BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

In the Matter of: STUDENT, Petitioner, vs. FULLERTON SCHOOL DISTRICT, Respondent.	OAH No. N 2005070430
FULLERTON SCHOOL DISTRICT, Petitioner, vs. STUDENT, Respondent.	OAH No. N 2005090296

DECISION

Administrative Law Judge Peter Paul Castillo, Office of Administrative Hearings, Special Education Division (OAH), State of California, heard this matter in Fullerton, California, on March 6-10 and 22, 2006.

N. Jane DuBovy represented the Student, and was assisted by her associate, Mandy Favalora. Student was not present during the hearing. The Student's Parents were present during the hearing.

Cynthia A. Yount, Attorney at Law, represented the Fullerton School District (District). Also present was Lourene Happoldt, District Student Support Services.

The record remained open to receive written briefs, which OAH received on April 14, 2006. The record closed on April 14, 2006.

ISSUES

In the Due Process Complaint, and at hearing, the District and Student raised the following contentions:[1]

1. District asserts that it adequately assessed Student in the autism consultation, psychoeducational, occupational therapy, and speech and language assessments.

2. Student asserts that the District failed to offer Student a sufficient amount of speech and language therapy to meet Student's needs.

3. Student asserts that the District failed to offer Student a sufficient amount of occupational therapy to meet Student's needs.

4. Student asserts that the District failed to offer Student a sufficient amount of individual tutoring/home behavioral support to meet Student's needs.

5. Student asserts the District failed to offer Student an appropriate behavioral intervention support in the classroom by not providing Student, during the times that Student was mainstreamed in general education, with an aide who was trained to assist Student in a class routine and to facilitate social modeling.

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[1] OAH issued an Order on February 28, 2006, that limited the issues for hearing. This Order prohibited Student from challenging the sufficiency of the January 9, 2006 Individual Education Program in this hearing as those allegations are outside the scope of the June 30, 2005 Due Process Complaint and Student has not obtained the approval of OAH or the District to amend Student's Complaint. (Cal. Ed. Code § 56502(i) and § 56509.)

6. Student asserts that the District did not provide Student with sufficient aids and supports to ensure Student's participation and interaction with non-disabled peers that would allow Student to access and make progress in the general education.

7. Student asserts that the District did not provide Student with a public education in the least restrictive environment by limiting Student's mainstreaming time in the general education environment.

8. Student asserts that the District failed to write appropriate goals and objectives that were sufficiently comprehensive, objective, or measurable to meet Student's unique needs as the goals were limited to a special education classroom that did not permit Student to be involved or progress in a general education environment.

FACTUAL FINDINGS

PRELIMINARY FINDINGS

1. Student, born February 5, 1999, lives with his parents within the District. Student entered the District at the start of the 2004-2005 school year. Student qualifies for special education under the classification of autism.

2. Before residing within the District, Student resided within the Buena Park School District (Buena Park), which provided Student with special education services. Student's last Individual Education Program (IEP) meeting with Buena Park occurred on June 11, 2004. After Student's Parents moved into the District, the District convened an IEP meeting on August 31, 2004, and offered Student the same program and services as Buena Park had offered. As both districts belonged to the North Orange County Special Education Local Plan Area (SELPA), LouAnne Boyd, the SELPA's autism coordinator, was designated to continue to provide Student with behavioral consultation. The District placed Student in a special day class (SDC) for moderately-to-severely disabled students. This classroom was designed for autistic children based on the District's "Success" program used Applied Behavioral Analysis, Distinct Trial Techniques services in a language

rich environment that used visual communication modalities. Parents indicated that they would like more mainstreaming for Student once his behavior problems improved.

I. ADEQUACY OF THE DISTRICT'S ASSESSMENTS OF STUDENT CONCERNING THE PSYCHOEDUCATIONAL, OCCUPATIONAL THERAPY, SPEECH AND LANGUAGE AND AUTISM CONSULTATION.

3. In December 2004, the District conducted triennial psychoeducational, occupational therapy, and speech and language assessments for the January 2005 triennial IEP. In May 2005, the District prepared an autism consultation to make recommendations for the 2005-2006 school year. Parents do not challenge the qualifications of the assessors. Instead, Parents' challenge focuses on the assessors' failure to assess Student in all areas of suspected disability, especially in those areas focusing on Student's social skills. Parent did not formally notify the District of their objections to the assessments until June 30, 2005.

A. Psychoeducational Assessment

4. District's school psychologist, Sue Khalili, conducted the psychoeducational assessment. (Exh. 35) Ms. Khalili chose the test instruments for the assessment based on best practices recommendations of the SELPA. Parents contend that the testing instruments Ms. Khalili used do not accurately represent Student's strengths and weaknesses. Parents' expert, Dr. Sandra R. Kaler, challenged Ms. Khalili's use of the Leiter Revised International Performance Scale (Leiter)[2] as Leiter would overestimate Student's performance. However, Ms. Khalili established that Leiter is an appropriate test for non-verbal autistic students, and that the Wechsler Preschool and Primary Scale of Intelligence, used by Dr. Kaler instead of Leiter, is not normed for moderately-to-severely autistic children, like Student. Ms. Khalili's results were consistent with her observations of

[2] The Leiter scale is a non-verbal measure of a person's intellectual functioning.

Student's abilities, and those which Student's teacher and Parents reported. Ms. Khalili adequately administered the other testing instruments noted in her assessment, and the results she obtained were an accurate representation of Student in the areas assessed in December 2004.

5. Ms. Khalili adequately assessed Student's ability to progress in a general education setting, and Student's social skills. Ms. Khalili determined that Student had difficulties in the moderate-to-severe SDC, and that Student, at this time, was not ready for any additional mainstream time. As to social skills, Ms. Khalili used the American Association of Mental Retardation (AAMR) Adaptive Behavior Scale, which assesses a student's adaptive behaviors. The assessment contains adequate information as to Student's social skills, and Student's difficulties in these areas. (Exh. 35, pp. 196-199.) The assessment documents Student's socialization deficits and need for a curriculum that is language rich with focus of pragmatic judgment, social communication and social interaction to teach Student skills to be able to integrate into a general education environment.

6. Ms. Khalili's assessment is an accurate representation of Student in December 2004. It covered all areas of Student's suspected disabilities, including socialization, and adequately evaluated Student's ability to participate in the general education.

B. Occupational Therapy Assessment

7. Parents contend that the District failed to assess Student in all areas of suspected disability, especially in the areas of sensory integration and processing. Sensory integration involves a child's ability to properly respond to sensory input, and is a common area of difficulty for autistic children, which leads these children to engage in sensory seeking behaviors, such as spinning, pinching one-self, or vocal self-stimulation.

8. Michelle Lesnick provided Student with occupational therapy services during the 2004-2005 school year.[3] Ms. Lesnick prepared an Occupational Therapy Triennial Report, dated January 6, 2005. (Exh. 31.) The assessment focused on Student's fine and gross motor skills and visual motor integration. The assessment glossed over Student's needs in the area of sensory integration, in contrast with the private assessment conducted by Cornerstone Therapies (Cornerstone), which was prepared at the same time. (Exh. 32.) The Cornerstone assessment noted Student's deficiencies concerning sensory processing, and recommended that these deficiencies needed to be further assessed as to the impact on Student's functioning at school. Ms. Lesnick's January 6, 2005 assessment did not address Student's sensory processing deficiencies and their impact on Student's ability to progress in a general education environment.

