

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

TEHACHAPI UNIFIED SCHOOL DISTRICT.

OAH Case No. 2016110289

CORRECTED DECISION¹

Student filed a due process hearing request (complaint) with the Office of Administrative Hearings (OAH), State of California, on October 20, 2016, naming Tehachapi Unified School District. District filed a response to Student's complaint on October 28, 2016. The matter was continued for good cause on December 7, 2016.

Administrative Law Judge Christine Arden heard this matter in Van Nuys, California, on March 7, 8 and 9, 2017.

Andrea Marcus, Attorney at Law, represented Student. Victoria Rice, paralegal, attended the hearing on behalf of Student on March 7, 2017. Lyndsey Gallagher, Attorney at Law, attended the hearing on Student's behalf on March 8 and 9, 2017. Mother attended the entire due process hearing. Student did not attend the hearing.

¹ This Decision, originally issued on April 19, 2017, has been corrected to address an error in the first name of one of Student's attorneys, Lyndsey Gallagher, who was incorrectly identified as Lisa Gallagher, on page one of the original Decision.

Darren Bogé and Kyle Holmes, Attorneys at Law, represented District. Dennis Ferrell, Director of Programs, attended the hearing on behalf of District on March 8 and 9, 2017.

On March 9, 2017, a continuance was granted for the parties to file written closing arguments and the record remained open until March 27, 2017. Upon timely receipt of the written closing arguments, the record was closed and the matter was submitted for decision.

ISSUE

Did District deny Student a free appropriate public education by interfering with her parent's right to participate in the individualized education program process when it did not allow Student to receive applied behavioral analysis treatment at school as prescribed by Student's doctor?

SUMMARY OF DECISION

Student, who was autistic, received approval from her medical insurer for funding of 40 hours a week of services from a trained applied behavior analysis aide, and supervision of the aide by a Board Certified Behavior Analyst. The services could be provided to Student in her home or school. This approval was based on a recent functional behavior assessment of Student. Student's physician wrote a note on a prescription form ordering Student to receive ABA therapy at school from the insurance funded ABA aide. Mother provided the ABA prescription from Student's doctor and the functional behavior assessment it was based upon, to District, and asked that an IEP meeting be held to discuss the prescription and Mother's request that Student's insurance funded ABA aide be permitted to accompany Student at school to provide her with ABA services.

Before the IEP meeting was held, District's Director of Programs conferred with other District administrators and determined District would not honor the ABA prescription and would refuse to allow Student's ABA aide to accompany Student at school. At the IEP meeting, District's administrative representative told Mother District would not honor the prescription or allow the ABA aide on campus with Student. District did not discuss and honestly consider Mother's request and failed to explain why the aide would not be allowed to accompany Student at school at the IEP meeting. Consequently, Mother could not participate in discussing and formulating an IEP that provided placement and services in light of Student's unique circumstances. District denied Student a FAPE from September 9, 2016, by significantly impeding Mother's right to participate in the IEP process. Mother kept Student home from school so she could receive the weekly 40 hours of insurance funded ABA therapy.

District is ordered to hold an IEP meeting for the purpose of openly and honestly discussing and considering the ABA prescription and Mother's request that District allow Student's ABA insurance funded aide to accompany Student on campus. District is ordered to provide training to its administrative and special education personnel regarding parental participation in the IEP process under the IDEA.

PROCEDURAL HISTORY

1. The hearing in this matter initially commenced on December 19, 2016, before Administrative Law Judge Darrell Lepkowsky. After giving their opening arguments the parties jointly requested that the hearing be continued to allow the parties time to brief the issue of whether OAH had jurisdiction over the two issues then pending in this matter. On December 20, 2016, ALJ Lepkowsky granted the request, continued the hearing and set a briefing schedule on the jurisdictional issue. On February 16, 2017, ALJ Lepkowsky ordered that OAH had jurisdiction to hear Student's

then two pending issues as defined in the December 5, 2016 Order Following Prehearing Conference.

2. On February 22, 2017, District filed a motion for reconsideration on the question of whether OAH had jurisdiction over the issues in this case based on the new holding in *Fry v. Napoleon Community Schools* (2017) 137 S.Ct. 743. On February 23, 2017, Presiding Administrative Law Judge, Peter Paul Castillo, granted District's motion for reconsideration, but held that OAH had jurisdiction over Student's two pending issues.

3. Presiding Administrative Law Judge Peter Paul Castillo presided over the February 27, 2017 prehearing conference and thereafter issued an Order identifying one issue for hearing.

FACTUAL FINDINGS

JURISDICTION AND PROCEDURAL BACKGROUND

1. Student was a 10-year-old girl in the fourth grade at the time of the hearing. She resided with her Parents in the District boundaries at all relevant times. Student was diagnosed with autism spectrum disorder when she was three and a half years old. She was eligible for special education under the categories of autism and speech and language impairment. Student was enrolled in Cummings Valley Elementary School, Student's local school.²

² The parties previously litigated due process complaints before OAH. During the hearing of this matter, District filed a Request for Official Notice of the decision in OAH Consolidated Case Nos. 2015050934/2015030954, issued on March 8, 2017. As with evidence generally, the matter to be judicially noticed must be relevant to the issues in the case. (*Mozzetti v. City of Brisbane* (1977) 67 Cal.App.3d 565, 578.) District's Request for Official Notice lacked requisite specificity and failed to establish the relevance of the

STUDENT'S ABA THERAPY PRIOR TO AUGUST, 2016

2. Before August 2016, Student had only sporadically received applied behavior analysis (commonly referred to as ABA) therapy in her home, usually for a few hours in the evenings. These ABA therapy services were funded by the local Regional Center and were provided by multiple therapists, who were not supervised by a Board Certified Behavior Analyst (commonly referred to as a BCBA). Student's verbal communication and self-help skills were minimal and her behaviors were very inappropriate.

