BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS on behalf of STUDENT, v. CORONA-NORCO UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2008040704

DECISION

Administrative Law Judge (ALJ) Susan Ruff of the Office of Administrative Hearings, State of California (OAH), heard this matter on June 5, 6, 9, 11, 12 and 16, 2008, in Norco, California.

Ralph O. Lewis, Esq., represented the Student and his parents (Student) at the hearing. Student's mother and father were present throughout the hearing. Student was not present.

Christopher J. Fernandes, Esq., represented Corona-Norco Unified School District (District) at the hearing. Jim Huckeba also appeared on behalf of the District.

Student's due process complaint was filed on April 16, 2008. At the conclusion of the hearing, the parties requested time to file written closing argument. The matter was taken under submission upon the receipt of the parties' written closing argument on June 30, 2008.[1]

[1] In order to maintain a clear record, the parties' written closing arguments have been marked as exhibits for identification purposes. Student's written closing argument

ISSUES

Did the District deny Student a free appropriate public education (FAPE) during the 2006-2007 and 2007-2008 school years in the following respects:

1. The District failed to properly assess Student in all areas of educational need, and particularly in the areas of speech and language, occupational therapy (OT), reading, reading comprehension, math, and applied behavior analysis (ABA);

2. The placement and services in the individualized education programs (IEP) dated March 3, 2006, March 9, 2007, and June 6, 2007, were inappropriate because:[2]

a) The District staff was not appropriately trained in the areas of Student's disability;

b) The classroom setting was not appropriate;

c) Student required intensive educational treatment not offered by the District;

d) The District did not offer or provide appropriate services to Student in the areas of speech and language and OT;

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has been marked as Exhibit S-66. The District's written closing argument has been marked as Exhibit D-62.

[2] Student's due process request originally alleged that the District committed procedural violations during the March 3, 2006 IEP. Those allegations were dismissed pursuant to the District's Motion to Dismiss on the basis that they fell outside the statute of limitations for due process complaints. (Ed. Code, § 56505, subd. (l).) As discussed in Legal Conclusions 9 – 12, the substantive allegations involving the first part of the 2006-2007 school year are within the two-year statute of limitations period, even though they are based on the IEP developed on March 3, 2006.

e) The District did not offer or provide appropriate ABA services to Student.

3. The District failed to allow for parental participation at the IEP meetings held on March 9, 2007, and June 6, 2007; [3]

4. The District predetermined Student's proposed placement in the IEPs dated March 9, 2007, and June 6, 2007;

5. The District failed to have the required persons at the IEP meetings held on March 9, 2007, and June 6, 2007; and

6. The goals and objectives developed in the proposed IEPs dated March 9, 2007, and June 6, 2007, were vague and not capable of measurement.

FACTUAL FINDINGS

1. Student is a ten-year-old boy who is eligible for special education under the category of autism/autistic-like behaviors. At all times relevant to this proceeding, Student's family lived within the jurisdiction of the District.

DID THE DISTRICT PROPERLY ASSESS STUDENT IN ALL AREAS OF EDUCATIONAL NEED?

2. Student contends that the District failed to assess Student in all areas of educational need. The District contends that its assessments were thorough and that it was unable to complete further assessments because the parents refused to consent to the District's proposed assessment plan. A district is required to assess a child in all areas of educational need, but it may not proceed with an assessment unless it has parental consent.

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[3] At the start of the hearing, Student made a motion to correct the date of June 7, 2007, in all these issues to June 6, 2007. The District did not oppose that motion, and the request was granted. The issues listed herein reflect the corrected date.

3. Student's initial assessment by the District was conducted in January and February 2004. The assessors found Student eligible for special education services under the category of speech and language impairment. Student's IEP team met on March 5, 2004, and placed Student in a special day class (SDC) taught by Debra Buchanan[4] at Adams Elementary School within the District. After adapted physical education (APE) and OT assessments were conducted in June 2004, Student's IEP team added OT and APE designated instruction and services (DIS services) to Student's IEP.

4. While Student was in the SDC class, Buchanan noticed behaviors by Student that caused her to believe Student might have a disability other than speech and language impairment. Based on her observations, the District conducted an early three-year assessment of Student in April and May 2005.

5. The District's 2005 assessment was comprehensive. Robert Garcia, a school psychologist, conducted the psychoeducational portion of the assessment. Garcia received his master's degree and credential in 2004. He has worked for the District for approximately 5 years. As part of his assessment, he reviewed Student's records, conducted a classroom observation, spoke with Student's teacher, and conducted testing of Student.

6. Garcia used the following tests and assessment tools: Wechsler Intelligence Scale for Children – Fourth Edition (WISC-IV), Woodcock-Johnson Tests of Achievement – Third Edition (WJ-III), Test of Auditory-Perceptual Skills – Revised, Vineland Adaptive Behavior Scales, Developmental Test of Visual-Motor Integration, Behavior Assessment for Children (both parent and teacher rating scales), and the Childhood Autism Rating Scale.

[4] At the time Student began in the SDC class, Buchanan's last name was Songer.

7. Garcia was trained to administer all the tests and administered them in accordance with the testing manuals. During the hearing, he was initially confused about whether certain tests were standardized tests, but he quickly corrected his testimony. His initial confusion appeared to be due to nervousness about testifying rather than lack of familiarity with the tests he administered. The evidence supports a finding that Garcia was trained to administer the tests and properly administered them. They were valid and reliable for the purposes used.

8. The results of Student's cognitive testing on the WISC-IV showed that he had a full-scale intelligence quotient (IQ) score of 67, in the deficient range. This score was lower than the IQ scores he received in previous district testing and in subsequent testing by a private assessor, which placed him in the low average range. His academic scores on the WJ-III were all in the borderline range or lower. The results of the various rating scales showed that Student engaged in autistic-like behaviors, including 1) an inability to use oral language for appropriate communication, 2) "peculiar motoric mannerisms and motility patterns," and 3) self-stimulating, ritualistic behavior.

9. Based on the results of the testing, Garcia recommended certain modifications and accommodations for Student in the classroom. He did not recommend a change in Student's placement, because he believed that the SDC class was an appropriate placement for Student.

10. Charlene Delahoyde, a District speech-language pathologist (SLP), administered the language/communication portion of the assessment. Delahoyde worked as an SLP for the District for 27 years prior to her recent retirement. She was licensed as an SLP by the State of California in 1981. She has received training related to children with autism at various "in service" trainings taught by professionals outside the District. Her training has included techniques such as the Picture Exchange

Communication (PECS) method of communication and the use of social skills groups for children with autism.

11. Delahoyde was involved in Student's 2004 assessment which found Student eligible for special education under the category of speech and language impairment. She also administered speech and language testing as part of Student's 2005 assessments.

12. During the 2005 assessments, she administered the Test of Language Development – Primary (TOLD-P:3). Delahoyde was familiar with this test and administered it in accordance with the testing manual. The test was valid and reliable for the purposes used.

13. Student's scores on two of the subtests of the TOLD-P:3 – grammatic understanding and sentence imitation – were particularly low. He scored in the second percentile in grammatic understanding subtest and below the first percentile in the sentence imitation subtest. Delahoyde explained that Student could not do any of the sentence imitation in the formal testing. However, when she subsequently tested him informally, he was able to repeat up to 10 syllables 80 percent of the time if the sentence incorporated familiar vocabulary and syntax.

14. A score below seven percent in two or more of these subtests normally qualifies a child for special education under the eligibility category of speech and language impairment. However, based on her informal testing on the sentence imitation test, Delahoyde did not believe the test results supported that eligibility category for Student.

15. She concluded that Student was able to communicate using intelligible speech, but his lack of attention affected his performance. She determined that Student's speech and language needs could be met in his SDC class "through oral language development lessons which are included as part of the academic curriculum."

For that reason, she recommended that his pull-out speech and language services be discontinued.

16. Kimberly Oliver conducted Student's APE assessment in June 2005. As part of her assessment, she administered the Test of Gross Motor Development. She found that Student continued to qualify for APE services. Oliver was familiar with this test and conducted it in accordance with the test instructions.

