

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENTS ON BEHALF OF STUDENT,

v.

DEHESA ELEMENTARY SCHOOL DISTRICT
AND COMMUNITY MONTESSORI
CHARTER SCHOOL,

OAH Case No. 2016030188

PARENTS ON BEHALF OF STUDENT,

v.

DEHESA ELEMENTARY SCHOOL DISTRICT
AND COMMUNITY MONTESSORI
CHARTER SCHOOL.

OAH Case No. 2016070924

DECISION

Parents on behalf of Student filed a due process hearing request with the Office of Administrative Hearings on February 29, 2016, naming Dehesa School District and Community Montessori Charter School (Districts). The Office of Administrative Hearings granted the parties' joint request for continuance on April 21, 2016. Student filed a second due process hearing request with OAH on July 15, 2016, naming Districts. On

July 27, 2016, OAH granted Student's motion to consolidate his two cases.¹

Administrative Law Judge Darrell Lepkowsky heard this matter in San Diego, California, on October 11, 13, 17, and 18, 2016.

Attorneys Meagan Nuñez and Jennifer Varga represented Student. Mother attended all days of the hearing. Father attended the hearing the afternoon he testified. Student did not attend.

Attorney Deborah Cesario represented Districts. Terri Novacek, the Executive Director of Element Education, a non-profit organization that oversees the Community Montessori Charter School, attended each day of the hearing. Nancy Hauer, the Superintendent of the Dehesa Elementary School District, attended the first day of hearing.

On the last day of hearing, the matter was continued at the parties' request until November 1, 2016, so the parties could file written closing arguments. Upon timely receipt of the written closing arguments, the record was closed and the matter was submitted for decision.

ISSUES²

1. Did Districts deny Student a free appropriate public education from February 3, 2016, to May 23, 2016, by preventing Parents from meaningfully

¹ Districts filed on April 27, 2016, their own complaint against Student, which they dismissed on October 3, 2016, at the Prehearing Conference.

² Student's two requests for due process contained several substantive and procedural issues. Prior to the hearing, Student withdrew his substantive issues and all of his procedural issues except the two addressed in this decision.

participating in Student's individualized education program process, by unilaterally changing Student's placement without Parents' consent?

2. Did Districts deny Student a FAPE from February 3, 2016, to May 23, 2016, by preventing Parents from meaningfully participating in Student's individualized education program process, by failing to provide prior written notice to Parents regarding the change in placement?

SUMMARY OF DECISION

Student contends Districts changed his placement on February 3, 2016, without Parents' consent and without giving them prior written notice, by dis-enrolling him from Districts' Learning Center and placing him instead in Districts' full-time independent study home program. Districts contend that Student's placement, since his enrollment in Districts, has always been the independent study home program. Districts contend that Student's participation in the Learning Center was not his placement and therefore they had no obligation to include Parents in the decision to terminate Student's participation there. Districts assert that removing Student from the Learning Center merely changed the location of Student's educational placement, and did not amount to a change in the placement itself.

This decision finds that Student met his burden of demonstrating that Districts' removal of him from the Learning Center program constituted a change in his placement, done without prior written notice to Parents and without their consent. Student likewise demonstrated that Districts' actions impeded Parents' ability to participate in the development of Student's educational program, resulting in a denial of FAPE to him. Student is entitled to a remedy for this violation, albeit not to the extent Student has requested.

FACTUAL FINDINGS

BACKGROUND

1. Student was just under seven years old at the time of hearing. At all relevant times, he lived with Parents in San Diego County.
2. Student was diagnosed with autism when he was four years old. Carlsbad Unified School District, Student's district of residence, found him eligible for special education and related services as a child with autism and provided him with an IEP. That IEP placed Student in a preschool special day class and provided speech and language therapy. Mother was not happy with the placement because she felt Student was the only verbal child in the special day class and that Student was imitating undesirable behaviors learned from his classmates.
3. Carlsbad Unified convened an annual IEP team meeting for Student on January 13, 2015. Carlsbad Unified again offered Student placement in a preschool special day class. It also offered Student speech and language services. Parents accepted the speech and language services, but rejected the placement offer. Instead, they enrolled Student in a Head Start general education preschool for the remainder of the 2014-2015 school year. Student had an aide in the Head Start classroom and successfully participated in that class.

COMMUNITY MONTESSORI CHARTER SCHOOL PROGRAMS AND STUDENT'S ENROLLMENT

4. Student was scheduled to start kindergarten at the beginning of the 2015-2016 school year. Mother did not want to return to Student's school district of residence because she did not want to place Student back into a special day class. She began investigating other possible school placements in the spring and early summer of 2015.
5. Mother learned that Community Montessori Charter School was going to

open another educational program in the fall of 2015, in the area of San Diego County where Student lived. Community Montessori was one of three charter schools run by Element Education, Inc., a non-profit organization. With the opening of the new school, Community Montessori had a total of five school programs in San Diego County. The newest school, where Student lived, would initially serve children in grades kindergarten through second grade, with additional grades anticipated to be added at a future date.

6. Element Education held several informational meetings for the public during May, June, and July 2015, to describe its different charter school programs and encourage enrollment in them. Mother attended one of the meetings. She also spoke several times with Brandi Rodrigues, Community Montessori's director of special education.

7. Ms. Rodrigues and staff from Community Montessori and Element Education explained at those meetings that Community Montessori was chartered as an independent study program that followed the Montessori teaching philosophy. At hearing, Roland Yung, the director of the five Community Montessori programs, and Terri Novacek, the executive director of Element Education, explained the Montessori philosophy. Education was child-centered. The goal was for the children to be independent in their work and to gain overall life independence. The child picked the work or assignment he or she wished to work on from available assignments or projects rather than a teacher directing the assignments. At home, many of the assignments focused on practical life functions such as learning to squeeze sponges and having the child get in touch with each of his or her senses. Learning could be gained not only from lessons at home but from interaction with the child's environment out in the community.

8. During the informational meetings and the discussions with Ms. Rodrigues, Mother was informed of how the Community Montessori educational

program functioned. In the home study program, a parent was the primary teacher. The parent was called the “parent-teacher” and responsible for all lessons. In the home study program, the home was the classroom. Each child also would be assigned an Educational Facilitator who was a credentialed general education teacher. Parents would meet weekly with the Educational Facilitator who would assist the parent in selecting assignments and curriculum. In the home study program, the Educational Facilitator was not the child’s teacher.

9. In all documents related to a child’s attendance at Community Montessori, including the Parent Handbook and a child’s IEP’s, the parent is referred to as the “parent-teacher.” Although Ms. Rodrigues, and later Student’s teacher Leigh Brown, explained this to Mother and reviewed the Parent Handbook with her, Mother misunderstood the term of “parent-teacher.” She thought that it referred to two people: the parent *and* the Educational Facilitator. However, Mother did not ask anyone to clarify the terms and did not give any indication to Ms. Rodrigues or any other of Districts’ staff or personnel that she misunderstood any part of the information given to her orally or in the Parent Handbook.

10. Parents and students were required to sign a master agreement that laid out each of their responsibilities for attendance in the Community Montessori program. Among other responsibilities, parents were required to meet with the Educational Facilitator, help develop learning plans, and monitor the student’s education and progress.

11. Full-time independent home study was not the primary educational option available to students at Community Montessori. It also had Learning Centers in which a child could enroll. These were classrooms where the Educational Facilitator was the teacher. In the Parent Handbook, parents were invited to observe how the Community Montessori program was implemented in the Learning Centers. The handbook

specifically referred to the Learning Center as a “classroom” and to the educator in the classroom as the “teacher.” The classroom teacher in the Montessori program was considered a facilitator of the student’s autonomous learning process. The teacher prepared the classroom learning environment, provided tools to utilize the materials, and then did whatever was necessary to help the child interact with the classroom environment.

12. Community Montessori considered participation in the Learning Center to be a learning option that supplemented a student’s personalized learning plan that was implemented in the home. Parents were offered the choice of either full-time independent home study or Learning Center participation at the enrollment meeting that Community Montessori had with each family. If a parent opted to have the student participate in the Learning Center, attendance was not optional. Students who attended less than 80 percent of class time due to absences or tardiness could be dropped from the Learning Center class.

13. If parents chose to have their child attend the Learning Center, they were not permitted to randomly choose the amount of time the child would spend there. The Learning Center program was either a four-day or a five-day program. The fifth day was a shortened day on Fridays. While the four-day program was centered on academics and state curriculum standards, the fifth day, on Friday, was more of a social or activity day. If a child enrolled in the Learning Center, 80 percent of his or her educational program would be through the Learning Center. The remaining 20 percent of the child’s education would be through the independent study home program, taught by the child’s parent.

14. Students attending kindergarten were given another option. They could choose either a full-day or half-day, four-day program, and additionally choose whether to attend the Friday non-academic day. Community Montessori only permitted students

who had attended preschool for at least 15 hours a week in the year prior to enrolling in kindergarten, to be considered initially for the full-day program.

15. Students who enrolled in the Learning Center agreed to follow rules developed by Community Montessori. The Parent Handbook contained these rules in a section entitled "Learning Center Discipline." The rules stated each student could use only the materials and equipment authorized by the classroom instructor. The student had to follow written and verbal instructions carefully and clean work areas before leaving the classroom. Each student was expected to show respect for the instructor and classmates and show respect for other's property. The rules also included a prohibition on running, yelling, smoking, or use of profanity.

16. The Learning Center discipline page of the Parent Handbook also included steps for action by Community Montessori if a student did not follow these rules. If a student took an action that was not safety related, the student would receive a verbal warning. Actions compromising the safety of the learning environment could result in immediate dismissal from the Learning Center and withdrawal from the class.

