross and fine motor skills based on teacher/parent feedback and expressed concerns.”

30. The IEP team did not offer a 1:1 aide, speech and language, or assistive technology services.

31. Father signed the April 28, 2008 IEP, still hoping for an eventual transfer back into Launch. Student was placed in the LACOE SDC class at Bursch starting in April 2008 and for the remainder of the school year, ESY over the summer and continuing into the fall and winter of 2008-2009.

SUMMER/FALL 2008

32. On or around June 8, 2008, LACOE speech language pathologist Mary Bergman conducted a Communication Assessment. Ms. Bergman was not called to testify. Her Communication Assessment Summary indicated that she made behavioral observations of Student, and assessed him using the Southern California Ordinal Scales of Development, an instrument that assessed the range and quality of functioning. Her findings indicated an overall reduced developmental and communication profile, with communication skills at the eight-to-twelve-month level. Student understood and expressed himself non-verbally, did not understand what was said to him, and communicated via behaviors including body movement, tone, posture and movement. Student had receptive and expressive language deficits but was "emerging in the acquisition of some of the cognitive constructs required for representational thought and symbolic language (i.e. meaningful understanding and use of words.)" Her report indicated the following behavioral observations: Student exhibited dependence on adults and did not respond to adult prompts, even within his ability level. He appeared to exhibit "learned helplessness" in that he appeared to understand that adults would perform actions for him. He appeared to have the motor capability to interact with toys and objects, but had not learned the skills to do so. Ms. Bergman stated that Student might be capable of more independence but had not received the adult reinforcement necessary to achieve it. She stated concerns due to Student's lack of response to sound and verbalization. Student's hearing was a major area of concern. She recommended a complete audiological evaluation.

33. Ms. Bergman found that Student did not meet the eligibility criteria for enrollment in speech and language services. This finding was not explained in the report, and nobody was called to testify regarding it. This finding is not persuasive in light of Ms. Bergman's other findings regarding Student's needs, and in light of the

countervailing evidence of eligibility for speech and language services from Student's prior assessments.

34. On June 20, 2008, an IEP amendment meeting was held to review the results of Ms. Bergman's report. The IEP team agreed that Parent would "contact a service provider for audiological support." The June 20, 2008 IEP meeting did not make any new or different offer of placement and services.

35. Parents arranged for their own audiological testing on September 22, 2008, through Children's Hospital of Los Angeles, which conducted an auditory brainstem response (ABR) test on Student. This was a test used to evaluate hearing status. The results indicated a mild hearing loss in the left ear and a mild-moderate hearing loss in the right ear. The hearing loss "significantly impact[ed] spoken language and warrant[ed] close otologic/audiologic treatment and follow-up." LACOE received this document on or around December 3, 2008.

APRIL 24, 2009 IEP

36. On April 20, 2009, Father filled out a form entitled "Parent Information for Program Planning" on which he stated areas of need in language and self-help skills and concluded "keep up the good work." Despite his concerns about the placement, and although he felt Student was not being educated, Father had appreciated Ms. Williams-Armstrong's work on Student's behavior.

37. Student's next annual IEP meeting was held on April 24, 2009. The following persons attended: Ms. Williams-Armstrong, Avalon PAU Assistant Principal Richard Ellis, and an adapted physical education (APE) teacher.

38. Neither Parent attended the April 24, 2009 IEP meeting. The IEP stated, "Parent gave permission to hold meeting in his absence. He was ill at the time of the scheduled meeting." According to Ms. Williams-Armstrong, District personnel informed her that they had invited Parents. She had no personal knowledge of the invitation, and

no documents were put into evidence concerning it. Respondents presented no evidence of their practices and procedures regarding parental notification, other than the testimony of Ms. Williams-Armstrong, who admitted no personal knowledge of any invitation to Parents.

39. Father credibly denied ever having given permission to proceed in his absence; if he could not attend a scheduled meeting, his practice would have been to reschedule it. Parents' attendance at every other IEP meeting is documented and attests to their customary diligent attendance practices.

40. The April 24, 2009 IEP team reviewed no assessments. The IEP stated five annual goals. Student's English/Language Arts goal was: "When given a 2-step direction (pick up and put in, or give to me) [Student] will perform action to comply with a two-step direction 40% of the time (4) out of (10) trial days as observed and charted by staff." Student's Fine Motor goals were: "When given no more than 5 blocks, [Student] will perform the task of stacking the blocks 40% of the time (4) of (10) trial days as charted by staff," and "When given a crayon and paper, [Student] will make marks on the paper using the crayon 40% of the time (4) of (10) trial days." Student's Motor Skills Development goals were: "While in PE class, [Student] will step forward and kick a stationary 8 ½" ball, demonstrates (sic) follow through of kicking leg receiving verbal and visual prompts for 2 out of 3 trials as measured by observation record," and "While in PE class, [Student] will balance on one foot (2-5 sec.) receiving verbal and visual prompts for 2 out of 3 trials as measured by observation record."

41. The April 24, 2009 IEP offered Student placement in the LACOE preschool SDC at Bursch, five times weekly, three hours per day, and APE services six times per month for 60 minutes each. No other related services were offered.

2009 TRIENNIAL ASSESSMENT AND IEP

42. On September 24, 2009, Father signed a Consent for Assessment in the following areas: academic/pre-academic performance; self-help; social and emotional status; motor ability; and general abilities. On or around October 16, 2009, LACOE conducted a Triennial Multi-Disciplinary Psycho-educational Assessment, resulting in an undated and unsigned Draft Report. The Draft Report was ambiguous in many respects. While it named, as assessment team members, school psychologist Jim Watwood, school nurse Theresa Sanders, and SDC teacher Williams-Armstrong, it was unclear which individuals performed the assessments. It also indicated that an unidentified speech language pathologist and an APE teacher were supposed to be members of the assessment team. It referenced one prior assessment that is in evidence (the SCLARC assessment performed on August 25, 2006, by Clinical Psychologist Victor Sanchez). It also referred to various other reports that were not offered into evidence at the hearing, including an undated nurse report, unidentified "prior evaluations," an undated APE report, and reports from psychologist Watwood, nurse Sanders, and SDC teacher Williams-Armstrong purportedly dated September 24 and 25, 2009. Regarding the "Validity of This Assessment," the report stated: "All assessment observations and results have been backed by prior assessments, parent report and are appropriate for the concerns of the IEP (which include: self-help strategies for toileting, eating and mobility)."

43. The assessor or assessors administered one formal test, the Scales of Independent Behavior—Revised (SIB-R), which measured overall adaptive behavior based on an average of four different areas of adaptive functioning: motor skills; social interaction and communication skills; personal living skills; and community living skills. It concluded that Student's "functional independence is very limited to negligible; his performance is comparable to that of the average individual at age 7 months." The

report stated that all formal attempts to assess general cognitive ability had failed due to student limitations. It stated: "According to prior evaluations, current observations and reports as well as adaptive functioning, [Student's] general academic potential (cognitive ability) is estimated to be in the very low range of development."

44. On October 30, 2009, LACOE also prepared a "Speech Language Summary" which did not reassess Student, but restated the findings and recommendations in the Bergman Communication Assessment Summary report dated June 8, 2008.