17. The District's assessment report concluded that Student met the eligibility criteria for special education under the classification of autism due to autistic-like behaviors and that he no longer met the eligibility criteria as a student with a speech and language impairment.

THE INDEPENDENT EDUCATIONAL EVALUATION BY DR. MORRIS

18. Robin Morris, Psy.D, M.F.T., evaluated Student in approximately March through May 2007, at the request of Student's parents. Morris has practiced as a psychologist for 11 years, and worked as a marriage and family therapist for five years before that. She has conducted numerous assessments of children on the autism spectrum.

19. As part of her evaluation, Morris reviewed Student's records, observed Student in class and spoke with District teachers, including: 1) Buchanan; 2) the long-term substitute teacher who taught the class after Buchanan left on medical leave; and 3) the teacher who taught the upper grade District SDC class that Student was expected to move into during the 2007-2008 school year.

20. Morris administered tests to Student, including the Stanford-Binet Intelligence Scales – Fifth Edition, the Woodcock-Johnson Test of Achievement, and the Beery Visual Motor Integration Test. She also used rating scales, including the Sensory Profile, the Autism Diagnostic Interview- Revised, the Vineland Adaptive Behavior Scales, the Social Responsiveness Scale and the Social Skills Rating System.

21. Based on the results of her evaluation, Morris found that Student had an autistic disorder, a reading disorder, and a disorder of written expression. On the standardized academic testing, Student was able to identify basic sight words, but could not read. In math, he had regressed and could not even do basic math that he could do before. She determined that Student's autism interfered with his learning and recommended the Student receive instruction from individuals trained in ABA methodologies. She also recommended that he participate in a general education classroom for at least part of his school day with one-to-one support from an aide trained in ABA methodologies.

22. Morris conducted classroom observations on two occasions: 1) during the time a short-term substitute teacher was teaching Buchanan's SDC class; and 2) when a long-term substitute was teaching the class. Based on her observation of Student's class and her discussion with Student's teachers, Morris believed that Student's current classroom placement was not appropriate for him. The class was very loud and chaotic. Because there were so many children in the class with disabilities that required constant attention, Morris believed that Student was not receiving the attention that he required to make educational progress. Morris was concerned that the same disruptive children who were drawing away the teacher's attention in Student's class would be continuing on with him to the upper grade SDC class during the following school year.

23. Morris also observed Student on the playground. He was wandering around by himself. She saw no efforts by staff to help him interact with other children. When he came back into the classroom, he began engaging in autistic, self-stimulatory behaviors. No one did anything to redirect him.

24. Morris recommended that Student receive an intensive reading program such as Lindamood-Bell or Orton Gillingham to assist him with his reading and spelling skills. She also felt that he should receive occupational therapy one time per week for 60

minutes per session to work on sensory processing issues. She recommended an updated speech-language assessment to determine his need for services.

25. Morris provided her assessment report to Student's parents, and they gave a copy of the report to the District staff at a meeting on June 6, 2007. After reviewing the assessment report, the District staff decided that they needed to assess Student further in light of Morris's findings.

26. On June 18, 2007, Leonard Kaufman, the District's Coordinator of Special Education, sent Student's counsel a proposed assessment plan. The proposed plan included an ABA assessment and a "District provided" Lindamood-Bell assessment, as well as full academic, cognitive, perceptual motor, speech and language, social/emotional and self-help assessments. When there was no response to the request for the assessment, Kaufman followed up with another letter on July 12, 2007.

27. On July 31, 2007, Student's attorney faxed a letter to the District explaining that the parents would not sign the assessment. After receiving that letter, the District could have sought an order from OAH through a due process proceeding to require the assessments. The District did not do so. As of the dates of the hearing, the parents had not agreed to a District reassessment and no further District assessments had been done.

28. The evidence does not support a finding that the District failed to properly assess Student in all areas of educational need. The District's 2005 assessments were comprehensive and addressed Student's areas of need. The testing was done by trained and competent individuals, and the tests and other assessment instruments were valid and reliable for the purposes used. A credentialed school psychologist administered the tests of intellectual and emotional functioning. The tests were administered in Student's native language and were free from cultural, racial or sexual biases. There was no

evidence that Student's circumstances had changed so much by 2007 that a new assessment was mandated.

29. To the extent that additional testing was warranted based on Morris's findings, the District attempted to conduct further assessments, but was prevented from doing so by the parents' refusal to sign the assessment plan. A parent cannot refuse an assessment and then file for due process based on a district's failure to conduct the same assessment the parent refused. There was no violation of FAPE by the District based on a failure to assess.

DID THE DISTRICT PROVIDE STUDENT WITH AN APPROPRIATE PLACEMENT AND SERVICES TO MEET HIS NEEDS AND PROVIDE HIM WITH EDUCATIONAL BENEFIT DURING THE 2006 – 2007 SCHOOL YEAR?[5]

30. Student contends that the placement and services provided to Student during the 2006-2007 school year did not provide him with a FAPE. In particular, Student alleges that the District did not offer or provide appropriate DIS services to Student in the areas of speech and language and OT, Student required intensive educational treatment not offered by the District, the District staff was not appropriately trained in the areas of Student's disability, the classroom setting was not appropriate, and the District did not offer or provide appropriate ABA services to Student.

[5] Normally a due process hearing decision examines whether a district complied with the procedural requirements of special education law before reviewing the substance of the special education program offered by the district. However, because the procedural allegations related to the March 2006 IEP were dismissed, it is appropriate in this instance to examine the substantive program offered for the 2006-2007 school year before turning to the procedural issues involving the 2007 IEP. The March 2006 IEP established Student's program for most of the 2006-2007 school year.

31. The District's 2006-2007 school year began in July 2006. The IEP in effect for Student at the start of the 2006-2007 school year was the IEP developed on March 3, 2006. An IEP must be reasonably calculated to provide a Student with educational benefit based on what the IEP team knew or should have known at the time the IEP was drafted. In this case, however, because the due process request alleges denial of FAPE starting with the 2006-2007 school year, it is necessary to look at what the District knew or should have known at the start of the 2006-2007 school year in July 2006. To make that determination, it is necessary to review the events that led up to the formation of the March 3, 2006 IEP.

32. In June 2005, the parties held an IEP meeting to discuss the results of the District's 2005 assessments. The IEP team changed Student's eligibility category to autism/autistic-like behaviors. The team continued Student in the same SDC placement, but discontinued Student's speech and language pull-out services. The IEP team continued Student's academic goals and added two new APE goals. The IEP team determined that Student's next three-year assessment would be due by June 2, 2008.

33. Student's IEP team met again on July 8, 2005, around the start of the 2005-2006 school year, to review Student's OT assessment and add an OT goal to the IEP.

34. In approximately February 2006, the non-public agency which had been providing OT services to Student on behalf of the District, informed the District that the agency would no longer be able to provide OT services. The District did not find another provider for those services, and Student did not receive his OT services called for in his IEP for approximately six months. The evidence did not establish the date on which these OT services began again, but six months after February 2006 would have been approximately August 2006, within the 2006-2007 school year.

35. On March 3, 2006, the IEP team met for Student's annual review. Student's mother attended the meeting along with various District staff members. The team determined that Student had met two of his IEP goals from the previous year, had partially met two others and had not met one of his APE goals. Student's mother raised concerns about Student's reading.

36. The IEP team agreed to continue Student in the SDC class for all academic subjects. Student would spend approximately 20 percent of his time with general education pupils during lunch, recess and special events. The IEP called for Student to receive 45 sessions of APE for 30 minutes per session, and 25 sessions of OT, for 30 minutes each session.

37. The IEP did not call for any direct speech and language services for Student. Instead, Student would receive speech and language services with the rest of the SDC class on the occasions in which the SLP came into the class to instruct the class on speech issues. The SLP came into the classroom two or three times a month. During these classroom sessions, the SLP often divided the class into small groups led by Buchanan, the SLP, and the two classroom aides to work with the pupils on speech and language issues. These classroom speech and language services were not noted in Student's IEP.

38. Student's March 3, 2006 IEP remained in effect from the start of the 2006-2007 school year in July 2006 until his next annual IEP meeting held on March 9, 2007. During the 2006-2007 school year, Student remained in the SDC class. There were seventeen children in the class that year and two classroom aides in addition to the teacher.

