

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

In the Matter of :

EAST WHITTIER CITY SCHOOL
DISTRICT,

OAH NO. N2005090275

Petitioner,

v.

STUDENT,

Respondent.

EAST WHITTIER CITY SCHOOL
DISTRICT,

OAH NO. N2005090276

Petitioner,

v.

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EAST WHITTIER CITY SCHOOL
DISTRICT,

OAH NO. 2005090277

Respondent.

DECISION

Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings (OAH), Special Education Division, State of California, heard this matter on February 21, 22, 23, and 24, 2006, and May 4 and 5, 2006, in Whittier, California.

Student was represented by Tania L. Whiteleather, Esq. Also present for Student at the hearing were educational consultant and advocate Christopher Russell and Student's Father. East Whittier City School District (District) was represented by Darin W. Barber, Esq. Also present for the District were Assistant Superintendent of Student Services Linda Low and Director of Special Education Ruth Valadez.

PROCEDURAL HISTORY

On or about March 28, 2005, the District filed a request for due process hearing (Case No. N2005090275) with the California Special Education Hearing Office (SEHO).¹ The District sought a determination of whether its psychoeducational and physical therapy assessments of Student were appropriate. On or about April 1, 2005, at the request of the parties, SEHO took the matter off calendar. On April 29, 2005, the District filed a second due process hearing request (Case No. N2005090276) which sought a determination of whether the District offered Student a free appropriate public education (FAPE) in the March 15, 2005, individualized education program (IEP). On May 26, 2005, at the request of the parties, SEHO took the second matter off calendar.

¹ On July 1, 2005, the California Department of Education transferred the responsibility to hear special education cases from SEHO to OAH, including cases filed prior to July 1, 2005 but not yet heard by SEHO.

On or about June 17, 2005, Student filed a request for due process hearing (Case No. N2005090277) and a motion to consolidate his case with the District's two previously filed cases. On June 20, 2005, SEHO issued an order granting Student's motion to consolidate, and set a hearing on the consolidated matters for July 12, 2005. On June 24, 2005, at the request of the parties, SEHO took the matters off calendar. On October 4, 2005, OAH issued an order setting the hearing on the consolidated matters for November 16-18, 2005.

On November 16, 2005, Robert S. Eisman, Administrative Law Judge with OAH, opened the record of the hearing on the consolidated matters and heard argument on a motion for continuance filed by Student. ALJ Eisman granted Student's motion for continuance and continued the hearing on the consolidated matters to February 21-24, 2006.

The continued hearing in this matter was held on February 21 through 24, 2006. Two additional hearing days were held on May 4 and 5, 2006.

At the conclusion of the hearing on May 5, 2006, the record was held open pending the receipt of written closing briefs, which were due to be postmarked by May 26, 2006. The District's brief and Student's brief were timely postmarked, received at OAH on May 30, 2006, and marked for identification as District's Exhibit 13 and Respondent's Exhibit V, respectively. The record was closed on May 30, 2006.

ISSUES

DISTRICT 'S ISSUES

1. Was the District's psychoeducational assessment of Student appropriate?
2. Was the District's physical therapy assessment of Student appropriate?
3. Did the District offer a FAPE to Student in the March 15, 2005, IEP?

STUDENT'S ISSUES

4. Did the District fail to offer Student a FAPE in the March 15, 2005, IEP by failing to offer DIS/related services appropriate to meet Student's needs in speech and language, occupational therapy, and physical therapy, and by failing to offer Student a placement in the least restrictive environment (LRE)?
5. Did the District appropriately assess Student in the area of occupational therapy?
6. Did the District commit procedural violations, which resulted in a substantive denial of FAPE, by failing to provide prior written notice to Student's parents of the denial of their requests for (1) a sensory integration assessment, (2) a behavior assessment, (3) mainstreaming, and (4) to allow East Los Angeles Regional Center (ELARC) to provide oral motor therapy and feeding/swallowing services to Student during the school day; and by failing to conduct a review of previous IEP goals?
7. Did the District deny Student a FAPE when it refused to allow ELARC time in the school day to provide Student, free of any charge to the District, oral motor therapy and feeding/swallowing services that he required?
8. Did the District appropriately assess Student's behavior needs and provide appropriate services to meet those needs?

FACTUAL FINDINGS

BACKGROUND

1. Student is an eight-year, two-month-old boy with a medical diagnosis of Down syndrome. Student transferred to the District from the Los Angeles Unified School District (LAUSD) in late December 2004. Student was initially found eligible for special education services by LAUSD on December 1, 2000.

2. LAUSD held its last IEP meeting for Student on December 13, 2004. Student's eligibility was in the categories of mental retardation and speech or language impairment. The December 13, 2004, IEP recommended Student's placement in a first grade general education classroom with full inclusion support including a full time one-to-one aide. The December 13, 2004, IEP also recommended DIS/related services for Student including occupational therapy, physical therapy, adapted physical education, language and speech, and LRE support facilitation. Although Father signed the IEP on December 20, 2004, he disagreed with certain aspects of the IEP and expressed his intent to initiate a request for due process hearing. Father's only dispute with LAUSD involved physical therapy relating to Student's inability to ascend and descend a flight of stairs using his feet in an alternating pattern, his trunk strength, and motor coordination with his hands. LAUSD agreed, during mediation, to provide clinical physical therapy services and then reassess Student at the end of the services. LAUSD did not reassess Student because the family moved out of the District.

3. On January 10, 2005, Student attended his first day of school in the District at Laurel Elementary School. Pursuant to the December 13, 2004, IEP from LAUSD, Student was fully included in a first grade general education class taught by Sergio Perez, a general education teacher. Student received educational support from the Severely Handicapped Program. Student also received DIS/related services including adapted physical education, language and speech, occupational therapy, and physical therapy.

ASSESSMENT PLAN

4. On or about January 17, 2005, Student's parents signed an assessment plan developed by the District. Pursuant to the assessment plan, the District assessed Student in the areas of occupational therapy, adapted physical education, speech

and language, vision and hearing, and physical therapy. The District also conducted a multidisciplinary psychoeducational evaluation to assess Student's academic, cognitive, adaptive and developmental abilities.

OCCUPATIONAL THERAPY

5. Harpreet Khandpur is an occupational therapist with Gallagher Pediatric Therapy (Gallagher), a nonpublic agency. Ms. Khandpur conducted a 30-day review² of Student's occupational therapy goals and objectives set forth in his December 13, 2004, IEP from LAUSD, and made recommendations for his current program. The 30-day review was not a formal assessment.

6. Ms. Khandpur's 30-day review was based on her informal observation of Student and information from his one-to-one aide. Ms. Khandpur found Student was making minimal progress toward the two occupational therapy goals set forth in his December 13, 2004, IEP. Ms. Khandpur also found Student demonstrated concerns in tactile processing, grasp and manipulation of classroom tools, and eye-hand coordination affecting his fine motor and self-care skills, which in turn influence his participation in developmentally appropriate activities. Based on her 30-day review, Ms. Khandpur recommended that Student continue occupational therapy services, one time per week, for one clinical hour per session. Ms. Khandpur wrote two occupational therapy goals for the IEP addressing fine motor skills (eye-hand/bilateral coordination) and tactile processing because those were the most critical occupational therapy areas for Student to participate in his educational environment. Ms. Khandpur did not write a goal to address the area of feeding because the IEP team determined that ELARC was addressing feeding. Ms. Khandpur's understanding was that Student's parents wanted ELARC to address

² See Legal Conclusion 8.

feeding. At the March 15th meeting, Father expressed his agreement with the occupational therapy goals.

