

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL DISTRICT.

OAH Case No. 2016040382

DECISION

Student, by and through his Parent, filed a due process hearing request (complaint) with the Office of Administrative Hearings, State of California, on April 1, 2016, naming Long Beach Unified School District. On May 17, 2016, the parties jointly requested a continuance, and a continuance of the hearing was granted.

Administrative Law Judge Ted Mann heard this matter in Long Beach, California, on August 30 and 31, 2016 and September 1, 2016.

Attorneys Adriana Nusbickel and Sarah Spacht appeared on behalf of Student. Attorney Hiromi Parks attended the final day of hearing on behalf of Student. Student's mother attended portions of each day of the hearing. Student did not attend the hearing. Attorney Sundee Johnson represented District. District Program Coordinator Angela Suttles attended each day of the hearing on behalf of District.

On the last day of hearing, a continuance was granted for the parties to file written closing arguments. Upon timely receipt of written closing arguments, the record was closed and the matter submitted for decision on September 19, 2016.

ISSUE

Did District deny Student a free appropriate public education from May 5, 2015, to April 1, 2016, by failing to provide appropriate goals in the areas of occupational therapy, vision, and speech and language?

SUMMARY OF DECISION

Student contends that District denied him a FAPE by not providing appropriate goals from May 5, 2015 to April 1, 2016, in the areas of occupational therapy, vision, and speech and language. District contends that Student is barred from raising his claims by a May 5, 2015, settlement agreement. District argues Student waived FAPE claims in the agreement and the agreement did not mention goals in any way. District also contends that no goals were needed in occupational therapy during the claim period, and that the goals in vision and speech and language that were operative during the claim period were adequate to meet Student's needs and did not deny him a FAPE.

Student did not meet his burden of proof in his claims that District denied him a FAPE from May 5, 2015, to April 1, 2016. Nothing in the settlement agreement required District to provide the goals Student requested at hearing. Rather, the waivers contained within the settlement agreement released District from providing anything more than that negotiated between the parties and included in the language of the settlement agreement. Additionally, notwithstanding Student's waiver of FAPE claims in the settlement agreement, the goals developed by District for Student during the period in question did provide Student with a FAPE and allowed him to access his education and make educational progress.

FACTUAL FINDINGS

1. At the time of the hearing, Student was a 12 year-old boy eligible for special education under the primary category of orthopedic impairment. Student

resided within District's boundaries at all relevant times.

2. Student was born with severe orthopedic impairments including spondyloepimetaphyseal dysplasia ("dwarfism") and asthma. Student has very low vision, a history of retinal detachment leading to concerns that his vision could continue to deteriorate, and some bilateral hearing loss. Student was first found eligible for special education in May 2008.

MARCH 11, 2014 IEP

3. Student's annual IEP team meeting was held on March 11, 2014. District administrator Edith Bonner, school psychologist Annette Miller, speech/language pathologist Christie Kacmarcik, occupational therapist Kristi Reyes, school nurse Lucy Goodloe, Student's special education teacher Juan Fernandez, and Parent attended. Susan Lyon attended as the administrative designee. District vision specialist Sherri Lugo and District assistive technology specialist Jimene Miniaci provided written documentation, and District general education teacher Yolanda Correa's attendance was waived. Student was approximately nine years and seven months old at the time of the IEP team meeting.

4. The IEP team reviewed Student's present levels of performance. Student had met four of his five goals from his prior IEP. His behavior was not impeding his learning or that of others, and he did not require behavioral intervention. Student was able to rote count and receptively identify numbers from 1 to 20, and was working within the kindergarten math curriculum. He was able to recognize over 10 kindergarten level sight words, and to independently write 24 uppercase letters and 20 lowercase letters legible to an adult. He was also able to answer simple who and where questions about a given story with the use of picture exchange. Student was able to make comments and requests with some prompting using his picture exchange communication symbols. He primarily relied on pointing, gestures, and vocalizations to

make needs and wants known. Parent had concerns about Student producing utterances at home that were not produced at school, as well as his augmentative device being too large given Student's stature.

5. District's occupational therapist presented findings and recommended that direct occupational therapy services be discontinued with only consultation services retained pending assessment. No occupational therapy goals were written as a result. District's speech/language pathologist recommended a decrease in direct services in order to focus on functional communication in the classroom. District's vision specialist indicated that Student qualified for a video magnification device, and that Student's then current assistive technology device was too large and cumbersome to be practical for Student's use and should be discontinued.

6. The IEP team discussed a range of placement options and determined that the least restrictive environment was in the special day class at Webster Elementary School. The IEP plan included 360 minutes in the classroom per day. Student was to receive 90 minutes of direct speech and language services per month. He was also to receive 60 minutes of occupational therapy consultation per month. His direct occupational therapy services were discontinued. Student received 30 minutes of vision services per week. The services began on March 11, 2014, and ended on March 10, 2015.

7. Student's program included a one-to-one aide, assistance with toileting, and supervision to prevent falls. Student was offered both extended school year for the summer of 2014 and school transportation.

8. Student was given seven goals as part of his IEP. Two goals were in mathematics, three goals were in language arts, one goal was in communication, and one goal was in vision. The goals included two measurable progress objectives in June and December of 2014. Each annual goal was to be completed by March of 2015.

9. Student's first goal in the area of language arts was predicated on needs

with visual motor skills and letter identification. The goal provided that when given visual letter cues, and when given a maximum of two verbal prompts, Student would identify the letter from a group of 10 letters with 80 percent accuracy in three of four consecutive trials.

10. Student's second goal in the area of language arts was predicated on needs with visual motor skills and handwriting. The goal provided that Student would write 20 consonant/vowel/consonant words recited to him on manuscript with one-inch letters with correct formation and spacing with 80 percent accuracy over five trials.