17. If a student's behavior did not improve, options that Community Montessori could take included adjusting the student's Learning Center schedule, including a mandated break from attending Learning Center classes, or asking the student's parent to assist at the Learning Center to help the student participate.

18. Finally, as a third step to the disciplinary process, if a student continued to compromise the learning environment for others, the student would be withdrawn from the Learning Center class.

19. Mr. Yung, who gave candid and forthright testimony at hearing, acknowledged that these steps were progressive discipline designed to ensure that parents and students understood that attendance at the Learning Center could be terminated if a student continued to violate the Learning Center's student rules of

conduct.

20. After considering other possible educational choices, and attending the informational meetings conducted by Element Education and talking with Ms. Rodrigues, Mother enrolled Student in Community Montessori. Parents chose the school because it offered the Learning Center option. Mother did not want Student learning at home full-time because she was not trained as a teacher and did not think she was qualified to be Student's sole instructor. She also wanted Student in a school-based program where he would interact with his general education peers and hopefully model behavior from them. Mother would not have enrolled Student at Community Montessori if Student had not been able to enroll in the Learning Center program.

21. After Parents enrolled Student in school, Community Montessori set a meeting for them to meet with Ms. Brown, Student's Educational Facilitator and the teacher who would teach kindergarten at the Learning Center nearest to Student's home for the 2015-2016 school year. Mother met with Ms. Brown on August 31, 2015. Mother selected the Learning Center option for Student. She initially wanted Student to go to school less than four days a week, but Ms. Leigh told her that was not an option. Parents could only select either the Monday through Thursday program, or the five-day program that included a half day on Fridays.

22. Although Student had attended preschool the previous year and was eligible for the full-day kindergarten program, Mother selected the half-day Learning Center program for five days a week. Community Montessori accepted Student into the program. Later, in early October, Mother wanted to switch Student from five days to four days a week, but with Wednesdays as his day off. She was informed by Timmithea Leeds, the regional director for Community Montessori, that the only Learning Center choices were Monday through Thursday or Monday through Friday.

23. Although Community Montessori's protocols stated that participation in

the Learning Center was on a space-available basis, and that the student's Educational Facilitator was the final arbiter on whether a student was qualified to enroll in the program, there is no evidence that Community Montessori has ever denied a child the right to initially enroll in the Learning Center program. Every year, between 95 to 99 percent of all children who enrolled in Community Montessori participated in a Learning Center Classroom. Ms. Novacek acknowledged that if parents were more interested in having their child participate in a home study program, they would enroll their child in Dehesa Charter School, another charter school run by Element Education.

24. When Student began kindergarten in Ms. Brown's class for the 2015-2016 school year, 100 percent of her students participated in the Learning Center. By the end of the school year, Student was the only child in kindergarten in Ms. Brown's class who had been enrolled full-time in the independent study home program at any time during the school year.

25. Although Ms. Rodrigues and other Districts' staff explained the role of the parent-teacher to Mother several times, and although Mother had read the Parent Handbook, she did not really understand the concept. It is clear from her testimony that she chose Community Montessori due to the availability of the Learning Center and did not believe that she was going to have responsibility for educating Student. Had Districts declined to enroll Student in the Learning Center, where he would receive at least 80 percent of his instruction from a credentialed teacher, Parents would not have enrolled Student in Community Montessori.

STUDENT'S ATTENDANCE AT COMMUNITY MONTESSORI LEARNING CENTER FOR FALL 2015

Learning Center Criteria and Student's Enrollment

26. Prior to the start of the 2015-2016 school year, Mother provided Ms. Rodrigues with a copy of Student's IEP from Carlsbad Unified. Based upon his last IEP,

Ms. Rodrigues developed a 30-day interim IEP. Although Mother did not remember the interim IEP process, it is clear from the notes on the document and Ms. Rodrigues's testimony, that Ms. Rodrigues reviewed the interim IEP with her.

27. The interim IEP provided Student with 30 minutes of speech and language therapy a week; occupational therapy consultation and collaboration; and speech and language consultation and collaboration between the therapists, Student's Educational Facilitator, and Mother as the parent-teacher. The interim IEP stated that Student could participate in the Learning Center pursuant to the criteria set forth in the Parent Handbook. The interim IEP also stated that Mother acknowledged that she would be the primary teacher for Student and that he would need to follow the Learning Center rules to remain enrolled there. Mother did not remember this discussion.

28. When Ms. Brown met with Mother and Student on August 31, 2015, she reviewed Student's personalized learning plan with them. The plan described what a kindergarten student was supposed to accomplish during the school year. Mother and Student also signed a master agreement for charter school independent study that described their responsibilities in participating in Community Montessori's independent study program. The agreement included a section describing the methods of study that Student would use during the school year. Student's speech and language therapy was going to be provided by an outside vendor. Ms. Brown checked off independent reading, online resources, and field experience for Student's study methods. She did not check off Learning Center instruction. However, Mother did choose Learning Center participation for Student at this meeting and filled out a request form indicating that choice. Community Montessori accepted Student into the Learning Center program.

Ms. Brown's Learning Center Classroom

29. Instruction at Community Montessori for the 2015-2016 school year began on September 9, 2015. However, instruction at the Learning Center was delayed about

two weeks. Since it was a new program, the classroom was not yet ready. Once the classroom was ready, the students began attendance there.

30. Since attendance at the Learning Center only comprised 80 percent of each student's education, students were expected to complete assignments at home under their parents' guidance for the remaining 20 percent of the instructional week. Mr. Yung emailed assignments to Learning Center participants on the first day of the 2015-2016 school year. He included a variety of assignment options for parents to select. Each student was expected to complete at least four of the assignments in the following three to four weeks. Thereafter, the students' Educational Facilitator provided monthly assignments to parents to supplement the Learning Center instruction.

31. Once the Learning Center opened, it operated as did any Montessori kindergarten classroom, following the Montessori teaching philosophy. Ms. Brown had 24 students in class. Each morning the students would arrive, hang up their backpacks, and greet Ms. Brown and her teaching assistant. Each student could then choose a lesson or project on which to work. Some students worked alone, some in groups. They could work at tables, or sit on the floor. There were different materials placed throughout the room, designed to be accessible and appealing to the students so that they would be eager to choose different work to do. In addition to the classroom, the students were expected to learn in all their environments, including home and the community.

32. Ms. Brown's kindergarten class was called the "Maple Class." Every week, Ms. Brown sent home a Maple Class newsletter. It provided reminders to parents about work that needed to be completed and listed upcoming activities. It also informed parents of what the class would be working on for that week.

33. Ms. Brown also completed report cards for each child in her class. The grading period covered approximately eight weeks of instruction. Community

Montessori did not give traditional letter grades. Rather, it used a numerical system of 1 through 4. A number 1 on the report card indicated that a particular lesson had been presented to the student. A "2" indicated that the student was practicing the lesson or ability. A "3" indicated that the student was progressing toward mastering the particular area assessed. A "4" meant the student had mastered the area or subject matter.

34. Parents of Learning Center students were not involved in the grading process. They did not have input into the grades a child received for the work done at the Learning Center and did not grade the work their child did at home. It was each Educational Facilitator, such as Ms. Brown, who assessed the children enrolled in his or her classroom and who determined where each child was at toward mastering any given subject or area of lesson or skill. The grades were based solely on the Educational Facilitator's knowledge of each student and review of the student's work. The Educational Facilitator entered the grades on each student's assignment sheet. The Educational Facilitator then discussed the grades with each student's parents.

Student's Difficulties at the Learning Center and His October 2015 IEP

35. Student began having difficulties at the Learning Center soon after he began attending class there. Although Student generally started his day at the Learning Center happy, smiling, and excited, he became frustrated as the school day wore on. His happiness turned to frustration, anger, and sadness. He was not able to work independently as required by the Montessori program. He would often take things from other students without asking and not return them. He would not verbalize with the other children. He would sometimes throw papers and other work materials onto the floor and not pick them up, or throw them at his peers. Student frequently made noises, tuning into sounds from outside the classroom, and then repeating the noises during class time. He also had hit and squeezed Ms. Brown.

36. Ms. Brown sent an incident report home on September 28, 2015, after

another occasion of Student taking something that a small group of students was using and not returning it. By this time, Ms. Brown had discussed with Mother that if Student continued these behaviors, Mother would have to pick him up and take Student home. Classes had only been in session at the Learning Center for a couple of weeks at the time Ms. Brown sent home this incident report. Ms. Brown reminded Mother about the discipline criteria for the Learning Center. She reminded her that Community Montessori could terminate Student's participation in the Learning Center if he continued to be unable to follow the rules set out in the Parent Handbook.

37. Ms. Brown discussed with Mother how Mother could work with Student at home to make him more comfortable at school. Mother did several observations at the Learning Center to see how instruction occurred there so she could do the same with Student's lessons at home. Mother also began going to the Learning Center, particularly on Fridays, to help with Student and to get lessons from Ms. Brown on how to teach Student at home. Student was very resistant to having instruction from Ms. Brown.

38. Districts scheduled Student's 30-day IEP review team meeting for October 6, 2015. Prior to the meeting, Ms. Brown and Ms. Rodrigues discussed with Mother the difficulties that Student was having at the Learning Center. They suggested that Student decrease the amount of time that he spent there to three half-days a week and thus increase the amount of independent home study instruction he would receive from Mother. Parents agreed to have Student just attend Learning Center on Monday, Wednesday, and Friday mornings.

39. Student's IEP team met as scheduled on October 6, 2015. The IEP team consisted of Parents; Ms. Brown; Ms. Rodrigues; Mr. Yung; Ms. Leeds; an occupational therapist; and a speech language pathologist.