7. Student offered the testimony of Dr. Jerry Lindquist to support his contention that the District "failed to conduct an appropriate assessment in occupational therapy/sensory integration." Dr. Lindquist conducted an occupational therapy assessment of Student at the request of Student's parents. Dr. Lindquist has been a neuropsychologist and clinical psychologist for 17 years, and an occupational therapist for 27 years. Student was assessed by Dr. Lindquist on October 26, 2005 and November 9, 15, and 23, 2005. Student's parents paid \$1,500.00 to Dr. Lindquist for his assessment.

8. Dr. Lindquist interviewed Student's parents, conducted clinical observation of Student on three occasions at his office, and reviewed records. He administered the Sensory Integration and Praxis Tests (SIPT). Dr. Lindquist found Student demonstrated moderate to severe sensory processing deficits affecting his visual, tactile, proprioceptive (the discrimination of muscle/joint position and movement), and vestibular (perception of movement through space) sensory systems. Dr. Lindquist's opinion is that these deficits contributed to a generalized sensory defensiveness, motor planning deficits, bilateral motor and sequencing problems, and visual-motor incoordination. Dr. Lindquist also found Student's sensory modulation was deficient. Dr. Lindquist recommended Student should receive clinic-based occupational therapy services, emphasizing sensory integration procedures, twice per week with reassessment indicated in 12 months. Father testified he agrees with Dr. Lindquist's recommendation.

SPEECH AND LANGUAGE

9. Lilia Mata, a speech and language specialist for the District for two years, conducted an assessment of Student in February 2005. Previously, Ms. Mata

worked as a speech and language specialist for LAUSD for five years. She holds a bachelor's degree in speech and language pathology and audiology.

10. Ms. Mata found Student continued to present with a severe receptive and expressive language disorder and required speech and language services. Her opinion is that Student should have a multimodal form of communication, and he would "strongly benefit" from a communication system such as the Picture Exchange Communication System. Ms. Mata's opinion is that this form of communication may also be coupled with verbal language, as Student would also benefit from auditory stimuli. Based on her assessment, Ms. Mata recommended speech and language services in a group for two 15-minute sessions- per week and individually for one 30-minute session per week. Ms. Mata developed two speech and language goals for the March 15, 2005, IEP. At the March 15th IEP meeting, Father expressed his agreement with the speech and language goals.

PHYSICAL THERAPY

11. Brenda A. Camarena is physical therapist with Gallagher. Ms. Camarena has been a physical therapist for 18 years, and has worked for Gallagher for over seven years. On February 16, 2005, Ms. Camarena conducted a physical therapy assessment of Student for the District. Ms. Camarena prepared a written assessment report dated February 16, 2005.

12. Ms. Camarena's assessment of Student lasted approximately one hour, during which time she observed Student in his classroom and on the playground at school and spoke with his teacher, Mr. Perez, and Student's one-to-one aide. Ms. Camarena found that Student could walk independently across different surfaces on the playground. She found Student's balance was adequate. He could walk on grass, sand, a curb, and not fall. He could step up and down on a curb, and also stand on one leg. Student could stand at the top of the playground slide, sit, and slide down

by himself. He could also climb down the spiral bars and access the U-shaped bars. Ms. Camarena also observed Student ascend and descend two stairs, non-reciprocally, holding the handrail. Student moved cautiously on the stairs but demonstrated good motor control Student could kick, throw, and retrieve a ball. Ms. Camarena observed Student walk around his classroom, and also carry a slant-board and place it on the counter.

13. The purpose of school-based physical therapy is to ensure that children demonstrate adequate functional mobility to access their current classroom and playground environments in order for them to participate in their educational program. Based on her assessment of Student, Ms. Camarena concluded that physical therapy intervention was not indicated, as Student had adequate mobility and was able to participate in appropriate playground and classroom activities by independently ambulating and climbing on the equipment with the supervision of the school staff.

14. At the March 15th meeting, Father disagreed with the physical therapy recommendation. Father expressed concern that Student had not met his prior IEP goal of ascending and descending stairs in a reciprocal pattern (i.e., alternating his feet on each step). The IEP team addressed Father's concern by explaining the ability to ascend and descend stairs is an area that develops with time but takes longer in children with Down syndrome. The IEP team also explained Student's one-to-one aide and the other staff who work with Student were appropriate to work with him on improving his ability to ascend and descend stairs, and a physical therapist was not required to address this area of concern.

MULTIDISCIPLINARY PSYCHOEDUCATIONAL EVALUATION (MPE)

15. In February 2005, on six days during a two-week period, the District's school psychologists, Jacquelyne Leigh and Julie Balandran, and inclusion specialist

Candice Clark, conducted a multidisciplinary psychoeducational evaluation (MPE) of Student. The purpose of the evaluation was to assess Student's cognitive and academic abilities, his social, emotional and behavioral functioning, his adaptive behavior, and to make recommendations to assist the IEP team in developing related services and an appropriate placement.

16. Ms. Leigh is a school psychologist with the Whittier Area Cooperative Special Education Program. She has 21 years experience as a school psychologist, and is licensed as an educational psychologist. Ms. Leigh holds a bachelor's degree in psychology and a master's degree in school psychology. She has an advanced pupil personnel services credential, and is certified as a behavior intervention case manager (BICM) and is a BICM trainer. As a part-time professor at Chapman University, Ms. Leigh has taught courses in academic and intellectual assessment in the Department of Education and School Psychology. Ms. Leigh's testimony was persuasive and credible. She displayed a professional demeanor, answered questions in a straightforward manner, and exuded a sincere interest in ensuring the appropriateness of Student's educational program.

17. Ms. Balandran was a first year, but fully credentialed, school psychologist at the time of Student's assessment. Ms. Leigh provided input and guidance to Ms. Balandran during the assessment.

18. Ms. Clark was an inclusion specialist for the District from August 2000 until her departure from the District in June 2005. Prior to working for the District, she was a teacher at a nonpublic school for seven years. Ms. Clark was the full inclusion specialist for Student's placement in Mr. Perez's first grade general education classroom in January 2005. Ms. Clark was in the classroom with Student twice per week for three to four hours. She worked with one-to-one with Student for two hours per day. She provided Mr. Perez and Student's aides with strategies on

working with Student, including modification of the first grade curriculum, use of picture schedules, and informal training in Discrete Trials, relaxation therapy, and task analysis.

19. The District's MPE included observations, interviews, a review of prior assessments, parent and teacher rating scales, and both informal and standardized assessments. The standardized tests used in the MPE included the Leiter International Performance Scale-Revised (Leiter-R); the Test of Nonverbal Intelligence-Third Edition (TONI-3); the Beery Buktenica Developmental Test of Visual-Motor Integration-Fifth Edition (VMI); and the Motor-Free Visual Perception Test-Third Edition (MVPT). However, these tests were not completed by Student and no scores obtained because Student was unable or refused to respond to the tests or training items and/or his responses were insufficient to obtain a score.