11. Student's third goal in the area of language arts was predicated on Student's ability to answer simple who and where questions with the use of his picture exchange communication system. The goal provided that Student would, when given a passage at his reading level, answer five who, what, where, and when questions with 80 percent accuracy in three out of four trials.

12. Student's goal in the area of speech and language was a functional communication goal predicated on Student's then ability to make comments or requests with his picture exchange communication symbols. The goal provided that Student would use his assistive technology communication device a minimum of 75 percent of the school day with no more than two adult prompts or cues.

13. Student's goal in the area of vision was predicated on Student's ability to recognize numbers and letters at close proximity. The goal provided that given an assignment by teacher, Student would independently use the video magnifier to complete the assignment in three out of five trials.

14. Parent indicated agreement with the IEP and signed the IEP without exception.

APRIL 17, 2014 IEP TEAM MEETING

15. The March 11, 2014 IEP team meeting was reconvened on April 17, 2014,

to discuss an assessment plan for Student, a possible change in eligibility category, revisions of goals, and change in his communication device. At the meeting, changes to most goals were agreed upon, and one goal was to be sent in draft form to Parent.

16. Student's IEP goals were modified to clarify them, and to add consecutive days and/or trials to the goals to increase their rigor and objective requirements. Student continued to have seven goals as part of his IEP with two goals in mathematics, three goals in language arts, one goal in communication, and one goal in vision.

17. Student's first goal in the area of language arts was revised to provide that Student, when given visual letter cues including all consonants and short vowels, would receptively identify the letter by letter sound from a group of 10 letters with 80 percent accuracy in three of four consecutive trials on three consecutive days. The task was to be accomplished independently by Student using his augmentative device with no more than two verbal prompts.

18. Student's second goal in the area of language arts was revised to provide that Student would write 20 novel consonant/vowel/consonant words recited to him on manuscript with one-inch letters with correct formation and spacing with 80 percent accuracy over five trials on three consecutive days. The task was to be accomplished independently by Student with verbal prompting and one visual prompt per word.

19. Student's third goal in the area of language arts was revised to provide that Student would, when given a passage at his reading level, answer five who, what, where, and when text based questions with 80 percent accuracy in three out of four trials on three consecutive days. The level of support was a modeled response with up to three verbal prompts.

20. Student's goal in the area of speech and language was revised to provide that Student would utilize a multi-modal approach to communication through pictures, gestures, and/or speech generating device to express needs/wants, engage in social

commenting and demonstrate academic knowledge in four out of five opportunities daily with a maximum of two verbal reminders.

21. Student's goal in the area of vision continued to provide that given an assignment by teacher, Student would independently use the video magnifier to complete the assignment in three out of five trials.

JUNE 4, 2014 GALLAGHER OCCUPATIONAL THERAPY REPORT

22. As part of a comprehensive assessment plan, Gallagher Pediatric Therapy assessed Student for occupational therapy needs and issued a report on June 4, 2014. The assessment and accompanying report were done by Ms. Reyes.

23. The assessment included observations of Student in the occupational therapy room, classroom, bathroom, and cafeteria; interviews with both Parent and Student's special education teacher; teacher classroom checklist; review of records; the Beery-Buktenica Developmental Test of Visual-Motor Integration, Sixth Edition; and the Bruininks-Oseretsky Test of Motor Proficiency, Second Edition.

24. Parent reported concerns about Student's difficulties fastening and unfastening buttons and zippers, grasping a writing utensil, and his safety and access within the home environment. Student's special education teacher reported concerns with Student's decreased vision, and his dependence on an adult to initiate use of Student's communication devices.

25. The Bruininks-Oseretsky assessment tool looked at Student's fine motor and gross motor control skills over four composite areas: fine motor precision, fine motor integration, manual dexterity, and upper limb coordination. Student scored well below average on each of the composite areas. Despite the very low scores on the test, Ms. Reyes found that Student demonstrated overall functional bilateral coordination skills and hand manipulation to successfully access and participate within his educational environment. Such skills included turning a page in a book, removing or

replacing the cap on a marker, opening a lunch container, stringing beads, using scissors to cut, fastening and unfastening buttons on a shirt, zipping and unzipping his backpack, and performing/managing bathroom tasks.

26. The Beery-Buktenica assessment tool looked at Student's ability to integrate his visual and motor abilities by having Student copy increasingly difficult geometric forms. Student scored very low on the test. Despite the very low score, Ms. Reyes observed him demonstrating successful visual-motor skills in the educational environment, including using a slant board for writing and reading, and copying upper and lower case letters.

27. Ms. Reyes was concerned about Student's behavior during the standardized testing, as Student did not attend well, needed significant redirection, and did not give his best effort. Based upon her observations, Ms. Reyes concluded that the standardized testing scores should be viewed with caution.

28. Ms. Reyes concluded Student demonstrated inconsistent organization of behavioral skills and adequate neuromuscular skills to successfully access and participate in his educational environment. His height did necessitate the use of adaptations to his educational environment so that he could access and participate independently.

29. Student demonstrated adequate proprioceptive¹ processing skills and tactile processing skills to successfully access and participate within his educational environment. He also demonstrated adequate self-care skills to successfully access his educational setting including use of clothing fasteners, toileting and hygiene skills,

¹ Proprioceptive skills are involved in the localization of joint and muscle movement and position, and are important for the correct awareness of one's body in space.

eating, and adequate fine motor, bilateral coordination, and motor planning skills to be independent with his self-care.