40. Although Student's IEP reflected Districts' stance that Student was enrolled in a general education charter school independent study program by parent choice that

included participation in an optional general education Learning Center, at the October 6, 2015 IEP team meeting, Districts' IEP team members focused on how Student was progressing in the Learning Center and on developing supports for Student so that he could adjust to the Montessori program there. The team discussed Student's present levels of performance. Student's academic skills were strong when Student worked one-on-one with an adult. Districts had previously asked Mother to accompany Student to the Learning Center and to his speech and language therapy so that she could assist his participation in class and in the therapy sessions. At the October 6, 2015 IEP team meeting, Student's IEP team agreed that Mother would continue to accompany Student. However, Districts later decided that having Mother in the classroom was counter to the Montessori philosophy of developing independence in children. Thereafter, rather than having Mother assist in the classroom, Ms. Brown would ask her to take Student home if he engaged in a behavior disruptive to the rest of his class or to his learning.

41. Student had difficulty expressing what he needed to children and to adults. He also demonstrated difficulty adjusting to the Montessori program. The speech pathologist offered to develop social stories with photographs to teach Student about the school rules. The IEP team determined the speech pathologist would use visual cues and pictures to teach Student to transition between tasks and learn the class routine. Additionally, the team determined that a visual schedule would be used for Student, in collaboration with the speech pathologist, Mother as the parent-teacher, and Ms. Brown as the classroom instructor, to allow Student choices within limits.

42. Districts' IEP team members recognized that Student's weak pragmatic communication skills were an area of need. Student had begun to verbalize his desire to engage in play with a familiar peer, but he needed a script sometimes to engage in reciprocal conversation. He sometimes required prompts to initiate a greeting, to ask or answer questions whether from an adult or from a peer, to share information, or to state

his feelings. To address Student's communication needs, Districts increased Student's speech and language therapy sessions to 45 minutes a week.

43. The occupational therapist had previously observed Student in the Learning Center. She noted he was off-task and disruptive. She suggested support strategies for Ms. Brown to implement in the classroom to see how Student would respond to them.

44. The IEP team also discussed different strategies for Mother to use at home to ensure Student was attentive and ready to work. The team also discussed strategies for Ms. Brown to use in the classroom.

45. Because Student's behavior was impeding his learning and that of his peers, his IEP team developed several strategies for Ms. Brown and the speech language pathologist to implement in the Learning Center. These consisted of providing Student with choices, providing him with a visual schedule, and waiting after giving a direction, or after asking a question, to give Student time to respond. The team agreed Student would have movement breaks during class; that Ms. Brown and the speech pathologist would provide him with verbal reinforcement and encouragement for positive behaviors; and that Ms. Brown would provide him with a mat, carpet area, or table, where Student could go when feeling stressed or anxious.

46. Although Districts contend that the aids, accommodations, modifications, strategies and supports developed for Student were designed for use in Student's home study program, the weight of the evidence, based upon the IEP document, indicates that the IEP team contemplated that these strategies would be implemented by Ms. Brown in the Learning Center. Mother was not taught how to implement them and had no concept of how she would do so in the home. Additionally, most, if not all, of Student's behavioral issues occurred at school and not in the home. There was no indication that Student threw items at home, that he hit people or peers at home, or that he was off-

task or unable to complete assignments anywhere other than at the Learning Center.

47. Parents consented to Student's October 6, 2015 IEP, on October 27, 2015. Other than the notes stating that Parents had agreed to reduce Student's Learning Center participation to three mornings a week, the IEP did not reference the Learning Center as Student's placement. Nor did it specifically refer to Student's home study program. Instead, it erroneously retained the previous placement offered to Student by his prior school district, of 180 minutes-a-day, four days-a-week, of specialized academic instruction in a separate classroom at a public school as the offer of placement.

48. In fact, as of October 6, 2015, Student's placement at Community Montessori consisted of 60 percent of his time in general education at the Learning Center, and 40 percent of his time in general education at home in the independent home study program.

49. Districts convened a Student Study Team meeting with Parents on October 8, 2015, to further discuss Student's difficulties in the Learning Center. At this meeting, Districts reiterated the strategies they would implement with Student in the Learning Center that had already been determined at the October 6, 2015 IEP team meeting. Districts also stated they would order instructional materials for Student to use at home with Parents on Tuesdays and Thursday. However, other than class assignments and work sheets, the only materials Districts ever provided to Parents for Student's use in the home was a number rod.

DISTRICTS' REMOVAL OF STUDENT FROM THE LEARNING CENTER PROGRAM

50. On October 7, 2015, Student had another behavior incident. While the class was gathering to sit for a morning meeting, Student walked over to a classmate and hit her on the head. Ms. Brown re-directed him and gave him choices of where to sit and join the group. Instead, Student walked around the room and hit the classmate

again. He then walked over to Ms. Brown, grabbed her arm, pulled her toward him, and hit her head. Districts had Mother spend more time at the Learning Center to support Student after this incident.

51. When Mother accompanied Student at the Learning Center, he was more on task, but tended to rely on her too much. Although spending less time at the Learning Center had been helpful for Student and he was making more progress in the classroom by being able to work independently at times on classwork, it still took Ms. Brown a long time to present lessons to him.

52. Districts held a follow-up Student Study Team Meeting for Student on November 13, 2015. Districts decided to continue having Mother go into the classroom if Student was not responding to instruction, and to continue the current three-day a week Learning Center schedule. However, Districts later decided that Mother's support of Student in the classroom was contrary to the Montessori philosophy of instilling independence in children. Districts therefore curtailed Mother's ability to assist Student in class. Rather, they only called her to come if they needed her to try to intervene with Student if he was having a behavior incident, or if Ms. Brown wanted Mother to take Student home.

53. Since Student's triennial assessment and IEP were due the beginning of 2016, Districts sent Parents an assessment plan in September 2015, which Parents signed. Districts conducted psychoeducational, speech and language, occupational therapy, and academic testing of Student as part of the assessment. The assessments are not at issue in this case.

54. Districts convened an annual/triennial IEP team meeting for Student on January 6, 2016. In attendance were Parents; Ms. Rodrigues; Mr. Yung; the speech and language pathologist; the occupational therapist; Ms. Brown, who was identified both as the Educational Facilitator and the General Education Teacher; and the bilingual speech

and language pathologist who had assessed Student. The IEP team reviewed Student's present levels of performances in speech and language and motor skills. Student still had difficulty expressing his needs to adults and children. He still had difficulty following directions, and refused requests by adults and peers. He was still often off-task and disruptive. The behaviors noted at school were not present in the home.

55. The IEP team did not conclude reviewing Student's assessments and agreed to reconvene at a later date. The continued meeting was later scheduled for February 3, 2016.

56. Unbeknownst to Parents, Community Montessori staff had been discussing Student's continued disruptive behaviors in the Learning Center. Conversations had occurred between Mr. Yung, Ms. Novacek, and Ms. Brown that, in spite of Student's decreased time in the Learning Center, the attempted interventional strategies, and Mother's increased assistance, Student was not able to benefit from the Montessori program at the Learning Center. Student could not work independently, was not able to work with his peers or socialize with them, and continued to run around the classroom, throw objects, and engage in aggressive behaviors.

57. On February 1, 2016, Student lashed out at Ms. Brown and another adult in the classroom. He was asked to stop and use gentle hands. Later that morning, during the class morning meeting, Student got up and went over to Ms. Brown and started to grab her shoulder very firmly. He then leaned in and bit her arm. Mother had to be called to intervene.

58. This latest incident resulted in a meeting being convened between Mr. Yung, Ms. Brown, and Ms. Novacek. They did not include Special Education Director Ms. Rodrigues in the meeting. The three discussed the fact that Student had not responded to interventions, was not able to participate in the Montessori learning process, and had broken the rules laid out in the Parent Handbook for continued participation in the

Learning Center. Mr. Yung, Ms. Novacek, and Ms. Brown agreed that Districts had attempted to use the first two levels of progressive discipline with Student as outlined in the Parent Handbook by first giving Student many months of verbal warnings, decreasing Student's time in the Learning Center, and having Mother assist with supporting Student there. They agreed the next and final step to implement in line with the Parent Handbook notification of progressive discipline was to at least temporarily suspend Student's participation in the Learning Center and have him attend the home study program on a full-time basis. They believed that Student needed to first learn how to socialize and interact with classmates before he could be successful in the Learning Center environment. Districts did not include Ms. Rodrigues in the discussions or in the decision to remove Student from the Learning Center. They did not include Parents in the discussions or give them written notice of what they intended to do.

59. Mr. Yung met with Parents on February 2, 2016, to explain that Districts thought it was in Student's best interest to cease attending the Learning Center and to move to full-time participation in the independent home study program. He informed Parents that Student would no longer be able to attend the Learning Center until he was able to participate without being disruptive.

60. Parents were unprepared for and somewhat stunned by Mr. Yung's pronouncement. They left the meeting with Mr. Yung without voicing any real protest to what he told them. Mr. Yung took their silence as acquiescence to Districts' plan to remove Student from the Learning Center at least temporarily. However, Parents' silence was due to their shock at being informed that Student was being removed from the Learning Center and not due to their agreement with Districts' decision.

61. Districts re-convened Student's triennial IEP team meeting the next day, on February 3, 2016. Many of the same IEP team members present on January 6, 2016, attended this meeting, including Parents, Ms. Rodrigues, Mr. Yung, and Ms. Brown.

62. By the time of the meeting, Parents had had time to absorb the fact that Districts intended to remove Student from the Learning Center. They were not in agreement with the decision. They never had the intention of enrolling Student in a full-time independent home study program. Since Student was autistic, they knew he required opportunities to socialize with peers and felt that a home program would only serve to isolate him from those peers.