20. The MPE team obtained responses from Father and Student's teacher, Mr. Perez, on the Adaptive Behavior Assessment System-Second Edition (ABAS-II) and the Behavior Assessment System for Children (BASC). The ABAS-II is a survey of adaptive and independent behavior. The scores on the ABAS-II indicated Student demonstrated moderate delays in adaptive behavior to an equal degree at home and at school. The BASC assesses typical and atypical behavior, and identifies problem behavior or atypicality. The overall findings from the BASC indicated Student functioned fairly well with a few number of problem behaviors in the home setting. Student did not have overt externalized, aggressive or destructive behaviors in school. Nor did he show high levels of internalized worry or anxious behavior in school. However, Student had some behaviors in the school setting that came up as a concern, namely, school problems, learning problems, and atypicality. Mr. Perez rated Student as having a serious problem with attention, and he is easily distracted

from class work, does not pay attention to lectures, has a short attention span, and has trouble concentrating.

21. Both Ms. Leigh and Ms. Balandran observed Student in Mr. Perez's first grade general education classroom. Ms. Balandran observed Student on February 8 and 11, 2005, using the Behavior Assessment System for Children-Structured Observation System (BAAsc.: SOS). Ms. Leigh conducted her objective observation on February 9 and 10, 2005. The observations by Ms. Leigh and Ms. Balandran included the following. Student was observed to be most engaged in classroom activities involving music, singing, and clapping. When the other pupils were engaged in an academic activity beyond Student's skill level, such as independently writing a paragraph with a thesis statement, supporting details, and a conclusion, Student was given alternate activities until the academic activity was completed, such as using a crayon to trace over letters, figures, and shapes drawn by his aide on a piece of paper. Student required hand-over-hand assistance from his aide to write words using pencil and paper. Student's inappropriate behaviors included throwing a crayon into his desk when directed to trace shapes with the crayon, dropping to the ground and refusing to walk when his aide directed him to return to the classroom after recess, making vocalizations (i.e., guttural and blowing sounds), rubbing and twisting the hem of his pants, vocalizing loudly when directed away from a preferred activity, and looking around the room or at his peers instead of focusing on the task presented to him.

22. On February 11, 2005, Ms. Leigh administered the Psychoeducational Profile Revised (PEP-R), which is a comprehensive survey of developmental tasks designed for children with differences or delays in their development as well as communication handicaps. Ms. Leigh administered the PEP-R to Student at his school, with his one-to-one aide and Ms. Balandran also present. From the PEP-R

Developmental Scale, Student demonstrated developmental mastery of skills equivalent to that of a child of 17 to 21 months of age. His emerging skills were measured at 36 months or below. His developmental functioning in emerging skills was at 21 to 25 months. Student's areas of strength were in imitation, visual processing, and gross motor skills. His areas of weakness were in fine motor skills, cognitive skills expressed verbally, eye-hand integration, and receptive language/cognitive performance. The overall profile indicated significant developmental delay.

23. From the PEP-R Behavioral Scale, Student was rated in the areas of Relating and Affect (interactions with other people), Play and Interest in Materials, Sensory Responses (reactions to visual, auditory, and tactile stimuli), and Language. Of the 12 areas in Relating and Affect, Student was rated "appropriate" in six areas and rated "mildly atypical" in the other six areas of initiation of social interaction, consistent response to examiner's voice, cooperation with examiner, fear reaction, and tolerance for interruptions of preferred activity. Of the eight areas in Play and Interest in Materials, Student was rated "appropriate" in five areas, and rated "mildly atypical" in the three areas of solitary play, attention span, and ability to be motivated by intrinsic rewards. Student rated "appropriate" in all 12 areas of Sensory Responses. Of the 11 areas of Language, Student was rated in only one area because of his non-speaking status. Student rated "severely atypical" in spontaneous communication. Student was not observed using the American Sign Language signs he was reported to know. Instead, Student used reactions and behavior to communicate his wants and needs. Ms. Leigh's opinion is that Student's mildly atypical behaviors related back to his lack of symbolic communication as well as his overall developmental level of functioning.

24. The MPE team assessed Student's academic skills at below the kindergarten level. Student did not demonstrate kindergarten readiness skills, such as holding a writing implement, cutting with scissors, or stringing beads. However, Student demonstrated a number of skills at the preschool level, such as matching two and three dimensional objects of the same color and sorting objects by color and size. Student was observed to participate most effectively and independently in activities more closely similar to preschool level activities, such as singing, music, and rhythm activities. Student's increased attention, involvement, and enjoyment of preschool activities was contrasted by his passive non participation in large group instruction. Student's difficulty accessing the general education curriculum in the first grade class impacted his behavior, as he appeared to be protesting demands and activities that were imposed on him but had no meaning for him.

25. The MPE team concluded that Student's behavioral needs did not require a behavior support plan or more significantly involved behavior intervention. This conclusion was based on a consideration of the nature of Student's behavior and the function of a behavior plan. Student's behavior was communicative in nature, goal directed, and met a need for him. Student's behavior was not the result of being a bad child. Student was simply trying his best to make a difficult environment (i.e., the general education setting) work for him. Ms. Leigh explained the function of a behavior plan. A behavior intervention should teach skills and provide the child with immediate and long term benefit. A behavior plan should benefit the child, not the setting, and should not be implemented just to force conformity to a setting. A behavior plan should not simply suppress behavior, but should immediately teach replacement behavior or communication. This can be done more frequently and with less disruption to the learning of the rest of the class in a non-general education setting. A behavior plan must take into account the

child's development level. The MPE team felt the general education curriculum could not be modified any further to make it more meaningful for Student. Children are more likely to demonstrate protest behavior, vocalizations, and tantrums when there is a mismatch between the instructional setting and the child's needs. Student's behaviors did not reflect something wrong with him that needed to be fixed but were behaviors that needed to be shaped into appropriate communication in a setting that would allow that instruction to occur. The MPE team concluded that provision of a behavior support plan would not address the instructional, environmental, and developmental factors present for Student in the general education setting that would be remedied by placement in an appropriate special day class setting.

26. Based on its assessment of Student, the MPE team recommended that the appropriate placement for Student was a special day class with mainstreaming opportunities on a daily basis. The classroom should have a 1:3 staff to student ratio and Student should be supported by a one-to-one aide. The MPE team also recommended that some of Student's supports from his general education classroom should be carried over to the special day class, including a picture schedule, supplementation of verbal directions with visual cues on a ring, a smaller desk and chair, use of preferred activities and toys to reinforce less preferred activities, safe scissors, colorful visual displays without a lot of distractors, and opportunities to use a computer to access developmentally appropriate software. The recommendation for daily mainstreaming opportunities was based on the MPE team's conclusion that Student benefited from socialization with non-disabled peers in the classroom, on the playground, and at school social periods such as lunch and assemblies.

27. Student offered the testimony of Dr. Christine Davidson to support his contention that the District did not conduct an appropriate psychoeducational assessment. Dr. Davidson is a licensed educational psychologist who conducted an independent psychoeducational assessment of Student in November 2005. Dr. Davidson conducted the assessment at the request of Student's parents. Student's parents have paid a total of \$3,830.00 for Dr. Davidson's assessment.

