BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT on behalf of STUDENT, v. EAST WHITTIER CITY SCHOOL DISTRICT.	OAH CASE NO. 2009010196

DECISION

Administrative Law Judge (ALJ) Susan Ruff, Office of Administrative Hearings (OAH), State of California, heard this matter on April 22, 24, 29, 30, May 1, 12, 14, and June 8 and 9, 2009, in Whittier, California.[1]

Ralph O. Lewis, Jr., Esq., represented Student and his parents (Student). Student's mother was present during most of the hearing. Student was not present.

Christopher H. Knauf, Esq., represented the East Whittier City School District (District). Elisa Yasutomi also appeared on behalf of the District.

Student filed his request for a due process hearing on January 8, 2009. On February 20, 2009, OAH granted the parties' request for a continuance of the hearing. During the hearing, the parties requested and received permission to file written closing

[1] The hearing was also scheduled for May 13, 2009, but due to counsel's family emergency, it did not go forward that date.

argument. Pursuant to the parties' stipulation, the case was deemed submitted upon receipt of those written closing briefs on June 26, 2009.[2]

ISSUES

The issues for this hearing were those set forth in Student's due process hearing request, as clarified during the prehearing conference held before OAH on April 13, 2009:[3]

(A) Did the District deny Student a free and appropriate public education (FAPE) for the 2008-2009 school year and the 2009 extended school year by:

ASSESSMENT ISSUE:

1) Failing to adequately assess Student in all areas of suspected disability;

PROCEDURAL ISSUES:

2) ailing to develop an IEP within the time required by law;
3) Failing to have the appropriate people, in particular a general education teacher and school nurse, at the July 2008 IEP meeting;[4]

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[2] To maintain a clear record, the parties closing briefs have been marked for identification as Exhibit S-70 (Student's closing brief) and Exhibit D-66 (District's closing brief).

[3] The order of these issues has been revised to assist with the clarity of this Decision.

[4] This issue was not included in the Prehearing Conference Order, but was alleged in Student's initial due process request and was reaffirmed by Student's counsel during the hearing.

4) Significantly impeding parents' right to participate in the IEP process by failing to discuss the continuum of services at an IEP meeting, and failing to consider the views and reports of parents' experts;
5) Predetermining Student's placement;
6) Failing to make a sufficiently specific offer that could be clearly understood by parents;
7) Changing goals and objectives outside the presence of parents and some members of the individualized education program (IEP) team;
8) Failing to give prior written notice of its decision to change Student's placement from Pacific Child and Family Associates;
9) Failing to allow Student's parents or experts sufficient time to observe the classroom setting without interference; [5]

Substantive Issues:

10) Adopting inaccurate present levels of performance;
11) Offering goals and objectives that were vague and not designed to allow Student to make progress;
12) Failing to offer an appropriate placement in light of Student's disabilities;
13) Failing to address Student's unique need for speech and language therapy, Applied Behavioral Analysis therapy, and transportation;
14) Failing to allow proper classroom observations to give Student's parents the opportunity to make an informed decision about whether the proposed placement was appropriate.[6]

[5] This issue was added by stipulation of the parties, with approval from the ALJ, on the seventh day of the hearing.

FACTUAL FINDINGS

1. Student is four years and 11 months old, and is eligible for special education and related services under the eligibility category of autism. The parties do not dispute that Student was a resident of the District at all relevant times in this matter, and do not dispute his eligibility for special education.

2. Student has severe communication and social deficits due to his autism. He barely uses any words, and does not use them consistently. He has difficulty with eye contact and attention, and does not learn incidentally or by watching other children. He does not have a functional ability to point to objects in response to a question, so it is difficult to determine his cognitive levels according to standardized testing. He also has many food allergies and maladaptive behaviors, including stereotypical, autistic self-stimulatory behaviors.

3. In 2007, when Student was approximately three years old, the parties held an initial IEP team meeting for Student. Prior to that time, Student had received services from the Eastern Los Angeles Regional Center. Student's parents and the District were unable to agree upon an appropriate placement and services for Student at the initial IEP meeting. After due process proceedings began, the parties entered into a settlement of that case on November 13, 2007, and Student began to receive educational services pursuant to the terms of that agreement.[7]

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[6] This issue was added by stipulation of the parties, with approval from the ALJ, on the seventh day of the hearing.

[7] During the hearing, Student objected to that settlement agreement coming into evidence. However, because Student's program and services at the time of the July 2008 IEP were based on that settlement agreement and because the District's subsequent

4. At the time of the IEP team meeting at issue in the instant case (on July 1, 2008), Student was receiving the following educational services from the District pursuant to the settlement agreement: a) 20 hours per week of in-home applied behavior analysis (ABA) services from a nonpublic agency (NPA) provider; b) four hours per month of NPA supervision services; c) five hours per month of NPA clinic staff meetings; d) two hours per week of clinic-based NPA occupational therapy (OT) services with parent responsible for the transportation for this service; and e) two clinical hours per week of one-to-one in-home speech-language services provided by an NPA, plus one additional hour per week for the NPA speech-language provider to consult with the NPA ABA provider.

5. Student also received additional ABA services through the Regional Center, for a total of 40 hours a week of home ABA therapy.

6. In the settlement, the parties agreed that the program described in the agreement would continue until August 31, 2008, and that an annual IEP would be held for Student by July 31, 2008.

DID THE DISTRICT ADEQUATELY ASSESS STUDENT IN ALL AREAS OF SUSPECTED DISABILITY?

7. Student contends that the District failed to assess Student adequately in all areas of suspected disability in preparation for the July 1, 2008 IEP meeting. The District contends that no request for an assessment was made, no reassessment

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actions were based, in part, on that agreement, it was necessary for that agreement to come into evidence. The agreement contained a clause that it would remain confidential except "for purposes of enforcement."

was due for Student, and the IEP team had sufficient information to develop Student's IEP without a new assessment.

8. A district must assess a child prior to providing any special education services. After that initial assessment, a new assessment must be conducted 1) at least once every three years; 2) if the local educational agency determines that the child's needs warrant a reassessment; or 3) when a parent or teacher requests a reassessment.

9. The District, through the special education local plan area (SELPA), conducted an initial assessment of Student during the summer of 2007. Any issues regarding the appropriateness of that assessment were dealt with in the November 13, 2007 settlement agreement, which waived all claims of the parties prior to that date. The agreement recited that it "constitutes a full and final resolution of all claims and issues arising from or related to the Parties' due process complaints and Student's educational assessments and program through the effective date of this Agreement." The agreement included a general release of claims and a specific waiver by Student of all claims arising from Student's educational program through the effective date of the agreement. It also provided that the District would reimburse the parents up to a certain amount of money for educational expenses, including independent educational evaluations (IEE) obtained by the parents prior to the date of the agreement.

10. Because of the settlement agreement, no issues regarding the appropriateness of the 2007 assessment may be raised in this action. The only assessment issue for the current case is whether a reassessment was required prior to the July 1, 2008 IEP meeting. Student contends that the District was required to reassess either because of a request for an assessment made by Student's mother in

March 2008, or because the District did not have sufficient information to determine Student's needs and present levels of performance at the time of the July 1, 2008 IEP meeting.

11. There is a factual dispute as to whether Student's mother requested a reassessment in March 2008. In March 2008, the IEP team met at the parents' request to hear a report regarding OT services and to discuss OT goals. Student's mother testified that she requested a new assessment during that meeting. The District staff members who attended the meeting denied that a request for an assessment was made. The meeting notes for the IEP meeting do not reflect that a request for reassessment was made.

12. Rosalie Anderson, a District program specialist who acted as the note taker at the March IEP meeting, remembered a discussion during the meeting in which Student's mother asked *about* assessments, but did not actually ask *for* an assessment. The District staff explained that assessments were necessary initially and then every three years after that. Progress on goals was measured without the need for another assessment for the annual IEP. Anderson also testified that Student's parents did not make any request for an assessment between the March meeting and the July 1, 2008 meeting.

13. Chantelle Ainsworth, a special education teacher for the District's autism focus class, also attended the March IEP meeting. She did not recall any request by Student's parents for a reassessment during that meeting.

14. The testimony of Student's mother supported Anderson's recollection. She testified that she asked the District staff during the meeting if the District needed further assessments. The District staff told her that they did not need to conduct further assessments until Student's three-year review. Student's mother let

the District know that she disagreed with their 2007 assessments. She also testified that she requested a reassessment during that meeting, but it was not clear in her testimony whether she was referring to that conversation or a specific request for reassessment.

15. On April 18, 2008, Student's parents sent a letter to the District stating:

> As you mentioned at the last IEP for [Student] and [Student's sibling] on March 11, 2008, this letter is to confirm the district does not require any further evaluations prior to their next triennial IEP. If this is not your understanding, please let us know immediately.

16. The District replied on April 24, 2008, stating that the next assessments "may occur prior to [Student's] triennial IEP; however, assessments/evaluations could occur anytime the IEP Team determines they are needed."

17. The evidence does not support a finding that Student's mother made a request for a reassessment at the March IEP meeting. If such a request had been made and refused, it is likely that her letter of April 18, 2008, would have recited that request. Instead, the mother's letter simply recites that the District did not feel additional evaluations were necessary. Student's mother may have believed that her discussion regarding assessments at the March meeting constituted a request for a reassessment, but her belief was not sufficient to put the District personnel on notice that the parents requested a reassessment, nor did it trigger any duty on the part of the District to reassess.

18. Without a request by the parent or the three year review, the District would only have to reassess if the Student's needs warranted a reassessment. The evidence supports a finding that, as of July 1, 2008, the District had sufficient

information regarding Student's unique needs, his present levels of performance, and his progress on his goals and objectives to develop an appropriate IEP for him. There was no need for a reassessment prior to the July 1, 2008 IEP meeting.

19. The information possessed by the District at the July 2008 IEP meeting included the results of the 2007 assessment and the numerous reports and evaluations reviewed by the SELPA assessment team at the time of that assessment. It also included IEEs done at the parents' request (and reimbursed by the District pursuant to the settlement agreement), progress reports from Student's ABA home provider Pacific Child and Family Associates (Pacific), the OT assessment from Gallagher Pediatric Therapy discussed at the March 2008 IEP meeting, and a progress report from Core Communication Partners, Student's NPA speech-language provider.

20. The District also obtained information from an observation of Student's home program by members of the District's IEP team in June 2008. The observers included Ainsworth, Anderson, Brian Wenzel (a behaviorist) and a speech therapist. During the observation, the District observers were able to converse with Student's ABA provider and obtain parental input regarding Student's needs and progress. What they observed regarding Student's conduct and progress was consistent with what the ABA provider had stated in the progress reports.

21. In addition, the District had information from updated IEEs conducted at the parents' request, done by the same assessors who had previously done IEEs of Student in 2007, including Melanie Lenington, a private psychologist and JoAnne Abrassart, a speech-language pathologist. Although the District did not receive a written report from Lenington, both assessors attended the July 1, 2008 IEP meeting and provided input to the team regarding their assessment results. Student's mother also obtained an updated report dated May 1, 2008, from pediatrician Kek Khee Loo, M.D., from the UCLA Medical Center, regarding Student.

22. At hearing, the District IEP team members were consistent in their testimony that the District did not need to reassess as of July 1, 2008. Anderson testified that she felt the District had plenty of information available for the IEP team to determine Student's eligibility and present levels of performance. Wenzel described the various reports he reviewed prior to the IEP meeting, and talked about his conversation with Geoffrey Putnam, an ABA provider working for Pacific. He believed they had sufficient information to proceed with the IEP.[8]

23. In Student's written closing argument, Student objected to the lack of standardized testing done in the 2007 assessment. In 2007, the assessors conducted the Psychoeducational Profile – Revised (PEP-R). This is a comprehensive survey of tasks designed for children functioning at or below the preschool range and within the age range of six months to seven years. In addition to that, the assessors had Student's parents fill out various questionnaires and rating scales to obtain input. However, no standardized testing in speech and language was done as part of the assessment. Instead, the speech-language assessor relied on test results from standardized tests given by the prior assessors, as well as observations of Student, parent interviews and questionnaires, and an informal, criterion-referenced play-based assessment.

24. Student's objection to the 2007 assessment is not well taken for three reasons. First, as stated in Factual Findings 9 – 10 above, any issues related to that assessment are foreclosed by the settlement agreement.

