

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT, on behalf of STUDENT,

OAH CASE NO. 2008060957

v.

COVINA-VALLEY UNIFIED SCHOOL
DISTRICT.

DECISION

Stella L. Owens-Murrell, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on August 18, 2008, and August 28, 2008, in Covina, California.

Covina-Valley Unified School District (District) was represented at the hearing by Courteny Cooke, Attorney at Law, of the Law Office of Margaret A. Chidester & Associates. Dennis Trezciak, Senior Director Student Services, and Abigail Cabrera, Special Education Administrator, were present on both days of hearing.

Student was represented at the hearing by David M. Grey, Attorney at Law, of Grey & Grey. Student's mother (Mother) was present on both days of hearing. Student's father (Father), or collectively (Parents), was present on the last day of hearing. Spanish language interpreting services were provided for the entire hearing.

Student filed a Due Process Hearing request (Complaint) on June 23, 2008.

The Due process hearing commenced on August 18, 2008. On the first day of hearing, the parties stipulated that the sole issue for hearing was issue I B in the Prehearing

Conference Order issued August 12, 2008. Student withdrew all other remaining issues identified in the Prehearing Conference Order. The matter proceeded to a second day of hearing and concluded on August 28, 2008.

Sworn testimony and documentary evidence were received at the hearing. At the conclusion of hearing, the record remained open for the parties to file closing briefs on or before September 4, 2008. The record closed and the matter was submitted on September 4, 2008.

ISSUES

Whether the May 7, 2008, Individualized Education Program (IEP), offer of Aural Rehabilitation Therapy services (ART) instead of Auditory Verbal Therapy (AVT), provided Student a free appropriate public education (FAPE) for the 2008-2009 school year?

REMEDIES REQUESTED

Student requests AVT services by a certified auditory verbal therapist prospectively, and compensatory education services in the form of AVT by a certified auditory verbal therapist.

FACTUAL FINDINGS

JURISDICTION

1. Student, born on June 15, 2001, was seven years of age at the time of the due process hearing. She lives with her parents in the jurisdictional boundaries of the District. Student is eligible for special education services under the disability categories of hearing impairment, deaf low incidence (DHH), and speech and language disorder.

EARLY CHILDHOOD EVALUATION, EDUCATION, AND SERVICES

2. Student was diagnosed at 18 months of age with a severe hearing

impairment. Parents consulted with specialists at the John Tracy Clinic, an educational and medical institution specializing in the treatment of early childhood deafness. Student attended the clinic four days per week from 2003 to 2006.

3. On June 8, 2004, at age three, a Left Hi Res Harmony BTE Cochlear Implant (Implant) was surgically implanted in Student's left cochlea¹. The Implant was mapped and activated on July 7, 2004. Student was also fitted for a hearing aid for her right ear.

¹ A cochlear implant is a small, complex electronic device that provides a sense of sound to an individual who is deaf or severely hard of hearing. The implant is surgically placed under the skin behind the ear. An implant does not restore or create normal hearing. Instead, it may assist a deaf or severely hearing impaired individual to understand speech.

Cochlear implants have both external and internal components. The external cochlear implant components include a microphone (through which sound enters), a speech processor (which is an individually programmed, computerized device that deciphers the sound and translates it into an electric signal), and a transmitting coil held in place by a magnet (which, by means of a radio wave, transmits the signal sent by the processor through the intact skin). The speech processor must be programmed, or mapped, by an audiologist on a regular basis following the implantation, to adjust for changes in the implant recipient's listening skills and developmental progress. Without such regular programming, the recipient would not be able to continue to hear. The internal cochlear implant components include a receiver/stimulator located directly under the skin beneath the transmitting coil and an array of electrodes implanted in the cochlea that emit electrical charges to stimulate the auditory nerve fibers.

4. In 2004, after receiving her Implant, Student began receiving therapy from a licensed speech pathologist for District. The therapy consisted of 45 to 50 minutes per week of auditory skills development therapy.