45. LACOE also conducted an APE Assessment, resulting in a report dated October 7, 2009. The assessor administered the Ordinal Scales of strength, balance, mobility and coordination and the LA County Care-R. The Ordinal Scales results revealed that Student was in approximately the eight-to-eighteen-month age range in all categories. The LA County Care-R measured motor skills. Student rated 12-15 months for "gross motor" and 1-2 years for "object control." The report summarized Student's status as "demonstrating severe motor delays which are greater than 50% below his chronological age in the areas of gross motor and object control skills, which adversely affect his educational performance or physical education." The report recommended APE services a minimum of six times a month for 30 minutes each.

46. Student's triennial IEP meeting occurred on October 30, 2009. The IEP team reviewed the October 16, 2009 LACOE Triennial Multi-Disciplinary Psycho-educational Assessment, the "Speech Language Summary" dated October 30, 2009, and the APE Assessment report dated October 7, 2009.

47. The IEP stated three annual goals. Student's English/ Language Arts goal was: "When given a 2-step direction (pick up and put in, come to me and sit down) [Student] will perform action to comply with the two-step direction 80% of the time (8) of (10) trial days as observed and charted by staff." Student's Science goal was "to

observe common objects by using the five senses When given two different textures by teacher, [Student] will explore textures by moving hand over both surfaces for 5 seconds (80%) of the time over (10) consecutive days as observed and recorded by staff." Student's Physical Education goal was to "use recreational/leisure materials for its intended purpose by i.e. stacking blocks on top of another or placing a inset puzzle piece in the inset (8) out of (10) trial days as observed and charted by staff." Ms. Williams-Armstrong reported that these goals were appropriate because Student liked to touch objects with his hands, was able to pick up items, and could walk to and from locations.

48. The October 30, 2009 IEP offered placement in LACOE's kindergarten SDC at Bursch, with APE services.

49. Ms. Williams-Armstrong testified that Student had obtained educational benefit in her class from 2008-2009, and had progressed on his goals, although limited, in the following respects: he responded to other students; he had a favorite spot in the classroom; he recognized people and knew who he liked; he could put his hat and coat away; he ate food that was prepared from home. With respect to his health needs, Ms. Williams-Armstrong had access to a nurse for emergencies. Once, Student appeared to be in distress with his breathing; Ms. Williams-Armstrong called nurse Agbelusi on her cellphone, and also called the school nurse, who arrived right away. Nurse Agbelusi arrived within fifteen minutes. Ms. Williams-Armstrong would have called 911 if there had been any apparent need.

LEGAL CONCLUSIONS

BURDEN OF PROOF

1. The petitioning party has the burden of persuasion. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].) Therefore, Student has the burden of persuasion on all issues.

STATUTE OF LIMITATIONS

2. Due process complaints filed after October 9, 2006, are subject to a two-year statute of limitations. (20 U.S.C. §§ 1415(b)(6)(B), 1415(f)(3)(C); 34 C.F.R. § 300.507(a)(2) (2006);² 34 C.F.R. § 300.511(e); Ed. Code, § 56505, subds. (l) & (n).) There is an exception to the two-year statute of limitations where the parent was prevented from requesting the hearing due to the local educational agency's "withholding of information from the parent that was required under this subchapter to be provided to the parent." (20 U.S.C. § 1415 (f)(3)(D)(ii).)

3. The complaint alleged that Respondents failed to provide copies of Student's records in a timely manner, thereby justifying an exception to the two-year statute of limitations. However, at hearing, Student failed to put on any evidence concerning this allegation. Thus, the applicable statute of limitations in this case is two years. Moreover, since Student re-entered District after January 29, 2008, all relevant allegations fall within the two-year period preceding the filing of the complaint on January 29, 2010. Thus, an exception to the two-year statute of limitations is neither warranted by the evidence, nor necessary to address all relevant allegations.

² All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise stated.

ISSUE 1: TRANSFER IEP

4. Student contends that Respondents denied Student a FAPE by failing to implement Student's Torrance IEP when Student transferred into District on January 30, 2008. Respondents contend that Student's move to Torrance was not legitimate, and that they had no reasonable basis for knowing there had been an IEP there. They also contend that they were not obligated to implement the Torrance IEP, of which they were admittedly unaware, because they developed and implemented a new IEP.

DEFINITION OF FAPE

5. Under both State law and the federal Individuals with Disabilities Education Act (IDEA), students with disabilities have the right to a FAPE. (20 U.S.C. §1400; Ed. Code, § 56000.) A FAPE means special education and related services that are available to the child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29).) "Related services" are transportation and other developmental, corrective and supportive services as may be required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); Ed. Code, § 56363, subd. (a) [In California, related services are called designated instruction and services].) "Related services" include speech-language pathology and audiology services, OT and PT, and school health and nurse services. (34 C.F.R. § 300.34 (a).) School health services and school nurse services are health services that are designed to enable a child with a disability to receive a FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or another qualified person. (34 C.F.R. § 300.34 (c)(13).)

6. In *Board of Education of the Hendrick Hudson Central School District, et al. 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 “sufficient to confer some educational benefit” upon the child. (*Id.* at pp. 200, 203-204.) In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district’s proposed program. (*Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1307, 1314.) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Ibid.*) For a school district’s offer of special education services to a disabled pupil to constitute a FAPE under the IDEA, a school district’s offer of educational services and/or placement must be designed to meet the student’s unique needs, comport with the student’s IEP, and be reasonably calculated to provide the pupil with some educational benefit in the least restrictive environment. (*Ibid.*) Whether a student was denied a FAPE is determined by looking to what was reasonable at the time, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrman v. East Hanover Bd. of Education* (3d Cir. 1993) 993 F.2d 1031, 1041.)

IMPLEMENTATION OF EXISTING IEP UPON TRANSFER FROM ONE DISTRICT TO ANOTHER

7. In the case of an individual with exceptional needs who has an IEP and transfers into a district from a district not operating programs under the same local plan in which he or she was last enrolled in a special education program within the same academic year, the local educational agency shall provide the pupil with a FAPE, including services comparable to those described in the previously approved IEP, in consultation with the parents, for a period not to exceed 30 days, by which time the local educational agency shall adopt the previously approved IEP or shall develop, adopt, and implement a new IEP that is consistent with federal and state law. (20 U.S.C. § 1414(d)(2)(C); 34 C.F.R. § 300.323(e); Ed. Code, § 56325, subd. (a)(1); Ed. Code, §56043, subd. (m)(1).)

8. To facilitate the transition from one school district to another, the new school in which the student enrolls shall take reasonable steps to promptly obtain the pupil's records, including the IEP and supporting documents and any other records relating to the provision of special education and related services to the pupil, from the previous school in which the pupil was enrolled. (Ed.Code, § 56325, subd. (b)(1).)

9. Respondents denied Student a FAPE by failing to implement Student's September 28, 2007 IEP when Student transferred into District from Torrance on January 30, 2008. Torrance's September 28, 2007, IEP offered Student the following services: speech and language services (one fifteen-minute group session each week, one ten-minute consultation session each week, and one twenty-minute individual session each week); transportation; extended school year; assistive technology consisting of a single-switch device to make requests; specially designed physical education once per week for twenty minutes; 1:1 supervision at all times; and weekly group OT sessions, consisting of both of weekly fine motor group sessions for forty-five minutes, and weekly sensory

arousal group sessions of thirty minutes. PTN worked with Student on balance, mobility and weakness in his trunk. PTN ordered a special chair for Student to allow him to sit up straight. PTN was also working on feeding skills, training Student to hold a spoon and bring it to his mouth. The Torrance classroom had toilet training and hand-washing skills incorporated into its daily routine. (Factual Findings 14-15, 19-23; Legal Conclusions 7-8.)