25. Second, because of the nature of Student's disabilities, standardized testing is very difficult for Student. Both Lenington and Abrassart, who conducted

[8] Even Student's own educational expert, Dr. Patterson, determined that there was no need for further assessment when Student's parents brought Student to him in 2009 for an opinion about the District's offer.

updated IEEs at the parents' request shortly before the July 1, 2008 IEP meeting, found that Student's disabilities precluded them from being able to score Student through standardized testing. In particular, in the area of speech and language, Abrassart explained that standardized testing is not always possible for preschool age children with autism. Often, the primary method for assessing the child is through observations and interviews with people who know the child. With respect to Student, she attempted to conduct standardized tests, but was unable to do so because of his level of functioning, so she interacted with him and observed him with his ABA tutors. In light of Abrassart and Lenington's assessments, the evidence supports a finding that any attempt at standardized testing by the District would also have failed.

26. Third, all the various assessments of Student, including the 2007 assessment and those done by the independent assessors, came to very consistent conclusions about Student's needs and disabilities. There was no necessity for the District to attempt further standardized testing prior to the July 2008 IEP. The 2007 assessment had concluded that Student had significant delays in expressive and receptive language, speech articulation/phonology skills and pragmatics. It found that Student exhibited characteristics of a child with autism and was eligible for special education and related services under the category of autism. This is consistent with every other assessment done of Student. The real dispute in the instant case is not the nature of Student's disability or his needs, but the appropriate educational program to address those needs.

27. The evidence supports a finding that the District had sufficient information as of the July 1, 2008 IEP and no reassessment was necessary at that time. Student failed to meet his burden of proving that the District failed to adequately assess Student in all areas of suspected disability.

DID THE DISTRICT COMMIT ANY PROCEDURAL VIOLATIONS OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT?

28. Student contends that the District committed several procedural violations of the Individuals with Disabilities Education Act (IDEA) in connection with the July 1, 2008 IEP meeting. A procedural violation occurs when a district violates one or more of the procedures set out in federal or state law for holding IEP meetings and developing IEPs. A district's procedural violation of IDEA may give rise to a substantive denial of FAPE if it impedes the child's right to a FAPE, significantly impedes the opportunity of the parents to participate in the decision making process, or caused a deprivation of educational benefits.

DID THE DISTRICT VIOLATE IDEA BY FAILING TO DEVELOP AN IEP WITHIN THE TIME REQUIRED BY LAW?

29. Student contends that the District violated IDEA by failing to hold an IEP team meeting within 30 days of a request by Student's parents for a meeting. The law requires a district to hold an IEP meeting within 30 days of a written request by a parent.

30. On May 15, 2008, Student's parents sent a letter to the District requesting an IEP meeting for Student. The letter was sent by certified mail, return receipt requested. The letter was delivered on May 19, 2008.

31. Due to inadvertent error, the District staff did not immediately begin scheduling the requested meeting. As soon as Anderson realized that the parents had requested a meeting sooner than annual date for the meeting, she began trying to coordinate the meeting (and a meeting for Student's sibling on the same date). The meeting was finally set and noticed for July 1, 2008. Anderson explained during the hearing that there were no earlier dates that would have accommodated the participants' schedules. The meeting for Student's sibling was set in the morning and

Student's meeting was set in the afternoon. The meeting was ultimately held on July 1, 2008. Student's mother never gave the District an extension of time to conduct the IEP meeting.

32. The evidence supports a finding that the District violated IDEA by not holding an IEP team meeting within 30 days after the written request made by the parents on May 15, 2008. Instead, the IEP meeting was held over two weeks late, on July 1, 2008.

33. However, the evidence does not support a finding that the approximately two and one-half week delay in holding the meeting gave rise to a substantive denial of FAPE. According to the terms of the settlement agreement, Student's programs were scheduled to continue until August 31, 2008, and a new IEP meeting was to be held by July 31, 2008. Because the programs continued unchanged, there is no evidence that the delay in holding the meeting impeded Student's right to a FAPE or caused a deprivation of educational benefits. There is also no evidence that the delay significantly impeded the opportunity of the parents to participate in the decision making process. The parents, their attorney, and their experts were able to attend the July 1, 2008 meeting. In the settlement agreement, the parties agreed to have a meeting by July 31, 2008, and the meeting was held almost a whole month before that date. There is no evidence that the District deliberately delayed the meeting. Instead, it was an honest error and the District attempted to remedy the situation swiftly as soon as the error was discovered. There was no harm to Student and no denial of FAPE.

DID THE DISTRICT VIOLATE IDEA BY FAILING TO HAVE THE APPROPRIATE PEOPLE, IN PARTICULAR A GENERAL EDUCATION TEACHER AND SCHOOL NURSE, AT THE JULY 2008 IEP MEETING?

34. Student contends that the District committed a procedural violation of IDEA by failing to have a general education teacher and school nurse at the July 2008

IEP meeting. A district is required to have a general education teacher at an IEP meeting if the child is or may be participating in the general education environment. An IEP team may also include, at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child.

35. On June 23, 2008, the District sent out a notice of an IEP meeting to be held on July 1, 2008. On June 26, 2008, Student's parents requested that Lenington and Abrassart be invited to the meeting. Student's parents did not make a request to have a school nurse at the meeting. On June 23, 2008, counsel for Student and the District exchanged email messages about whether Student's parents would waive the attendance of a general education teacher at the meeting in light of the fact that no general education placement was contemplated for Student. On June 30, 2008, Student's counsel sent an email response stating that a general education teacher was required to attend the meeting.

36. The people in attendance at the July 1, 2008 meeting included Student's mother and father, Ainsworth, Elisa Yasutomi, the District's Director of Special Education, Lenington, Abrassart, an occupational therapist from Gallagher Pediatric Therapy, Brian Wenzel, a behavior specialist and school psychologist employed by the SELPA, Anderson, Katie Bernal from Core Communication Partners (Core), Geoffrey Putnam from Pacific, and attorneys for both the Student and the District. Valerie Proctor, a general education preschool teacher from Santa Monica, attended the meeting in the capacity of a general education teacher.

37. There was no school nurse at the July 1, 2008 IEP meeting. Student contends that the District was required to have a school nurse at the IEP meeting because of Student's food allergies.[9] Student's mother had provided the District with

[9] Student's written closing argument focuses on the lack of the general education teacher at the meeting, not the lack of the school nurse, so it is unclear if Student

information regarding Student's food allergies, and there was a discussion during the IEP meeting about those allergies. The District staff assured Student's mother that they would make certain Student did not eat other people's food if Student was placed in the District's proposed placement (the autism focus special day class).

38. Ainsworth explained during the hearing that it is quite common for children in her class to have allergies or other food restrictions. The classroom staff individually handles each child's food and the aides are informed of what each child cannot eat. The aides pay attention to what the children are eating to prevent mistakes. Dr. Loo testified that Student's allergies were controlled and would not be an impediment to his learning.

39. The evidence does not support a finding that it was necessary to have a school nurse at Student's IEP meeting. Allergies are handled as part of the autism focus classroom with no need for a school nurse's input at an IEP meeting. There was no procedural violation by the District.

40. During the hearing, Yasutomi explained why a general education teacher from Santa Monica attended the July 2008 IEP meeting. The District does not have any general education preschool classes. All general education preschool classrooms on District campuses are run by private providers. Yasutomi started working for the District around the time of Student's July 1, 2008 IEP meeting. She previously had worked in Santa Monica. When she learned that the parents wanted a general education preschool teacher at the July IEP meeting, she attempted to arrange for a general education teacher to attend. She first contacted the private preschool teacher who attended the 2007 IEP, but that teacher was not available for the July 1, 2008 IEP. Therefore Yasutomi

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dropped that issue. However, both sides included evidence regarding whether a school nurse was required to be at the IEP meeting, so this Decision will address that issue.

asked a general education preschool teacher that she had worked with in Santa Monica to attend the meeting.

41. The Santa Monica teacher did not know about the District's preschool classrooms and spoke about collaborative classrooms that did not exist in the District. However, she was familiar with regular education preschool children and was able to respond to some general questions regarding how Student could benefit by being around typical peers.

42. The law requires an IEP team to include "[n]ot less than one regular education teacher of the pupil, if the pupil is, or may be, participating in the regular education environment." (Ed. Code, § 56341, subd. (b)(2).)

43. In the instant case, there was never a possibility that Student would be participating in a regular education environment. The District's experts believed that Student would not gain educational benefit in the regular education program and that the least restrictive environment appropriate for Student was the District autism focus special day class (SDC). All of Student's experts maintained that Student was not ready for any school environment, even a small SDC.

44. In an SDC class, Student would interact with regular education children when those children came into the preschool class or during lunch and recess. While it would have been preferable for the District to have one of the general education preschool teachers from the private preschools within the District at the meeting, the Santa Monica preschool teacher was qualified to discuss the nature of general education preschool children and what the parent could expect from the lunch and recess contact that Student might have with them.

45. However, even if there was a procedural violation from the failure to have a private general education preschool teacher attend the meeting, that violation did not give rise to a substantive denial of FAPE. As stated above, no one expected Student to

go into a regular education preschool class, so the lack of the private teacher at the meeting did not cause a deprivation of educational benefits or deny Student a FAPE. Student's mother was able to question the Santa Monica teacher extensively and also obtained information from other District staff at the meeting. Student's mother and her experts observed the proposed autism focus classroom to see how it operated. Student has not shown that the lack of the general education preschool teacher significantly impeded the parents' ability to participate in the decision making process. There was no denial of FAPE.

DID THE DISTRICT VIOLATE IDEA BY FAILING TO DISCUSS THE CONTINUUM OF SERVICES AT THE IEP MEETING, AND BY FAILING TO CONSIDER THE VIEWS AND REPORTS OF THE PARENTS' EXPERTS?

46. Student contends that the District violated IDEA by failing to discuss the continuum of services available for Student and failing to consider the views of Student's experts during the meeting. A district is required to have a continuum of educational programs available for a child. There is no specific requirement that a continuum of placements be discussed at every meeting, beyond the general requirements that parents must have meaningful participation in the IEP and that the district team members must consider the parents' input. However, even assuming there was such a standard, Student has not provided sufficient evidence to show there was a failure to discuss the options by the District. To the contrary, the evidence supports a finding that there was a robust discussion about the various possible placement and services. The evidence also supports a finding that each of Student's experts provided input during the meeting.

47. At the parents' request, Student's independent experts, Lenington and Abrassart, were invited to the July 2008 IEP meeting, and they both attended the meeting. Lenington's report written after the meeting confirms that she provided her

opinions to the IEP team, discussed her assessment and findings regarding Student, participated in the drafting of the goals, and gave her opinions on an appropriate placement. For example, with respect to the placement discussion at the IEP meeting, Lenington's report stated: "The examiner sat with notes from the observation and went through them to alert the team about why [Student] was not yet appropriate for this classroom."

48. Abrassart testified to her participation in the meeting, her presentation of her assessment report, and the general discussion regarding adding a methodology known as Links to Language to Student's speech-language goals. She also testified to the discussion of possible placements for Student during the meeting, including a discussion of the parents' proposed home program and the District's autism focus classroom.

49. The testimony of Student's NPA providers also confirmed that there were discussions of goals, placement and services during the meeting. Bernal, the NPA speech-language provider from Core, told about the IEP discussion regarding possible placements, including general education, home program, the District's autism focus class and a developmental preschool program. There was also a discussion about the transition between the home and school program. Putnam recalled during cross examination that there was a discussion of a home program for Student and it appeared as if the District team members were listening to the discussion. He also recalled a discussion of the proposed goals he brought to the meeting.

50. The District witnesses also testified extensively about the discussions at the IEP meeting. For example, Anderson recalled a lengthy and somewhat heated discussion regarding placement. There was discussion of general education, the autism focus class and Student's home program. Ainsworth recalled a discussion of goals during the IEP meeting, as well as a discussion of various placements, including a general education

classroom, a non-autism focus SDC class, and her autism focus class. Wenzel recalled that the ABA provider gave input on the goals, and the goals were edited in light of that input. Yasutomi described a discussion regarding how to transition Student to a school program and how the District specifically sought input from the various NPA providers on that issue.