63. In addition to discussing the rest of Student's assessments, his goals, Student's continued eligibility for special education as a child with autism, and the related services Student required, the IEP team on February 3, 2016, discussed Districts' decision to remove Student from the Learning Center. Parents informed the Districts' IEP team members that they strongly disagreed with the decision. They wanted to know how removing Student from a classroom environment would benefit him given his need for social interaction.

64. Mr. Yung explained to Parents that he felt the classroom environment was too stressful for Student. Incidents such as the one where Student had bitten Ms. Brown had been increasing, which Mr. Yung believed demonstrated Student's frustration with his inability to process and communicate his feelings and needs. Mr. Yung believed that Student needed to build up his communication skills and social skills before being able to access instruction in the Learning Center environment. Once Student was able to communicate better, he would be more successful at processing his stress in constructive ways rather than in the inappropriate manners he was then using.

65. Districts therefore reiterated to Parents at the IEP team meeting that because Student had not been able to follow the conduct expected of students at the Learning Center, he would no longer be able to attend class there.³ Student would

³ Although Districts removed Student from the Learning Center program because

continue to participate in the independent home study program, but on a full-time rather than part-time basis.

66. At the February 3, 2016 IEP team meeting, Districts continued to offer Student 45 minutes a week of speech and language, as they had in Student's October 2015 IEP. Districts also added 120 minutes a month of occupational therapy for Student, based on the results of Districts' occupational therapy assessment, which indicated that Student had unique needs in that area that needed to be addressed through therapy. Based upon Student's academic needs, Districts also offered him an hour a week of specialized academic instruction, to be provided by a special education teacher. The therapy services and specialized academic instruction would be provided to Student at the Learning Center. Parents were expected to bring Student to the Learning Center just for his therapy sessions and specialized academic instruction. The remainder of Student's educational program would be independent home study, with Mother as the parent-teacher.

67. Parents ultimately accepted the occupational therapy and speech and language therapy services, but declined to bring Student to the Learning Center for specialized academic instruction. They also declined to consent to the remainder of the January 6, 2016 IEP, as finalized on February 3, 2016, because Districts removed Student from the Learning Center. Districts did not provide Parents with a copy of the February 3, 2016 IEP, at the end of the IEP team meeting.

he did not follow the code of conduct stated in the Parent Handbook, Districts did not convene a manifestation determination review team to determine whether Student's behavior was a result of his disability.

EVENTS BETWEEN FEBRUARY 3, 2016, AND MAY 23, 2016

68. Districts did not provide any written notification to Parents prior to removing Student from the Learning Center. The decision was made by Mr. Yung, Ms. Novacek, and Ms. Brown, on February 2, 2016. Although the decision was discussed at the February 3, 2016 IEP team meeting, Districts were not willing to retract or modify their decision based upon Parents' input or concerns. Until Student filed his first due process complaint in this case, to which Districts filed a response, Districts did not explain in writing their rationale for removing Student from the Learning Center, other than the notes written for the February 3, 2016 IEP team meeting.

69. Neither Mr. Yung nor Ms. Brown was familiar with the concept of prior written notice. Ms. Rodrigues was trained as a special education teacher and had over 20 years' special education experience. However, although she was the special education director for Districts, she had never explained the concept of prior written notice to Mr. Yung or Ms. Brown. In any case, Ms. Rodrigues was not invited to attend the February 2, 2016 meeting convened by Mr. Yung to discuss Student's continued attendance at the Learning Center. Nor was Ms. Rodrigues involved in the decision-making process that culminated in Districts' decision to terminate Student's Learning Center attendance.

70. On the morning of February 8, 2016, the Monday following the February 3, 2016 IEP team meeting, Father sent an email to Ms. Rodrigues asking why Parents had not received anything in writing regarding Student's change in placement. He also requested that Districts provide Parents with a copy of the February 3, 2016 IEP. Districts did not provide the IEP document. At the time Student filed his first due process request in March 2016, Parents still had not received a copy of the February 3, 2016 IEP. In his email, Father also informed Ms. Rodrigues that Parents intended to bring Student to the Learning Center that day. When they arrived, Ms. Brown told Father that Student could no longer attend the program, which she thought had been made clear to Parents at the

IEP team meeting.

71. That evening, Mr. Yung responded to Father's email to Ms. Rodrigues. He expressed confusion as to why Parents brought Student to the Learning Center. He reiterated Districts' position that Student would benefit from the home study program. Mr. Yung also reiterated Districts' position that they had not changed Student's placement, which they contended had been and continued to be in a general education independent home study program.

72. To support Student's home study program, Ms. Brown developed weekly, rather than monthly, assignments for Parents to implement at home with Student. Student completed most of the assignments.

73. Student filed his amended complaint on April 19, 2016. On April 25, 2016, he filed a motion for stay put, contending that his three-day a week participation in the Learning Center constituted his stay put placement. On May 16, 2016, OAH granted Student's motion for stay put. Districts permitted Student to return to the Learning Center on May 23, 2016, pursuant to the stay put order. Student remained at the Learning Center three days a week through the end of the 2015-2016 regular school year.

74. Parents brought Student to the Learning Center for his speech and language during the approximately three-and-a-half months Districts did not permit Student to attend Ms. Brown's class. Parents did not consent to the specialized academic instruction offered by Districts at any time during the three-and-a-half months and therefore did not avail themselves of the instruction, although Districts continued to make it available to Student during the months he did not attend the Learning Center. Parents also did not avail themselves of the occupational therapy sessions Districts offered in the February 3, 2016 IEP. It is not clear from the record why Parents declined those services although Districts continued to make them available.

SERVICES PARENTS FUNDED WHILE STUDENT WAS NOT PERMITTED TO ATTEND THE LEARNING CENTER

75. Parents were concerned about Student's lack of interaction with peers during the months Districts did not permit him to attend Ms. Brown's Learning Center class. They began investigating alternative programs in which to enroll Student. They were not successful in locating a program until after Student returned to the Learning Center pursuant to the order granting his motion for stay put. Parents eventually enrolled Student in a weekly group social skills program offered by Headway Social Skills. Student began attending the program on June 4, 2016. He attended during June, July, August, and September 2016. Parents paid a total of \$500 in tuition for Student to attend this program. The invoices Student submitted as evidence in this case did not indicate that Parents had paid the tuition, but Parents' credible testimony at hearing was that the invoices had been paid. Parents testified that the program worked on Student's social skills and pragmatic skills and that it was beneficial for Student. Districts did not provide any evidence to contradict Parents' testimony that the program addressed Student's need to interact with peers and the need to focus on the social skills and pragmatic speech skills he missed out on during the time he was not permitted to attend the Learning Center.

76. Parents also took Student to Pediatric Neurology Therapeutics for a neuropsychological assessment and psychotherapy. Parents stated that Student also received other therapies from this agency, such as Applied Behavior Analysis therapy and occupational therapy, but it is unclear from their testimony or from the agency's invoices what other types of therapies or services the agency provided to Student. Parents were unclear as to what the therapies were and there is no indication as to how many sessions Student received or how long each session might have lasted. Parents' insurance paid for the majority of charges incurred at Pediatric Therapeutics, but they

were responsible for co-payments that totaled \$1,391.54.

77. Student did not receive any type of psycho-therapy, Applied Behavior Analysis, or counseling through his IEP's developed by Districts or through attendance at the Learning Center. To the extent that Pediatric Therapeutics might have provided occupational therapy and/or speech and language therapy to Student, Districts continued to offer these services to Student, even during the time they did not permit him to attend class at the Learning Center. To the extent Student received Applied Behavior Analysis therapy from Pediatric Therapeutics, Student was not receiving that type of therapy through his IEP, and it was not provided as part of the Learning Center program. Student did not demonstrate a persuasive correlation between what he lost by being deprived of attendance at the Learning Center and Parents' decision to fund Applied Behavior Analysis services for him when he received full-time instruction in the home. Student did not provide any evidence whatsoever that whatever assessments, therapies, or services he received at Pediatric Therapeutics replaced any assessments, therapies, or services he would have had at the Learning Center had Districts not removed him from attendance there.

TESTIMONY OF STUDENT'S EXPERTS IN SUPPORT OF HIS REQUEST FOR COMPENSATORY EDUCATION

78. Student requested that Districts be ordered to provide him with compensatory education if this decision found that he was denied a FAPE. Student requested 14 hours of compensatory speech and language therapy, 28 hours of social skills training, and 63 hours of specialized academic instruction. Student based the requests on the instruction he contends he lost during the time Districts prevented him from attending class at the Learning Center.

Testimony of Miguel Montiel

79. Student presented the testimony of two experts in support of his request for compensatory education. Miguel Montiel conducted a speech and language independent educational assessment for Student in May and June 2016. Districts funded the assessment. Mr. Montiel has a master's degree in speech and language pathology. He has worked as a speech and language pathologist since 2003 in public schools and in clinical settings. He started his own speech and language pathology practice that focused on contracting with schools to provide speech and language services and assessments. Mr. Montiel was an earnest and forthright witness who answered questions with deliberation and thoughtfulness.

80. Mr. Montiel's assessment consisted of standardized and non-standardized tests, interviews with Ms. Brown and Student, a review of Student's file, and an observation of Student in Ms. Brown's classroom. Based upon his assessment, Mr. Montiel concluded that Student demonstrated severe deficiencies in his receptive, expressive, and pragmatic language skills.

81. Mr. Montiel observed Student in his classroom at the Learning Center on June 13, 2016, about three weeks after Student returned to classes there. Mr. Montiel determined from his observation that Student did not have the skills to initiate conversations with peers or independently join group play. He opined that Student lost approximately 14 weeks of socialization practice while he was not permitted to attend the Learning Center and lost the opportunity to generalize his skills across environments.