30. Ms. Reyes found that Student had areas of strength in fine motor skills, self-care skills, and overall sensory processing skills. His visual impairment was found to negatively impact his visual motor skills, and he had difficulties with transitioning into and out of a classroom chair, accessing food options in the cafeteria, and initiating zipping of zippers. Overall, Ms. Reyes did not recommend additional occupational therapy for Student, and did not propose goals of any kind for him for tasks or activities related to occupational therapy needs.

JUNE 12, 2014 DISTRICT SPEECH/LANGUAGE REPORT

31. As part of a comprehensive assessment plan, District assessed Student for speech and language therapy needs and issued a report on June 12, 2014. The assessment and accompanying report were done by Ms. Kacmarcik.

32. The assessment included observations of Student; questionnaires from both Parent and Student's special education teacher; review of records; informal assessments including: oral peripheral examination, the General Speech Behavior Rating Scale, the Non-Speech Test, the Functional Communication Profile-Revised, the Preschool Language Scale-5, and the Bracken Basic Concept Scale-Third Edition; standardized assessments including: the Goldman-Fristoe Test of Articulation-2, the Receptive One Word Picture Vocabulary Test, and the Pragmatic Language Skills Inventory.

33. Ms. Kacmarcik found that Student exhibited significant delays in expressive, receptive, and pragmatic language compared to same-aged peers. She found that he scored in the 24-36 month range in expressive language and 27-36 month range in receptive language. She did find that he demonstrated communicative intent, and that through the use of a picture-based functional communication system

within the school environment, he was able to access his classroom curriculum. Student's communications allowed him to make his basic needs and wants known to adults with context and adequate time. However, Ms. Kacmarcik also found that Student's communication through speech was not functional.

34. Based on her finding, Ms. Kacmarcik recommended the continued use of gestures, vocalizations, and a vocal output device to facilitate a functional communication system. She also recommended speech/language therapy for 30 minutes, three times per month to support functional communication, and accompanying teacher and speech/language pathologist consultation on a monthly basis.

OCTOBER 12, 2014 INDEPENDENT EDUCATIONAL EVALUATION SPEECH REPORT

35. Speech/language pathologist Susan Hollar conducted an independent educational evaluation of Student on August 20, September 28, and October 8, 2014. Ms. Hollar issued a written report of her findings on October 14, 2014.

36. The assessment included observations of Student; interview with Parent; review of records; the Clinical Evaluation of Language Fundamentals-5; the Descriptive Pragmatics Profile; the Receptive One Word Picture Vocabulary Test-4; the Expressive One Word Picture Vocabulary Test-4; the Preschool Language Scale-5; the Evaluating Acquired Skills in Communication-3; Kaufman Test of Apraxia; an Oral Motor Assessment; the Goldman-Fristoe Test of Articulation-2; Play Interactions; Spontaneous Language Sampling; and Dynamic Assessment Strategies. The Expressive One Word test, the Goldman Fristoe test, and Spontaneous Language Sampling were all discontinued during the testing because of Student's lack of production or ability to respond.

37. Ms. Hollar found Student exhibited a severe receptive language disorder and a profound expressive language disorder. Similar to District's assessment, she found Student's skills in receptive and expressive language to be in the 24 to 28 month range.

She recommended that Student be assessed for an appropriate voice activated assistive technology device that would then be used in all settings, as well as Student's participation in a social skills group. She recommended that Student receive individual speech/language therapy once per week for 30 minutes, along with group speech/language therapy once per week for 30 minutes. She also recommended use of the iPad Proloquo2Go system, a one-to-one aide, and appropriate speech/language modeling by same-aged peers at least four days per week for three hours per day. Ms. Hollar additionally recommended goals for Student in expressive speech, pragmatic speech, symbolic representation, speech production, and receptive language.

NOVEMBER 18, 2014 IEP TEAM MEETING

38. The IEP team met again on November 18, 2014, to discuss Student's use of his closed circuit text magnifier, a possible change in eligibility category multiple disabilities, and his use of the Prox Talker and iPad for communication.

THE MAY 5, 2015 SETTLEMENT AGREEMENT

39. On May 5, 2015, Student and District entered into a settlement agreement. The Agreement settled all disputes then existing between the parties while permitting a subsequent enforcement action if necessary.² The Agreement included placement and related services for the 2015-2016 regular school year and compensatory education in the form of a stated number of hours for occupational, vision and speech and language therapies to be used or forfeited by June 30, 2016. The Agreement did not contain goals

² At the time of the settlement the parties had three open cases pending with the Office of Administrative Hearings, including consolidated OAH Case Nos. 2015010656, 2015020736, and 2015030395. Student also had an open compliance complaint with the State, Case No. S-04660014/15.

or any language about goals for the compensatory education. The Agreement included a so-called "integration clause" that specifically limited the Agreement to its stated terms.

40. The Agreement was executed knowingly, voluntarily and without duress or undue influence by Parent on his behalf, and with the advice of counsel. Student's attorney signed the Agreement approving the Agreement as to form, and Parent signed the Agreement and represented that she fully understood all of the provisions of the Agreement.

41. The Agreement included a waiver and release of claims. Parent, on behalf of Student, waived all claims against District through June 30, 2016, the last day the terms of the Agreement were in force and effect. The waived claims included both FAPE claims as of the date of the Agreement, May 5, 2015, as well as prospective FAPE claims from the date of the Agreement through June 30, 2016.

JUNE 11, 2015 IEP

42. Student's next annual review IEP team meeting was held on June 11, 2015. District administrators Kelly Lingel and Maria Martinez, Annette Miller, Ms. Kacmarcik, occupational therapist Ilene Fuson, Mr. Fernandez, District's adapted physical education teacher Leanne Clark, District assistive technology specialist Genevieve Huffman, District's counselor Christopher Gaspar, physical therapist Kari Loudenbach, Student's independent speech/language pathologist evaluator Susan Hollar, Student's attorney Margot Stevens, teacher specialist Sharon Lemmis, Parent, and Lisa Gayou and Abelardo Quezado attended. The attendance of a District general education teacher was waived.