39. Buchanan was scheduled for maternity leave in March 2007. However, she left before that on medical leave in February 2007 and did not return to the class until the following school year. Between February and the end of the 2006-2007 school year,

Student's SDC class was taught by substitute teachers, one short-term substitute teacher who took over the class immediately after Buchanan left on medical leave, and a long-term substitute who took over the class after that.

40. Before Buchanan left for medical leave, she started to draft Student's March 2007 IEP. She worked on some of the present levels of performance and academic goals, but did not complete them. Susan LePard, a resource specialist for the District, took over organizing Student's IEP after Buchanan left and completed the draft IEP.

41. Buchanan did not attend Student's March 9, 2007 IEP meeting. Instead, Susan LePard attended the meeting as a special education teacher. Elizabeth Moore, the school principal, attended the meeting in the capacity of an administrator. An APE teacher and occupational therapist also attended the meeting. No general education teacher, school psychologist or SLP attended the meeting.

42. The District members of the IEP team proposed the same basic placement and services for Student that had been proposed during the previous year: placement in an SDC class for 80 percent of Student's school day, with participation in the general education curriculum for lunch, recess and special events. The IEP called for Student to receive 45 sessions of APE during the school year at 30 minutes a session, as it had the previous year.

43. The amount of OT proposed was 18 sessions, at 30 minutes a session, a lower amount than the previous IEP. The March 2007 IEP provided that the OT services would be "Direct 1:1/Consultation," but did not specify the amount of time which would be direct or consultation during those 18 sessions.

44. The IEP proposed accommodations and modifications to the school curriculum, including: "one to one, small group, multisensory approach, repeat directions or statements and questions, allow extra time to finish work, modify

assignments when needed." These were almost identical to the accommodations and modifications provided the year before.

45. Student made little or no academic progress between the March 3, 2006 IEP and the March 9, 2007 IEP. As of March 9, 2007, Student had not met any of his IEP goals from the previous IEP. In March 2006, Student's present levels of performance on his IEP showed that he could read 40 sight words. A year later, his March 2007 IEP reflected that he knew 44 sight words. The March 2006 IEP had a goal calling for Student to solve 20 addition/subtraction problems up to the number 20 with 80 percent accuracy. A year later, the 2007 IEP reported that had not even partially met the goal, and the 2007 IEP continued the same goal. The 2007 IEP reported that Student had partially met his goal regarding identifying incorrect capitalization in sentences, but the IEP did not specify to what extent he met that goal and the IEP did not continue that goal.

46. The March 9, 2007 proposed IEP was the last offer of placement and services made by the District for the 2006-2007 and 2007-2008 school years, up through and including the dates of this hearing. Although, as discussed below, there were meetings on June 6 and July 31, 2007, no new IEP offer was made by the District.

47. The evidence supports a finding that the District did not provide Student with a FAPE during the 2006-2007 school year because it failed to provide Student with appropriate speech and language services. The law requires a district to provide DIS services that are necessary for a child to access his special education and gain educational benefit.

48. The parties dispute whether the DIS services provided during the 2006-2007 school year should have included direct speech and language services in addition to the general classroom speech and language services. Delahoyde did not believe that Student needed one-to-one speech and language services in order to access his

education and gain educational benefit. She believed that the speech and language services provided to the SDC class were sufficient to meet his needs.

49. Student's speech and language expert JoAnne Abrassart disagreed with Delahoyde's opinion. Abrassart is an SLP with over 35 years of work in the field of speech and language. She has worked as an SLP for school districts and in private practice. She has also worked as a college professor in the communication field.

50. Abrassart assessed Student at the request of his parents in August 2007. As part of her assessment, she reviewed the District's 2005 testing. Based on her review of Delahoyde's 2005 speech and language assessment and the rest of the District's 2005 assessment, she believes that the District should have offered Student one-to-one speech and language services in his March 2006 IEP. She explained that Student needed speech and language services that were pinpointed to him, not just general services provided to the whole class. She feels his needs could not have been met through a general classroom speech and language session or a session in which the teacher or aides worked with a small group. His speech and language deficits interfered with his academic achievement and he needed the direct instruction of an SLP.

51. Abrassart's opinion in this regard is persuasive. She is a highly experienced SLP who had worked for school districts for many years. While Delahoyde was also very experienced, her opinion that Student did not need direct speech and language services is countered by her own test findings in the 2005 assessment. As Delahoyde herself admitted, Student's low scores on two of the subtests would have qualified him for special education under the category of speech and language impairment. The evidence supports a finding that Student needed speech and language DIS services in his March 2006 and March 2007 IEPs, and that the District failed to offer or provide those services. The District failed to provide Student with a FAPE for the 2006-2007 school year.

52. Student also challenges the OT services offered and provided to Student during the 2006-2007 school year. As set forth in Factual Finding 34, the evidence supports a finding that the OT services offered in the March 2006 IEP were not provided to Student for at least six months after February 2006. Even after those services began again during the 2006-2007 school year, there was no evidence that the District offered any additional services to make up for the services that were lost. Student did not meet any of his OT related goals in the March 2007 IEP. Despite this, the IEP team *decreased* the amount of OT DIS services called for in the March 2007 IEP.

53. The evidence supports a finding that the District denied Student a FAPE during the 2006-2007 school year because it did not offer or provide Student with appropriate OT services.

54. Student also contends that he was denied a FAPE during the 2006-2007 school year because the special education program offered and provided by the District was not sufficient to meet Student's educational needs. Student contends that the District should have offered Student an "intensive educational treatment" in order to meet his needs, such as applied behavior analysis (ABA).

55. Educational experts have developed various methodologies for addressing the needs of children with autism and autistic-like behaviors. One of the most widely accepted methodologies involves the use of ABA. ABA is a method of teaching and modifying behavior based on the peer-reviewed research of Dr. Ivar Lovass. It involves a behavioral approach to teaching skills using drills and reinforcement.

56. Another methodology used by school districts to address the needs of autistic children is the TEACCH method.[6] The TEACCH methodology relies on classroom centers and structuring a child's day through written schedules.

57. Some school districts rely on an "eclectic" approach to addressing autism, in which techniques from various methodologies are employed. However, even with an eclectic approach, it is essential that the approach be done consistently. An eclectic approach is not the same as no approach at all.

58. When Morris conducted her observations of Student's class in 2007, she did not see any consistent behavioral approach used to address Student's needs, not even an eclectic approach. In her opinion, this lack of a consistent approach to addressing Student's autistic behaviors affected his academic performance by allowing an increase in his agitation and off-task behavior. Morris also believed that Student's lack of educational progress was due, in part, to the failure of the District to provide an intensive remedial program for Student to address his academic deficits.

59. Because Buchanan left on medical leave in February 2007, Morris was unable to observe Buchanan's class during the time Buchanan was teaching. However, based on the testimony of Buchanan and her classroom aides, the evidence supports a finding that the same teaching approach Morris saw during her classroom observations was also used by Buchanan. Buchanan and her two classroom aides were not trained in the use of ABA techniques. Buchanan had heard of the TEACCH methodology, but she did not know what it was designed to address.

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[6] TEACCH stands for Treatment and Education of Autistic and Communication Handicapped Children. See *Yucaipa-Calimesa Unified School District v. Student* (OAH 2008) 108 LRP 32915.

60. Buchanan had not received any training specific to autism since 2003. Prior to that time, she had received training regarding autism behavior management during District in-service training sessions. Buchanan's classroom aides received training related to autism during monthly in-service programs taught by District staff.

61. Buchanan addressed Student's autism by redirecting him when he engaged in autistic self-stimulatory behaviors. She also had him sit near the front of the class and gave him sensory-related items such as Velcro under his desk to help divert him from those behaviors. The other techniques Buchanan used were the same ones she used for the whole class. For example, she had a behavioral reward system involving play money to make purchases at the classroom "store." She also used stickers and food as rewards, and employed various methods of teaching, such as the use of hands-on "manipulative" items to help children learn. Occasionally when Student did not finish his work, he would stay in at recess to complete it.