9. On March 29, 2005, Ms. Lesnick prepared an Occupational Therapy Progress Report (Exh. 40). The District used this report to support its April 5, 2005 IEP offer to reduce Student's occupational therapy services to a weekly 25 minute session, with 30 minutes per month classroom consultation. At this time, Student attended a general education kindergarten class for 15 minutes per day. Unlike the January 2005 Report, which did not note any sensory processing issues, the March 2005 Report noted sensory processing issues in Darlene Naslund's general education kindergarten class. Ms. Lesnick reported that Student engaged in self-stimulatory voicing when participating in unstructured activities and activities too difficult for Student to complete. Ms. Boyd's Autism Consultation noted that Student's self-stimulatory behaviors increased in less structured environments, which impeded Student's ability to participate in the general education environment. (Exh. 43, p. 245.) Ms. Lesnick's March 2005 Report did not address

[3] Ms. Lesnick is employed by Gallagher Pediatric Therapy, a certified non-public agency, which the District contracts with to provide occupational therapy and assessment to students.

this issue as the report presupposed Student's continuation in a SDC setting and did not analyze the difficulties Student faced in a general education setting and skills Student needed to progress.

10. Not until Ms. Lesnick's July 23, 2005 Progress Report (Exh. MMM) did the District assess in depth Student's sensory integration deficiencies. This report states that occupational therapy, utilizing a frame of reference of sensory integration, is normally only provided to a student for six months to two years. The July 2005 Report continues that Student had received two years of occupational therapy, but that Student should still continue to receive occupational therapy due to Student's failure to remain on task when performing non-preferred activities. However, this report did not adequately assess the occupational therapy services Student required to succeed in the general education.

11. Ms. Lesnick's January and March assessments failed to adequately mention Student's sensory processing deficits, or Student's need in the area in sensory integration. Ms. Lesnick's Occupational Therapy Assessment and two Progress Reports presuppose a restrictive environment for Student and did not consider how Student could succeed in general education environment. Therefore, District failed to assess Student in all areas of suspected disability by not adequately addressing Student's sensory integration and sensory processing deficits, and not considering Student's needs in these areas to progress in a general education environment.

C. Speech and Language Assessment

12. In December 2004 and January 2005, Brittney Ryan, a District speech and language pathologist, conducted a triennial speech and language evaluation on Student. (Exh. 28.) Ms. Ryan has provided Student with speech and language services through Student's entire attendance at Commonwealth. At the time Ms. Ryan conducted this assessment, she possessed the annual report conducted by Cornerstone (Exh. 25), Student's private speech and language provider. Both reports found that Student had significant language deficiencies, especially in expressive and receptive language.

13. Although Ms. Ryan had the Cornerstone report, she did not review the report before drafting her assessment report. The Cornerstone Report noted the need for continued work on Student's pragmatic language and social communication, which are typical areas of deficit for autistic children. However, District's assessment did not assess Student in the areas of pragmatic language and social communication. Instead, the District's assessment focused on whether Student was eligible for speech and language services, and skills Student needed for his SDC. The District's assessment did not cover what Student required, such as pragmatic language and social communication, to succeed in a general education environment. Thus, the District's speech and language assessment failed to assess Student in all areas of suspected disability.

D. Autism Consultation

14. Parents contend that Ms. Boyd failed to assess Student in the general education environment and the assessment does not contain sufficient information as to Student's social skills. Ms. Boyd is employed by the SELPA as its autism coordinator and provides consultative services to the District. Ms. Boyd provided Student with behavior consultative services at Buena Park (Exh. 17), and continued to provide Student consultative services through the pendency of this action, except while she was on maternity leave in early-2005. At the April 5, 2005 IEP meeting (Exh. 41), the IEP team requested that Ms. Boyd prepare a consultation report concerning Student's school program, which Ms. Boyd prepared on May 27, 2005. (Exh. 43.)

15. When Ms. Boyd observed Student on May 4, 2005, Student was spending 15 minutes per day in Ms. Naslund's kindergarten class. Parents challenge Ms. Boyd's assessment for observing Student during his mainstreaming time in the library and not in Ms. Naslund's class. However, Student's participation in the library circle reading time is substantially similar to Student's activities while in Ms. Naslund's class as to Student's activities and interaction with general education students. Student required the same skill set necessary to pay attention and participate during the library circle reading time as

needed for Ms. Naslund's kindergarten class. As for information concerning Student's social skills, this assessment contains adequate information as to Student's participation in group and individual activities and Student's interactions with adults and other students.

16. As to Parents' contention that Ms. Boyd's assessment failed to consider whether Student could progress in the general education environment, Ms. Boyd's assessment looked at the various environments Student participated in, including general education. The assessment then described Student's strengths and weaknesses, and the skills that Student needed to learn to more successfully participate in the general education setting. The assessment did confirm that Student's aide needed to do more to teach Student skills that Student needed in general education environment through the use of visual supports and pre- teaching of lessons. Therefore, Ms. Boyd's assessment adequately considered whether and how Student could progress in the general education environment.

17. Finally, Ms. Boyd's assessment accurately represented Student's abilities at the time of her assessment. Parent's reliance on Dr. Kaler to challenge Ms. Boyd's assessment is not appropriate as Dr. Kaler's assessment and observations occurred nearly five months later. Also, Dr. Kaler's critique of Ms. Boyd focused on the interpretation of Ms. Boyd's assessment findings and observations, and not the adequacy of the assessment.

II. DID THE DISTRICT OFFER STUDENT A SUFFICIENT AMOUNT OF SPEECH AND LANGUAGE THERAPY TO MEET STUDENT'S NEEDS?

18. Parents contend that the District's provision of only one hour of speech and language therapy in a classroom, not an individual setting, failed to meet Student's needs. The District contends that the speech and language services that it provided were adequately designed to provide Student with some educational benefit. Parents provided Student with additional private speech and language services at Cornerstone while Student attended Buena Park and during the pendency of this action.

A. 2004-2005 School Year, Including the 2005 Extended School Year

19. Student's first IEP with the District was the August 31, 2004 interim IEP (Exh. 22), which provided Student with twice weekly, thirty minute speech and language therapy sessions, the same level of services that Student received at Buena Park. The District held the next IEP meeting on October 5, 2004 (Exh. 24) and changed Student's speech and language services to four times per week for 15 minute sessions. The District changed the speech and language to 15 minute sessions since Student could not attend a 30 minute session. The District continued to provide the same level of speech and language services in the January 12, 2005 IEP (Exh. 36) and April 5, 2005 IEP (Exh. 41). These IEPs do not mention whether the District would provide Student with this service in an individual or group setting. During this school year, Student also received two hours per week of private speech and language therapy through Cornerstone.