5. Student attended District's early start preschool program at the Vincent Children's Center in the 2005-2006 school year. Student attended private preschool at the Learning Garden Center Preschool for the 2006-2007 school year. Parents elected to have Student repeat kindergarten and unilaterally placed Student in kindergarten at Echo Horizons School (Echo Horizons) in Culver City, California for the 2007-2008 school year. Student is currently attending first grade at Echo Horizons for the 2008-2009 school year.

DISTRICT'S SPEECH AND LANGUAGE ASSESSMENT

6. District assessed Student in the area of speech and language on May 3, 2007, May 10, 2007 and May 11, 2007. The assessment was conducted by Sylvia Kaparos (Ms. Kaparos) and Nannette Miller (Ms. Miller), District speech and language pathologists.²

7. Ms. Kaparos obtained a Bachelor of Arts Degree in Psychology from California State University, Pomona; a Master of Science Degree in Education from the University of Southern California, and from California State University, Northridge in Communicative Disorders. She is also a candidate for certification as an Auditory Verbal Therapist by the AG Bell Academy for Listening and Spoken Language. Ms. Kaparos has a Preliminary Speech-Language Services Credential, a Deaf and Hard of Hearing Clear Level II Credential, and a Multiple Subject Clear Credential. She is a licensed Speech-Language Pathologist for District since 2006 and was employed as a DHH Teacher in the auditory-

² Nanette Miller did not testify and no evidence of her background and qualifications was offered at hearing.

oral K-1 classroom in the District from 2000-2006. Ms. Kaparos also provided auditory skills development therapy and ART to Student and her Parents from 2004-2007.

8. The tests administered included the Comprehensive Assessment of Spoken Language (CASL); Expressive Vocabulary Test (EVT); Test of Language Development-Primary (TOLD P:3); Test of Auditory Comprehension of Language (TACL-3); Goldman Fristoe 2-Test of Articulation; Contrasts for Auditory and Speech Training; Cottage Acquisition Scales for Listening, Language and Speech (CASLLS); and Informal Language Samples.

9. At the time of the assessment, Student's hearing age, measured from the date Student received her Implant, was two years and ten months, and her chronological age was five years and ten months.

10. The assessment results indicated Student was an oral language learner, with deficits in articulation and intelligibility, and expressive/receptive language deficits in morphology, syntax, and semantics, and who exhibited weaknesses in her ability to understand and use appropriate English grammar. According to the informal language sample, Student spoke in complete simple sentences. The results of the CASL showed that Student's auditory comprehension of syntax (ability to understand grammar in narrative form) was below average for a student her age. Student's ability to generate and finish sentences using a variety of grammatical rules including present tense agreement, plurals and prepositional phrases was below average for a student her age. The results of the TOLD P:3 showed Student's understanding of grammatical structures such as negatives, past tense, adverbs, and other grammatical structures was in the below average range for students her age. In addition, Student did not demonstrate the ability to imitate more complex sentences, indicating that she spoke in more simple sentences and had limited understanding of negatives, pronouns and conjunctions. The results of the TACL-3 showed Student had below average skills in auditory comprehension of prepositions and

pronouns and a variety of sentence structures. The CASLLS, reported by Parents and therapist, indicated that Student had mastered and consistently used noun modifiers, double adjectives, adverbs, object, indefinite and reflexive pronouns and other grammatical forms, but continued to struggle with tense forms, regular past tense possessives and plurals, among others. In summary, the test results indicated Student's overall understanding and use of grammar was below average for a child of her chronological and hearing age.

11. Ms. Kaparos and Ms. Miller issued a speech and language evaluation report dated May 16, 2007. The report summary noted that Student had strengths in the area of pragmatics and deficits in the area of phonology, semantics, and syntax-morphology. They recommended speech and language therapy in the areas of auditory comprehension and auditory retrieval of semantics; auditory discrimination and auditory feedback; auditory comprehension and auditory retrieval of syntax-morphology; and auditory memory.