10. Respondents did not implement these services, nor comparable services, within the first 30 days of Student's transfer on January 30, 2008. Within the first 30 days, no formal offer of placement or services was made. Respondents' only action was to permit Parents and Nurse Agbelusi to observe the LACOE SDC placement at Bursch, and speak with Ms. Williams-Armstrong. Student was not placed in the LACOE SDC class at Bursch until April 2008. (Factual Findings 19-23, 31; Legal Conclusions 7-8.)

11. Respondents did not make any specific offer of placement or services at the March 4, 2008 intake IEP meeting. The IEP stated simply that the IEP team would meet after 30 days "to revisit this placement." The March 4, 2008 IEP takes specific notice of Student's prior placement at Launch in Torrance. Thus, Respondents' contention that they were not on any reasonable notice of the Torrance placement is contradicted by the evidence. Respondents' contention that Student's residence in Torrance was a sham is also contradicted by the evidence. (Factual Findings 9, 19-23; Legal Conclusions 7-8.)

12. Respondents failed to provide this district-transfer Student with a FAPE, including services comparable to those described in the previously approved IEP, for the first 30 days. Respondents failed within 30 days to either adopt the previous IEP or develop a new IEP consistent with federal and State law. (Factual Findings 19-23; Legal Conclusions 7-8.)

ISSUE 2: PRIOR WRITTEN NOTICE

13. Student contends that Respondents committed a procedural error, thereby denying him a FAPE, when they failed to provide prior written notice of their refusal to enroll Student in Torrance Unified School District's Launch program, as requested by Parents at the March 4, 2008 IEP team meeting. Respondents contend that Student has failed to meet his burden of proving that he was denied a FAPE.

14. A local educational agency is required to provide written prior notice to the parents of the child whenever the agency proposes or refuses to initiate or change the identification, evaluation or educational placement of the child. (20 U.S.C. § 1415(b)(3).) The notice is required to include a description of the action proposed or refused by the agency; an explanation of why the agency proposes or refuses to take the action and a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; a statement that the parents of a child with a disability have procedural protections; sources for parents to contact to obtain assistance in understanding those protections; a description of other options considered by the IEP Team and the reason why those options were rejected; and a description of the factors that were relevant to the agency's proposal or refusal. (20 U.S.C. § 1415(c)(1).)

PROCEDURAL VIOLATIONS ALONE INSUFFICIENT TO CONSTITUTE DENIAL OF FAPE

15. The decision of a due process hearing officer shall be made on substantive grounds based on a determination of whether the child received a FAPE. (20 U.S.C. § 1415(f)(3)(E); Ed. Code, § 56505, subd.(f)(1).) The hearing officer "shall not base a decision solely on nonsubstantive procedural errors, unless the hearing officer finds that the nonsubstantive procedural errors resulted in the loss of an educational opportunity to the pupil or interfered with the opportunity of the parent or guardian to participate in

the formulation process of the individualized education program.” (Ed. Code, § 56505, subd. (j).) In matters alleging a procedural violation, a due process hearing officer may find that a child did not receive a FAPE only if the procedural violation did any of the following: impeded the right of the child to a FAPE; significantly impeded the opportunity of the parents to participate in the decision-making process regarding the provision of a FAPE to the child of the parents; or caused a deprivation of educational benefits. (20 U.S.C. § 1415 (f)(3)(E); Ed. Code, § 56505, subds. (f)(2).)

16. Respondents committed a procedural error by failing to provide written notice of refusal to enroll Student in Torrance Unified School District’s Launch program, as requested by Parents. At the March 4, 2008 IEP, Father asked that Student be placed back in the Launch program in Torrance. Principal Dixon told Father he would investigate this request and respond within 30 days. This did not occur, and Father never received a response. Parents were entitled to, and did not receive, written notice of Respondents’ rejection of their inter-district request to have Student placed back into the Torrance Launch program. (Factual Finding 23; Legal Conclusion 14.)

17. However, to prove the denial of a FAPE based on a procedural violation, Student must demonstrate that the violation impeded the right of the child to a FAPE, significantly impeded the opportunity of the parents to participate in the decision-making process regarding the provision of a FAPE to the child of the parents, or caused a deprivation of educational benefits. Student here has not shown any of these elements. Parents kept discussing their desire for Student to attend Launch at subsequent IEP team meetings, demonstrating that their right to participate was not impeded. Thus, they have not shown that their opportunity to participate in the decision-making process was impeded by the procedural error. Nor have they shown that the error impeded Student’s right to a FAPE, or caused a deprivation of educational

benefits. Student has failed to meet the burden of proving that the procedural error constituted the denial of a FAPE. (Factual Findings 23, 31; Legal Conclusion 15.)

ISSUES 3 AND 9(B): FAILURES TO ASSESS IN ALL AREAS OF SUSPECTED DISABILITY

18. Student contends that between January 30, 2008, and April 28, 2008, Respondents failed to assess Student in all areas of suspected disability, specifically by failing to conduct OT, PT, health and nursing, or assistive technology assessments. Respondents contend that Student has failed to meet his burden of proving that he was denied a FAPE.

19. Student also contends that the Speech Language Summary prepared by Respondents in October 2009 was not an appropriate assessment, and resulted in the denial of a FAPE. Respondents contend that Student has failed to meet his burden of proof that he was denied a FAPE.

20. As stated above in Legal Conclusions 5 and 6, "related services" are developmental, corrective and supportive services as may be required to assist the child in benefiting from special education, and include OT, PT, health and nursing services, assistive technology and speech-language pathology. A FAPE means special education and related services that are available to the child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. 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.

21. A state or local educational agency must conduct a full and individual initial assessment before the initial provision of special education and related services to a child with a disability. (20 U.S.C. § 1414 (a); 34 C.F.R. § 300.301; Ed. Code, § 56320). After a child has been deemed eligible for special education, reassessments must be performed if warranted by the child's educational or related services needs. (20 U.S.C. §

1414 (a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1); Ed. Code, § 56381, subd. (a)(1)). However, absent an agreement to the contrary between a school district and a student's parents, reassessments must not occur more than once a year, or more than three years apart. (20 U.S.C. § 1414 (a)(2)(B); 34 C.F.R. § 300.303(b); Ed. Code, § 56381, subd. (a)(2).)

22. A local educational agency must assess a special education student in all areas of suspected disability, including if appropriate, health and development, vision, hearing, motor abilities, language function, general intelligence, academic performance, communicative status, self-help, orientation and mobility skills, career and vocational abilities and interests, and social and emotional status. (20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304 (c)(4); Ed. Code, § 56320, subd. (f).) A local educational agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information. (20 U.S.C. § 1414(b)(2)(A)). No single measure or assessment shall be the sole criterion for determining whether a child is a child with a disability. (20 U.S.C. § 1414(b)(2)(B); 34 C.F.R. § 300.304(b)(2); Ed. Code, § 56320, subd. (e)). Assessments must be sufficiently comprehensive to identify all of the child's special education and related service needs, whether or not commonly linked to the disability category of the child. (34 C.F.R. § 300.304 (c)(6).) The local educational agency must use technically sound testing instruments that demonstrate the effect that cognitive, behavioral, physical and developmental factors have on the functioning of the student. (20 U.S.C. § 1414(b)(2)(C); 34 C.F.R. § 300.304 (b)(3).)

23. The IEP team must consider the assessments in determining the child's educational program. (34 C.F.R. § 300.324(a)(1)(iii)).