62. The law does not generally require a District to use a particular methodology in providing special education to a child. As long as the child's IEP addresses his unique needs and is reasonably calculated to provide him with educational benefit, the District is free to rely upon the teaching methodology that it believes to be most appropriate.

63. The evidence supports a finding that the District should have known as of the start of the 2006-2007 school year in July 2006, that its March 2006 IEP was not meeting Student's needs and was not reasonably calculated to provide him with educational benefit. The District's 2005 assessment found that Student had autistic-like behaviors that interfered with his learning. As of March 2006, the District also knew that Student was significantly behind in all academic areas. Despite that knowledge, the District offered him the same basic program and services as it had in March 2005, when he was eligible for special education under a speech and language category (except that

the District added OT and APE services in June 2005 and took away his one-to-one speech and language services). The District offered no consistent methodology to address his autistic-like behaviors despite the knowledge that those behaviors interfered with his learning.[7]

64. Even if the District thought its program was sufficient in March 2006, by July 2006, the District had reason to know that Student was not meeting his benchmarks for his reading and math goals. At that point, the District should have called an IEP team meeting and reviewed his program. The District should also have realized that its lack of consistency in its approach to Student's autistic behaviors was interfering with his progress and should have taken steps to introduce a consistent methodology to deal with those autistic behaviors.

65. By the March 2007 IEP meeting, the deficiency of the District's program was clear. Student did not meet *any* of his goals. Despite that lack of progress, the District offered no ABA or other consistent methodology designed to address Student's autistic-like behaviors. Instead, the District's offer took away part of his OT services. Even if the District might not have understood in March 2006 that it needed a consistent approach to Student's autism, by March 2007, the District should have known.

[7] There is a heated debate in the special education community about which methodologies are effective to combat autism. It is not necessary to address that debate in this Decision, because the evidence does not show that the District employed any of these methodologies or even an eclectic mix of these methodologies to address Student's needs.

66. The evidence supports a finding that District failed to offer or provide a special education program designed to meet Student's unique educational needs related to his autism and thereby denied Student a FAPE during the 2006-2007 school year.[8]

DID THE DISTRICT COMMIT ANY PROCEDURAL ERRORS DURING THE MARCH 9, 2007 IEP MEETING?

67. In addition to Student's substantive challenge to the District's March 2007 IEP, Student raises several procedural challenges to the IEP. Student alleges that the District failed to allow for parental participation at the IEP meeting, predetermined Student's placement, failed to have the required personnel at the meeting, and proposed goals and objectives that were vague and not capable of measurement. The District contends that it complied with all required procedures at the meeting.

68. Both of Student's parents attended the March 9, 2007 IEP meeting. Student's parents had been growing more and more concerned about Student's lack of progress, particularly his continuing inability to read. Student's mother had also been very concerned when she learned that Student had not been receiving the OT services called for in his IEP. Prior to the March 9, 2007 meeting, Student's parents spoke with an attorney and contacted Morris about an educational assessment. At the time of the

[8] Because Student has proven the substantive denial of FAPE based on the lack of appropriate speech-language and OT services as well as the lack of appropriate special education to address Student's autism, there is no need to consider Student's remaining substantive contentions that Student was denied a FAPE due to lack of appropriately trained staff or an inappropriate classroom setting.

March 2007 IEP meeting, Morris had not completed her assessment. The parents informed the District IEP team members about Morris's assessment and explained that they wanted to wait to sign the IEP until they received Morris's report.

69. The IEP team agreed to reconvene the meeting at a later date. The notes in the IEP state, in part: "The parents are going to review proposed goals and objectives after receiving report. The IEP team will reconvene to finalize IEP."

70. As set forth in Factual Finding 40 above, the proposed goals in the IEP were drafted by Buchanan and finalized by LePard prior to the March 2007 IEP meeting. Those goals were discussed at the meeting, and Student's parents participated in the discussion. As they had in the past, Student's parents raised concerns about Student's problems with reading. They asked about specialized reading programs the District had available and asked about a program that another child was receiving (the "Fast Forward" program). The District staff did not believe that would be an appropriate program to meet Student's needs. There was also discussion about Student's APE progress, and Student's father asked what he could do at home to assist his son.

71. Student's parents were not educators and relied upon the District staff to propose an appropriate program for their son. They did not specifically object to the placement or goals and objectives during the IEP meeting, although they wished to see what Morris said before they agreed to the IEP. The District staff gave the parents a written copy of their parental rights during the meeting along with a draft of the proposed IEP. There was no specific discussion of other potential placements for Student during the meeting because the District staff believed that continued placement in the SDC class was appropriate.

72. The evidence does not support a finding that the District failed to allow for meaningful participation by the parents or predetermined Student's placement. As discussed in Legal Conclusion 21, a district is not supposed to ignore the concerns of

the child's parents and present a "take it or leave it" offer. There is no evidence that any such conduct occurred at the March 2007 meeting. The parents were given an opportunity to express their concerns and did so.

73. While it is true that the parents were not educators and did not know enough to object to the placement and services, that does not mean the District prevented them from participating. It is not required for a district to do a rote recitation of every possible placement at every single IEP meeting, particularly in a situation such as this, in which the child had been in a particular placement for several years and the District personnel believed it was meeting his needs. Even if the District personnel were incorrect in their belief that it met his needs, that does not mean they gave the parents a "take it or leave it" offer. To the contrary, when the parents mentioned Morris's assessment, the District agreed to hold another IEP meeting to review Student's IEP in light of that report. There was no procedural violation.

74. Student also alleges a procedural violation because the District did not have the required personnel at the meeting. As set forth in Factual Finding 41 above, the District did not have a general education teacher at the March 2007 meeting. Student's IEP called for him to be mainstreamed for 20 percent of his day. In addition, Buchanan testified that her class would occasionally enter a mainstream class for collaborative instruction in science and social studies. Given those circumstances, the District should have had a general education teacher at the March 2007 meeting. As discussed in Legal Conclusions 24 – 27 below, the failure to do so was a procedural violation that denied Student a FAPE.

THE GOALS AND OBJECTIVES IN THE MARCH 2007 IEP

75. Student also contends that the goals and objectives in the March 2007 IEP were vague and not capable of measurement. There were seven goals in the proposed

March 9, 2007 IEP. The first goal called for Student to learn to read 40 new sight words. The present levels of performance next to the goal indicated that Student knew 44 of the 220 basic sight words. The goal did not list the 44 words that he knew.

76. The second goal called for Student to perform 10 addition and 10 subtraction problems involving numbers up to 20, with 80 percent accuracy in three out of four trials. The present levels of performance for the goal indicated that Student could add to 10 inconsistently, about 60 percent of the time.

77. The third goal called for Student to copy letters, words and sentences, using correct letter formation and spacing with 80 percent accuracy in four out of five trials. The present levels of performance indicated that Student could copy off the board, but had poor handwriting skills: "not much pressure when writing or legible."

78. The fourth goal called for Student to respond to who, what, when, where, and how questions after listening to a first grade story with 80 percent accuracy in three out of four trials. The present levels of performance indicated that Student "[d]oesn't always respond when asked questions and is inconsistent with answers when he does respond."

79. The fifth goal called for Student to demonstrate understanding of mathematical symbols ("+," "-" and "=") when presented with 10 math problems with 80 percent accuracy in three out of four trials. The present levels of performance for that goal indicated that Student was inconsistent in recognition and application of those symbols.

80. The sixth goal was an APE goal and called for Student to hop forward five times on his preferred foot in four out of five trials, given one demonstration and verbal cues. The present levels of performance indicated that Student could not hop without assistance and could hop forward with his hand held.

81. The seventh goal was also an APE goal. It called for Student to hit a lightly tossed ball from seven feet away "demonstrating proper/mature swing pattern" in three out of five trials with verbal cues. The present levels of performance indicated that Student was able to hit a ball off a tee using a chopping motion.

82. The evidence supports a finding that the goals were not vague or incapable of measurement. With each goal it was clear what Student was supposed to accomplish and how to tell whether it was accomplished. Goals in an IEP are not a precise, scientific collection of data. Instead, they are just intended to be a means to tell whether a child is progressing. These goals served that function – the District staff was able to use the prior year's goals to determine that Student had not made academic progress. The new goals were similar. There was no violation of FAPE due to the goals and objectives in the March 9, 2007 IEP.