28. Dr. Davidson assessed Student in her office on November 7, 2005 for four and one-half hours. Dr. Davidson administered standardized tests and rating scales including the Wechsler Intelligence Scale for Children-Fourth Edition (WISC-IV), the Comprehensive Test of Nonverbal Intelligence (CTONI), the Kaufman Brief Intelligence Test-2 (KBIT-2), the Bracken School Readiness Assessment (BSRA), the Brigance Diagnostic Inventory of Early Development (Brigance), the Kaufman Survey of Early Academic and Language Skills (K-SEALS), the Burks' Behavior Rating Scales (BBRS), the Vineland Adaptive Behavior Scales (Vineland), and the Greenspan Social-Emotional Growth Chart (Greenspan). Dr. Davidson also conducted interviews and reviewed records. She observed Student in his second grade general education class, and also visited Mrs. Canales's special day class. Dr. Davidson's opinion is that a second grade general education classroom is not an appropriate placement for Student because he lacks the skills needed to access the curriculum. Dr. Davidson liked Mrs. Canales's special day class and found her to be a caring and passionate teacher with a good curriculum. Dr. Davidson recommended that Student's school day should be spent 50 percent in a special day class and 50 percent in general education.

29. Student offered the testimony of Dr. Denise Eckman to support his contention that the District failed to conduct an appropriate assessment of Student in the area of behavior. Dr. Eckman conducted a behavioral assessment of Student

on November 11, 2005, at the request of Father. Student's parents paid \$600.00 for Dr. Eckman's assessment. Dr. Eckman is the Director of Autism Solutions, a certified NPA, and has been the Director since October 2004. She holds a bachelor's degree in psychology (1997), a master's degree in clinical psychology (1999), and a doctoral of psychology (Psy.D). in clinical psychology (August 2005). Dr. Eckman expects to receive her license in clinical psychology in February 2007.

30. In conducting her assessment, Dr. Eckman used the Assessment of Basic Language and Learning Skills (ABLLS), reviewed documents, interviewed Student's parents, and directly observed and interacted with Student at his home on November 11th. Dr. Eckman disagreed with the District's recommendation that "more significant behavior intervention is not required" for Student. Based on her assessment, Dr. Eckman concluded that Student needs an intensive one-to-one behavioral-based intervention program at home and at school to address communication, play, and social skills. Dr. Eckman strongly recommended Student receive a year round ABA program that focuses on requesting for items because by emphasizing requesting throughout the day, Student will learn the importance and power of communicating with others. Dr. Eckman recommended that the requesting or "mand training" should include utilizing sign language and/or signals that represent the sounds paired with vocalizations, in at least 50 percent of all one-to-one behavioral sessions. Dr. Eckman's opinion is that, once Student can independently request for specific items; he can then be taught to receptively identify and expressively label those same items using sign language and vocalizations. Dr. Eckman's opinion is that placement alone, without a behavior plan, would not address Student's behavior needs.

OFFER OF PLACEMENT AND SERVICES

31. On March 15, 2005, the District convened an IEP meeting to review assessment results³ and determine Student's needs, services, and placement, following his transfer into the District from LAUSD. At the meeting, the IEP team discussed and developed goals and objectives to address Student's areas of need. Father and Student's mother were present and participated in this meeting. The specialists who conducted assessments of Student also attended the meeting, including occupational therapist Ms. Khandpur, speech and language specialist Ms. Mata, and the MPE team members Ms. Leigh, Ms. Balandran, and Ms. Clark. Physical therapist Ms. Camarena did not attend the March 15, 2005, IEP meeting, but the results of her assessment were presented at the meeting by Christy Marilo, another physical therapist from Gallagher. In addition, Ms. Leigh prepared the meeting notes attached to the March 15th IEP document. The meeting was not tape recorded. Ms. Leigh typed the notes on her laptop computer, in real time, as the IEP meeting was occurring. The notes are not verbatim but were Ms. Leigh's best effort to accurately portray the discussions at the meeting.

32. At the March 15th meeting, the IEP team agreed that placement in a general education classroom was not appropriate for Student. The IEP team made an offer of placement in a special day class with participation in general education for art, music, daily recess and lunch, and school wide assemblies. The IEP team discussed mainstreaming and agreed there was some benefit for Student to be with typically developing children in non- academic situations. In addition, the District

³ "Adapted physical education" and "vision and hearing" were two of the assessments completed by the District in connection with the March 15, 2005, IEP. These two assessment areas are not in dispute in this due process proceeding.

offered DIS/related services including occupational therapy (individual), one time per week for 50 minutes; adapted physical education (group), twice a week, 30 minutes per session; speech and language in a group for two times per week, 15 minutes per session, and individually for one time per week for 30 minutes.

33. At the March 15th IEP meeting, Student's parents disagreed with the District's proposed placement and insisted on a full inclusion general education placement for their son. Student's parents signed the IEP on March 16, 2005 but attached an addendum to the IEP signature page which stated the parents agreed to "speech and language, occupational therapy, [and] adaptive physical education services," and disagreed with "the psychoeducational and physical therapy assessments." The addendum requested independent psychoeducational and physical therapy assessments at public expense, and also stated "we request 'stay-put' of the 12/04 IEP in regards to placement, physical therapy services and the one-to-one aide."

34. In a letter dated March 24, 2005, the District denied the parents' request for independent psychoeducational and physical therapy assessments at public expense. The District filed a request for due process hearing on March 28, 2005, and a second request for due process hearing on April 29, 2005. Student filed his request for due process hearing on June 17, 2005.

35. As discussed in Factual Finding 32, at the March 15, 2005, IEP meeting, the District's offer of placement for Student was a special day class with mainstreaming. However, Student's parents now contend they were unaware that the District's offer for a special day class also included participation in general education. No persuasive evidence supports this contention. The March 15, 2005, IEP indicates on the first page that Student will spend "52% of time outside general education," and lists several activities in a section entitled "Participation in General

Education." The District's witnesses testified that, if Student was to spend 52 percent of his day "outside general education" (i.e., in a special day class), then, by simple arithmetic, the remaining 48 percent of the day would be spent "in general education" as indicated in the IEP. Father's testimony was not persuasive that he did not know the District's offer included participation in general education. Father is a Project Manager in the Department of Urology at the University of California Norris Cancer Center. In addition, he has some familiarity with IEP processes and requirements based on his experience with his son's IEPs with LAUSD. Also, the District sent Student's parents a letter dated August 26, 2005, which reaffirmed the District's offer of placement and services as including, among other things, "[p]lacement in a developmental focus special day class five days per week for the entire school day, except for periods of time spent with his nondisabled peers for socialization and pull-out designated instructional services," "[p]articipation in the second grade general education classroom with nondisabled peers for Art and Music," and "[p]articipation with nondisabled peers at recess and lunch."

STUDENT'S CURRENT PLACEMENT - MRS. CASTILLO'S SECOND GRADE CLASS

36. For school year 2005-2006, Student is fully included in a second grade general education class at Laurel Elementary School. The class is taught by Yesenia Castillo, who has been a general education teacher in the District for five years. According to Mrs. Castillo, Student cannot access the second grade curriculum because he does not yet have the skills to do the curriculum. Mrs. Castillo believes Student can develop his skills in a non general education classroom. Mrs. Castillo also believes it is appropriate for Student to be in a general education setting for socialization, music, and playground, so he can learn by modeling the behavior of other children. Student is friendly and well-liked by his classmates, and he likes to be with other children.