THE MAY 31, 2007 IEP

12. District convened an IEP team meeting on May 31, 2007, to discuss Student's triennial assessments and program. District offered Student placement in a general education kindergarten class for four hours a day, with the support of a DHH teacher, at Ben Lomond Elementary School (Ben Lomond), the site of District's DHH auditory-oral program. The IEP offer further included language and speech services, small group, 30-minute sessions twice per week; listening and auditory skills therapy individual, once per week for 50 minutes; audiologist hearing evaluation annually and equipment checks for FM; and curb-to-curb transportation. Parents wanted placement in a full day kindergarten class. Parents disagreed with the IEP offer. Parents requested District pay for mileage to private school and that District provide AVT by a therapist familiar with Implants. District

denied the request and Parents did not consent to the IEP. Parents unilaterally enrolled Student in a full day kindergarten general education class at Echo Horizons.

DISTRICT'S 2007 AGREEMENT TO PROVIDE AUDITORY VERBAL THERAPY

13. Student subsequently disputed the May 31, 2007, IEP. District thereafter agreed to provide Student AVT by a certified auditory verbal therapist for two hours per week.

14. In November 2007, Student began receiving AVT from Bridgette Klaus (Ms. Klaus), M.S. Ed., LSLS, at District expense. Ms. Klaus, a private practitioner, was a Listening and Spoken Language Specialist and a Certified Auditory Verbal Therapist. Ms. Klaus obtained a Bachelor of Arts degree with a major in liberal studies and minor in special education from Loyola Marymount University, and a Master of Science degree in education with a deaf and hard of hearing credential from the University of Southern California. Ms. Klaus had eight years experience as a speech and language teacher at John Tracy Clinic where she specialized in teaching four- and five-year old students with hearing loss. In addition to her private practice, Ms. Klaus was an Adjunct Professor at the John Tracy Clinic/University of San Diego, where she taught classes on preschool curriculum to graduate students preparing to teach deaf students.

Auditory Verbal Therapy

15. AVT is a method used to teach children with cochlear implants how to make sense of sounds. AVT uses hearing as a primary mode in developing speech, language and communication without the use of lip reading, sign language or tactile cues. The method teaches a DHH child to learn speech and language in the child's natural environment across school and home settings, and requires parental and family involvement to reinforce the therapy in the home environment. Its objective is to teach children to use whatever hearing they possess to acquire speech and language. AVT also incorporates

the following "basic principles of treatment" : (1) early detection and identification of the hearing impairments in infants and toddlers; (2) aggressive medical techniques and maintenance of appropriate hearing aids, cochlear implants, or other sensory aids; (3) appropriate technology to achieve maximum benefit of learning spoken language through listening; (4) favorable auditory learning environments for acquisition of spoken language, including one-to-one teaching; (5) affirmation of the parent as the primary model in helping the child learn to listen to his or her own voice, the voices of others, and the sounds of the environment; (6) integrating listening into the child's total personality so that listening becomes a way of life; (7) ongoing assessment, evaluation, and prognosis of the child developing auditory, language, speech, and cognitive skills; (8) full mainstreaming of the hearing-impaired child into the regular education system beginning at preschool so that the child will have mainstream peers as role models; and (9) active participation of the parents in order to improve spoken communication between the child and family members.

16. It is the position of the A.G. Bell Academy for Listening and Spoken Language (A.G. Bell Academy) that to be more effective, AVT should be provided by a certified auditory verbal therapist. According to both Ms. Klaus and Ms. Kaparos, AVT certification is not a California state requirement and is provided only by a private professional organization, the A.G. Bell Academy. A.G. Bell Academy was established by the Alexander Graham Bell Association for the Deaf and Hard of Hearing, an international organization for deaf and hard of hearing individuals and professionals in that field, located in Washington, D.C. In order to be certified the candidate must be an audiologist, a speech therapist, or an auditory verbal therapist. Candidates must have completed 1200 hours of work in auditory verbal therapy, with 200 hours of externship with a mentor, and sit for a three-to four-hour multiple choice examination. The A.G. Bell Academy previously required candidates to submit a video taped presentation of an AVT session. However, the

requirement was recently eliminated. Accordingly, while certification may have provided an opportunity for DHH professionals to acquire more training and expertise, neither state nor federal law mandated AVT certification and nothing precluded provision of AVT by a non-certified therapist. This is particularly true when to become certified, a therapist must perform hundreds of hours of therapy before being certified.