24. As stated above in Legal Conclusion 15, to prove the denial of a FAPE based on a procedural violation, Student must demonstrate that the violation impeded the right of the child to a FAPE, significantly impeded the opportunity of the parents to

participate in the decision-making process regarding the provision of a FAPE to the child of the parents, or caused a deprivation of educational benefits.

25. Here, Respondents failed to assess Student in all areas of suspected disability by failing to conduct OT, PT, health and nursing, or assistive technology assessments upon Student's transfer into District in January 2008. Respondents undertook no assessments in preparation for the April 2008 IEP meeting. Respondents were aware, from Student's medical history, parent-reporting and teacher observation, as well as from their own interaction with Student in 2006, that Student had needs in the areas of toileting, feeding, OT and PT, and specialized health needs. Respondents nevertheless failed to assess Student in these areas, which were clearly areas of suspected disability. The failure to conduct its own assessments might have been appropriate had Respondents been in possession of the assessments that had been conducted by Torrance in September 2007. But since this was not the case, as far as Respondents were aware, Student had not been assessed since 2006. Respondents thus should have, but did not, assess Student for his OT, PT, health and nursing, and assistive technology needs. (Factual Findings 1-8, 25; Legal Conclusions 21-23.)

26. With regard to the failure to assess for OT and PT, Respondents' procedural error impeded the right of Student to a FAPE, and caused a deprivation of educational benefits. Had Respondents assessed Student, they would have found the areas of need in OT and PT, as identified by Torrance's 2007 assessments and by District's own 2006 assessments. Respondents would have found, as PTN did in 2006 and 2007, that Student required hand-over-hand assistance to perform most tasks including self-care skills, and had difficulty with overall motor functioning. An OT and PT assessment would have found, as did PTN's assessment through Torrance, that Student had significant deficits in fine motor skills, sensory processing, and praxis and ideation. Identifying these areas of need would have enabled Respondents to consider OT and PT

as part of Student's educational program, as PTN had recommended through SCLARC in 2006, since "delays in these areas directly impact his ability to safely and independently interact with his peers and participate within his educational program." An OT and PT assessment would have found, as did PTN's assessment through Torrance, that Student was eligible for educationally-related OT, and that he would benefit from OT services in a specialized clinic with suspended equipment. Thus, assessments in the area of OT and PT should have resulted in a different program for Student, one which included an offer of OT and PT services. Respondents' failure to assess in these areas resulted in the denial of a FAPE. (Factual Findings 4, 15; Legal Conclusions 21-23.)

27. With regard to the failure to assess for health and nursing needs, Respondents' procedural error impeded the right of Student to a FAPE, and caused a deprivation of educational benefits. Had Respondents assessed Student for health and nursing needs, they would have found areas of need in having a nebulizer available to him at school to open up airways, and to have the ability to be fed at school through his G-tube. Although Student's medical needs for the most part were managed at home, Nurse Agbelusi credibly opined that Student should have had a nebulizer available to him at school in case of emergencies to open up airways, and that if Student got sick he should have had the ability to be fed at school through his G-tube. In addition, Torrance's school nurse noted that although Student was to be fed at home, she requested Mother to bring feeding supplies in case of emergency, and that on Student's first day at school, Parent or his nurse should demonstrate how to use the G-tube. In addition, Father credibly testified that without assistance for Student with feeding and with medications, Student could not attend a full day of school. While other children could eat at school, Student had to be fed at home and brought to school after breakfast and brought home in time for afternoon feeding. Thus, the length of his school day and his feeding schedule at home were organized around the fact that G-

tube feeding services were not offered at school. Assessments in the area of health and nursing should have resulted in a different program for Student, one which included an offer of health and nurse services. Respondents' failure to assess in these areas resulted in the denial of a FAPE. (Factual Findings 14, 28; Legal Conclusions 21-23.)

28. With regard to the failure to assess for assistive technology, Respondents' procedural error impeded the right of Student to a FAPE, and caused a deprivation of educational benefits. Had Respondents assessed Student, they would have identified, as did the Torrance IEP, his need for a single-switch activation device to make requests. An assessment should have resulted in a different program for Student, one which included an offer of this assistive technology device and services. Respondents' failure to assess in this area resulted in the denial of a FAPE. (Factual Findings 14-15; Legal Conclusions 21-23.)

29. Respondents also failed to properly assess Student in the area of speech and language in the October 30, 2009 "Speech Language Summary." This document, without reassessing Student, merely restated the findings and recommendations in the Bergman Communication Assessment Summary report dated June 8, 2008, and found that Student did not meet the eligibility criteria for enrollment in speech and language services. As discussed above, that finding was not persuasive in light of Ms. Bergman's other findings that Student had receptive and expressive language deficits, and was "emerging in the acquisition of some of the cognitive constructs required for representational thought and symbolic language (i.e. meaningful understanding and use of words)." The finding of ineligibility was also unpersuasive given the countervailing evidence of eligibility for speech and language services from Student's prior assessments. (Factual Findings 32-33; Legal Conclusions 21-23.)

30. With regard to the failure to appropriately assess in speech and language, Respondents' procedural error impeded the right of Student to a FAPE, and caused a

deprivation of educational benefits. Had Respondents properly assessed Student, they would have identified his needs in the area of receptive and expressive language, as were identified in District's own 2006 initial psycho-educational assessment, and in PTN's 2006 recommendation that speech and language therapy be part of Student's future educational program. Had Respondents seen the Torrance documents, it would have been aware of the results on the PLS-4 indicating severe receptive and expressive language disorder, and recommending Student for individual speech and language therapy to support his receptive understanding and expressive language use in the classroom. In light of this evidence, speech and language was a clear area of need for Student. An assessment should have resulted in a different program for Student, one which included an offer of speech language services. Respondents' failure to assess in this area resulted in the denial of a FAPE. (Factual Findings 4-16; Legal Conclusions 5-6.)

ISSUE 4: APRIL 28, 2008 IEP TEAM PARTICIPANTS

31. Student contends that Respondents committed a procedural error by failing to have the proper persons attend the April 28, 2008 IEP meeting, thereby denying him a FAPE. Specifically, Student contends that the following persons should have been present: a school nurse to discuss Student's specialized health needs; an APE teacher to discuss the differences between APE and physical therapy; a speech pathologist; and a general education teacher because Respondents proposed that Student should spend 10% of his time in general education. Respondents contend that Student has failed to meet his burden of proving that he was denied a FAPE.

IEP TEAM MEMBERS

32. The IEP team must include the parents; at least one regular education teacher if the child is, or may be, participating in the regular education environment; at least one special education teacher; a representative of the local educational agency

who is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; an individual who can interpret the instructional implications of evaluation results, who may be one of the persons described above; and at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate. (20 U.S.C. § 1414 (d)(1)(B); 34 C.F.R. § 300.321 (a); Ed. Code, § 56341.)

33. As stated above in Legal Conclusion 15, to prove the denial of a FAPE based on a procedural violation, Student must demonstrate that the violation impeded the right of the child to a FAPE, significantly impeded the opportunity of the parents to participate in the decision-making process regarding the provision of a FAPE to the child of the parents, or caused a deprivation of educational benefits.

34. Student's April 28, 2008 IEP offer included 10% participation in the general education environment. Thus, the failure to have a general education teacher attend the IEP meeting constituted a procedural violation. However, Student presented no evidence to show how a general education teacher's presence would have changed Student's educational opportunity. Nor did this omission affect Parent's participatory rights. Student has not demonstrated that the violation impeded the right of the child to a FAPE, significantly impeded the opportunity of the parents to participate in the decision-making process regarding the provision of a FAPE to the child of the parents, or caused a deprivation of educational benefits. (Factual Findings 24, 27; Legal Conclusions 15, 32.)