FUNCTIONAL BEHAVIOR ASSESSMENT BY DR. JEFFREY HAYDEN AND MEDICAL INSURANCE PREAPPROVAL OF ABA SERVICES

3. Before summer 2016, District had hired Dr. Jeffrey Hayden, Ph.D., BCBA, and co-owner of Hayden Consulting Services, a non-public agency certified by the California Department of Education, to provide professional services. In summer 2016, Mother engaged Dr. Jeffrey Hayden to conduct a functional behavior assessment of Student. Based upon the results of his assessment, in August 2016, Student's medical insurer agreed to fund 40 hours a week of ABA therapy services to Student by an aide (sometimes referred to as a consultant) trained in ABA techniques, with supervision by a BCBA. These services could be provided to Student both at school and at home. The insurance funded ABA therapy services to be provided to Student in school was like one-to-one, aide-to-student, assistance.

4. When Student began receiving 40 hours a week of ABA therapy from a BCBA supervised trained aide in August 2016, Student's communication skills, behaviors

decision in OAH Consolidated Case Nos. 2015050934/2015030954, to this matter.

District's Request for Official Notice is hereby denied.

and self-help skills progressed significantly in a short period of time. Student started to verbally communicate in three to four sentence statements. She began to ask for help when she needed it. Her behaviors drastically improved. She progressed with independent self-care tasks. For example, she started choosing appropriate clothing for herself, collecting her dirty clothes and properly placing them for laundering, and brushing her teeth on her own. She started making herself simple breakfasts and lunches, and independently eating and cleaning up after herself. She learned to count money. Student began meeting her own needs. Mother's testimony about Student's progress since Student began receiving 40 hours a week of ABA therapy was credible and undisputed.

BEGINNING OF 2016-2017 SCHOOL YEAR

5. Student attended a "mild to moderate" special day class at Cummings Valley for the first four days of the 2016-2017 school year, which began on August 17, 2016. Around the beginning of the school year, Mother requested that an IEP meeting be held to discuss Mother's multiple concerns about Student's educational program with the IEP team.

6. At about 9:00 a.m. on August 22, 2016, Mother arrived at Cummings Valley with Student and Holly Gomez, a behavior consultant/aide, who was prepared and ready to accompany Student at school that day (and on all school days in the future) to provide ABA therapy services to Student. Ms. Gomez was employed by Hayden Consultation Services, a non-public agency specializing in behavioral assessment, ABA therapy and behavioral consultation. Mother gave Traci Minjares, principal of Cummings Valley, a note written on a medical prescription form, ordering 40 hours a week of ABA therapy services for Student. Mother also asked Ms. Minjares to allow Ms. Gomez to accompany Student as a one-to-one ABA aide during the school day to provide ABA therapy services to Student pursuant to the prescription. The prescription dated August

11, 2016, was written by Mark A. Pesche, D.O., one of Student's physicians. It read: "Please provide 40 hours a week of ABA supervised by a behavior therapist via current provider for COC supervised by BCBA." Below the foregoing was the notation: "COC continuum of care."

7. Initially, Ms. Minjares responded favorably to the concept of Student being accompanied at school by an insurance funded one-to-one ABA aide and told Mother that such additional assistance with Student would be helpful. Ms. Minjares met with Mother and Joanna Hammer, school psychologist, to discuss the prescription and how to proceed. Either Ms. Minjares or Ms. Hammer informed Mother that implementation of the prescription at school would require a health plan for Student, which would initially be drafted by the school nurse and later be finalized by the IEP team in an IEP meeting. Mother also provided Ms. Minjares and Ms. Hammer with Dr. Hayden's recent functional behavior assessment of Student, which was the basis for Dr. Pesche's prescription. Following instructions from District personnel, Mother gave the prescription to Ms. Purdy, Cummings Valley school nurse. Ms. Minjares, Ms. Hammer, and Ms. Purdy did not know how to proceed with regard to Student's prescription for ABA services at school or a health plan based on the prescription.

8. Ms. Minjares called Dennis Ferrell³, District director of programs, at District's administrative office, and asked him how she should proceed regarding

³ Mr. Ferrell holds a California professional clear administrative credential, a preliminary administrative credential, a master of art's degree in special education, a special education learning handicapped credential, and two single subject teaching credentials. He taught high school for 10 years, was a special education resource specialist teacher, served as the chairperson for Tehachapi High School special education department, was a special education program manager for Bakersfield City

Student's ABA therapy prescription and Mother's request that Ms. Gomez be allowed to accompany Student at school pursuant to the prescription. Ms. Minjares provided Mr. Ferrell with a copy of the prescription and Dr. Hayden's recent functional behavior assessment, which Mr. Ferrell assumed was the basis for the prescription. Mr. Ferrell instructed Ms. Minjares not to allow Ms. Gomez on campus because District did not know her. When Ms. Minjares informed Mother that District would not permit Ms. Gomez to accompany Student on campus, Mother took Student home.

9. Shortly after noon that day Mother emailed to Ms. Minjares and Ms. Hammer, a scanned version of a note written on a medical prescription form by Victoria Schiff, M.D., Student's primary physician. The prescription specified Student was to receive 40 hours a week of ABA therapy and one-to-one supervision in a special day class. Mother stated in the email that Student would not be attending school until District respected the prescription for ABA services by allowing Student's ABA trained aide to accompany Student throughout the school day. Dr. Schauf has been Student's pediatrician for the last four or five years. Dr. Schauf was professionally experienced and active in addressing and training others with respect to autism spectrum disorder.

10. Mr. Ferrell was one of a small group of District administrators who are part of the "Superintendent's Cabinet." The District superintendent regularly met with her cabinet to informally discuss various topics of interest to District administration. On August 22, 2016, Mr. Ferrell discussed Student's prescription for ABA services and Mother's request that the insurance funded ABA aide be allowed to accompany Student at school pursuant to the prescription, with District's superintendent and the

School District for 12 years, and has been District's director of programs, which includes special education, since February 2016.

superintendent's cabinet. As a result of that discussion, Mr. Ferrell concluded District would not allow Student's insurance funded ABA aide to accompany Student at school.

