

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

In the Matter of:

STUDENT,

Petitioner,

v.

UPLAND UNIFIED SCHOOL DISTRICT and
WEST END SELPA,

Respondents.

OAH CASE NO. N 2005110360

DECISION

Wendy A. Weber, Administrative Law Judge, Office of Administrative Hearings, Special Education Division, State of California, heard this matter on November 15 and 16, November 27 through December 1, 2006, December 18 and 19, 2006, and January 16 through 20, 2007, in Rancho Cucamonga, California.

Tania Whiteleather, Attorney at Law, represented Petitioner/Student (Student). Also present during portions of the hearing were Student's mother (Mother/Parent), and advocates Christopher Russell and Carmen Carley.

Karen Gilyard, Attorney at Law, represented Respondents Upland Unified School District ("the District") and West End Special Education Local Plan Area (SELPA). Also present during portions of the hearing on behalf of Respondents were Lynda Spicer, Director of Student Services for the District, Joann Reilly, SELPA Administrator, and Jean Martin, SELPA Program Manager.

PROCEDURAL STATEMENT

On November 10, 2005, Student filed a Due Process Request and Motion for Stay-Put. On December 12, 2005, OAH denied the motion for stay-put, and on January 9, 2006,

denied Student's Motion for Reconsideration. Student's third Motion for Stay-Put was denied after oral argument on the first day of hearing on the grounds the issue had been previously determined by OAH.¹ Testimony concluded on January 19, 2007, and the record remained open for closing briefs. The parties submitted closing briefs on February 5, 2007, and Reply Briefs on February 14, 2007, the record was closed and the matter submitted on February 15, 2007.

¹ Petitioner's argument he was entitled to an evidentiary hearing and a formal balancing of the equities involved in an injunction hearing is without merit and misses the point. (*See, e.g., T.H. v. Bd. of Ed. Palatine Comm. Consol. Sch. Dist. 15* (N.D. Ill. 1998) LEXIS 19110; *Bd. of Educ. of Comm. High Sch. Dist. No. 218 v. Ill. State Bd. of Educ.* (7th Cir. 1996) 103 F.3d 545.) If equitable factors were applied to the stay-put provision, the IDEA's statutory framework would be diluted. Once a child has been deemed eligible for special education under the IDEA, the statute guarantees he and his parents can rely on an uninterrupted education during a contest between the school and the parents. It may be the placement is not appropriate for Student's needs, but that is an issue for hearing and is not determinative of the stay-put placement. If Student's placement is a sufficient concern to Mother, injunctive relief can be sought in an appropriate forum; but that concern does not alter the stay-put. (*Light v. Parkway C-2 School Dist.* (8th Cir. 1994) 21 IDELR 933.)

ISSUES²

ISSUE 1: Did the District appropriately assess Student in sensory integration and oral motor needs for a “feeding”/eating program for the 2003-2004, 2004-2005 and 2005-2006³ school years?

ISSUE 2: Did the District deny Student a free appropriate public education (FAPE) during the 2003-2004 school year by:

- (A) Failing to implement the February 10, 2003 and March 5, 2003 individualized educational plans (IEPs), as the aides had no idea what goals were in the IEPs or what specific toileting program/schedule Student required, and the placement allowed Student to “stim” and did not intervene when Student engaged in aversive and escape-type behaviors?
- (B) Failing to provide properly trained and qualified teachers and aides in the severely handicapped (SH)/special day class (SDC) in 2003?
- (C) Ignoring recommendations of independent assessors in oral motor and oral sensitivity issues that interfered with eating which resulted in a choking hazard?
- (D) Failing to delineate the level of language/speech/hearing (LSH) services

² Petitioner filed a Motion to Revisit Issues as set forth in the Prehearing Conference Order on the grounds that the Order did not accurately reflect the issues contained in Petitioner’s Due Process Request. Petitioner’s issues were clarified the first day of hearing before presentation of evidence, from which an Issues Statement was prepared by the ALJ and identified as exhibit SS. This document was utilized throughout the hearing as the basis for evidentiary rulings, and was amended by Petitioner during his case-in-chief. Although Petitioner phrased the majority of his issues as alleged procedural violations of the IDEA as reflected in exhibit SS, this Decision reframed the issues for analytical clarity.

³ Petitioner limited the time period covering the 2005-2006 school year to December 15, 2005.

implemented at the March 5, 2003 IEP meeting, i.e. no information as to individual or group, or location of services to be provided?

ISSUE 3: Did the District deny Student a FAPE for the 2004-2005 school year by:

- (A) Failing to provide increased supervision hours by the non-public agency (NPA) for Applied Behavior Analysis (ABA) services?
- (B) Failing to provide a 50-week per year program to prevent regression?
- (C) Failing to provide a shadow aide for the entire school day and to coordinate the home program and the school program?
- (D) Ignoring the psychoeducational recommendations of Dr. Christine Davidson, the occupational therapy (OT) recommendations of Laurie Cohen, and recommendations of Dr. Margaret L. Bauman, pediatric neurologist?

ISSUE 4: Did the District deny Student a FAPE for the 2005-2006 school year by:

- (A) Failing to provide a 50-week per year program to prevent regression?
- (B) Failing to provide an NPA aide during transition to a public school placement in order for Student to benefit from his education?

ISSUE 5: Did the District significantly infringe on parent's opportunity to participate in the IEP process by:

- (A) Refusing or ignoring parent's input at IEP meetings regarding Student's food allergies and Student's safety during OT sessions?
- (B) Failing to set forth a discussion of goals or a continuum of placements in the initial IEP of February 10, 2003?
- (C) Failing to provide prior written notice of the District's refusal to provide services parents requested at the July 11, 2005, August 22, 2005 and September 26, 2005 IEP meetings?
- (D) Failing to provide prior written notice of a change in services when the NPA was removed two days per week from Student's program in November 2005?

ISSUE 6: Is Student entitled to compensatory educational services?

ISSUE 7: Are parents entitled to reimbursement for costs incurred for NPA behavior aide services?

CONTENTIONS OF THE PARTIES

STUDENT'S CONTENTIONS

Student contends the District and SELPA failed to properly assess Student's needs in sensory integration and an oral-motor feeding/eating program. This occurred in each of school years 2003-2004, 2004-2005, and 2005-2006.

Student asserts that the IEP team did not consider a continuum of placement options for Student and/or did not memorialize that consideration in the initial February 10, 2003 IEP. The speech and language services recited in the District's initial IEP developed on February 10 and March 8, 2003, did not specify whether the therapy was individual or group and the location at which the therapy services would be provided. When Student was initially placed by the District in a county preschool program for severely autistic children for approximately four months from March to June of 2003, the aides were not aware of or working on, Student's goals, including toilet training and behaviors. As a result, Student was not making progress toward meeting his goals and was regressing as reflected by self stimulating ("stimming"), as well as aversive and escape-type behaviors.

With respect to the 2004-2005 school year, during which Student was receiving behavioral services in a home-based preschool program, Student contends the District refused to increase supervision hours even though the District's contract service provider recommended such an increase. The District failed to provide a 50 week program to prevent regression. The District failed to consider the recommendations of three independent evaluators: a pediatric neurologist, a clinical psychologist, and a licensed occupational therapist.

Student's main contention relates to the 2005-2006 school year, when he was placed in a general education kindergarten class. Student asserts the District failed to provide

properly trained and qualified aides in the classroom to help him transition from his home-based program. The District's attempt to train District personnel in behavioral management, including mentoring by the home program NPA behavior aides, was not successful. Only the NPA's personnel who had been providing Student's behavioral services at home were qualified to provide them in the school setting during the approximately four months that Student remained in the class until Mother removed him on December 15, 2005.

Student contends the District failed to provide "prior" written notice to parents of its refusal to provide NPA school aide services requested during IEP team meetings held on July 11, 2005, August 22, 2005 and September 26, 2005. Student asserts the District failed to provide prior written notice of its termination of the NPA aide services in Student's kindergarten class in November of 2005.

Student seeks compensatory educational services and reimbursement of costs incurred for NPA behavioral aide services. Student seeks compensatory educational services consisting of 14 sessions of OT, LSH services over the past 2 and a half years, and continued provision of an NPA aide for a specific amount of hours five days per week, and Student's parent seeks reimbursement for costs incurred for an in-home behavior aide.

DISTRICT'S CONTENTIONS

The District and SELPA contend they timely and appropriately assessed Student in all areas of suspected disability, including sensory integration and oral-motor function. The sensory integration assessments became the basis for a sensory diet and other services for Student. Student reported no known food allergies and the assessments did not reveal any feeding problems requiring a feeding/eating program.

The District and SELPA contend that a full continuum of placement options was discussed and considered at Student's initial IEP meetings in early 2002, including general education, designated instruction and services, resource specialist, and special day classes for severe and non-severe autistic students. The parties agreed that Student needed a special day class placement. The District and SELPA assert that, after visiting the county

autistic program, Mother accepted it as Student's placement. Student's aides in the SDC for autistic children were aware of his goals and were qualified to implement them.

The District contends that in the 2004-2005 school year, it did not increase supervision hours because the request by the NPA provider was based on a generic request that the provider was making in all of its cases, not on any perceived need for such an increase for Student. The District did consider the independent evaluations submitted by Parent and, where appropriate, incorporated recommendations in the IEPs.

FINDINGS OF FACT

BACKGROUND

1. Student is a six-year-old male, eligible for special education under the category of autistic-like behaviors (autism).⁴ At all relevant times, Student resided with Mother in the District.

2. Prior to turning three years old, Student received early intervention services through Inland Empire Regional Center (IERC), which consisted of LSH from Briggs & Associates and behavior services from Behavior Intervention Development Services (BIDS). IERC referred Student to the District in September 2002; and at his initial IEP on February 10, 2003, Student was found eligible for special education and related services.

⁴ Autism is a developmental disorder of neurobiological origin that impacts how children learn to be social, take care of themselves and participate in the community. Education skills include academic learning, socialization, adaptive skills, language and communication, and reduction of behavior problems to assist the autistic child in developing independence and responsibility. (*See, Amanda J. v. Clark Cty. Sch. Dist.* (9th Cir. 2001) 267 F.3d 877.)

ASSESSMENT OF STUDENT'S UNIQUE NEEDS IN SENSORY INTEGRATION AND ORAL-MOTOR FUNCTION AND FEEDING PROBLEMS⁵ IN SCHOOL YEARS 2003-2004, 2004-2005 AND 2005-2006

3. Petitioner contends the District failed to properly assess Student in sensory integration (SI)⁶ and oral-motor needs to support a feeding/eating program for the 2003-2004, 2004-2005 and 2005-2006 school years. As discussed in Legal Conclusions, before any action is taken with respect to the initial placement of an individual with exceptional needs, a school district is required to ensure a full and individual assessment to determine if a child is a child with a disability and the educational needs of the child. The student must be assessed in all areas related to his suspected disability, and no single procedure may be used as the sole criterion for determining whether the student has a disability or an appropriate educational program for the student. A school district must reassess a child with a disability at least once every three years, or if a parent or teacher requests one.

⁵ Student's eligibility is not at issue, and there is no dispute the District and SELPA appropriately assessed Student in all areas of suspected disability other than sensory integration and oral-motor function for a feeding/eating program.

⁶ SI is the ability to perceive and respond to sensory demands from the environment through touch, sight and sound, and in relation to one's own body through proprioception (input to muscles and joints) and vestibular position (head movement and gravity). Play-based therapy using SI techniques is effective for children who have difficulty processing sensory information, and provides a foundation for motor planning and maintaining organized participation and attention to school activities and routines. A "sensory diet" is created for behavioral triggers, solutions and remediation, and is applied by incremental changes in timing and social referencing to help the child become more flexible and build environmental interaction.