43. The IEP team reviewed Student's present levels of performance. Student had met four of his seven goals from his prior IEP, including three of five outside the area of mathematics. He was making reasonable progress on the two other goals.

44. In math, Student was able to rote count and receptively identify numbers

from 1 to 30, and was able to provide one-to-one correspondence for numbers from 1 to 10 with minimal prompting and use of his communication device. He was also able to follow a pattern by shape and color with minimal prompting.

45. In language arts, Student was able to recognize the alphabet by their phonetic sounds, and had begun adding letters together to create consonant/vowel/consonant words. He was also able to independently write all uppercase and lowercase letters in a legible form, as well as copy consonant/vowel/consonant words and simple sentences from a visual source on different types of paper. He was able to independently position himself at his desk, get needed work materials, and set up his slantboard. Overall he was able to dramatically improve his independent ability to initiate and produce legible written work with his handwriting neatness and accuracy improving. He was also able to answer simple who and where questions about a story with the use of picture exchange or with his communication device with minimal prompting, and answer when and what questions with moderate prompting.

46. In speech and language, Student was able to successfully comment or request using his speech generating device in all classroom environments. He was observed creating at least four-word novel utterances in order to comment, respond, or request. He was also able to produce with speech 11 consonants in the initial position of a word.

47. In vision, Student was able to work with enlarged print from his video enlarger, and had made sustained progress in visual letter and number identification. He was also able to point at pictures and colors on the screen of the video magnifier.

48. In adapted physical education, Student enjoyed physical activity and could dribble a ball with one hand while standing still or moving forward. He could bounce pass a ball back and forth with a partner at a distance of 12 feet, and could catch or trap

a ball tossed to him from 10 feet. Student interacted and played with others during recess and was observed running and playing chase with others as well as playing tetherball.

49. Student's independent speech/language pathologist Susan Hollar presented her assessment report. Her opinion was that Student's speech was not developing normally. Staff shared that Student had transitioned from the picture exchange communication system to using his iPad as a communicative device and that he was doing very well with the new system. District's vision and occupational therapy personnel both indicated that they had collaborated on Student's communicative device goal.

50. The IEP team discussed a range of placement options and determined that the least restrictive environment was in the special day class at Webster Elementary School. The IEP plan included 360 minutes in the classroom per day. Student was to receive 120 minutes of direct speech and language services per month. He was also to receive 60 minutes of direct occupational therapy services per week in accordance with the terms of the Settlement Agreement. District's recommendation continued to be 60 minutes consultation per month. Student received 30 minutes of vision services per week. Student also received adapted physical education for four sessions per week of 50 minutes each session. The services began on June 11, 2015, and ended on March 10, 2016. The next annual review was scheduled to occur by March 10, 2016.

51. Student's program included a one-to-one aide, assistance with toileting, and both testing and non-testing accommodations. Student was offered extended school year for the summer of 2015 and school transportation.

52. Student's IEP contained nine goals. Two goals were in mathematics, three goals were in language arts, two goals were in communication, one goal was in vision, and one goal was in adapted physical education. The math and language arts goals

included mid-year progress objectives by December 15, 2015. Each annual goal was to be completed by March 2016.

53. Student's first goal in the area of language arts was predicated on needs with visual motor skills, letter identification, writing, and spelling. The goal provided that Student, when given directions to spell 10 vowel-consonant and 10 consonant-vowel-consonant words that are recited to him, would print on classroom paper, or construct using letter cards, with 80 percent spelling accuracy over five trials on three consecutive days. The level of support was to be independent with verbal prompting and one visual prompt per word.

54. Student's second goal in the area of language arts was predicated on needs with comprehension and communication. The goal provided that Student would, when given a passage at the first grade level, answer one "what" and one "when" text based question with 90 percent accuracy in three of four trials on three consecutive days. The level of support was to be independent with questions being read aloud and with Student using his communication device.

55. Student's third goal in the area of language arts was predicated on Student's ability to copy legibly over 20 consonant/vowel/consonant words onto one-inch lined or narrower paper with good space and placement of letter and words. The goal provided that Student would, when given directions, copy a five-word sentence attending to letter size, formation, and spacing using manuscript with one inch or smaller letters with 80 percent accuracy over five trials on three consecutive days. The level of support was to be independent with verbal prompting and one visual prompt per word.

56. Student's first goal in the area of speech and language was a functional communication goal predicated on Student's ability to make spoken comments or requests with vocalizations or poor verbal approximations. The goal provided that

Student would orally label common nouns producing at least the initial consonant-vowel when provided prompts in three out of four trials across three speech sessions.

57. Student's second goal in the area of speech and language was a functional communication goal predicated on his use of his speech generating device to generate at least four-word utterances. The goal provided that Student would begin to independently, with no more than one verbal prompt from an adult, use his communication device to comment, request, or respond to adults or peers a minimum of five times per hour of instruction during the school day.

58. Student's goal in the area of vision was predicated on Student's ability to identify numbers and letters with the use of enlarged print, and to identify pictures and colors on the screen of his video magnifier. The goal provided that given an assignment by a teacher, Student would independently use the video magnifier to complete the assignment in three out of five trials. The goal had been partially met at the 20 percent level, thus the goal was repeated in order to have Student fully achieve the goal.

59. Student's goal in the area of adapted physical education was predicated on Student's ability to throw a beanbag overhand, but without demonstrating an opposing step. The goal provided that Student would demonstrate stepping in opposition when overhand throwing an object such as an beanbag or tennis ball forward on four of five trials with teacher demonstration and verbal prompts as needed, during three adapted physical education sessions.