ELARC FEEDING THERAPY

37. Student received feeding therapy from a vendor funded by ELARC. ELARC was handling Student's feeding therapy since at least the March 15, 2005, IEP meeting.⁴ On or about August 25, 2005, Father sent a letter to Karena Perez of ELARC requesting to know the current status of feeding services because Student had been without feeding services "for a few months."

38. On or about October 12, 2005, Ms. Perez contacted Ruth Valadez, Director of Special Education for the District, and informed Ms. Valadez that Student's parents requested feeding therapy from ELARC, and ELARC offered to provide the feeding therapy to Student at home, but the scheduled time for the therapy was inconvenient for Student's parents. Ms. Perez asked Ms. Valadez if the District would allow the feeding therapy vendor to provide the services to Student at school during the lunch hour. By letter dated October 25, 2005, Ms. Valadez notified Ms. Perez that the District denied the request because the proposed service was based on inconvenience to the parents as opposed to a unique need of Student that the District was obligated to address in his IEP. Ms. Valadez did not call an IEP meeting to discuss feeding therapy for Student because it was not a service requested by District staff nor Student's parents. Ms. Valadez testified that feeding therapy was a service provided to Student by ELARC.

39. Ms. Valadez attended and chaired the March 15th IEP meeting. Father indicated the family was handling Student's feeding issues and consulting with a nutritionist. At the IEP meeting, Ms. Valadez explained to Father that the IEP team was proceeding based on the information available to the team at that time, but if new information about nutrition or oral motor needs came available, the IEP team

⁴ See Factual Finding 6, *ante*.

would consider the new information. No additional information was provided to the IEP team.

PROPOSED SPECIAL DAY CLASS TAUGHT BY MRS. CANALES

40. Yvonne Canales is a special education kindergarten teacher at La Colima Elementary School. She teaches a special day class for children with moderate to severe disabilities. The District proposes Mrs. Canales's special day class as Student's placement pursuant to the March 15, 2005, IEP.

41. Mrs. Canales's opinion is that her special day class is appropriate for Student as she is already using the methods suggested for Student in the March 15, 2005, IEP. Mrs. Canales's class has an all-day emphasis on communication skills using picture exchange and spoken language. Tokens are earned at "centers" to increase positive participation. Charts and calendars on the wall have larger print than in a general education classroom. Picture icons and visual supplements are used in all areas of instruction. Mrs. Canales and all of her classroom assistants carry picture schedules so they can cue students to expected behavior at any time. Lessons and materials for reading, math, language, and writing are at a level that Student can understand. Because the special day class has a smaller number of students than a general education class, Student will receive instruction directly from the teacher, Mrs. Canales, supported by her instructional assistants. Student will be an active participant in all classroom activities, as opposed to a passive observer. He will have the opportunity to increase his functional skills in task completion, communication, and self-care throughout the day. Mrs. Canales uses Applied Behavior Analysis (ABA) methods in conducting her special day class. Mrs. Canales and her classroom aides have training in discrete trial training (DTT). Non-disabled students from the general education fifth grade classes at the school also come to Mrs. Canales special day

class four times a week, for 30 minutes, to be buddies and work with Mrs. Canales special day class students.

42. Mrs. Canales understands the process for mainstreaming because she has previously had students in her special day class who also participated in general education. Mrs. Canales would implement the mainstreaming component of the March 15, 2005, IEP by consulting with the general education teachers for art and music to determine which class is appropriate for Student and determining the schedule when Student would attend those classes. Mrs. Canales testified she cannot know the frequency of the general education art and music classes until she speaks with the general education teachers for those classes. The frequency of art and music classes varies among schools. If appropriate general education art and music classes are not available, Mrs. Canales would look to other types of general education inclusion time that is appropriate for Student and acceptable to the IEP group and the parents.

43. Mrs. Canales did not write the goals set forth in the March 15, 2005, IEP. On cross-examination, Mrs. Canales was asked to review some of the written goals and indicate whether the written goals stated a "baseline" present level of performance (i.e., the number of times Student can perform the skill involved in the goal). Mrs. Canales testified some of the written goals did not specify the number of times Student could presently perform the skill or there was no baseline because the skill was new for Student. However, Mrs. Canales further explained, assuming Student was placed in her special day class, if a goal involved a new skill for Student, then the presumption is the baseline is zero (i.e., he cannot do the skill). If a goal describes the current level of performance being "difficult" for Student⁵, she would

⁵ For example, the written goal for eye-hand/bilateral coordination stated the present level of performance as "[Student] demonstrates difficulty coordinating his

implement the goal presuming that Student is unable to do the task. Mrs. Canales is a credible witness. She had a professional demeanor and displayed a genuine sense of concern for the appropriate education of the students in her special day class. Student's own witness, Dr. Davidson, also thought highly of Mrs. Canales after visiting her special day class.

TESTIMONY OF CHRISTINE DAVIDSON

44. Based on her assessment of Student, Dr. Davidson recommended that Student should spend 50 percent of his day in a language-based ABA program, and the other 50 percent of the day with typically developing peers for modeling of social, language, play, motor, and pre-academic skills. Dr. Davidson would structure Student's program as three hours of one-to-one discrete trial training for the first half of the school day, and then participation in general education classes in the afternoon. Dr. Davidson also recommended one-to-one behavior intervention at home and at school. In addition, Dr. Davidson's recommendations for Student include that he should be evaluated for an assistive technology device to address his communicative needs, and he should receive individual and group speech and language therapy. Father agrees with Dr. Davidson's recommendation for placement and services.

45. Both Dr. Davidson and Ms. Leigh are highly qualified to conduct psychoeducational assessments. The fact that Dr. Davidson recommended

hands to string primary sized beads independently." The written goal for grasp/scissor stated the present level as "[Student) demonstrates difficulty separating the two sides of his hand to successfully participate in cutting activities." The written goal for social-peer interaction stated the present level as "[Student) has difficulty taking turns, communicating and interacting with his peers."

essentially the same placement as the District's MPE (i.e., a special day class with participation in general education) is persuasive evidence that the District's MPE was appropriate. The fact that Dr. Davidson's recommendation was for a 50-50 split between special education and general education, and the District's recommendation was for a 52-48 split, does not mean the District's MPE was inappropriate. Under the circumstances presented in this case, the difference in the recommendations for the amount of time spent in special education versus general education is not significant.

TESTIMONY OF DENISE ECKMAN

46. Dr. Eckman's testimony was not persuasive because she lacked a basic factual foundation from which to testify about Student's behavior needs related to accessing his education. Dr. Eckman's assessment did not include any observation of Student in his educational setting, nor any interviews with Student's teachers or other school district professionals involved in Student's education, nor a visit to the special day class proposed by the District. Dr. Eckman observed Student on one occasion at his home, whereas the members of the MPE team observed Student in his educational setting on several occasions. In addition, since Dr. Eckman's assessment occurred in November 2005, approximately eight months after the March 15th IEP meeting, Dr. Eckman's testimony and findings are of little probative value in determining whether the District appropriately assessed Student in the area of behavior for the March 15th IEP. Ms. Leigh's testimony and the findings of the MPE team are more persuasive and entitled to more weight because of their greater familiarity with Student and his educational setting.