11. Thereafter, on August 22, 2016, Mr. Ferrell provided Mother with a Prior Written Notice stating District refused to allow Student's insurance funded ABA trained aide, prescribed by Dr. Pesche and Dr. Schauf, to accompany Student at school to provide her with ABA therapy. Mr. Ferrell explained that "[t]he District has not met in an IEP setting to discuss this request from the parent. The District is currently in the process of scheduling a meeting in early September 2016." This notice further stated: "Parent arrived at school on Monday, August 22, 2016 with an ABA aide ready to enter the classroom and to begin providing services at school. However, the District has not yet met in an IEP setting to discuss this."

12. Mother did not want Student to miss instruction until Student returned to school, when and if District allowed Student's ABA aide on campus. Therefore, on August 24, 2016, Mother conferred with Ms. Minjares about obtaining temporary home hospital instruction for Student until the upcoming IEP meeting during which the team was to discuss, consider and decide if District would honor Student's ABA prescription. Ms. Minjares referred Mother to Suzie Onufrak, Mr. Ferrell's secretary, for a home hospital instruction application, which Mother completed and promptly submitted to District.

13. About September 1, 2016, Mother emailed Ms. Minjares a note written by Dr. Schauf that stated Student needed ABA therapy throughout the school day due to Student's autism symptoms, which interfered with Student's safety and learning.

14. A resolution meeting was held between District and Mother on September 2, 2016, to address Mother's application for temporary home hospital instruction. District denied Mother's home hospital instruction application at that meeting. On September 2, 2016, Mr. Ferrell provided Mother with a Prior Written Notice stating

District refused Student's application for temporary home hospital instruction because the IEP team had not yet met to discuss it, and Student's medical reason for the application did "...not meet the requirements as outlined in 5 CCR 3051.4."

SEPTEMBER 9, 2016 IEP MEETING⁴

15. An IEP meeting was held on September 9, 2016, to discuss a number of Mother's concerns, including Student's recent functional behavior assessment, Student's prescription for 40 hours weekly of ABA therapy services, Mother's request that District allow Student's insurance funded ABA aide to accompany Student at school, temporary home hospital instruction, and progress Student made over the summer in the Lindamood Bell "Talkies" program. Participating in the meeting were: Mother; Vikki Rice, advocate; Jeanette Pool, family friend; Ms. Minjares; Mr. Ferrell; Chris Duff, special education teacher; Carolyn Winchelle, speech pathologist; Julie Robson, general education teacher; Ms. Hammer; and Jenna Burgess, District nurse. Anne Perry, Lindamood Bell instructor, also telephonically participated for part of the meeting. Mr. Ferrell chaired the meeting as District's administrative representative. He stated the meeting would be limited to a maximum of two hours.

⁴ Mother recorded the September 9, 2016 IEP meeting. Thereafter, Mother hired a transcription service to transcribe the recording, which certified transcription was admitted into evidence at hearing. Dr. Ferrell, who attended that IEP meeting, testified that the transcript of the meeting submitted as evidence was accurate. Following the hearing, District filed a written objection to a few omissions from a small portion of the recording on three specified pages of the transcript. District's objection is sustained. However, District's corrections are essentially immaterial to the issue in this matter.

16. Without any discussion by the team at the September 9, 2016 IEP meeting, Mr. Ferrell unequivocally stated that District would not honor the ABA prescription, meaning District would not allow the medical insurance funded ABA aide to accompany Student at school. Mr. Ferrell did not give a reason for District's refusal to honor the prescription, other than stating that the prescription was unusual because it did not order a medication for Student. No District members of the IEP team, other than Mr. Ferrell, spoke about the ABA prescription and Mother's request that the aide be allowed to accompany Student at school. The recent functional behavior assessment of Student by Dr. Hayden was not discussed at all. No one mentioned at the meeting that an aide would have to follow a behavior intervention plan, which was not included with the functional behavior assessment. Mr. Ferrell did not disclose at the IEP meeting that he had already decided District would not honor Student's ABA prescription and allow the insurance funded ABA aide on campus with Student, following his discussion of the issue with the District superintendent and the superintendent's cabinet.

17. At the September 9, 2016 IEP meeting Ms. Rice, Student's advocate, twice suggested that a continued IEP meeting be held, at which Dr. Hayden could present his recent report on Student's functional behavior assessment. Ms. Rice recommended "...let's try and get Dr. Hayden on the phone and schedule a time where he can present to the team his information as well." Mr. Ferrell responded, "[w]ell maybe we just don't see it the same way." Ms. Rice also asked the team if District had obtained a release so District personnel could speak to Dr. Hayden about his report. No District personnel responded to this query, or asked Mother to sign a release authorizing District to speak with Dr. Hayden about his report or Student.

18. Mr. Ferrell warned Mother at the September 9, 2016 IEP meeting that if Student did not attend school, Student would be subject to truancy consequences.

19. Mr. Ferrell, who had no ABA training, believed Student did not need a one-to-one ABA aide. At hearing he testified it was problematic that Ms. Gomez did not arrive at school with instructions or a behavior intervention plan for Student. His testimony lacked credibility because at the September 9, 2016 IEP meeting, neither Mr. Ferrell, nor any other member of the IEP team, mentioned that it was problematic because there were no instructions for the aide, or because Dr. Hayden's functional behavior assessment report did not include a behavior intervention plan for Student. Mr. Ferrell also testified that a behavior intervention plan is usually developed by the IEP team in an IEP meeting, following a completed functional behavior assessment of a student. No member of the IEP team suggested at the September 9, 2016 IEP meeting that the team develop a behavior intervention plan for Student based on Dr. Hayden's report of his functional behavior assessment. Mr. Ferrell read Dr. Hayden's functional behavior assessment of Student, but he never discussed it with any members of the IEP team, and he did not direct any District employees to review the report. Mr. Ferrell was unaware if any other members of Student's IEP team had read Dr. Hayden's report. At the September 9, 2016 IEP meeting, while addressing Student's progress in a Lindamood Bell program, Mr. Ferrell asked if there was a written report because "...as a school district we're obligated to consider it." He did not apply this District obligation to Dr. Hayden's report of his summer, 2016 functional behavior assessment of Student.