60. Parent indicated agreement with the IEP and her attorney submitted separate correspondence, dated June 11, 2015, indicating Parent's consent to the June 11, 2015 IEP.

AUGUST 20, 2015 INDEPENDENT EDUCATIONAL EVALUATION PSYCHOEDUCATIONAL REPORT

61. Ann Simun, Psy.D., conducted an independent educational evaluation of

Student in August and October 2014. She assessed Student in her office on August 28 and 29, 2014, and observed Student at school on October 8, 2014. She prepared a report dated August 20, 2015, and presented the report at an IEP team meeting on October 5, 2015.³

62. Dr. Simun was qualified to conduct a psychoeducational assessment and to testify as an expert based on her education, training and experience. Dr. Simun has a bachelor of arts in psychology, master of science in school psychology and Psy.D. in neuropsychology.

63. Dr. Simun was a school psychologist for 10 years and conducted numerous psychoeducational assessments. She is nationally board certified. Dr. Simun has conducted numerous neuropsychological assessments for elementary school age children and attended hundreds of IEP team meetings since obtaining her Psy.D. in 1998. She is not licensed as a speech/language pathologist, an occupational therapist, or a vision specialist.

64. The assessment included psychoeducational testing of Student, observations of Student at clinic and school,⁴ interview with Parent; Parent rating scales, teacher rating scales; and a review of records. Psychoeducational testing instruments included: Leiter, Third Edition; Wechsler Preschool Primary Scales of Intelligence, Fourth

³ Although the data in Dr. Simun's report was collected in August (assessment) and October (school observation) of 2014, the report was not prepared until August of 2015 after issues concerning the funding of the evaluation were resolved in the May 5, 2015 Agreement.

⁴ Dr. Simun's observations of Student at school were quite limited and included observing the end of Student's APE class, the transition back to the classroom, and a limited amount of time in the classroom on October 8, 2014.

Edition; Test of Non-Verbal Intelligence, Fourth Edition; Southern California Ordinal Scales of Development, Cognition; Southern California Ordinal Scales of Development, Communication; Woodcock Johnson, Fourth Edition (attempted and discontinued); Gray Oral Reading Tests, Fourth Edition (attempted and discontinued); Test of Written Language, Fourth Edition (attempted and discontinued); Test of Word Reading Efficiency, Second Edition; Test of Language Development, Fourth Edition-Primary; Wide Range Assessment of Visual Motor Abilities; NEPSY-II, motor portions; Autism Diagnostic Observation Schedule, Second Edition-module 2; Adaptive Behavior Assessment Scale, Second Edition-Teacher; Adaptive Behavior Assessment Scale, Second Edition-Parent (not returned); Achenbach Child Behavior Checklist; and Achenbach Teacher Report Form.

65. Dr. Simun found that Student exhibited severe communication deficits, had very limited fine motor skills, limited attention, low frustration threshold, and avoidance behaviors, all of which made assessing him quite challenging. Despite her difficulties assessing Student, her opinion was that he possessed low average to average cognitive skills, very limited expressive and receptive language skills, and very limited social emotional and adaptive behavior skills.

66. Dr. Simun recommended Student attend a non-public school. In her opinion making Student proficient at using a communication method was the primary objective of his education at that point in time. She recommended goals in expressive language, academics, self-care, fine motor skills, and socialization.

OCTOBER 5, 2015 IEP

67. The IEP team met on October 5, 2015, to review Dr. Simun's August 20, 2015 report. District administrator Patrick Booker, school psychologist Dylan Fahey, Student's classroom special education teacher Patricia Anaya, District's general education teacher Ann Ruegg, District's attorney Kristin Myers, Student's expert

psychologist Dr. Simun, Student's attorney Damian Fragoso, Student's advocate Jim Campbell, and Parent attended.

68. Dr. Simun presented her independent psychoeducational report to the IEP team. She recommended occupational therapy goals to focus on praxis or motor planning. Dr. Simun's recommendation regarding occupational therapy goals was not found to be persuasive as the information she relied on was more than a year old, and had been supplanted by current observations and present levels of performance that indicated that Student had made very significant progress as of October 5, 2015, and did not require occupational therapy services or goals.

69. No changes to Student's IEP were made at this meeting.

MARCH 8, 2016 IEP

70. The IEP team met on March 8, 2016 for Student's annual review. District administrator David Costa, speech/language pathologist Allison Koller, occupational therapist Bernadette Pelayo, District's special education teachers Patricia Anaya and Elizabeth Iovine, District's adapted physical education teacher Nancy Levy, District assistive technology specialist Katie Fields, District's general education teacher Ann Ruegg, District's attorney Sundee Johnson, Student's advocate Jim Campbell, Student's attorney Adriana Nusbickel, and Parent attended.

71. The IEP team reviewed Student's present levels of performance. Student had met four of the nine goals from his prior IEP, including three of seven outside the mathematics area. He was making reasonable progress on each of the five other goals.

72. In math, Student was able to count/add items from one to five with greater independence and consistency. He could use a visual prompt to correct counting mistakes. He could also sort two coins and follow a two-item pattern, although he needed greater support for more complex patterns.

73. In language arts, Student had made significant progress over the year. He

was able to write much more effectively, including doubling his writing speed, and using his video magnifier to perform his daily journal writing. He also made a lot of progress in spelling and was able to correctly spell one to two first grade words during the weekly quiz, including words with up to six letters and/or blended sounds. In comprehension, Student was able to respond to a simple picture adapted question about a story when given cues. He responded to picture adapted questions in a field of three, with 20 to 40 percent accuracy (five questions at a time) by identifying key vocabulary of the week.