School Year 2003-2004

4. The District conducted assessments in OT and LSH⁷ for the 2003-2004 school year, which appropriately assessed Student's needs in SI and oral-motor function, including whether Student had any feeding problems.

5. For the 2003-2004 school year, Student's needs in SI and oral-motor function were assessed by Tracey Uditsky, licensed occupational therapist (OT/L), Angie Winslow, OT/L, Cindy Trubey, Speech Language Pathologist (SLP), and Michelle Holmes, OT/L.

6. An OT evaluation was done at the request of IERC by OT/L Tracey Uditsky in December 2002 due to Mother's concerns about Student's eating habits. Ms. Uditsky determined Student was selective about foods, but chewed and swallowed appropriately. She found no physical or sensory reason for his unusual diet. Although she recommended an OT evaluation with emphasis in SI for home-based services, her evaluation was "non-educational" based. She found no need for a feeding/eating program.

7. Upon Ms. Uditsky's recommendation, the District referred Student for a clinic-based "full OT" assessment with an emphasis on SI. On January 20, 2003, OT/L Angie Winslow, employed by Casa Colina a non public agency (NPA),⁸ for six years, conducted the assessment, which consisted of a parent interview, review of medical/educational records, clinical observations and the Infant-Toddler Sensory Profile. Student showed significant

⁷ SI and oral-motor needs can be addressed by either OT or LSH. OT addresses fine and gross motor and self-help skills and activities of daily living, SI and sensory processing, or skills needed to function independently in the community. The most basic self-help skills include feeding, toileting and dressing. LSH is generally defined as services concerned with prevention, identification and treatment of disorders in speech, language, oral, and pharyngeal sensorimotor function. (34 C.F.R. § 300.24(b)(5), (14).)

⁸ "NPA" is the acronym for a non-public agency, which is an agency certified to provide services in accordance with an IEP.

difficulties with the ability to perceive, integrate and respond to sensory stimuli which created challenges in his ability to engage in many age-appropriate occupations (play, socialization, community outings, feeding, learning new motor skills), and which adversely affected his ability to engage in a classroom program. Ms. Winslow also recognized additional areas of concern as touch aversion, decreased body awareness in space, proprioceptive and vestibular seeking, safety awareness in the classroom, and significant delays in the development of fine and visual motor skills. She recommended OT 60 minutes, two times per week, by a person trained in SI techniques in a clinic-based setting. Ms. Winslow prepared recommended goals for six months, i.e. Student was to transition into the clinic setting separate from Mother in order to engage in vestibular-based activities, tolerate a wet tactile substance while on the swing and standing in a bubble ball pit for 30 seconds, demonstrate digital grasp on a writing utensil in order to imitate a vertical stroke, and use a picture schedule to assist in organization and transitioning within OT treatment sessions.

8. Ms. Winslow testified credibly that she developed a sensory diet for Student, which focused on sensory-motor based activities to assist him in his "occupations" of being a student and family member, and taking care of himself. The sensory diet consisted of using SI techniques to attempt to regulate response to sensory stimuli, since tactile or visual stimuli can exacerbate attention and behavior problems by causing sensory overload. Ms. Winslow also recognized the possibility that motor and sensory difficulties with feeding may pose a safety risk in the classroom, but she found no evidence Student had a feeding/eating problem due to oral-motor needs. Ms. Winslow found no need for a feeding/eating program.

9. On January 21, 2003, the District's SLP Cindy Trubey conducted a speech/language assessment, which included an oral-motor evaluation. Ms. Trubey has a Bachelor of Arts and Master's degree in speech and language pathology, a California LSH credential, and is licensed in California as an SLP. She interviewed Mother and conducted observations and standardized tests in articulation, language skills, auditory comprehension,

and expressive communication. She found Student's expressive and receptive language was severely delayed. Ms. Trubey recommended intensive direct LSH therapy and instruction, with a focus on increasing eye contact, response to name and mutual interaction, building a functional vocabulary and communicative interaction through use of an alternative system such as the Picture Exchange Communication System (PECS), oral speech therapy, normalizing oral sensitivity and coordinated oral movement for speech. Ms. Trubey examined Student's oral structures and found them normal. Based on Mother's concerns about the possibility of Student choking on food, Ms. Trubey surmised Student may have developed oral apraxia⁹ and abnormal oral sensitivity. Since Student's oral structures and feeding skills were normal, however, a feeding/eating program was not needed.

10. Michelle Holmes, OT/L employed by the San Bernardino County Superintendent of Schools (SBCSS), conducted an assessment of Student's SI and oral-motor needs on May 20, 2003, which consisted of clinical observations, an OT screen, and a sensory profile completed by Mother. Ms. Holmes found no evidence of oral-motor needs necessitating a feeding/eating program. She concluded Student had needs in fine motor skills, engaged in self-stimulatory ("stimming") behaviors, was unable to stay on-task, and required deep pressure for tactile needs. By then, Student was placed in the county Mulberry School Early Education Center (Mulberry EEC) Special Day Class (SDC) and Ms. Holmes believed Student's placement there provided a supportive and sensory rich environment where Student functioned well. She recommended OT 30 times per year for 30 minute sessions, direct services and collaboration with Student's teacher and team members to focus on fine motor and self-care skills as appropriate for the classroom setting, with ongoing assessments and evaluations of sensory issues throughout the year. She suggested writing tools and an ergonomic set-up for support while sitting at the table, sensory

⁹ Apraxia is a disorder of the ability to execute controlled motor movements for speech.

supports to help Student sit in circle time with the least amount of physical contact from aides or teacher, classroom staff training to prepare Student to sit and attend to a classroom task, and addressing sensory behaviors when they interfered with his ability to attend to activities and participate in the classroom environment.

11. Mother did not inform any of the assessors that Student had food allergies. An April 23, 2002 health assessment conducted by IERC reported no known allergies. No food allergies were found or reported in any of the assessments described above.

12. For school year 2003-2004, the District and SELPA appropriately assessed Student for sensory integration and oral-motor needs. The assessments did not reveal any oral-motor needs warranting the provision of a feeding/eating program. The District did not ignore any independent assessor's recommendations regarding the implementation of a feeding program.

School Years 2004-2005 and 2005-2006

13. For the 2004-2005 school year, Student's needs in oral-motor function were evaluated on August 10, 2004, in a preschool LSH assessment conducted by Mira Rendon, Ph.D., SLP, employed by the District. Mother requested the assessment to determine appropriate placement in language/speech development. Dr. Rendon observed Student in his home and in his brother's private preschool class. Dr. Rendon noted Student was sensitive to auditory stimuli, but participated in parallel play and joint attention at preschool. He had communicative intent, could establish joint reference and joint attention, transitioned relatively easily, did not escalate behaviors during transitioning, redirected fairly easily with consistent verbal and physical cues, and most importantly, appeared to attend to his environment. Dr. Rendon concluded Student's ability to verbalize all sounds correctly and produce some words necessitated implementation of the verbal aspect of expressive communication. She found Student qualified for LSH services and recommended intensive LSH intervention with PECS and verbal expression, initially one-to-one at home. Dr. Rendon recommended, after Student had developed a basic communication repertoire, placement in

a mainstream setting with a one-to-one aide to reinforce learning and ensure safety; interaction with peers to reinforce social and communicative abilities; monitoring OT and adaptive physical education (APE) needs; and ensuring appropriate interventions. Dr. Rendon found no basis for a feeding/eating program.

14. No additional assessments in OT or LSH were done by the District for the 2004-2005 or 2005-2006 school years as Mother refused consent.¹⁰

15. Although no further assessments were allowed by Mother, Michelle Keilson, OT/L employed by Casa Colina, informally evaluated Student's OT needs on an ongoing basis from July 2004 to the present by clinical observation. She prepared a sensory diet, and worked on Student's areas of need as identified in Ms. Winslow's sensory profile (which included SI needs in touch modulation, vestibular modulation, touch defensiveness, and hyporesponsiveness to proprioception). Ms. Keilson testified credibly that she concluded Student's SI needs did not affect eating; and, although Student continued to have oral-motor needs with strength, coordination and sensory sensitivities, Student had no problems related to feeding or eating.

16. Petitioner presented no evidence that established the District failed to appropriately assess Student in SI or that he had any oral-motor needs for a feeding/eating program for the 2004-2005 and 2005-2006 school years. Student's needs in SI were identified, and a sensory diet was established and utilized throughout this time. Although Mother periodically related concerns to assessors about the possibility of Student choking on food, no evidence was presented which supported Student's contention that his needs in SI or oral-motor functioning required a feeding/eating program. Mother developed a diet

¹⁰ Although no further District assessments were allowed by Mother, independent assessments were done at her request in 2003 and 2004. None of the independent assessors found Student's oral-motor needs indicated a choking hazard or required a feeding/eating program.

for Student, which she provided to him while Student attended the Mulberry EEC from March to June 2003, and the mainstream kindergarten class at Valencia Elementary School from August 2005 to December 2005.

DID THE DISTRICT DENY STUDENT A FAPE DURING THE 2003-2004 SCHOOL YEAR?

17. For the 2003-2004 school year, as Student was transitioning from IERC to a preschool program, the operative IEP was developed at the initial IEP meeting on February 10, and at additional meetings on March 5, June 9 and September 8, 2003.

18. Student's unique needs were identified in the areas of language, socialization, restricted and stereotypical patterns of behaviors and interests, cognition and adaptive behavior, fine and gross motor delay, and self-help. These were based on a psychoeducational assessment by Lori Sortino, Ph.D.; the speech/language assessment by Ms. Trubey; the OT assessments by Ms. Uditsky, Ms. Winslow and Ms. Holmes; a health assessment; an APE evaluation by Patty Duran; and a functional behavior analysis (FBA) by Roger Hammond, SELPA Behavior Specialist/School Psychologist.

Consideration of a Full Continuum of Placements at the February 10 and March 5, 2003 IEP Team Meetings

19. Student contends that District IEP team members failed to consider a full continuum of placements in the February 10 and March 5, 2003 IEP meetings, instead presenting Mother with a "take it or leave it" placement at a county SDC for severely autistic children. Student further asserts there is no memorialization of such discussion in the IEPs. As discussed in the Legal Conclusions, the District and SELPA must ensure that a continuum of program options are available to meet the needs of special education students including regular education programs, a resource specialist program, designated instruction and services, and special classes. In determining the educational placement for a special education student, each public agency must ensure that the decision includes the parent. No provision of applicable law specifically requires that the IEP memorialize the continuum

of placements discussed during team meetings.

20. At the initial IEP meeting on February 10, 2003, Student's present levels of performance (PLOPs) were reviewed. Ms. Trubey, Ms. Winslow and Dr. Sortino's assessments and the health report were reviewed and considered. Annual goals, objectives and benchmarks were developed with input from Mother;¹¹ and a continuum of placement options was discussed and considered, i.e., general education (State Preschool), designated instruction services (DIS), resource specialist program (RSP), SDC (non-severe) and SDC (severe-autistic). That portion of the IEP which describes "program options" contains a list of options considered with boxes to be checked. General Education, Designated Instruction and Services, Resource Specialist, Special Day Class (Non-severe), Special Day Class (Severe) autistic, were all checked as considered, and Special Day Class (Severe) autistic was checked as "Decided." The Comments page of the IEP also refers to discussion of placement options and the agreement that Student needed a special day class level of service. Mother's expression of interest in visiting a preschool SDC was noted. The District's offer of the Maple Street EEC was included, as well as Parent's desire to visit the Mulberry EEC.