35. There was attendance by all other legally required District participants. Additional persons may attend but this is at the discretion of the parent or the agency. Thus, the failure to have such additional attendance was not a violation of Respondents' responsibilities. (Factual Findings 24, 27; Legal Conclusions 15, 32.)

ISSUES 5(A), 8(A) AND 10(A): APPROPRIATE ASSESSMENTS FOR THE APRIL 28, 2008; APRIL 24, 2009; AND OCTOBER 30, 2009 IEPs

36. Student contends that Respondents denied Student a FAPE in the April 28, 2008; April 24, 2009; and October 30, 2009 IEPs by failing to base their offers of FAPE on appropriate assessments. Respondents contend that Student has failed to meet his burden of proving that he was denied a FAPE.

37. As discussed above in Legal Conclusions 5 and 6, "related services" are developmental, corrective and supportive services as may be required to assist the child in benefiting from special education, and include OT, PT, health and nursing services, assistive technology and speech and language services. A FAPE means special education and related services that are available to the child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. 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.

38. As discussed in Legal Conclusions 21-23 above, a district must assess a special education student in all areas of suspected disability. Assessments must be sufficiently comprehensive to identify all of the child's special education and related service needs. Finally, the IEP team must consider the assessments in determining the child's educational program.

39. As discussed in Legal Conclusions 18-30, Respondents failed in their obligation to assess Student in all areas of suspected disability, and Student has established that assessments should have resulted in a different program for Student, one which included an offer of OT and PT services, health and nurse services, assistive technology and speech and language services. The failure to assess in, and to offer appropriate OT and PT services, health and nurse services, assistive technology and

speech and language services continued from the April 28, 2008 IEP to the April 24, 2009 and October 30, 2009 IEPs. Student has met his burden of showing that he was denied a FAPE. (Factual Findings 36-48; Legal Conclusions 18-30.)

ISSUES 5(B), 8(B) AND 10(B): GOALS IN THE APRIL 28, 2008; APRIL 24, 2009; AND OCTOBER 30, 2009 IEPs

40. Student contends that Respondents denied Student a FAPE because the April 28, 2008; April 24, 2009; and October 30, 2009 IEPs failed to identify appropriate IEP goals. Student generally contends that the goals could not have been complete and appropriate to meet his needs, because they were not based on proper assessments. Student specifically contends that the IEPs were deficient in failing to state a toileting goal. Respondents contend that Student has failed to meet his burden of proving that he was denied a FAPE.

41. The IEP is a written statement for each child with a disability that must include a statement of measurable annual goals, including academic and functional goals designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum, and to meet each of the child's other educational needs that result from the child's disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320 (a)(2)(i).) The IEP must also contain a description of how the child's progress toward meeting the annual goals will be measured. (1414(d)(1)(A)(i)(III); 34 CFR 300.320 (a)(3).)

42. As stated above in Legal Conclusion 15, to prove the denial of a FAPE based on a procedural violation, Student must demonstrate that the violation impeded the right of the child to a FAPE, significantly impeded the opportunity of the parents to participate in the decision-making process regarding the provision of a FAPE to the child of the parents, or caused a deprivation of educational benefits.

43. Although the goals that were stated in the April 28, 2008 IEP were not inappropriate, they were incomplete. The IEP failed to state any goals addressing the areas of need of fine motor skills or self-regulation. As discussed above, this omission resulted in the denial of a FAPE in the area of OT and PT services. The April 28, 2008 IEP also failed to state any goals addressing the areas of receptive language or expressive language. As discussed above, this omission resulted in the denial of a FAPE in the area of speech and language services. (Factual Finding 26; Legal Conclusions 26, 30.)

44. The April 28, 2008 IEP also failed to state any goals addressing the area of self-help, even though toileting was an established area of need for Student. This omission resulted in the denial of a FAPE in that no services were offered to meet that area of need. Ms. Williams-Armstrong's opinion that a toileting goal was inappropriate was not credible, in view of the countervailing opinion stated by Parents, and the evidence regarding the progress Student had made when such a goal, and supportive services to reach it, were being provided. Furthermore, even if Student did lack the precursor skills necessary to make a toileting goal appropriate, as testified to by Ms. Williams-Armstrong, the IEP did not provide any goals in the areas of the necessary precursor foundation skills, such as learning to pull pants up and down. Since toileting and the precursor skills were areas of identified need, and since the IEP failed to state any goals or to provide any services to meet those areas of need, the IEP denied Student a FAPE. (Factual Findings 13, 16, 26; Legal Conclusions 41-42.)

45. The April 24, 2009 and October 30, 2009 IEPs continued to omit goals in these areas of need, continued to fail to offer services to address these areas, and continued to deny Student a FAPE. (Factual Findings 36-48; Legal Conclusions 40-45.)

ISSUES 5(C), 8(C) AND 10(C): OFFERS OF PLACEMENT IN THE APRIL 28, 2008;
APRIL 24, 2009; AND OCTOBER 30, 2009 IEPs

46. Student contends that Respondents denied Student a FAPE in the April 28, 2008; April 24, 2009; and October 30, 2009 IEPs by offering inappropriate classroom placement. Respondents contend that their offer of placement was appropriate, and that Student has failed to meet his burden of proving that he was denied a FAPE.

47. As stated above in Legal Conclusions 5 and 6, a school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. For a school district's offer of special education services to a disabled pupil to constitute a FAPE under the IDEA, the educational services and/or placement must only be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the pupil with some educational benefit in the least restrictive environment.

48. School districts are required to provide each special education student with a program in the least restrictive environment, with removal from the regular education environment occurring only when the nature or severity of the student's disabilities is such that education in regular classes with the use of supplementary aids and services could not be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2)(ii).) School districts must have available a continuum of program options to meet the needs of individuals with exceptional needs for special education and related services as required by the IDEA and related federal regulations. The continuum of program options includes, but is not limited to: regular education; resource specialist programs; designated instruction and services; special classes; non-public, non-sectarian schools; state special schools; specially designed instruction in settings other than classrooms; itinerant instruction in settings other than classrooms; and instruction using

telecommunication, instruction in the home or instructions in hospitals or institutions. (Ed. Code, § 56361.)

49. Here, the SDC classroom placement offered by Respondents in the April 28, 2008; April 24, 2009; and October 30, 2009 IEPs was not inappropriate, although another classroom might have been preferred by Parents. Ms. Williams-Armstrong credibly testified that her classroom was a small class run by herself and an adult parent-educator, both of whom were present the full day. Student does not contend that such a special day class was an inappropriate option on the continuum of program options, nor that another option on the continuum (regular education; resource specialist programs; non-public, non-sectarian schools; state special schools; specially designed instruction in settings other than classrooms; itinerant instruction in settings other than classrooms; or instruction in the home or hospitals or institutions) was more appropriate. The Launch program preferred by Parents was itself a special day class. Thus, there was no evidence that the placement of Student in the SDC itself was an inappropriate placement, only that Parents preferred another SDC in another district. Respondents were required to offer a placement designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the pupil with some educational benefit in the least restrictive environment. The SDC placement complies with these requirements. (Factual Findings 14, 27, 41, 48; Legal Conclusions 6, 48.)