82. Mr. Montiel opined that an hour of group speech and language therapy focused on socialization skills and pragmatic speech for each week Student was prevented from attending class at the Learning Center would be appropriate to compensate Student for the loss of socialization and communication with peers as well

as the loss of opportunities to generalize these skills across domains. Mr. Montiel therefore opined that Student needed a total of 14 weeks of group speech and language services to compensate for these losses. Districts provided no persuasive evidence to counter Mr. Montiel's testimony. Districts did not provide any evidence that Mr. Montiel's recommendation of 14 hours of compensatory speech services was inappropriate or unwarranted.

Testimony of Dr. Jill Weckerly

83. Student also provided the testimony of Dr. Jill Weckerly in support of his request for compensatory education. Dr. Weckerly has a master's degree in linguistics and two doctorate degrees, one in cognitive science and linguistics and the second in clinical psychology. She has worked as a psychologist since 1999. Her work experience includes working as a staff psychologist, working as an assistant professor of psychology at the University of California-San Diego, maintaining a private clinical psychology practice, and working in the mental health department for a school district in San Diego County. Dr. Weckerly has given numerous presentations and published numerous peer-reviewed articles in her areas of expertise. She was professional, straight-forward, and deliberative during her testimony and gave thoughtful and insightful responses to questions. She readily admitted when her expertise did not permit her to respond to all questions concerning Student's request for compensatory education.

84. Dr. Weckerly conducted an independent educational evaluation of Student in the area of neuropsychology in May and June 2016. Districts funded the assessment. In addition to standardized testing and a review of Student's records, Dr. Weckerly observed Student at school in his Learning Center classroom and during the three sessions of testing.

85. Dr. Weckerly opined that because Student was autistic, he had a significant need to practice social skills with peers and adults other than his parents. Student also

needed to learn to generalize skills across environments. Student was deprived of the ability to do so when he was prevented from attending class at the Learning Center. He also lost the benefit of incidental learning that flows from being in a classroom with peers and modeling their behaviors, learning to problem solve, and how to get along with other people.

86. Dr. Weckerly opined that Student required one to two hours of social skills group for every week he did not attend class at the Learning Center, to make up for having lost exposure to other children and adults. However, Dr. Weckerly failed to address the fact that by the time of the hearing, Parents had already provided Student with at least 14 hours of social skills training through Headway Social Skills. Student provided no evidence that he required a duplicative social skills remedy.

87. Dr. Weckerly acknowledged that she was not an education specialist and therefore could not give an expert opinion as to whether Student required specialized academic instruction to compensate him for any academic losses he might have suffered as a result of not being able to attend the Learning Center. However, Dr. Weckerly stated that she felt that giving Student four-and-a-half hours of compensatory education for every week he did not attend the Learning Center would be equitable to address the non-academic benefits Student received from attending class there. She stated that in addition to losing socialization and interaction with peers at the Learning Center, Student also lost the opportunity to interact with more than one teacher and to generalize skills between instructors. While solely in the home program, Student's only interaction with an instructor was with Mother.

88. Dr. Weckerly acknowledged that her suggestion for compensatory specialized academic instruction hours was an educated guess rather than a fact-based expert recommendation.

89. Dr. Weckerly was not provided with and therefore never reviewed Districts'

latest IEP offers to Student. The only IEP she received and reviewed was the one from Carlsbad Unified, dated January 13, 2015. She was not aware that Districts were providing 45 minutes a week of speech and language therapy to Student, and that they had offered him 120 minutes a month of occupational therapy. Nor was she aware that Districts' had offered to provide Student with an hour a week of specialized academic instruction even while Student remained in the full-time independent home study program, and that Parents had never consented to that offer.

90. Dr. Weckerly acknowledged that she could not know for a fact that Student lost social skills or academic benefit from not attending the Learning Center. Her greatest concern was that Student needed to be taught by someone other than just his mother. His home study program did not provide Student with any other instructional model that he could generalize from one instructor to another. However, Dr. Weckerly acknowledged that she was basically offering an educated guess as to the extent of compensatory specialized academic instruction Student should receive. She also was unaware of the related services and specialized academic instruction Districts had offered Student, which would have provided Student with three different instructors in three different types of environments. Had Parents accepted Districts' offer of specialized academic instruction, Student would have been taught by the additional teacher Dr. Weckerly thought was so critical to his learning to generalize instructional models. Dr. Weckerly agreed that had Student received the instruction offered by Districts but declined by Parents, Student would have been getting the instruction from a second instructor that she felt he needed.

91. Based on these factors, Dr. Weckerly's opinion that Student required four-and-a-half hours per week of compensatory specialized academic instruction for every week he did not attend the Learning Center, was not persuasive. However, Dr. Weckerly's expert opinion that Student lost the benefit of receiving instruction from a

general education teacher during the time he was prevented from attending the Learning Center is well-taken. As discussed below, Student is entitled to some compensatory specialized academic instruction for the time he was not able to participate in the general education Learning Center classroom, albeit not to the extent suggested by Dr. Weckerly.

PARENTS' CONDUCT BETWEEN FEBRUARY 3, 2016, AND MAY 23, 2016

92. Districts responded to the filing of Student's original due process complaint in a letter to Student's attorneys dated March 11, 2016. In the letter Districts offered, among other things, to conduct a functional behavior assessment of Student. The stated purpose was to identify what behaviors might be impeding Student's ability to learn, and to help his IEP team develop positive behaviors and supports. Districts attached an assessment plan for Parents' consideration and signature.

93. Districts had removed Student from Learning Center participation five weeks prior to the time they proposed the functional behavior assessment. Districts did not offer to reinstate Student to the Learning Center program as part of the assessment process. Parents did not believe it appropriate or logical to conduct a functional behavior analysis of Student while he was in a full-time home study program because Student did not have many behavioral problems at home. His behavior issues had presented for the most part when he attended class at the Learning Center. Parents therefore did not consent to the assessment until just before Student returned to the Learning Center on May 23, 2016, pursuant to OAH's order granting his motion for stay put.

94. Districts included an IEP team meeting notice in their April 21, 2016 letter, for a meeting scheduled to be held on April 25, 2016. April 21, 2016, was a Thursday. April 25, 2016, was a Monday. The notice therefore gave Parents one business day of advance notice. Districts did not offer any alternative meeting dates. Parents were

unable to re-arrange their schedules in such a short amount of time and informed Districts through their attorneys that they could not agree to the proposed IEP team meeting date. Although there was some delay in convening the IEP team meeting, Parents agreed to attend one in July 2016, after Student returned to the Learning Center, and after the 2015-2016 school year had concluded. Soon after the meeting, Student withdrew from Districts and enrolled in another school district.

95. Student completed the majority of the school work Ms. Brown assigned him during the 14 weeks he was not permitted to attend the Learning Center. Mother returned the completed assignments to Ms. Brown.

LEGAL CONCLUSIONS

INTRODUCTION: LEGAL FRAMEWORK UNDER THE IDEA⁴

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et seq.; 34 C.F.R. § 300.1 (2006)⁵ et seq.; Ed. Code, § 56000, et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are (1) to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, §

⁴ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

⁵ All references to the Code of Federal Regulations are to the 2006 version, unless otherwise noted.

56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034] ("*Rowley*"), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to "maximize the potential" of each special needs child "commensurate with the opportunity provided" to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to "confer some educational benefit" upon the child. (*Id.* at pp. 200, 203-204.) The Ninth

Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.]) Although sometimes described in Ninth Circuit cases as “educational benefit,” “some educational benefit,” or “meaningful educational benefit,” all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 951, fn. 10.)

4. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, 56505.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3)(C), (D).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) In this case, Student, as the complaining party, bears the burden of proof on all issues.

ISSUE 1: UNILATERAL CHANGE IN STUDENT’S PLACEMENT WITHOUT PARENTS’ CONSENT

5. Student contends that Districts’ unilaterally changed his placement

without Parents' consent when Districts removed him from the Learning Center program after Student was unable to conform to the Learning Center's student code of conduct. Student contends that by making the change unilaterally and without Parents' consent, Districts impeded Parents' right to participate in Student's IEP process.

6. Districts contend that Student's placement was always their general education independent home study program, which is the program for which Community Montessori is chartered. Districts contend that participation in the Learning Center was merely a curricular option selected by Parents that did not create a separate or different placement for Student. Therefore, Districts' removal of Student from the Learning Center merely constituted a change in the location of Student's placement rather than a change in placement. Districts contend that such a change was well within their educational purview and did not require them to consult with Parents prior to making the change in location.

Legal Authority

CHARTER SCHOOL RESPONSIBILITY

7. Children with disabilities who attend public charter schools and their parents retain all rights under the IDEA and its regulations. (34 C.F.R. § 300.209(a).) A charter school that is a public school of a local educational agency must serve children with disabilities attending those charter schools in the same manner as the local educational agency serves children with disabilities in its other schools. (*Id.* at subd. (b)(1)(i).)

8. Although charter schools have been granted independence to develop unique educational models, the California Legislature did not intend that the charter school statutes override or conflict with special education law. Education Code section 47646, subdivision (a), provides in pertinent part that a child with disabilities attending a charter school shall receive special education instruction "in the same manner as a child

with disabilities who attends another public school of that local educational agency.” It also imposes on the chartering local educational agency the duty to ensure that “all children with disabilities enrolled in the charter school receive special education ... in a manner that is consistent with their individualized education program” and is in compliance with the IDEA and its regulations. (*Ibid.*)

9. Since the power of an ALJ to order relief in an IDEA matter is grounded in federal law, it prevails over conflicting state law. (U.S. Const., art. 6, § 2.)