74. Student had made progress using his communicative device, although he did not yet use the device independently, and still needed prompts from the teacher to use the device. He had become more capable of navigating the device independently once utilizing it, and he was able to use the device to type, find pre-programmed responses, and describe items by color.

75. In speech and language, Student was able to use his speech generating device to comment, request, and respond in all school environments. With mild prompting, he was able to find the correct folders and create sentences of up to four words or pictures/symbols in length.

76. In vision, Student made significant progress over the year. He was able to work with large print, using the video magnifier to enlarge regular fonts. He was able to copy words and letters from the screen and write them on his paper. He could identify colors and pictures on the screen of the video magnifier.

77. In adapted physical education, Student was able to improve across the board in tasks from dressing for physical education, to good object control, to increased locomotor skills, and to increased physical fitness. He was able to demonstrate good balance and praxis while riding his "LittleScoot" Segway type device around campus. He was able to complete a 20-foot obstacle course that included jumping, balancing, and climbing.

78. The IEP team discussed a range of placement options and determined that the least restrictive environment was in the special day class at Stanford Middle School. The IEP plan included 360 minutes in the classroom per day. Student was to receive 120 minutes of direct speech and language services per month. Student received 30 minutes of vision services per week. Student also received adapted physical education for four sessions per week of 50 minutes each session. The services began on March 8, 2016, and were scheduled to end on March 7, 2017.

79. Student's program included a one-to-one aide, assistance with toileting, and both testing and non-testing accommodations. Student was offered both extended school year for the summer of 2016 and school transportation.

80. Student was given 11 goals as part of his IEP. Two goals were in mathematics, two goals were in language arts, one goal was in social/emotional (participation), two goals were in communication, one goal was in vision, and three goals were in adapted physical education. The goals each included two benchmark targets of June 30, 2016, and December 30, 2016. Each annual goal was to be completed by March 2017.

81. Student's first goal in the area of language arts provided that Student, after being read a story, would respond to simple picture adapted comprehension questions about text by selecting the correct answer from a field of three with 80 percent accuracy in three of four opportunities with only verbal cues from staff.

82. Student's second goal in the area of language arts provided that Student would receptively identify 40 pre-primer words without picture support when presented in a field of 10 on his augmentative alternative communication device by identifying the word when asked "find ____" with 80 percent accuracy in four of five opportunities.

83. Student's first goal in the area of social/emotional was predicated on Student's ability to use his communication device, and the need for him to use it

independently without prompting. The goal provided that Student would independently access his communication device to ask or answer questions, make comments, and participate in group discussions using pre-recorded or core vocabulary a minimum of one time per period in six of eight periods across two consecutive weeks.

84. Student's first goal in the area of speech and language was a functional communication goal predicated on Student's ability to make spontaneous verbal approximations that were inconsistent or difficult to understand. The goal provided that Student would orally label common nouns producing at least the initial consonant-vowel when provided with no more than one visual/tactile prompt in four out of five trials across three speech sessions.

85. Student's second goal in the area of speech and language was a functional communication goal predicated on his functional use of his speech generating device to comment, respond, and request, while rarely using modifiers/attributes to create more complex sentences or provide descriptive detail. The goal provided that during structured activity Student would create phrases of two or more words containing contextually appropriate descriptors/modifiers/attributes in four of five opportunities given no more than one verbal or gestural prompt.

86. Student's goal in the area of vision was predicated on Student's ability to identify numbers and letters with the use of enlarged print, and to identify pictures and colors on the screen of his video magnifier. The goal provided that when given an assignment by a teacher, Student would independently use the video magnifier to complete the assignment while keeping his head up and eyes focused on the screen in three out of five trials. The previous goal had been partially met at the 75 percent level, thus the goal was repeated in order to have Student fully achieve the goal while adding a new component.

87. Student's first goal in the area of adapted physical education provided that

Student would navigate a 20-foot long obstacle course with four forward jumps, three serpentine cones, a wide six-foot balance beam, an upright hula hoop, and a six-inch up and over step in 35 seconds or less without knocking the obstacles over, in three of four trials.

88. Student's second goal in the area of adapted physical education provided that Student, given a heart rate monitor or 10-second pulse check and moderate to vigorous exercise for 15 to 30 minutes, would maintain an average heart rate of 140 to 170 beats per minute in three of four trials.

89. Student's third goal in the area of adapted physical education provided that Student would keep his opposite foot forward and demonstrate sufficient weight transfer with body rotation when overhand throwing an object such as a tennis ball or beanbag with only one verbal reminder during three adapted physical education sessions.

90. Parent's attorney subsequently submitted separate correspondence, dated April 25, 2016, indicating Parent's consent to the services, goals, and accommodations in the March 8, 2016 IEP, while asserting that the IEP offer denied Student a FAPE by not providing, among other things, occupational therapy services, occupational therapy goals, speech and language goals, and vision goals.

LEGAL CONCLUSIONS

INTRODUCTION - LEGAL FRAMEWORK UNDER THE IDEA⁵

1. This hearing was held under the IDEA, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et seq.; 34 C.F.R. §

⁵ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

300.1 (2006) et seq.,⁶ 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, § 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 California, related services are also called designated instruction and services].) 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)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a).)

⁶ All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*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. 950, 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) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) 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); Ed. Code, 56505, subd. (l).) 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. 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; 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 matter, because Student filed the complaint and requested the hearing, Student has the burden of proof.

5. In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Ibid.*) For a school district's offer of special education services to a disabled pupil to constitute a FAPE under the IDEA, a school district's offer must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the student with some educational benefit in the least restrictive environment. (*Ibid.*) Whether a student was offered or denied a FAPE is determined by looking to what was reasonable at the time the IEP was developed, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrman v. East Hanover Bd. of Education* (3rd Cir. 1993) 993 F.2d 1031, 1041.)