21. A program was designed to address Student's unique needs in fine and gross motor, communication/language, on-task behavior, social interaction, cognitive, and self-help. The need for related services was identified, and referrals were made for assessments in LSH, OT and APE. Due to Student's severe autism, the District recommended placement in an autistic SDC preschool at Maple Street EEC for 300 minutes, five days per week, plus extended school year (ESY) to maintain skills, and special education services 100 percent of the time. Student would continue to receive behavior services at home and LSH services through IERC at Mother's request. Progress toward goals and objectives was to be evaluated by observations and charting by special education teachers, and PECS system

¹¹ Annual goals were written in fine and gross motor, communication, on-task behavior, social interaction, cognitive, and self-help.

icons were to be used to help with communication at Mother's request. Mother refused consent to placement at Maple Street EEC. Mother asked to visit another county preschool SDC for autistic children known as Mulberry EEC.

22. At a reconvened IEP meeting on March 5, 2003, Student was placed in the SDC/severe autism class at Mulberry EEC at Mother's request, five days a week. The District also offered 20 minutes of LSH twice a week to be provided by SBCSS in the SDC from March 2003 to February 2004. Mother signed approval of the IEP, and consented to the eligibility, goals and objectives, and SDC program placement and services.

23. The evidence established that a full continuum of services was available from the District and SELPA and discussed at the IEP team meetings on February 10 and March 5, 2003. Mother was a full participant in the discussions and selected the Mulberry EEC for severely autistic preschool children. The discussion was memorialized in the IEP.

Failure to Delineate Location or Type of Speech and Language Services

24. As discussed in Legal Conclusions, an IEP must include the anticipated frequency, location, and duration of special education and related services. As noted in Finding 21, the IEP did include the frequency and duration of the speech and language services. While the location of the services was not specified in the IEP, the parties clearly understood the services were to be provided in the SDC based on Ms. Trubey's recommendation. The IEP also did not specify whether the services were to be individual, group or both. The goals included those relating to communication, including one to be monitored by the SLP. Student made progress on that goal. Student presented no evidence that the failure to specify the location of the LSH services and whether the LSH services were to be individual, group, or a combination, in any way resulted in any significant impediment to his Mother's ability to fully and effectively participate in the IEP or in the loss of educational benefits to Student.¹²

¹² The LSH Log describes the speech and language objectives and records Student's

Failure to Implement IEP Services to Advance Student towards Attaining Annual Goals in the Mulberry EEC SDC

25. An IEP meeting was held on June 9, 2003, at Mother's request to discuss Student's progress and services at Mulberry EEC. Annual goals and short-term objectives were discussed and revised with Mother's extensive input, and goals in speech, writing letters, social interaction with other children, receptive labeling (body movement), OT and APE were added. Mother requested an FBA due to self-stimulatory behaviors ("stimming"), and requested that Casa Colina provide OT services as set forth in Ms. Winslow's assessment (which included SI recommendations). Since Student continued to require extensive supports, placement remained the SDC/severe autism class at Mulberry EEC five days a week from June 2003 to February 2004, but the program was modified to include summer school from June to August 2003 five days a week to maintain skills. LSH was continued for 60 sessions for 20 minutes per session from June 2003 to February 2004, APE 60 sessions per year for 30 minutes per session to emphasize motor skills development, strength and fitness activities, peer interaction and participation in age appropriate games/activities in a small group setting, and OT 30 sessions per year for 30 minute sessions provided by SBCSS from June 2003 to February 2004.

26. Mother consented to the changes in services, but reiterated her request that Casa Colina provide OT services.

27. In June 2003, Mother visited Mulberry EEC with a case worker from BIDS. Mother withdrew Student from the class during the summer because she did not feel the aides were adequately trained. No evidence was presented to support Mother's claims the District failed to provide properly trained and qualified teachers and aides in the SDC class, or that the aides were not familiar with the IEP goals. The case worker did not testify at hearing, her notes regarding this visit are unsupported hearsay, and Mother never invited

progress from March 17, 2003 until June 4, 2003. It is apparent from the log that the services were provided on an individual basis and in a group setting.

the case worker to an IEP or provided the District a copy of the notes to review. In contrast, Ms. Holmes, OT/L, did visit Mulberry EEC to observe Student for her assessment. She described the placement as “a very supportive, sensory rich environment” and one in which Student “seems to be functioning well within this context.” When Mr. Hammond visited the class six times as part of his FBA discussed below, he also noted that Student had met various benchmarks including those relating to toileting. At the June 9, 2003 IEP team meeting, Student’s PLOPS showed the District’s program provided Student educational benefit. He had met most of the OT goals, the communication goal by benchmarking at 60 percent accuracy using PECS/verbalization, the social skills goal by benchmarking in group participation, the cognitive abilities goal by benchmarking at showing an interest in learning new things, the self-help goal by benchmarking at showing emerging awareness and practice of safe and healthy behavior, and his social interaction goal by benchmarking at ceasing activity in response to his name being called. Thus, Student failed to establish either that the Mulberry school staff were unaware of Student’s goals or that they were not implementing services designed to attain the goals. Moreover, no credible evidence established that staff failed to intervene when Student engaged in aversive or escape-like behaviors.

28. Student received in-home behavior services through BIDS, and clinic-based OT and LSH services by Casa Colina, during the summer.

29. At Mother’s request, Margaret L. Bauman, M.D., pediatric neurologist at Casa Colina, performed an independent neurology consultation on July 7, 2003. However, Mother did not inform the District about the assessment, or provide the report to the District for review.

30. Also at Mother’s request, Roger Hammond, SELPA Behavior Specialist/School Psychologist, conducted an FBA on August 16, 2003, to determine behavioral intervention strategies for home and school to increase language, communication and pre-academic

skills.¹³ Student's behavior deficits were identified in receptive instructions and following rules/directions, functional communication within daily routines, play skills, and verbal and non-verbal imitation, and behavior excesses such as crying, gazing, hand flapping, spinning and visual perseveration on moving objects. Mr. Hammond recommended a 20-25 hour per week in-home behavioral program, or a combined 10-15 hour per week in-home program and continued SDC preschool placement, using applied behavior analysis (ABA) principles, and discrete trial techniques (DTT). ABA and DTT rely on reinforcement and applied verbal behavior principles, visual environmental modifications to facilitate independent task completion and transitions among activities, and generalization of skills acquired through one-to-one instruction to the classroom context. He believed placement at the Mulberry EEC provided Student opportunities to work on skill development, play skills, PECS and toileting. He recommended one-to-one instruction to focus on behavior deficits in communication, independence in completing functional routines and transitions, play, social, speech and academic skills development. Mr. Hammond also recommended SELPA train the one-to-one aides and classroom staff to implement the program effectively. The proposed training would consist of one hour aide supervision per week, two hours program supervision every second week, and one hour school consultation every second week provided by the behavior specialist/psychologist and behavioral support consultant. Also recommended were reevaluation of the program every six months and active parent involvement, all in preparation for kindergarten and later school success.

31. An IEP meeting was held on September 8, 2003, to review assessments conducted over the summer. Mother attended with an advocate. Mr. Hammond reviewed his FBA, Dr. Rendon reported on her LSH evaluation, and Ms. Holmes reviewed the OT report

¹³ Preacademics are developed in preparation for academic learning, e.g. matching and sorting colors and shapes, using a crayon, and understanding concepts relating to quantity and size.

from Casa Colina. Dr. Rendon noted Student did not communicate verbally but was able to produce sounds and some words. He had joint reference and attentions and communicative intent, engaged in parallel play and could be redirected without major escalation. Student used PECS for communication and could easily discriminate icons. Dr. Rendon recommended intensive LSH intervention with PECS and verbal expression, initially one-to-one at home. Ms. Holmes noted Student had received clinic-based services as compensatory education for OT missed due to a delay in assessment, and reported Student had sensory dysfunction to tactile and vestibular input, demonstrated delayed protective reactions, and had difficulties with arousal/self-regulation.

32. The District's program and services were revised to address Student's unique needs in speech/language, fine and gross motor, self-help, socialization and behavior. From September 2003 to February 2004, Student's behavioral services were changed to the in-home ABA program recommended by Mr. Hammond; and the District-offered individual LSH therapy 30 minutes three times per week and collaboration 30 minutes one time per month; and clinic-based OT services by Casa Colina 60 minutes two times per week.

33. Mother consented to the program and services, but refused APE. At the February, March and September IEP meetings, Mother acknowledged she received and understood the procedural safeguards and assessment reports, and reviewed the goals and objectives from Student's April 22, 2002 Individual Family Service Plan (IFSP).

34. From June 2003 to March 2004, Student continued to receive educational benefit from the program and services provided by the District. After Mother withdrew Student from the Mulberry EEC class in June 2003, the District provided an in-home ABA behavior program and clinic-based OT and LSH services. Student made progress in the behavior program by developing rote academic skills such as counting and ABCs. He made good progress on all OT goals by partially achieving tolerating glue in preschool arts without resistance using sensory strategies, fine motor/visual motor activities using sensory strategies, transitioning to adult-directed activities without crying using sensory/visual

strategies, maintaining balance using postural reactions, and toileting. In receptive instructions, Student understood some directions and made gains in instructional control with reinforcers. In language and play, Student ranged from 3-17 spontaneous expressive utterances and followed 4-10 receptive instructions, and made progress in expressive language. In LSH, Student showed growing abilities in verbal imitation, was transitioning well to speech therapy, and beginning to verbally initiate his wants when verbally cued with a question and visual prompt. He was able to match identical pictures from a field of two with 20 percent accuracy, and Mother reported improvements in talking and imitating on command.

DID THE DISTRICT DENY STUDENT A FAPE DURING THE 2004-2005 SCHOOL YEAR?

March 8, 2004 Annual IEP

35. For the 2004-2005 school year, the operative IEP was developed at an annual IEP meeting on March 8, 2004, when Student was in a home-based ABA-style preschool program provided by SELPA, and receiving LSH and OT services from Casa Colina.

36. Student's unique needs were identified in the areas of language, socialization, restricted and stereotypical patterns of behaviors and interests, cognition and adaptive behavior, fine and gross motor delay, and self-help. These were based on the psychoeducational assessment by Dr. Sortino; OT assessments by Ms. Uditsky, Ms. Winslow and Ms. Holmes; health assessment; speech/language assessment by Dr. Rendon; and the FBA by Mr. Hammond.

37. Student's PLOPs were reviewed in reading, written expression, math, communication, language, fine and gross motor skills, social emotional, self-help and community participation. In spite of missing OT sessions due to frequent illnesses, Student was responsive to the SI approach and tolerated hand-over-hand prompting. The use of multiple ABA in-home aides and Student's frequent illnesses adversely affected his progress in the behavior program.

38. In March 2004, a program was designed to address Student's unique needs in

fine and gross motor skills, writing, communication and language (expressive and receptive), social and interpersonal, self-help/safety, and play/work (behavior). Annual goals and short-term objectives were written in those areas for March 8, 2004 to March 8, 2005, and a new goal was added to use hand/feet to fall safely when jumping off equipment. Behavior goals and objectives identified in the March 2003 IEP were continued for six months. Placement options of SDC and instruction in a non-classroom setting were considered.

39. The IEP team believed Student's needs were best met through an intensive ABA-style program that focused on developing learning skills necessary to participate in small group instruction. Therefore, from March 2004 to September 2004 the District continued the same SELPA in-home behavior program, ESY, and OT and LSH services provided by Casa Colina. Progress toward goals and objectives would be evaluated at program supervision meetings by data summary. Program modifications, accommodations and supports for school personnel, supervision and training of aides and program supervision were to be provided by SELPA. Supplementary aids and services were to be provided in OT and LSH by Casa Colina to increase participation or transition to a general education curriculum and/or non-academic activities. In reaching this decision, the IEP team relied on progress on IEP goals, data collection, Mother report and OT update.