20. The main difficulty in determining whether the District offered Student adequate speech and language services is the fact that Student received private speech and language services that overlapped significantly as to Student's IEP goals. While Ms. Ryan had the Cornerstone annual report, she did not review it as part of her triennial assessment, which contained proposed goals for the January 12, 2005 IEP, nor did she discuss the Cornerstone report with the IEP team. Parents established that Student's progress in meeting the prior IEP speech and language goals, which led to the January 12, 2005 IEP goals, was due Student receiving speech and language services from both the District and Cornerstone. The District could not rebut this as the District never attempted to determine at the time of the IEP meetings whether Student required both the District and private speech and language services for Student to obtain an adequate educational benefit.

21. Ms. Ryan stated that she and the other instructor set up of parallel instruction in the SDC classroom. With parallel instruction, Ms. Ryan would work with Student, and the other therapist would work in close proximity with another student. Ms.

Ryan stated that she and the other therapist provided therapy in this manner due to lack of adequate space and not being able to get sensory neutral room. The problem with the District's provision of these services to Student is the distractions, which are a significant cause of the lack of attention that Ms. Ryan and her colleague noted, especially due to Student's hypersensitivity to sound. (Exh. KKK.) Student's Mother, and corroborated by Cornerstone reports during this school year, established Student's ability to successfully handle one hour individual sessions in a clinic setting during the 2004-2005 school year. The District failed to provide adequate speech and language services to Student by providing the services in a group environment and in a location with numerous distractions that significantly limited Student's ability to stay on task and obtain an adequate benefit from the therapy.

22. The November 2004 Cornerstone report stated Student's need for pragmatic speech and language goals, which the District did not dispute as an area of need. However, Ms. Ryan could not explain why the January 2005 IEP contained no pragmatic speech and language goals. Pragmatic communication is important, especially for autistic children, as pragmatics is the foundation for social interaction. While Ms. Ryan stated that she was working on pragmatic communication as part of the January 2005 IEP, the District did not add pragmatic communication goals to Student's IEP until the June 2, 2005 IEP, even after Student started to attend a general education class in February 2005. Thus, the District failed to meet Student's need to learn pragmatic language skills.

23. The District failed to offer Student adequate speech and language services by not offering Student services to improve Student's pragmatic communication to improve Student's deficits in social interaction and skills. The District's failure to provide Student with therapy in an individual setting, removed from known distractions to Student, prevented Student from obtaining an adequate educational benefit from the District's services. Finally, the District could not disprove that Student's progress that the District

noted was more from Student's private speech and language services in an individual, clinic setting.

B. 2005-2006 School Year Through January 8, 2006

24. At the June 2, 2005 IEP meeting, which was planning for next school year, the District proposed for the first time social interaction speech and language goals in pragmatics. These goals included Student learning techniques for turn taking with a group of peers and responding to teacher questions. The IEP noted that Student's attention span had increased, which coincided with Student taking medications in April 2005. The District continued to offer Student with speech and language services four times per week with 15 minute sessions, which the District provided through January 8, 2006.

25. Student continued to receive speech and language services in an isolated portion of a SDC classroom. This prevented Student from receiving an adequate benefit from this service and necessitated Student receiving private speech and language services at Cornerstone. As to Student's ability to attend for a thirty minute session, Emily Molitor, Student's speech and language therapist at Cornerstone during this school year, stated that Student attended for up to one hour speech and language individual sessions in a clinic setting at Cornerstone with positive reinforcers and minimal breaks. Also, Dr. Kaler's assessment report and testimony, along with Ms. Molitor, show that for this school year that Student required two hours per week of speech and language services due to Student's significant language delays. Therefore, Parents established that Student required for this time period two hours of speech and language therapy in an individual setting so that Student could obtain some education benefit due to Student's significant speech and language deficits, especially in the area of social communication and pragmatic language.

III. DID THE DISTRICT OFFER STUDENT A SUFFICIENT AMOUNT OF OCCUPATIONAL THERAPY TO MEET STUDENT'S NEEDS?

A. 2004-2005 School Year, Including the 2005 Extended School Year

26. At the time of the January 12, 2005 IEP meeting, Ms. Lesnick provided Student with two weekly 50 minute sessions in a clinical setting, which focused on improving Student's behavioral organization, sensory processing and upper body strength. Starting with the January 12, 2005 IEP, the District provided Student with 50 minutes of occupational therapy per week. During this school year, Student did not receive private occupational therapy services.

27. Parents contend that the District did not provide Student with adequate occupational therapy in the areas of vestibular processing and tactile processing. Vestibular processing involves a person's processing of sensory information in relation to body movement and balance. Tactile processing involves a person's touch. Student's Mother observed that Student had significant deficits concerning vestibular processing and tactile processing. However, the testimony of Ms. Lesnick and Shelley Berglund, Student's SDC teacher, clearly indicate that Student could tolerate different tactile sensations. Student did not have vestibular processing problems based on his ability to ride a tricycle, use of playground equipment and demonstrable adequate body awareness. Student could also stand in line and sit in circle time with other Students.

28. As to sensory processing in the areas oral and auditory processing, the District did not address these known deficiencies, which limited Student's ability to succeed in the general education environment. As to oral processing, Student would mouth items, such as placing his hand in his mouth, especially during times of stress. As to auditory processing, Student was extremely sensitive to loud noises, which would cause Student to freeze up and not participate in his education. Ms. Lesnick felt that the District had already addressed Student's oral and auditory processing and self stimulation problems by the time of the January 2005 IEP meeting. As to Student's ability to

participate in Student's SDC class, Ms. Lesnick was correct as the behaviors that Student exhibited in these areas upon his arrival at the District had decreased significantly and were not impacting Student's ability to participate in the SDC curriculum. However, Ms. Lesnick failed to consider the impact of these deficiencies as to Student's ability to participate in the general education environment, or when Student needed to perform a non-preferred task. Ms. Lesnick's belief that these had been resolved is evidenced by the fact that she did not believe that Student required a sensory diet, which the Parents had to request at the January 2005 meeting, to assist Student with sensory strategies and activities to help Student organize his behavior to participate in school activities.

29. The District did not adequately address Student's self-stimulation behaviors that arose after the start of February 2005, when the District had Student spending 15 minutes per day in Ms. Naslund's general education class. Ms. Ryan noted that Student continued to mouth his hand during speech and language therapy and froze if Student heard another student cry loudly. Ms. Lesnick reported in her March 2005 Progress Report that Student engaged in mouthing items and self-stimulatory behaviors in his general education class. Ms. Lesnick recommended that Student's activities remain structured to promote a successful transition to general education. Ms. Lesnick also recommended that Student's occupational therapy be reduced to once per week for a 25 minute treatment session and a once per month 30 minute classroom consultation as Student was making adequate progress in the area of fine motor skills concerning handwriting and buttoning.

30. The District incorporated Ms. Lesnick's recommendation in the April 2005 IEP offer, which the Parents rejected. The April 2005 IEP meeting noted Student's self-stimulatory behaviors that Ms. Lesnick noted, and stated that this behavior was an organizing technique. However, the District did not propose any additional services to address Student's behavior, which was directly tied to Student being in the less structured general education setting.