17. Ms. Klaus provided two hours of AVT per week, in two one-hour sessions, to Student and her family. Ms. Klaus was also familiar with Student as she had previously provided AVT to Student at John Tracy Clinic in 2005 and 2006-2007. Ms. Klaus measured Student's progress by taking notes at each therapy session. She also consulted with Ms. Kaparos and District DHH Program Specialist, Patricia Shawn (Ms. Shawn) concerning Student's progress and the development of Student's IEP goals.

MAY 2008 ASSESSMENT

18. In April and May 2008, Ms. Klaus conducted a formal speech and language assessment of Student and issued a report entitled "Language, Speech, and Auditory Skills Present Levels of Functioning," dated May 2008. The purpose of the assessment was to gauge Student's present levels of performance to enable District to establish Student's goals and objectives in the IEP for the 2008-2009 school year.

19. Ms. Klaus used the following test instruments: Oral and Written Language Scales (OWLS); The Expressive One-Word Picture Vocabulary Test and The Receptive One-Word Picture Vocabulary Test; and Informal Observation and Language Sampling to assess Student's receptive and expressive language abilities. Student tested at a total test age equivalent of three years and ten months, on the OWLS. Student tested at an age equivalent of four years and six months, on the Receptive One-Word Picture Vocabulary Test and four years and ten months, on the Expressive One-Word Vocabulary Test, all of which established that Student was below age level in both her expressive and receptive language skills. The results of the informal observation and language sampling indicated

that Student was beginning to communicate at the simple sentence level. Student tended to speak only in the present tense, using the root form of the verb; used pronouns frequently and tended to mix up the gender; used the articles "a" and "the" inconsistently in her spontaneous speech; and had difficulty comprehending different "wh"-question forms. The language sampling from December 2007 to May 2008 also indicated that Student's sentences had increased in length and complexity.

20. Ms. Klaus selected the Ling Phonetic Level Speech Evaluation (PLE) and Informal Observation to assess Student's phonetic level speech skills. The Ling 6 Sound Test was administered to test Student's auditory skills, and present skills in auditory discrimination, auditory comprehension and memory sequencing, and figure-ground/degraded signals. The test results indicated that Student was able to identify all of the Ling 6 sounds with the aid of her Implant. She was able to discriminate words on the basis of segmental features including discriminating between words in which the consonants are identical and the vowels differ. She could also discriminate between words in which vowels were identical and consonants differed in manner, place, and voicing. However, she was inconsistent in her discrimination of words that differ in manner or place only. In the area of auditory comprehension and memory sequencing, the test results indicated that Student comprehended stereotypic directions, and was able to recall three critical elements in a message, but Student needed to work on focusing and attending to the entire message in order to comprehend the story, or what was being asked of her.

21. Based upon the assessment results, Ms. Klaus recommended IEP goals for Student in the areas of phonetic level speech, phonological level speech, language, and audition, specifically in word discrimination and memory-sequencing. Ms. Klaus made no written or verbal recommendations that Student continue receiving AVT nor did she make recommendations regarding the frequency and duration of AVT she believed necessary to meet Student's needs.

THE MAY 7, 2008, IEP

22. District convened an IEP team meeting on May 7, 2008. Parents attended the meeting accompanied by a Spanish language interpreter. Ms. Klaus attended in her capacity as Student's AVT. Ms. Shawn, DHH program specialist; Blaise Kistler, audiologist; Abigail Cabrera, special education administrator; Delicia M. Colantuono, special education teacher; Trish Doroux, general education teacher; and Cheri Howell, administrator designee, attended on behalf of District. Ms. Klaus presented her assessment and recommendations for goals and objectives. Ms. Klaus did not recommend to the IEP team that Student continue receiving AVT. The IEP team reviewed and considered Ms. Klaus' report and any other information available to them as Student was not attending a District school at the time of the IEP.