ISSUES 5(D)(I), 8(D)(I) AND 10(D)(I):NURSING AND HEALTH SERVICES IN THE APRIL 28, 2008; APRIL 24, 2009; AND OCTOBER 30, 2009 IEPs

50. Student contends that Respondents denied Student a FAPE in the April 28, 2008; April 24, 2009; and October 30, 2009 IEPs by failing to offer full-time qualified nursing staff and specialized health services. Respondents contend that a school nurse

was available for emergencies, that Student's needs were managed at home, and that Student has failed to meet his burden of proving that he was denied a FAPE.

51. As stated above in Legal Conclusions 5 and 6, "related services" are developmental, corrective and supportive services as may be required to assist the child in benefiting from special education. A FAPE means special education and related services that are available to the child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. 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.

52. As stated above in Legal Conclusion 5, "related services" include school health and nurse services. School health services and school nurse services are health services that are designed to enable a child with a disability to receive a FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or another qualified person.

53. As stated above in Legal Conclusions 27 and 39, the failure of District to provide related services in the area of Student's health needs resulted in the denial of a FAPE in the April 28, 2008; April 24, 2009; and October 30, 2009 IEPs.

ISSUES 5(D)(II), 8(D)(II) AND 10(D)(II): 1:1 AIDE IN THE APRIL 28, 2008; APRIL 24, 2009; AND OCTOBER 30, 2009 IEPs

54. Student contends that Respondents denied Student a FAPE in the April 28, 2008; April 24, 2009; and October 30, 2009 IEPs by failing to offer a full-time qualified 1:1 aide. Respondents contend that Student has failed to meet his burden of proving that he was denied a FAPE.

55. As stated above in Legal Conclusions 5 and 6, “related services” are developmental, corrective and supportive services as may be required to assist the child in benefiting from special education. A FAPE means special education and related services that are available to the child at no charge to the parent or guardian, meet state educational standards, and conform to the child’s IEP. 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. A 1:1 aide falls within the definition of related services.

56. Except for health services with regard to eating/feeding, and services to meet an appropriate toileting goal, Student has not established his need for 1:1 aide assistance. The only evidence he presented of needs in this regard is the fact that Torrance offered 1:1 supervision. Although Student was unsteady on his feet while in motion, and had balance issues that might cause him to fall, Student did not present any evidence of ongoing safety concerns in the Respondents’ SDC placement, nor any need for full-time supervision. Student did not establish that in a small SDC classroom, a full-time teacher and an adult parent-educator were insufficient to supervise Student throughout the school day. Student has not met his burden of proving that a full-time 1:1 aide was required to assist him in benefiting from special education. Respondents’ failure to offer a 1:1 aide was not a denial of a FAPE. (Factual Findings 1-2, 14, 27; Legal Conclusions 5-6.)

ISSUES 5(D)(III), 8(D)(III) AND 10(D)(III): SPEECH AND LANGUAGE IN THE APRIL 28, 2008; APRIL 24, 2009; AND OCTOBER 30, 2009 IEPs

57. Student contends that Respondents denied Student a FAPE in the April 28, 2008; April 24, 2009; and October 30, 2009 IEPs by failing to offer appropriate speech and language services. Respondents contend that Student has failed to meet his burden of proving that he was denied a FAPE.

58. As stated above in Legal Conclusions 5 and 6, "related services" are developmental, corrective and supportive services as may be required to assist the child in benefiting from special education. "Related services" include speech-language pathology. A FAPE means special education and related services that are available to the child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. 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.

59. As stated above in Legal Conclusions 29, 30 and 39, the failure of Respondents to provide related services in the area of Student's speech and language needs in the April 28, 2008; April 24, 2009; and October 30, 2009 IEPs resulted in the denial of a FAPE.

ISSUES 5(D)(IV), 8(D)(IV) AND 10 (D)(IV): OT AND PT IN THE APRIL 28, 2008; APRIL 24, 2009; AND OCTOBER 30, 2009 IEPs

60. Student contends that Respondents denied Student a FAPE in the April 28, 2008; April 24, 2009; and October 30, 2009 IEPs by failing to offer OT and PT. Respondents contend that Student has failed to meet his burden of proving that he was denied a FAPE.

61. As stated above in Legal Conclusions 5 and 6, "related services" are developmental, corrective and supportive services as may be required to assist the child in benefiting from special education. "Related services" include OT and PT. A FAPE means special education and related services that are available to the child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. 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.

62. As stated above in Legal Conclusions 25, 26 and 39, the failure of Respondents to provide related services in the areas of OT and PT in the April 28, 2008; April 24, 2009; and October 30, 2009 IEPs resulted in the denial of a FAPE.

ISSUES 5(D)(V), 8(D)(V) AND 10(D)(V): ASSISTIVE TECHNOLOGY IN THE APRIL 28, 2008; APRIL 24, 2009; AND OCTOBER 30, 2009 IEPs

63. Student contends that Respondents denied Student a FAPE in the April 28, 2008; April 24, 2009; and October 30, 2009 IEPs by failing to offer assistive technology. Respondents contend that Student has failed to meet his burden of proving that he was denied a FAPE.

64. As stated above in Legal Conclusions 5 and 6, "related services" are developmental, corrective and supportive services as may be required to assist the child in benefiting from special education. A FAPE means special education and related services that are available to the child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. 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.

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

special education, related services, or supplementary aids and services. (34 C.F.R. § 300.105.)

66. As stated above in Legal Conclusions 28 and 39, Student has met his burden of demonstrating that he was denied a FAPE because the April 28, 2008; April 24, 2009; and October 30, 2009 IEPs should have offered related assistive technology services.

ISSUES 6 AND 9(A): AUDIOLOGICAL AND PSYCHO-EDUCATIONAL ASSESSMENTS

67. Student contends that audiological issues were an area of suspected disability for which Respondents failed to assess him after being put on notice of his needs in 2008. Student also contends that the psycho-educational assessment conducted by Respondents in October 2009 was not appropriate. In particular, Student contends that the psycho-educational report was incomplete, unsigned, failed to identify the other documents it relied on, administered only one assessment tool, and did not assess Student in all areas of suspected need, specifically the areas of social-emotional status, academic/pre-academic performance, or general ability. Respondents contend that Student has failed to meet his burden of proof that he was denied a FAPE.

68. As discussed in Legal Conclusions 21 through 23 above, a district must assess a special education student in all areas of suspected disability. Assessments must be sufficiently comprehensive to identify all of the child's special education and related service needs. Finally, the IEP team must consider the assessments in determining the child's educational program.

69. As stated above in Legal Conclusion 15, to prove the denial of a FAPE based on a procedural violation, Student must demonstrate that the violation impeded the right of the child to a FAPE, significantly impeded the opportunity of the parents to participate in the decision-making process regarding the provision of a FAPE to the child of the parents, or caused a deprivation of educational benefits.

70. With regard to the audiological assessment issue, Respondents were aware, when Parents re-enrolled Student back into District on January 30, 2008, that Father noted Student's hearing problems on the Student Registration Form. Respondents were further aware at the April 28, 2008 IEP meeting that Parent asked for a nurse to follow up on Student's hearing issues. The June 8, 2008 Communication Assessment by LACOE Speech Language Pathologist Mary Bergman pointed out a major area of concern regarding Student's hearing, and recommended a complete audiological evaluation. Respondents did not follow up on this, other than to state, at the June 20, 2008 IEP amendment meeting, that Parent would "contact a service provider for audiological support," nor did it follow up on the results of the Parent-provided audiological test conducted by Children's Hospital of Los Angeles on September 22, 2008, and provided to LACOE on or around December 3, 2008. This report stated that Student's hearing loss "significantly impact[ed] spoken language and warrant[ed] close otologic/audiologic treatment and follow-up." There was no follow-up assessment of any kind by Respondents in response to this report. Thus, Respondents were aware, from Student's medical history, parent-reporting and its own assessment, that Student had hearing needs. Respondents nevertheless failed to initiate an assessment in this area, which was clearly an area of suspected disability. (Factual Findings 19, 32-35.)