TESTIMONY OF JERRY LINDQUIST

47. While Dr. Lindquist is a well-credentialed and highly qualified expert, his findings and testimony are of little probative value in determining whether the District appropriately assessed Student in the area of school-based occupational therapy. Dr. Lindquist's assessment occurred approximately seven months after the March 15, 2005 IEP meeting. Dr. Lindquist lacked a factual foundation from which to testify about Student's school-based occupational therapy needs. He did not speak to Student's current occupational therapy provider Ms. Khandpur or anyone from Gallagher, nor Student's teachers Mrs. Castillo and Mr. Perez. Nor did Dr. Lindquist observe Student in his educational setting.

LEGAL CONCLUSIONS

APPLICABLE LAW⁶

1. A child with a disability has the right to a FAPE. (20 U.S.C. §1412(a)((I)(A); Ed. Code, § 56000.) A FAPE is defined in pertinent part as special education and related services that are provided at public expense and under public supervision and direction, that meet the State's educational standards, and that conform to the student's IEP. (20 U.S.C. § 1401(8); 20 U.S.C. § 1410(9), effective July 1, 2005; Cal. Code Regs., tit. 5, § 3001, subd. (o).) Special education is defined in pertinent part as specially-designed instruction, at no cost to parents, to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(25); 20 U.S.C. § 1410(29), effective July 1, 2005; Ed. Code, § 56031.) Related services include developmental, corrective, and

⁶ Unless otherwise indicated, citations to Title 20 of United States Code are to statutes in effect prior to July 1, 2005, and citations to the Education Code are to statutes in effect prior to October 7, 2005.

other supportive services as may be required to assist a child with a disability to benefit from special education. (20 U.S.C. § 1401(22); 34 C.F.R. § 300.24(a); Ed. Code, § 56363; Cal. Code Regs., tit., 5, § 3001, subd. (z).)

2. A school district must provide "a basic floor of opportunity ...[consisting] of access to specialized instruction and related services which are individually designed to provide educational benefit to the [child with a disability]." (*Bd. of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201.) The intent of the Individuals with Disabilities Education Act (IDEA) is to "open the door of public education" to children with disabilities; it does not "guarantee any particular level of education once inside." (*Id.* at p. 192.) A child receives a FAPE if the program (1) addresses the student's unique needs; (2) provides adequate support services so the student can take advantage of educational opportunities; (3) is in accord with the IEP; and (4) is the LRE. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 444 F.3d 1149; *Capistrano Unified School Dist. v. Wartenberg* (9th Cir. 1995) 59 F.3d 884, 893.)

3. When determining whether a placement is the LRE, four factors must be evaluated and balanced: (1) the educational benefits of full-time placement in a regular education classroom; (2) the non-academic benefits of full-time placement in a regular classroom; (3) the effect of the presence of the child with a disability has on the teacher and the children in a regular classroom; and (4) the cost of placing the child with a disability full time in a regular classroom. (*Ms. S. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1136-1137; *Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404.)

4. The IDEA requires neither that a school district provide the best education to a child with a disability, nor that it provide an education that maximizes the child's potential. (*Rowley, supra*, 458 U.S. at 197,200; *Gregory K. v. Longview*

School Dist. (9th Cir. 1987) 811 F.2d 1307, 1314.) As long as the school district's offer was reasonably calculated to provide educational benefits, it constitutes an offer of a FAPE. (*Rowley, supra*, 458 U.S. at 200.)

5. An IEP is evaluated in light of information available at the time it was developed; it is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149; *Christopher S. v. Stanislaus County Off of Education* (9th Cir. 2004) 384 F.3d 1205, 1212.) "An IEP is a snapshot, not a retrospective." (*Id.* at p. 1149, citing *Fuhrmann v. East Hanover Bd. of Education* (3rd Cir. 1993) 993 F.2d 1031, 1041.) Although a child's progress toward the IEP 's goals may be considered, whether an IEP offers a FAPE must be evaluated in terms of what was objectively reasonable when the IEP was developed. (*Ibid.*; *County of San Diego v. California Special & ducation Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467.) The focus is on the placement offered by the school district, not on the alternative preferred by the parents. (*Gregory K., supra*, 811 F.2d at 1314.) Even if the parents' preferred placement would be better for the child, this does not necessarily mean that the district's offer did not constitute a FAPE. (*Rowley, supra*, 458 U.S. at 200; *Gregory K., supra*, 811 F.2d at 1314.)

6. In addition to these substantive requirements, the Supreme Court recognized the importance of adhering to the procedural requirements of the IDEA. Thus, the analysis of whether a student has been provided a FAPE is two-fold: (1) the school district must comply with the procedural requirements of the IDEA, and (2) the IEP must be reasonably calculated to provide the child with educational benefits. (*Rowley, supra*, 458 U.S. at 206- 207.)

7. While a student is entitled to both the procedural and substantive protections of the IDEA, not every procedural violation is sufficient to support a finding that a student was denied a FAPE. Mere technical violations will not render an

IEP invalid. (*Amanda J v. Clark County School Dist.*, *supra*, 267 F.3d at p. 892.) To constitute a denial of a FAPE, a procedural violation must result in either the loss of educational opportunity, or a serious infringement of the parents' opportunity to participate in the IEP process. (*Ibid.*; 20 U.S.C. § 1415(f)(3)(E)(ii), effective July 1, 2005; Ed. Code, § 56505, subd. (j).)

8. When a pupil transfers into a school district from another school district, the pupil shall immediately be provided an interim placement for a period not to exceed 30 days, in conformity with the pupil's existing IEP, implemented to the extent possible within existing resources, or a new IEP. (Ed. Code § 56325(a).) Before the expiration of the 30-day period, the IEP team shall review the interim placement and make a final recommendation. (Ed. Code § 56325(b).)

9. A parent must be provided "written prior notice" when a school district proposes, or refuses, to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(3); Ed. Code § 56500.4.) The notice must include a description of the action refused by the school district, an explanation of why the district refuses to take the action, a description of each evaluation procedure, test, record, or report used as a basis for the refused action, a description of any other factors relevant to the district's refusal, a statement that the parents have protection under the procedural safeguards of IDEA, and sources for the parents to • contact to obtain assistance. (20 U.S.C. § 1415(c); 34 C.F.R. § 300.503(b).)

10. Assessments must be conducted in accordance with assessment procedures specified in the federal IDEA and State special education law. (Ed. Code § 56381(e).) For example, tests and assessment materials must be validated for the

specific purpose for which they are used; must be selected and administered so as not to be racially, culturally or sexually discriminatory; must be provided and administered in the student's primary language or other mode of communication unless this is clearly not feasible; and must be administered by trained personnel in conformance with the instructions provided by the producer of such tests. (20 U.S.C. § 1414(a)(2), (3); 34 C.F.R. § 300.532, subd. (a), (c); Ed. Code §§ 56320, subd. (a), (b); 56322.) The assessors must use a variety of assessment tools and strategies to gather relevant functional and developmental information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general curriculum, that may assist in determining whether the child is a child with a disability and what the content of the child's IEP should be. (34 C.F.R. § 300.532(b).) Additionally, assessments must be conducted by individuals who are knowledgeable of the student's disability, and any psychological assessment must be performed by a credentialed school psychologist. (Ed. Code §§ 56320(g) and 56324.)