23. The IEP team identified Student as an oral learner. The IEP identified Student's present levels of performance in academics, communication, social development, and pre-vocational/vocational.

24. The IEP team identified Student's areas of need in ten specific areas: (1) Decoding and word recognition/spoken language skills; (2) Phonemic awareness/auditory and spoken language skills; (3) Phonemic awareness/spoken language skills; (4) Reading comprehension/auditory and spoken language skills; (5) Written/auditory skills; (6) Math application/auditory and spoken language skills; (7) Pre-vocational/social emotional/auditory spoken language skills; (8) Auditory comprehension and auditory retrieval syntax-morphology-grammar; (9) Auditory comprehension; (10) Auditory comprehension; and (11) Speech/articulation. The latter four areas of need were incorporated verbatim from Ms. Klaus' assessment and recommendations.

25. The IEP established goals based on Student's areas of need and present levels of performance. The IEP offer for the remainder of the 2007-2008 school year included: (1) extended school year (ESY) from June 16, 2008-July 11, 2008 in a first grade

general education class with services to include speech and language therapy from a DHH teacher five days per week for 30 minutes each session in a small group; (2) speech and language services twice per week, 30 minutes each, one individual and one small group; (3) continue AVT twice per week, 60 minutes each with a private AVT until the end of ESY; and (4) curb-to-curb transportation.

26. The IEP offer for the 2008-2009 school year included: (1) placement in a general education first grade class at District school (Ben Lomond); (2) specialized academic instruction from a District DHH teacher five days per week, 30 minutes per day; (3) specialized academic instruction from a DHH Itinerant teacher twice a week, 30 minutes each, individual; (4) ART services, provided by DHH staff once per week, for 50 minutes, individual; and (5) an instructional assistant six hours per day, five days a week. The services were to be provided on a pull-out basis. Parents disagreed with the offered placement, offer of ART services instead of AVT, and the type and frequency of services. Parents did not consent to the IEP.

27. On May 28, 2008, Parents through their attorney, served District notice of their intention to unilaterally place Student at Echo Horizons for the 2008-2009 school year and for the 2008 ESY. Parents also demanded District continue providing Student's services.

28. On June 23, 2008, Parents filed a Due Process Complaint on Student's behalf asserting, in part, that District denied Student a FAPE for failure to provide AVT, with a certified auditory verbal therapist, for the 2008-2009 school year.

AURAL REHABILITATION THERAPY

29. District's Mission Statement for Aural Rehabilitation Services described its mission to provide students with Cochlear Implants the skills necessary to develop listening, language and speech through the use of audition or listening. The sessions are individual and focus on guiding and coaching parents to help their children use hearing as

a primary modality in developing spoken language without the use of lip-reading or sign language. Therapy is focused on helping the child and parents integrate listening and spoken language into all aspects of life and develop natural patterns of audition, speech, language, and communication. AVT techniques are used to model for parents listening and language interactions that promote auditory development in everyday communications. Ongoing formal and informal diagnostic assessments to develop individualized treatment plans, monitor progress and evaluate the effectiveness of therapy are carried out by professionals currently in the process of becoming certified auditory verbal therapists.

30. AVT and ART have a common objective. This is to provide DHH children the skills necessary to develop language and speech through the use of audition or listening. That is, both teach the hearing impaired child to use hearing as a primary mode in developing speech, language and communication without the use of lip reading, sign language or tactile cues. Both therapies: utilize appropriate technology to achieve maximum benefit of learning spoken language through listening; require favorable auditory learning environments for acquisition of spoken language, including one-to-one teaching; promote and affirm the role of the parent as the primary model in helping the child learn to listen to his or her own voice, the voices of others, and the sounds of the environment; perform ongoing assessment, evaluation, and prognosis of the child developing auditory, language, speech, and cognitive skills; support full mainstreaming of the hearing-impaired child into the regular education system beginning at preschool so that the child will have mainstream peers as role models; and require active participation of the parents in order to improve spoken communication between the child and family members.