71. With regard to the October 2009 psycho-educational assessment, the Draft Report was clearly incomplete. It was unsigned. It was unclear which individuals performed the assessments or who constituted the assessment team. The Draft Report referenced a number of other reports that are not in evidence. The assessor or assessors used one instrument to assess Student's adaptive functioning including motor skills; social interaction and communication skills; personal living skills; and community living skills. It did not assess Student's academic/pre-academic performance; self-help; social

and emotional status; and general abilities as stated in the Consent for Assessment. (Factual Findings 42-43.)

72. Student has, however, failed to demonstrate that these procedural violations impeded the right of the child to a FAPE, significantly impeded the opportunity of the parents to participate in the decision-making process regarding the provision of a FAPE to the child of the parents, or caused a deprivation of educational benefits. Student presented no evidence of what specific audiological or psycho-educational services should have been offered. Thus, the evidence is insufficient to establish that Student was denied a FAPE. (Factual Findings 19, 32-35, 42-44; Legal Conclusion 15.)

ISSUES 7(A) AND 7(B): IEP TEAM COMPOSITION ON APRIL 24, 2009

73. Student contends that Respondents committed procedural errors by failing to have the proper persons attend the April 24, 2009 IEP meeting, thereby denying him a FAPE. Specifically, Student contends that the following persons should have been but were not present: a school nurse to discuss Student's specialized health needs and a speech pathologist. Respondents contend that the proper persons attended the IEP meeting. Student further contends that Respondents committed a procedural error by failing to have Parents attend the April 24, 2009 IEP meeting, thereby denying him a FAPE. Respondents contend that Parent waived his attendance.

IEP TEAM MEMBERS

74. As stated above in Legal Conclusion 32, the IEP Team must include the parents; at least one regular education teacher if the child is, or may be, participating in the regular education environment; at least one special education teacher; a representative of the local educational agency who is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children

with disabilities; an individual who can interpret the instructional implications of evaluation results, who may be one of the persons described above; and at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate. (20 U.S.C. § 1414 (d)(1)(B); 34 C.F.R. § 300.321 (a); Ed. Code, § 56341.)

PARENTAL PARTICIPATION IN IEP

75. Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP team meeting or are afforded the opportunity to participate, including (1) notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) scheduling the meeting at a mutually agreed on time and place. (34 C.F.R. § 300.322 (a).) If neither parent can attend an IEP team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls. (34 C.F.R. § 300.322 (c).) If unable to convince the parents that they should attend, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as (1) detailed records of telephone calls made or attempted and the results of those calls; (2) copies of correspondence sent to the parents and any responses received; and (3) detailed records of visits made to the parents' home or place of employment and the results of those visits. (34 C.F.R. § 300.322 (c).) "Among the most important procedural safeguards are those that protect the parents' right to be involved in the development of their child's educational plan." (*Amanda J. ex rel. Annette J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 892-895 [school's failure to timely provide parents with assessment results indicating a suspicion of autism significantly impeded parents' right to participate in the IEP process, resulting in compensatory education award].)

76. As stated above in Legal Conclusions 15, to prove the denial of a FAPE based on a procedural violation, Student must demonstrate that the violation impeded the right of the child to a FAPE, significantly impeded the opportunity of the parents to participate in the decision-making process regarding the provision of a FAPE to the child of the parents, or caused a deprivation of educational benefits.

77. With regard to the District personnel who attended the April 24, 2009 IEP team meeting, Respondents did not commit a procedural error. There was attendance by all legally required District participants. Additional persons such as a school nurse or speech pathologist may attend, but this is discretionary. Thus, the failure to have such additional attendance was not a violation of Respondents' responsibilities. (Factual Finding 37; Legal Conclusions 32, 74-75.)

78. Respondents committed a procedural error in failing to ensure Parents' attendance at the April 24, 2009 IEP meeting. The procedural safeguards protecting the parents' right to be involved in the development of their child's educational plan are among the most important in the IDEA. Respondents conducted the April 24, 2009 IEP meeting without Parents, and presented no credible evidence of any notification to Parents much less the repeated notification the law requires. Respondents presented no evidence other than the testimony of Ms. Williams-Armstrong, who admitted no personal knowledge of any invitation to Parents. The IEP states "Parent gave permission to hold meeting in his absence. He was ill at the time of the scheduled meeting." However, Father credibly denied ever having given any permission to proceed in his absence. Parents' attendance at every other IEP meeting is documented and attests to their normal diligent attendance practices (Factual Findings 37-39; Legal Conclusions 32, 74-75.)

79. Student has also shown that the procedural violation significantly impeded Parents' opportunity to participate in the decision-making process regarding the

provision of a FAPE to the child. Parents were not given the opportunity to discuss the child's problems, express disagreement regarding the IEP team's conclusions, or request revisions in the IEP. (See *N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann v. East Hanover Bd. of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1036 [parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way].) This significantly impeded the opportunity of Parents to participate in the decision-making process regarding the child's educational program, and constituted the denial of a FAPE. (Factual Findings 37-39; Legal Conclusions 32, 74-75.)

ISSUES 8(D)(VI) AND 10(D)(VI): AUDIOLOGICAL SERVICES IN THE APRIL 24, 2009 AND OCTOBER 30, 2009 IEPs

80. Student contends that Respondents denied Student a FAPE in the April 24, 2009 IEP by failing to offer audiological services as a result of the audiological test conducted by Children's Hospital of Los Angeles on September 22, 2008. Student also contends that Respondents denied Student a FAPE in the October 30, 2009, IEP by failing to offer audiological services. Respondents contend that Student has failed to meet his burden of proving that he was denied a FAPE.

81. As stated above in Legal Conclusions 5 and 6, "related services" are developmental, corrective and supportive services as may be required to assist the child in benefiting from special education. Related services include audiological services.

82. As discussed in Legal Conclusion 72 above, Student presented no evidence that Student actually required audiological services, or what specific services he should have been offered. Student has not met his burden of proving that audiological services were required to assist him in benefiting from special education. Respondents' failure to offer audiological services was not a denial of a FAPE.

REMEDIES

83. Student seeks a remedy of compensatory education, consisting of all the services offered by the Torrance 2007 IEP for a period of two years, provided by a non-public agency (NPA). Student also seeks independent educational evaluations (IEEs) as follow: neuropsychological or psycho-educational assessments, a speech and language assessment, OT and PT assessments, a health/medical assessment, an assistive technology assessment and an audiological assessment.

84. School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Student W. v. Puyallup School District* (9th Cir. 1994) 31 F.3d 1489, 1496.) The conduct of both parties must be reviewed and considered to determine whether relief is appropriate. (*Id.* at p. 1496.) These are equitable remedies that courts may employ to craft "appropriate relief" for a party. An award of compensatory education need not provide a "day-for-day compensation." (*Id.* at p. 1497.) An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student's needs. (*Reid ex rel. Reid v. District of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524.) The award must be "reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." (*Ibid.*)

85. The procedural safeguards of the IDEA provide that under certain conditions a student is entitled to obtain an IEE at public expense. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502 (a)(1)(2006); 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 IEE]].) "Independent educational evaluation means an evaluation 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 IEE, the student must disagree with an evaluation obtained by the public agency and request an IEE at public expense. (34 C.F.R. § 300.502(b)(1) & (b)(2).)