51. Most of Student's evidence regarding the lack of IEP discussions came from the testimony of Student's mother. Student's mother testified that, rather than discuss the various placement options, the District team members simply referred to the IEP meeting discussion that had been held for Student's sibling, earlier in the day. She admitted that the IEP for the sibling had a full discussion about the various possible placements within the District and the parents' preferred home placement, but contends there was no discussion of any other class besides the autism focus class at Student's IEP. She said there was a discussion of the home program by Student's experts and the NPA provider, but the District team members only commented that, because Student was doing well in the home program, he should now be in school. She recalled that various reports were presented and discussed, but time was short so they only discussed them quickly.

52. Student's mother believed that the District was treating Student the same as his sibling. Although Student and his sibling are twins, they are fraternal twins and their needs are not the same. Both boys have autism, but their autism affects their skill sets differently. For example, Student's mother explained that Student is better than his sibling at matching items, but much worse at fine motor skills. Student can say a few words, but his sibling has a very difficult time speaking words. The two both have allergies, but they are allergic to different foods. The IEP meeting for Student's sibling was held just before Student's IEP on July 1, and Student mother felt that Student's IEP

team made too many references to things that were already discussed in the sibling's IEP.

53. Yasutomi agreed that the District had a full discussion about the various program options at the sibling's IEP meeting. She explained that the District staff did not repeat every detail about their programs during Student's IEP meeting, but instead focused on the differences between Student and his sibling. She recalls that they reviewed and discussed the reports about Student and separately went through each of his goals. They did not feel the need for a detailed discussion of each of the different District program options because they had just discussed those during the sibling's IEP two hours before.

54. The evidence supports a finding that there was no procedural violation by the District with respect to the discussion at the IEP meeting. Each of Student's home providers and independent experts gave input at the meeting. While the District may have disagreed with their ultimate recommendation that Student stay in a home program, that does not mean the District failed to consider their input.

55. Likewise, there was no evidence that the District violated IDEA by failing to discuss a continuum of placements. If the District had just described the various possible placements in detail during the sibling's IEP meeting only hours before, there was no need to repeat the entire discussion. Student's parents and the other IEP team members were well aware of their options. If the team chose to focus its attention instead on the differences between student and his sibling, and how that would affect Student's goals and placement, there was nothing wrong with that under the circumstances. There was no procedural violation.

DID THE DISTRICT VIOLATE THE IDEA BY PREDETERMINING STUDENT'S PLACEMENT?

56. Student next contends that the District committed a procedural violation by predetermining Student's placement in the District's autism focus class. A District is required to come to an IEP meeting with an open mind and consider the input of the parents. A District cannot show up at an IEP meeting having already decided on the placement with a "take it or leave it" attitude. The evidence does not support a finding that any predetermination occurred here.

57. As discussed above in Factual Findings 46 – 55, the IEP team engaged in a full discussion of the opinions of Student's experts and the possible placement for Student. Just because the parties ultimately disagreed, does not mean the District predetermined the placement.

58. Student contends that some of the District's proposed goals were written for a classroom, so the District must have predetermined placement in a classroom. The evidence supports a finding that some of the proposed goals were written with a classroom in mind, but not that a classroom placement was predetermined.

59. The draft goals were written after the observation of Student in his home in June 2008 discussed in Factual Finding 20 above. After the observation, Wenzel, Ainsworth and Anderson went back to the District office for a meeting. They discussed Student's progress on his goals, his present levels of performance, and other progress they had seen during the home visit. The drafted some proposed present levels of performance, but left others blank to await further discussion at the IEP meeting.

60. Ainsworth testified that they did not assume Student would be in a classroom placement at the time of the meeting when they drafted goals. They drafted some goals in the hopes that he would be in a classroom, but recognized that was an

IEP team decision to make. They discussed that, if Student came into a classroom setting, Ainsworth's class would probably be the class recommended.

61. Just because the District staff drafted proposed goals with a classroom in mind, does not mean they had predetermined that a classroom would be the only offered placement. The draft goals were just a starting place for the IEP discussion. The evidence indicates that there was discussion regarding each of the goals during the IEP meeting and changes were made to the goals. That is no evidence that the District was unwilling to listen to the opinions of the parents' experts. Indeed, as stated in Factual Findings 46 – 55 above, the District did listen to them.

62. Student also contends that the District's employees testified that they never recommend solely a home placement for a child. Student's contention is in error. The District witnesses stated that they might recommend a home placement when a child's health or behavior might present a danger to the child or others if the child was placed in a public school. They testified that they had not, in the past, recommended a solely home placement for other children, but that does not mean they would never do so or that they would not consider such a placement in Student's case. Student has the burden to show that the District predetermined the placement and has failed to meet that burden. There was no procedural violation.

DID THE DISTRICT VIOLATE IDEA BY FAILING TO MAKE A SUFFICIENTLY SPECIFIC IEP OFFER THAT COULD BE CLEARLY UNDERSTOOD BY STUDENT'S PARENTS?

63. Student contends that the District violated IDEA by failing to make a sufficiently clear IEP offer. A district must make a formal, written offer of placement and services for a child. A district is also required to provide a copy of an IEP to the parents at no cost. Student cites to no statutory requirement that a written document be provided immediately after an IEP meeting.

64. At the end of the July 2008 IEP meeting, there was no agreement by the IEP team as to Student's placement or services, although Student's mother understood that the District's autism focus class was heavily recommended as the placement by the District IEP team members. Student's mother asked to take a copy of the proposed IEP with her to review. The District had only brief notes of the meeting and asked for a few days to type the notes and finalize the IEP offer. The District staff gave the parents a set of draft notes for the meeting, copies of three reports, and the IEP signature page, and said they would complete the written IEP offer and give it to the parents by July 4, 2008.

65. By July 23, 2008, the District had still not sent out the finalized IEP, so Student's counsel sent a letter to the District's counsel asking for a copy of the IEP document. The District staff finally sent out the proposed IEP on July 28, 2008.

66. Yasutomi admitted that it took the District until July 28, 2008, to finally get a written IEP offer to Student's parents. She explained that they were waiting for the final draft of the OT report and goals before they completed it. Also, because it was summer, many of the District staff members were gone so it took longer. She explained that they were busy trying to organize the extended school year (ESY) program at the same time as Anderson was trying to retype Student's IEP.

67. The offer of placement and services made in the IEP document sent out on July 28, 2008, included the following: 1) placement in the District's autism focus SDC for 240 minutes per day, beginning on September 3, 2008; 2) extended day services four times a week for 75 minutes per session;[10] 3) individual speech and language services provided by an NPA two times a week for 60 minutes per session; 4) speech and language classroom consultation with the NPA provider once a month; 5) OT services

[10] The nature of the District's extended day services are discussed in Factual Finding 140 below in connection with the substantive aspects of the District's FAPE offer.

provided by an NPA two times a week for 50 minutes per session; and 6) an autism parent support group once a month.

68. The written offer also included ESY services for the summer of 2009. The specifics of those services were not written in the IEP document, because the extended school year classes for preschool children are typically the same as the regular school year classes.

69. The IEP also offered transportation from home to school and back. The meeting notes stated that the parents would be reimbursed for their mileage for taking Student to and from his OT sessions. The notes also offered a transition plan which included one-to-one aide support for Student's first 30 days of school with possible continuation of that support "if determined appropriate by the IEP team."

70. On August 23, 2008, Student's counsel sent a letter to the District's counsel stating that the parents objected to the IEP offer. The letter contended that the IEP document sent to the parents did not reflect the actual discussions at the meeting. Counsel explained that Student's parents consented to the speech and language services in the IEP "with the one hour of co-therapy to be separate from the two hours of speech therapy." [11] The parents also agreed to the offered OT services and mileage reimbursement. The parents rejected the remainder of the IEP offer.

71. There were no other IEP meetings between July 1, 2008, and September 1, 2008, nor did the District notice any other meetings during that time.

72. The evidence does not support a finding that the District violated any provision of IDEA by taking a month to get a written IEP document to Student's parents. While it certainly would have been preferable for the District to have provided a written

[11] As discussed in Factual Finding 175 below, "co-therapy" refers to the SLP providing services in conjunction with Student's ABA provider or other service providers.

document on the same day or within a few days of the meeting, there were reasons for the District's delay in the instant case.

73. However, even if there was a procedural violation, the evidence does not support a finding that any delay in providing the final IEP document gave rise to a denial of FAPE under the circumstances of this case. Under the settlement agreement, the District was required to provide Student's home program until August 31, 2008, more than a month after the finalized IEP was sent to the parents. Student's parents were able to review the offer, accept the portions they found agreeable and reject the rest before the settlement agreement services ended. Any delay in making a clear, written IEP offer to the parents did not cause a denial of FAPE, cause a deprivation of educational benefits, or significantly impede the parents ability to participate in the decision making process. There was no denial of FAPE.

DID THE DISTRICT VIOLATE IDEA BY CHANGING GOALS AND OBJECTIVES OUTSIDE THE PRESENCE OF STUDENT'S PARENTS AND OTHER MEMBERS OF THE IEP TEAM?

74. Student contends that the District violated IDEA by changing the proposed goals and objectives between July 1, 2008, when the IEP meeting was held, and July 28, 2008, when a finalized copy of the IEP was sent to the parents. The law requires an IEP to contain a statement of measurable annual goals, including academic and functional goals designed to meet the child's educational needs. The law also provides that a child's parents should have an opportunity to participate in the development of an IEP, including the development of goals.

75. Anderson was the note taker during the July 2008 IEP meeting. She took handwritten notes during the meeting, which were given to the parents at the end of the meeting. At the end of the meeting, she collected the documents, including goals that were handwritten or edited during the meeting. After the meeting, she typed up the notes, corrected spelling and punctuation, and numbered the pages. She also typed

up handwritten goals. Yasutomi recalled that Anderson told the IEP team that she had only taken brief notes during the meeting and would fill them in when she retyped the IEP document.

76. In Student's written closing argument, Student argues that there was a violation because the notes of the meeting ultimately sent to the parents were different from the handwritten ones handed to the parents at the end of the meeting. There is no question that the typed notes for the meeting are more complete than the handwritten notes given to the parent at the IEP. However, Student fails to cite to a code section or regulation violated by the more complete notes. Instead, Student seems to be arguing that it deprived the parents of a meaningful opportunity to participate in the IEP process. However, the evidence does not support a finding that the more complete notes caused that to happen. The parents were free to dispute the accuracy of those notes, to request a new meeting, or to reject any offer of FAPE described in those notes.

77. Student also contends that some of the proposed goals were changed between the IEP meeting and the written IEP draft sent on July 28. In particular, Student is concerned about the removal of "Links to Language" from one or more of the speech-language goals.

78. During the meeting, there was a discussion about adding a speech-language goal to the IEP incorporating "Links to Language." Links to Language is a methodology used to take a child from prelinguistic tasks to conversation. Abrassart recommended the use of Links to Language for Student. Using a blank District goal form, she drafted a handwritten, proposed IEP goal incorporating that methodology.

79. The parties dispute whether the IEP team agreed to include Links to Language within Student's goals and how Abrassart ended up drafting that goal. Abrassart believed that the District had agreed to include Links to Language in Student's

speech-language goals. She testified that, during the meeting, Bernal handed her a blank goal page to write up a goal including Links to Language and she did so.

80. Yasutomi disagreed with Abrassart's interpretation of what happened at the meeting. She testified that the District team members made it clear that they would not write methodology (such as Links to language) into a goal, but if there were needed skills related to Links to Language, those could go into a goal. If the speech pathologist implementing the IEP wanted to use Links to Language, that was fine, but it would not be placed into a written goal. Yasutomi said the District did not ask Abrassart to draft a Links to Language goal. Instead, Bernal (the NPA speech provider) had been given blank goal pages to help draft her goals and she gave one of those pages to Abrassart. When Anderson was organizing all the papers after the meeting to begin retyping the IEP, she discovered an extra handwritten goal.

81. Bernal's testimony supported the District's position. She recalled the discussion about Links to Language at the IEP meeting and that Abrassart had written out a goal including it. However, she said there was no agreement as to whether it should be written in a goal. Even Abrassart admitted that there had been a discussion that methodology was not usually included in goals. The evidence supports a finding that the IEP team did not agree to include the Links to Language goal in Student's IEP.