31. The evidence established that Student had difficulty adjusting to the less structured general education environment, which is not surprising for an autistic child of Student's age. When Student had trouble adjusting to the SDC at Commonwealth in the fall of 2004, the District employed several strategies through Student's occupational therapy sessions to help Student organize his behavior. However, when the District moved Student into the general education population, and Student started exhibiting similar behaviors, the District failed to adequately address these issues through occupational therapy, which negatively impacted Student's ability to obtain an adequate education benefit from his participation in mainstreaming activities.

B. 2005-2006 School Year through January 8, 2006

32. At the June 2, 2005 IEP meeting, the District proposed reducing Student's occupational therapy to once per week for a 25 minute session, with a monthly 30 minute class consultation, based upon Ms. Lesnick's recommendation in her March 29, 2005 Progress Report. As noted previously, Ms. Lesnick's recommendation failed to adequately take into consideration problems Student had in a less structured environment general education classroom. While the District believed that Student had made satisfactory progress towards his sensory goals, the District's position is based on Student's progress in the restrictive SDC setting. The District failed to adequately consider Student's needs in the less structured general education environment, or even the 30 minutes per day in the learning handicapped classroom that the District offered. Parents' rejected the District's offer, and the District continued to have Student in Ms. Naslund's classroom despite never being consented to by Parents.

33. Parents established that the District needed to provide Student with propioceptive techniques to assist Student organize himself, especially when Student was in a less structured environment. As Leslie Greenwood, a private occupational therapist who has provided Student with services since September 2005, testified, Student requires propioceptive techniques, like climbing and heavy movement, to get Student focused and

calmed. The use of propioceptive techniques and teaching skills is needed to modulate Student's over stimulation that occurs in a less structured environment. The District did not establish why it did not provide Student with a sensory strategy to help Student succeed in the general education environment, even though the evidence established that Student's sensory processing difficulties were hindering his ability to remain attentive during mainstream opportunities.

IV. DID THE DISTRICT FAILED TO OFFER STUDENT A SUFFICIENT AMOUNT OF INDIVIDUAL TUTORING/HOME BEHAVIORAL SUPPORT TO MEET STUDENT'S NEEDS?

A. 2004-2005 School Year, Including the 2005 Extended School Year

34. The District provided Student with five hours per week of individual tutoring and home behavior support from the January 12, 2005 IEP through the end of the school year to meet Student's educational and behavioral needs. The District provide this service through SEEK Education, Inc. (SEEK),[4] and required Parents to pay for the individual tutor personally, and then be reimbursed by the District.

35. SEEK provided Student with services while Student resided within Buena Park. (Exhs. 16 and 17.) At this time, Student had significant problems with eloping from his preschool class and in the community, engaging in self-stimulatory behavior, such as spinning alone, and having an very short attention span. Because of Student's behavior problems, Buena Park had SEEK assess Student. SEEK recommended, and the IEP team agreed, that Student would receive seven hours per week of one-on-one behavioral support, with one hour being consultation at Student's home for three months. SEEK would provide six hours per month of home consultation, with one of these hours for collaboration with Student's school. The goal for the individual tutoring was to decrease Student's negative behaviors, such as elopement and temper tantrums, through ABA techniques, and to teach parents techniques to handle these behaviors. At the time

[4] SEEK is a certified non-public agency.

Student transferred into the District and through the January 2005 IEP, Student received seven hours per week of services with an individual tutor, Susan Yang. During the 2004-2005 and 2005-2006 school years, Parents paid Ms. Yang for her services, and then billed the District for reimbursement. Parents did not request that the District provide these services in another matter because Parents did not or could not pay Ms. Yang and then await reiumbursement.

36. For the January 2005 IEP meeting, SEEK prepared a report that detailed Student's progress on goals from September 2004 through the IEP meeting. (Exh. 34.) The report recommended reducing the individual tutoring services to five hours per week based on Student's improvement. The report and Ms. Yang noted a reduction of Student's behavior excesses, such as running away and self-stimulatory behaviors, and Student's increased ability to request assistance and breaks. Shoshana Levin, Behavior Consultant, and Jason Moseley, Senior Behavior Consultant, from SEEK attended the January 2005 IEP meeting, where they presented the SEEK report, which led to the reduction of services to five hours per week, to which Parents consented.

37. While the additional two hours could maximize Student's potential, Parents did not prove that Student required the additional two hours to receive some meaningful education benefit. Mr. Moseley's and Ms. Yang's testimony showed the improvements that Student made and that the improvement was satisfactory. While Parents are correct that the individual therapy should have been in daily one hour sessions, versus the two to three hour sessions that occurred due to Ms. Yang's schedule, Parent's did not establish that Student did not obtain an adequate educational benefit.

B. 2005-2006 School Year through January 8, 2006

38. At the start of the 2005-2006 school year, Student continued to receive five hours per week of individual tutoring and home behavior through SEEK with Ms. Yang. In preparation for the January 9, 2006 IEP meeting, SEEK prepared a Progress on Goals. (Exh. 54, pp. 325-333.) This report summarized Student's progress concerning Student's

previous goals. The reported noted that Student met the goal of requesting proper attention from adults and increasing Student's wait time for a preferred activity. The report also noted that Student's self-stimulatory behaviors had decreased. While Student's eloping behaviors had recently increased at home and in the community, no one had reported increased behavior excesses at school. Mr. Moseley and Ms. Yang established the progress that Student made as a result of the individual tutoring and home behavior, and Parents did not prove that Student did not receive adequate educational progress, especially as Student's attention and behaviors improved in school in both the special education and general education classes, as documented in Dr. Kaler's report.

V. DID THE DISTRICT OFFER STUDENT AN APPROPRIATE BEHAVIORAL INTERVENTION SUPPORT IN THE GENERAL EDUCATION CLASSROOM?

A. 2004-2005 School Year, Including the 2005 Extended School Year

39. Parents assert that the District did not provide Student, during the times that Student was mainstreamed in the general education, with an aide who was trained to assist Student in a class routine and to facilitate social modeling. Parents did not present evidence that the Student's aide was not qualified to assist Student.

40. Although the District placed Student in Ms. Naslund's general education kindergarten class at the beginning of February 2005, the District did not document this in any IEP. Ms. Khalili acknowledges that Student's IEPs did not contain information as to what Student's aide would do with Student while in Ms. Naslund's class. Ms. Naslund stated that the aide's function was to ensure that Student did not elope and paid attention in class. Student rushed to complete his task in the general education class, and would then be allowed to go off and read books or play with the class computer, activities that Student prefers. (May 18, 2005 IEP Addendum, Exh. 44.) The aide did not attempt to assist Student in any social modeling skills or to have Student remain with the other general education Students after the completion of the required task. While Student did not have the verbal skills to interact with other general education student's, Dr. Kaler established

that numerous non-verbal interaction opportunities exist for students of Student's age and that teaching Student non-verbal interaction would assist Student in improving his social skills.

41. Parents established that the District failed to provide Student with an aide to assist Student in learning social modeling skills, which Student needed to make some educational progress. The District did not update Student's IEP to reflect Student's 15 minutes per day in Ms. Naslund's class and the skills Student was supposed to be obtaining. This denied Parents a meaningful opportunity to participate in the IEP process as the District did not afford Parents the opportunity to discuss the aide's role in Ms. Naslund's class.