PROCEDURAL VIOLATIONS

10. To assist courts and administrative tribunals, the Supreme Court established a two-part test to determine whether an educational agency has provided a FAPE for a disabled child. (*Mercer Island, supra*, 592 F.3d at p. 947.) “First, has the State complied with the procedures set forth in the Act? And, second, is the individualized education program developed through the Act’s procedures reasonably calculated to enable the child to receive educational benefits?” (*Rowley, supra*, 458 U.S. at pp. 206-207.) “If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.” (*Id.* at p. 207.)

11. A procedural violation constitutes a denial of FAPE only if it impeded the child’s right to a FAPE, significantly impeded the parents’ opportunity to participate in the decision making process regarding the provision of a FAPE to their child, or caused a deprivation of educational benefits for the child. (20 U.S.C. § 1415(f)(3)(E); 34 C.F.R. § 300.513(a)(2); Ed. Code, § 56505, subd. (f)(2); see also, *W.G. v. Board of Trustees of Target Range School Dist.* (9th Cir. 1992) 960 F.2d 1479, 1483-1484 (*Target Range*).

12. The Ninth Circuit Court of Appeals has confirmed that not all procedural violations deny the child a FAPE. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1033, fn.3; *Ford v. Long Beach Unified School Dist.* (9th Cir. 2002) 291 F.3d 1086, 1089.) The Ninth Circuit has also found that IDEA procedural error may

be held harmless. (*M.L. v. Fed. Way School Dist.* (9th Cir. 2005) 394 F.3d 634, 652.)

PARENTAL PARTICIPATION IN THE IEP PROCESS

13. The IDEA and the regulations promulgated pursuant to the IDEA guarantee that the parents of each child with a disability participate in any group that makes decisions on the educational placement of their child. It emphasizes the participation of the parents in developing jointly with the school district the child's educational program and assessing its effectiveness. (20 U.S.C. § 1415(a); see also 20 U.S.C. § 1400(d)(1)(B) (rights of parents protected); 20 U.S.C. 1414(c)(1)(B) (input from parents specified); 20 U.S.C § 1414(a)(1)(D) (parental consent specified); 20 U.S.C. § 1415(b) (opportunity for parents to examine the record specified); and 20 U.S.C. § 1414(d)(2)(C)(i) and (ii)(requiring school district to consult with parents of students transferring into district in the development of a comparable interim IEP).) Making placement recommendations is the central function of an IEP team meeting. (Ed. Code, §§ 56342, subd. (a), (b); 56343, subd. (d).)

14. Special education law therefore places a premium on parental participation in the IEP process. School districts must guarantee that parents have the opportunity "to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(1).) The United States Supreme Court has recognized that parental participation in the development of an IEP is the cornerstone of the IDEA. (*Winkelman v. Parma City School Dist.* (2007) 550 U.S. 516, 524 [127 S.Ct. 1994, 167 L.Ed.2d 904].) Parental participation in the IEP process is also considered "(A)mong the most important procedural safeguards." (*Amanda J. v. Clark County School* (9th Cir. 2001) 267 F.3d 877, 882.)

15. In *Shapiro v. Paradise Valley Unified School Dist.* (9th Cir. 2003) 317 F.3d 1072, 1077, *superseded on other grounds by* 20 U.S.C. § 1414(d)(1)(B) (*Shapiro*), the

Ninth Circuit noted that “[t]he importance of parental participation in the IEP process is evident.” The Ninth Circuit reiterated its ruling in *Shapiro* in the case of *Doug C. v. Hawaii Dept. of Educ.* (9th Cir. 2013) 720 F.3d 1038 (*Doug C.*). There, the school district was faced with either missing the statutory deadline to hold the child’s IEP meeting or holding the meeting without the child’s father who had cancelled a few meetings and then had informed the district that he was ill and could not attend the latest scheduled meeting. The Ninth Circuit found that it was more important to ensure the parent’s presence at the IEP meeting than it was to meet the deadline to hold the meeting, because the former was the procedural requirement that most benefitted the Student. (*Id.* at pp. 1043-1047.) The Ninth Circuit reiterated that the regulatory framework of the IDEA, as acknowledged by *Rowley* and its progeny, places an affirmative duty on agencies to include parents in the IEP process. (*Id.* at p. 1044.)

16. Finally, an educational agency must permit a child’s parents “meaningful participation” in the IEP process. (*Ms. S. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131-1132 (*Vashon Island*)). The standard for “meaningful participation” is an adequate opportunity to participate in the development of the IEP.

Analysis

17. With these criteria in mind, we turn to the facts of the instant case. Districts do not dispute that they unilaterally decided on or about February 2, 2016, that Student was not then a candidate for the Learning Center and determined to end Student’s participation in the program until he was able to communicate and socialize better with his peers and instructor. Student had engaged in disruptive behavior since enrollment in Districts. He ran around the classroom instead of selecting an activity to complete. He threw class materials onto the floor and at his classmates. He hit his classmates and Ms. Brown, and bit Ms. Brown on several occasions. He engaged in this disruptive behavior on a constant basis in spite of interventions implemented by

Districts and in spite of Mother's increased presence in the Learning Center classroom. Because Student had violated the Learning Center's student code of conduct, Districts had imposed the progressive discipline steps stated in the Parent Handbook. Based on Student's failure to cease his disruptive behavior, Districts imposed the highest level of progressive discipline indicated in the handbook by removing Student from the Learning Center program.

18. Districts contend that they appropriately removed Student from the Learning Center program because participation there was merely a curricular choice. They contend that Student's placement from the time he enrolled in Community Montessori was in a general education independent home study program. Districts point to the fact that Parents were informed that Community Montessori was an independent home study program at the informational group meeting Mother attended during the summer of 2015, during her conversations with Ms. Rodrigues, and in her initial enrollment meeting with Ms. Brown. Districts point as well to the fact that Community Montessori's status as an independent home study program was reiterated in all written forms reviewed and signed by Mother, in the Parent Handbook, and in Student's IEP's developed by Districts. In removing Student from the Learning Center, Districts therefore merely changed the location of where Student would receive his independent study program, from the Learning Center classroom to his home; the latter of which was the original and intended location of Community Montessori's independent study program.

19. However, just because Districts insist that Student was always enrolled in an independent home study program, and just because documentation stated that as well, does not make it so. In reality, the Learning Center was Student's primary placement; as it was for every kindergarten student enrolled at Community Montessori for the 2015-2016 school year; and as it was for anywhere from 95 to 99 percent of the

students enrolled in all other Community Montessori classes.

20. Although parents made the original decision to enroll their child in the Learning Center, they were not permitted to choose how or when the student would participate in the program. The only attendance options permitted were either a four-day or five-day program, with an additional option for kindergarten students of choosing to attend either a full or half-day session. Parents were unable to choose to decrease the number of days a week their child could attend the program or the number of hours a day of attendance. Student's parents initially wanted him to attend the Learning Center only three days a week. Ms. Brown informed Mother that they could not choose to have Student attend less than four days a week. When Mother later wished to have Student attend the Learning Center four days a week, but with Wednesday as Student's day off, her proposal was rejected because the Learning Center placement for students did not permit the parents to make that choice. This was because the Learning Center provided academic instruction to all students Monday through Thursday. Friday attendance was optional because it was a non-academic day where the students engaged in non-academic activities.

21. Additionally, continued participation in the Learning Center was governed by the student's regular attendance there. Only excused absences were permitted and if a student's attendance fell below 80 percent, the student could be removed from the program. Parents were required to call the Learning Center if their child would not be attending school on a given day.

22. The Learning Center also operated as a traditional Montessori classroom. The children had a regular schedule of class time. Although the Montessori method required the student to select the assignment he or she would work on, the classroom was directed by a teacher, in this case, Ms. Brown. As the teacher, Ms. Brown facilitated lessons, re-directed inappropriate behavior, and disciplined students who did not meet

acceptable standards of conduct. She provided lessons to the students in her class. She evaluated their work and gave them grades. Although all students in the Learning Center also participated 20 percent of the time in the independent home study program under the tutelage of one of their parents, that parent did not grade the student and did not have any input or say in the classroom teacher's grading process.

23. Despite Districts' position that Mother was Student's primary teacher, the evidence does not support this contention. Mother was not trained as a teacher. She had very little idea how to implement instruction for Student at home. Although Districts were supposed to supply her with instructional materials, particularly after Student's participation in the Learning Center decreased from five days to three days a week, the only materials Mother received were Student's monthly, and later weekly, assignments and a number rod.

24. Significantly, Mother was not permitted to continue to assist Student in the classroom. Rather, it was Ms. Brown who was responsible for Student's education. Ms. Brown determined the materials that would be present in the classroom and the grades a student would receive.

25. Districts' position that the Learning Center was not Student's placement is also belied by the fact that when Student's behaviors continued impeding his learning and that of his classmates, Districts, through Student's IEP process, developed several strategies for Ms. Brown and the speech language pathologist to implement in the Learning Center. These consisted of providing Student with choices, providing him with a visual schedule, and waiting after giving a direction or after asking a question to give Student time to respond. The IEP developed by Districts also provided Student with movement breaks at school, as well as a system for Ms. Brown and the speech pathologist to provide him with verbal reinforcement and encouragement for positive behaviors. The IEP team also determined that Ms. Brown, not Mother, would provide

Student with a mat, carpet area, or table where Student could go when feeling stressed or anxious at the Learning Center.

26. Additionally, all the aids, accommodations, modifications, strategies and supports developed for Student by Districts' IEP team members were designed for use in the Learning Center, not in Student's home study program. The weight of the evidence indicates that the IEP team contemplated that these strategies would be implemented by Ms. Brown in the Learning Center. Mother was not taught how to implement them and had no concept of how she would do so in the home. Additionally, most, if not all, of Student's behavioral issues occurred at school and not in the home. There was no indication that Student threw items at home, that he hit people or peers at home, or that he was off-task or unable to complete assignments anywhere other than at the Learning Center.