31. Ms. Kaparos had been providing ART to Student gradually incorporating AVT techniques as early as 2004 and continued to 2007, when Student enrolled in private

school. Ms. Kaparos described the therapy she provided to Student in the early start program years. She described teaching Student how to listen with her Implant. She further described using minimal lip reading to initially assist Student with her language and speech articulation. As Student progressed in age Ms. Kaparos used more AVT techniques. Currently Ms. Kaparos does not use lip reading or tactile cues when providing ART. She never used sign language with Student because it is not Student's preferred mode of communication. Student does not understand sign language. Patti Shawn also observed a number of Ms. Kaparos' therapy sessions with Student and confirmed that no lip reading, sign language or tactile cues were used. Ms. Kaparos indicated that she occasionally used visual cues such as pictures to clarify words and sounds. An example of one of the AVT techniques Ms. Kaparos used with Student was to sit beside Student so Student could not see her mouth while she spoke to Student. The purpose of this exercise was to re-focus Student on listening rather than lip reading. This is the same technique, and one of the goals of AVT and is consistent with District's mission statement, which Ms. Kaparos assisted in drafting. Ms. Kaparos provided therapy and services to Student consistent the District's ART mission statement.

32. Ms. Kaparos had also provided speech and language services to Student. In speech and language, therapy Ms. Kaparos used tactile cues such as throat touching to aid in the development Student's speech and articulation. She did not use tactile cues in ART.

33. Ms. Kaparos assisted in drafting the IEP. Ms. Kaparos believed that the offer of ART services was appropriate and met the criteria of AVT, and was designed to meet Student's unique needs in hearing, speech and communication, and respected Student's primary mode of communication, which was oral. She also believed 50 minutes of ART combined with 60 minutes of speech and language therapy was sufficient to provide Student educational benefit. Ms. Kaparos was a credible witness with experience in the field of oral education of DHH children. She also had at least three to four years

experience assessing and evaluating Student and providing therapy to Student, which qualified her to know Student's unique needs in the area of oral communication. Her opinion regarding the appropriateness of the IEP offer of ART was persuasive.

34. At hearing, Ms. Klaus offered clarification that while she did not make a specific recommendation at the IEP team meeting that District continue to provide Student AVT, the goals recommended in her assessment report were intended to be met by the continued use of AVT. Ms. Klaus admitted she did not engage in a lengthy discussion of her report with the IEP team and she did not object to the IEP offer of ART. In fact, Ms. Klaus agreed with District's mission statement and agreed further that the goals of both ART and AVT were the same, i.e. to help Student to use her Implant to hear and speak. She also used some of the same techniques, described by Ms. Kaparos, in her AVT therapy sessions with DHH students. Ms. Klaus also indicated that while it was not ever appropriate to use sign language and tactile cues in AVT, she did use visual cues (pictures) and minimal lip reading where appropriate as a last resort when clarifying words for a student. In her opinion, the primary differences between the two methods was that AVT therapy was provided on an individual basis, and AVT required adherence to the treatment principles set forth in Factual Finding 15. Despite her agreement that the goals of ART and AVT were substantially the same, she opined that two hours of AVT was necessary for Student to continue to progress in the development of her speech and language skills through the use of audition. Ms. Klaus presented as a credible witness to the extent that she acknowledged that ART and AVT were substantially the same. However, she provided no persuasive evidence to support her ultimate opinion that Student would benefit more from AVT as opposed to ART.

35. Mother did not believe ART incorporating AVT techniques met Student's needs because she had observed Ms. Kaparos in prior therapy sessions with Student using sign language, lip reading and tactile cues (such as throat touching). Mother believed that

the use of these techniques were not appropriate for Student because Student was an oral learner and did not use sign language or lip reading. Mother believed that AVT provided by a certified auditory verbal therapist was the only appropriate form of therapy to address Student's oral and communication needs. Given that Ms. Kaparos had used some lip reading with Student in the beginning years of therapy, but not in more recent years, it appears that Mother may have confused the time periods when she may have observed her use of lip reading in Student's therapy sessions. However, Student produced no witnesses who observed Ms. Kaparos' use of sign language or tactile cues with Student.