B. 2005-2006 School Year through January 8, 2006

42. While the June 2, 2005 IEP did not propose having Student in a general education class, the District continued to have Student attend Ms. Naslund's classroom for 15 minutes per day, which increased by the end of the calendar year to 30 minutes. Student's aide's duties had not changed as to the aide's responsibilities while in Ms. Naslund's class with Student. The District did not update Student's IEP to reflect the increase in general education time. And as in the prior school year, the District did not include in an IEP needed social modeling goals for Student, nor did the aide assist Student in social modeling during Student's time in Ms. Naslund's class, or class participation.

VI. DID THE DISTRICT PROVIDE STUDENT WITH SUFFICIENT AIDS AND SUPPORTS TO ENSURE STUDENT'S PARTICIPATION AND INTERACTION WITH NON-DISABLED PEERS?

43. Parents assert that the District failed to provide Student with adequate aids and supports that would allow Student to participate and interact with non-disabled peers to access and make progress in the general education.

A. For the 2004-2005 School Year, Including the 2005 Extended School Year

44. Statements from District staff, especially by Ms. Khalili and Ms. Boyd, showed that the District wanted to ensure that Student had basic skills, especially verbal, before Student could interact with non-disabled students. The District established the need for Student to possess basic verbal skills to access the general education environment and to interact with these Students. However, for autistic children, as Dr. Kaler established, the fact that Student may lack skills to verbally communicate, does not mean that social goals could not be created for non-verbal interaction and modeling, such as catch or parallel play.

45. The District in the IEPs for this school year created situations for Student to be with typically developing students, and outside the IEPs with Student being in Ms. Naslund's class. However, the District did not use any supplementary aides or aide support to assist Student to interact with the general education students. The District did not give Ms. Naslund a copy of Student's IEP for her to assist Student in these goals. During recess time, Student played alone and the District made no attempt to have Student play with other students, or attempt to model their behavior through his aide.

46. The evidence established that while the District created opportunities for Student to participate with non-disabled students, the District did not attempt during these opportunities to provide Student with aids or support to allow Student to interact with these students. Therefore, the District's failure to provide Student with adequate aids or support did not allow Student to participate with non-disabled students so that Student would receive some education benefit from the mainstreaming opportunities that the District created.

B. 2005-2006 School Year through January 8, 2006

47. While the District in the June 2, 2005 IEP added goals for Student to learn pragmatic communication through turn taking, learning to raise his hand in class, and to

respond to questions from his teacher, these goals were designed for a special education setting. The District did not provide Student with goals for Student in the offered mainstreaming time to interact with typically developing peers. During the 2005-2006 school year, the evidence established that the District continued to fail to provide Student with adequate aids or support to allow Student to participate with non-disabled students. Student continued to attend Ms. Naslund's class with no opportunity for Student to learn social modeling skills.

VII. DID THE DISTRICT PROVIDE STUDENT WITH A PUBLIC EDUCATION IN THE LEAST RESTRICTIVE ENVIRONMENT?

48. Parents assert that the District did not educate Student in the least restrictive environment by limiting Student's mainstreaming time in the general education to approximately 15 minutes per day in the 2004-2005 school year, and up to 30 minutes per day in the next school year. The District contends that during these school years that Student required a structured environment to succeed in his educational program, and that Student did not have the required basic skills, which the District was working on, to obtain an adequate benefit from any additional mainstreaming time.

A. 2004-2005 School Year, Including the 2005 Extended School Year

49. Commonwealth Elementary has three class environments. The least restrictive environment is the general education classrooms. The next least restrictive setting is the learning handicapped classroom for mild-to-moderately impaired special education students, which has 15 students per class. The most restrictive class setting is the SDC for moderately- to-severely impaired students, which has eight students per class. The District placed Student in Ms. Berglund's moderate-to-severe SDC.

50. Based on the observations of Ms. Berglund, Ms. Ryan, Ms. Lesnick and Ms. Boyd, at time of the January 12, 2005 IEP meeting, Student's behavior, especially elopement, had improved, but Student still had significant problems concerning his

attention span and speech and language deficits. The SEEK and Cornerstone reports do not indicate that Student was ready for more general education time. The District in the January 12, 2005 IEP properly determined Student's ability to participate in the general education environment. The District documented sufficiently the decision for no additional mainstreaming. Parents did not prove that the District's decision was wrong or that the District did not discuss this issue fully with Parents, who requested more mainstreaming opportunities for Student. The District did consider Parents' request and determined that even the less restrictive learning handicapped classroom was not appropriate as the learning handicapped class is more independent and Student required the structure of Ms. Berglund's moderate-to-severe SDC to receive some educational benefit.

51. By the April 5, 2005 IEP meeting, Student had been attending for two months Ms. Naslund's general education kindergarten for 15 minutes per day. Despite the fact that this placement constituted a significant change to Student's placement, the District did not update Student's IEP, which prevented Parents from being able to meaningfully participate in decision making process. While Student had behavior and attention problems when he first attended Ms. Naslund's class, these behaviors had decreased significantly so that could participate up to the 15 minutes per day. At the time of April 2005 IEP meeting, 15 minutes per day was an adequate amount of general education time for Student based on attention issues identified by Ms. Ryan, Ms. Berglund and Ms. Naslund. Student was able to sit still for no more than two minutes, and up to four to ten minutes on six occasions. (Exh. 41, p. 231.) However, the District did not discuss whether Student should also be placed in the learning handicapped classroom as middle ground to learn needed social skills in a less restrictive setting than Ms. Berglund's class as Student's behavior and attention improved. At this time Student was in the top third in Ms. Berglund's SDC class, and the eldest student as Ms. Berglund's class was designed for pre-kindergarteners. As for the May 18, 2005 IEP meeting, Student's behavior continued to

improve in the general education environment, but the District decided to maintain Student's 15 minutes in the general education classroom.

52. The District failed to conduct an adequate analysis during either the April 2005 or May 2005 IEP meetings as to Student's ability for more instruction in a less restrictive setting. The District never documented in Student's IEP what educational benefits Student was supposed to obtain in Ms. Naslund's classroom. Also, the District did not analyze whether Student could benefit from placement in the learning handicapped room as a less restrictive setting. Finally, the District did not document Student's change of placement, nor obtain Parents' consent before placing Student in Ms. Naslund's classroom.

B. 2005-2006 School Year through January 8, 2006

53. During the course of this school year, Student's time in Ms. Naslund's general education classroom increased from 15 to 30 minutes per day and Student did not attend the learning handicapped room. While Ms. Boyd and Ms. Khalili felt at the time of the June 2, 2005 IEP meeting that Student would not receive an adequate education benefit from any time in a general education classroom, the District did not establish that Student was not receiving any non-education benefits from his time in Ms. Naslund's class. Student was not eloping in Ms. Naslund's classroom or being a disruption as Ms. Naslund did not indicate that Student was a behavior problem in her class with the assistance of Student's aide.