THE JUNE 6, 2007 MEETING

83. As stated in Factual Findings 68 – 69 above, at the end of the March 9, 2007 IEP meeting, the IEP team agreed to meet again to receive Morris's report and finalize the IEP. In April or May, LePard telephoned Student's parents to arrange for a meeting, and they ultimately agreed to meet on June 6, 2007. The parties dispute whether the June 6, 2007 meeting was an IEP meeting.

84. The purpose of the June 6 meeting was to allow Student's parents to present Morris's report to the District staff and to sign the IEP. No formal, written notice of an IEP meeting was sent out, but the parents believed the June 6 meeting was supposed to be the continuation of the IEP meeting called for in the March 9, 2007 IEP. Student's parents both attended the meeting with their attorney Ralph Lewis. They provided a copy of Morris's report to the District staff at the meeting.

85. Susan LePard organized and attended the June 6, 2007 meeting. She believed the meeting was not an IEP meeting.

86. Christy Dunlap, a school psychologist, was not originally scheduled to attend the June 6 meeting. She was on campus at the time the meeting started, and was called into the meeting because the District staff at first mistakenly believed that Ralph Lewis was the private psychologist who did the independent assessment of Student. Dunlap did not know the purpose of the meeting at the time she attended. She never received a prior notice for the meeting as she did for IEP meetings.

87. Elizabeth Moore, the school principal who attended the March 2007 IEP, was not available to attend the June 6 meeting. She testified that she had written the June 6 meeting date on her calendar, and that it was supposed to be a continuation of the March IEP meeting. However, she had another commitment that day so she was unable to attend.

88. Bonita Barnett, who was at that time the assistant principal, attended in place of Moore. She testified that she was called into the meeting when LePard discovered that Student's parents brought an attorney with them. She was never sent a prior notice for the meeting.

89. The evidence supports a finding that the June 6 meeting was, in fact, an IEP meeting for Student. The March IEP called for a reconvened IEP meeting to discuss the independent assessment and finalize the IEP. That was precisely what the June 6 meeting was intended to accomplish. Whether or not LePard sent out a formal, written notice of the meeting, it clearly was an IEP meeting and the parents attended in the belief that it was an IEP meeting. Even Elizabeth Moore believed that an IEP meeting had been set for that date.

90. In the District's written closing argument, the District contends that finding the June 6 meeting to be an IEP meeting "would allow the Parents to recast a meeting

scheduled by the District as an IEP team meeting and then attack the District for not complying with all of the IEP team meeting requirements under state and federal law." The District is not correct. The *IEP team*, not the Student or the District, determined that the team would meet again to accept Morris's report and finalize the IEP. The District staff could not unilaterally thwart the decision of the IEP team simply by choosing not to properly notice the June 6 meeting as an IEP meeting or by failing to invite the proper District staff.

91. At the very least, if the District chose not to hold a full IEP team meeting despite the previous IEP team decision to do so, the staff should have notified the parents that the June 6 meeting was not a formal IEP meeting. Then the parents could decide whether to attend the informal meeting or wait for a formal IEP meeting with all of its procedural protections. Instead, because no such notice was given, the parents relied on the IEP team's decision to continue the meeting and showed up at the meeting with their attorney.

92. The parties also dispute whether the District's actions during the June 6 meeting were reasonable once they discovered that Ralph Lewis was the parents' attorney. The evidence supports a finding that the District's actions were not reasonable.

93. The day before the June 6 meeting, Lewis sent a fax to the District informing the District that he was representing Student's parents and would attend the meeting with them. The fax was not sent to the special education department fax line, but was instead sent to the main District fax number. As a result of this, LePard and the other District staff members in attendance at the meeting did not know that the parents were planning to bring an attorney with them to the June 6 meeting.

94. As discussed in Factual Finding 86 above, when the parents first showed up at the June 6 meeting with their attorney, the District staff thought Lewis was the psychologist who had performed the evaluation. When they learned that he was an

attorney, Barnett telephoned the District Office. After that telephone conversation, she ended the meeting. The District felt that it was not appropriate to continue a meeting when the parents had an attorney present but the District did not.[9]

95. Student's parents and their attorney asked to go forward with the meeting, but the District did not do so. Lewis wrote a dissent to the March IEP proposal, signed by Student's mother, which he gave to the District staff at the meeting. In their dissent, Student's parents notified the District that they disagreed with the March IEP. They said they would be pulling their son from the District program based on Morris's recommendation and placing him in a private educational program. The parents did not name a specific private school at the meeting or in their written dissent. Student thereafter ceased attending District schools.

96. The District's actions in ending the June 6 meeting were not reasonable. As discussed in Legal Conclusions 30 – 34, the law permits parents to bring "a representative selected by the parent" with them to an IEP meeting and makes that individual part of the IEP team. There is no legal requirement that the parents provide written notice when they bring an attorney to an IEP meeting. While the District preferred to have its own counsel present, there is no evidence that the District staff, who had conducted hundreds of IEP meetings, would need an attorney to tell them how

[9] The District's action in this regard is further evidence that the June 6 meeting was an IEP meeting. If it had truly been an informal meeting to receive an evaluation and let the parents sign a document, it is unclear why the District staff would have felt disadvantaged to be without an attorney.

to run a meeting or respond to parental concerns. This was an IEP meeting, not a court proceeding.

97. The evidence supports a finding that the District did not allow parental participation at the June 6, 2007 IEP meeting. By ending the meeting abruptly, before the parents had any opportunity to discuss their expert's report and what Student's program should be, the District failed to allow the parents the participation required at an IEP meeting. That procedural violation significantly impeded the parents' opportunity to participate in the decision making process with regard to their son's education and resulted in a denial of FAPE.

98. The other procedural violations Student alleged for the June 6 meeting are the same as the March IEP meeting. The goals and objectives did not change from the March IEP and were valid for the reasons stated in Factual Finding 82 above. There was no general education teacher present at the June 6, 2007 IEP meeting, so the same considerations apply as in Factual Finding 74 above.

99. There was no predetermination of placement on June 6. The District staff only received Morris's report that day. They needed time to review and evaluate it before they could determine if the placement and services they offered to Student were appropriate.

THE JULY 31, 2007 MEETING

100. On June 18, 2007, Leonard Kaufman, the District's Coordinator of Special Education, sent Student's counsel a letter, in which he stated that the June 6 meeting was not an IEP meeting. His letter stated, in part, that: "On June 4, [Student's] parents were informed by phone confirming that the purpose of the meeting on June 6 was to obtain student's independent evaluation and answer questions about the IEP for parents' signature."

101. The letter asked Student's counsel to contact Kaufman's office regarding IEP dates. The letter also included the assessment plan discussed in Factual Finding 26 above.

102. The letter concluded with the statements:

> Please advise parents that if they unilaterally select to obtain educational services outside of the District, it will be at their expense. At this time, the District has no responsibility to sponsor non District provided services since we have many services available within our district including Linda Mood-Bell and ABA supports.

103. Neither the parents nor their attorney responded to Kaufman's letter. Student's parents contacted the Center for Autism and Related Disorders (CARD) about providing services for Student. CARD did an initial intake evaluation of Student on July 17, 2007, and thereafter began providing one-to-one ABA therapy to Student at home.

104. On July 12, 2007, Kaufman sent a letter to Student's attorney, once again asking the parents to sign the proposed assessment plan. The letter included three notices for possible IEP meeting dates at the end of July. The letter also threatened to file proceedings with the School Attendance Review Board (SARB) unless Student started attending school in the District or "another certificated school program by the end of next week."

105. On July 25, 2007, Trevor Dietrich, the assistant principal, contacted Student's father because Student had not begun the new school year in the District's SDC class. He wanted to know where Student was attending school and mentioned the possibility of SARB proceedings. Student's father told him to talk to Attorney Lewis.

106. Dietrich followed up that conversation by sending a letter by certified mail, return receipt requested, to Student's parents once again threatening to file a SARB proceeding if the parents did not bring Student to school or provide the name of the private school he was attending. The parents did not accept service of that certified letter and it was returned by the post office to the District undelivered.