36. The evidence supports a finding that District-provided ART services incorporated AVT techniques without the use of sign language, lip reading or tactile cues, and was substantially the same type of therapy.

STUDENT'S UNIQUE NEEDS

37. Student presented no persuasive evidence that placement and other related services offered in the May 7, 2008, IEP were inappropriate to meet Student's needs.

LEGAL CONCLUSIONS

1. As the petitioning party, Student has the burden of persuasion on all issues (Schaffer vs. Weast (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].)

ISSUE: WHETHER THE MAY 7, 2008, INDIVIDUALIZED EDUCATION PROGRAM (IEP), OFFER OF AURAL REHABILITATION THERAPY SERVICES (ART) INSTEAD OF AUDITORY VERBAL THERAPY (AVT), PROVIDED STUDENT A FREE APPROPRIATE PUBLIC EDUCATION (FAPE) FOR THE 2008-2009 SCHOOL YEAR?

2. Student contends that the District's failure to offer AVT constitutes a substantive denial of FAPE, by ignoring Student's unique needs to learn in an oral environment utilizing oral communication. Student contends further that provision of AVT by a certified auditory therapist is necessary and appropriate for Student to derive

educational benefit. District contends that its offer of ART is appropriate as it addresses the same areas of need by providing therapy and services that utilize AVT techniques.

3. Under the federal Individuals with Disabilities Education Act (IDEA) and corresponding state law, students with disabilities have the right to a FAPE. (20 U.S.C. § 1400 et seq.; Ed. Code, § 56000 et seq.) FAPE means special education and related services that are available to the student at no cost to the parents, that meet the state educational standards, and that conform to the student's IEP. (20 U.S.C. § 1401(9); Cal. Code Regs., tit. 5, § 3001, subd. (o).)

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

5. In *Board of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley* (1982) 458 U.S. 176, 200, [102 S.Ct. 3034] (Rowley), the United States Supreme Court addressed the level of instruction and services that must be provided to a student with disabilities to satisfy the requirement of the IDEA. Under Rowley and state and federal statutes, the standard for determining whether a district's provision of services substantively and procedurally provided a FAPE involves four factors: (1) the services must be designed to meet the student's unique needs; (2) the services must be reasonably designed to provide some educational benefit; (3) the services must conform to the IEP as written; and (4) the program offered must be designed to provide the student with the foregoing in the least restrictive environment. While this requires a school district to provide a disabled child with meaningful access to education, it does not mean that the school district is required

to guarantee successful results. (20 U.S.C. § 1412(a)(5)(A); Ed. Code, § 56301.) The Court stated that school districts are required to provide only a “basic floor of opportunity” that consists of access to specialized instructional and related services, which are individually designed to provide educational benefit to the student. (Id. at p. 201.)

6. To determine whether a school district substantively offered FAPE to a student, the adequacy of the school district’s proposed program must be determined. (Gregory K. v. Longview School District (9th Cir. 1987) 811 F.2d 1307, 1314.) As long as a school district provides an appropriate education, methodology is left up to the district's discretion. (Rowley, supra, 458 U.S. at p. 208; see also, Adams v. State of Oregon (9th Cir. 1999) 195 F.3d 1141; Pitchford v. Salem-Keizer School District (D. Ore. 2001) 155 F.Supp.2d 1213, 1230-1232; T. B. v. Warwick School Commission (1st Cir. 2004) 361 F.3d 80, 84.) Courts are ill-equipped to second-guess reasonable choices that school districts have made among appropriate instructional methods. (T.B., supra, 361 F.3d at p. 84.)