82. About a week after the IEP meeting, Yasutomi telephoned Bernal about the Links to Language goal. Bernal told Yasutomi that Links to Language was not a necessary part of the goal. Yasutomi also asked Bernal to clarify some of the handwritten goals Bernal had provided during the meeting because they contained another methodology (facilitated communication). Yasutomi asked Bernal to remove anything from the goals that involved facilitated communication.

83. Bernal's supervisor Darlene Hanson also met with Yasutomi to discuss goals while Bernal was out of the country. They determined that the same skills covered

in the Links to Language goal were already covered in the remaining IEP goals so there was no need for that additional goal.

84. Student's mother first learned about the change in the Links to Language goal from Bernal. When the District sent the finalized IEP to Student's mother on July 28, 2008, the cover letter explained that goals were not written to address methodologies such as Links to Language.

85. The evidence does not support a finding that the changes made to the proposed goals between the IEP team meeting and the finalized version of the IEP violated IDEA. There was no evidence that the IEP team agreed to the Links to Language goal (or any of the proposed goals) during the meeting. The parents wanted a finalized copy of the IEP to review before they agreed to anything.

86. However, even if there was a procedural violation, it did not give rise to a denial of FAPE. Links to Language was a methodology, not a necessary part of the goal. The failure to include it in a goal would not stop Student's speech provider from using that methodology. The failure to include it in a goal did not cause any deprivation of educational benefits, deny a FAPE, or impede the parents' ability to participate in the decision making process. There was a full discussion and disagreement about the Links to Language goal at the IEP team meeting and no dispute that the District team members said they did not include methodology in goals. There was no denial of FAPE.

DID THE DISTRICT VIOLATE IDEA BY FAILING TO GIVE PRIOR WRITTEN NOTICE OF ITS DECISION TO CHANGE STUDENT'S PLACEMENT FROM PACIFIC CHILD AND FAMILY ASSOCIATES?

87. Student contends that the District failed to give notice that it intended to stop the ABA home placement through Pacific. The evidence does not support Student's contention. The District's recommendation to move Student from his home placement into a District SDC classroom was discussed at an IEP meeting and a written IEP offer

was subsequently sent to the parents. The IEP document satisfied the written notice requirement. However, even if it did not, there was no substantive denial of FAPE. The parents and their attorney had sufficient notice in the written IEP document to send a letter rejecting the IEP offer. The lack of a separate notice document did not deny Student a FAPE, cause a deprivation of educational benefits or impede the parents' ability to participate in the decision making process. There was no denial of FAPE.

DID THE DISTRICT DENY STUDENT A FAPE BY FAILING TO ALLOW STUDENT'S PARENTS OR EXPERTS SUFFICIENT TIME TO OBSERVE THE CLASSROOM SETTING WITHOUT INTERFERENCE?

88. Student also contends that the District violated IDEA by failing to give the parents and their experts an appropriate opportunity to visit the District's proposed autism focus classroom. The law provides that the parents' right to participate in the IEP process includes the right to have the parents' independent expert observe a district's proposed placement. The law also provides that if a district observes a child during its assessment, it must give an "equivalent opportunity" for the parents' independent experts to view any educational placement and setting proposed by the district.

89. The District allowed three sets of observations of its autism focus and SDC classrooms. The first observations occurred in 2007, prior to the time at issue in the instant case.

90. In May and June 2008, shortly before the July 1, 2008 IEP meeting, Student's parents and their experts had two more opportunities to visit the SDC classes at Ceres Elementary School (Ceres). Abrassart and Lenington visited Ainsworth's autism focus class and another SDC at Ceres. The visit lasted about 30 minutes for each class. Student's mother and Geoffrey Putnam also visited the classes. Putnam was not permitted to visit during the May observation because of a limit on the number of visitors, so he observed the classes in June 2008 along with Student's mother.

91. During the visits to Ceres, there were problems with the conduct of the observers. One of Student's experts got too close to a child and interfered with the child's play time. Another observer asked about a child's goals, which was private information.

92. The parents requested additional observations, but school ended for the summer, so the District was unable to accommodate the additional observations until the fall.

93. In approximately September and October 2008, after Ainsworth's class had moved to Leffingwell Elementary School (Leffingwell), Student's mother and her experts conducted additional school observations on two separate occasions. Abrassart and Lenington were present during the first of those observations. Once again, the observation of Ainsworth's class lasted approximately 30 minutes. Student's mother accompanied them to the observation, but the District limited the observers to two people, so Student's mother did not go into the classroom. Student's mother was able to observe during the second visit to Leffingwell.

94. Because of the concerns about the observers' behavior during the Ceres visits, the District required the observers in the Leffingwell visit to stand in a particular spot in the room, at least five or six feet away from the children. When Abrassart tried to move closer to a child, school principal Scott Blackwell stopped her. There were a few partitions in the room, so the observers could not see the specific activities occurring in every part of the room from where they were standing.

95. As stated above in Factual Finding 20, District IEP team members visited Student's home program in June 2008 for about two hours, and observed Student for approximately one-half hour to an hour. Student's parents did not limit the number of people who could attend or the time they spent in the observation.

96. The evidence supports a finding that the District permitted Student's parents and experts a reasonable and sufficient opportunity to observe the autism focus classroom. The District permitted observations of Ainsworth's class on four different occasions in 2008, twice at the Ceres location and twice at Leffingwell, for 30 minutes per classroom visit on each occasion. The District's limit on the number of observers was reasonable to avoid disruption to the rest of the class.

97. Given the intrusive conduct of the observers during the Ceres visit, it was also reasonable for the District to limit their movements at Leffingwell to avoid disrupting the children. The observers could see enough of the room to tell how it functioned. The specific tasks that individual children in the class were working on would not have been relevant to Student's program, which would have been based on his individual IEP. The limited movement did not hinder the observation in any significant respect.

98. It was also not a violation because the parents gave the District observers unlimited access, but the District did not do the same. When the District observers saw Student and his sibling in their home program, there was no risk of disturbing other children. The District's classroom, on the other hand, was a very different situation and required reasonable controls to minimize intrusion to other children. There was no denial of FAPE.

DID THE DISTRICT'S JULY 2008 PROPOSED IEP OFFER STUDENT A FAPE IN THE LEAST RESTRICTIVE ENVIRONMENT (LRE)?

99. In addition to the procedural issues, Student contends that the District failed to offer a FAPE from a substantive point of view. In particular, Student alleges that the District's July 2008 IEP contained inaccurate present levels of performance, had improper goals and objectives, and failed to offer proper placement and services.

DID THE DISTRICT DENY STUDENT A FAPE BY ADOPTING INACCURATE PRESENT LEVELS OF PERFORMANCE?

100. The law requires an IEP to contain a statement of a child's present levels of academic achievement and functional performance including, for a preschool child, the manner in which the disability affects the child's participation in appropriate activities. Student contends that the District's present levels of performance were inaccurate because they were developed without an appropriate assessment. However, as discussed above in Factual Findings 7 – 27, the District had sufficient information as of July 1, 2008, to develop accurate present levels of performance. No reassessment was necessary.

101. As discussed above, in addition to the numerous progress reports and past evaluations of Student, the District received input on the present levels from Student's home ABA provider, Abrassart, Bernal, Lenington, the District team members who had observed Student in his home placement, and Student's mother. These provided sufficient information for accurate present levels of performance.

102. With respect to Student's present levels regarding speech and language, Abrassart and Bernal discussed his present levels of performance prior to the meeting, and agreed that he had significant and global needs in the area of speech and language. Bernal testified that there was general agreement about his present levels of performance and skills during the IEP meeting.

103. Dr. Loo testified that he reviewed IEP and ABA reports and had no disagreement with the present levels of performance listed there. Anderson testified that she did not recall any disagreement at the July IEP meeting about Student's unique needs or his present levels of performance by any team members.

104. The only real criticism regarding the present levels of performance during the hearing came from Lenington. In her testimony, she disagreed with the present level

which talked about Student "working on receptively labeling items." Because Student did not have the ability to point to objects upon request, she felt it was inaccurate. However, given Student's full IEP and assessments, her criticism seems overly technical. The present level simply says he is "working on" receptive labeling. The evidence showed he was doing that. The wording was not inaccurate.

105. Lenington also criticized the present levels listed for several goals which stated that Student had not had the opportunity to participate in academic instruction. She felt that statement was inaccurate. However, it was clear from the associated goals that the present level referred to academic instruction in a public classroom. In that sense, the goals were accurate.

106. In Student's written closing argument, Student contended that the District failed to include an accurate cognitive present level of performance. However, even the Student's experts discussed the difficulty of obtaining an accurate cognitive score for Student. Lenington was unable to derive a full scale IQ score for Student because he was unable to accomplish the verbal portion of the test. There was no denial of FAPE based on the failure to give a specific IQ score or cognitive level.

107. Student also contends that the District failed to determine his present levels of functioning in hand-eye coordination. However, the IEP contained present levels regarding his fine motor ability to draw lines and attend to tabletop activities. Student contends the IEP did not address self-help skills, but there is a present level of performance related to dressing and undressing.

108. Student also objects to the present levels related to expressive and receptive language, but those were derived from the reports of the ABA and speech-language providers. They were accurate based on the information provided.

109. Student has the burden to show that the present levels of performance in the District's proposed IEP were inaccurate, and failed to meet that burden. There was no denial of FAPE.

DID THE DISTRICT DENY STUDENT A FAPE BY OFFERING GOALS AND OBJECTIVES THAT WERE VAGUE AND NOT DESIGNED TO ALLOW STUDENT TO MAKE PROGRESS?

110. An IEP must contain measurable annual goals to allow the parents and district to see if a child is making educational progress. In Student's written closing argument, Student raises two objections to the District's goals. First Student contends that the goals are vague and not measurable. Second, Student contends that there should have been an oral-motor goal and a behavioral goal in the IEP.

111. The July 2008 IEP contained approximately 18 goals. During the IEP meeting there was a discussion about each of the proposed goals and some changes were made. Before moving on to the discussion of the next goal, the District staff would ask if there were any further questions on the goals. The parents did not disagree with the goals during the meeting, but said they wanted to take them home to review them.

112. Aside from the issue of whether or not to include Links to Language in a goal, there was very little disagreement regarding goals during the July 2008 IEP meeting. Abrassart and Bernal discussed the speech-language goals before the meeting. Abrassart explained during the hearing that her proposed goals were similar to the ones the District ultimately offered in the IEP, except for the lack of the Links to Language methodology in the goals.

113. During the hearing, Lenington criticized many of the District's goals on the basis that they were vague and not measurable. The goal on page 51 of the IEP involved Student identifying six colors and six shapes with no more than one prompt in four out

of five opportunities daily over a two week period.[12] Lenington felt the goal was vague because she did not know which colors and shapes were involved and how many colors would be in front of him.

114. Ainsworth defended the goal during her testimony, explaining that it was derived from a proposed goal by the ABA provider. She believed that all the District's goals were measurable and could be accomplished by Student in a year's time. Anderson, Bernal, Hanson and Wenzel also testified that the goals were clear and measurable.

115. The evidence supports a finding that the District's receptive language goal was clear, measurable and appropriate. It was clear what would be expected of Student and how his progress would be measured. Lenington's objections to the goal were overly critical.

116. Lenington had the same type of objections to the goal on page 52, which deals with Student engaging in appropriate motor movements for two out of four songs, with no more than two prompts in four out of five opportunities daily in a two week period, and the goal on page 53, which called for Student to use a visual schedule to transition to centers around a classroom with no more than two verbal prompts for four out of five opportunities daily in a two week consecutive period. Contrary to Lenington's claims that more specificity was needed, these two goals are specific, measurable and appropriate for Student.

117. The goal on page 54 called for Student to participate/engage in a small group with peers for five minutes with no more than one prompt on three out of four opportunities daily for a two week period. Lenington criticized the goal because she did

[12] The goals were not numbered in the IEP and were identified during the hearing based on the page on which they appeared in the document.

not know what would be expected of him to participate or engage, but she admitted it was an appropriate area to work on with him. Her criticism of the goal is not well taken. The classroom teacher would know if Student was participating in the group. It is clear, measurable and appropriate.

118. The goal on page 55 called for Student to use a variety of toys functionally with a peer in four out of five opportunities for a two week consecutive period. Lenington thought the goal should have listed which toys he would play with (such as farm animals). She also thought it would be too much for him to accomplish in one year. Once again, her comments on the goal are overly technical. The goal was sufficiently specific. If the goal was later shown to be too advanced and Student was not making progress, it could be modified.

119. Lenington had similar criticisms of the goal listed on page 56 which related to Student engaging in appropriate playground activities with a peer. She said she did not know which playground activities it referred to. With respect to the goal on page 57, which dealt with Student sitting in a chair for 10 minutes and engaging in non-preferred activities, she thought the District should make "staying in his seat" into a separate goal from the rest of the goal. She also thought that the goal on page 58 regarding imitating horizontal and vertical lines should be separated and should specify what types of prompts would be used. With respect to the goal on page 59 which dealt with matching pictures within a field of seven or eight choices, she felt they should specify whether they meant identical or non-identical pictures. Once again, Lenington's comments are overly critical for each of these goals. In each case, the goals are clear, measurable and appropriate for Student.

120. With respect to the goal on page 60, which involved Student answering "who, what and where" questions about a short story by pointing to pictures, Lenington felt the goal was too complex for Student at that time. However, her comments do not

invalidate the goal. If Student was unable to make progress on that goal, it could be modified later.

121. The goal on page 61 called for Student to identify items from at least three categories (food, farm animals, clothing) by pointing to pictures from a choice of four with 80 percent accuracy in four out of five trials. Lenington and Abrassart both pointed out that the two objectives for the goal dealt with prepositional phrases, not identifying items. This made the goal confusing to them. While they are correct that the objectives do not seem directly related to the goal, they do not make the goal itself unclear or incapable of being measured.

122. Lenington criticized the goal on page 62, which called for Student to demonstrate an understanding on certain concepts (such as night and day) by drawing a line to pictures, because it was very complex and too difficult for Student. However, despite her concerns, the goal is clear and measurable. If it was later shown that Student was not making progress toward it, the goal could be modified.

123. The remainder of Lenington's criticisms regarding the goals on pages 63, 64, 66 and 68 fall into the same category. In each case, she demands additional specificity of a goal that is already very specific. In each case, the goal is measurable, clear and appropriate.

124. Lenington also criticized the lack of IEP goals to address Student's maladaptive behaviors. Wenzel explained that the IEP goals related to organization and social skills would address Student's maladaptive behaviors. Lenington admitted that some of the goals inferred that the District would monitor his self-stimulating behavior, but felt they were not sufficient.

125. Although both Wenzel and Lenington are qualified to discuss behavioral goals in Student's IEP, Wenzel's testimony is more persuasive in this regard. The goals regarding class participation and social skills, by necessity, involve any maladaptive

behaviors that would interfere with these activities. Until Student is actually in a classroom placement, it would be difficult to know which (if any) maladaptive behaviors should be targeted by additional goals.

126. Student also contends that the District should have included an oral motor goal in the IEP. However, the evidence supports a finding that there was such a goal. The goal on page 64 specifically referred to imitation of oral motor postures including tongue lateralization and elevation.

127. The evidence supports a finding that goals contained in the District's July 2008 IEP were clear, measurable, appropriate, and covered all of Student's areas of unique need. There was no denial of FAPE.

DID THE DISTRICT DENY STUDENT A FAPE BY FAILING TO OFFER AN APPROPRIATE PLACEMENT IN LIGHT OF STUDENT'S DISABILITIES?

128. The heart of the disagreement between Student and the District involves the District's offer of placement in the District's autism focus SDC. Student contends that he will not gain meaningful educational benefit in that setting because he does not have the necessary pre-academic skills to function in a group environment. Student also contends that the autism focus classroom does not use research based methodologies, and that only a 40-hour per week home ABA program will help Student gain educational benefit. The District maintains that its autism focus class uses research based methodologies and that Student possesses the necessary skills to gain educational benefit in that class.

129. Ainsworth teaches the autism focus class. She has taught that class since 2006, and has been a special education teacher with the District since 2005. From 1996 to 2005, she worked for the Los Angeles Unified School District (LAUSD), first as a general education teacher and later as a special education teacher. While at LAUSD, she taught in an autism-specific SDC. She has been trained in numerous methodologies for

use with children with autism, including but not limited to ABA and discrete trial training (DTT),[13] Treatment and Education of Autistic and Communication-Handicapped Children (TEACCH), Picture Exchange Communication (PECS), Structured Teaching, and Floortime. Some of these training sessions were provided by the District or LAUSD, rather than by the private companies that developed the various methodologies. She stays current on autism research through classes, reading articles and updates sent by email. Blackwell, the principal at Leffingwell, described Ainsworth as an exceptional teacher.

130. In addition to Ainsworth, there are four instructional aides in her class, for a total of five adults. There are also speech-language therapists and occupational therapists who come into the room at times. All of the classroom aides go through a 16-hour District-taught training in the use of DTT. At the time of the hearing, all the classroom aides except the newest one had undergone the training. Ainsworth gives the aides on-the-job training and daily feedback as they work with the children in her class. The aides also take crisis prevention intervention training.

131. Some of the classroom aides have additional training. For example, Lisa Zubrod-Emch has an Associate of Science degree in psychology. In the past, she worked as an in-home therapist for an NPA providing services to autistic children. That work included use of methodologies such as DTT. She received training there in ABA, DTT and PECS.

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[13] Discrete trial training (DTT) refers to a method of teaching utilized as part of an ABA program in which tasks are broken down into small parts for teaching. A therapist using DTT gives a child an instruction, expecting a particular response. For example, the therapist may say, "Bring me the spoon." Depending on the child's response, the child may receive a reward to reinforce the correct response. The instructor repeats the exercise many times until the child has mastered the action.

132. During the 2007-2008 school year, Ainsworth's autism focus class was located at Ceres. The class ranged in size from seven to 10 children. At the end of the 2007-2008 school year there were eight children in the class. Usually the aides would rotate between children, but an aide might be assigned to a particular child, depending on the child's needs. Ainsworth made certain that there was never more than a two-to-one ratio of children to adults in the class.

133. Ainsworth's class used the state standard curriculum, the California Preschool Learning Foundations. The class used an "eclectic" approach in which many different methodologies for addressing autism were utilized, instead of concentrating on one particular methodology. There is a "best practices manual" in the classroom describing various methodologies. The SELPA put the manual together for use in the class in 2007.

134. Ainsworth individualized each child's program to the child's needs. For example, if a child had greater needs, Ainsworth and the aides might concentrate on a DTT methodology in instructing the child. With a child who was more independent, they might rely more on a TEACCH format. If a child needed one-to-one teaching or assistance in the class, that would be provided. At the time of the hearing, Ainsworth had two children in her class receiving 90 percent of their daily instruction in a one-to-one fashion. If Student had been in her class, he would have had 100 percent one-to-one aide support during the 30-day transition period. If he had needed that level of support after those 30 days, it could have continued. It would depend on how well he functioned independently during that time. Ainsworth and her aides would have been taking data on Student (as they do with all the children in the class) to determine his progress on his goals and objectives and to assist with behavior management.

135. At the time of the July 2008 IEP (and at present), children in Ainsworth's class were given visual schedules. They used the schedules to move from one activity to

another throughout the day. Part of the day involved rotation to separate "work stations" where the children worked on individual IEP goals or other related tasks, either one-to-one or two-to-one. With the higher functioning children, an aide might use DTT with two children at the same time instead of one-to-one, but the lower functioning children tended to work one-on-one with an adult at the work stations. The teacher and aides collected data on each child's progress at each work station every day. There were clipboards located at each work station for this purpose. The data collected was individualized based on a student's needs and IEP goals. When a data tracking form was completed it was placed in a child's individual notebook. The work stations focused on areas such as pre-academic skills, speech-language, fine motor, vocabulary, and letter recognition.

136. In addition to the rotation to the work stations, the school day included circle time with the other children and play time in which the children worked on their social goals and functional play goals. On some days, the speech-language pathologist (SLP), speech-language assistant, or occupational therapist would come into the class to work with students individually. At the moment, the SLP comes into Ainsworth's class three days a week and the speech-language assistant is in the class two days a week, but that could change depending on the individual students' IEP goals.

137. There was also a behaviorist who visited the class occasionally to observe the children and consult with the teacher. The behaviorist provided support for the children in the extended day program and assisted the teacher when there were children with problem behaviors. The classroom had designated areas for specific activities to help the children know when and where to be. The class also used partitions to help decrease distractions for the children. The aides and layout of the class made certain that elopement was not a problem.

138. At the start of the 2008-2009 school year, Ainsworth's class moved from Ceres to Leffingwell, but the structure and teaching methodologies used in the class remained the same. The main differences were the physical layout of the classroom, the times that different activities would occur in class, and the manner in which the children could interact with typically developing peers. Children in the class at Leffingwell interact with typical children daily at recess. Typical peers also come into the classroom at snack time and are with the children during library time. At Ceres, the contact with typical peers would take place on Fridays.

139. At the time of the hearing, there were seven children in Ainsworth's Leffingwell class and five adults (Ainsworth and four aides).

140. To assist children who needed additional one-to-one teaching, the District had an after school program for preschool children called the extended day program. In the extended day program, an instructor or aide worked with a child on a one-to-one basis using ABA and DTT techniques. It was heavily data driven and targeted areas of need for the child. The time of the extended day services depended on the child's needs, as determined by the IEP team. Generally, either Ainsworth or one of the school aides provided those services. Wenzel provided supervision for the program during the time he worked for the District, until he left at the end of November 2008. The current behaviorist continues to monitor the program, collects the data and evaluates each child's progress.

141. As stated above in Factual Finding 67, part of the District's IEP offer for Student included the extended day program for five hours per week in addition to the SDC class, OT services, and SLP services. Student would attend the extended day program on four days a week, for an hour and 15 minutes per day.

142. To transition Student from home to the classroom, the District offered one-to-one aide support for Student's first 30 days of school. The District also offered

ESY services. As stated in Factual Finding 68 above, the IEP did not describe the nature of the ESY, because typically in preschool, the ESY classes are the same as the classes during the regular school year.

143. Although Student's experts criticized some of the things they saw during their observations in Ainsworth's class, their real objection is not to the class itself. In fact, Robert Patterson, Student's educational expert, praised the District's autism focus class. He said it was efficient and well run, and the teacher was very knowledgeable. He felt the aides were well trained. He explained that the class used an eclectic program and did it very well. He believes that the District tailors the program based on a child's individual needs. However, Patterson and the other experts who testified for Student's side believed that Student was not yet ready for *any* classroom, even one as small, individualized, and well run as Ainsworth's class.

144. To the extent that Student challenges the general methodologies used in Ainsworth's autism focus classroom, OAH has already made extensive findings on that issue in the case involving Student's sibling. (*Parents on behalf of Student v. East Whittier City School District* (2009) OAH case number N2008090101, pages 34 – 36.)[14] The evidence presented in the instant case was sufficient to support all the factual and legal findings on that issue made in the previous case. Rather than restate all those findings herein, that discussion is incorporated by reference as though fully set forth at this point. As was decided in that case: "[t]he District's autism focus preschool class is found to utilize accepted best practice methodologies in the treatment of autism, which are based on research to the extent practicable, and which address the core deficits of

[14] During the hearing, the District requested that the ALJ take official notice of that decision. (Gov. Code, § 11515; Evid. Code, §§ 451, 452.)

autism in an educational environment." The evidence supports the same finding in the instant case.

145. Of course, because that case involved a different child, it cannot resolve the ultimate issue of whether Ainsworth's class was appropriate to meet the needs of Student in *this* case. The discussion from the previous case is solely incorporated herein to address the general issue of whether Ainsworth's class used appropriate methodologies. No matter how well-researched the methodologies may be, if the proposed program does not meet the needs of an individual child, it is not an appropriate class to provide a FAPE.

146. In order for a proposed program to offer a child a FAPE, the program must meet the unique needs of the child and must be reasonably calculated to provide the child with meaningful educational benefit. The parties' experts – Patterson and Lenington on one hand and Ainsworth, Wenzel and Anderson on the other – disagree sharply about whether Student could have gained educational benefit in Ainsworth's class as of July 2008.

147. Student's educational experts, Patterson and Lenington, hold an impressive array of credentials, education and experience. Patterson is a licensed psychologist and a licensed educational psychologist, and has worked in the field for over 20 years. He holds credentials in teaching and school psychology. He has served as a teacher, administrator, and coordinator of special education for a school district in the past and has assessed many preschool age children, including children on the autism spectrum. He has taken numerous educational courses and published multiple articles on a variety of subjects.

148. Patterson was hired by Student's parents in 2009 to determine if it was appropriate for Student to be placed in the District's program. Patterson determined that there was sufficient data about Student so he did not need to conduct an

assessment, but he did ask to observe Student. Patterson observed Student in his ABA home program and at Sunday school.

149. Lenington has been a licensed psychologist in private practice in California since 1994. She is also an occupational therapist. She has done numerous assessments of children with autism and attended hundreds of IEPs. She is often called upon to determine the appropriateness of a classroom setting for a particular child, and has consulted with school districts. She has made professional presentations to various groups on a variety of topics, including autism and behavior. Lenington does not hold a teaching credential and has no experience teaching in a public school. She has never provided direct services to Student.

150. In the opinion of both Patterson and Lenington, Student was not yet ready to attend a school program as of July 2008 (and is still not ready at the present time). Lenington believes that, in order to determine whether a child is ready for a classroom, you look at whether the child can pay attention and follow directives designed to keep the child safe. The child also needs to be able to sit and attend in a group for a time. The child must also have prelearning skills and "joint attention."[15] She does not believe that Student possesses these prerequisite skills. She thinks if the focus is completely on Student in a home program, he will get beyond his resistance and learn, but in a school program, he would be too distracted and difficult to manage. She also believes that an eclectic approach would not work for him right now.

151. Lenington believes that Student was not ready for a school environment of any type in July 2008, because he did not have the precursors to learning, such as better

[15] In very simplified terms, joint attention refers to the ability of a child to share attention to activities or conversation with another individual.

attention, self-help skills, language skills and behavior regulation. She also does not believe he should have been in a program with "atypically" developing peers.

152. At the time of Lenington's observation of the District's proposed classroom for Student, she believed it was too advanced for him. She felt it was too noisy, the ratio of adults to children was too low, tasks were not sufficiently structured, and things moved too quickly. She did not think Student could learn in any group environment at that time and believed he would not have made educational progress in Ainsworth's class. She believed (and still believes) that Student required a 40 hour per week home ABA program with three hours per week of speech-language and two hours a week of OT. She believes that his current ABA program is helping him, but admitted it is not helping as fast as she would like it to. However, she believes that nothing less than this program would provide him with benefit.

153. Patterson believes that the level of students in Ainsworth's autism focus SDC is well above Student's current level of functioning. While Student can do some drills successfully, Patterson does not feel that he could have benefited from a class with other students in July 2008, even if there were only five or six other children present. Patterson also believes that an eclectic approach has not been proven through research to be as effective as a 40-hour a week home ABA program. He believes that Student has shown growth in his ABA program, albeit slowly and with some inconsistency.

154. Patterson believes that Student is moving toward a place where he will be ready for school, but not yet. He thinks Student will regress if placed in the school program. He thinks Student's progress will slow even if Student is cut back to a 25 hour-per-week home program.

155. During their testimony, Abrassart, Putnam and Dr. Loo echoed the opinions of Patterson and Lenington that Student did not have the necessary pre-academic skills to gain educational benefit in a District classroom. Abrassart believes the

primary consideration in whether a child is ready for school is how well the child can connect to his world. If the child does not have the readiness set of skills to notice and be involved in the environment, he is not yet ready for a group setting. She said she would like to see Student move in the direction of a classroom placement.

156. The District's experts, on the other hand, were unanimous in their testimony that Student would have gained meaningful educational benefit in the District's autism focus classroom as of July 2008 and would still do so at the present time. Ainsworth believes that Student was ready for a classroom placement in July 2008. When she observed him in his home program in June 2008, she saw him responding to some directions, able to sit for five to ten minutes, and performing some basic preschool skills of the type children perform in her classroom. She believes that Student's skill set was the same as or higher than children already in her class.

157. In Ainsworth's opinion, none of the behaviors she saw at the home visit or the behaviors listed in the ABA provider's report would be sufficient to keep Student out of a classroom. Ainsworth and her aides are used to children with maladaptive behaviors in her class. The class has strategies for dealing with Student's stereotypical autistic behaviors, his tantrums, and his elopement. Just because a child does not have joint attention skills or cannot learn from other children is not a reason to exclude the child from a classroom. Those are skills they work on in her classroom. Ainsworth has observed autistic children in her class start out as non-verbal and become verbal as the class progresses. She had two students do so this very year. She has also observed students who were previously unable to learn from others start doing so in her class. Ainsworth believes that her autism focus class was and is an appropriate placement for Student and that he would do well in the program. She believes that as of July 2008, he would have gained meaningful educational benefit in her classroom and that her class was the least restrictive environment appropriate for Student.

158. Wenzel also agreed that Student was ready for a school placement at the time of the July 2008 IEP meeting. At the time of the events in this case, Wenzel was a school psychologist and behavior specialist working for the SELPA. Since December 2008, he has been a school psychologist for another District. He was trained as a behavior intervention case manager and had attended trainings in various autism methodologies, including ABA. During his observation in Student's home in June 2008, Wenzel saw Student demonstrating the same types of skills as other children in the autism focus class. Wenzel believed that Student could make progress in a school based program. He felt that the autism focus class was the least restrictive environment in which Student could gain meaningful educational benefit as of July 2008.

159. Anderson also agreed that Student was ready for a classroom placement at the time of the July 2008 IEP. Anderson has 20 years of experience in the field of special education, and obtained her master's degree in special education school psychology in 1988. She has been an autism and severe-handicapped program specialist with the District since August 2007. She testified that she did not recall seeing any aggressive or maladaptive behaviors by Student during the home observation in 2008. Instead, she saw Student comply with requests from adults. Although he had problems making eye contact, he seemed to be sitting and attending to his tasks appropriately. She also saw him transition from one task to another appropriately. She believed he was ready to move into a classroom. She explained that, even if Student had exhibited aggressive or eloping behaviors, the autism focus class is designed to address those.

160. Anderson expressed concerns about Student's home ABA program because of the level of restrictedness of the environment. There is no opportunity for Student to "generalize" skills in that environment. Generalizing skills refers to the ability of a child to carry over skills learned in one environment (such as one-to-one training) into another environment. In Anderson's opinion, one-to-one instruction has merit in

teaching children specific skills, but they need the benefit of a group to generalize those skills.

161. Putnam took issue with Anderson's belief that a school placement was necessary for Student to generalize a skill. He said that generalization of skills could occur in Student's home program. Generalization is not solely an environmental factor. It can occur between different people or even if a child is a moved a certain distance from the instructor. He believes that Student needed (and still needs) a structured one-to-one setting to learn how to generalize.

162. Bernal and Hanson, although not District employees, shared the District's opinion that the autism focus class was appropriate. In their opinion, from a speech-language perspective, Student had the readiness skills for a school environment when they were working with him. Student was able to sit and attend for a significant amount of time. He could follow directions and he could be redirected from problem behaviors. Although Student had behavior problems, they were not unlike those generally associated with other children with autism. Hanson pointed out that if Student is going to learn to model his peers, he needs peers around him for that purpose.

163. Although both sides' experts are highly qualified, the District's experts are more persuasive on this issue. While the Student's experts can speculate as to how Student might act in a classroom, Ainsworth has actually seen children with skills and needs similar to Student gain educational benefit in her class. She observed Student in his home program and believes he possesses the skills that would make him successful in her class.

164. Ainsworth's class is not a one-size-fits-all program. It is highly individualized to meet each child's needs. If a child needs a one-to-one, full-time aide to make progress, the aide is provided. If the child needs an emphasis on ABA/DTT, that is provided. In addition, the District's placement offer included an after hours extended

day program that solely uses ABA/DTT methodologies one-to-one with a child. Even if Student requires that type of methodology to learn, the District extended day program will provide that.

165. Lenington's opinion is not as persuasive as the District educators. She does not teach an SDC classroom to see the requisite pre-academic skills that a child needs to make progress in that environment. For example, her opinion that Student should not be in an SDC class because he lacked joint attention was countered by the testimony of the District educators who explained that joint attention is not a pre-requisite for a small, highly structured autism focus SDC.

166. Patterson does have an educational background, and his opinion carries weight, but he does not have the recent day-to-day experience of Ainsworth in watching children with Student's skill set gain benefit in the District's autism focus class. Although the evidence is very close in this case, the balance tips in the District's favor. Student has the burden of showing that he will not gain educational benefit in the autism focus class and he has failed to meet that burden.

167. It is important to note that this is not a case in which a narrow window of educational opportunity might be missed for Student if he is placed in the SDC classroom instead of his home program. The evidence at hearing supports a finding that Student's progress in his home ABA program has been very slow and unsteady, despite more than a year of one-to-one ABA for 40 hours per week. Although Student is making some educational progress in his home ABA program, it is far below the progress expected in such a program for an autistic child.

168. Lenington's updated assessment done before the June 2008 IEP meeting found that some of Student's tested skills had actually regressed despite his 40-hour per week home ABA program. Although she attributed this to Student's refusal to do work which Student felt was "beneath" him, she could not deny that his progress has been

very slow. Dr. Patterson also admitted that Student has not made extensive growth despite being in what he considered to be an "appropriate" program for over a year. The data logs from Student's home ABA program which Student placed into evidence do not show the type of growth anticipated by the various research studies supporting ABA programs. Student's experts did not state when they thought Student might advance enough to meet what they believed to be the requirements for entry into a school classroom.[16]

169. In addition, there is no dispute that the District's SDC is a less restrictive environment than Student's home. In Ainsworth's class Student will have access to both the children in the class and to typically developing children at various times during the day. As Hanson pointed out, it is difficult to see how Student could learn to model other children if there are no children for him to model. The evidence supports a finding that Student will gain meaningful educational benefit in Ainsworth's class. He will also have the non-academic benefit of having peers, including typically developing peers, in contact with him. There is no indication that Student's presence in the SDC class will present any disruptive behaviors beyond what is expected from an autistic child. The

[16] In one of the scholarly works submitted into evidence by Student, entitled *Are Other Treatments Effective?* at page 56, author Tristram Smith, in discussing his belief regarding the superiority of ABA programs for treatment of children with autism, states, "Thus, despite the recommendation given above to concentrate on behavioral treatment, it is clear that for children who progress slowly, one may have to consider alternatives." Although it is unnecessary to decide the issue for purposes of this Decision, Student may be one of those children for whom ABA methodology has only limited effectiveness.

District's autism focus class is the least restrictive environment appropriate to meet Student's educational needs.

170. Obviously, if Student fails to make progress in the District's program or if he regresses, the District will be required to call an IEP team meeting to discuss changes to his program. However, as of July 2008, the District's program was reasonably calculated to provide Student with meaningful educational benefit and to meet all his unique needs. Student has failed to meet his burden to show otherwise. There was no denial of FAPE.

DID THE DISTRICT DENY STUDENT A FAPE BY FAILING TO ADDRESS STUDENT'S UNIQUE NEED FOR SPEECH AND LANGUAGE THERAPY, APPLIED BEHAVIORAL ANALYSIS THERAPY, AND TRANSPORTATION?

171. As stated above in Factual Findings 67 and 129 – 142, the District's IEP offer included ABA/DTT both during the SDC class and after school, in the extended day class. To the extent that Student had a "need" for ABA methodology, it would be provided in the District's offered program.

172. Student also contends that the District did not meet his need for speech language therapy. A District is required to provide a child with related services, such as speech and language services, if those services are necessary for the child to benefit from special education. In the instant case, neither party disputes that Student needed speech and language services to benefit from his special education. The dispute centers around the amount of services needed per week.

173. The July 2008 IEP offered two times per week, 60 minutes per session, of individual speech-language services from an "NPA/SLP" and 60 minutes classroom consultation once a month. The parties dispute whether a third hour per week of "co-therapy" speech-language services, in addition to the two hours called for in the IEP, was required to provide Student with a FAPE.

174. Joanne Abrassart testified on behalf of Student as an expert in the area of speech-language. Abrassart is an SLP in private practice with approximately 36 years in the field. She has taught college classes related to speech and language. She has conducted many speech and language assessments of preschool children, including children on the autism spectrum, and has attended hundreds of IEPs. She is a very qualified expert in the area of speech and language.

175. Abrassart assessed Student twice with respect to his speech and language needs prior to the July 2008 IEP meeting. She ultimately recommended two hours of individual speech-language services per week, with an additional hour of co-therapy a week. Co-therapy, as described by Abrassart, refers to a multi-disciplinary approach to speech-language services, in which the speech-language provider works with the child at the same time as the ABA provider or other provider to infuse more language into the child's program.

176. On June 24, 2008, Core, the NPA speech-language provider for Student, provided an updated report on Student's progress. The report recommended that Student continue with one-hour individual speech-language sessions twice a week "with additional co-therapy and team consultation of up to 1-hour per week."

177. Bernal, who provided Student's speech and language services through Core, testified that two hours per week of individual services plus one hour per month of consultation services would be sufficient to meet Student's needs, particularly if Student was in a classroom.

178. Bernal began providing services to Student in approximately December 2007. At the time she was an independent contractor (not an employee) of Core, and did not have an SLP license from the State of California. Instead, she worked under the supervision of Darlene Hanson.

179. Hanson also believed that the District's IEP offer of speech-language services for Student constituted a FAPE. Hanson has been a speech-language pathologist in private practice since 1988. She received her Masters Degree in communicative disorders from Whittier College in 1986. She is currently the Director and Supervisor of Communication Services for Whittier Area Parent Association for Persons with Developmental Handicap.

180. Abrassart's opinion regarding Student's speech and language needs and services is more persuasive than those of Bernal and Hanson. As stated above, Bernal was not licensed as an SLP when she began services for Student. Although Hanson had more experience than Bernal, her opinion is less persuasive than Abrassart's in light of her adherence to a controversial methodology known as facilitated communication.

181. Facilitated communication is a methodology used in delivering speech-language services. The theory behind facilitated communication is that the disabled child has the desire and mental capability to communicate but because of motor problems or other disabilities is unable to express himself or herself through activities such as typing at a keyboard. The facilitator applies slight resistance to the child's arm to assist with the typing. Although the facilitators believe that the physical resistance applied does not in any way interfere with the message the child intends to impart, many people in the profession believe that the facilitator is actually influencing the message and that learning is not taking place.

182. The American Psychological Association adopted a resolution in 1994 stating, in part, that "facilitated communication is a controversial and unproved communicative procedure with no scientifically demonstrated support for its efficacy." The report also noted that "information obtained via facilitated communication should not be used…to make diagnostic or treatment decisions." The American Speech-Language-Hearing Association published a position statement in 1994, in which it was

stated that "the scientific validity and reliability of Facilitated Communication have not been demonstrated to date. Information obtained through or based on Facilitated Communication should not form the sole basis for making any diagnostic or treatment decisions."

183. In approximately March 2008, Bernal began using facilitated communication with Student. She also used other strategies in her speech-language sessions with Student, including but not limited to, verbal prompts, positive reinforcement, modeling, and having him point to pictures.

184. Student's mother was not informed at first that Core was using facilitated communication. When the SLP started describing the resistance and prompting during one of the provider collaboration meetings, the ABA providers were very surprised and there was a disagreement as to how the facilitated communication prompting should be recorded on the data tracking sheets.

185. Student's mother grew concerned because Student did not seem to be making progress in his speech-language. When Student's mother took Student for standardized testing, he was not able to understand the things he supposedly could when facilitated communication was used.

186. Abrassart does not use facilitated communication in her work and did not believe it was appropriate for Student. She explained that facilitative communication assumes that the child has good comprehension and competence, but simply has difficulty expressing himself. In her opinion, Student did not fit that profile. She believed that Student should have made more progress in his speech-language services during the time between her two evaluations than he did. She also raised concerns about facilitated communication in general, because there were documented instances of too much facilitator involvement in the child's communication.

187. Hanson is a master trainer in the use of facilitated communication. She believes facilitated communication can be helpful for children with autism.

188. For purposes of this decision, it is unnecessary to decide the debate regarding the effectiveness of facilitated communication. However, Hanson's adherence to such a controversial methodology and her direction to Bernal to use that methodology with Student weaken the persuasiveness of her opinion that the District's offer was appropriate. In light of that, and in light of Abrassart's extensive experience in the area of speech-language pathology, Abrassart's opinion regarding Student's needs is more persuasive. The evidence supports a finding that the District's proposed speech-language services in the July 2008 IEP were not sufficient to offer Student a FAPE.

189. In its written closing argument, the District argues that Student will not need the hour of co-therapy if he is in a District school program (as opposed to a home program with multiple NPA providers). However, the District's July 2008 FAPE offer called for speech-language services to be provided by an "NPA/SLP." Under those circumstances, the third hour of co-therapy services per week is still appropriate.

190. Student also argues that the District's July IEP should have offered transportation services. The IEP called for transportation services from Student's home to school and back, so it is not clear what the basis for Student's claim may be. The arguments regarding this issue in Student's written closing argument do not clarify the nature of Student's dispute of the IEP offer. With respect to OT services, the IEP stated that the District would reimburse Student's parents for mileage to and from the OT clinic. Student's mother provided some testimony at hearing that there was a dispute between Student's mother and the District about the language of the documentation required to obtain reimbursement. If so, that is an implementation issue, not a FAPE issue. Student's issues set forth in the Prehearing Conference order and due process request do not include implementation issues. Because they were not properly alleged,

it would be inappropriate to add them at this time. There was no denial of FAPE with respect to the July 2008 offer with respect to transportation services.[17]

DID THE DISTRICT DENY STUDENT A FAPE BY FAILING TO ALLOW PROPER CLASSROOM OBSERVATIONS TO GIVE STUDENT'S PARENTS THE OPPORTUNITY TO MAKE AN INFORMED DECISION ABOUT WHETHER THE PROPOSED PLACEMENT WAS APPROPRIATE?

191. At hearing, Student's counsel requested, and the parties stipulated, that the observation issue be added as both a procedural and substantive issue. To the extent that observation could relate to a substantive denial of FAPE, the evidence, as set forth in Factual Findings 88 – 98 above, supports a finding that there was no violation. The parents and their experts had ample time to view the proposed classroom. There was no denial of FAPE.

WHAT IS THE APPROPRIATE REMEDY FOR THE DENIAL OF FAPE WITH RESPECT TO SPEECH-LANGUAGE SERVICES?

192. When a District fails to provide a FAPE to a child, it may be appropriate to make an order for compensatory education for the child or to order the District to reimburse the parents for expenses they incurred to secure an appropriate education for the child. To determine what remedy would be appropriate in the instant case, it is necessary to examine what occurred after the July 1, 2008 IEP meeting with respect to Student's speech and language services.

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[17] It was also unclear from Student's written closing argument whether Student was trying to add implementation issues with respect to the speech and language services provided to Student. If so, those issues were not properly alleged and may not be added at this time. The issues alleged in this case deal solely with the District's July 2008 offer of FAPE.

193. As stated above in Factual Findings 67 – 70, Student's counsel sent a letter to the District purportedly accepting the IEP offer of speech-language services. However, Student accepted the offered therapy, plus "one hour of co-therapy," which had not been offered by the District. (The District had offered once a month consultation.) Therefore, it is questionable whether Student's "acceptance" was in fact an acceptance at all. However, Student continued to receive services under the settlement agreement through August 31, 2008.

194. On September 23, 2008, Core sent Student's mother a letter stating that Core would cease providing speech and language services for Student on October 23, 2008.

195. On October 7, 2008, Student's mother sent an email stating that Core would no longer be required to provide services for Student. The attorney for the parents sent a letter that same day to the attorney for the District stating that the parents had begun paying for the services of Robin Jones-Brown, SLP, as a replacement speech and language provider. At hearing, Student's mother testified that Core stopped services around October 7, 2008.

196. On October 13, 2008, the District sent the parents a letter offering speech-language services through a district SLP and asking for information about Jones-Brown. On October 27, 2008, the District sent a letter to the parents discussing the possibility of using Jones-Brown as a District NPA provider for Student.

197. During the hearing, the parties stipulated that Jones-Brown was an appropriate speech-language provider for Student. Jones-Brown provided direct speech-language therapy twice a week for one hour per session and a third hour per week of co-therapy with the other providers. Initially the co-therapy services were separate, but later Jones-Brown added Student's sibling to his co-therapy hour each week. Jones-Brown has been using the Links to Language methodology with Student.

198. According to the documentation submitted by Student's parents, they paid $7,320.00 to Jones-Brown for two hours a week of speech-language therapy services and one hour per week of co-therapy between September 17, 2008 and April 17, 2009.

199. Under the circumstances, it would be reasonable to require the District to reimburse this amount to Student's parents. This amount was necessarily incurred by the parents related to the District's denial of FAPE with respect to the offered speech and language services.[18] The evidence supports a finding that the District should reimburse Student's parents $7,320.00 within 60 days of the date of this Decision.

200. However, because reimbursement is a matter of equity, the evidence does not support a finding that the District should reimburse Student's parents for their mileage to Jones-Brown's office or other purchases related to speech and language. The District offered to locate another SLP to take the place of Core, but the parents unilaterally chose to contract with Jones-Brown. Had the parents worked with the District to find another provider, amounts spent on mileage and supplies might have been avoided.

LEGAL CONCLUSIONS

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

[18] There was evidence during the hearing that Core failed to provide Student with 18 hours of co-therapy prior to the time Core ceased to provide services. Because Student did not allege implementation issues in this case, no findings are made regarding those missed hours and whether Student is entitled to additional speech-language therapy to make up for those missed hours.

2. 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).)

3. 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] (*Rowley*), 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.)

4. Not every procedural violation of IDEA results in a substantive denial of FAPE. (*W.G. v. Board of Trustees of Target Range School District* (9th Cir.1992) 960 F.2d 1479, 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.

THE DISTRICT DID NOT DENY STUDENT A FAPE BY FAILING TO ADEQUATELY ASSESS STUDENT IN ALL AREAS OF SUSPECTED DISABILITY.

5. 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.)[19] 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).) In addition, a district must reassess a child when it determines that a child's educational and related services needs warrant a reassessment or when a child's parents or teacher requests a reassessment. (20 U.S.C. § 1414(a)(2); Ed. Code, § 56381, subd. (a)(1).)

6. As set forth above in Factual Findings 1 – 27, Student was not due for his three year review and the evidence did not support a finding of any request for a reassessment. The District had ample information with which to conduct Student's July 2008 IEP, and no need for a reassessment. There was no violation by the District.

THE DISTRICT DID NOT DENY STUDENT A FAPE BY FAILING TO DEVELOP AN IEP WITHIN THE TIME REQUIRED BY LAW.

7. A district is required to hold an IEP meeting within 30 days of a written request by a parent. (Ed. Code, § 56343.5.)

8. As discussed above in Factual Findings 29 – 33, the District did not hold an IEP meeting within 30 days of the parents' May 15, 2008 letter requesting a meeting. Instead, the District held the meeting about two and one-half weeks late on July 1, 2008. That constituted a procedural violation of the law. However, that violation did not impede Student's right to a FAPE, impede the ability of Student's parents to participate in the decision making process or cause a deprivation of educational benefits. There was no denial of FAPE.

[19] The federal law uses the term "evaluation" and California uses the term "assessment," but the two terms are synonymous for purposes of this case, so they will be used interchangeably.

THE DISTRICT DID NOT DENY STUDENT A FAPE BY FAILING TO HAVE A GENERAL EDUCATION TEACHER AND SCHOOL NURSE AT THE JULY 1, 2008 IEP MEETING.

9. 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." The federal law has the same requirement. (20 U.S.C. § 1414(d)(1)(B)(ii).) An IEP team may also include "at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate…." (20 U.S.C. § 1414(d)(1)(B)(vi); Ed. Code, § 56341, subd. (b)(6).)

10. As discussed above in Factual Findings 34 – 45, there was no violation by the District for failing to have a general education teacher and school nurse at the IEP meeting. Student was not participating in the general education environment, so there was no requirement that a District general education preschool teacher be present. Any questions Student's parents had about regular education children in general could be answered by the Santa Monica preschool teacher who attended the meeting. There was also no requirement to have a school nurse present. Food allergies were a common occurrence in the District's SDC class and were handled by the classroom teacher and aides on a routine basis. The IEP team did not need a school nurse for input on that issue.