107. The District held an IEP meeting on July 31, 2007, the third date of the three noticed. Neither the parents nor their attorney attended the meeting. During the meeting, the District members of the IEP team once again proposed the March 9, 2007 IEP as the offer of placement and services without any changes or additions. They also agreed to refer the parents to the SARB. Bernadette Meade, a Lindamood-Bell specialist who began working for the District on July 3, 2007, attended the meeting, but no Lindamood-Bell services were placed into Student's proposed IEP or offered as part of Student's program. No ABA services were offered in the proposed IEP.

108. Kaufman sent Student's counsel a letter that same day, enclosing a copy of the IEP and discussing the District's referral of the parents to the SARB proceedings. The letter once again enclosed a copy of the proposed assessment plan.

109. Late that same evening, Student's counsel faxed two letters to the District disputing the District's previous letters. One of the letters explained that Student was receiving educational services from CARD.

110. On August 3, 2007, the District's counsel sent a letter to Student's counsel explaining that the District would continue with the SARB referral because CARD "is not a school, nor does CARD hold itself out as a school." The District carried out its threat and referred the parents to SARB proceedings.

111. In order to end the SARB proceedings, Student's parents were forced to find a school quickly for Student. Crossroads Christian School (Crossroads) accepted Student in its general education classroom beginning in September 2007. Student

began attending Crossroads for part of his day with an aide provided by CARD. Student continued to receive CARD one-to-one ABA services at home. On September 13, 2007, the District sent a letter to the parents rescinding the SARB notice for a hearing set for September 20, 2007, based on Student's attendance at Crossroads.

112. The District has not noticed or held any IEP meetings for Student since July 31, 2007. Student's parents never signed the District's proposed assessment plan, and the District has not conducted any assessments of Student since 2005. The District has never sought to enforce its proposed assessments through a due process proceeding.

DID THE DISTRICT OFFER A FAPE FOR THE 2007-2008 SCHOOL YEAR?

113. The March 9, 2007 IEP offer was the last offer made by the District up to and including the time of the due process hearing in this case. When the District held its July 31, 2007 meeting, the District reaffirmed that the March 9, 2007 IEP was the District's offer of FAPE. As set forth in Factual Findings 30 – 66, the District's March 2007 IEP did not offer Student a FAPE. Therefore, the evidence supports a finding that the District did not offer Student a FAPE during the 2007-2008 school year.

PARENTS' INDEPENDENT EDUCATIONAL EVALUATIONS AND PRIVATE EDUCATIONAL SERVICES

114. In approximately August 2007, Student's parents paid for an independent OT assessment for Student. Russo, Fleck & Associates conducted the assessment. These were the same occupational therapists that assessed Student during his 2005 assessment by the District. The report recommended that Student receive OT one time per week for a year and physical therapy one time per week for a year. Student's parents did not provide the District with a copy of this assessment prior to the filing of this due process case.

115. As stated above in Factual Finding 50, in August 2007, Student's parents paid for a speech and language assessment of Student by Abrassart. Student's parents did not provide the District with a copy of this assessment prior to the filing of this due process case. After her assessment, Abrassart began providing individual speech and language services to Student at his parents' expense. Abarassart is not a non-public agency (NPA) provider certified by the State of California.

116. On September 21, 2007, Abramson Audiology conducted a central auditory processing evaluation of Student at the request of Student's parents. The report concluded that Student had auditory processing deficits and suggested various accommodations and strategies for remediation. Student's parents did not provide the District with a copy of this assessment prior to the filing of this due process case.

117. On December 18, 2007, the Inland Regional Center conducted an assessment of Student and determined that he qualified for Regional Center Services on the basis of an autistic disorder. Thomas F. Gross, Ph.D., the assessor, believed that Student's ABA services from CARD were appropriate and should be continued. Student's parents did not provide the District with a copy of this assessment prior to the filing of this due process case.

118. Beginning in approximately March 2008, Student's parents paid Lindamood-Bell to provide specialized reading instruction to Student. Student was tested and retested by Lindamood-Bell as part of that reading program.

119. Student continued to attend Crossroads throughout the 2007-2008 school year. He also continued to receive services from CARD, Lindamood-Bell, and speech and language services from Abrassart throughout the 2007-2008 school year.

120. Student made educational progress in the placement and services provided by his parents during the 2007-2008 school year. The placement and services provided were appropriate to meet his educational needs.

PARENTS' COSTS FOR PRIVATE EDUCATION AND ASSESSMENTS

121. As of May 31, 2008, Student's parents had spent the following amounts for Student's testing and education:

a. Testing by Dr. Morris: $2,475; transportation to the Morris testing: $31

b. Crossroads Christian School Tuition and supplies: $6,675

c. CARD services and transportation through March 2008: $66,765.80

d. Speech-language services by Abrassart: assessment and transportation in August 2007: $2,353; Speech-language services through April 2008: $1,868.75

e. OT testing by Russo & Fleck: $425; transportation to OT testing: $64

f. Audiology testing: $625; transportation to audiology testing: $65

g. Lindamood-Bell services and transportation: $12,638.

122. The District contends that Student did not submit sufficient evidence to support these costs. That contention is not well taken. Student's father put together the summary of his expenses and testified regarding the money the parents paid. The District brought in no evidence to challenge any of his testimony regarding the money spent. Student's father was a highly credible witness, and his testimony, along with the receipts and invoices entered into evidence, is sufficient to support a finding regarding the amount of money Student's parents spent to educate their son during the 2007-2008 school year.

LEGAL CONCLUSIONS

1. The Student has the burden of proof in this proceeding. (*Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528].)

THE DISTRICT PROPERLY ASSESSED STUDENT IN ALL AREAS OF EDUCATIONAL NEED

2. Prior to making a determination of whether a child qualifies for special education services, a school district must assess the child. (20 U.S.C. § 1414(a), (b); Ed.

Code, §§ 56320, 56321.) A school district must reassess a special education student not more frequently than once a year, but at least once every three years. (20 U.S.C. § 1414(a)(2)(B); Ed. Code, § 56381, subd. (a)(2).) However, a district may not assess or reassess a child without parental consent. (20 U.S.C. § 1414(a)(1)(D); Ed. Code, § 56381, subd. (f)(1).) [10]

3. School districts must perform assessments and reassessments according to strict statutory guidelines that prescribe both the content of the assessment and the qualifications of the assessor(s). The district must select and administer assessment materials in the student's native language and that are free of racial, cultural and sexual discrimination. (20 U.S.C. § 1414(b)(3)(A)(i); 34 C.F.R. § 300.304(c)(1); Ed. Code, § 56320, subd. (a).) The assessment materials must be valid and reliable for the purposes for which the assessments are used. (20 U.S.C. § 1414(b)(3)(A)(iii); Ed. Code, § 56320, subd. (b)(2).) They must also be sufficiently comprehensive and tailored to evaluate specific areas of educational need. (20 U.S.C. § 1414(b)(3)(C); 34 C.F.R. § 300.304(c)(6); Ed. Code, § 56320, subd. (c).) Trained, knowledgeable and competent district personnel must administer special education assessments. (20 U.S.C. § 1414(b)(3)(iv); Ed. Code, §§ 56320, subd. (b)(3), 56322.) A credentialed school psychologist must administer psychological assessments and individually administered tests of intellectual or emotional functioning. (Ed. Code, §§ 56320, subd. (b)(3), 56324, subd. (a).)

4. In performing a reassessment, a school district must review existing assessment data, including information provided by the parents and observations by teachers and service providers. (20 U.S.C. § 1414(c)(1)(A); Ed. Code, § 56381, subd. (b)(1).) Based upon that review, the district must identify any additional information that is

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[10] The federal code uses the term "evaluation" instead of the term "assessment" used by California law, but the two terms have the same meaning for these purposes.

needed by the IEP team to determine the present levels of academic achievement and related developmental needs of the student and to decide whether modifications or additions in the child's special education program are needed. (20 U.S.C. § 1414(c)(1)(B); Ed. Code, § 56381, subd. (b)(2).) The district must perform assessments that are necessary to obtain such information concerning the student. (20 U.S.C. § 1414(c)(2); Ed. Code, § 56381, subd. (c).)