20. At the end of the meeting, a continued IEP meeting was tentatively set for September 21, 2016. Thereafter, Mother informed District, without further explanation, that she would not attend an IEP meeting on September 21, 2016. District made no further attempt to reschedule the IEP meeting. Mr. Ferrell did not instruct his staff to contact Mother to attempt to reschedule the continued IEP meeting to finish addressing Mother's concerns, including the ABA aide prescription, because he assumed Mother would file a due process complaint against District.

21. From August 22, 2016, through the date of hearing, Mother kept Student home from school because District would not allow the ABA aide to accompany Student at school. Student instead received 40 hours a week of ABA therapy at home and Mother attempted to put together an academic curriculum for Student's home instruction.

22. Mr. Ferrell testified it was possible administrative issues might arise from having an insurance funded nonpublic agency ABA aide providing services to Student on the Cummings Valley campus. Mr. Ferrell did not think an insurance funded ABA aide or a BCBA supervisor would disrupt Student's special day class, but he thought some problems might arise because the aide was not a District employee and would need some District training. His testimony on this issue lacked credibility because, in response to questioning, he conceded that any administrative complications which arose from having Student's aide on campus would probably be minor and "could be worked out." Mr. Ferrell also testified he had no plans to implement Student's ABA prescription, although he was willing to discuss it further if he had more information from Dr. Hayden or Dr. Pesche. This testimony lacked credibility because Mr. Ferrell did nothing to obtain such further information. He did not ask Student's special day class teacher, or any other District employee, if Student's insurance funded ABA aide could be accommodated in Student's classroom. No evidence was introduced which suggested that Mr. Ferrell or any other IEP team member informed Mother that District was willing to further discuss the ABA prescription or whether District would allow Student's insurance funded ABA aide to accompany Student at school. Moreover, no evidence was introduced that Mr. Ferrell, or any other District members of the IEP team, attempted to obtain additional information from Dr. Hayden or anyone else regarding the Student's ABA therapy prescription.

23. Mr. Ferrell testified that a health plan was a blueprint for responding to a student's health incident or condition, while at school. Mr. Ferrell believed Student's ABA prescription was not the appropriate basis for a health plan. However, he failed to explain why the impropriety of a health plan was significant in this circumstance, or if there was an appropriate alternative to a health plan to address Student's ABA prescription.

24. Mr. Ferrell testified that Student's non-public agency ABA aide might need to go through training before being allowed on campus. District had a program for training adult volunteers on District campuses.

25. District never asked Mother to sign a release giving District authority to confer with Dr. Pesche, Dr. Schauf or Dr. Jeffrey Hayden, regarding their treatments or assessments of Student, or regarding the ABA therapy prescriptions written for Student. District made no effort to confer with Dr. Pesche, Dr. Schauf or Dr. Jeffrey Hayden regarding the prescriptions for ABA therapy, or the functional behavior assessment, upon which the prescriptions were based.

EXPERT WITNESS TESTIMONY AT HEARING

Ellyn Whidelock, School Nurse

26. Ellyn Whidelock, a registered nurse, who has held a California School Nurse Services credential since 2005, testified telephonically on behalf of District at the hearing. Ms. Whidelock is employed by the Kern County Superintendent of Schools as a special education school nurse. She has prepared over 1,000 health plans for students with IEPs. The health plans Ms. Whidelock has prepared have been for students who are taking medication at school, have a medical diagnosis, medical condition or need (i.e., asthma, seizure disorder, feeding tube), or an allergy. She has never prepared a health

plan for a student with a medical prescription for ABA therapy services at school. Ms. Whidelock did not know Student.

27. Ms. Whidelock testified that a prescription for ABA therapy was not an appropriate basis for a health plan and that such a prescription would more likely be the responsibility of a school behaviorist, rather than a school nurse. Even though Ms. Whidelock's testimony was believable, it was given no weight in this matter because the appropriateness of a health plan based on Student's prescription for ABA therapy services is irrelevant to the sole issue in this matter, which concerns parent participation in the IEP process. Also, Ms. Whidelock had no knowledge or experience as to how a school should properly address or document a student's medical prescription for ABA therapy.

Mitchell Taubman, Ph.D., Behaviorist

28. Mitchell Taubman, Ph.D., testified at the hearing on behalf of District. He had been a California licensed psychologist since 1985 and was a behaviorist and co-director of Autism Partnership, a nonpublic agency certified by the California Department of Education, specializing in ABA consultation, training, assessments and therapy. Autism Partnership is retained by various public school districts, including District, to provide ABA therapy consultation services and to assess students. Autism Partnership also provides ABA trained aides to work with students in homes and schools, although it does not provide any aides to District because Autism Partnership's employees do not live in reasonable proximity to District. Dr. Taubman was unfamiliar with Student and did not opine as to the appropriateness of ABA therapy for Student. Dr. Taubman testified that medical doctors may recommend ABA therapy, but do not usually prescribe it. He opined it is preferable for autistic children to receive consistent ABA therapy across multiple settings (i.e., school and home) because consistency is necessary to change behaviors. Dr. Taubman testified credibly and knowledgably about

ABA therapy, functional behavior assessments, the roles of ABA aides and their supervisors, and applied behavioral analysis methodology in general. However, his testimony was given little weight because information and expert opinions about ABA therapy services in general were only marginally material to the sole issue in this matter, which concerns parent participation in the IEP process.