54. Dr. Kaler observed Student on September 28, 2005 at Commonwealth in Gretchen Svidal's moderate-to-severe SDC and Ms. Naslund's kindergarten class. Dr. Kaler noted that some of the problems concerning Student's self-stimulatory behaviors could be caused by the fact that Student attended Ms. Naslund's class when there was a crossover of the morning and afternoon kindergarten classes. After speaking to Ms. Naslund and Sharon Dyer, District's Program Specialist, who accompanied Dr. Kaler during her tour, Dr. Kaler opined that Student could attend mainstream kindergarten class for one hour in the morning before the afternoon kindergartners arrived, and that would give Student an

appropriate non-academic benefit of social modeling by being with typically developing peers with an aide to assist Student with social interactions and with clear social goals.

55. After Dr. Kaler's visit, the District felt that Student was receiving a sufficient benefit to increase Student's time in Ms. Naslund's classroom. However, as before, the District failed to obtain Parents' consent before increasing Student's time in Ms. Naslund's class. While Ms. Dyer agreed with Dr. Kaler's one hour mainstreaming recommendation, the District did not convene an IEP meeting to discuss and evaluate this recommendation. Thus, Parents, through Dr. Kaler, established that Student could attend a general education classroom for up to an hour in the correct setting and with the proper supports, which the District did not disprove.

VIII. DID THE DISTRICT WRITE APPROPRIATE GOALS AND OBJECTIVES THAT WERE SUFFICIENTLY COMPREHENSIVE, OBJECTIVE, OR MEASURABLE TO MEET STUDENT'S UNIQUE NEEDS?

A. 2004-2005 School Year, Including the 2005 Extended School Year

56. Parents challenge the August 31, 2004, October 5, 2004, January 12, 2005 and April 5, 2005 IEPs as the goals in the IEPs were limited to a special education classroom that did not permit Student to be involved or progress in a general education environment. As to the August 31, 2004, October 5, 2004, and January 12, 2005 IEPs, the evidence established that the District did consider whether Student could succeed in less restrictive setting than the moderate-to-severe SDC. The District correctly determined that due to Student's behavior problems that Student would not receive an appropriate educational benefit from attending a less restrictive classroom, and developed goals to improve Student's behaviors.

57. During the mainstream time that the District did provide Student in these IEPs, which included recess, school assemblies, library time and the "arts for all" program, the District did not develop adequate social skills goals. As proved by the testimony of Dr. Kaler, autistic children, like Student, have immense deficiencies as to their ability to

have simple social interaction and therefore need social skills goals. This deficiency also impacts an autistic student's ability to gain educational benefits due to the basic social skills a student needs to participate in the general education curriculum. While the District focused on teaching Student basic verbal communication skills needed for social communication, the District failed to adequately consider non-verbal social communication goals, such as using Student's aide to assist Student with parallel play or social modeling during recess.

58. When Student moved into Ms. Naslund's general education class, the District did not convene an IEP meeting to discuss the change in Student's placement. The District did not develop any new goals for Student to work on in the general education class, or a means to measure Student's success. The District could not explain why it did not convene an IEP meeting before placing Student in Ms. Naslund's classroom, or failed to develop any goals for Student to achieve while in this classroom. Thus, Student did not have as a needed goal social modeling skills that Student required as part of his education.

B. 2005-2006 School Year through January 8, 2006

59. During the last half of the 2004-2005 school year, the District revised Student's goals, and as noted above, failed to prepare adequate goals for Student to progress in the general education environment. The June 2, 2005 IEP added additional goals for Student that the District designed to assist Student progress towards participation in the general education environment with additional speech and language and social interaction goals. Despite the fact that the District continued to have Student in Ms. Naslund's classroom at the start of the 2005-2006 school year and increased Student's time in her class, the District had no goals for Student specific as to Student's attendance in this classroom. The District's continued failure to have goals for Student for Ms. Naslund's classroom was a continued failure by the District to have in place social modeling skills that Student needs to obtain as part of his education.

LEGAL CONCLUSIONS

BURDEN OF PROOF

1. The District has the burden of proof as to the issues designated in Issues, paragraph 1, of this Decision and Student has the burden of proof as to the issues designated in Issues, paragraph 2, of this Decision. (*Schaffer v. Weast* (2005) 546 U.S. _____[163 L.Ed.2d 387].)

GOVERNING PRINCIPALS OF SPECIAL EDUCATION

2. Under both State law and the federal Individuals with Disabilities Education Act (IDEA), students with disabilities have the right to a free appropriate public education (FAPE). (20 U.S.C. §§ 1400, et seq.[5]; Cal. Ed. Code §§ 56000, et seq.) The term "free appropriate public education" 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 individualized education program (IEP). (§ 1401(a)(9).) "Special education" is defined as specially designed instruction, at no cost to parents, to meet the unique needs of the student. (§ 1401(a)(29).)

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. (Cal. Ed. Code § 56031.) The term "related services" includes transportation and other developmental, corrective, and supportive services as may be required to assist a child to benefit from special education. (§ 1401(a)(26).)

[5] All federal statutory citations are to Title 20 United States Code, unless otherwise noted.

FREE APPROPRIATE PUBLIC EDUCATION CONCERNING SEEK SERVICES

3. Parents challenged the District's provision of in-home tutoring and behavior modification services through SEEK since Parents had to pay Ms. Yang for her services, and then bill the District for reimbursement. Parents did not establish that Student did not receive the services from SEEK called for in Student's IEPs due to this arrangement. Additionally, Parents did not prove that the District failed to offer another means of providing these services if Parents could not afford to pay Ms. Yang as Parents did not request another means for the District to provide these services. (Factual Findings (FF) 35-38.)

PROVISION OF SPEECH AND LANGUAGE, OCCUPATIONAL THERAPY, AND INDIVIDUAL TUTORING / HOME BEHAVIORAL SUPPORT TO MEET STUDENT'S NEEDS

4. In *Board of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley* (1982) 458 U.S. 176, 200, 102 S.Ct. 3034, 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. The Court determined that a student's IEP must be reasonably calculated to provide the student with some educational benefit, but that the IDEA does not require school districts to provide special education students with the best education available or to provide instruction or services that maximize a student's abilities. (*Id.* at p. 198-200.) The Court stated that school districts are required to provide only a "basic floor of opportunity" that consists of access to specialized instructional and related services, which are individually designed to provide educational benefit to the student. (*Id.* at p. 201.)

5. 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* (9th Cir. 1999) 195 F.3d

1141, 1149.)[6] "An IEP is a snapshot, not a retrospective." (*Id.* at p. 1149, citing *Fuhrmann v. East Hanover Bd. of Education* (3rd Cir. 1993) 993 F.2d 1031, 1041.) It must be evaluated in terms of what was objectively reasonable when the IEP was developed. (*Ibid.*) The focus is on the placement offered by the school district, not on the alternative preferred by the parents. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987), *supra*, 811 F.2d at p. 1314.)

6. To constitute a FAPE as required by the IDEA and *Rowley*, the District must design its offer to meet Student's unique needs and be reasonably calculated to provide Student with some educational benefit. The District's offer must conform to the IEP, must be in the least restrictive environment (LRE), and provide the student with access to the general education curriculum. (See, § 1412(a)(5)(A); 34 C.F.R. §§ 300.347(a), 300.550(b); Cal. Ed. Code § 56031.)