OCCUPATIONAL THERAPY, VISION AND SPEECH/LANGUAGE GOALS

6. Student contends that District denied him a FAPE by failing to include occupational therapy, vision and speech/language goals for the period from May 5, 2015 to April 1, 2016. District contends that the goals it developed for Student met all legal requirements and that the May 5, 2015 Agreement bars Student's claim.

Applicable Law

7. An annual IEP must contain a statement of measurable annual goals designed to: (1) meet the individual's needs that result from the individual's disability to enable the pupil to be involved in and make progress in the general curriculum; and (2) meet each of the pupil's other educational needs that result from the individual's disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2)(i); Ed. Code, § 56345, subd. (a)(2).)

8. The purpose of goals is to permit the IEP team to determine whether the pupil is making progress in an area of need. (Ed. Code, § 56345.) In developing the IEP, the IEP team shall consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial evaluation or most recent evaluation of the child and the academic, functional, and developmental needs of the child. (20 U.S.C. § 1414(d)(3)(A).) For each area in which a special education student has an identified need, the IEP team must develop measurable annual goals that are based upon the child's present levels of academic achievement and functional performance, and which the child has a reasonable chance of attaining within a year. (Ed. Code, § 56345; *Letter to Butler*, 213 IDELR 118 (OSERS 1998).) There is no requirement that an IEP include baselines for the goals, other than addressing a student's present level of performance. (*Student v. San Diego Unified School District* (2011) Cal.Offc.Admin.Hrngs Case No. 2011080459, at pp. 10-11.)

9. The IEP team need not draft IEP goals in a manner that the parents find optimal, as long as the goals are objectively measurable. (*Bridges v. Spartanburg County Sch. Dist. Two*, 57 IDELR 128 (D.S.C. 2011) (the use of percentages tied to the completion of discrete tasks is an appropriate way to measure student progress).)

10. A failure to offer an appropriate goal is a procedural violation of the IDEA. However, a procedural error does not automatically require a finding that a FAPE was

denied. A procedural violation results in a denial of a FAPE only if the violation: (1) impeded the child's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision making process; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a); Ed. Code, § 56505, subd. (f)(2) & (j); *W.G. v. Board of Trustees of Target Range School Dist. No. 23 Missoula, Mont.* (9th Cir. 1992) 960 F.2d 1479, 1484, *superseded in part by statute on other grounds* ["...procedural inadequacies that result in the loss of educational opportunity, [citation], or seriously infringe the parents' opportunity to participate in the IEP formulation process, [citations], clearly result in the denial of a FAPE."].) The hearing officer "shall not base a decision solely on nonsubstantive procedural errors, unless the hearing officer finds that the nonsubstantive procedural errors resulted in the loss of an educational opportunity to the pupil or interfered with the opportunity of the parent or guardian of the pupil to participate in the formulation process of the individualized education program." (Ed. Code, § 56505, subd. (j).) While a student is entitled to both the procedural and substantive protections of the IDEA, not every procedural violation is sufficient to support a finding that a student was denied a FAPE. (*Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 892.)

Analysis

11. District assessed Student in the area of occupational therapy in June 2014. Ms. Reyes reviewed her report with the IEP team on November 18, 2014. District's June 2014 occupational therapy assessment did not identify any needs in the area of occupational therapy that impeded Student's ability to be involved and make progress in his educational program. Ms. Reyes was an experienced assessor who conducted a comprehensive evaluation in the area of occupational therapy. She did not recommend occupational therapy and did not propose any goals in that area.

12. In the June 11, 2015 IEP, Student's goals addressed Student's occupational

therapy needs by focusing on visual motor skills and fine motor skills associated with reading and writing, albeit the goal was stated as a goal for language arts. Student had made significant progress with his copying and writing, and the goal carried the progress forward into further refinement of his ability to read and reproduce text legibly and precisely. Student's fine and gross motor skills were addressed in his goal of adapted physical education which focused on throwing skills. Student had been making considerable progress in all areas of physical education and the movement, coordination, praxis, and body control skills implicated by same.

13. Student's expert, Dr. Simun, was unpersuasive regarding any need for occupational therapy or explicit occupational therapy goals for Student. She is not a licensed occupational therapist, and her school-based observations of Student were extremely limited. More importantly, Dr. Simun's assessments and observations were completed between seven to nine months before the Agreement, and failed to reflect Student's present levels of performance or needs in May of 2015 or thereafter.

14. Student further argues that District denied him a FAPE by failing to provide occupational therapy goals for compensatory services provided by the Agreement. Notwithstanding the failure of the Agreement to include such language, Student contends that District should nonetheless have included goals in order to either guide District's service providers and/or to do likewise with the non-public agencies selected by Student, despite the fact that both lines of services were outside Student's IEP's. Student's contention posits that either District should have drawn up goals specifically tied to occupational therapy by name or that the goals District did have for Student did not adequately address Student's occupational therapy needs. Student fails to cite any legal authority for the proposition that a settlement agreement that provides compensatory services for which there is no evidence of the need to be addressed by the services must include goals or that goals must be established outside of the IEP

process to inform the providers of compensatory services.

15. Student's March 11, 2014 IEP, implemented before the Agreement, and Student's June 11, 2015 IEP, offered after the Agreement, contained goals in the areas of vision and speech/language. Student's June 11, 2015 and March 8, 2016 IEP's, contained measurable annual goals that were based upon Student's present levels of academic achievement and functional performance, and which he had a reasonable chance of attaining within a year.