40. Mother consented to the program and services, acknowledged she was advised and given a copy of the procedural safeguards, and reviewed and understood the goals and objectives in the February 10, 2003 IEP.

41. Additional IEP meetings were held on May 10, June 7 and December 10, 2004, to discuss Student's progress in LSH, OT and behavior services; a change in the behavior program provider; and compensatory educational services in OT, LSH and behavior from the 2003-2004 school year. Mother attended all meetings, and was represented by two attorneys at the December 10 meeting. Through the remainder of the 2004-2005 school year, Student continued to receive OT by Casa Colina with application of SI techniques on goals in pre-school arts, pre-writing and safety awareness because his functional limitations

were expected to impact his educational program. Additional OT goals were also developed and added to the IEP at Mother's request.

Change in Behavior Services Provider

42. At Mother's request, in June 2004, Student's in-home behavior program service provider was changed from SELPA to Autism Behavior Consultants (ABC), an NPA. Problems with scheduling in-home behavior aide services had developed, which resulted in Student missing an unspecified amount of services. The lost services were due to an insufficient number of available aides, restrictions placed on Student's availability due to the number of services he was receiving, and the fact that Mother "fired" five behavior aides in eight months. The same behavior program that had been provided by SELPA was to be continued from June 2004 to September 2004, and the same OT and LSH services provided by Casa Colina would continue from March 2004 to September 2004, plus ESY in all services for six weeks to retain learned skills.

ABC's Recommendation to Increase Supervision Hours

43. Upon the change in the behavior services provider, on July 15, 2004, Kelly Pieropan, M.A., Clinical Director of ABC, conducted an initial behavior services evaluation of Student. Following the evaluation, Ms. Pieropan recommended essentially the same in-home behavior program that had been provided by SELPA with an increase in supervision from four to eight hours. ABC's program would focus on decreasing inappropriate behaviors, increasing compliance, generalizing mastered skills across environments, parent training, self-help, play and social skills, and increasing spontaneous language. The District and SELPA IEP team members declined to approve the increase in supervision hours as they believed the increase was unnecessary. The evidence established that ABC's recommendation for an increase was based on a policy decision to increase supervision in all of their cases, not on any particular need related to Student revealed during the assessment or the provision of behavior services.

Consideration of IEEs at December 10, 2004 and March 2, 2005 IEPs

44. In August 2004, Mother obtained an independent OT assessment by Laurie Cohen, OT/L, and a psychoeducational assessment by Chris Davidson, Ph.D., psychologist. Ms. Cohen obtained a history of developmental levels and sensory motor skills from Mother, interviewed Student's then-current behavioral therapist, administered the School AMPS (Assessment for Motor and Process Skills) and the Classroom Observation Checklist. She also observed Student during the in-home behavioral program, in a preschool classroom setting and on the school playground, as well as working with the OT's at Casa Colina. Ms. Cohen evaluated Student's adaptive skills in sensory processing, motor/visual perception, fine and gross motor skills and social play, and found he had OT needs in sensory processing, perceptual motor/visual motor integration, gross motor coordination and upper extremity control/fine motor skills. Ms. Cohen recommended OT in the clinic two sessions per week for 100 minutes per week, two sessions per week of direct and collaborative in-home, 100 minutes per week; extensive training for Mother in the use of specific OT techniques at home; and OT service 52 weeks for two years to prevent regression (based on Mother's report that inappropriate behaviors increased when she did not work with Student) or until fully included in a regular kindergarten program.¹⁴

45. Dr. Davidson's psychoeducational assessment focused on Student's then-current educational, intellectual and social functioning levels. She drafted a proposed list of goals in school readiness, pre-academics, and social, play, self-help and behavior skills. She made recommendations regarding Student's in-home behavioral program, and suggested using a combination of methodologies, including DTT, visual/organization strategies, Pivotal

¹⁴ Mother hired Ms. Cohen in July 2004 to work on Student's OT needs at home in conjunction with the ABA program provided by ABC. Although Student continued to receive OT at the Casa Colina clinic, Ms. Cohen has provided additional OT at home since July 2004.

Response Training Model (clear instructions and reinforcers related to and contingent upon desired behavior), floortime and play skills.

46. At a reconvened IEP meeting on December 10, 2004, Mother attended with two attorneys. Also in attendance were Ms. Cohen, Dr. Davidson, and two supervisors from ABC.

47. Student's PLOPS, goals and objectives were reviewed, and new OT goals were written. Casa Colina presented an OT treatment plan and sensory diet in play, writing, and self-care, and recommended the plan be continued two times, 60 minutes per week, for six months. Student's SI needs would be addressed by exploring tactile discrimination skills. Dr. Rendon presented her preschool LSH evaluation, and noted communicative, spatial and social interaction skills needed to be considered in determining appropriate placement. She explained that Student's ability to transition fairly well from one task to another with no escalation in acting-out behaviors and his attempts to imitate other children made him a good candidate for being around competent peers.

48. Ms. Cohen and Dr. Davidson's reports and recommendations were reviewed and discussed. Ms. Cohen discussed Student's PLOPS, goals, objectives, and her data collection and assessments, and recommended neurodevelopment techniques (NDT) to address Student's difficulty with determining where his body was in space, a technique she claimed was not being provided by Casa Colina's OT. Since Casa Colina's OT was not present, the District declined to adopt Ms. Cohen's goals without her input. Dr. Davidson's recommendations and goals were considered, most of which were already implemented as reported by Ms. Pieropan, and additional goals and objectives for all areas of need would be developed as ABC deemed appropriate.

49. Ms. Cohen's OT assessment and recommendations were further discussed at the March 2, 2005 IEP team meeting. The team determined that one recommendation was already being offered, two were satisfied by the Mother and Grandmother's attendance at the OT clinical sessions, and two were not adopted upon the recommendation of the

existing OT provider, Casa Colina. Thus, while the District and SELPA IEP team members did not adopt all of the recommendations of the IEEs, they did "consider" them in earnest.

50. In school year 2004-2005, the District and SELPA offered a program to address Student's unique needs in fine and gross motor skills, writing, communication and language (expressive and receptive), social and interpersonal, self-help/safety, and play/work (behavior). The same program offered at the June 9, 2004 IEP meeting was extended to the next annual review in March 2005 (behavioral services consisting of NPA program supervision two hours two times per month; NPA aide supervision one hour, one time per week, and NPA aide 25 hours per week); plus OT one-to-one 60 minutes, two times per week; and LSH one-to-one 60 minutes, two times per week, both provided by Casa Colina.

51. As of March 2005, Student's PLOPS showed the District's program provided educational benefit in reading, work recognition, comprehension, written expression, applied problems, expressive and receptive communication, fine/gross motor skills, social emotional, attention, behavior, and self-help skills. He made tremendous progress in both OT and LSH, and continued to show progress in all areas of development. Student met his tactile and safety goals, and made good progress toward the on-task behavior and writing goal. Overlap with speech therapy provided a strong carry through of verbal skills during OT. Increased stimming behaviors were noted and motor coordination interfered with pre-academic skills, but Student showed an ability to sight read and label objects, followed directions at home, and SI techniques successfully increased attention and decreased stimming. In self-help, Student washed his hands, drank from a cup, and took turns and shared with his brother during play when verbally or physically prompted.

District's and SELPA's Failure to Provide 52 Weeks of Services

52. As noted above, the offer by the District and SELPA for school year 2004- 2005 included six weeks of extended school year services. In December of 2004 and March of 2005, Ms. Cohen recommended a full year (52 weeks) of services to prevent regression. Beyond Mother's report to Ms. Cohen that Student's behavior problems increased when

Mother did not work with Student, Student did not provide evidence to support likely regression during any brief summer hiatus when services would not be provided by the District and SELPA.

DID THE DISTRICT DENY STUDENT A FAPE DURING THE 2005-2006 SCHOOL YEAR?

53. For the 2005-2006 school year, the operative IEP was developed at annual IEP meetings on March 2 and April 12, 2005, when Student, then five years old, remained in his preschool in-home ABA program.¹⁵ Mother attended with an attorney and Ms. Cohen.

54. Student's unique needs were identified in the areas of language, socialization, restricted and stereotypical patterns of behaviors and interests, cognition and adaptive behavior, fine and gross motor delay, and self-help, based on the previously described psychoeducational assessment by Dr. Sortino; OT assessments by Ms. Uditsky, Ms. Winslow and Ms. Holmes; health assessment; speech/language assessment by Dr. Rendon; the FBA by Mr. Hammond; and the two IEEs described above.

55. Student's PLOPs, annual goals and short-term objectives, including those adopted from Ms. Cohen and Dr. Davidson, were reviewed. The behavior program showed Student benefited from structure, repetition, direct reinforcement, and visual learning, and Student made progress toward OT goals set in November 2004. Given a sensory diet and structured table task, he was able to work on a task five minutes with intermittent supervision, showed varied success using sensory techniques in reducing increased stimulating behaviors, but good progress and more interest with sensory model and adaptations to write capital letters. Overall, Student responded very well to the SI approach. Ms. Cohen presented her view of Student's PLOPs based on her work with the in-home ABA providers. Student met the LSH receptive and expressive goals set in May 2003, but still required redirection during non-preferred tasks.

¹⁵ Additional IEP meetings were held on July 11, August 22, September 26 and December 13, 2005, to develop a transition program into a mainstream kindergarten class.

56. A program had been designed for March to September 2005 to address Student's unique needs in fine and gross motor skills, writing, communication and language (expressive and receptive), social and interpersonal, self-help/safety, and play/work (behavior). Since Student was not attending school, there was no need for regular program participation. Autism limited his attention, language and social development, so he continued to require an alternative curriculum, which broke learning activities into discrete steps with generalizing to the environment. The IEP team felt Student's needs could best be met through an intensive ABA program that focused on the development of learning skills necessary to participate in small group instruction.

57. As noted above, from March 2005 to September 2005, the District offered behavioral services by ABC (one hour two times per month program supervision, two hours one time per week aide supervision, and 25 hours per week aide services), plus one- to-one OT by an NPA 60 minutes two times per week, and one-to-one LSH by an NPA 60 minutes two times per week, and ESY with no more than a two week break (as he could tolerate a two week break without regression). LSH goals and objectives were written in receptive and expressive language and speech production. OT goals and objectives were written using a sensory diet in verbal and physical cues in writing and staying on task. SI techniques would continue to address tactile defensiveness, hand and trunk strengthening exercises, dexterity, in-hand manipulation and adapted writing. Goals and objectives were to be evaluated using quarterly reports at program supervision meetings and progress reports on goals provided by the NPA providers. Program modifications and supports included supervision and training aides, and program supervision to review data and progress, program targets and communicate between providers. Supplementary aids and services to assist Student's transition to a general education curriculum and nonacademic activities included OT and LSH services at Casa Colina. Placement options considered included general education, SDC (non-severe) and instruction in a non-classroom setting. The decision was based on a review of progress on IEP goals, data collection, and parent and NPA progress reports.

58. Mother did not consent to the IEP. She requested Student attend a mainstream kindergarten class in the fall, so she asked to visit several kindergarten classes. The IEP team agreed to continue the then-current level of services and reconvene in April 2005 to address fall school placement.

Development of a Transition Program for Kindergarten

APRIL 12, 2005 IEP MEETING

59. The annual IEP meeting reconvened on April 12, 2005, to review goals and objectives from the March 2, 2005 IEP, and to discuss ESY, levels of services, and transition from an in-home program to a kindergarten class for the 2005-2006 school year. Mother attended with an attorney and Ms. Cohen.