5. As set forth in Factual Findings 1 – 29 above, Student has not met his burden of showing that the District failed to assess Student properly to determine his educational needs. The District's 2005 assessments were comprehensive and thorough. The assessors were trained, knowledgeable and competent to administer the tests and assessments.

6. Those assessments were still valid in 2007 when Morris conducted her assessment. To the extent that the District needed additional assessments based on Morris's assessment, Student's parents prevented those additional assessments by refusing to sign the assessment plan. (See *Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1307, 1315.)

THE DISTRICT DID NOT PROVIDE STUDENT WITH A FAPE DURING THE 2006-2007 AND 2007-2008 SCHOOL YEARS.

7. Under the federal Individuals with Disabilities Education Act (IDEA) and corresponding state law, students with disabilities have the right to a FAPE. (20 U.S.C. § 1400 et seq.; Ed. Code, § 56000 et seq.) FAPE means special education and related services that are available to the student at no cost to the parents, that meet the state educational standards, and that conform to the student's IEP. (20 U.S.C. § 1401(9); Cal. Code Regs., tit. 5, § 3001, subd. (o).)

8. The congressional mandate to provide a FAPE to a child includes both a procedural and a substantive component. In *Board of Education of the Hendrick Hudson*

Central School District v. Rowley (1982) 458 U.S. 176 [102 S.Ct. 3034], the United States Supreme Court utilized a two-prong test to determine if a school district had complied with the IDEA. First, the district is required to comply with statutory procedures. Second, a court will examine the child's IEP to determine if it was reasonably calculated to enable the student to receive educational benefit. (*Id.* at pp. 206 – 207.)

9. California law sets a two year statute of limitations for due process actions. A due process case must be filed within two years of the date "the party initiating the request knew or had reason to know of the facts underlying the basis for the request." (Ed. Code, § 56505, subd. (l).)

10. Student's due process request was filed on April 16, 2008, so the two-year statute of limitations bars any claims that Student might have based on events that occurred prior to April 16, 2006. The March 3, 2006 IEP meeting occurred outside that two-year statutory period. Therefore any procedural claims regarding the formation of the March 3, 2006 IEP are barred by the two-year statute.

11. However, the 2006-2007 school year began in July 2007, within the statute of limitations period. The District claims that because Student's educational program at the beginning of the 2006-2007 school year was based on the March 3, 2006 IEP, Student's substantive claims prior to the March 2007 IEP are also barred. The District argues that an IEP is a "snapshot" in time (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149), so the issue is what was reasonably calculated to provide a FAPE to Student at the time of the March 2006 IEP meeting. Since that IEP meeting was outside the statute of limitations period, the District contends that all of Student's substantive claims are barred until the next IEP held in March 2007.

12. The District's position is not well taken. If the Legislature had wanted to make the statute of limitations dependent on the date of the IEP meeting, it would have stated that. Instead, the code talks about the facts underlying the basis for the due

process request. Certainly, any procedural problems with the March 2006 IEP would be barred by the statute of limitations, because those problems would have occurred at that meeting outside of the two-year period. However, the substantive requirement to provide an appropriate special education program that meets a child's needs does not end on the day of the IEP meeting, but instead continues to the next meeting. To the extent that those services fall within the two-year period, a Student may properly bring a claim that the provision of those services denied Student a FAPE.

THE DISTRICT DID NOT OFFER OR PROVIDE APPROPRIATE DIS SERVICES

13. An IEP must offer DIS services to a pupil if those services are necessary to permit the child to benefit from special education, including services such as speech and language therapy and OT. (Ed. Code, § 56363, subd. (a).)

14. As set forth in Factual Findings 47 – 53, the District did not offer or provide appropriate OT and speech and language services to meet Student's needs and permit him to benefit from his special education.

THE DISTRICT DID NOT OFFER OR PROVIDE EDUCATIONAL SERVICES TO MEET STUDENT'S NEEDS

15. The law requires an IEP team to meet at least annually "to determine whether the annual goals for the pupil are being achieved, and revise the individualized education program, as appropriate, to address among other matters the following: (1) Any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate…." (Ed. Code, § 56341.1, subd. (d).) An IEP meeting must be called when the "pupil demonstrates a lack of anticipated progress." (Ed. Code, § 56343, subd. (b).)

16. As set forth in Factual Findings 30 – 66, the District did not provide Student with a special education program and services designed to meet his unique

needs during the 2006-2007 school year. By the start of the 2006-2007 school year, which was approximately four months after the signing of Student's March 2006 IEP, the District staff had knowledge that Student was not making any progress on his reading and math goals, yet the District did nothing to address those concerns. The District staff did not call an IEP meeting, did not propose new assessments and did nothing to provide a consistent methodology to address Student's autistic behaviors.

17. While it is true that a district's choice of one methodology over another will not be overturned as long as the child is receiving educational benefit (see *Adams v. State of Oregon, supra,* 195 F.3d at p. 1149), in the instant case, it should have been apparent to the District by July 2006 that its placement and services were not providing Student with even the basic floor of educational opportunity.

18. By the time of the March 2007 IEP, the District staff knew that Student had not met *any* of his IEP goals, but the District did nothing to alter his special education program and services to address his needs. The District's March 2007 IEP was not reasonably calculated to meet Student's educational needs or provide him with educational benefit.

19. As set forth in Factual Finding 113, the March 9, 2007 IEP offer was the only proposed IEP offered by the District from that date through the time of the hearing, at the end of the 2007-2008 school year. It was deficient and denied Student a FAPE the 2007-2008 school year for the same reasons as the previous year.

20. Student met his burden of showing that the District denied Student a FAPE for the 2006-2007 and 2007-2008 school years.

THE DISTRICT DID NOT DENY STUDENT A FAPE AT THE MARCH 2007 IEP MEETING BY PREDETERMINING THE PLACEMENT OR FAILING TO PROVIDE FOR PARENTAL INPUT.

21. Parents are an important part of the IEP process. An IEP team must include at least one parent of the special education child. (Ed. Code, § 56341, subd. (b)(1).) The IDEA contemplates that decisions will be made by the IEP team during the IEP meeting. It is improper for the district to prepare an IEP without parental input, with a preexisting, predetermined program and a "take it or leave it" position. (*W.G. v. Board of Trustees of Target Range School District* (9th Cir. 1992) 960 F.2d 1479, 1484.)

22. As discussed in Factual Findings 67 – 74 above, Student's parents had an opportunity to participate fully in the March 2007 IEP team meeting. Student failed to meet his burden to show otherwise. The parents participated in the discussion of goals and the District personnel readily discussed the goals with them. When the parents explained that they had an outside expert assessing Student, the District personnel properly determined that the IEP team would meet again to consider that outside report. The parents trusted the District and did not object to the District's proposals, but that is not the same as saying the District personnel prevented them from commenting or refused to consider what they said.

23. Student has also failed to meet his burden of showing that the District personnel predetermined Student's placement and services. There is no evidence in this case that the District personnel insisted on a pre-chosen placement no matter what the parents wanted. It is true that the District came to the meeting with a recommended placement, but there is no evidence that they were unwilling to discuss other options.

THE FAILURE TO HAVE A GENERAL EDUCATION TEACHER AT THE MARCH 2007 IEP DENIED STUDENT A FAPE.

24. Education Code section 56341, subdivision (b) provides that an IEP team must include: "Not less than one regular education teacher of the pupil, if the pupil is, or may be participating in the regular education environment."

25. Cases have interpreted this requirement very strictly. If a general education teacher should be at an IEP meeting and is not present, that constitutes a procedural violation of IDEA. (*M.L. v. Federal Way School District* (9th Cir. 2004) 394 F.3d 634, 643.) There is no dispute that no general education teacher attended the March 9, 2007 IEP team meeting. As set forth in Factual Finding 74, Student was a child who participated in the regular education environment on a collaborative basis for science and social studies. In addition, as set forth in Factual Findings 111, 117 and 120, the evidence indicated that he was capable of participating in the general education environment with an appropriately trained classroom aide. Although the District did not propose that placement in its March 2007 IEP, it was a reasonable possibility. The evidence supports a finding that Student came under the category of a child who "may be participating in the regular education environment." A general education teacher should have been at his IEP team meetings. The failure to have one present was a procedural violation of IDEA.