16. In speech and language, Student had continuing needs in expressive, receptive, and functional speech. Based upon his needs, the IEP determined that Student would focus on using his communicative device as the foundation for his communication, and aligned his goals to focus on this area. As such, the speech and language and related goals were adequate to meet Student's speech and language needs, and Student made significant progress over the period in question.

17. Student's overarching need in the area of vision was developing his skills with his text magnifier as a window into all other areas of his education. His vision goal was aligned well with this need, and continued to develop his use of and skills with the magnifier. As such, the vision and related goals were adequate to meet Student's needs regarding vision.

18. Student failed to prove his IEP's lacked appropriate goals in occupational

therapy, vision and speech/language.⁷ The evidence further demonstrated that any of the alleged deficiencies in the goals did not impede Student's right to a FAPE, impede Parents' opportunity to participate in the decision making process, or deprive Student of educational benefits. In fact, Student made significant, and undisputed, educational progress during the period from May 5, 2015, to April 1, 2016, with Student clearly not deprived of educational benefit or being denied a FAPE. Likewise, his Parent, attorneys, and independent assessors participated fully in the decision making process at Student's IEP's, with no evidence that their opportunity to participate was impaired in any way.

19. Finally, notwithstanding any other consideration discussed above, as discussed below, Student's claims are barred by the waiver and release language of the Agreement.

SETTLEMENT AGREEMENT

20. District contends Student's claims are barred by a waiver and release contained in the Agreement. Student disagrees. Student argues District failed to implement the Agreement by not writing goals in furtherance of the Agreement.

Applicable Law

21. A special education settlement agreement is considered a contract. (See, e.g., *D.R. v. East Brunswick Board of Education* (3d Cir. 1997) 109 F.3d 896, 898. (*D.R.*))

⁷ As with Dr. Simun's assessments, observations, and recommendations regarding occupational therapy, both Dr. Simun's and Ms. Hollar's assessments, observations, and recommendations regarding speech/language and/or vision goals are found not to be persuasive due to the fact they were completed between seven to nine months before the Agreement, and fail to reflect Student's present levels of performance or needs in May of 2015 or thereafter.

Settlement agreements are interpreted using the same rules that apply to interpretation of contracts. (*Vaillette v. Fireman's Fund Ins. Co.* (1993) 18 Cal.App.4th 680, 686, citing *Adams v. Johns-Manville Corp.* (9th Cir. 1989) 876 F.2d 702, 704.) "Ordinarily, the words of the document are to be given their plain meaning and understood in their common sense; the parties' expressed objective intent, not their unexpressed subjective intent, governs." (*Id.* at p. 686.) If a contract is ambiguous, i.e., susceptible to more than one interpretation, then extrinsic evidence may be used to interpret it. (*Pacific Gas & Electric Co. v. G. W. Thomas Drayage & Rigging Co.* (1968) 69 Cal.2d 33, 37-40.) Even if a contract appears to be unambiguous on its face, a party may offer relevant extrinsic evidence to demonstrate that the contract contains a latent ambiguity; however, to demonstrate an ambiguity, the contract must be "reasonably susceptible" to the interpretation offered by the party introducing extrinsic evidence. (*Dore v. Arnold Worldwide, Inc.* (2006) 39 Cal.4th 384, 391, 393.)

22. In *D.R.*, *supra*, 109 F.3d at p. 898, the parties resolved by settlement agreement student's prior claims against the school district. The parties also resolved in the settlement agreement future claims for the upcoming school year as the school district agreed to reimburse parents for 90 percent of the private school cost. A dispute arose between the parties when student's private school tuition doubled because of student's purported need for a personal aide. The school district refused to pay for the additional cost because the aide was not a related service covered by the parties' settlement agreement. The Third Circuit agreed with the school district's interpretation of the settlement agreement, and rejected the parents' attempt to void the settlement agreement for the upcoming school year. The court held that nothing in the IDEA prevents the parties from waiving future FAPE claims, or prevents enforcement of such a provision, unless there has been a change of circumstances.

A party enters a settlement agreement, at least in part, to

avoid unpredictable costs of litigation in favor of agreeing to known costs. Government entities have additional interests in settling disputes in order to increase the predictability of costs for budgetary purposes. We are concerned that a decision that would allow parents to void settlement agreements when they become unpalatable would work a significant deterrence contrary to the federal policy of encouraging settlement agreements.

(D.R., supra, 109 F.3d at p. 901.)

Analysis

23. Student claims that despite the absence of any mention of goals in the Agreement that the creation of goals is implied by the Agreement. As noted, above, standard contract law precludes the incorporation of terms in a contract that are not explicitly stated. Significantly, the Agreement itself included a so-called "integration clause" that specifically limited the Agreement to its stated terms. Here, the language of the Agreement is clear and unambiguous. There is no mention of goals anywhere in the Agreement. The Agreement was a mediated agreement that was negotiated and reviewed by Student's attorney, and read and understood by Parent with the assistance of counsel. Thus, notwithstanding the existence of a so-called "integration clause" limiting the Agreement to its stated terms, there is no basis for the introduction of extrinsic evidence regarding the meaning of the Agreement.

24. Student also claims that District denied Student a free appropriate public education from May 5, 2015, to April 1, 2016, by failing to provide appropriate goals. However, the Agreement contains an explicit waiver of any claims regarding a free and appropriate education during that period and beyond. In light of the waiver language,

there is no basis for Student to sustain his claim. As above, the Agreement was a mediated agreement that was negotiated and reviewed by Student's attorney, and read and understood by Parent with the assistance of counsel. As such, Student has simply waived his rights in this regard.

ORDER

Student's 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. District prevailed on all issues presented.

RIGHT TO APPEAL THIS DECISION

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

DATE: October 14, 2016

/s/

TED MANN

Administrative Law Judge

Office of Administrative Hearings