Dr. Lisa Hayden, Psy.D.,BCBA

29. Lisa Hayden, Psy.D.,BCBA, testified at hearing on behalf of Student. She is a clinical psychologist and a California licensed psychologist, who received her doctorate in psychology from Pepperdine University in 1996. In 2000, she founded Hayden Consulting Services, a nonpublic agency, certified by the California Department of Education, specializing in ABA services. At the time of hearing, she was the vice-president and co-owner of Hayden Consulting Services and Dr. Jeffrey Hayden's spouse. Hayden Consulting Services provided ABA therapeutic services, consultations, assessments, and training. Most of Hayden Consulting Services' clients were autistic children. Student was a client of Hayden Consulting Services at the time of hearing. In summer 2015, Dr. Hayden spent a half day with Student and her family. Dr. Hayden testified that, due to recent legislation, some medical insurance policies now cover ABA therapy services. She opined that 40 hours a week of ABA therapy was considered to be the customary "best practice" for autistic clients. Hayden Consulting Services provided ABA therapy aide services to children in public school special day classes and, at the time of hearing, had three of its employees serving as insurance funded ABA therapy aides for autistic children in public school settings in Southern California. Dr. Lisa Hayden opined that communication between the classroom teacher and the ABA aide was very important when Hayden Consulting Services provided an ABA aide to accompany a child on a public school campus.

30. Dr. Lisa Hayden testified generally about ABA therapy services, functional behavior assessments and behavior intervention plans used with children in school settings. She opined that a functional behavior assessment was the basis for a behavior intervention plan, which ideally continually changes as the client learns new skills. She further opined that the assessor, who conducted the functional behavior assessment, should develop the tentative behavior intervention plan by working with the child's school, reviewing the child's records and IEPs and conferring with the child's teacher. The behavior intervention plan should provide for the aide to be gradually "fading" to avoid the client developing dependence on the aide. Dr. Lisa Hayden's testimony was credible, candid and competent, but was given limited weight due to its slight materiality to the sole issue in this matter regarding parent participation in the IEP process. Her testimony credibly established that ABA trained aides employed by nonpublic agencies, whose services are funded by a medical insurer, can successfully provide ABA therapeutic services to a student while she is attending a public school, without disrupting other students, school employees, or the school's environment.

31. Both Judge Darrell Lepkowsky's Order Following Prehearing Conference of December 5, 2016, and Presiding Judge Peter Paul Castillo's Order Following Prehearing Conference dated February 28, 2017, stated "[a] party seeking compensatory education should provide evidence regarding the type, amount, duration and need for any requested compensatory education." No assessment results of Student were introduced as evidence at hearing. Also, no evidence was introduced at hearing regarding the type, amount, duration or need for compensatory education, which was requested by Student in this matter.

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA⁵

1. This hearing was held under the Individuals with Disabilities Education Act (IDEA), 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)⁶et 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 free appropriate public education (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 individualized education program (IEP). (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; Cal. Code Regs., tit. 5, § 3001, subd. (p).) “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

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

⁶ All subsequent references to the Code of Federal Regulations are to the 2006 version.

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).)

3. In *Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 200 [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*, to date, 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.) In a recent unanimous decision, the United States Supreme Court declined to interpret the FAPE provision in a manner that was at odds with the *Rowley* court's analysis, and clarified FAPE as "markedly more demanding than the 'merely more than the de minimus test'..." (*Endrew F. v. Douglas School Dist. RE-1* (2017) 137 S.Ct. 988, 1000 (*Endrew*)). The Supreme Court in *Endrew* stated that school districts must "... offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances."(*Id.*at p. 1002.)

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).)

5. 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, 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 action Student is the party petitioning for relief and has the burden of proving the essential elements of his claim. (*Schaffer, supra*, 546 U.S. 49, at p. 62.)

ISSUE: MOTHER'S RIGHT TO PARTICIPATE IN THE IEP PROCESS

6. Student contends District denied Student a FAPE by significantly impeding Mother's opportunity to participate in the decision-making process when District refused to allow Student's insurance funded ABA aide to accompany Student at school in order to provide Student with ABA therapy services prescribed by Student's doctor. District contends it did not impede Mother's right to participate in Student's IEP process.

Procedural Violations Under the IDEA

7. The IDEA contains numerous procedural safeguards designed to protect the rights of disabled children and their parents. (20 U.S.C. § 1415.) These safeguards are a central feature of the IDEA process, not a mere afterthought. "It seems to us no exaggeration to say Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process as it did upon the measurement of the resulting IEP against a substantive standard." *Rowley, supra*, 458 U.S. at 205.

8. The legal analysis of a school district's compliance with the IDEA has two parts: (1) whether the district has complied with the procedures set forth in the IDEA and (2) whether the IEP developed through those procedures was designed to meet the child's unique needs, and reasonably calculated to enable the child to receive educational benefit. (*Rowley, supra*, 458 U.S. 176 at pp. 205-207.) Procedural flaws do not automatically require a finding of a denial of FAPE. A procedural violation does not constitute a denial of FAPE unless the procedural inadequacy (a) impeded the child's right to a FAPE; (b) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE; or (c) caused a deprivation of educational benefits. (20 U.S.C. §1415(f)(3)(E)(i)-(iii); Ed. Code, § 56505, subds. (f) and (j); *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d

1479, 1483-1484.) (superseded on other grounds by 20 U.S.C. § 1414(d)(1)(B) (*Target Range*)).

Parental Participation in the IEP Process

9. Because disabled children and their parents are frequently not represented by counsel during the IEP process, procedural errors at that stage are likely to be prejudicial and result in lost educational benefits. Consequently, compliance with the IDEA's procedural safeguards "... is essential to ensuring that every eligible child receives a FAPE, and those procedures which provide for meaningful parent participation are particularly important." (*Amanda J. v. Clark Cty. Sch. Dist.* (9th Cir. 2001) 267 F.3d 877, 891 (*Amanda J.*)). Procedural violations that interfere with parental participation in the IEP process undermine the essence of the IDEA. (*M.C. v. Antelope Valley Union High School District* (9th Cir. March 27, 2017) ___ F.3d ___ (2017 WL 1131821 at p. 2).)

10. Parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, assessment, educational placement, and provision of a FAPE to their child. (34 C.F.R. § 300.501(b)(3)(2006); Ed. Code, § 56341.5.) "Among the most important procedural safeguards are those that protect the parents' right to be involved in the development of their child's educational plan." (*Amanda J., supra*, 267 F.3d at p. 882.) A local educational agency must fairly and honestly consider the views of parents expressed in an IEP meeting. A school district that predetermines the child's program and does not consider the parents' requests with an open mind has denied the parents' right to participate in the IEP process, which constitutes a procedural denial of FAPE.

11. School officials are permitted to engage in preparatory activities to develop a proposal or response to a parent proposal that will be discussed at a later meeting. (34 C.F.R. § 300.501(b)(1) & (b)(3)(2006); *T.P. and S.P. on behalf of S.P. v. Mamaroneck Union Free School District* (3d Cir. 2009) 554 F.3d 247, 253.) School district

personnel may bring a draft of the IEP to the meeting; however, the parents are entitled to a full discussion of their questions, concerns and recommendations before the IEP is finalized. (*Assistance to States for the Education of Children With Disabilities and the Early Intervention Programs for Infants*(Mar. 12, 1999) 64 Fed.Reg. 12478;*see JG v. Douglas County School Dist.* (9th Cir. 2008) 552 F.3d 786, 801, n. 10.)

12. In *Target Range, supra*, 960 F.2d at p.1483, the Ninth Circuit recognized the IDEA's emphasis on the importance of meaningful parental participation in the IEP process. A local educational agency's predetermination of an IEP seriously infringes on parental participation in the IEP process, which constitutes a procedural denial of FAPE. (*Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004) 392 F.3d 840, 858.)

"...[P]redetermination occurs "when an educational agency has made its determination prior to the IEP meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives." (*H.B., et al. v. Las Virgenes Unified School Dist.* (9th Cir. 2007) 239 Fed. Appx. 342, 344; *see also, Ms. S. ex rel. G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131 ["A school district violates IDEA procedures if it independently develops an IEP, without meaningful parental participation, then simply presents the IEP to the parent for ratification."])(*citing Target Range, supra*, 960 F.2d at p.1485).)

13. The IEP team must consider the concerns of the parent for enhancing the student's education and information on the student's needs provided to or by the parent.(20 U.S.C. § 1414(d)(3)(A) (ii) and (d)(4)(A)(iii); 34 C.F.R. § 300.324(a)(1)(ii) & (b)(1)(ii)(C); Ed. Code, § 56341.1, subds. (a)(2), (d)(3) & (f).) 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])The informed involvement of parents is central to the IEP process. "Among the most important procedural safeguards are those that protect

the parents' right to be involved in the development of their child's educational plan."(*Amanda J., supra*, 267 F.3d at p.882.)

14. A school district is required to conduct, not just an IEP team meeting, but also a meaningful IEP team meeting.(*Target Range, supra*, 960 F.2d at p. 1485, *Fuhrmann v. East Hanover Board of Educ.* (3rd Cir. 1993) 993 F.2d 1031, 1036.)"Participation must be more than mere form; it must be meaningful."(*Deal, supra*, 392 F.3d at p. 858 [citations omitted].)A parent who has an opportunity to discuss a proposed IEP and suggest changes, and whose concerns are considered by the IEP team, has participated in the IEP development process in a meaningful way. (*Ibid.*)A school district that predetermines the child's program, and does not consider the parents' requests with an open mind, has denied the parents' right to participate in the IEP process. (*Deal, supra*, 392 F.3d at p. 858; *Ms. S. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131, superseded on other grounds by statute.)

Analysis and Conclusions

15. District members of the IEP team did not fairly and honestly discuss and consider Mother's request that District honor Student's ABA prescription by allowing Student's insurance funded ABA trained aide to provide ABA services while Student attended school. The same day that Mother gave the ABA prescription to principal Ms. Minjares, Mr. Ferrell met and discussed with the District superintendent and the other members of the superintendent's cabinet the ABA prescription and Mother's request to allow the aide on campus with Student. Following that discussion, and before the September 9, 2016 IEP meeting, Mr. Ferrell determined District would not allow the ABA aide to accompany Student at school pursuant to the ABA prescription. On the same day that Mr. Ferrell met with District superintendent and other members of the superintendent's cabinet, Mr. Ferrell signed the Prior Written Notice dated September 22, 2016, which stated District refused Mother's request to comply with the ABA

prescription at school because the IEP team had not yet met to discuss it. In light of the evidence that neither discussion about, nor consideration of, Mother's concerns occurred when the IEP meeting was eventually held, this statement from the Prior Written Notice is not credible.

16. At the IEP meeting on September 9, 2016, Mother's request that District allow the insurance funded aide to accompany Student at school, pursuant to the ABA prescription, was simply denied by Mr. Ferrell, without either discussion or consideration in earnest by the IEP team. Mr. Ferrell was the only District member of the IEP team who spoke at all about Mother's request, and his input was limited to rejecting Mother's request without explanation, discussion or consideration.

17. Before rejecting Mother's request to allow the ABA aide to accompany Student on campus, the IEP team did not discuss Dr. Hayden's functional behavior assessment, which was the basis for the prescription. There was no evidence that any of the District IEP team members, other than Mr. Ferrell, had read Dr. Hayden's report. Moreover, District made no effort to contact Dr. Hayden for his input on the assessment and the ABA prescription. District did not even ask Mother to sign a release to authorize District to confer with Dr. Hayden for further information or to make arrangements for him to speak to the IEP team at a meeting before summarily rejecting Mother's request, even though Mr. Ferrell acknowledged District had an obligation to consider all independent assessment reports.

18. The recording of the September 9, 2016 IEP meeting established that the IEP team did not discuss or consider Mother's request with an open mind. Therefore, District significantly impeded Mother's right to participate in the IEP process, which constitutes a procedural denial of FAPE.