60. Problems with scheduling ABC services had developed due to Mother's inflexible schedule and the amount of services Student was receiving. New OT goals and objectives were designed and presented in writing, staying on task and accessing playground equipment safely. At ABC and Mother's request, Casa Colina occupational therapist Keilson designed a sensory diet¹⁶ and strengthening program as part of OT services for implementation at home (it was not appropriate for in-school behaviors). Ms. Cohen would provide goals in articulation and gross motor to the District and Mother for approval.¹⁷

61. For the period of March to August 29, 2005, the District's program was revised to consist of ABC behavior services (25 hours per week aide services, program supervision

¹⁶ The sensory diet reflected a planned and scheduled activity program designed to meet Student's specific sensory needs, with the purpose of increasing his participation in school activities while decreasing resistant and/or stimming behaviors.

¹⁷ OT and LSH final revised goals were added to the IEP as an addendum in May 2005.

was increased to two hours, two times per month, and aide supervision was increased to eight hours one time per week at Mother's request), plus OT and LSH 60 minutes two times per week each. Mother consented to the program and services offered.

62. The IEP team then discussed a transition program from in-home services to kindergarten class. Mother requested District's Valencia Elementary School full inclusion program. In order to effectuate a smooth transition, the IEP team suggested dividing the ABA aide hours by reducing the in-home ABA tutor services to 10 hours per week, with the remaining 15 hours to be used in the classroom by a District aide trained in ABA (three hours per day, five days per week), plus ABC classroom consultation. Ms. Kielson recommended adding one hour OT consultation for carry over from the clinic into the classroom setting.

63. A program was designed to address Student's unique needs in fine and gross motor skills, writing, communication and language (expressive and receptive), social and interpersonal, self-help/safety, and play/work (behavior). The District offered Valencia's regular education kindergarten class, a full-time classroom District aide trained in ABA, the same OT and LSH services, supervision and training by an ABA provider, OT consult two times per month for 30 minutes, 10 hours of ABA services direct in-home by ABC, and nine weeks of services for ESY (which allowed for a two week summer break).

64. Mother disagreed with the program and services. She wanted Student to attend a three hour school day with an ABC aide, in addition to receiving 25 hours of in-home instruction. The District agreed to consider other training options and NPA availability. The meeting ended with no agreement as to the fall program.

65. Over the next several weeks, training of the District aide was discussed at IEP meetings and through correspondence with Mother and her attorney. Despite the District's reassurances regarding training, Mother remained steadfast in her belief the District aides could not be sufficiently trained. Without Mother's consent, ABC could not hire an additional aide to accompany and train the school aide.

JULY 11, 2005 IEP MEETING

66. The IEP meeting was reconvened on July 11, 2005, to continue discussions regarding Student's program for fall 2005. Mother attended with her attorney. Ms. Kielson reviewed her OT recommendations for a sensory diet and strengthening program as requested by Mother and Ms. Cohen, which were attached to the IEP. Mother refused to allow the District's program manager and kindergarten teacher to observe Student in his in-home setting, and held firm that ABC provide the classroom aide services. The District offered to provide the District aide a two-day ABA training provided by Autism Partnership, plus four weeks classroom shadowing by the current ABC aide. The District also offered ongoing training and support provided by ABC through program and aide supervision, and one hour consultation by ABC in the school setting when school started on August 29, 2005. Mother still did not agree to the offer, but acknowledged receiving her procedural safeguards.

August 22, 2005 IEP Meeting

67. For the fall semester of the 2005-2006 school year, the operative IEP was superceded at an IEP meeting on August 22, 2005, which was held at Mother's request to develop a transition plan to a kindergarten classroom. Mother was present, represented by an advocate, and provided a verbatim review of the procedural safeguards. Mother waived advanced written notice.

68. Student's PLOPS were reviewed. Elizabeth Ryneer, a Valencia kindergarten teacher, reported that the kindergarten screening showed Student identified letters and sounds and could read and identify colors. OT and LSH goals and objectives from the March and April IEPs had been implemented, and Dr. Rendon suggested a 30-day review of the LSH goals in expressive/receptive and speech production. Mother gave input on behaviors to be expected, and sensory diet descriptions were provided. The RSP teacher, aide, and Ms. Ryneer had completed two days ABA training.

69. For the period of August 22, 2005 to September 2005, a program was

designed to address Student's unique needs in fine and gross motor skills, writing, communication and language (expressive and receptive), social and interpersonal, self-help/safety, and play/work (behavior). Student was provided a 300 minute school day general education kindergarten class at Valencia Elementary, ESY, and transportation. Behavior services included a District aide four hours per day (with ABC or SELPA training); 15 hours aide services by ABC in the school setting for four weeks, with additional time to be considered at the next IEP meeting; 10 hours ABA services by ABC or another NPA in the home; eight hours aide supervision by ABC or another NPA with a minimum of four hours to be used at school; two hours per month program supervision to be provided by an NPA in the home program; and eight hours per month program supervision in the school setting by the SELPA program specialist. OT and LSH services continued at 60 minutes two times per week each, plus 60 minutes per month OT consultation.

70. Additional assessments in pragmatics and socialization would be considered at the next IEP meeting, after the school staff had the opportunity to learn Student's learning styles and skills. Classroom evaluation of pre-academic/academic skills would be conducted by the kindergarten teacher during the first weeks of school. The District's case carrier and RSP teacher would provide in-class collaboration with Ms. Rynear one time per week for 15 minutes. Progress toward goals would be reported by trimester parent/teacher conferences. Program modifications and supports for school personnel included continued training and support through SELPA training. Accommodations and modifications included sensory diet, components to be provided by SELPA program specialist, modified work in classroom, and extra time to complete classroom and homework assignments. Student would participate in regular physical education, school day activities and recess.

71. Mother consented to the goals and objectives, placement, support and services, with the limitation that it was an "interim agreement" until the next IEP in September 2005.¹⁸ Mother and her advocate signed the IEP.

¹⁸This is the last IEP consented to by Mother and constitutes the basis for the stay-put order.

LAST AGREED-UPON PLACEMENT

72. Mother claims she believed the August 22, 2005 IEP provided for ABC in-school aide services to September 2006. Although the first page of the IEP states the ABC services would be provided from August 22, 2005, to September 2006, credible testimony from Ms. Reilly and Ms. Spicer established that the September 2006 date was written in error. This error formed the basis of Petitioner's motion for stay-put, as Mother interpreted "interim agreement" as ABC providing aide services at school until September 2006, during which time the District aide would complete four weeks of ABA training before shadowing Student in class. The evidence does not support this claim. Although the services page of the IEP does not state the District was providing its own employee aide for 15 hours of classroom shadowing, that page only lists related services offered for state reporting requirements. The IEP comments clearly spell out the District's offer—a "shadow aide *employed by the District* four hours per day when school is in session," and "15 hours of ABC aide time in school setting for four weeks." The comments also reflect the District's agreement to consider *additional* ABC classroom aide training at the 30-day IEP meeting (in fact, four additional weeks of ABC classroom aide time were provided at the next IEP meeting). Moreover, although Mother claimed she always relied on the front page of an IEP as the program and services offered, she wrote comments and addendums to IEPs several times over the years in which she referred to services specifically listed in the comments sections of IEPs.

73. Service contracts between SELPA and ABC also do not establish that ABC's services were provided until September 2006. ABC and SELPA entered into a Master Contract to provide related services and an Individual Services Agreement (ISA) both in effect July 1, 2005 to June 30, 2006. The ISA required ABC to provide Student direct behavior intervention 25 hours per week, 10 at home and 15 at school, for a maximum of 46 weeks, program supervision eight hours per month for a maximum of 96 hours, and clinical director meetings two hours per month for a maximum of 12 hours. According to Ms. Reilly

and Laura Roberts, Director of ABC, ISAs are amended in accordance with a student's IEP, and identify services for a student at a particular point in time. The ISA was amended on January 30, 2006, in response to OAH's ruling on stay-put, limiting ABC's services to 10 hours per week of in-home behavior therapy for a maximum of 46 weeks effective December 12, 2005.

September 26 and December 13, 2005 IEP Meetings

74. A 30-day review IEP meeting was held on September 26, 2005. Mother attended with an advocate and Ms. Cohen. Student's PLOPS and services were reviewed. Ms. Rynear was developing goals in writing, on task behaviors and playground safety; and Ms. Cohen instructed the District aide on sensory activities and pressure techniques. Christina Mikuljan, Program Specialist, was concerned the large number of services and individuals in the class created problems with consistency and limited Ms. Rynear's interaction. Four ABC aides were assigned over five days of school to train and transition the District aide. Although Student was transitioning well with support from both aides, he needed many prompts and redirections, and increased sensory input caused off task behavior. Mrs. Mikuljan was critical of the ABC aides' excessive talking, complicated, excessive and inconsistent directions and prompts, and repetition of ineffective cues. ABC and the District aides collaborated with OT two times per week in class and discussed strategies to reduce disruptive behaviors. ABC reported the District aide was doing well in recognizing and redirecting challenging behaviors, but required more training in ABA techniques, and requested the in-home hours be increased;¹⁹ and, since the number of different aides in the classroom created problems, ABC agreed to provide a single aide, if given the time to hire

¹⁹ ABC's recommendation to increase hours was due to a change in company policy, not based on Student's needs. The in-home program continued to provide instruction in communication and language, behavior, social, self-help, and play skills, and parent training.

and train the aide.

75. The IEP team believed the District aide best met Student's needs and provided a working relationship with the classroom. To address Mother's concerns, however, the program was revised for the period September 26 to November 10, 2005, to include an additional four weeks of ABC training of the District classroom aide. Additional services were added to allow for time for SELPA program specialist in-class consultation and RSP District collaboration. From September 2005 to March 2006, the same OT and LSH services were provided, with the addition of OT classroom consult 10 minutes per month, all provided by Casa Colina. Annual academic, social and vocational goals and objectives based on the kinder assessment were drafted by Ms. Ryneer, the RSP teacher and Ms. Mikuljan, with input from Mother's advocate, which concentrated on phonemic awareness, comprehension (picture cues), transitions and taking part in classroom activities. Accommodations included a basket of reinforcers with a token or break card system, and Ms. Mikuljan recommended simple, clear directions, one at a time with teacher/aide repeating the directions consistently and allowing time to process and to include the teacher. OT suggested using a white board for directions, and to continue the token system.

76. The IEP team agreed to reconvene in four weeks to determine if the District aide was ready to assume responsibility without ABC support. Mother did not consent to this IEP, but acknowledged she was advised and received the procedural safeguards and reviewed and understood the goals and objectives for the IEP. Mother and Mr. Russell drafted a dissenting statement, which was attached to the IEP.

77. Although no meeting was held in four weeks, Mother's advocate, ABC and the District exchanged correspondence regarding the training and use of a District aide in the classroom. Mother continued to assert the District aide lacked training and wanted her removed, requested Casa Colina's OT classroom consultation for SI needs be discontinued (based on Ms. Cohen's recommendation), and reiterated her objection to using a different NPA to train the District aide. On ABC's recommendation and in accordance with the

August 22 IEP, ABC began transitioning services to the District aide on October 31 over a four week "fade-out" process.

78. Mother attended an IEP meeting on December 13, 2005, with Mr. Russell and Ms. Cohen. Student's PLOPS, goals and objectives were reviewed. Ms. Rynear reported many behaviors required adult assistance in an individualized and structured program to initiate and persevere. Work continued on phonemic awareness, penmanship and picture clues. Student could memorize, but as kindergarten standards increased, he needed to develop additional strategies such as blending sounds, using picture clues, beginning writing skills and legible penmanship, and had difficulty self-regulating. Additional goals were included in language arts for kinder standard. Student met one OT goal and made progress on another, but undesirable behaviors had increased, reflecting difficulties in transitioning to kindergarten, more difficult tasks and/or curriculum, and/or the number of adults providing services in the classroom. ABC could not provide a single in-class aide, but the District aides had, by this time, completed the two-day training, plus 77 hours hands-on support by ABC based on its recommended training plan, and 80 hours of support from SELPA program specialists.

79. Mother did not consent to this IEP as she still believed the District aide was not adequately trained. In a dissenting statement, she and her advocate complained the District was ignoring Student's increased stimming and aversive behaviors.

80. Student's PLOPS as of December 2005 showed the District's program provided Student educational benefit in reading, word recognition, comprehension, written expression, math, computation, applied problems, communication, language, speech, fine and gross motor skills, social emotional, cooperation, attention, social acceptance, and self-help skills. Mother reported Student had more independent skills, wanted to participate with others, and sang songs. Ms. Rynear reported Student was more independent with peer cues, required less verbal prompts, had more eye contact, and used picture cues. However, tracking, sitting, reading, and humming remained the same. Student's kindergarten report

card for the first quarter, during which he was assisted by the District aide, showed Student partially met reading and math standards for second grade and writing for first grade, scored satisfactory in social studies, science, PE, and fine arts. Behavior was generally satisfactory and he was becoming more aware of classroom routines and procedures, but needed work in contributing to class discussions, staying focused and on task. He had a large sight word vocabulary and knew most letters and sounds.

81. After Student's motion for stay-put was denied (affirming the August 22, 2005 IEP as the last agreed-upon, fully implemented IEP), ABC's services in the classroom were discontinued. Mother removed Student from school in December 2005 as she did not agree to the District aide. Although he has not returned to school, Student continued to receive District-funded behavior in-home services 10 hours per week provided by ABC, and the same level of OT and LSH services, as set forth in the August 22, 2005 IEP.

82. On December 15, 2005, the District sent Mother an Assessment Plan in preparation for a triennial review to be held in March 2006. Mother never consented to the request.²⁰

²⁰ In May 2006, 23 people attended an annual IEP meeting. Although this meeting should have been the triennial IEP, Mother refused to consent to District assessments. As a result, the District was unable to determine Student's current levels and offered a program based on information from the 2005 fall semester. The District offered a small structured classroom for students with autism on a general education campus with ESY, LSH and OT one time per week at home and one time per week in school, a one to one District aide for four weeks during transition to the classroom, continuation of in-home behavioral services of 10 hours per week aide, four hours per month aide supervision, and two hours per month clinic supervision. Mother refused the offer and continued to request 25 hours per week of in-home services be provided by ABC. The meeting was extremely contentious and abruptly ended without resolution.

83. After removing Student from school, Mother provided home instruction. She believes his behaviors have improved and he can do first grade work. She keeps Student out of school because she believes the aide training and services offered by the District are inadequate.

84. Home instruction is not providing Student educational benefit designed to meet his unique needs in the least restrictive environment. Although he has been receiving ABA behavior services at home since December 2005, and ABC is working on math skills, telling time and sight words, all learning is through memorization, there are no goals for reading comprehension or decoding, and his current comprehension, math application, and reading levels are unknown. Student has regressed in OT and LSH due to inconsistent classroom placement. By May 2006, he failed to meet OT goals in on-task behavior, hand strengthening exercises, dexterity and in-hand manipulation, adapted writing techniques, and social skills, and failed to meet his LSH goals in attention and speech production. He is not interacting with peers in a structured setting to encourage socialization and carry-over of OT and LSH skills, and self-injurious behavior developed at home in 2006.

Appropriateness of District Aides' Training During Transition

85. Petitioner contends the District aides' insufficient training prevented Student from obtaining educational benefit from the kindergarten classroom program. Testimony by numerous witnesses established that the District aides, Carol DeSpain and Sheri Cologgi, were provided appropriate training in ABA to assist Student in the classroom, and that any increase in negative behaviors was not due to the District aides.

86. ABC aides' primary goal was to train the District aide to become Student's one-to-one aide in the classroom.²¹ ABC trained the District aides to facilitate Student's

²¹ Training included prompts for deficits, model spontaneous language, prevent and react to specific challenging behaviors, give verbal and written feedback, help the District aide bond and build rapport with Student, educate on behavioral techniques, data collection

participation and functioning in the classroom by assisting with group and individual directions, teaching new skills and maintaining mastered ones, engaging Student in social/play situations, helping with self-help needs, modifying class assignments to attention and learning style, preventing and reacting to behaviors, and providing sensory breaks and differential reinforcement, and communicating with Mother and Ms. Ryneer on progress.

87. Carol DeSpain, Student's District aide for five weeks, had been employed as a District instructional aide for 10 years in SDC, RSP and general education classrooms. ABC aides provided her instruction through observation and demonstration, and gradually allowed her to work directly with Student. Although Student continued to exhibit behavior issues, Ms. DeSpain observed no safety issues and had no difficulty controlling his behavior.

88. Sheri Cologgi, Student's District aide for six weeks, has a Bachelor of Arts in business management and is working on her master's degree in special education. She attended a two day workshop on autism, received daily training and instruction from the ABC aides, and instruction one to two times per month from John Elderkin and Christina Mikuljan, SELPA Program Specialists. For 3 and a half hours per day from October to November 2005, Ms. Cologgi "shadowed" Student and worked on his goals in social and writing skills, attention, safety, and self-help. Although she witnessed stimming behaviors five times, she controlled them effectively with ABA techniques as instructed by ABC aides. She presented as a very capable, concerned person, who enjoyed working with Student, and credibly provided explicit details about his behaviors, her application of ABA techniques, and Student's responses.

89. Testimony from two ABC aides, Erica DeSantiago and Stacey Morales, as well as Ms. DeSpain and Ms. Cologgi, established that the District aides were not fully versed in

and terminology that directly applied to Student's needs, and help the classroom and teacher gain a better understanding of Student's personality, learning style and specific needs.

all ABA terminology and concepts contained in ABC's training guide. Ms. DeSantiago trained Ms. DeSpain three to four hours per day, one to two times per week, for more than four weeks, and Ms. Cologgi three hours per day, two times per week, from October to the end of November 2005. She provided explicit instructions and demonstrated how she used ABA techniques on Student in the home program. She gave the aides opportunities to practice techniques and strategies in prompting, recognizing, addressing and eliminating triggers, environmental and stimming behaviors in the classroom. After two weeks, Ms. DeSpain was left alone with Student, but continued to have some difficulty addressing negative behaviors, and needed reminders and practice. Ms. Cologgi earned earlier independence by quickly grasping ABA concepts and was good with reinforcing, but needed practice to address behaviors in classroom and recognizing stimming and task-avoidance behaviors. By the end of the training, and in spite of inconsistency in addressing stimming, Ms. Cologgi was ready to be alone with Student. Ms. Morales trained Ms. Cologgi for two weeks, which she believed was insufficient to learn ABA techniques, but admitted Ms. Cologgi was very quick, wanted to learn and was interested.

90. Although neither Ms. DeSpain nor Ms. Cologgi could define every ABA term, their testimony establishes they understood the basic principles, and were able to apply ABA techniques. Kelly Pieropan, Director of ABC, and Ms. DeSantiago, now a case supervisor at ABC, admitted that even ABC's beginning aides did not need to know all the terms, just a basic comprehension of techniques.

91. District and SELPA employees also observed Ms. DeSpain and Ms. Cologgi, and supported their abilities. John Elderkin, SELPA Program Specialist, has a Bachelor of Science in organizational management and teaching and special education credentials. He was a special education teacher for several years, underwent extensive training in ABA and other behavior techniques for autistic children, and provides autism training to paraprofessionals for SELPA schools. Mr. Elderkin provided advice and consultation behavior services in Student's classroom as reflected in the IEP. He observed Ms. Cologgi several times and

described her as having a natural ability to understand and apply strategies that worked for Student, and competent to provide ABA aide services. Although Student continued to have problems with transitioning and attention, Mr. Elderkin believed this was due to the inconsistency and number of ABC aides trying to control Student's behavior, not a result of Ms. Cologgi's lack of training or abilities.

92. Christina Mikuljan, SELPA Program Specialist, has a Bachelor of Arts in special education, holds several teaching credentials, and has been employed as a program specialist for three years. From September 2005 to Student's withdrawal from class in December 2005, she provided behavior support and assisted the teacher and aides in the transition by developing and instructing on the use of individualized visual supports and a token reward system for reinforcement. Ms. Mikuljan observed Ms. DeSpain and Ms. Cologgi work with Student under the guidance of ABC aides. She found the District aides capable of prompting and redirecting Student, and believed they understood ABA concepts. Although she observed no negative behaviors, in her view if such occurred, they would have been due to increased stressors caused by increased demands, unrelated to the training of the District aides. She felt Student was benefiting from his placement and services in the classroom.

93. Elizabeth Ryneer has a Bachelor of Arts in liberal studies, a Master of Arts in educational technology, and a permanent multi-subject teaching credential. She has been a kindergarten teacher at Valencia Elementary for 13 years. She observed the ABC aides train the District aides on Student's social skills. Student learned how to participate in class with less prompting and bonded with Ms. Cologgi as the ABC aides allowed her more hands-on direction at Ms. Ryneer's request. Although Student initially exhibited some stimming behaviors, his comfort level increased and he became more focused with Ms. Cologgi's redirection and guidance. Neither Ms. DeSpain nor Ms. Cologgi ever worked with Student alone, as Mother would not bring him to school on days the ABC aides were not present.

94. Mother testified that she believed the District aides did not know how to apply

ABA techniques and was concerned about Student's safety, lack of independence and increased negative behaviors, but offered no credible explanation for her concerns. The evidence overwhelmingly established the District aides were appropriately and adequately trained, and able to apply ABA techniques. No evidence was presented that the District aides caused an increase in negative behaviors or regression.

Full Day Behavioral Services

95. Student contends he required a full day behavioral aide in his kindergarten class. As noted above, the IEP defined Student's program as a 300 minute (or five hour) school day. Student was to participate in regular physical education, recess, and school activities. Behavior services were provided for four hours during the school day, in addition to the 10 hours of in-home behavior services each week. While ABC aides suggested, in their testimony, that Student required behavior services for his entire school day, Student did not establish that the one hour during which such services were not provided limited Student's access to his educational program.

Need for a 52-Week Program of Services

96. As noted, the District and SELPA offered all services during an ESY which provided for a two week summer break for Student. Student contends, as he did for the previous year, that the need to prevent likely regression required a 52 week (full year) program of all services. As noted with reference to the same contention for the previous year, other than Mother's conversation with Ms. Cohen relating the need for her to work with Student during the summer to prevent an escalation of unwanted behaviors, there was no evidence supporting the need for OT, LSH, and behavior services for 52 weeks a year.

Prior Written Notice

97. After the April 12, 2005 IEP meeting, the District sent Mother a letter in compliance with 20 United States Code section 1415(b)(3) and (c)(1) in which it refused her request for ABC to provide the classroom aide and 25 hours per week of ABA tutor services

provided by ABC. The District believed comparable services were offered which focused more directly on Student's educational needs and the development of skills needed for classroom success. Options of continuing the 25 hours per week in-home ABA program or SDC placement were considered and rejected because neither provided LRE. In a further attempt to accommodate Mother, the District proposed full inclusion kindergarten at Valencia, with additional behavior services (15 hours per week District aide time; 15 hours per week for four weeks of aide time provided by ABC to support transition to the District aide; 10 hours per week of ABA in-home services provided by ABC; eight hours per month aide supervision with a minimum of four hours to be used at school and the remaining four hours to be used at home provided by ABC; and two hours per month aide supervision provided by ABC); plus 60 minutes two times per week OT; 60 minutes per month OT consultation in school setting and 60 minutes two times per week LSH provided by Casa Colina. Mother did not respond to the offer.