27. Although Community Montessori required parents and students to sign a master contract that detailed their obligations and responsibilities, as well as controlled the student's educational experience, and which detailed the independent home study program as the placement offered to each child, Districts cannot use the agreement or Parent Handbook as a way of shielding themselves from their obligations under the IDEA. Those obligations and the rights afforded to children who are eligible for special education take precedence over a charter school's definition of its program or the contractual obligations to which it believes it has bound a student. (See, e.g. *Student v. Camptonville Academy, et al.* (2009) Cal.Offc.Admin.Hrngs 2008090659 (finding that it was a violation of the IDEA for a charter school to unilaterally dis-enroll a student when the student's parents violated charter rules by failing to sign an annual master agreement).)

28. While a charter school, like any other public school, may apply disciplinary rules and other regulations to children who are not eligible for IEP's, different rules

apply to children who are or may be eligible. For example, while a school district may suspend a non-IEP eligible child for any number of times, a child who is or may be eligible for an IEP is entitled to a manifestation determination review hearing before being suspended for more than 10 cumulative days a year for violating a student code of conduct. (20 U.S.C. §1415(k)(1)(E); 34 C.F.R. § 300.530(e)(i) & (ii).)

29. Therefore, the weight of the evidence supports Student's contention that his placement was in the Learning Center for the majority of his instructional week. Removing Student from the Learning Center to a full-time independent home study program constituted a change in placement.

30. It is disingenuous for Districts to argue otherwise. The independent home study program consisted of one pupil: Student. When Student attended the home study program, Mother, who was not a credentialed teacher and had no training as a teacher, was the primary instructor. In contrast, in the Learning Center, Student was taught by Ms. Brown, a credentialed general education teacher. He was in a class of approximately 24 students, and had an opportunity to interact, socialize, communicate, and learn with them. The contrast between learning independently at home with a parent as the teacher, and participating in a classroom with peers and a credentialed teacher is apparent and is substantial. Removing Student from the Learning Center changed Student's instructional environment drastically. Districts' arguments to the contrary are unpersuasive.

31. Student has therefore met his burden of proof that Districts changed his placement when they removed him from the Learning Center. Districts made the change unilaterally and without Parents' consent. The weight of the evidence is that after trying for several months to address Student's disruptive classroom behaviors, and after instituting their progressive discipline procedures pursuant to the Parent Handbook, Districts determined that Student was not benefiting from the Learning Center. They

determined that they would remove Student from the Learning Center and not permit him to return until he learned to communicate and socialize with peers. Mr. Yung, Ms. Novacek, and Ms. Brown made this decision on or about February 2, 2016. They did not invite Parents to their initial meeting to discuss the issue, and had already made the decision and informed Parents of it by the time Districts convened the February 3, 2016 IEP team meeting. The decision to remove Student from the Learning Center was, in effect, predetermined by Community Montessori staff. The fact that Districts permitted Parents to voice their opposition to the decision at the IEP team meeting does not change the fact that the decision was made without Parent input.

32. Districts' contention that this unilateral decision did not impede Parents' right to meaningfully participate in the process to offer Student a FAPE is not well-taken. Districts point to several ways in which Parents did participate in Student's IEP process. However, the fact that they were able to participate in some aspects of that process does not remedy the fact that they were fully excluded from the decision regarding Student's placement. This is even more significant in light of the fact that the decision to remove Student from the Learning Center eliminated Student's ability to participate in a classroom experience, which was the very reason Parents had enrolled Student at Community Montessori in the first place. As stated above, both the United States Supreme Court and the Ninth Circuit have found that parent participation is the cornerstone of the IDEA. Student has met his burden of proof that Parents' right to participate in his IEP process was substantially impeded by Districts' unilateral decision to change Student's placement, thereby resulting in a denial of FAPE to Student.

ISSUE 2: FAILURE TO PROVIDE PRIOR WRITTEN NOTICE BEFORE CHANGING STUDENT'S PLACEMENT

33. Student contends that Districts did not provide Parents with prior written notice before they changed Student's placement by removing him from the Learning

Center. Districts contend that they were not obligated to provide notice because they did not change Student's placement.

34. A school district must provide written notice to the parents of a pupil whenever the district proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the pupil, or the provision of a FAPE to the pupil. (20 U.S.C. § 1415(b)(3); 34 C.F.R. § 300.503(a)(2006); Ed. Code, § 56500.4, subd. (a).) The notice must contain: (1) a description of the action refused by the agency, (2) an explanation for the refusal, along with a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the refusal, (3) a statement that the parents of a disabled child are entitled to procedural safeguards, with the means by which the parents can obtain a copy of those procedural safeguards, (4) sources of assistance for parents to contact, (5) a description of other options that the IEP team considered, with the reasons those options were rejected, and (6) a description of the factors relevant to the agency's refusal. (20 U.S.C. § 1415(c)(1); 34 C.F.R. § 300.503(b)(2006); Ed. Code, § 56500.4, subd. (b).)

35. This decision has already found that Districts' unilaterally changed Student's placement and the manner in which Student would be educated, and did not merely change the location of where he was going to receive instruction. Districts were therefore required to provide prior written notice to Parents before the change was effectuated. Districts failed to do so. The decision to remove Student from the Learning Center was finalized by Mr. Yung, Ms. Novacek, and Ms. Brown on February 2, 2016. Mr. Yung verbally notified Parents of the decision that same day. No written notice was given to Parents before or any time during their meeting with Mr. Yung. To the extent that the Districts may contend that the February 3, 2016 IEP document notes provided prior written notice, that contention is misplaced. Districts' decision to remove Student from the Learning Center was made before the IEP team meeting, not during it.

Including the discussion in the IEP meeting notes therefore occurred after the decision was made, not prior to it. In any case, Parents were not given a copy of the IEP document on February 3, 2016. Therefore, the IEP document could not serve as prior written notice of Districts' decision.

36. Nor is the contention that Parents' right to participate in Student's IEP process was not impeded by the failure to provide them with prior written notice persuasive. Parents were blind-sided by Districts' decision to remove Student from the Learning Center classroom. The existence of that classroom and the ability of Student to participate in the Learning Center program were the reasons Parents enrolled Student at Community Montessori. Districts' failure to offer an explanation for their decision prior to making it, and their failure to give a basis for their decision, prevented Parents from being active participants in deciding their son's placement. As the Ninth Circuit found in *Doug C., supra*, 720 F.3d at p. 1047, not every procedural violation results in the denial of a FAPE, but procedural errors "that result in the loss of educational opportunity, or seriously infringe the parents' opportunity to participate in the IEP formulation process" do. (Cite omitted.) Like the school district's failure in *Doug C.* to include the student's father in the IEP team meeting where the district determined and finalized the student's placement, the failure here to provide Parents with prior written notice of the decision to change Student's placement clearly infringed on their ability to participate in the IEP formulation process. As the Ninth Circuit determined in *Doug C.*, that reason alone is cause to conclude that Student was denied a FAPE. Student has met his burden of proof on this issue.

REMEDIES FOR DISTRICTS' DENIAL OF FAPE

37. Student prevailed on both issues in this case by proving that Districts unilaterally changed his placement on February 2, 2016, by removing him from the Learning Center program, without providing prior written notice of that decision to

Parents. These actions by Districts significantly impeded Parents' opportunity to participate in the decision making process regarding the provision to Student of a FAPE. As a remedy, Student requested reimbursement for the cost of 1) Tuition paid to Headway Social Skills in the amount of \$500; 2) Reimbursement for Parents' out-of-pocket costs for the fees paid to Pediatric Neurology Therapeutics; 3) Compensatory education in the amount of 14 hours of speech and language therapy; 4) Compensatory education in the amount of 63 hours of specialized academic instruction; 5) Compensatory education in the amount of 28 hours of social skills training; and 6) Training for Districts regarding the IDEA's requirement for parental participation in the IEP process.

38. Districts argue that Student is not entitled to any of the remedies he has requested. Districts contend that even if Student is found to have prevailed on any issue, the unreasonableness of Parents' conduct should eliminate or reduce any remedy contemplated or ordered.

39. Under federal and state law, courts have broad equitable powers to remedy the failure of a school district to provide FAPE to a disabled child. (20 U.S.C. §1415(i); see *School Committee of Town of Burlington, Mass. v. Department of Educ. of Mass.* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996, 85 L.Ed.2d 385] (*Burlington*)). This broad equitable authority extends to an ALJ who hears and decides a special education administrative due process matter. (*Forest Grove School Dist. v. T.A.*, *supra*, 557 U.S. 230, 244, n. 11.) Parents may be entitled to reimbursement for the costs of placement or services they have procured for their child when the school district has failed to provide a FAPE, and the private placement or services were appropriate under the IDEA and replaced services that the school district failed to provide. (20 U.S.C. § 1412(a)(10)(C); *Burlington*, *supra*, 471 U.S. at pp. 369-371.) When a school district fails to provide a FAPE to a pupil with a disability, the pupil is entitled to relief that is "appropriate" in light of

the purposes of the IDEA. ALJ's have broad latitude to fashion equitable remedies appropriate for a denial of a FAPE. (*Id.* at 369-370; *Forest Grove School Dist. v. T.A.*, *supra*, 557 U.S. at 244, n. 11.)

40. An award of costs may be reduced or denied if, inter alia, a hearing officer finds that a parent's actions were unreasonable. The conduct of both parties must be reviewed and considered to determine whether relief is appropriate. (*Parents of Student W. v. Puyallup Sch. Dist. No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496 (*Puyallup*); 20 U.S.C. § 1412(a)(10)(C) (ii) and (iii)(III); 34 C.F.R. 300.148(c) and (d)(3).)

41. Based on the principle set forth in *Burlington*, federal courts have held that compensatory education is a form of equitable relief that may be granted for the denial of appropriate special education services to help overcome lost educational opportunity. (*Puyallup, supra*, 31 F. 3d at p. 1496.) The purpose of compensatory education is to "ensure that the student is appropriately educated within the meaning of the IDEA." (*Ibid.*)

42. The remedy of compensatory education depends on a "fact-specific analysis" of the individual circumstances of the case, and the conduct of both parties must be reviewed and considered to determine whether relief is appropriate. (*Puyallup, supra*, 31 F.3d 1489, 1497.) There is no obligation to provide day-for-day compensation for time missed. (*Park v. Anaheim, supra*, 464 F.3d at p. 1033.)

43. The IDEA does not require compensatory education services to be awarded directly to a student, so school district staff training can be an appropriate remedy. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1034 [student, who was denied a FAPE due to failure to properly implement his IEP, could most benefit by having his teacher appropriately trained to do so].) Appropriate relief in light of the purposes of the IDEA may include an award that school staff be trained concerning areas in which violations were found, to benefit the specific pupil involved,

or to remedy violations that may benefit other pupils. (*Ibid.*) (*Student v. Reed Union School District* (2008) Cal.Offc.Admin.Hrngs. Case No. 2008080580, p. 8. [requiring training on predetermination and parental participation in IEP's]; *Student v. San Diego Unified Sch. Dist.* (Cal. SEA 2005) 42 IDELR 249 [105 LRP 5069] [requiring training regarding pupil's medical condition and unique needs].)

44. The primary reason Parents enrolled Student in Community Montessori was so Student could participate in the general education Learning Center classroom and garner the benefits of being educated with his peers. Districts' unilateral decision to remove Student from the Learning Center deprived Student of the benefits of that classroom. Parents were compelled thereafter to provide Student with the socialization he was missing by being placed full-time in Districts' independent home study program. They sought out and located the Headway Social Skills program, which provided Student with some of the socialization, communication, and interaction with peers that he required. Dr. Weckerly's testimony was persuasive that Student, as an autistic child, lost significant opportunities for the type of social interaction he required, for the some 14 weeks he was prevented from attending the Learning Center. Parents' testimony and the documentary evidence substantiated the tuition that Parents' paid to Headway. Student is entitled to an order reimbursing Parents for those costs.

45. Student likewise demonstrated, through the testimony of Mr. Montiel, that he lost the benefit of pragmatic language role-modeling from peers during the 14 weeks he did not attend the Learning Center. Student is entitled to an order that Districts provide him with 14 hours of group speech and language sessions by a non-public agency, focusing on the use of pragmatic language.

46. Student has also requested that Parents be reimbursed for their out-of-pocket costs for the fees they paid to Pediatric Therapeutics. However, Student failed to prove that he is entitled to that remedy. First, it is unclear from the record exactly what

type of services that agency provided to Student. Second, to the extent that the fees were for counseling, occupational therapy, Applied Behavioral Analysis therapy, or for assessments, Student has failed to prove that there is a direct correlation between Districts' removal of him from the Learning Center and the therapies or other services Parents funded at Pediatric Therapeutics. Neither Student's IEP's nor the program at the Learning Center included Applied Behavioral Analysis. Student therefore did not lose the benefit of that type of therapy by not being able to attend the Learning Center. Districts offered Student occupational therapy services even during the time they did not permit him to attend the Learning Center. If Parents failed to avail themselves of those services it was not due to any action or inaction by Districts. Requiring them to now pay for a service they offered to provide would be inequitable. Likewise, there is no evidence that any other service Parents may have funded at Pediatric Therapeutics were services that Districts refused to provide during the time they prevented Student from attending the Learning Center. Student's request for reimbursement of any of the fees associated with Pediatric Therapeutics is denied.

47. Student requested an award of 68 hours of compensatory education in the area of specialized academic instruction to compensate him for the hours of instruction he lost by not being able to attend the Learning Center. Student calculated this amount based upon Dr. Weckerly's recommendation that he receive half of the nine hours a week he was supposed to attend the Learning Center, as compensatory education for the 14 weeks he was prevented from attending class there. Dr. Weckerly based her recommendation on the fact that Student lost the benefit of instruction from a credentialed general education teacher and lost the benefit of instruction from a person other than his mother. This loss inhibited Student's ability to generalize teaching methods from one instructor to another. Dr. Weckerly made her recommendation after observing Student in the Learning Center classroom after he returned to school there.

48. However, Dr. Weckerly acknowledged she was basically making an educated guess that Student required the hours she was recommending. Additionally, her opinion was based on incomplete information. She was not aware that Student's most recent IEP offered him one hour a week of specialized academic instruction from a special education teacher and that Districts had offered to provide this instruction while Student attended the full-time independent home study program. Parents declined the specialized academic instruction and Student therefore did not receive the benefit of the instruction. Had Parents accepted the IEP offer, Student would have had the exposure to a teacher other than his mother for one hour a week.

49. Dr. Weckerly's opinion that Student lost the benefit of generalizing instruction due to Districts' unilateral removal of Student from the Learning Center is persuasive. However, it is not equitable to order the amount of services she recommended because her recommendation was based on incomplete information. Districts offered one hour a week of instruction, but Parents declined it. Under the circumstances, taking into account Districts' offer of services, Dr. Weckerly's testimony, Districts' offer of one hour a week of specialized academic instruction that Parents declined, and the time Student lost at the Learning Center, it is equitable to award Student two hours a week of compensatory education in the area of specialized academic instruction for each week of time he was deprived of attending the Learning Center, for a total of 28 hours.

50. Dr. Weckerly also recommended that Student receive one to two hours of social skills training for every week he was prevented from attending the Learning Center class. However, her recommendation failed to take into account the fact that Parents already provided that amount of social skills training to Student through Headway Social Skills, which this decision orders be reimbursed. It would be inequitable to order Districts to doubly fund the social skills services.

51. Student has also requested that Districts be ordered to fund training for Districts' staff on proper IDEA procedures. This request is supported by the fact that, other than Ms. Rodrigues, none of Districts' staff appeared at hearing to understand a student's and parent's rights under the IDEA, and a district's corresponding obligations. As stated above, teacher training is an appropriate and equitable remedy for violations of the IDEA, and is appropriately ordered here.

52. Districts argue that Parents' conduct during the spring 2016 school semester was unreasonable, and warrants either a denial of remedies altogether or the reduction of ordered remedies. The primary reasons Districts offer for their argument are that Parents delayed in consenting to a functional behavioral analysis assessment of Student and delayed agreeing to dates for an IEP team meeting, until after the 2015-2016 school year had ended. With regard to the assessment, Districts' contentions are not well-taken. Districts proposed assessing Student while he was in the full-time independent home study program. There was no evidence that Student's behaviors at home significantly interfered with his learning. His difficulties manifested at school in the Learning Center. Assessing him at home did not appear to have any purpose. Parents' reticence in agreeing to the assessment is therefore understandable.

53. Although Parents' delay in agreeing to attend the IEP meeting is somewhat troublesome, Districts presented no evidence that they would have re-considered their decision to withdraw Student from the Learning Center had Parents agreed to attend an IEP team meeting before May 23, 2016, when Student returned to class. At the time Districts noticed the IEP team meeting, Student was not attending the Learning Center due to Districts' unilateral decision to terminate his participation there. Parents' reluctance to attend an IEP team meeting was therefore not surprising. Further, Districts' initial proposal for an IEP team meeting provided Parents with only one business day of notice of the meeting. That was not sufficient time to expect Parents to

re-arrange their schedules to be able to attend. For these reasons, Districts have not persuasively demonstrated that the remedies ordered in this case should be denied or reduced based on any unreasonable conduct attributable to Parents.

ORDER

1. Within 45 calendar days of this decision, Districts are ordered to reimburse Parents for the base cost of the Headway Social Skills program in the amount of \$500. No further proof of payment is required as sufficient proof was submitted at hearing.

2. Within 45 calendar days of this decision, Districts will contract with a non-public agency of Parents' choice to provide 14 hours of group speech and language therapy for Student. Districts shall directly fund these services. Student shall have one year from the date Districts informs Parents that the contract is in effect to use the 14 hours. Any hours not used within that year shall be forfeited. Parents shall be responsible for providing transportation to and from the services and shall not be entitled to reimbursement for the transportation.

3. Within 45 calendar days of this decision, Districts will contract with a non-public agency of Parents' choice to provide 28 hours of specialized academic instruction for Student. Districts shall directly fund these services. Student shall have one year from the date Districts informs Parents that the contract is in effect to use the 28 hours. Any hours not used within that year shall be forfeited. Parents shall be responsible for providing transportation to and from the services and shall not be entitled to reimbursement for the transportation.

4. Within 30 calendar days of this Decision, Districts shall contract with a nonpublic agency to provide 10 hours of training to Districts' entire staff who had been involved in Student's education, concerning requirements of the IDEA to provide parents meaningful participation in the IEP process, the need to provide prior written notice of any proposed changes to, or refusals to change, a student's placement or IEP,

and the requirements for changing a student's placement under state and federal law. Training must be provided by an agency or individual that has not previously provided any services to Districts. Districts shall ensure that all 10 hours of training are provided within six calendar months of the date of this Decision.

5. All of Student's remaining requests for relief are denied.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, Student prevailed on both issues heard and decided in this case.

RIGHT TO APPEAL THIS DECISION

This Decision is the final administrative determination and is binding on all parties. (Ed. Code, § 56505, subd. (h).) Any party has the right to appeal this Decision to a court of competent jurisdiction within 90 days of receiving it. (Ed. Code, § 56505, subd. (k).)

DATED: November 17, 2016

_____/s/_____

DARRELL LEPKOWSKY

Administrative Law Judge

Office of Administrative Hearings