11. When a parent disagrees with an assessment obtained by the public educational agency, the parent has the right to an independent educational evaluation (IEE) from qualified specialists at public expense unless the educational agency is able to demonstrate at a due process hearing that its assessment was appropriate. (Ed. Code §§ 56329, subd. (b), (c), and 56506(c); 34 C.F.R. § 300.502.) If a parent requests an IEE at public expense, the public agency must, without unnecessary delay, either initiate a due process hearing to show that its evaluation is appropriate, or ensure that an IEE is provided at public expense, unless the agency demonstrates in a hearing that the evaluation obtained by the parent did not meet agency criteria. (34 C.F.R. § 300.502(b)(2).)

12. The IEP for each child with a disability must include "a statement of the special and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or its supports for school personnel that will be provided for the child." (20 U.S.C. § 1414(d)(l)(A)(iii); Ed. Code§ 56345(a)(3).) A statement of measurable annual goals must be included in the IEP. (20 U.S.C. § 1414(d)(l)(A)(ii); Ed. Code§ 56345(a)(2).)The IEP must also include the projected date for the beginning of the services, and the anticipated frequency, location, and duration of those services and modifications. (20 U.S.C. § 1414(d)(l)(A)(vi); Ed. Code§ 56345(a)(6).) "The amount of services to be provided must be stated in the IEP, so that the level of the agency's commitment of resources will be clear to the parents and the other IEP team members(§ 300.347(a)(6)). The amount of time to be committed to each of the various services to be provided must be (1) appropriate to the specific service, and (2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP." (34 C.F.R. Part 300, Appendix A, Section IV.35.)

13. Under federal and state law, an IEP must contain measurable annual goals, including benchmarks or short term objectives, related to both (1) meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum, and (2) meeting each of the child's other educational needs that result from the child's disability. (20 U.S.C. § 1414(d)(l)(A)(ii); Ed. Code§ 56345 subd. (2)(A), (B).)⁷ The IEP "shall show a direct relationship between the present levels of performance, the goals and objectives, and the specific educational services to be provided." (Cal. Code. Regs., tit. 5, § 3040(c).) In addition,

⁷ Effective October 7, 2005, Ed. Code§ 56345(a)(2) was amended so that benchmarks and short-term objectives are no longer required in an IEP.

the IEP must include "appropriate objective criteria, evaluation procedures, and schedules for determining, on at least an annual basis, whether the annual goals are being achieved," and a statement of how the student's progress toward the goals will be measured. (Ed. Code§ 56345, subd. (7), (9).)

14. An expert's credibility may be evaluated by examining the reasons and factual data upon which the expert's opinions are based. (*Griffith v. County of Los Angeles* (1967) 267 Cal.App.2d 837, 847.)

15. The U.S. Supreme Court has ruled that the petitioner in a special education administrative hearing has the burden to prove their contentions at the hearing. (*Schaffer v. Weast* (Nov. 14, 2005, No. 04-698) ___ U.S. ___, [126 S. Ct. 528, 2005 U.S. Lexis 8554].) Accordingly, the District has the burden of proof as to Issue Nos. 1, 2 and 3, and Student has the burden of proof as to Issue Nos. 4, 5, 6, 7, and 8.

DETERMINATION OF ISSUES

ISSUE NO. ONE: WAS THE DISTRICT'S PSYCHOEDUCATIONAL ASSESSMENT OF STUDENT APPROPRIATE?

16. Based on Factual Findings 15-28, and Legal Conclusions 10 and 14, the District's psychoeducational assessment of Student was appropriate and met the statutory requirements for psychological assessments, including the use of trained and qualified personnel to conduct the assessment and the use of a variety of assessment tools and strategies to obtain developmental and functional information about Student. The fact that Dr. Davidson, the independent assessor hired by Student's parents, recommended essentially the same placement for Student as the District's assessment is persuasive evidence that the District's assessment was appropriate. Because the District's psychoeducational assessment was appropriate,

Student's parents are not entitled to reimbursement of the cost of Dr. Davidson's independent assessment.

ISSUE NO. TWO: WAS THE DISTRICT'S PHYSICAL THERAPY ASSESSMENT OF STUDENT APPROPRIATE?

17. Based on Factual Findings 11-14 and Legal Conclusions 10 and 14, the District's physical therapy assessment of Student was appropriate and met the statutory requirements for assessments. No persuasive evidence was presented to the contrary.

ISSUE NO. THREE: DID THE DISTRICT OFFER A FAPE TO STUDENT IN THE MARCH 15, 2005, IEP?

ISSUE NO. FOUR: DID THE DISTRICT FAIL TO OFFER STUDENT A FAPE IN THE MARCH 15, 2005, IEP BY FAILING TO OFFER DIS/RELATED SERVICES APPROPRIATE TO MEET STUDENT'S NEEDS IN SPEECH AND LANGUAGE, OCCUPATIONAL THERAPY, AND PHYSICAL THERAPY, AND BY FAILING TO OFFER STUDENT A PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT?

18. The District's Issue No. 3 and Student's Issue No. 4 will be analyzed together as they present intertwined issues regarding whether the District's offer in the March 15, 2005, IEP was a FAPE.

PROCEDURAL COMPLIANCE

19. Based on the March 15, 2005, IEP document, and the testimony of the District's witnesses who attended the IEP meeting, the District complied with the procedural requirements of IDEA in developing the March 15, 2005, IEP. The District conducted the IEP meeting in a manner reasonably calculated to gain the maximum input from proper parties into developing an appropriate IEP. Student's parents meaningfully participated in the development of the March 15, 2005, IEP. The parents' concerns were discussed, considered, and documented.

20. Student contends the written goals of the March 15, 2005, IEP were "lacking and inappropriate" because some of the goals did not have "baselines" and, thus, Student's progress cannot not be measured objectively. Student failed to offer persuasive evidence to support this contention. Student relied solely on Mrs. Canales's testimony. (Factual Finding 43.) No other evidence was offered showing the written goals are not objectively measureable. The written goals on their face state how and by whom progress will be measured. ⁸

SUBSTANTIVE COMPLIANCE

21. Student contends that, due to the District's failure to conduct appropriate assessments, the IEP team lacked "necessary information" in developing the March 15, 2005, IEP. Consequently, the March 15, 2005, IEP fails to provide appropriate DIS/related services to meet his unique needs, including sensory integration, behavior, feeding, and speech and language. There is no persuasive evidence supporting this contention.

22. The occupational therapy services offered in the March 15, 2005, IEP were appropriate. Student's parents expressly agreed and consented to the occupational therapy goals and services. (Factual Finding 33.) Based on Legal Conclusion 28, the IEP team was not lacking necessary information to determine appropriate occupational therapy services for Student.

23. Based on Legal Conclusion 16 and 36, the IEP team was not lacking necessary information to determine appropriate services and placement to address

⁸ For example, progress on the goal for eye-hand/bilateral coordination will be measured by the occupational therapist and will be evidenced by Student's "ability to string three one-inch beads on a shoestring, given verbal prompting as needed, 50 percent of the time."