98. The District was not required to provide prior written notice of its refusal to provide the services Mother requested at the July 11, August 22 and September 26, 2005 IEP meetings. Those meetings involved a continued discussion of a transition program being developed for the 2005-2006 school year from an in-home ABA behavior program to a full-inclusion classroom setting. The program was initially discussed at an April 2005 IEP meeting where the District proposed the behavior aide hours be divided between two locations—15 hours in the classroom, with the remaining 10 hours in the home. No fundamental change in, or elimination of, a basic element of Student's educational program occurred. Mother's request and the District's proposal remained the same as was initially addressed in April. Moreover, Mother waived prior written notice at the August 22 IEP meeting.

99. The District did not fail to provide prior written notice of the change in services when the ABC aide was removed two days per week from Student's program in November 2005. The ABC aide was removed at ABC's recommendation for fading out after

Student was provided an additional four weeks of training beyond the services Mother agreed to in the August 22, 2005 IEP.

COMPENSATORY EDUCATIONAL SERVICES

100. A student who has been denied a FAPE may be entitled to the equitable remedy of compensatory education. Although Student contends he is entitled to OT, LSH, and NPA behavior services as compensatory education, the District's provision of a FAPE for the 2003-2004, 2004-2005 and 2005-2006 school years precludes the remedy.

101. Compensatory educational services in OT, LSH and behavior for the 2003-2004 and 2004-2005 school years were resolved as a result of compliance complaints Mother filed with the California Department of Education; and no evidence was provided that Student regressed as a result of missed services. Moreover, Student is not entitled to compensatory NPA behavior services for the 2005-2006 school year as the evidence is insufficient to establish a basis for calculating an award. An award to compensate for past violations must rely on an individualized assessment. Since Mother withdrew Student from school, she has prevented the District from conducting assessments to identify Student's current areas and levels of need. Further, any regression Student experienced is due to Mother withdrawing Student from school, not a result of the District's failure to provide Student a FAPE.

REIMBURSEMENT FOR NPA BEHAVIOR AIDE SERVICES

102. Mother requests reimbursement for ABC aide services 15-20 hours per week from the summer of 2006 to the present at \$50 per hour. Mother failed to provide any documentation evidencing payments made for these services. She refused to consent to any services after the expiration of the August 22, 2005 IEP, and no evidence was presented Student required these services for a FAPE.

Credibility of Mother

103. Mother's primary concern that the District is unable to provide adequate ABA training for the classroom aides negatively impacts her credibility. The evidence established that the aides were fully capable of assisting Student in the classroom setting; and Mother's belief the District aides were harming Student are unfounded.

104. Mother's concerns about her child are understandable; and she is to be commended for being proactive and engaged in Student's educational program. She was intricately involved in designing and monitoring Student's program and services, and relentlessly ensured programs and services were provided, implemented and evaluated. In spite of her extensive input and involvement, however, the evidence did not establish a reasonable basis for withdrawing Student from the program and services offered by the District and SELPA.

LEGAL CONCLUSIONS

GENERAL APPLICABLE LAW

Burden of Proof

1. Petitioner/Student has the burden of proving non-compliance with the IDEA by a preponderance of evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, [126 S.Ct. 528, 163 L.Ed.2d 387].)

Provision of a Free Appropriate Public Education

2. A child with a disability has the right to a FAPE under the Individuals with Disabilities Education Act (IDEA) and California special education law. (20 U.S.C. § 1412(a)(1)(A); Ed. Code, § 56000.6.) A FAPE consists of special education and related services provided at public expense and under public supervision and direction that meet the State's educational standards and conform to the student's IEP. (20 U.S.C. § 1401(9); Ed. Code, § 56040; Cal. Code Regs., tit. 5, § 3001, subd. (o).) "Special education" is defined as specially

designed instruction, at no cost to parents, to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); Ed. Code, § 56031.) Special education related services, denominated as designated instruction and services in California, include in pertinent part developmental, corrective, and supportive services, such as speech-language pathology services and OT,²² as may be required to assist a child with a disability to benefit from special education. (20 U.S.C. § 1401(a)(26); Ed. Code, § 56363.)

3. The primary goal of the IDEA is to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs. (20 U.S.C. § 1400(d).) To effectuate that goal, section 1414(d)(2) requires every school district to develop an IEP for each child with a disability. (See also Section 1401(a)(11).) A child receives a FAPE if the program: (1) addresses his unique needs; (2) is reasonably calculated to provide some educational benefit; and (3) comports with the IEP.²³ (*Capistrano Unified Sch. Dist. v. Wartenberg*, 59 P.3d 884, 893 (9th Cir. 1995) (citing *Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 188-189.) A district must provide a basic floor of opportunity consisting of access to specialized instruction and related services that are individually designed to provide

²² OT is defined as improving, developing or restoring functions impaired or lost through illness, injury, or deprivation; (ii) improving ability to perform tasks for independent functioning when functions are impaired or lost; and (iii) preventing, through early intervention, initial or further impairment or loss of function. (34 C.F.R. § 300.16(5).) The propriety and extent of OT are decided on a case-by-case basis.

²³ School districts are also required to provide each special education student with a program in the least restrictive environment, with removal from the regular education environment occurring only when the nature or severity of the student's disabilities is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412 (a)(5)(A); Ed. Code, § 56031.)

educational benefit to the child with a disability. (*Rowley*, 458 U.S. at pp. 200-201.) The IDEA requires neither that a school district provide the best education to a child with a disability, nor that it provide an education that maximizes the child's potential. (*Id.* at pp.198-199.)

4. The factual showing required to establish a student has received "some educational benefit" is not demanding. (See, e.g., *M.L. v. Fed. Way Sch. Dist.* (9th Cir. 2004) 394 F.3d 634 ("educational benefit"); *Houston Indep. Sch. Dist. v. Bobby R.* (5th Cir. 2000) 200 F.3d 341, 349 (more than trivial or de minimis); *L.E. v. Ramsey Bd. of Educ.* (3d Cir. 2006) 435 F.3d 384, 395 ("meaningful").) A student derives benefit under *Rowley* when he improves in some areas even though he fails to improve in others. (See, e.g., *Fort Zumwalt Sch. Dist. v. Clynes* (8th Cir. 1997) 119 F.3d 607, 613.) Whether a student has received more than de minimis benefit must be measured in relation to the student's potential. (*Mrs. B. v. Milford Bd. of Educ.* (2d Cir. 1997) 103 F.3d 1114, 1121.) While inquiry into subsequent performance "may shed light" on the adequacy of the program, "such evidence is not outcome determinative." (*Adams v. Oregon* (9th Cir. 1999) 195 F.3d 1141.) (See also *Carlisle Area School v. Scott P.* (3d Cir. 1995) 62 F.3d 520, 530 ["Any lack of progress under a particular IEP ... does not render that IEP inappropriate.]) A student derives educational benefit under *Rowley* even if most of his goals and objectives are not met, as long as he makes progress toward some of them. (See, e.g., *J.P. v. West Clark Comm. Schools* (S.D.Ind. 2002) 230 F.Supp.2d 910.)

Procedural Requirements

5. The IDEA also provides procedural safeguards to children and their parents. (20 U.S.C. § 1415.) Although a student is entitled to both procedural and substantive protections of the IDEA, not every procedural violation is sufficient to support a finding that a student was denied a FAPE. Mere technical violations will not render an IEP invalid. (*Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877.) A procedural violation does not result in the denial of a FAPE unless the violation impedes the child's right to a FAPE, causes

a loss of educational benefits, or significantly infringes on the parents' opportunity to participate in the IEP process. (*W.G. v. Bd. of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479. See also, 20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subds. (f)(2),(A),(B),(C).) A court's inquiry in suits brought under §1415(f) is twofold. First, has the District complied with the procedures set forth in the Act? Second, is the IEP developed through the IDEA's procedures reasonably calculated to enable the child to receive educational benefits? If these requirements are met, the District has complied with the obligations imposed by Congress and the courts can require no more. (*Capristrano*, 59 P.3d at p. 891.)

DETERMINATION OF ISSUES

ISSUE 1: DID THE DISTRICT APPROPRIATELY ASSESS STUDENT IN OT SENSORY INTEGRATION AND ORAL-MOTOR NEEDS FOR A "FEEDING"/EATING PROGRAM FOR THE 2003-2004, 2004- 2005 AND 2005-2006 SCHOOL YEARS?

Assessments

6. Before any action is taken with respect to the initial placement of an individual with exceptional needs, a school district is required to ensure a full and individual evaluation to determine if a child is a "child with a disability" under 34 C.F.R. § 300.7, and the educational needs of the child. (34 C.F.R. § 300.320; Ed Code, § 56320.) The student must be assessed in all areas related to his suspected disability, and no single procedure may be used as the sole criterion for determining whether the student has a disability or an appropriate educational program for the student. (20 U.S.C. § 1414(a)(2), (3); Ed Code, § 56320, subds. (e), (f).) Assessments must be conducted by individuals who are both "knowledgeable of the student's disability" and "competent to perform the assessment, as determined by school district, county office, or special education local plan area." (Ed. Code, §§ 56320, subd. (g), 56322.) A school district must re-evaluate a child with a disability at least once every three years, or if a parent or teacher requests one. (20 U.S.C. § 1414(a)(2); 34 C.F.R. § 300.536(b); Ed. Code, § 56381, subd. (a).) A school district is required to use assessments that provide

relevant information that directly assist persons in determining the educational needs of the child. (20 U.S.C. § 1414(b)(3)(D); 34 C.F.R. § 300.532(j).)

7. Based on Findings 3 through 16, the evidence establishes the District properly assessed Student in SI and oral/motor needs during the 2003-2004 school year; and the District was not obligated to reassess Student for the 2004-2005 and 2005-2006 school years. Mother did not consent to any District assessments after August 2004, and no evidence was presented the District should have suspected a disability in SI or oral-motor function that had not already been addressed. Petitioner failed to present any evidence as to what tests or procedures he claims the District did not perform.

8. The District and SELPA's assessments in the 2003-2004 school year (including reliance upon those conducted by IERC) properly identified Student's needs in SI and oral-motor deficits, and an SI plan was developed and implemented. No evidence was presented that Student required a feeding/eating program. Although Mother reported "possible" choking or gagging concerns to some assessors, she offered no testimony to support a finding that her concerns developed into reality, and she never mentioned her concern at any IEP meeting. No assessor found any basis for the concern, other than recognizing Student's SI and oral-motor needs required parent teaching regarding foods and diet. Finally, even if Student had a feeding/eating problem, no evidence was presented it hindered his educational needs. (Ed. Code, § 56320.)

ISSUE 2: DID THE DISTRICT DENY STUDENT A FAPE FOR THE 2003-2004 SCHOOL YEAR BY:

(A) Failing to Implement the February 10, 2003 and March 5, 2003 IEPs, as the aides had no idea what the goals were in the IEPs or what specific toileting program/schedule Student required, and the placement allowed Student to "stim" and engage in aversive and escape-type behaviors without intervention.