7. The District's offer of one hour of speech and language therapy per week is not adequate to meet Student's educational needs and to provide Student some educational benefit. Parents proved that Student needed two hours per week to meet Student needs due to the severity of Student's speech and language deficits, especially in the area of pragmatic language and social communication. (FF 20 and 23.) The District failed to provide Student with adequate speech and language services as the District did not provide Student with this service in an individual setting. (FF 21 and 25.) Providing Student with this service in a removed portion of Student's SDC contained too many

[6] Although Adams involved an Individual Family Service Plan and not an IEP, the Ninth Circuit Court of Appeals applied the analysis in Adams to other issues concerning an IEP (Christopher S. v. Stanislaus County Off. of Education (9th Cir. 2004) 384 F.3d 1205, 1212), and District Courts within the Ninth Circuit have adopted its analysis of this issue for an IEP (Pitchford v. Salem-Keizer School Dist. No. 24J (D. Or. 2001) 155 F. Supp. 2d 1213, 1236).

distractions that caused Student not to be able to attend to the therapy sessions, and not receive a sufficient educational benefit.

8. Concerning occupational therapy, the District's offer in the January 12, 2005 IEP, and continuing through January 8, 2006, was not sufficient to provide Student with adequate educational benefit as the District did not address Student's deficiencies in sensory processing. (FF 28 and 33.) The District failed to consider, up to the June 2, 2005 IEP, Student's deficits in the area of sensory processing and the impact these deficits had as to Student's ability to progress in Ms. Naslund's general education kindergarten. (FF 29.) The District's offer to reduce Student's occupational therapy service to a weekly 25 minute session, starting with the April 5, 2005 IEP, failed to provide sufficient occupational therapy due to Student's need for services to reduce Student's self-stimulatory behaviors in Ms. Naslund's class. The District's offer to reduce Student's occupational therapy was based on Student remaining in a highly structured moderate-to-severe SDC, where Student did not need additional services, and not Student's need in a less structured learning handicapped room, which the District offered in the June 2, 2005 IEP, or a general education setting. (FF 32.)

9. As to the District's offer and provision of five hours per week of individual tutoring and home behavioral supports, Parents did not establish that Student required the seven hours per week that received before the January 12, 2005 IEP. The District's offer provided Student with an adequate educational benefit designed to meet Student's behavioral needs. Parents did not establish that Student required additional hours after the District placed Student in Ms. Naslund's kindergarten. Parents' request for additional hours is more to maximize Student's potential, than to provide for Student's basic needs. Finally, while Ms. Yang should have provided individual tutoring an hour per day, and not in larger two to hour sessions, Parents did not establish that Student did not receive an adequate educational benefit from the longer and less frequent sessions. (FF 35-38.)

LESS RESTRICTIVE ENVIRONMENT

10. When determining whether a placement is the LRE, four factors must be evaluated and balanced: (1) the educational benefits of full-time placement in a regular classroom; (2) the non-academic benefits of full-time placement in a regular classroom; (3) the effect the presence of the child with a disability has on the teacher and children in a regular classroom; and (4) the cost of placing the child with a disability full-time in a regular classroom. (*Ms. S. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1136-1137; *Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404.).

11. Section 1415(a)(5)(A) requires a local education agency "[t]o the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." Title 34 Code of Federal Regulations part 300.347(a)(3) requires a local education agency when developing an IEP to include a statement of the program modifications and related services and supplementary aides that the educational agency will provide a student to progress in the general education curriculum.

12. In applying the four part LRE analysis, at the time of January 12, 2005 IEP the District was correct that Student required additional skills to be learned in a moderate-to- severe SDC setting before Student could receive an educational benefit in either general education or the District's learning handicapped. Due to Student's attention deficits and elopement problems, Student would not be able to obtain any non-academic benefits. The District also did not attempt to teach Student social modeling skills during the mainstream time provided in the January 12, 2005 IEP, which Student required to learn to be integrated more into a general education setting. (FF 50.)

13. The District changed the dynamics of the analysis when the District in February 2005 placed Student in Ms. Naslund's general education classroom for 15 minutes per day. Due to Student's attention and elopement deficits, 15 minutes was an adequate time. However, the District failed to provide Student with adequate supports and services to obtain an adequate benefit from Student's time in Ms. Naslund's class. The District did not provide Ms. Naslund with a copy of Student's IEP, nor create any goals for Student while in Ms. Naslund's class. (FF 40.) The District's early intention appeared to be to improve Student's ability to attend in a less structured environment. However, after Student's class behavior and attention improved, the District did not establish new goals for Student to learn social modeling. (FF 51 and 52.) District's occupational therapy services did not adequately address Student's sensory processing deficits that negatively impacted on Student's ability to attend in Ms. Naslund's class. (FF 28, 29 and 31.) Although in the June 2, 2005 IEP the District offered Student 30 minutes per day in the less restrictive learning handicapped room, the District failed to adequately consider the non-academic benefits Student received in Ms. Naslund's class. (FF 53.) As Student's attention and behavior improved in Ms. Naslund's class during the 2005-2006 school year, the District increased Student's time general education to 30 minutes per day, but still did not provide Student with adequate related services, supports and aids. (FF 42 and 54.) Finally, the District failed to properly consider Dr. Kaler's recommendation that Student, with adequate supports and accommodations, could attend Ms. Naslund's class after Dr. Kaler spoke with Ms. Dyer, who did not disagree with Dr. Kaler's opinion. (FF 55.)

PROCEDURAL AND PRIOR WRITTEN NOTICE VIOLATIONS

14. *Rowley* also recognized the importance of adherence to the procedural requirements of the IDEA as part of the FAPE analysis. Pursuant to Section 1415(f)(3)(E)(ii), of IDEA, for a procedural violation to deny the student FAPE the procedural violation must either: 1) impede the student's right to FAPE; 2) significantly impede a parent's opportunity

to participate in the education decision making process; or 3) caused a deprivation of educational benefits.

15. The District is required to provide written notice to the parents of the child whenever the local educational agency proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child.[7] (§ 1415(b)(3).) The notice given to the parent's of the child must meet the requirements specified in Section 1415(c)(1).

16. The District's placement of Student in Ms. Naslund's class in February 2005 constituted a change in Student's placement, which required prior notice to and consent from Parents. (FF 51.) In the fall of 2005, the District increased Student's time in Ms. Naslund's class to 30 minutes per day without prior written notice or Parents' consent. (FF 53.) The District's failure to document Student's placement in Ms. Naslund's class significantly impeded Parents' right to participate in the decision making process, as, for example, the District did not afford Parents the opportunity to assist in the development of goals for Student in Ms. Naslund's class. Therefore, the District failed to provide Student

[7] Education Code section 56500.4 states: Pursuant to paragraphs (3) and (4) of subsection (b) and paragraph (1) of subsection (c) of Section 1415 of Title 20 of the United States Code, and in accordance with Section 300.503 of Title 34 of the Code of Federal Regulations, prior written notice shall be given by the public education agency to the parents or guardians of an individual with exceptional needs, or to the parents or guardians of a child upon initial referral for assessment, and when the public education agency proposes to initiate or change, or refuses to initiate or change, the identification, assessment, or educational placement of the child, or the provision of a free appropriate public education to the child.

with FAPE by not obtaining Parents' consent before placing Student in Ms. Naslund's class, and not documenting the change in any IEP.