26. Not every procedural violation of IDEA results in a substantive denial of FAPE. (*W.G. v. Board of Trustees of Target Range School District, supra,* 960 F.2d at p. 1484.) According to Education Code section 56505, subdivision (f)(2), a procedural violation may constitute a substantive denial of FAPE only if it:

(A) Impeded the child's right to a free appropriate public education;

(B) Significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a free appropriate public education to the parents' child; or

(C) Caused a deprivation of educational benefits.

27. The evidence supports a finding that the failure to have a general education teacher at the March 2007 IEP team meeting impeded Student right to a FAPE and caused a deprivation of educational benefits. A general education teacher would have been able to discuss the possibility of Student participating in a general education classroom, with or without an aide, and whether he would make educational progress in such a setting. The lack of a general education teacher left the IEP team without a critical viewpoint during the meeting and resulted in a substantive denial of FAPE.

THE GOALS AND OBJECTIVES IN THE MARCH 9, 2007 IEP WERE NOT VAGUE.

28. An IEP is a written document that includes statements regarding a child's "present levels of academic achievement and functional performance" and a "statement of measurable annual goals, including academic and functional goals" designed to meet the child's educational needs. (Ed. Code, § 56345, subds. (a)(1), (2).) The IEP must also contain a description "of the manner in which the progress of the pupil toward meeting the annual goals…will be measured and when periodic reports on the progress the pupil is making…will be provided." (Ed. Code, § 56345, subd. (a)(3).)

29. As discussed in Factual Findings 75 – 82 above, the goals and objectives in the March 2007 IEP were not vague. They were clear and capable of measurement. There was no denial of FAPE based on the goals and objectives.

THE DISTRICT COMMITTED PROCEDURAL VIOLATIONS OF IDEA AT THE JUNE 6, 2007 IEP MEETING

30. As discussed in Factual Findings 83 – 91, the evidence supports a finding that the June 6, 2007 meeting was an IEP meeting. Because it was an IEP meeting, the failure to have a general education teacher at the meeting denied Student a FAPE for the reasons set forth in Legal Conclusions 24 – 27 above.

31. The evidence also supports a finding that the District denied Student's parents a meaningful opportunity to participate in the June 6 meeting. As set forth in Factual Findings 92 – 97 above, the District allowed the parents no chance at all to participate because the District shut down the meeting immediately upon learning that the parents brought an attorney.

32. The District cites to no authority to support its actions in ending the meeting because the parents brought an attorney. Education Code section 56341, subdivision (b) provides that the IEP team shall include: "One or both of the pupil's parents, a representative selected by a parent, or both…." There is no requirement in that code section for the parents to give the district notice that an attorney will be accompanying them to an IEP meeting.

33. Certainly it is more courteous for an attorney to provide notice to a district, and Lewis did give notice, although the notice did not go to the most direct fax line. However, the failure by the District personnel to receive that prior notice does not justify an immediate shut-down of an IEP meeting. The District's conduct in doing so significantly impeded the parents' opportunity to participate in the decision making process and resulted in a substantive denial of FAPE. (Ed. Code, § 56505, subd. (f)(2)(B).)

34. However, the evidence does not support a finding that the District predetermined Student's placement at the June 6 meeting. There was no discussion of placement whatsoever. The evidence also does not support a finding that the goals and objectives in the June 6 IEP was vague and not capable of measurement. They were the same goals as in the March IEP, and were valid for all the reasons discussed in Legal Conclusions 28 – 29 above.

STUDENT IS ENTITLED TO REIMBURSEMENT FOR EDUCATIONAL EXPENSES AND DR. MORRIS'S ASSESSMENT

35. Compensatory education is an equitable remedy designed to "ensure that the student is appropriately educated within the meaning of the IDEA." (*Parents of Student W v. Puyallup School District, No. 3* (9th Cir. 1994) 31 F.3d 1489, 1497.) There is no obligation to provide a day-for-day compensation for time missed. The remedy of compensatory education depends on a "fact-specific analysis" of the individual circumstances of the case. (*Ibid.*) The court is given broad discretion in fashioning a remedy, as long as the relief is appropriate in light of the purpose of special education law. (*School Committee of the Town of Burlington, Massachusetts v. Department of Education* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996].)

36. As set forth in Factual Findings 114 – 122, Student's parents went through considerable expense to provide an appropriate education for Student during the 2007-2008 school year. Student made educational progress during the year he received these private services and his placement was appropriate. It is appropriate to require the District to reimburse Student's parents for the cost of these services.

37. It is also appropriate to require the District to reimburse Student's parents for the cost of Robin Morris's assessment. Although the District had properly assessed Student in 2005, it did not provide Student with appropriate services based on its own assessments. Student's parents had to obtain an independent assessment in order to determine what the appropriate services should be.

38. However, it would not be equitable to require the District to pay for the remaining assessments. Student's parents did not provide the District with copies of these assessments or even notify the District about them until after this due process case was filed.

39. The District argues that it would be inequitable to require the District to reimburse the parents for their expenses because the parents refused to sign the District's June 2007 assessment plan and refused to cooperate in scheduling another IEP team meeting.

40. This District's position is not well taken. The equities of this case weigh strongly in favor of the parents. The District's actions in June and July 2007 were unreasonable. The District shut down the June 6 meeting solely because the parents brought an attorney with them. The District then began threatening the parents with SARB proceedings and even began those proceedings despite the knowledge that the Student was receiving ABA services from CARD.

41. Further, the District did nothing for almost a whole year after July 31, 2007, to obtain new assessments or to change Student's program in light of Morris's assessment. If the District genuinely believed that it needed new assessments to prepare a proper IEP offer, the District could have filed for due process to seek new assessments. Instead the District seemed more interested in initiating SARB proceedings than due process proceedings.

42. Until the June 6 meeting, Student's parents had cooperated with the District in every respect. They had trusted the District and signed every IEP until March 2007. Even in March 2007, they did not dispute the District's offer, but simply asked to discuss it again after they received their expert's report. It was the District that stopped cooperating, first by shutting down the meeting and then threatening SARB proceedings. It is true that the parents also failed to cooperate by refusing to sign the assessment, but under the circumstances of this case, the balance of equities weighs in favor of the parents.

43. The District objects to an order for continuing placement at Crossroads and continuing speech and language services from Abrassart because they are not

certified non-public providers with the State of California. The law does not permit OAH to order a school district to place a child prospectively in a private placement, unless it is certified. (Ed. Code, § 56505.2, subd. (a).)

44. It is not necessary to address this issue, because there is no need for this Decision to order any prospective placement. The 2007-2008 school year has ended. Student's parents are entitled to reimbursement of their expenses for the 2007-2008 school year, as proven at hearing. The evidence supports a finding that the year of intensive, private services provided to Student at his parents' expense during the 2007-2008 school year is sufficient to compensate Student for any educational loss he had as a result of the District's failure to provide a FAPE during the 2006-2007 and 2007-2008 school years. There is no need for this Decision to discuss Student's placement for the 2008-2009 school year.

45. The total spent by the parents to provide Student with his educational services and transportation costs, according to the evidence presented at hearing, is $90,453.55. This amount includes all Crossroads expenses, CARD expenses, Lindamood-Bell expenses, Morris's assessment, and speech and language services provided by Abrassart. It does not include the assessment costs or transportation costs for the assessments done by Abrassart, Russo & Fleck, and Abramson Audiology. The cost of testing done by Lindamood-Bell and CARD is included in the amount reimbursed because the evidence indicated the testing was a necessary part of the services provided, not a separate educational assessment.

ORDER

The District shall reimburse Student's parents the amount of $90,453.55 within 90 days of the date of this Decision.

PREVAILING PARTY

Pursuant to Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. In accordance with that section the following finding is made: Student prevailed on all issues in this case, except issues 1, 4 and 6. The District prevailed on issues 1, 4 and 6.

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 in accordance with Education Code section 56505, subdivision (k).

Dated: July 14, 2008

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings