

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OAH CASE NO. 2009010538

CORONA-NORCO UNIFIED SCHOOL
DISTRICT,

v.

PARENTS on behalf of STUDENT.

DECISION

Elsa H. Jones, Administrative Law Judge, Office of Administrative Hearings (OAH), heard this matter on May 11 through May 14, 2009, and June 8 through June 11, 2009, in Norco, California.

Corona-Norco Unified School District (District) was represented by Melissa Hatch, Attorney at Law, of Fagen Friedman and Fulfroost, LLP. Jim Huckeba, Ph.D., SELPA Administrative Director, attended all hearing days.

Student and Parents were represented by James D. Peters III, an advocate with the Peter D. Collisson Professional Corporation. Student's mother (Mother) attended all hearing days.

District's Due Process Hearing Request (Complaint) was filed with OAH on January 23, 2009. OAH continued the matter on February 20, 2009, for good cause shown.

Sworn testimony and documentary evidence were received at the hearing. At the conclusion of the hearing, the parties were ordered to file written closing briefs by no later than 5:00 p.m. on June 30, 2009. District timely filed its closing brief. Student did not file his closing brief until approximately 6:10 p.m. on June 30, 2009. Since the

Student's brief was only minimally untimely, the untimely filing is deemed nonprejudicial, and is excused. The Student's brief has been accepted. Upon receipt of both briefs, the record was closed and the matter was submitted.

ISSUE

Whether the Individual Education Program (IEP) of November 17, 2008, offered Student a free appropriate public education (FAPE).¹

REMEDIES REQUESTED

District seeks an order that it may implement the November 17, 2008, IEP over the Parents' objections, if Parents wish the District to continue to provide Student special education and related services. District further seeks an order that it is no longer obligated to fund the services Student currently receives from nonpublic agencies (NPAs), as the IEP of November 17, 2008, does not include those services.

FINDINGS OF FACT

GENERAL BACKGROUND AND JURISDICTIONAL MATTERS

1. Student is a 13-year-old boy who is in seventh grade and has resided in the District at all relevant times. He has attended Norco Intermediate School (Norco Intermediate) in the District since the beginning of the 2008-2009 school year, where he has been fully included in the general education setting and curriculum. He has been eligible for special education as a student with autistic-like behaviors since July 1999,

¹ At the prehearing conference, and in his closing brief, Student contended that he was entitled to affirmative relief. However, Student never filed a Complaint in this action. Consequently, there is no basis for Student's request for affirmative relief.

when he was four years old. Prior to attending Norco Intermediate, he attended Sierra Vista Elementary School (Sierra Vista), where he completed fourth through sixth grades, all in the general education setting. Norco Intermediate is not Student's home school, but District placed him there for middle school as several of his classmates from Sierra Vista would also be attending Norco Intermediate.

2. In 2006, Student and the District entered into a settlement agreement to resolve a due process complaint filed by the Student. Pursuant to the settlement agreement, Student's special education related services have included the following: (1) A one-to-one instructional aide (IA) during school hours; (2) Sixty minutes of speech and language (LAS) therapy per week, in a small group, provided by the Speech and Language Development Center in Buena Park, California (Buena Park), which is a non-public agency (NPA); (3) Fifteen hours per week of home-based Applied Behavior Analysis (ABA) services, plus six hours per month of supervision and 4 hours per month of clinic meetings, all provided by ABC Behavior Services, an NPA; and (4) Two hours per week of clinic-based occupational therapy (OT) services provided by Big Fun Therapy and Recreation Services (Big Fun), an NPA². ABC and Big Fun provided services to Student during the summer. Buena Park did not provide services during the month of July. Student has continued to receive these NPA services to the present, as the parties have not been able to agree upon any IEPs since entering into the 2006 settlement agreement. During the 2008-2009 school year, Student has had to miss school on Thursdays from approximately 11:30 to the end of the school day (4th period through

² Evidence at the hearing revealed that various Big Fun locations, including the Chino, California location where Student has received services, will no longer be California-certified as of July 1, 2009.

7th period) to receive his NPA LAS services at Buena Park. Buena Park is located approximately 30 miles from Norco Intermediate.

TRIENNIAL ASSESSMENT

3. On June 27, 2008, Student's parents consented to the District's assessment plan for a triennial assessment. The assessment, which occurred in the fall of 2009, when Student was 13 years old and in the seventh grade, consisted of the following: a psychoeducational assessment, a speech and language (LAS) assessment, an autism program assessment, an OT assessment, a physical therapy (PT) assessment, an audiology assessment, and an adaptive physical education (APE) assessment.³

PSYCHOEDUCATIONAL ASSESSMENT

4. The psychoeducational assessment was conducted on several days in September and October 2008. The assessment was conducted by school psychologist Kelly Hicks, and the school nurse, with input provided by Mother, Terrance McKinney (Student's IA), and various of Student's sixth grade and seventh grade teachers. Ms. Hicks spent approximately 13 hours or more assessing Student.

5. Ms. Hicks has a bachelor's degree in Psychology from Cal Poly Pomona, and received her M.A. in Educational Psychology in December 2006 from Azusa Pacific University. She holds a Pupil Personnel Services (PPS) credential, as well a preliminary mild-moderate special education credential. She holds a Crosscultural, Language and Academic Development (CLAD) credential, and is a certified Behavior Intervention Case

³ During hearing, the parties stipulated that APE services are not at issue in this action. Consequently, this Decision will not discuss the APE assessment or the APE services offered by the District. The parties also stipulated during hearing that the IEP team's determination not to offer PT services is not at issue in this action.

Manager (BICM). She worked for one year as a tutor for autistic children, was an RSP teacher from 2003-2006, and has been a school psychologist in the District for two years. Ms. Hicks wrote a report of the assessment, dated October 28, 2008. She reported on her interview with Student, during which he expressed that he liked school, but that English was hard for him because he had to "tell the author's feelings." Ms. Hicks's records review revealed that Student had passed all of his sixth grade classes, with grades ranging from "A+" to "C-," and had displayed satisfactory to outstanding effort in all classes. She noted that no behavior or attendance issues were reported as of the time of the assessment.

6. Ms. Hicks summarized the school nurse's assessment, which revealed that Student had normal vision and hearing, and was generally healthy. The nurse called Student's parents on October 8 and October 9, 2008, to obtain further information. She left messages on cell and home phones, but she never received a return phone call.

7. Ms. Hicks reported that Student was pleasant and very cooperative during the test sessions. His verbal and physical activity levels were age-appropriate, and he put forth adequate effort throughout the test sessions. Student was concerned about the current time, and seemed agitated that there were no clocks in the assessment room. He needed to prepare to leave the assessment room three minutes before the bell. Ms. Hicks also observed that Student rarely made eye contact or made attempts at being humorous. He lined up his pencils and played with his eyebrows. Once, when he was otherwise unoccupied, he started making car crashing sounds and pretending he had cars in his hands.

8. Ms. Hicks observed Student at lunchtime on September 8, 2008, and in pre-algebra class on October 13, 2008. In her report, she summarized her observations. At lunch, he ate quickly and then walked around the lunch area. Twice he stood by lunch

tables and would say a few words to a peer, without looking at the peer. Ms. McKinney, Student's IA, watched from a distance and re-directed Student once.

9. In the pre-algebra class, Student acted as did any other student. He followed the teacher's directions, paid attention, responded to requests, wrote notes, and was not distracted by noise or disturbed by a change in the routine. Mr. McKinney was seated on the other side of the classroom, and Student did not need McKinney's assistance at all.

10. Ms. Hicks assessed Student's cognitive functioning by administering the Woodcock-Johnson-III Tests of Cognitive Ability (WJ-III), and the Test of Nonverbal Intelligence-3 (TONI-3). Student's scores on these tests were generally consistent, demonstrating that his cognitive abilities were in the average to high average range. These results were also consistent with Ms. Hicks's records review. Student demonstrated a weakness on the Verbal Ability Cluster of the WJ-III, achieving a standard score of 80 (low average). The Verbal Ability Cluster measures word comprehension and the understanding of relationships among words. This factor is important in Student's ability to understand language and communicate effectively.

11. Ms. Hicks assessed Student's auditory processing using the Test of Auditory Processing Skills—3d Edition (TAPS-3). She reported that his auditory processing skills were mainly in the average range, but his overall score of below average appeared to be skewed lower due to his extremely low score on the Cohesion Index, and a low score on the Sentence Memory subtest. Ms. Hicks described the low Sentence Memory subtest score as an "outlier," because Student's auditory working memory was average, based on the other three subtests. In her report, Ms. Hicks attributed Student's significantly below average score on the Sentence Memory subtest to his distraction and frustration at being pulled out of his physical education class for the assessment.

12. Ms. Hicks's report explained that the Cohesion Index reflected a student's ability to understand situations and the world around them. In this regard, Student had difficulty answering "why" questions. Ms. Hicks concluded that Student's conceptualization skills were significantly below average and she considered them to reflect a processing deficit. She deferred to the speech and language pathologist's (SLP) report for further information regarding Student's language functioning.

13. Ms. Hicks assessed Student's visual processing skills using the Test of Visual-Perceptual Skills-3rd edition (TVPS-3). She reported that his visual processing skills were in the average range, but he displayed slight weaknesses in certain skills. He had some difficulty with tasks that required him to use short-term visual memory skills to recall a specific design, and also in finding a design that had been altered in size and hidden in a larger design.

14. Ms. Hicks assessed Student's sensory-motor skills/psychomotor functioning by administering the Developmental Test of Visual-Motor Integration, 5th edition (VMI). She concluded that Student's sensory-motor ability was in the low average range, and was a slight weakness. She deferred to the PT, APE, and OT reports for more information regarding Student's motor abilities.

15. Ms. Hicks assessed Student's academic functioning by administering the Woodcock-Johnson-III Tests of Achievement (WJ-III Ach). Based on his standard scores, she concluded that Student's basic reading skills were in the superior range, and his comprehension skills were in the low average range. Student needed improvement with using context clues to answer comprehension questions and in analogies. She concluded that Student's listening comprehension skills were in the low average range. Student needed improvement with following three-step directions that include contingencies, and understanding certain sentences read to him. Student's writing skills were in the average range. He needed improvement with staying on topic, sometimes

veering from the topic to write about a preferred topic. Ms. Hicks reported that Student's calculation skills were in the superior range, and his math reasoning skills were in the average range. He needed to double-check his answers, as sometimes he did not "carry" properly. She reported that Student's oral expression skills were in the average range. He needed to improve in recalling specific details in information read to him.

16. Ms. Hicks evaluated Student's social-emotional functioning by administering the Behavior Assessment System for Children, 2nd Edition (BASC-2). She distributed the BASC-2 rating scales to three of Student's teachers and Mother. Mother reported some aggressive behaviors that were not observed by Student's teachers. Further, Mother reported Student as having a significant level of maladjustment in the areas of atypicality, hyperactivity, adaptability, social skills, activities of daily living, and functional communication. Mother's ratings were lower, overall, than those of Student's teachers. Two of Student's teachers, Mr. Rike and Ms. Williams, who rated Student during the first month of school, reported that withdrawal and social skills were areas of significant difficulty for Student. However, their ratings were invalid, as they did not know Student for the 6-8 week minimum period required by the testing manual. Their ratings were included in the report for informational purposes only. Mr. Pena, another of Student's teachers, completed the rating scale after having been Student's teacher for 7 weeks. Mr. Pena's ratings were consistent with Ms. Williams' in many areas. Mr. Pena rated Student as having significant maladjustment in adaptability, social skills, and leadership. Mr. Pena also believed that Student may have difficulties in the area of study skills, as Mr. Pena had never observed him asking to make up missed assignment or taking good notes during a lecture. Mr. Pena acknowledged that these behaviors may nonetheless exist.

17. Mr. McKinney, Student's IA, completed the Gilliam Autism Rating Scale-2nd Edition (GARS-2). Mr. McKinney rated Student to be in the possibly autistic range in the areas of Stereotyped Behavior, Communication, and Social Interactions.

18. Ms. Hicks assessed Student's adaptive functioning by administering the Vineland-II Adaptive Behavior Scales: Teacher Rating Form (Vineland) to Ms. Phillips, who had been Student's 6th grade teacher, and to Ms. Hardy, who was Student's current language arts and literature teacher. Ms. Hicks attempted to contact Student's parents to request they participate in filling out the rating forms. She left two phone messages for them, which were not returned.

19. The Vineland aids in assessing an individual's level of communication, daily living skills, and socialization skills necessary for routine or day-to-day activities. Ms. Hardy had not known Student for the requisite two-month period stated in the test manual. Therefore, her ratings were invalid and were included in the report for informational purposes only. Student's scores on the rating scales ranged from the average to significantly below average ranges. Student demonstrated strengths in the domains of Communication and Daily Living Skills, and required improvement in the Socialization domain. Student knew many age-appropriate adaptive skills, and appeared to function well in his new school environment. He knew personal identification information, was consistently prepared for his classes, and demonstrated many behaviors of a responsible student.

20. Ms. Hicks concluded that Student was functioning cognitively in the average to high average range. His processing speed was a strength, and conceptualization was a processing deficit. Student excelled at basic reading skills and math calculation skills, and had difficulty with reading comprehension and listening comprehension. Observation and rating scales revealed that Student had difficulties in socialization. Student displayed an inability to use oral language for appropriate

communication, he had a history of relating to people inappropriately, he demonstrated continued impairment in social interactions, and he displayed peculiar motoric mannerisms.

21. Ms. Hicks concluded that Student continued to qualify as eligible for special education as a student with autistic-like behaviors which impacted his education.

OCCUPATIONAL THERAPY ASSESSMENT

22. Marisa Ficalora, a registered and licensed occupational therapist for the District conducted Student's OT assessment. She produced a report dated September 15, 2008, which she updated as of October 8, 2008. The assessment occurred on September 10 and September 15, 2008. The assessment consisted of a chart review, interviews with Student's student teacher and Student's IA, clinical observations, specific task completion, the Bruinincks-Oseretsky Test of Motor Proficiency-2d Edition (BOT-2), and the Wide Range Assessment of Visual Motor Abilities (WRAVMA). Ms. Ficalora attempted to contact parents to obtain their input on September 11 and September 15, 2008, but they did not respond to her calls.

23. Student was friendly and cooperative throughout testing. Student was tested in a room with both visual and auditory distractions, but he was able to stay on task throughout the testing. At times, his "fair" eye contact made it appear as though he was not paying attention, but he would follow through with the directions given to him.

24. Ms. Ficalora interviewed Student's IA Mr. McKinney, and Nicole Elmore, a student teacher who teaches language arts and academic literature with Ms. Hardy, Student's classroom teacher in those subjects. Mr. McKinney commented that Student could transition from class to class following a written class schedule. Mr. McKinney also mentioned that although he shadowed Student, Student was independent in his classes, and was able to focus on his class work. Mr. McKinney advised that Student had exhibited tremendous growth in terms of his behavior in class, and that Student

appeared to have matured and gained independence. Ms. Elmore reported to Ms. Ficalora that Student was doing very well academically. Ms. Elmore commented that Student appeared to have the most difficulty with the social aspect of the curriculum, but he was making progress with taking turns and sharing while working with groups in the classroom.

25. Ms. Ficalora sent home an OT Parent Questionnaire with Student on September 15, 2008. Mother completed it on September 24, 2008. In her report, Ms. Ficalora quoted Mother's primary concerns for Student regarding OT and Student's performance in school: "Coordination/strength in moving, proximity, sports/social interaction, team player issues, sensory issues—reactions to cooking odors and vacuum cleaner, self-injurious behaviors, verbal "stimming," coping ability, no real friends, unable to use a phone, etc. typical to same age." Mother also noted that Student had difficulty holding a plate level, had difficulty flipping over food while cooking, and would drip food. Mother reported attention problems while cleaning up and using a stove. Mother also reported that Student had difficulty organizing homework assignments, and he lost homework assignments daily. She noted that Student did not play on playground equipment at his peer level, was uncoordinated with sports, and had strength and endurance problems, including weakness in his hands.

26. Ms. Ficalora reported that Student told her that his favorite class was science. He stated that sometimes it was hard for him to understand what he was reading and to write paragraphs. He told her he has played the trumpet since 2007 and enjoyed it.

27. Ms. Ficalora's chart review reflected several reports by others, which she summarized. Sylvia R. Williams, another District OT, had written a report on June 8, 2008, in which she noted that Student exhibited some inefficient sensory processing of vestibular proprioceptive input, but he appeared to demonstrate adequate sensory

processing for school participation with minimal accommodation. Ms. Ficalora's report also summarized an OT Progress Report by Joey Nawa of Big Fun, written on April 17, 2008. District provided OT services to Student through Big Fun, an NPA. Mr. Nawa indicated that Student's trunk and upper extremity strength and endurance had improved. He reported that Student had achieved a "very basic" level of body awareness, coordination, balance, endurance and strength. Student had difficulties in "modulating sensory information," which, according to Mr. Nawa, affected Student's ability to act appropriately in social/peer groups, to pay attention, and to focus. Mr. Nawa also indicated that Student had difficulty following verbal directions, problem-solving novel activities, and participating in fast-paced and dynamic games or sports. Mr. Nawa recommended the use of a sensory diet in school.

28. Ms. Ficalora also summarized an independent psychological evaluation by David M. Paltin, Ph.D., written January 30, 2008. Dr. Paltin's report concluded that Student's primary deficits included problems with generalization of skills learned in ABA training, pragmatic language functioning, and executive functioning in managing attention. He also noted that Student displayed maladaptive self-stimulatory behaviors. Dr. Paltin recommended OT to support sensory stress management, substitution of inappropriate disruptive behaviors with less obvious self-stimulatory behaviors, and to support areas of fine and gross motor skills and coordination.

29. Ms. Ficalora also summarized an independent OT assessment by Gene Hurwin of Big Fun, written on June 17, 2006, which was presented to the District on April 25, 2007, along with a sensory diet for the classroom and home. The sensory diet included activities to provide deep pressure input, strengthening activities, coordination exercises, swinging, and listening to classical music. He recommended that Student play in the Big Fun gym. Mr. Hurwin's report indicated that Student was over-stimulated by the visual impact of the OT gym at Big Fun, occasionally had intense reactions to intense

movement, showed poor respiratory support, and had weak trunk musculature. His report stated that increasing Student's physical strength and endurance through developmentally appropriate movements would lead Student to learn new motor skills, organize his attention to tasks, increase his willingness to explore group play, and participate in everyday activities.

30. Ms. Ficalora noted Student's ability to perform school-related self-care tasks. She noted that Student could independently put on and take off his coat. He could independently change for P.E. class and use his locker, according to Mr. McKinney and a progress report from Ms. Williams, Student's P.E. teacher. Student independently followed his lunchtime routine, and he was able to use the school bathroom. He could organize his books, pens and pencils. Student consistently handed in homework and organized papers and other class work while in the classroom.

31. Ms. Ficalora also reported on Student's ability to perform school-related motor skills. Student presented with adequate gross motor skills to safely navigate the campus and classroom. He was able to participate in P.E. Student's P.E. progress report stated that he was "Doing Excellent! Dresses out daily, follows class instruction, works well with other students in practice and games of volleyball." With respect to his fine motor skills, Ms. Ficalora reported that Student used an age-appropriate, tripod grasp, and was able to write with a regular pencil, mechanical pencil, and a pen with adequate pressure on the writing tool. She had viewed Student's writing samples in both cursive and print, and they were legible, with proper letter formation and adequate sizing and spacing. Ms. Elmore had reported that Student's cursive writing was sloppy at times, but Ms. Ficalora's assessment indicated that this sloppiness was not due to a motor skills deficit.

32. Ms. Ficalora reported Student's scores on the BOT-2. The BOT-2 is a standardized assessment that evaluates proficiency in four motor-area composites: Fine

Manual Control, Manual Coordination, Body Coordination, and Strength and Agility. She did not administer the Strength and Agility subtest. Student's standard score of 48 in Fine Manual control, standard score of 57 in Manual Coordination, and standard score of 46 in Body Coordination, were all within the average range. Student balance as tested in the Body Coordination area was average, which may also indicate adequate sensory processing abilities in the area of proprioception and vestibular processing.

33. Ms. Ficalora assessed Student's visual-motor skills using the WRAVMA. The WRAVMA assesses three aspects of visual motor functioning including drawing for motor ability, matching for visual spatial ability, and pegboard for fine motor ability. Ms. Ficalora administered the Drawing (Visual-Motor) subtest, on which Student's standard score of 131 placed him within the above average range. She noted that during this test, Student presented with confidence in his drawing ability, and showed excellent concentration. His score reflected similar ability to that he demonstrated on the fine Motor Integration subtest of the BOT-2.

34. Ms. Ficalora also administered the Matching (Visual-Spatial) subtest, in which Student's standard score of 86 placed him in the low average range.⁴ She noted that most of Student's wrong answers involved questions that included small details and required intense attention to those details. Student had appeared to rush through this testing section and had shown less concentration than he had on the Drawing (Visual Motor) subtest.

⁴ In a table in her report, Ms. Ficalora erroneously listed Student's standard score on the Matching subtest of the WRAVMA as 31, and his percentile score as 86. In fact, the test protocol revealed that Student's raw score was 31, his standard score was 86, and his percentile score was 18. These scores fall into the low average range, as Ms. Ficalora reported in the table.

35. Ms. Ficalora assessed Student's sensory processing skills by clinical observation and report by school staff. She reported that Student's auditory processing, visual processing, vestibular processing, proprioceptive skills, and tactile processing skills were adequate for him to participate and function in the classroom and on campus. At times he would avoid eye contact. She noted that Mr. McKinney reported that Student consistently demonstrated appropriate behavior during his school day.

36. Ms. Ficalora specifically considered the sensory diet presented to the District by Big Fun on March 7, 2005. She reported that Student was not demonstrating the behaviors and other deficits that the sensory diet was designed to address, and that it did not appear that he required a sensory diet as of the time of her report. Overall, she concluded that Student was fully able to participate in his educational process and did not present with areas of need in the areas addressed by school-based OT.

PHYSICAL THERAPY ASSESSMENT⁵

37. Greta Bullock, DPT and Verneice Hunter, RPT, conducted a physical therapy assessment on September 29, 2008. They wrote a report of their assessment.

38. The assessment consisted of a records review, and verbal reports from a teacher and Student's IA. Ms. Bullock attempted to contact parents, and twice left messages for them, but parents did not respond to the messages.

⁵ As is mentioned elsewhere in this Decision, the parties stipulated at hearing that PT services are not at issue. The PT assessment is relevant, however, because the disciplines of PT and OT overlap with respect to gross motor skills. The need for OT services with respect to Student's gross motor skills are at issue in this matter.

39. Student's IA was present throughout the physical portion of the assessment. The assessors noted that Student had typical seventh grade interests, including an interest in sports such as soccer and lacrosse.

40. The assessors observed Student while he was transitioning between classes, and while he was sitting in a class. He was pulled out of class for the one-on-one portion of the assessment. The assessors reported that Student was cooperative throughout the assessment, and he followed verbal directions well, although most directions had to be repeated twice. They reported that Student was occasionally distracted, but he was easily re-directed. Student reported to them that he ran 175 miles during 6th grade as part of a school-wide initiative.

41. The assessors administered a variety of exercises and physical skills tests to Student. They also considered Student's results on the BOT-2 administered by Ms. Ficalora. The assessors concluded that Student was demonstrating age-appropriate gross motor skills, posture, balance, coordination, and endurance, and was appropriately accessing his educational environment as of the time of the assessment.

LAS ASSESSMENT

42. Natalie Orton, the District's speech pathologist (SLP) conducted the LAS assessment of Student during the last week of August 2008, and continuing into September 2008. She wrote an assessment report dated September 25, 2008. Ms. Orton has a B.A. in Psychology from California State University, San Bernardino, and an M.A. in Communication Disorders from California State University, Fullerton. She is a California-licensed SLP, and holds a CLAD credential, a clinical and rehabilitative services credential, and a Certificate of Clinical Competence (CCC) from the American Speech and Hearing Association (ASHA). At the time of the hearing, Ms. Orton had been an SLP with the District for four years, and approximately one-third of her caseload during that period has consisted of students on the autism spectrum.

43. The assessment consisted of (1) a records review; (2) an informal observation of Student's oral communications, including his pragmatic skills and voice, fluency, and articulation; (3) classroom observations; and (4) standardized testing.

44. Ms. Orton's records review revealed that Student obtained scores in the "Basic" range for Language and "Proficient" range for Math on his spring 2008 California Standardized Testing and Reporting (STAR) tests. He received grades ranging from "C-" (in History) to "A+" in Spelling on his 6th grade report card, and marks ranging from an "S+" (Superior) in handwriting to "O's" (Outstanding) in Computer, Fine Arts, PE, Homework, and Behavior.⁶ Student passed his hearing and vision screenings in January 2007.

45. Ms. Orton's informal observation of Student's conversation reveals that Student's speech was within normal limits in the areas of semantics, morphology, and syntax. Student stated he enjoyed school and his teachers, he enjoyed playing with his brother, and he will get a job when he attends "postsecondary school or university."

46. Based upon her review of Student's pragmatic language skills during her informal observation during the testing sessions, as well as during her classroom observations, Ms. Orton concluded that Student responded appropriately to turn taking, following commands, attending to tasks, topic maintenance, and initiating dialogue. However, he committed two social missteps. Ms. Orton concluded that Student appeared to be in the below normal range in the area of pragmatics. Ms. Orton also concluded that Student's voice pitch, quality, resonance, loudness, and speaking fluency were within normal limits.

⁶ In fact, Student's 6th grade report card reflects that Student received an "S-" in Handwriting, and not an "S+" as noted by Ms. Orton.

47. Ms. Orton observed Student on September 8, 2008, during 5th period science. Student appeared like every other student in the class. He followed all directions in class, and he completed all class work in a timely manner. He did not interact with peers, but there were limited opportunities to interact with peers in the class. She noted that his IA was not present for the majority of the class period. Evidence at hearing reflected that Student's IA typically left for lunch during Student's science class.

48. Ms. Orton also observed Student on September 15, 2008, during 7th period world history. She concluded that Student appeared like every other student in the class. He raised his hand, he followed all of the directions in the class, and he and his classmates were actively engaged in a power point presentation due to the sound effects. Student's IA had minimal contact with Student during this class, and Student did not interact with peers. However, as in science class, Ms. Orton noted that there were limited opportunities to talk with classmates during class.

49. Ms. Orton reported on the standardized assessments she administered. Student's IA was present in the room for this testing, but the IA sat in the corner and did not make any distracting sounds. Ms. Orton administered the Comprehensive Receptive and Expressive Vocabulary Test, 2nd edition (CREVT-2), to evaluate Student's expressive and receptive language skills. Student obtained standard scores of 90 on both the receptive vocabulary and expressive vocabulary tests, which were within normal limits.

50. Ms. Orton also administered the Comprehensive Assessment of Spoken Language (CASL), a norm-referenced, in-depth evaluation of the oral language processing systems of auditory comprehension, oral expression, word retrieval, knowledge and use of words and grammatical structures. The CASL also evaluated the ability to use language for special tasks requiring higher-level cognitive functions. Ms. Orton administered the five core tests of the CASL. Student's standard score of 90 on

the Synonyms subtest was within normal limits, as was his standard score of 81 on the Grammaticality Judgment subtest. His standard scores of 58 on the Non Literal Language subtest, 77 on the Meaning from Context subtest, and 40 on the Pragmatic Judgment subtests were below normal limits.

51. Ms. Orton also administered six supplementary subtests of the CASL, all of which evaluated Student's expressive language skills. Student's standard scores of 71 on Antonyms, 71 on Sentence Completion, 68 on Idiomatic Language, 67 on Syntax Construction, 46 on Inference, and 0 on Ambiguous Sentences were below normal limits.

52. Ms. Orton also administered the Adolescent Test of Problem Solving, which is a norm-referenced test to assess language-based critical thinking skills. His Standard score of < 55 was below normal limits.

53. Student was polite during the testing, and appeared to attempt all tasks. His eyes remained on the testing material or the examiner's face for the majority of the testing session.

54. Ms. Orton concluded that Student presented with normal articulation and receptive language skills. He also presented with a delay in problem solving skills, expressive language skills, and pragmatics. Her report recommended that Student receive 50 sessions of LAS services during the school year, at 30 minutes each session, to address Student's pragmatic and expressive language skills deficits.

AUDITORY PROCESSING ASSESSMENT

55. As part of the triennial assessment, Dwayne Lizar, a California licensed audiologist and SLP, conducted an auditory processing assessment of Student on September 1, 2008, and he prepared a written report of the assessment. Mr. Lizar holds B.S. and M.S. degrees from Phillips University. He is a California Licensed Audiologist and SLP, and he holds Certificates of Clinical Competence in both Audiology and

Speech/Language Pathology from ASHA. Mr. Lizar has been providing audiology and speech and language evaluations and services professionally since 1966. Mr. Lizar examined Student in a quiet room at school, in the presence of Student's IA. Mr. Lizar reported that Student was attentive and cooperative during the assessment, and his responses were generally immediate and precise. Student did not complain that any of the assessment tasks were too difficult, and he did not ask for any repetitions of the stimulus.

56. Mr. Lizar's audiologic assessment revealed that Student's hearing sensitivity was within the normal range. Ms. Lizar used a variety of instruments to assess auditory processing, and determined that Student's auditory processing capability ranged from average to above average. Mr. Lizar concluded that Student had no central auditory processing disorder, and Student did not require any accommodations or modifications with respect to his hearing or auditory processing.

AUTISM ASSESSMENT

57. Ms. Susan Binns, the District autism specialist, conducted an autism program assessment of Student and prepared a report dated November 17, 2008. Ms. Binns has a B.A. in Liberal Studies from the University of the Pacific, and an M.S. in Learning Handicaps from the University of La Verne. She has been a special education teacher since 1979. Her credentials include a Specialist Instruction in Special Education Life Credentials in the categories of Learning Handicapped and Severely Handicapped, a Resource Specialist Certificate, and a Certificate in Education Students with Autism. She has been trained in Applied Behavioral Analysis (ABA), including training in Discrete Trial Training as well as in TEACCH (Treatment and Education of Autistic and Related Communication Handicapped Children). She has taught more than 100 children with autism during her career.

58. Ms. Binns assessed Student on September 12 and 22, 2008, and from September 23, 2008 through October 6, 2008, and also from October 22, 2008 through November 4, 2008. Her assessment included review of records, classroom observations, and the administration of social skills/behavioral profiles. Mother declined Ms. Binns's request for a parent interview.

59. During her observations of Student in the classroom and at lunch, Ms. Binns noticed that Student followed teacher directions, followed along with instruction, participated in classroom activities, laughed and interacted with other students, and, in general, acted as would a typical student. Student's science teacher reported to Ms. Binns that the day of her observation was the first time she had ever seen Student engaged and interacting in a group activity, such as the group game the teacher had organized in to help the students study for a test.

60. Ms. Binns observed that Student required assistance from Mr. McKinney once at lunch, when Student forgot to pay for his lunch, and again in his language arts class. At the lunch observation, Mr. McKinney advised her that Student knew when to ask for assistance and would come to Mr. McKinney when needed.

61. Ms. Binns noticed that Student had difficulty drafting an essay in language arts class, and he needed assistance from Mr. McKinney and the teacher. Student had started the particular assignment previously, but did not have his paper with him during this particular class session, so he had to begin the assignment again. Thus, the class was supposed to be working on the second draft of the essay, but Student was still writing the first draft. His teacher reported to Ms. Binns that Student was falling behind in the class, because the material was much more difficult than it was in sixth grade, and required more critical thinking skills. Student had also missed class due to the testing for the triennial assessment. Furthermore, Mr. McKinney had told Ms. Binns that Student left language arts class early on Thursdays, to attend his off-campus NPA services.

62. Ms. Binns requested Mr. McKinney to collect data for 10 consecutive school days regarding how often Student needed help in each of his classes and during lunch. Mr. McKinney reported to Ms. Binns that Student needed no help during this period in band, science, or lunch. He needed assistance one time in algebra, one time in history, three times in P.E., five times in reading, and 21 times in language arts.

63. Mr. McKinney gave examples of the types of assistance he provided. In PE, both instances involved Mr. McKinney prompting Student to focus on the class activity. The only time he assisted Student in algebra, he helped Student put his notebook together. In language arts and reading, Student needed assistance in writing assignments and with assignments that required critical thinking. Ms. Binns concluded that Student currently functioned independently in band, science, and lunch, and that minimal support was needed in physical education, world history, and algebra. She concluded that Student required assistance in his language arts and reading classes.

64. Ms. Binns also requested Mr. McKinney to collect data during a different 10-day period regarding how many times Student needed assistance during classes as well as passing periods. Mr. McKinney's data showed that Student needed no assistance during passing periods. He needed assistance in band, science and lunch two times each, in P.E. and history three times each, in algebra five times, in reading 10 times, and in language arts 11 times. Mr. McKinney gave Ms. Binns examples of the types of assistance he rendered to Student. In algebra, Student forgot how to divide fractions, and needed assistance. On another occasion, Mr. McKinney had to tell Student to stop talking about John McCain. In band, Student needed help with his instrument on both of the documented occasions. During language arts, Mr. McKinney provided assistance with directions, helped Student identify the main idea of the text, and prevented him from cheating on a spelling test. In reading, Student needed prompting to do his work and also needed help understanding a book report project. In science, Student needed

help finding a group to work with. At lunch, Student was sitting by himself. In P.E., Mr. McKinney had to show Student how to do push-ups and on another occasion Student did not want to run.

65. Ms. Binns gave all of Student's teachers, Mr. McKinney, and Mother, two social/behavioral profiles to complete. Ms. Binns noted that she was administering these profiles during the first month of the school year, and some classes did not provide Student the opportunity to demonstrate some of the listed skills. One of the profiles was a Profile of Social Skills form, to determine areas of need and what skills to teach. The profile covered four domains: Social Interaction, Social Communication, Social Perspective, and Pulling it All Together.

66. With respect to the Social Interaction domain, Student's algebra and band teachers gave Student the highest scores. Ms. Binns noted that those are classes in which Student does very well. The lowest scores were given by Mr. McKinney and Mother. Ms. Binns noted that Mr. McKinney's scores on all of the rating scales were based upon seeing Student throughout his entire school day, including during unstructured times, so he had more opportunities to observe whether Student possessed the rated skills. Ms. Binns also noted that Mother's report on all of the rating scales was based on what Mother observed outside the school setting. Mother reported that Student stands too close to others and touches inappropriately. She said that Student still exhibited tantrum behavior, chest pounding, verbal "stimming," barging past people, and swearing. Student also shook his fist and threatened to hit, kicked, pounded on furniture, went into private property without permission, and had no awareness of safety.

67. With respect to the Social Communication domain, several of Student's teachers gave many responses of "Don't Know," which Ms. Binns attributed to the fact that socializing was not appropriate in some classes. Mother gave a significantly lower

score than the other raters. She reported that Student could maintain a conversation, but would perseverate on favorite topics. She also reported that Student was able to use the "frameworks" technique he had learned in ABA, but once the "framework" was done, he could not maintain interaction.

68. With respect to the Social Perspective domain, Ms. Binns again noted the many "Don't Know" ratings by several of Student's teachers, and again attributed them to the fact that socializing was not appropriate in some classes. Student's science teacher wrote that Student had done amazingly well in group activities, and he was extremely high functioning in her class. Mother reported that Student almost never used any of the skills in this domain. Mr. McKinney reported to Ms. Binns that Student almost never understood the emotions of others, and seldom acknowledged the interests of others or accepted others' points of view.

69. With respect to the Pulling It All Together domain, Student's science teacher rated Student the highest in this domain, and answered every question in this section. Student's algebra teacher gave Student the highest ratings on the skills he had observed. Both Mr. McKinney and Mother identified skills that Student has difficulty with, including the ability to use inferences, understanding the jokes of others, and the ability to compromise during disagreements with others.

70. Overall, Ms. Binns noted that there was a significant number of "Don't Knows" on this profile, which brought the total scores down. She also noted that Mother's total score was significantly lower than the score of Mr. McKinney and Student's science teacher. Student's science teacher gave Student the highest score.

71. Ms. Binns also gave Student's teachers, Mr. McKinney, and Mother a Social/Behavioral rating form. Higher scores on this scale reflect that a student has more difficulty with the skill. Mother gave the highest score, and Mr. McKinney gave the second-highest score. Again, Ms. Binns noted that Mother based her scores on Mother's

observations of Student's behaviors outside of his school day. Ms. Binns also noted that Mr. McKinney's ratings reflected his opportunities to see Student throughout his school day, including during non-structured times. Therefore, he had more opportunities to observe whether Student demonstrated many of these skills.

72. Ms. Binns concluded that Student was adjusting and doing well in all of his classes. She noted he required more help in language arts and reading, but that he functioned independently in several of his classes, with minimal or no assistance from Mr. McKinney. She also reported that Student demonstrated some good social interaction skills, but his areas of need included improving social communication and perspective-taking skills.

73. None of the assessors contacted any of Student's NPA providers while performing their assessments. Nor did any of them contact Student's expert, David Paltin, Ph.D., whose report dated January 30, 2008, was summarized in Ms. Ficalora's report. At hearing, Sara Jones, Student's NPA SLP, had no criticisms of the accuracy, thoroughness, or validity of Ms. Orton's LAS assessment or of Mr. Lizar's audiology assessment. Ms. Jones has a master's degree from Chapman University in Communication Disorders, and is a licensed California SLP. She has her CCC, and a life rehabilitation credential. She has been a practicing SLP for almost 30 years, and during that time has worked with many students on the autism spectrum. She has been working with Student for approximately the past two or two and one-half years, providing 60 minutes of social communication LAS in a group setting.

74. Heidi Glesne, the director of ABC (Student's ABA provider), acknowledged that the psychoeducational assessment and Ms. Binns' autism assessment accurately portrayed Student's strengths and weaknesses. Ms. Glesne, who was called to testify by Student, holds a B.S. in Biology and a B.S. in Psychology from Loyola Marymount University in Los Angeles. She has an M.S. in Marriage and Family Therapy from Fuller

Seminary. She is a Board Certified Behavior Analyst, and has ten year of experience in working with individuals with autism. She has known Student since July 2007. She observed Student at school in January 2009 for approximately 2 hours in Language Arts, Literature, and Science. In May 2009, she observed Student for approximately 1.75 hours during lunch, free time, P.E. and World History. She testified that she could have provided additional information to the assessors, if she had been contacted. She testified that Student's autism did not affect his academic work as much as it affected his social interaction at school, which his at-home ABA services were addressing.

75. David Paltin, Ph.D., a clinical psychologist who testified on behalf of Student, criticized Ms. Binns's reliance on the social/behavioral profiles. Dr. Paltin has a B.A. in Psychology from the University of Hawaii, and an M.A. and Ph.D. in Clinical Psychology from United States International University. He is a licensed California psychologist, and he has been a clinical psychologist in private practice since 1999. Dr. Paltin has never treated Student. He first met Student in conjunction with an assessment he performed of Student in late 2007, the report of which Ms. Ficalora considered and briefly summarized in her OT assessment. He had also observed Student at Norco Intermediate for approximately an hour on or about June 16, 2009.

76. Dr. Paltin testified that the data collected by Mr. McKinney was vague as to the type of assistance the IA rendered. Dr. Paltin was also concerned about the number of "Don't Know" responses by Student's teachers on the profiles and he stated that the responses on the rating scales were not consistent with his knowledge of Student. Dr. Paltin testified that Ms. Binns's assessment, standing alone, was not sufficient to support the elimination of Student's in-home ABA services. In contrast, Ms. Glesne testified that the "Don't Know" responses by Student's teachers on the social/behavioral profiles in Ms. Binns' assessment made sense to her, as those individuals would likely not have observed the referenced skills in the classroom.

STUDENT'S TRANSITION TO AND PERFORMANCE AT NORCO INTERMEDIATE IN FALL OF 2008

77. Student made a smooth transition to Norco Intermediate from Sierra Vista Elementary. He quickly learned his way around the middle school campus, and, when his family dropped him off at school, he knew how to obtain food and find his first class. He exhibited no behavior problems at school at any time. He achieved passing grades throughout the school year. His IA was only required to provide him with minimal assistance during the school day. Student was able to cope with passing periods independently, and had no difficulty transitioning between classes and activities. In general, Student was able to participate and learn independently in his classes, including P.E., in which he dressed and participated in exercises and team sports as would a typical student. He had difficulty with language arts and literature, due largely to his weaknesses in making inferences, understanding figurative speech, and taking the perspective of another.

78. Even during the first trimester of the school year, Student participated in small group activities in class. At times, and, if given the option to do so, he preferred to work alone rather than in a group. He would occasionally answer questions. If he had questions for the teacher, he would ask them privately, after class. Student also attempted to engage in conversations with his peers at school during the first trimester and throughout the school year. His conversational skills were limited and awkward, however, as he tended to speak only about his preferred topics, or he would say something impolite or otherwise inappropriate. He could not maintain a social conversation unless he was talking about his interests, such as sports, with somebody who shared his interests, however, he managed to find such individuals. Student's in-home ABA therapists worked on social communication skills with Student at home, including helping him play with friends in the neighborhood and helping him engage in

social interactions in the community. His NPA LAS speech therapist, Sara Jones, also worked on Student's social communication skills.

79. Student missed classes due to the triennial assessment, as well as due to his NPA LAS therapy, and it took awhile for Student to realize that he had to make up the school work he had missed. Student consistently turned in his homework. Student's teachers who testified at hearing, Ms. Hardy, Student's language arts and literacy teacher, and Ms. Williams, Student's P.E. teacher, assumed that Student completed his homework by himself. Student's IA also assumed that Student completed his homework by himself. Actually, his at-home ABA therapists spent approximately one hour daily of the three hours daily ABA therapy helping Student with his homework.

NOVEMBER 17, 2008, IEP MEETING

80. On November 17, 2008, when Student was thirteen years old and in seventh grade at Norco Intermediate, District convened an IEP team meeting to review the results of Student's triennial assessment. Mother, who works as an assistant to her special education advocate Mr. Peters, attended the meeting and stayed throughout the entire meeting. Mother was accompanied by a friend who stayed for approximately one hour. The IEP team also included Jim Huckeba (the SELPA administrator), Ms. Binns (the District's autism specialist), Ms. Bullock (the District's PT), Tracey Bonafede, (the District's occupational therapist), Michael Coppers (Student's case supervisor from ABC), Ms. Glesne (Clinical Director of ABC), Michelle Hesse (the District's inclusion specialist), Luke Lopez (a special education teacher and Student's case carrier), Ms. Hardy (Student's language arts and literature teacher), Ms. Orton (the District's SLP), Ms. Hicks (the school psychologist), the school nurse, and an attorney for the District. Gene Hurwin, of Big Fun, and Mr. Lizar (the District audiologist) participated by telephone. Ms. Jones's NPA was not present at the meeting. Ms. Jones's office was telephoned during the meeting for input, but nobody answered the telephone.

81. Nobody invited Dr. Paltin to the meeting, and he did not appear. At the time the parties agreed that the meeting would occur on November 17, 2008, Mr. Peters, Student's advocate, had represented to the District that all of Student's invitees were available on that date and would appear. Mother did not protest the absence of Ms. Jones or Dr. Paltin from the meeting.

82. The team noted Student's eligibility as a child with autism. Student's assessors presented their reports, except for Ms. Ficalora, who was on maternity leave. The nurse stated that she had only been able to do a records review, as parents did not return the nurse's telephone calls. Mr. Hurwin of Big Fun reported that Student was doing well, but that Student had difficulty with novel tasks. He had difficulty performing a back handspring. Mr. Hurwin did not know when Big Fun had last evaluated Student, nor had he personally seen Student for four months. Nobody from Big Fun had observed Student at school, and Big Fun was not sending any exercises home with Student. Mr. Hurwin reported that Student was not working on weight-bearing, proprioceptive, or fine motor skills through Big Fun.

83. Ms. Bonafede, another District occupational therapist, presented Ms. Ficalora's report, since Ms. Ficalora was on maternity leave at the time of the IEP meeting. Ms. Bonafede advised the team that Student did not present with needs in areas that were addressed by school-based OT. She inquired of Mother about Student's use of a sensory diet at home, but Mother refused to respond. Ms. Bonafede advised that Student did not require a sensory diet at school.

84. Ms. Orton presented her report, and advised the team that Student did not have articulation or receptive language deficits, but he had great difficulty with pragmatic skills, expressive language skills, and problem-solving skills. She recommended LAS services. Dr. Lizar discussed his auditory assessment of Student, and

reported that Student did well on the assessment and did not have a central auditory processing disorder.

85. Ms. Binns, the District's ABA specialist, presented her report, and stated that Student required very minimal support during the day, except during language arts class. Ms. Glesne from ABC provided a report on Student's progress in the community and at home. Ms. Glesne and Michael Coppers, Student's Case Supervisor with ABC, had provided to the District a progress report dated August 1, 2008. In the report, ABC stated that Student engaged in largely independent and unscripted conversation and peer engagement with the peers in his neighborhood. The report noted that Student continued to demonstrate deficits in the areas of communication, social, and play/leisure skills. Student had significantly improved in the area of behavior management, but he continued to engage in maladaptive behaviors, such as threats of violence and aggression to others, and chest pounding. These behaviors had decreased in frequency during the reporting period, and that Student was implementing techniques to address these behaviors with minimal to moderate cuing. The report noted that Student had achieved or made progress toward all of his goals. (The goals were determined by ABC, as Student and District had not had an agreed-upon IEP since 2006.) ABC recommended that Student continue to receive 15 hours per week of at-home services, plus 4 hours per month of clinical direction, and an increase to 8 hours per month of case supervision, so that Student could continue to progress in the areas of behavior management and the generalization and maintenance of his skills.

86. According to the IEP notes, Ms. Glesne advised that Student had deficits in conversational skills, as he used scripted responses and did not tolerate non-preferred conversations well. Ms. Glesne also reported that Student threatened violence 1-2 times over a three-month period in the home setting. The IEP notes stated that this behavior had not been observed in the school setting. Testimony at hearing from all witnesses

who had observed Student in school at Norco Intermediate, including Student's experts Ms. Glesne and Dr. Paltin, confirmed that Student exhibited no aggressive or maladaptive behaviors in the school setting.

87. Ms. Hardy, Student's language arts and literature teacher, reported that Student did not work well in groups, but worked well when partnered with another student. She stated that Student was very literal and had difficulty with inferences, and taking the perspective of others. She also reported that Student did not consistently complete his homework in language arts, and was not taking it home or writing it in his planner. The team agreed that Student and Ms. Hardy would work together to devise ways whereby the homework assignments would be written down and taken home daily.

88. The team determined present levels of performance in the areas of reading, math, written expression, language/communication/speech, social behavior, physical skills, self-help skills, prevocational skills, and vision/hearing, based upon Student's assessments and teacher input. Student's strengths included processing speed, basic reading skills, and math calculation skills, although he sometimes did not double-check his math work. His weaknesses included abstract thought, drawing inferences, understanding figurative language, and identifying characters' motives. These deficiencies affected both his reading comprehension and his writing. He could decode words at the college-level, but his reading comprehension was at a mid-third grade level, and his listening comprehension was at a mid- fourth grade level. He had delays in social problem-solving skills, expressive language skills, and pragmatics. The team concluded that Student's autism affected his involvement and progress in the general education curriculum because of his struggles with social communication, perspective taking, and critical thinking. The team determined that Student was having

the most difficulty with his homework in language arts, and that homework in other classes was not a concern.

89. The team developed 10 goals, to address Student's needs in communication skills, reading comprehension skills, and expressive language skills, including pragmatics, and difficulty with abstractions, drawing inferences, and understanding figurative language; social skills; problem-solving skills; self-help skills; and listening comprehension. Each of the goals was measurable, and the IEP stated how each would be measured, including, as applicable, observation, data collection, work samples, and teacher-made and standardized tests. The IEP provided that progress toward the goals would be reported each trimester.

90. The District offered the following program: (1) Inclusion in the general education setting and curriculum; (2) Gradual phase-out of the IA aide, based upon data collection, during band, history, algebra, and science; (3) IA to be present during lunch, physical education, and language arts and literature; (4) Thirty minutes of school-based pull-out LAS services, in a small group, two times per week; (5) Fifteen-minute consultations, twice per month, by the District SLP with the Student's classroom teachers and IA; (6) An after-school social skills group held at El Cerrito Middle School (El Cerrito), led by ABA-trained District personnel for sixty minutes twice per week, with an additional 90 minutes once per week, at which times the students would participate in community outings to practice their skills; (7) Transportation or reimbursement for transportation to and from the social skills group at El Cerrito; and (8) Sixty minutes of consultation services, by District ABA-trained personnel, with Student's classroom teachers and IA, to occur two times per month for the first 30-60 days after the implementation of the IEP, and thereafter once per month. The team agreed to reconvene 30-60 days after parents consented to the IEP to review the data collection regarding the fade-out plan for the IA, and whether the fade-out plan was appropriate.

91. Testimony at hearing revealed that the social skills group would include six students, two of whom would be high school students, and the others would be in seventh or eighth grades. One other child from Norco Intermediate would be in the group. All of the six children in the social skills group had diagnoses of autism. The group would also include three typical peers, one in sixth grade, one in 10th grade (approximately 15 or 16 years old), and one in 12th grade (approximately 17 or 18 years old). The group would be led by three adults from the District's ABA department, and Student would work on his goals in the group.

92. The IEP team did not offer extended school year services (ESY). The social skills group at El Cerrito was on the District's "single track," and would meet during the month of August. The IEP team decided that Student would not regress so as require SLP services during the summer. The team also noted that there would be no peers available for the group LAS services during the summer.

93. The team developed classroom modifications to include note-taking assistance, teacher-provided notes, checking for understanding, RSP consult, ABA consult, allowing extra time to complete assignments, and monitoring of planner by teacher/aide. The team provided that school personnel would be trained as needed, and have access to the inclusion specialist. In addition, the ABA specialist and SLP would consult to the teacher and IA. Additionally, parents were to be provided access to support groups and access to IEP team members. The team determined that Student had no assistive technology needs, and that Student would participate in general education. The team also determined that Student could participate in California standards testing and other District assessments without accommodations. The team determined that no behavior management/intervention plan was needed.

94. Mother had been given copies of the District's assessment reports prior to the meeting, and copies of the reports were given to Mother at the meeting.

Throughout the meeting, Mother was given the opportunity to ask questions and provide input. Her only response was that she had no questions "at this time," and that she wanted to review the IEP with her advocate before commenting upon it. Mother provided no input into any aspect of the IEP. Mother did not consent to the IEP at the meeting, and declined to sign that she was in attendance at the meeting.

95. After the IEP meeting, Mother did not contact the District regarding the IEP. Dr. Huckeba sent Student's parents a letter dated January 6, 2009. In the letter, Dr. Huckeba reiterated and further explained the District's IEP offer, and requested that Parents consent to the IEP. Parents never consented to the IEP.

96. At hearing, Mother expressed that Student had made great progress due to his NPA services, and they were part of his routine. She was especially concerned that Student would regress and begin to fail academically if his ABA services were not maintained. She was concerned about the time it would take for Student to travel the seven miles to El Cerrito for the social skills training class. She believed that the amount of time consumed by that class would deprive him of opportunities to socialize with friends in the neighborhood, as currently facilitated by ABC.

97. Mother and Ms. Glesne both testified regarding Student's ABA program, in which various behaviors were broken down, then scripted, then role-played, and then practiced generally. Ms. Glesne remarked on the great progress Student had made during the 2008-2009 school year.

98. Each of Student's experts expressed opinions at hearing regarding the IEP goals. Ms. Jones, Student's SLP provider at the Buena Park NPA, had no criticisms of goals 1, 3, 5, 8, 9, and 10. She would have refined goal number 4 (which involved summarizing a reading passage) to specify that the summary involve "pertinent ideas." She would have refined goal number 6 (asking questions to obtain or clarify information) to include non-verbal skills. She did not think goal number 7 was necessary

(filling in homographs in sentences), because the District's assessment revealed that Student was within normal limits on semantics, morphology, and syntax.

99. Ms. Glesne liked goal number 1 (maintaining a conversation), and noted that she had proposed a similar goal. The only change she suggested was to have had the criteria be 4 out of 5 trials, instead of 3 of 5 trials. She thought goal number 2 (identifying emotions in self and others and answering "why" questions about the situation) could have addressed the Student's deficit at a higher level to demonstrate the application of the skill, such as how to resolve the emotional problem Student had identified. She agreed with goal number 5 overall (applying learned problem solving skills), but suggested that the goal specify the different situations to which the goal referred. She thought goal number 6 was fairly complete.

100. Dr. Paltin was the only expert for Student who criticized goal number 1. In contrast to the opinions of Ms. Jones and Ms. Glesne, Dr. Paltin believed that goal 1 did not comprehensively address S's needs, and did not specify the steps Student would take to achieve the goal. Dr. Paltin testified that Student did not have the skills to achieve goal number 2, and also felt that the goal was insufficient, as it merely involved the naming of emotions, as opposed to the intensity of the emotions or other qualities of the emotions. Dr. Paltin criticized goal number 5 in that there was a "significant jump" between the scripts and role-playing called for by the objectives in the goal, and the ability to generalize the skills in the real world.

LEGAL CONCLUSIONS

BURDEN OF PROOF

1. The petitioner in a special education due process administrative hearing has the burden of proof at hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-57 [126 S.Ct. 528].)

Whether the November 17, 2008, IEP provided Student a FAPE in the LRE

2. District contends that the November 17, 2008, IEP provided Student a FAPE in the LRE. District contends that its triennial assessment was appropriate, and the IEP goals were appropriate and addressed all of Student's needs as determined by the triennial assessment. District further contends that the services offered were reasonably calculated to provide Student with an educational benefit. District contends that Student does not require NPA LAS, OT, and at-home, one-to-one ABA services to benefit from his education. Rather, the District SLP can address Student's LAS needs, and the social skills group can address Student's social and social communication needs. District contends that its assessments did not identify that Student had any OT needs that were preventing him from accessing his education. District further contends that Student does not require an IA throughout the entire school day to benefit from his education.

3. Student contends that the November 17, 2008, IEP does not offer a FAPE. Student contends that he has progressed as well as he has because of the NPA services that he has received, and that if he does not continue to receive those services, including ESY, he will regress. Student also contends that he continues to require an IA throughout the entire school day because of his communication deficits, and his need for academic assistance. Student also contends that some of the IEP goals are not appropriate, and that Mother did not understand that the social skills group offered was not specifically an ABA program.

4. Pursuant to California special education law and the Individuals with Disabilities in Education Act (IDEA), as amended effective July 1, 2005, children with disabilities have the right to a FAPE that emphasizes special education and related services designed to meet their unique needs and to prepare them for employment and independent living. (20 U.S.C. §1400(d); Ed. Code, § 56000.) FAPE consists of special education and related services that are available to the student at no charge to the

parent or guardian, meet the state educational standards, include an appropriate school education in the state involved, and conform to the child's IEP. (20 U.S.C. § 1402(9).)

"Special education" is defined as specially designed instruction, at no cost to parents, to meet the unique needs of the student. (20 U.S.C. § 1402(29).) The IDEA defines specially defined instruction as "appropriately adapting to the needs of an eligible child . . . the content, methodology, or delivery of instruction." (34 C.F.R. § 300.39(b)(3) (2006).)⁷

5. California law defines special education as instruction designed to meet the unique needs of individuals with exceptional needs coupled with related services as needed to enable the student to benefit fully from instruction. (Ed. Code, § 56031.) The term "related services" includes transportation and such developmental, corrective, and other supportive services as may be required to assist a child to benefit from special education. (20 U.S.C. § 1402(26); Ed. Code, § 56363, subd. (a).)

6. In *Board of Educ. Of the Hendrick Hudson Central Sch. Dist. v. Rowley* (1982), 458 U.S. 106 [102 S. Ct. 3034] (*Rowley*), the United States Supreme Court addressed the level of instruction and services that must be provided to a student with disabilities to satisfy the substantive requirements of the IDEA. The Court determined that a student's IEP must be reasonably calculated to provide the student with some educational benefit, but that the IDEA does not require school districts to provide special education students with the best education available or to provide instruction or services that maximize a student's abilities. (*Id.* at pp. 198-200.) The Court stated that school districts are required to provide only a "basic floor of opportunity" that consists of access to specialized instructional and related services which are individually designed to provide educational benefit to the student. (*Rowley, supra*, at p. 201.)

⁷ All subsequent references to the Code of Federal Regulations are to the 2006 version, unless otherwise indicated.

7. To determine whether a school district's program offered a student a FAPE under the substantive component of the analysis (as opposed to the procedural component), the focus must be on the adequacy of the district's proposed program. (*Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1314.) If the school district's program was designed to address the student's unique educational needs, was reasonably calculated to provide the student with some educational benefit, and comported with the student's IEP, then the school district provided a FAPE, even if the student's parents preferred another program and even if his parents' preferred program would have resulted in greater educational benefit. However, to meet the level of educational benefit contemplated by *Rowley* and the IDEA, the school district's program must result in more than minimal academic advancement. (*Amanda J. v. Clark County School Dist., et al.* (9th Cir. 1996) 267 F.3d 877, 890.) Furthermore, educational benefit in a particular program is measured by the degree to which Student is making progress on the goals set forth in the IEP. (*County of San Diego v. California Special Education Hearing Office, et al.* (9th Cir. 1996) 93 F.3d 1458, 1467. (*County of San Diego*).

8. The issue of whether a school district has offered a FAPE has procedural components in addition to substantive components. States must establish and maintain certain procedural safeguards to ensure that each student with a disability receives the FAPE to which the student is entitled, and that parents are involved in the formulation of the student's educational program. (*W.G., et al. v. Board of Trustees of Target Range School District, etc., supra*, 960 F.2d 1479 at 1483.) Citing *Rowley, supra*, 458 U.S. at p. 200 the court also recognized the importance of adherence to the procedural requirements of the IDEA, but noted that procedural flaws do not automatically require a finding of a denial of a FAPE. (*Id.* at p. 1484.) Procedural violations may constitute a denial of a FAPE if they result in the loss of educational opportunity to the student or seriously infringe on the parents' opportunity to participate in the IEP process. (*Ibid.*)

These requirements are also found in the IDEA and California Education Code, both of which provide that a procedural violation only constitutes a denial of FAPE if the violation (1) impeded the child's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision making process; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415 (f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2); *Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1032.)

9. One of the IDEA's procedural requirements is the creation of an IEP team to formulate the IEP. (20 U.S.C. § 1414(d).) The IEP team must include a parent, a special education teacher, and at least one regular education teacher of the child if the child is, or may be, participating in the regular education environment. (20 U.S.C. § 1414 (d).) Related service personnel, such as Ms. Jones, may be included as members of the IEP team, at the discretion of the parent or the District. (34 C.F.R. 300.321(a)(6).) In this regard, the IDEA requires that the IEP team include an individual who can interpret the educational implications of the assessment results. (34 C.F.R. 300.321(a)(5).)

10. The IEP is a written document for each child who needs special education and related services. The contents of the IEP are mandated by the IDEA, and the IEP must include an assortment of information, including a statement of the child's present levels of academic achievement and functional performance, a statement of measurable annual goals designed to meet the child's needs that result from his disability to enable the child to be involved in and make progress in the general education curriculum, and, when appropriate, benchmarks or short-term objectives, that are based upon the child's present levels of academic achievement and functional performance, a description of how the child's progress toward meeting the annual goals will be measured, when periodic reports of the child's progress will be issued to the parent, and a statement of the special education and related services to be provided to the child. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320.) An IEP must contain the projected date for the

beginning of services and the anticipated frequency, location, and duration of those services. (20 U.S.C. § 1414(d)(1)(A)(VII); Ed. Code, § 56345, subd. (a)(7).)

11. In developing the IEP, the IEP team shall consider the strengths of the child, the concerns of the parents for enhancing the child's education, the result of the most recent evaluation of the child, and the academic, developmental, and functional needs of the child. (20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. § 300.346(a).) In the case of a child whose behavior impedes the child's own learning or other children's learning, the IEP team shall consider positive behavioral interventions and supports, and other strategies, to address the behavior. (20 U.S.C. 1414(d)(3)(B)(i); Ed. Code, § 56341.1, subd.(b)(I).)

12. Extended school year (ESY) services shall be provided, if necessary to provide a FAPE. (34 C.F.R. § 300.106(a).) California law provides that ESY shall be provided for those students who have handicaps which are likely to continue indefinitely or for a prolonged period, when interruption of the pupil's educational programming may cause regression and the student has limited recoupment capacity, rendering it impossible or unlikely that the student will retain the level of achievement that would otherwise be expected in view of the student's handicapping condition. (Cal.Code Regs., tit. 5, § 3043.)

13. An IEP is evaluated in light of information available to the IEP team at the time it was developed; it is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) "An IEP is a snapshot, not a retrospective." (*Id.* at p. 1149, citing *Fuhrmann v. East Hanover Bd. of Education* (3d Cir. 1993) 993 F.2d 1031, 1041.) It must be evaluated in terms of what was objectively reasonable when the IEP was developed. (*Ibid.*)

14. School districts are also required to provide each special education student with a program in the least restrictive environment, with removal from the regular education environment occurring only when the nature or severity of the

student's disabilities is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412 (a)(5)(A); Ed. Code, § 56031.) A placement must foster maximum interaction between disabled students and their nondisabled peers "in a manner that is appropriate to the needs of both." (Ed. Code, § 56031.)

15. Parents have the right to consent to all of part of the IEP. (Ed. Code, § 56346.) If the school district determines that all or part of the IEP to which a parent does not consent is necessary to provide the student with a FAPE, the school district shall initiate a due process hearing to obtain a ruling that the IEP provides a FAPE and allowing the District to implement the IEP without parental consent. (Ed. Code, § 56346, subd. (f).) While the due process complaint is pending, the student shall remain in his current placement. (*Ibid.*)

16. An assessment of a student who is receiving special education and related services must occur at least once every three years unless the parent and the school district agree that such a reevaluation is unnecessary. (20 U.S.C. § 1414(a)(2); Ed. Code, § 56381, subd. (a)(2).) The same basic requirements as for an initial assessment apply to re-assessments such as the three-year (triennial) assessment. (20 U.S.C. § 1414(a)(2); 34 C.F.R. § 300.303 (2006); Ed. Code, § 56381, subd. (e).) The student must be assessed in all areas related to his or her suspected disability, and no single procedure may be used as the sole criterion for determining whether the student has a disability or whether the student's educational program is appropriate. (20 U.S.C. § 1414(b)(2), (3); Ed. Code, § 56320, subds. (e) & (f).) The evaluation must be sufficiently comprehensive to identify all of the child's special education and related services needs, regardless of whether they are commonly linked to the child's disability category. (34 C.F.R. § 300.306 (2006).) As part of a reevaluation, the IEP team and other qualified professionals must review existing evaluation data on the child, including teacher and related service-providers'

observations. (20 U.S.C. § 1414(c)(1)(A); 34 C.F.R. § 300.305 (2006); Ed. Code, § 56381, subd. (b)(1).) Based upon such review, the school district must identify any additional information that is needed by the IEP team to determine the present level of academic achievement and related developmental needs of the student, and to decide whether modifications or additions to the child's special education program are needed. (20 U.S.C. § 1414(c)(1)(B); Ed. Code, § 56381, subd. (b)(2).) The school district must perform assessments that are necessary to obtain such information concerning the student. (20 U.S.C. § 1414(c)(2); Ed. Code, § 56381, subd. (c).)

17. Tests and assessment materials must be administered by trained personnel in conformity with the instructions provided by the producer of such tests. (20 U.S.C. § 1414(a)(2), (3); Ed. Code, § 56320, subds. (a) & (b).) Assessments must be conducted by individuals who are both "knowledgeable of the student's disability" and "competent to perform the assessment, as determined by the school district, county office, or special education local plan area." (Ed. Code, §§ 56320, subd. (g), 56322; see 20 U.S.C. § 1414(b)(3)(B)(ii).) A psychological assessment must be performed by a credentialed school psychologist. (Ed. Code, § 56324.) Tests and assessment materials must be validated for the specific purpose for which they are used; must be selected and administered so as not to be racially, culturally or sexually discriminatory; and must be provided and administered in the student's primary language or other mode of communication unless this is clearly not feasible. (20 U.S.C. § 1414(a)(2),(3); Ed. Code, § 56320, subds. (a) & (b).)

18. In conducting the assessment, the school district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, that may assist in determining whether the student is a child with a disability, and the content of the IEP. (20 U.S.C. § 1414(b)(2)(A)(i).) The school district must use technically

sound instruments to assess the relative contribution of cognitive and behavioral factors, as well as physical or developmental factors. (20 U.S.C. § 1414(b)(2)(C).) The personnel who assess the student shall prepare a written report of the results of each assessment. (Ed. Code, § 56327.) An IEP meeting to review the results of the assessment must be held within 60 days, with certain exceptions for vacation days and other circumstances, from the receipt of the parent's written consent to the assessment. Parent may agree, in writing, to an extension of the 60-day period. (Ed. Code, §§ 56043, subd. (f)(1), 56344, subd. (a).)

19. District has met its burden that the November 17, 2008, IEP offered Student a FAPE. The triennial assessments identified that Student's areas of need were: communication skills, including expressive language and pragmatics, reading comprehension skills, and social skills. There was no dispute at hearing regarding Student's substantive areas of need as reflected in the District assessments. Ms. Jones, Student's LAS NPA provider, testified at hearing that Student's scores on the District's LAS assessment were not surprising to her, and were consistent with her knowledge of Student. Similarly, Ms. Glesne, the Clinical Director of ABC, testified at hearing that the results of Ms. Binns's assessment and Ms. Kelly's psychoeducational assessment were consistent with her knowledge of Student. Dr. Paltin, the clinical psychologist who had evaluated Student and observed him in school, was concerned with Ms. Binns's reliance on ratings scales, but he did not specify any area of need that the District's assessments had not identified. He also testified that Ms. Binns's report should not have been used to eliminate ABA services for Student. However, the evidence demonstrated that the decision to stop ABC's services was based not only on Ms. Binns' report, but also upon Ms. Hicks's report, Ms. Orton's report, and Ms. Ficalora's report, all of which described Student's behaviors in school, his abilities to perform in class, and his social skills. None

of Student's experts identified any areas of need that the District's assessments failed to identify.

20. The goals and services formulated by the IEP team at the November 17, 2008, IEP meeting were based upon an evaluation of Student's present levels of performance, reports of Student's teachers and assessors, and reports by Student's NPA OT and ABA providers.

21. Student's experts criticized several of the goals, but their criticisms of the goals were largely directed to details as to how the goals could have been refined. None of the Student's experts testified that the goals, as a whole, failed to address Student's educational areas of need in some fashion, or were fatal to the IEP's purpose of providing Student some educational benefit. Ms. Jones questioned the need for goal number 7, an expressive language goal, since Ms. Orton had observed that Student's semantics, syntax and morphology were within normal limits. However, Ms. Orton also found that Student's CASL subtest results revealed deficits in Student's expressive language skills. Consequently, goal number 7 addresses Student's needs. Dr. Paltin's criticisms of the goals were particularly questionable, as he was the only expert for Student who criticized goal number 1. His criticism that the goal did not specify the steps Student would take to achieve the goal did not take into account the benchmarks related to the goal. Dr. Paltin also failed to take into account that goal number 2, which he also criticized, involved skills similar to those assessed by Dr. Paltin when he showed Student "Emotion Identification Cards" during his January 30, 2008, assessment of Student. Student did not perform well on that portion of the assessment. Dr. Paltin's opinion that goal number 2 is inappropriate is not entirely consistent with his determination that a test requiring the skills targeted by the goal was an appropriate test to administer to Student. Further, Student's poor results on the test revealed that this was an area of need for Student. Dr. Paltin criticized goal number 5 in that there was

a “significant jump” between the scripts and role-playing called for by the goal, and the ability to generalize the skills in the real world. Dr. Paltin’s criticism is inconsistent with Mother’s and Ms. Glesne’s testimony that ABA techniques for learning a skill include the very steps included in goal number 5: breaking down the behavior, using scripts, then role playing, and then generalizing to the real world.

22. Dr. Paltin’s opinions of the goals were inconsistent with those of Ms. Jones and Ms. Glesne, who were actual service providers to Student, and who have more expertise than Dr. Paltin in the areas that the goals cover. Moreover, if, after the goals have been implemented, they need modification or refinement, such as the Student’s experts suggest, an IEP meeting can be convened to refine the goals. The District met its burden of demonstrating that the goals adequately addressed each area of need, based upon the information that the team knew as of the time of the IEP meeting.

23. The IEP team determined, consistent with Student’s OT assessment, that Student had no OT deficits that required educationally-based OT. Mr. Hurwin’s report at the IEP meeting that Student was having difficulty learning a back handspring and was having difficulty with novel tasks was discounted by Ms. Bonafede, the District occupational therapist who attended the meeting, and Ms. Hicks, the school psychologist. Ms. Bonafede has been an occupational therapist for 11 years. She has a B.S and an M.S. in occupational therapy and is licensed as an occupational therapist three states, including California. She has worked with over 100 children with autism. Both Ms. Hicks and Ms. Bonafede stated at hearing that Student need not perform back handsprings to access his education, and none of the Student’s teachers or the District assessors had reported that Student had any difficulty with novel tasks. Ms. Bonafede credibly noted that Student had had OT for several years, and, with such a history of services, Student could be expected to have progressed to the point where he no longer

needed OT. She further stated that the fact that he was attempting to perform back handsprings evidenced that he had no OT needs.

24. Student presented no expert testimony at hearing to support his contention that he required OT services of any kind to obtain some educational benefit. Mother testified that the Big Fun OT services have been productive, and beneficial for Student's coordination, sensory issues, development, organization, communication, and ability to be a team player. Her testimony establishes only that Student can generally benefit from Big Fun. It does not support Student's contention that he requires OT services to obtain some educational benefit. Indeed, the evidence at hearing revealed that Student was, in general, as physically capable as his classmates at school. Under these circumstances, the IEP team did not deny Student a FAPE by determining that Student did not require OT services to access his education.

25. The IEP team determined that Student did not require NPA LAS services to benefit from his education, and that Student's LAS needs could be met by services provided by the District. Student provided no evidence that Student required NPA LAS services in order to benefit from his education, or that the District LAS services offered were deficient in quantity or quality. Indeed, Student's current NPA LAS provider, Ms. Jones, testified that the District SLPs were qualified to provide services to Student. She approved of the social skills group as another means of assisting with Student's communication skills. She did not consider it appropriate for an 18-year-old or 19-year-old student to be in the group, but her opinion on this point lacked foundation. Ms. Jones had no familiarity with how the social skills group operated, or the role of the high school senior in the group. The District did not propose that a 19-year-old individual participate in the group in any case.

26. The IEP team appropriately determined that Student did not require LAS services during ESY, because there was no information to suggest that Student would

regress during the summer. Dr. Paltin was the only witness who expressed the opinion that Student required ESY because he would regress over the summer, and he needed to keep up with the progress of his peers. Dr. Paltin offered no basis for this opinion. Nor did his opinion take into account that the IEP provided for Student to participate in the social skills group during the summer, and that, as Ms. Jones recognized, the social skills group was another means of developing the pragmatic and communication skills that Student's LAS services were also designed to develop.

27. The IEP team also appropriately determined that Student did not require the in-home ABA services and consultations that he was receiving from ABC. The IEP team was not aware that Student displayed any behaviors at school that prevented him from accessing his education. Rather, Student's needs at school that were primarily being addressed by his ABA services consisted of his social and communication deficits. The IEP offered a social skills group, conducted by ABA-trained specialists, to address these deficits. The social skills group, which was to be conducted on a school campus in the District, would be a less restrictive environment than was provided by Student's in-home ABA services. Mother's objections that the time required to travel to the social skills group, as well as the time consumed by the social skills group, would diminish the time for Student to socialize in his neighborhood, are not well-taken. Student's current NPA services, such as LAS, take him far from his neighborhood, and also cause him to miss school. The program offered by the District would keep Student in school during the school day, and will likely provide him more time to socialize with children in his neighborhood than does his current program.

28. Evidence at hearing revealed that Student's in-home ABA providers provided him with approximately one hour of homework assistance per day, as well as prompting him as to what to do in school the next day, such as turning in his work. Ms. Glesne testified that Student's ABA therapists had been instructed to provide him with

approximately 20 minutes of homework assistance per day, and she was surprised that they were providing him with assistance for an hour per day. Dr. Paltin testified that he did not know why ABA therapists would be providing Student with any homework assistance. There was no evidence that Student required in-home ABA therapists to provide homework assistance for an hour every day, or daily reminders from his in-home ABA therapists regarding school the next day, in order for Student to access or obtain some benefit from his education. Ms. Glesne testified that she recommended at the November 17, 2008, IEP meeting that Student continue to receive in-home ABA services, including consultation, from ABC. Dr. Paltin testified that he agreed with Ms. Glesne's recommendation to the IEP team. Both Ms. Glesne and Dr. Paltin conceded that they did not know the legal standard which governed the IEP team's decision to provide services, and neither of them testified that Student required the ABC ABA services to obtain some educational benefit. Moreover, there was no evidence that the IEP team, at the time of the IEP, had any information that Student required an hour per day of homework assistance from his in-home ABA providers, or daily prompting from ABA providers regarding school the next day.

29. The IEP team also determined that Student did not require his IA throughout the entire school day. The information obtained by the teachers and District assessors on the IEP team revealed that Student functioned at school largely independently of his IA. The team's decision to maintain the services of the IA during various parts of Student's school day (Student's language arts and literacy classes, P.E., and lunch), was also based upon the information known by the teachers and District assessors as of the date of the IEP meeting. Dr. Paltin testified that an IA would be helpful to Student throughout the school day, to assist him in communicating with peers, to help him ask questions in class, and to help him with his academic tasks. Ms. Glesne also testified that an IA could assist Student with social communications. Neither

Dr. Paltin's nor Ms. Glesne's testimony establishes that Student requires an IA throughout his entire school day to access his education. Student presented no evidence that he required the services of the IA throughout his school day, or at times other than those designated by the IEP, in order for him to access or obtain some benefit from his education.

30. Under all of these circumstances, and applying the "snapshot" rule, the November 17, 2008, IEP, was designed to address Student's unique educational needs, and was reasonably calculated to provide Student with some educational benefit. The November 17, 2008, IEP provided a FAPE at the time the IEP was developed. Based upon Findings of Fact Numbers 1 through 100, and Legal Conclusions Numbers 1 through 29, the IEP of November 17, 2008, provided Student a FAPE.

31. District contends that the IEP was not procedurally defective. Student contends that the IEP was procedurally defective because the District did not invite Ms. Jones, his SLP from the Buena Park NPA, to the IEP meeting, or Dr. Paltin. The evidence was conflicting as to whether the District had invited Ms. Jones to the meeting, but that dispute need not be resolved here. The law does not require that the District invite Ms. Jones or Dr. Paltin to the IEP meeting. With respect to Ms. Jones, the District's SLP, Ms. Orton, attended the meeting and was qualified to interpret the LAS assessment she presented to the team. This is sufficient under the IDEA. With respect to Dr. Paltin, who was not a service provider of Student, and there was no evidence that Student requested the District to invite him. In any event, Student did not protest the absence from the meeting of either Dr. Paltin or Ms. Jones. Further, Student could have invited both of them to the meeting. The absence of Ms. Jones and Dr. Paltin did not significantly impede the Parents' opportunity to participate in the IEP, cause a deprivation of education benefits, or impede Student's right to a FAPE. Based upon Findings of Fact Numbers 1 through 100, and Legal Conclusions Numbers 1, and 4

through 29, District met its burden that the IEP team was properly constituted, and Student was not denied a FAPE on this ground.

32. Student also contends that the IEP was procedurally defective because Mother did not fully understand the IEP offer, and the discussions at the IEP meeting were confusing to Mother, thereby depriving Mother of the opportunity to participate in the formulation of the IEP.

33. The IEP was not procedurally defective on this ground. The IEP states the services offered both in the services grid and in the notes. The evidence demonstrates that Mother, who was knowledgeable about the IEP process through her work, was given the opportunity to participate in the assessment process as well as the IEP meeting. If Mother was confused by the discussions at the IEP meeting, or the terms of the offer, she had the opportunity to ask questions during the meeting or afterwards. During the meeting the other IEP team members repeatedly asked for her comments and questions, and she chose not to express any. In particular, she had no questions or comments regarding the social skills group. After the IEP meeting, Mother did not contact any District personnel to ask questions about the IEP or state any concerns she had, whether regarding the social skills group or any other matter. Mother did not ask to observe the social skills group. Based upon Findings of Fact Numbers 1 through 100 and Legal Conclusions Numbers 1, and 4 through 29, the November 17, 2008, IEP was not procedurally defective so as to deny Student a FAPE on this ground.

ORDER

1. District may implement the November 17, 2008, IEP, despite the lack of parental consent to the IEP, if Parents and Student wish to continue to receive special education services from the District.

2. District is not obligated to fund any services Student receives from his current NPA providers, ABC Behavior Services, Big Fun Therapy and Recreation Services, and Speech and Language Development Center, from on or after the date of this Order.

PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that this Decision indicate the extent to which each party prevailed on each issue heard and decided in this due process matter. District prevailed on the only issue heard and decided.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56506, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within ninety (90) days of receipt.

Dated: July 8, 2009

ELSA H. JONES
Administrative Law Judge
Office of Administrative Hearings