19. District's designated administrator at the IEP meeting, Mr. Ferrell, came to the September 9, 2016 IEP meeting having already decided to refuse to honor Student's

prescription for ABA therapy and Mother's request to have Student's insurance funded ABA trained aide provide ABA therapy services while Student attended Cummings Valley. There was no discussion at the September 9, 2016 IEP meeting regarding the pros and cons of Mother's proposal. No District IEP team members, other than Mr. Ferrell, contributed at all to the brief discussion of Student's ABA therapy prescription. Following Mr. Ferrell's lead, no other District IEP team members expressed any opinions, asked any questions or otherwise engaged in discussion regarding Student's ABA therapy prescription and Mother's request that the aide be allowed to accompany Student while she attended school.

20. Predetermination of a child's educational program and interference with parent participation in the IEP process often go hand in hand. The former can result in the latter. It would have been appropriate for Mr. Ferrell and other District IEP team members, to do research about the ABA prescription and form opinions about Mother's request before the September 9, 2016 IEP meeting. However, it was improper for Mr. Ferrell to decide to reject Mother's request before the IEP meeting. Mother's request for District to respect the ABA prescription by allowing the ABA aide to accompany Student at school was not discussed or honestly considered in the IEP process, as contemplated by the IDEA.

21. These parties have a history of disputes. However, those prior disputes do not excuse District of its obligation to honestly and openly consider Mother's concerns about Student's educational program. District was required to convene an IEP meeting that would involve all members, including Mother, in a discussion about Mother's request to allow the ABA aide to provide services on campus. By rejecting Mother's request without an open and earnest discussion by the entire IEP team at a meeting, District significantly interfered with Mother's right to participate in the IEP process.

22. District contends that Mother inappropriately sought a health plan to memorialize the ABA prescription. However, this is irrelevant to the issue of whether Mother was allowed to participate in an open dialogue with the rest of the IEP team regarding her concerns about Student's educational program. Furthermore, Ms. Minjares or Ms. Hammer told Mother to ask the school nurse to draft an initial health plan for review by the IEP team. Mother was following school personnel's directive when she requested a health plan for Student to address the doctor's prescription for ABA therapy.

23. District also asserts that a nonpublic agency aide funded by an insurer might cause administrative problems with the classified union, or with Student's special day class teacher. This assertion lacked credibility because it was not raised at the IEP meeting or in the Prior Written Notice, and Mr. Ferrell conceded at hearing that these issues could probably be worked out. District already had a training program for non-employees volunteering to work on District campuses and District had at least one nonpublic agency (Autism Partnership) working on its campuses. Mr. Ferrell did not discuss the possibility of having Student's insurance funded ABA aide in the classroom with Student's special day class teacher. Neither did any other District employee.

24. When Mother informed District she would not be attending the follow-up IEP meeting tentatively scheduled for September 21, 2016, no one from District made any effort to reschedule the meeting with Mother. District did not contact Mother to see if she continued to be interested in discussing the ABA prescription with the IEP team and Dr. Hayden. Mr. Ferrell testified that he did not instruct any District employee to attempt to reschedule the IEP meeting because he assumed Mother planned to file a due process request against District. However, this is not a valid excuse for District's failure to attempt to schedule the follow-up IEP meeting with Mother to address her concerns.

25. In conclusion, District denied Student a FAPE by significantly impeding Mother's right to participate in the IEP process at the September 9, 2016 IEP meeting regarding District's refusal to allow Student's insurance funded ABA aide to accompany Student at school in order to provide Student with ABA therapy services prescribed by her doctor. Where a procedural violation is found to have significantly impeded the parents' opportunity to participate in the IEP process, the analysis does not include consideration of whether the student ultimately received a FAPE, but instead focuses on the remedy available to the parents. (*Amanda J.*, *supra*, 267 F. 3d at pp. 892-895; *Target Range*, *supra*, at pp. 1485-1487 [when parent participation was limited by district's pre-formulated placement decision, parents were awarded reimbursement for private school tuition during time when no procedurally proper IEP was held].) Therefore, Mother, on Student's behalf, is entitled to a remedy for District's breach of its obligations under the IDEA.

REMEDIES

1. Student prevailed on the sole issue at hearing. As remedies, she requests District be ordered to permit Student's ABA aide to accompany Student and provide applied behavioral analysis therapy services during school hours, and to fund compensatory education to Student, according to proof.

2. 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)(1)(C)(iii); see *School Committee of Town of Burlington, Mass. v. Department of Educ. of Mass.* (1985) 471 U.S. 359, 369.) 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.* (2009) 557 U.S. 230, 243, n. 11.) In remedying a FAPE denial, the student is entitled to relief that is "appropriate" in light of the purposes of

the IDEA. (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3); *Parents of Student W. v. Puyallup School Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1497.)

3. Here, Student did not request that Dr. Jeffrey Hayden's summer 2016 functional behavior assessment be admitted as evidence. No expert witness testified at hearing about it at hearing. Student did not introduce evidence of an appropriate behavior intervention plan, which a behaviorist might develop from the functional behavior assessment, to support and guide the prescribed ABA aide in the classroom and which could be finalized by the IEP team. Other than Mother's testimony, there was no evidence indicating Student would benefit from or needed the assistance of an ABA aide in order to access her education. The absence of such evidence renders it impossible to grant Student's requested remedy of directing District to permit Student's ABA aide to provide ABA therapy services at school.

4. Further, Student requested an award of compensatory education, but failed to introduce any evidence regarding the type, amount, duration and Student's need for compensatory education. Also, no Student assessments were introduced as evidence. An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student's needs. (*Reid v. District of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 524-526) An award of compensatory education must be fact specific and "reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." (*Ibid.*)A student seeking compensatory education must present specific evidence as to how it should be calculated. (*Ibid.*)Here, Student failed to meet her burden of proof regarding her request for compensatory education, so none is awarded. Simply put, Student has not presented evidence sufficient to support a finding that the requested remedies are appropriate in light of IDEA's purposes.