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

8. Deafness is a low-incidence disability that requires “highly specialized services, equipment, and materials.” Low incidence disabilities make up less than one percent of a statewide enrollment in special education. (Ed. Code, §§ 56000.5, subds. (a)(1) & (2), 56026.5.) “Deafness involves the most basic human needs—the ability to communicate with other human beings... . It is essential for the well-being and growth of hard of hearing and deaf children that educational programs recognize the unique nature of deafness.” (Ed. Code, § 56000.5, subd. (b)(1).) Hard of hearing and deaf children primarily use two different language modes, sign language and oral (aural). Oral learners

express and receive language orally with or without visual cues. (Ibid.; Ed. Code, § 56026.2.) In developing an IEP for a child who is deaf, the IEP team should take into consideration: the student's communication needs; the student's and the family's preferred mode of communication; linguistic needs; severity of the hearing loss; social and emotional needs; and the opportunities for peer interaction and communication. (Ed. Code, §§ 56000.5, subd. (b)(2), 56341.1, subd. (b)(4); Notice of Policy Guidance, U.S. Department of Education, October 26, 1992, at 19 IDELR 463A.)

9. In this case, Student did not challenge the IEP offer of placement or any other services and provided no evidence that they were inappropriate. Student's sole dispute is with District's offer of designated instructional services (DIS) in the form of ART for 50 minutes per week on an individual basis. In her closing brief Student also raised, for the first time, that the IEP goals were also inappropriate; however, Student presented no evidence at hearing to support this contention. Student simply argues that two hours of AVT provided by a certified auditory verbal therapist is more appropriate than ART. Student's parents believe that District use of ART incorporates lip reading and sign language. Parents do not want Student to become a lip reader or to sign. Because of this, Parents believe that the techniques used in AVT are better suited to meet Student's needs as an oral learner. The evidence does not support Student's contentions.

10. The District offered program, using ART, differs very little from AVT and has much in common with it. The testimony of Ms. Klaus, Student's AVT therapist, was that ART as defined in District's mission statement was appropriate therapy for Student because of its focus on development of Student's language and speech and auditory skills. Her testimony was consistent with Ms. Kaparos, who had previously provided ART to Student incorporating AVT techniques, as observed by Ms. Shawn. Both methods share a common goal and both share substantially the same principles and approaches to providing therapy. The primary difference is that AVT is believed to be better provided by

a certified specialist in auditory verbal therapy. Student provided no proof that such is the case. Certification is not mandated by either state or federal law and the A.G. Bell Academy requires applicants for certification to perform hundreds of hours of AVT therapy prior to certification. Further, the differences between ART and AVT are a matter of methodology and District's choice of methodology is discretionary. Student failed to show that ART was not an accepted and proven therapy that served the same purpose as AVT. Nor did Student prove that ART was inappropriate. Although the Student argued that AVT was the "best" and only appropriate method for the Student, District is only required to provide an "appropriate" methodology.

11. Student failed to prove that the IEP offer of DIS in the form of ART for 50 minutes per week, on an individual basis failed to meet her unique needs and did not provide educational benefit.

12. In conclusion, the evidence demonstrates that the offer of ART contained in the May 7, 2008, IEP considered Student's unique needs, and was appropriately designed to provide her with educational benefit. Student produced no persuasive or credible evidence in support of her claims that District failed to offer a FAPE in the 2008-2009 school year. Student has not met the burden of persuasion on the sole issue in her Complaint. (Factual Findings 1 to 37; Legal Conclusions 1 to 11.)

ORDER

Student's request for relief is denied.

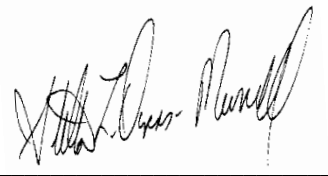
PREVAILING PARTY

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

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by this Decision. Pursuant to Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction, within ninety (90) days of receipt.

DATED: September 19,

A handwritten signature in black ink, appearing to read "Stella L. Owens-Murrell", is written over a light gray rectangular background. The signature is cursive and somewhat stylized.

Stella L. Owens-Murrell

Administrative Law Judge

Office of Administrative Hearings