Student's behavior needs. The District offered appropriate services to address Student's behavior needs.

24. Based on Factual Findings 6 and 37-39, there was no "failure" on the part of the District to provide DIS/related services in the area of feeding. The District was not required to conduct a feeding assessment because, from at least the time of the March 15, 2005, IEP meeting, Student's feeding needs were being addressed through ELARC services.

25. Based on Factual Findings 9-10 and Legal Conclusion 11, the IEP team was not lacking necessary information to determine appropriate speech and language services for Student. Student provided no evidence to support a finding that Ms. Mata was unqualified. The speech and language services offered by the District were appropriate, as evidenced by the express agreement and consent of the parents to the speech and language goals and services. (Factual Finding 33.)

26. Based on Factual Findings 19-26, 28, 41, and 44-45, the District's offer of placement in a special day class with mainstreaming addresses Student's unique needs and is reasonably calculated to provide Student with meaningful educational benefit. Both Ms. Leigh and Dr. Davidson are in agreement that Student will receive educational benefit from a placement in a special day class with daily mainstreaming opportunities.

27. Based on Factual Findings 26, 36, and 44-45, the parties agree that the LRE for Student is a special day class with participation in general education. Dr. Davidson recommends Student should spend half his day in special education and the other half in general education, which is, in essence, what the District offered in the March 15, 2005, IBP.

ISSUE NO. FIVE: DID THE DISTRICT APPROPRIATELY ASSESS STUDENT IN THE AREA OF OCCUPATIONAL THERAPY?

28. Based on Factual Findings 5-8, 33, and 47, and Legal Conclusion 10, the District appropriately addressed Student's occupational therapy needs through Ms. Khandpur's 30-day review. A formal occupational therapy assessment was not warranted. Student's parents agreed with the occupational therapy goals and services presented at the March 15th IBP meeting. No evidence was presented that the parents revoked their consent to those goals and services. The March 15th, IBP did not need to address feeding as an occupational therapy goal because, at the time of the March 15th meeting, Student's feeding needs were being addressed by BLARC. (Factual Findings 37-39.)

29. Because the District appropriately addressed Student's occupational therapy needs, Student's parents are not entitled to reimbursement for the independent occupational therapy assessment they obtained from Dr. Jerry Lindquist.

ISSUE NO. SIX: DID THE DISTRICT COMMIT PROCEDURAL VIOLATIONS BY FAILING TO PROVIDE PRIOR WRITTEN NOTICE TO STUDENT'S PARENTS OF THE DENIALS OF THEIR REQUESTS FOR (1) A SENSORY INTEGRATION ASSESSMENT, (2) A BEHAVIOR ASSESSMENT, (3) MAINSTREAMING, AND (4) TO ALLOW EAST LOS ANGELES REGIONAL CENTER (ELARC) TO PROVIDE ORAL MOTOR THERAPY AND FEEDING/SWALLOWING SERVICES TO STUDENT DURING THE SCHOOL DAY; AND BY FAILING TO CONDUCT A REVIEW OF PREVIOUS IEP GOALS?

30. Based on Factual Findings 6 and 32-33, and Legal Conclusion 9, Student has not met his burden of proving his contention of a procedural violation relating to the denial of an alleged request for a sensory integration assessment. There is no evidence that a sensory integration assessment was requested by the parents in connection with the March 15, 2005, IBP. The only independent assessments requested by the parents were physical therapy and psychoeducational assessments.

Since the parents expressly agreed to the occupational therapy goals and services contained in the March 15, 2005, IBP, there does not appear to be a reason for them to request a sensory integration assessment.

31. Based on Factual Findings 20-26, 29-30, 32-33, and 46, and Legal Conclusion 9, Student has not met his burden of proving his contention of a procedural violation relating to the denial of an alleged request for a behavior assessment. As discussed in Legal Conclusion 33, there was no evidence of a request by parents for independent assessments other than for physical therapy and a psychoeducational assessment. At the March 15th IEP meeting, the IEP team discussed Student's behavior concerns and concluded that behavior intervention was not warranted.

32. Based on Factual Findings 32-33 and 35, and Legal Conclusion 9, Student has not met his burden of proving his contention of a procedural violation relating to the denial of an alleged request by the parents for mainstreaming. There is no evidence that the parents requested mainstreaming at the March 15th IEP meeting. The parents insisted on a full inclusion general education placement.

33. Based on Factual Findings 6, 32-33, and 37-39, and Legal Conclusion 9, Student has not met his burden of proving his contention of a procedural violation relating to the District's denial of the parents' request to allow ELARC to provide feeding therapy at school. Feeding therapy was not identified in connection with the March 15, 2005, IEP as a necessary component of Student's FAPE. Feeding therapy was being addressed outside of the school setting through ELARC.

34. Student's contention is not persuasive that the District failed to review the goals and objectives from his previous IEP at the March 15th IEP meeting. According to Ms. Leigh's testimony, at the March 15th IEP meeting, each specialist reviewed their area of assessment and discussed the LAUSD goals related to their

area. Although the IEP document does not contain a statement that IEP goals were reviewed by the IEP team, the previous goals were discussed and considered through each specialist's assessment report.

ISSUE NO. SEVEN: DID THE DISTRICT DENY STUDENT A FAPE WHEN IT REFUSED TO ALLOW ELARC TIME IN THE SCHOOL DAY TO PROVIDE STUDENT, FREE OF ANY CHARGE TO THE DISTRICT, ORAL MOTOR THERAPY AND FEEDING/SWALLOWING SERVICES THAT HE REQUIRED?

35. Based on Factual Findings 6 and 37-39, the District did not deny Student a FAPE when it denied ELARC's request to provide feeding therapy to Student during the lunch hour at school. Student's feeding therapy was an area addressed by ELARC, not the District. When there was a problem with feeding services, Father directed his concern to ELARC, not the District. Student's evidence failed to establish feeding therapy was a related service the District was obligated to provide as part of the March 15, 2005, IEP.

ISSUE NO. EIGHT: DID THE DISTRICT APPROPRIATELY ASSESS STUDENT'S BEHAVIOR NEEDS AND PROVIDE APPROPRIATE SERVICES TO MEET THOSE NEEDS DURING THE TIME HE HAS RESIDED IN THE DISTRICT?

36. Based on Factual Findings 16, 19-26, 29-30, and 46, and Legal Conclusions 5, 10 and 14, the District appropriately assessed and addressed Student's behavior needs through the recommendation of placement in a special day class. Dr. Eckman's testimony lacked probative value and was less persuasive than Ms. Leigh's testimony and the findings of the MPE team regarding Student's behavior needs.

ORDER

1. The District's psychoeducational and physical therapy assessments were appropriate, and the District offered Student a FAPE in the March 15, 2005, IEP.

2. All of Student's requests for relief are denied.

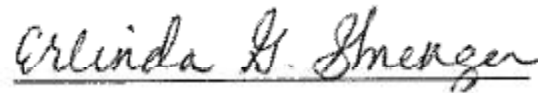
PREVAILING PARTY

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

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 ninety days of receipt of this decision. (Ed. Code § 56505, subd. (k).)

DATED: June 30, 2006



ERLINDA G. SHRENGER

Administrative Law Judge

Special Education Division

Office of Administrative Hearings