5. Where a procedural violation is found to have significantly impeded the parents' opportunity to participate in the IEP process, the analysis does not include consideration of whether the student ultimately received a FAPE, but instead focuses on the remedy available to the parents. (*Amanda J., supra*, 267 F.3d 877, 892-895 [school's failure to timely provide parents with assessment results indicating a suspicion of autism significantly impeded parents right to participate in the IEP process, resulting in compensatory education award]; *Target Range, supra*, 960 F.2d 1479, 1485-1487 [when parent participation was limited by district's pre-formulated placement decision, parents were awarded reimbursement for private school tuition during time when no procedurally proper IEP was developed].)

6. Because District significantly impeded Mother's participation in the IEP process, District shall, within 10 days of the issuance of this decision, schedule an IEP meeting to be held within 21 days of this decision's issuance. The IEP's sole purpose will be to conduct a full, transparent, honest and open discussion regarding Mother's request that District recognize and implement Student's ABA prescription by allowing Student's insurance funded ABA trained aide to provide ABA therapy services to Student at school. District shall invite Dr. Jeffrey Hayden to attend such IEP meeting, at District's expense⁷, to discuss his report on the functional behavior assessment of Student which he conducted in summer 2016. District shall promptly give Mother a release which seeks authority for District to confer with Dr. Hayden about Student. Mother shall promptly return the signed release to District. District members of the IEP team shall honestly and

⁷ District shall be obligated to fund a maximum of four hours of Dr. Hayden's professional services for his attendance at this IEP meeting, charged at his normal hourly rate for providing professional consultation services.

openly discuss and consider Mother's request and review all available information helpful to the legitimate consideration of Mother's request at the IEP meeting.

7. If a second IEP meeting is necessary for the IEP team to develop and/or finalize a behavior intervention plan for Student, such meeting shall be held within two weeks after the first IEP meeting. The second IEP will also include Dr. Jeffrey Hayden, at District's expense⁸, if Mother requests Dr. Hayden's attendance at the second possible IEP meeting and/or Dr. Hayden's assistance in developing a behavior intervention plan.

⁸ District shall be obligated to fund a maximum of five hours of Dr. Hayden's professional services for his development of a tentative behavior intervention plan and attendance at the second IEP meeting, charged at his normal hourly rate for providing professional consultation services.

8. If the IEP team grants Mother's request that District recognize and implement the ABA prescription at school by allowing the insurance funded ABA aide to accompany Student at school, District shall promptly train such aide within three school days, at District's expense, with regard to any necessary procedures or protocols utilized at Cummings Valley School to facilitate the aide's smooth transition to working with Student on campus. District shall also promptly arrange for reasonable collaboration, for a maximum of one hour, between Student's special day class teacher and Student's ABA aide before the aide begins accompanying Student in the classroom.

9. An order for staff training is an appropriate remedy under the IDEA. (*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 procedural violations that may benefit other pupils. (*Ibid.*)

10. Because District personnel demonstrated a lack of understanding of the parental participation rights in the IEP process under the IDEA, District shall provide the training to its special education personnel. By September 30, 2017, District shall provide at least two hours of special education training to the special education administrative, teaching and other professional personnel, who provide special education services to District students, in the area of parental participation in the IEP process under the IDEA. This training shall also be provided to District's superintendent, since she was involved in the discussion with Mr. Ferrell, after which District decided to reject Mother's request for the District to honor the ABA prescription, even though the IEP meeting had not yet taken place. The training shall be provided by an independent provider, not affiliated with the District, specializing in special education training to school districts, and shall

be completed by September 30, 2017. District shall notify Mother in writing within seven days of the date District has completed such training.

ORDER

1. Within 10 days of the date of this Order, District shall schedule an IEP meeting to be held within 21 days of the date of this Order, for the sole purpose of conducting a full, transparent, honest and open discussion regarding Mother's request that District recognize and implement Student's ABA prescription by allowing Student's insurance funded ABA trained aide to provide ABA therapy services to Student at school. District shall invite Dr. Jeffrey Hayden to attend such IEP meeting, at District's expense (for a maximum of four hours of his professional services), to discuss his report on the functional behavior assessment of Student, which he conducted in summer 2016.

2. District shall present Mother with a release form authorizing District to confer with Dr. Hayden about Student and Mother shall promptly sign and return such release form to District, so as to cause no delay in the ordered IEP meeting.

3. At the IEP meeting referred to in Order paragraph number one, District members of the IEP team shall fully, honestly and openly discuss and consider Mother's request and review all available information helpful to the legitimate consideration of Mother's request. If a second IEP meeting is necessary for the IEP team to develop or finalize a behavior intervention plan for Student, District shall arrange for such second meeting to be held within two weeks after the initial IEP meeting. District shall invite Dr. Jeffrey Hayden to attend that second meeting, at District's expense (for a maximum of five hours of his professional services), if Mother requests Dr. Hayden's assistance to develop a behavior intervention plan for Student and/or his attendance at the second meeting.

4. If the IEP team decides to grant Mother's request that District recognize and implement the ABA prescription at school by allowing the insurance funded ABA

aide to accompany Student at school, District shall promptly train such aide within three school days, at District's expense, with regard to any necessary procedures or protocols utilized at Cummings Valley School to facilitate the aide's smooth transition to working with Student on campus. If the IEP team determines it will grant Mother's request to honor Student's ABA prescription at school District shall also promptly arrange for reasonable collaboration, for a maximum of one hour, between Student's special day class teacher and Student's ABA aide before the aide begins accompanying Student in the classroom.

5. By September 30, 2017, District shall provide at least two hours of special education training to the special education administrative, teaching and other professional personnel, who provide special education services to District students, in the area of parental participation in the IEP process under the IDEA. This training shall also be provided to District's superintendent. The training shall be provided by an independent provider, not affiliated with District, specializing in special education training to school districts, and shall be completed by September 30, 2017. District shall notify Mother in writing within seven days of the date District has completed such training.

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 was the prevailing party on the one issue presented.

RIGHT TO APPEAL

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: April 24, 2017

_____/s/_____

CHRISTINE ARDEN

Administrative Law Judge

Office of Administrative Hearings