THE DISTRICT DID NOT DENY STUDENT A FAPE BY FAILING TO DISCUSS THE CONTINUUM OF SERVICES AT THE JULY 1, 2008 IEP MEETING, AND FAILING TO CONSIDER THE VIEWS AND REPORTS OF PARENTS' EXPERTS.

11. A district is required to have a continuum of program options and supplementary services available for a child. (Ed. Code, § 56360.) If a parent obtains an IEE, the district is required to consider that IEE at an IEP meeting in making a

determination of FAPE for a child. (Ed. Code, § 56329, subd. (c); 34 C.F.R. § 300.502(c)(1) (2006).)

12. As discussed above in Factual Findings 46 – 55, the evidence does not support a finding that the District committed a procedural violation. Instead, the evidence shows that the District had a continuum of programs available and discussed the various options at the IEP meeting. Likewise, the evidence supports a finding that the District reviewed the IEEs available at the time of the meeting and listened to the input from Student's parents and their experts. There was no denial of FAPE.

THE DISTRICT DID NOT DENY STUDENT A FAPE BY PREDETERMINING STUDENT'S PLACEMENT.

13. 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, supra,* 960 F.2d at p. 1484.)

14. As discussed in Factual Findings 56 – 62, there is no evidence that the District predetermined Student's placement. Instead the team members listened to the views of Student's parents and their experts at the IEP meeting. The mere fact that the parties ultimately disagreed about the proper placement did not mean it was predetermined. There was no denial of FAPE.

THE DISTRICT DID NOT DENY STUDENT A FAPE BY FAILING TO MAKE A SUFFICIENTLY SPECIFIC OFFER THAT COULD BE CLEARLY UNDERSTOOD BY THE PARENTS.

15. A district is required to give a child's parents a copy of the child's IEP at no cost to the parents. (34 C.F.R. § 300.322(f) (2006); Ed. Code, § 56341.5, subd. (j).) A district must also make a formal written offer in the IEP that clearly identifies the proposed program. (*Union Sch. Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1526.) This must include a statement of the special education and related services, and supplementary aids and services, including program modifications or supports, designed to address a child's unique needs. (Ed. Code, § 56345.)

16. As discussed above in Factual Findings 63 – 73, the District did not commit a procedural violation related to the specificity of the IEP offer. While there was a delay in producing a written document to the parents, once the written IEP was sent, it contained all the elements required of an IEP. Student continued to receive services pursuant to the settlement agreement for a month after the written IEP was sent. The parents understood the written offer well enough to accept part of it and reject the rest. The delay in sending the written document did not impede Student's right to a FAPE, cause a deprivation of educational benefits or impede the parents' right to participate in the decision making process. There was no denial of FAPE.

THE DISTRICT DID NOT DENY STUDENT A FAPE BY CHANGING GOALS AND OBJECTIVES OUTSIDE THE PRESENCE OF THE PARENTS AND SOME MEMBERS OF THE IEP TEAM.

17. As discussed above in Factual Findings 74 – 86, there was no violation by the District by changing goals and objectives in the proposed IEP between the July 1, 2008, and July 28, 2008, when the written document was sent. The evidence showed that the goal in dispute, which involved a Links to Language methodology, was never agreed

to by the IEP team. Even if there had been a procedural violation, it did not cause a deprivation of educational benefits, impede Student's right to a FAPE, or significantly impede the parents' participation in the decision making process. There was a full discussion of Links to Language at the July 1, 2008 IEP meeting and a disagreement among the team members. If the parents felt further discussion was necessary, they could have called another meeting.

THE DISTRICT DID NOT DENY STUDENT A FAPE BY FAILING TO GIVE PRIOR WRITTEN NOTICE OF ITS DECISION TO CHANGE STUDENT'S PLACEMENT FROM PACIFIC CHILD AND FAMILY ASSOCIATES.

18. A district is required to provide prior written notice to the parents of a child whenever it proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. §1415(b)(3); Ed. Code, § 56500.4.) The notice given to the parents or guardian must meet the requirements specified in United States Code, title 20, section 1415(c)(1). A district may use the IEP as the prior written notice as long as it meets all of the requirements of the IDEA. (34 C.F.R. § 300.503(a) (2006); 71 Fed.Reg. 46691 (August 14, 2006).)

19. As set forth in Factual Finding 87, the decision to change Student's home program to a District SDC was made in the July 2008 IEP. The written IEP document constituted prior written notice of its proposals for placement, services, goals, and transition, and of its refusal to continue funding Student's home ABA program. Since the IEP contained the requisite elements of prior written notice, no further written notice was required. Since there was no procedural violation, there was no denial of FAPE. However, even if there had been a procedural violation, the lack of a separate document did not impede Student's right to a FAPE, cause a deprivation of educational benefits or

impede the parents' opportunity to participate in the decision making process. There was no denial of FAPE.

THE DISTRICT DID NOT DENY STUDENT A FAPE BY FAILING TO ALLOW STUDENT'S PARENTS OR EXPERTS SUFFICIENT TIME TO OBSERVE THE CLASSROOM SETTING WITHOUT INTERFERENCE.

20. The parents' right to participate in the IEP process also includes the right to have the parents' independent expert observe a district's proposed placement. (*Benjamin G. v. Special Education Hearing Office* (2005) 131 Cal.App.4th 875.) If the district observed the pupil in conducting its assessment, or if its assessment procedures make it permissible to have in-class observation of a pupil, an equivalent opportunity shall apply to an independent educational assessment of the pupil in the pupil's current educational placement and setting, and observation of an educational placement and setting, if any, proposed by the district. (Ed. Code, § 56329.)

21. As discussed above in Factual Findings 88 – 98, the District afforded parents and their experts an equivalent opportunity to observe the proposed educational placements for Student. The District's observers went to Student's home on one occasion, stayed for about two hours, and observed Student for about an hour. Student's mother and her experts were given four different opportunities to observe Ainsworth's class in 2008, twice at Ceres and twice at Leffingwell. On each occasion, the classroom visit to Ainsworth's class lasted 30 minutes. The restriction put on the number of observers was necessary to prevent disruption to the other children. The restrictions on movement during the Leffingwell observations were necessary due to the observers' conduct at Ceres. There was no procedural violation and no denial of FAPE.

THE DISTRICT DID NOT DENY STUDENT A FAPE BY ADOPTING INACCURATE PRESENT LEVELS OF PERFORMANCE OR BY OFFERING GOALS AND OBJECTIVES THAT WERE VAGUE AND NOT DESIGNED TO ALLOW STUDENT TO MAKE PROGRESS.

22. An IEP is a written document that includes a statement regarding a child's "present levels of academic achievement and functional performance" including, for a preschool child, the manner in which the disability affects the child's participation in appropriate activities. (Ed. Code, § 56345, subd. (a).) An IEP must also contain a "statement of measurable annual goals, including academic and functional goals" designed to meet the child's educational needs and 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)(1), (3).)

23. As discussed in Factual Findings 100 – 109, Student failed to meet his burden of showing the present levels of performance in the District's July 2008 IEP were inaccurate. As discussed in Factual Findings 110 – 127, Student failed to meet his burden to show that the goals and objectives contained in the July 2008 IEP were vague and not designed to allow Student to make progress. There was no denial of FAPE.

THE DISTRICT DID NOT DENY STUDENT A FAPE BY FAILING TO OFFER AN APPROPRIATE PLACEMENT IN LIGHT OF STUDENT'S DISABILITIES.

24. As stated above in Legal Conclusion 3, to provide a child with a substantive FAPE, the proposed IEP program must be specially designed to address the student's unique needs, and be reasonably calculated to provide the student with educational benefit. In *Rowley*, the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs. (*Rowley, supra,* 458 U.S. at p. 201.) *Rowley* expressly rejected an

interpretation of the IDEA that would require a school district to "maximize the potential" of each special needs child "commensurate with the opportunity provided" to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is "sufficient to confer some educational benefit" upon the child. (*Rowley*, at pp. 200.) In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (*Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1307, 1314.) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student.

25. Recent Ninth Circuit decisions have indicated that a district must offer a program reasonably calculated to provide "meaningful" educational benefit. (*N.B. v. Hellgate Elementary School District* (9th Cir. 2008) 541 F.3d 1202, 1213; see also *J.G. v. Douglas County School District* (9th Cir. 2008) 552 F.3d 786, 800.)

26. An IEP is evaluated in light of information available at the time it was developed, and is not to be evaluated in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) The Ninth Circuit has endorsed the "snapshot rule," explaining that an IEP "is a snapshot, not a retrospective." The IEP must be evaluated in terms of what was objectively reasonable when it was developed. (*Id.* at 1149.)

27. The law also requires that a child be educated in the least restrictive environment (LRE). To the "maximum extent appropriate, children with disabilities…are educated with children who are not disabled…." (20 U.S.C. § 1412(a)(5).) "[S]pecial classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of

supplementary aids and services cannot be achieved satisfactorily." (20 U.S.C. § 1412(a)(5).)

28. Case law has provided guidance for determining whether a particular program for a student constitutes the LRE. In order to measure whether a placement is in the LRE, four factors must be considered: (1) the academic benefit of placement full-time in a regular class; (2) the non-academic benefits of such placement; (3) the effect of the disabled student's presence on the teacher and other children in the classroom; and (4) the cost of mainstreaming the disabled student in a general education classroom. (*Sacramento City Unified School District v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398.)

29. As discussed in Factual Findings 128 – 170, the District's proposed July 2008 IEP offered Student a placement in the LRE appropriate for Student. The evidence supports a finding that as of July 2008, the District's offer was reasonably calculated to provide Student with meaningful educational benefit. Student was not ready for a regular education placement or any less restrictive environment than the autism focus SDC. There was no denial of FAPE.

DID THE DISTRICT DENY STUDENT A FAPE BY FAILING TO ADDRESS STUDENT'S UNIQUE NEED FOR SPEECH AND LANGUAGE THERAPY, APPLIED BEHAVIORAL ANALYSIS THERAPY, AND TRANSPORTATION?

30. Designated instruction and services (DIS services), also known as related services, include transportation and such developmental, corrective and other supportive services (including speech-language pathology) as may be required to assist a child to benefit from special education. (Ed. Code, §56363, subd. (a); 20 U.S.C. § 1401(26).) An IEP must include a statement of special education and related services to be provided to a child. (Ed. Code, § 56345, subd. (a)(4).)

31. As discussed above in Factual Findings 171 – 190, the evidence does not support a finding that the District's July 2008 IEP offer denied Student a FAPE with

respect to transportation or ABA services. However, the District did deny Student a FAPE by failing to offer a third hour of speech-language services every week for purposes of "co-therapy" between Student's speech-language provider and teacher or other providers. Student's experts were more persuasive on this issue than the District's experts, and Student met his burden on this issue. The IEP denied Student a FAPE with respect to the offer of DIS speech and language services.

THE DISTRICT DID NOT DENY STUDENT A FAPE BY FAILING TO ALLOW PROPER CLASSROOM OBSERVATIONS TO GIVE STUDENT'S PARENTS THE OPPORTUNITY TO MAKE AN INFORMED DECISION ABOUT WHETHER THE PROPOSED PLACEMENT WAS APPROPRIATE.

32. As discussed above in Factual Findings 88 – 98 and 191, and Legal Conclusions 20 – 21, there was no procedural or substantive violation by the District with respect to the observations of the proposed SDC classroom. There was no denial of FAPE.

THE REMEDY FOR FAILURE TO OFFER APPROPRIATE SPEECH AND LANGUAGE SERVICES.

33. When a district has denied a FAPE, a 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].) Reimbursement of educational expenses incurred by a child's parents due to a district's denial of FAPE may be an appropriate remedy. (*Ibid.*)

34. As discussed above in Factual Findings 192 – 200, it would be appropriate to order the District to reimburse Student's parents for the money they spent for the services of Robin Jones-Brown after Core Communication ceased providing services at

District expense. The District's failure to offer appropriate speech and language services in the July 2008 IEP necessitated the parents' actions in retaining Jones-Brown.

ORDER

The District shall pay Student's parents $7,320.00 as reimbursement for their expenses within 60 days of the date of this order. All of Student's other claims for relief are denied.

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 partially prevailed on Issue 13. The District prevailed on all other issues heard and decided in this case.

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 17, 2009

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SUSAN RUFF

Administrative Law Judge

Office of Administrative Hearings