ASSESSMENTS

17. Pursuant to Title 34 Code of Federal Regulations part 300.502 and California Education Code section 56329, subdivision (b), a parent has the right to obtain an independent educational assessment of the pupil from a qualified specialist, at public expense, if the parent disagrees with the assessment obtained by a district, unless a district shows at a due process hearing that its assessment is appropriate, or a district refuses to provide a requested assessment. For an assessment to be deemed appropriate, it must comply with Section 1414, subdivisions (b)(2) and (3), and California Education Code sections 56320, 56322, and 56324.

18. "If a parent obtains an independent educational assessment at private expense, the results of the assessment shall be considered by the public education agency with respect to the provision of free, appropriate public education to the child and may be presented as evidence at a due process hearing...regarding the child." (Cal. Ed. Code § 56329(c).) A parent has the right to obtain an independent educational assessment of the pupil from a qualified specialist, at public expense, if the parent disagrees with the assessment obtained by the district, however, if the district shows at a due process hearing that its assessment was appropriate, a parent is not entitled to receive reimbursement. (Cal. Ed. Code § 56329(b).

19. Concerning the psychoeducational assessment, Ms. Khalili assessed Student in all areas of suspected disability and Student's ability progress in a general education setting, and used the appropriate testing instruments to achieve her results. (FF 4 and 5.) Parents' challenge to Ms. Khalili's assessment is based on contrasting Ms. Khalili's assessment against Dr. Kaler's. The fact that Dr. Kaler obtained different results is the result of assessing Student nine months later, in which the testimony of school personnel proved that Student made significant progress as to the goals identified in his IEPs.

20. As to the Occupational Therapy Assessment and Reports, the District failed to assess Student in all areas of suspected disability. The District failed to assess Student in the area of sensory processing in the January 6, 2006 Assessment Report and the March 29, 2005 Progress Report, despite this is a common area of difficulty for autistic children, and Student had engaged in self-stimulatory behaviors before these assessments. (FF 8 and 9.) The District failed to consider in its assessments Student's sensory process deficiencies and their impact on Student's ability to progress in the general education environment. Thus, the District's Occupational Therapy Assessment and Progress Reports are inadequate for failing to assess Student in all areas of suspected disability, and how Student could succeed in the general education environment.

21. Concerning the District's speech and language assessment, the District failed to assess Student in all areas of suspected disability by not assessing Student in the areas of pragmatic language and social communication. (FF 13.) The District knew of the Student's deficits in these areas, and Parent's established through Ms. Molitor and Dr. Kaler the importance of pragmatic language and social communication for autistic children like Student. The District's assessment is not adequate since it did not consider information from the Cornerstone report that was relevant as to Student's speech and language needs. (FF 13.)

22. The District did adequately assess Student in all areas of suspected disability and considered how Student could succeed in the general education environment in the autism consultation. Ms. Boyd properly observed Student in the general education environment, considered Student's deficits as to attention, self-stimulatory behaviors and deficits in social skills. (FF 14-17.)

23. As to Parents' request for reimbursement for the private assessments conducted by Cornerstone regarding speech and language and occupational therapy, Parents are not entitled to reimbursement for any assessment conducted before June 30, 2005. (FF 3.) Parents did not object to the District's assessments until June 30, 2005 and

Parents did not obtain these pre- June 30, 2005 assessments as the result of any dispute with the District's speech and language and occupational therapy assessments. As for the February 2006 Cornerstone occupational therapy assessment, Parents are not entitled to reimbursment as Parents did not timely present proposed Exhibit 55 to the District by the fifth business day before hearing, as required by California Education Code section 56505, subdivision (e)(7), nor did Parents provide this assessment to the District for any IEP.

REMEDIES

24. Court decisions subsequent to *Burlington, supra,* extended equitable relief in the form of compensatory education to students who have been denied a FAPE. (See, e.g., *Lester H. v. K. Gilhool and the Chester Upland School District* (3rd Cir. 1990) 916 F. 2d 865; *Miener v. State of Missouri* (8th Cir. 1986) 800 F.2d 749.) Compensatory education is an equitable remedy. There is no obligation to provide day-for-day or hour-for-hour compensation. "Appropriate relief is relief designed to ensure that the Student is appropriately educated within the meaning of the IDEA." (*Student W. v. Puyallup School District* (9th Cir.1994) 31 F.3d 1489, 1497.)

ORDER

1. As to the District's failure to provide Student with adequate speech and language services for the 2004-2005 school year, the District shall reimburse Parents in the amount of $10,800 for services provided by Cornerstone for two hours per week at $120 per hour for 42 weeks.

2. As to the District's failure to provide Student with adequate occupational therapy services starting with the January 12, 2005 IEP, District shall provide Student with seven hours of compensatory occupation therapy.

3. As to the District's failure to provide Student with adequate speech and language services for the 2005-2006 school year January 8, 2006, the District shall reimburse Parents in the amount of $2,520 for services provided by Cornerstone for one

hour per week at $120 per hour for 21 sessions, which covers through the January 9, 2006 IEP.

4. As to the District's failure to provide Student with adequate occupational therapy for the for the 2005-2006 school year January 8, 2006, the District shall reimburse Parents in the amount of $2,100 for services provided by Leslie Greenwood for two hours per week at $100 per hour for 21 weeks, which covers through the January 9, 2006 IEP.

5. The District shall provide Student with one-on-one aide during Student's time in either the general education or learning handicapped environment to assist Student with social modeling skills.

6. Within 30 days of this Order, the District shall convene IEP meeting to discuss and implement Dr. Kaler's report recommendations 1, 2, 3, 4, 5, 6 and 8 in Exh. 48, pp. 280-232.[8] For recommendation 2, the consultation with SEEK shall continue to the extent that Student is still receiving home based individual tutoring and home behavioral supports.

7. Within 90 days of this order, the District shall complete a speech and language assessment of Student, which shall include an assessment as to Student's pragmatic language and social communication and areas of need for Student to progress in the general education, and convene an IEP meeting to consider the results of the assessment.

8. Within 90 days of this order, the District shall complete an occupational therapy assessment of Student, which shall include an assessment as to Student's sensory processing deficits and areas of need for Student to progress in the general education, and convene an IEP meeting to consider the results of the assessment.

[8] District witnesses stated that they had not seen nor considered Dr. Kaler's report until after the parties' document exchange for hearing, which occurred after the January 9, 2006 IEP meeting.

PREVAILING PARTY

Pursuant to California Education Co, de section 56507, subdivision (d), the hearing decision must indicate the extent to each party has prevailed on each issue heard and decided. The following findings are made in accordance with this statute:

1. Concerning Issue 1, District prevailed as to the psychoeducational and autism consultation assessments, and Student as to the speech and language and occupational therapy assessments.

2. Concerning Issues 2, 3, 5, 6, 7 and 8, Student prevailed.

3. Concerning Issue 4, District prevailed.

RIGHT TO APPEAL THIS DECISION

The parties to this case may appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within 90 days of receipt of this Decision. (Cal. Ed. Code § 56505(k).)

IT IS SO ORDERED.

DATED: May 15, 2006

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PETER PAUL CASTILLO

Administrative Law Judge

Office of Administrative Hearings

Special Education Division