86. As discussed above, Respondents denied Student a FAPE by not ensuring continuity of service, not basing their 2008 or 2009 IEP offers on proper assessment information, developing incomplete IEP goals, conducting the April 2009 IEP in Parents’ absence, and failing to offer appropriate services to which Student was entitled.

87. However, Student did not demonstrate that Respondents cannot provide the appropriate services. Student did not demonstrate that in order to receive a FAPE, the services must be provided by an NPA. Nor did Student demonstrate that two years into the future is the appropriate duration for these services. Student is therefore denied the requested compensatory education for two years provided by an NPA.

88. Student did not demonstrate that the circumstances entitle him to an IEE at public expense, or that Respondents cannot perform assessments that are sufficiently comprehensive to identify all of the child’s special education and related service needs. Student is therefore denied the requested independent evaluations.

89. For Respondents’ failure to assess in or provide appropriate OT and PT goals and services (Issues 3, 5(a), 5(d)(iv), 8(a), 8(d)(iv), 10(a), 10(d)(iv)); Respondents’ failure to provide such services upon transfer from Torrance (Issue 1); and Respondents’ failure to ensure parental participation at the April 24, 2009, IEP meeting (Issue 7(b)), Respondents shall provide the following services: weekly fine motor group OT sessions for forty-five minutes each, and weekly sensory arousal group OT sessions of thirty minutes each.

90. For Respondents’ failure to assess in and provide appropriate health and nursing services (Issues 3, 5(a), 5(d)(i), 8(a), 8(d)(i), 10(a), 10(d)(i)); Respondents’ failure to

provide such services upon transfer from Torrance (Issue 1); and Respondents' failure to ensure parental participation at the April 24, 2009 IEP meeting (Issue 7(b)), Respondents shall provide the following services: a nebulizer and G-tube feeding supplies available at school in case of emergencies, and nursing staff available full-time for emergencies, trained to use his nebulizer and G-tube. In addition, a 1:1 health services aide will be provided at Student's mealtimes during school hours to assist Student with eating/feeding.

91. For Respondents' failure to assess in and provide appropriate assistive technology (Issues 5(d)(v), 8(d)(v), 10(d)(v)); Respondents' failure to provide such services upon transfer from Torrance (Issue 1); and Respondents' failure to ensure parental participation at the April 24, 2009 IEP meeting (Issue 7(b)), Respondents shall provide the following devices and services: a single-switch device to make requests, and services that directly assist Student in the selection, acquisition, and use of this assistive technology device.

92. For Respondents' failure to identify appropriate IEP goals in the area of need of receptive language or expressive language, the failure to appropriately assess, and the failure to provide appropriate speech and language services (Issues 5(b), 5(d)(iii), 8(b), 8(d)(iii), 9(b), 10(b), 10(d)(iii)); Respondents' failure to provide such services upon transfer from Torrance (Issue 1); and Respondents' failure to ensure parental participation at the April 24, 2009 IEP meeting (Issue 7(b)), Respondents shall provide the following services: speech and language services (one fifteen-minute group session each week, one ten-minute consultation session each week, and one twenty-minute individual session each week).

93. For Respondents' failure to state an appropriate toileting goal in Student's IEPs (Issue 5(b), 8(b), 10(b)); Respondents' failure to provide such services upon transfer from Torrance (Issue 1); and Respondents' failure to ensure parental participation at the

April 24, 2009 IEP meeting (Issue 7(b)), Respondents shall implement such a goal, as follows: "to follow an established toileting routine (e.g. being taken at regular times, pulling down pants, sitting on the toilet, pulling up pants) with verbal prompts and physical assistance as needed, 4 out of 5 times, accuracy as measured by teacher-charted observation."

94. Although Student seeks a fixed duration of these services for two years, he did not establish any such need. The services should continue until a properly convened IEP meeting is held, following assessments that are sufficiently comprehensive to identify all of the child's special education and related service needs. Respondents are therefore ordered to perform assessments in the following areas: OT, PT, assistive technology, health and nursing, speech and language, audiological, academic/pre-academic performance, self-help, social and emotional status, motor ability, and general abilities. Following the assessments, Respondents will convene and hold an IEP team meeting, at which time the IEP team shall decide upon appropriate services for Student designed to address his unique needs in conformity with the assessment results.

95. Based on Student's individualized needs, this is the appropriate equitable remedy, 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.

ORDER

1. Respondents will provide Student with the following services and equipment, which shall be provided by qualified District or LACOE personnel:

- (a) weekly fine motor group OT sessions of forty-five minutes each;
- (b) weekly sensory arousal group OT sessions of thirty minutes each;

- (c) speech and language services (one fifteen-minute group session each week, one ten-minute consultation session each week, and one twenty-minute individual session each week);
- (d) nebulizer and G-tube feeding supplies available at school in case of emergencies and nursing staff available full-time for emergencies, trained to use the nebulizer and G-tube;
- (e) 1:1 health services aide at Student's mealtimes during school hours to assist Student with eating/feeding; and
- (f) a single-switch device to make requests, and services that directly assist Student in the selection, acquisition, and use of this assistive technology device.

2. Respondents will implement a toileting goal, as follows: to "follow an established toileting routine [e.g. being taken at regular times, pulling down pants, sitting on the toilet, pulling up pants] with verbal prompts and physical assistance as needed, 4 out of 5 times, accuracy as measured by teacher-charted observation."

3. Respondents will perform assessments in the following areas: OT, PT, assistive technology, health and nursing, speech and language, audiological, academic/pre-academic performance, self-help, social and emotional status, motor ability, and general abilities.

4. Following the assessments, Respondents will convene and hold an IEP team meeting, at which time the IEP team shall decide upon appropriate services for Student designed to address his unique needs in conformity with the assessment results.

5. If Parents do not consent to the assessments ordered herein, the relief granted in this Decision shall be null and void.

6. The foregoing relief will commence immediately as of the date of this Decision, and will be provided until Respondents convene the IEP meeting ordered herein.

PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that this Decision indicate the extent to which each party prevailed on each issue heard and decided in this due process matter. Student prevailed on the following issues: Issue 1; Issue 3; Issue 5(a); Issue 5(b); Issue 5(d)(i); Issue 5(d)(iii); Issue 5(d)(iv); 5(d)(v); Issue 7(b); Issue 8(a); Issue 8(b); Issue 8(d)(i); 8(d)(iii); Issue 8 (d)(iv); Issue 8(d)(v); Issue 9(b); Issue 10(a); Issue 10(b); Issue 10(d)(i); Issue 10(d)(iii); Issue10(d)(iv); Issue 10(d)(v).

Respondents prevailed on the following issues: Issue 2; Issue 4; Issue 5(c); Issue 5(d)(ii); Issue 6; Issue 7(a); Issue 8(c); Issue 8(d)(ii); 8(d)(vi); Issue 9(a); Issue 10 (c); Issue 10(d)(ii); Issue 10(d)(vi).

RIGHT TO APPEAL THIS DECISION

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

Dated: June 21, 2010

JUNE R. LEHRMAN

Administrative Law Judge

Office of Administrative Hearings