9. School districts and SELPAs must, prior to placing a special education child, ensure that the teachers and others providing services have access to the child's IEP and are knowledgeable of their responsibilities in implementing the plan. (Ed. Code, § 56347.) A

failure to implement a Student's IEP will constitute a violation of the Student's right to a FAPE if the failure was material. There is no statutory requirement that a District must perfectly adhere to an IEP and, therefore, minor implementation failures will not be deemed a denial of FAPE. A material failure to implement an IEP occurs when the services a school district provides to a disabled student fall significantly short of the services required by the Student's IEP. (*Van Duyn, et al. v. Baker School District 5J* (9th Cir. 2007) 481 F.3d 770.)

10. Based on Findings 25 through 27, Student failed to establish the teachers and aides in Student's SDC for severely autistic children were unaware of his goals, including those for toileting, and failed to establish that the staff did not intervene when Student engaged in self stimulating, aversive, and escape-like behavior. Mother's testimony stands in contrast to that of more credible assessors who visited the class as well as the documented progress that Student made toward attaining toileting and behavior goals. Student failed to establish that the teachers and staff in the county SDC were unaware of their responsibilities under Student's IEP, or that they materially failed to implement Student's IEP in school year 2003-2004.

(B) Failing to provide properly trained and qualified teachers and aides in the county SDC for severely disabled autistic preschool children?

11. Based on Factual Findings 25 through 27, this contention fails. Student did not assert any particular deficiency in the qualifications of the teachers or aides. In fact, no specific evidence was presented the District failed to provide trained and qualified teachers and aides during the spring portion of the school year, before Mother withdrew Student from the county SDC. The county SDC was dedicated to instruction for preschool severely autistic children. As noted above, Student made progress in the class and persons expert in dealing with autistic preschool children commenting favorably on the services provided by the staff. Mother's testimony that she *believed* the personnel were not qualified, standing alone, is insufficient to establish this allegation.

(C) Ignoring recommendations of independent assessors in oral motor sensitivity issues that interfered with eating which resulted in a choking hazard?

12. As noted below, the District and SELPA are required to consider the results of any independent educational assessment in determining the provision of FAPE to special education students. (Ed. Code, § 56329, subd. (c); 34 C.F.R. § 300.502(b)(5)[current regulation number].) Although Petitioner contends the District ignored recommendations of IEE assessors with regard to Student's oral sensitivity and motor needs that interfered with eating and resulted in a choking hazard, no evidence was presented to establish that Student had such needs. Several qualified OT and LSH assessors recognized Student's oral sensitivity and motor needs, but none found those needs interfered with eating or caused a choking hazard. Mother pointed to no IEE specifically recommending a feeding program for Student which District and SELPA failed to consider. (Factual Findings 4 through 16.)

(D) Failing to delineate the level of language/speech/hearing (LSH) services implemented at the March 5, 2003 IEP meeting, i.e., no information as to individual or group, or location of services to be provided?

13. An IEP must include the anticipated frequency, location, and duration of special education and related services. (20 U.S.C. § 1414 (d)(1)(A)(VII); Ed. Code, § 56345, subd.(a)(6)²⁴; 34 C.F.R. § 300.320(a)(7) [current federal regulation].) There is no express requirement that the IEP specify whether services are to be provided in an individual or group setting.

14. As noted in Findings 22 and 24, the IEP did include the frequency and the duration of such services. The IEP did not specify whether such services would be individual, group, or both, and did not specify the location. While the failure to include the location technically constitutes a procedural violation, no prejudice resulted from the omission. Student did not establish that the failure significantly infringed upon Mother's opportunity

²⁴ Currently designated as subdivision (a)(7) of section 56345.

to participate in the IEP process or caused a loss of educational benefits to Student. The LSH services, as written, were agreed upon by the team members, including Mother. Student did benefit from such services as evidenced by his progress on communication goals monitored by the LSH provider.

ISSUE 3: DID THE DISTRICT DENY STUDENT A FAPE FOR THE 2004-2005 SCHOOL YEAR BY:

(A) Failing to provide increased supervision hours by the non-public agency (NPA) for Applied Behavior Analysis (ABA) services?

15. Applicable law prescribes no requirement for a particular level of supervision for services, behavioral or otherwise. Thus, the issue to be determined is whether the four hours provided by the District and SELPA provided Student with substantive FAPE. Apart from the requests by ABC to double the four hours of supervision, first at the time ABC took over the role of providing behavioral services to Student, and later during the provision of such services, there was no evidence received regarding the necessity of greater supervision. In fact, the request made after ABC actually began providing services was made in conformance with ABC's general policy decision to increase supervision to all of its clients, not on the basis of a perceived need for greater supervision of Student's ABC aides. In summary, Student failed to establish that the District's and SELPA's decision not to adopt the ABC recommendation to double Student's supervision hours for behavioral services in any way deprived Student of FAPE. (Factual Finding 43.)

(B) Failing to provide a 50-week per year program to prevent regression?

16. Extended school year (ESY) services are special education and related services provided to children with a disability beyond the normal school year. (34 C.F.R. § 300.309(b)(1)(i) [now 34 C.F.R. § 300.106(b)(1)(i)].) ESY services are necessary only if the IEP team finds, on an individual basis, that these services are necessary to provide a FAPE. (34 C.F.R. § 300.309(a)(2) [now 34 C.F.R. § 300.106(a)(2)].) ESY services must be in accord with a

child's IEP. (34 C.F.R. § 300.309(b)(ii) [now 34 C.F.R. § 300.106(b)(1)(ii)]; Ed. Code, § 56345, subd. (b)(3); Cal. Code Regs., tit. 5, § 3043, subd. (f).) The content of ESY services are governed by the necessity to prevent skills or benefits already accrued from the prior year from facing significant jeopardy due to regression or lack of retention. (*McQueen v. Colorado Springs School District No. 11* (D. Colo. 2006) 419 F.Supp.2d 1303, 1308-1310.) Additional skills training may be included in ESY when the IEP team determines that this is necessary to meet ESY skills-maintenance goals.

17. Student failed to establish that the six weeks of ESY offered by the District and SELPA was insufficient and would significantly jeopardize skills or benefits already accrued in the "regular" school year. Mother's report to Ms. Cohen that Student's unwanted behaviors increased when she did not work with him does not establish that 52 weeks of services were required.

(C) Failing to provide a shadow aide for the entire school day and to coordinate the home program and the school program?

18. Once again, there is no provision of law which specifies the portion of a special education child's school day during which shadow aide services must be provided, when such services are generally necessary for a student. In the case of a child whose behavior impedes his learning or that of others, the IEP team must consider, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior. (34 C.F.R. § 300.346(a)(2)(i)[currently, 34 C.F.R. § 300.324(a)(2)(i)]; Ed. Code, § 56341.1, subd. (b)(1).) There is also no specific requirement that the District and SELPA "coordinate" related school and home programs.

19. Behavioral interventions, supports, and strategies were a necessary part of Student's IEP, including the use of in-school shadow aides to provide behavior prompts and other supports to diminish the negative effect that Student's behavior had on his learning. The relevant IEPs also provided for at least four weeks of training for District in-school aides provided by those who were providing the in-home program. The issues, therefore, are

whether the provision of FAPE required in-school aide services for the entire school day and greater coordination between ABC and the District. The issue clearly relates, not to this school year, when Student was placed in an in-home preschool program, but the next school year when his placement was a general education kindergarten class. The issue will be considered as if so alleged.

20. As established in Finding 69, Student's placement in school year 2005-2006 was a five hour (300 minute) school day at Valencia, and his services included four hours of in-school behavior aide services (excluding in-home services and supervision). Student asserts that the aide should have been present for the full day, and representatives of ABC supported such assertion in their testimony. However, Student did not establish that the four hours of in-school shadow aide services provided by the District and SELPA failed to address Student's behavior issues to the extent that he could not access his educational program, or that he failed to receive some educational benefit. It may be that an additional hour would have enhanced the benefits, but, as noted in Legal Conclusion 4, the District and SELPA are not required to maximize a child's potential. Student's District's aides were also working with and being trained by ABC aides during virtually the entire period that Student attended school at Valencia in school year 2005-2006. When necessary, they corrected the District aides and answered questions relative to strategies for dealing with undesirable behaviors. It is difficult to imagine a more "coordinated" program.

(D) Ignoring the psychoeducational recommendations of Dr. Christine Davidson, the occupational therapy (OT) recommendations of Laurie Cohen, and recommendations of Dr. Margaret L. Bauman, pediatric neurologist?

21. A parent of a child with a disability has the right to obtain independent educational assessments of the child. If the parent shares assessments obtained at private expense with the school district or SELPA, the assessments must be considered, if they meet district or SELPA criteria, in the any decision made with respect to the provision of FAPE to the child. (Ed. Code, § 56329, subd. (c); 20 U.S.C. § 1415 (b)(1), (d)(2)(A); 34 C.F.R. § 300.502

(a), (c)(1).) There is no legal mandate that the IEP team "adopt" any particular recommendation by an independent assessor, or any assessor for that matter.

22. As reflected in Findings 44 through 49, Dr. Baumann's report was never provided to the District for review or consideration. Ms. Cohen and Dr. Davison's reports and recommendations were reviewed and fully discussed at the December 10, 2004 and March 2, 2005 IEP meetings. Each were thoroughly considered by the IEP team members in the context of providing Student FAPE. Nothing more was required.

ISSUE 4: DID THE DISTRICT DENY STUDENT A FAPE FOR THE 2005-2006 SCHOOL YEAR BY:

(A) Failing to provide a 50-week per year program to prevent regression?

23. As reflected in Finding 69, the operative IEP for this school year included ESY services. Even if this did not equate to 50 weeks of services, Student did not establish that a brief summer break would have significantly jeopardized skills or benefits already accrued during Student's "regular" kindergarten school year. Moreover, Mother withdrew Student from school in December 2005; and in accordance with the stay-put order and August 22, 2005 IEP, the District continued to provide OT, LSH and in-home behavior services through the summer of 2006.

(B) Failing to provide an NPA aide during transition to a public school placement in order for Student to benefit from his education?

24. As noted above, where a child's behavior impedes his learning or that of others, the IEP team must consider, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior.

25. The IEP team members acknowledged the need for a transitional plan to assist Student in moving from an in-home preschool program to a general education classroom. After considerable negotiation, they agreed to provide some initial ABA training to the District aide and to have the ABC aides essentially mentor the District aides for at least four

weeks in Student's classroom. Student continued to receive ABC behavioral support in his home. This mentoring was extended by agreement for another four weeks, but circumstances caused the ABC aides to continue their mentoring until at least late November 2005.

26. Based on Findings 85 through 95, the District aides, with training that exceeded that initially agreed upon on August 22, 2005, provided ABA behavioral support to Student. That support enabled Student to benefit from his education. There was no demonstrated need to continue the ABC aides in the school setting after November of 2005. Student presented no evidence, except the opinion of Mother, that in order to receive a FAPE he needed an ABC aide in the classroom, or 25 hours of in-home behavior services in addition to 15 hours of ABA aide services in the classroom; and Mother's belief the District aides were not adequately trained was unfounded. The question is not whether the District aides received optimum or "the best" training in ABA techniques, but whether the IEP was designed to provide Student meaningful educational benefit. Student was making adequate progress at Valencia in light of his limitations. It is unnecessary to evaluate whether he could have made greater progress with 25 hours of in-home ABA tutoring a day, since the law does not guarantee maximum progress, or services that may be better than those in an IEP, as long as the IEP provides a FAPE. In light of Student's substantial limitations, his progress during the 2005-2006 school year, though modest and due in most part to transitioning to a new environment, was meaningful.

ISSUE 5: DID THE DISTRICT SIGNIFICANTLY INFRINGE ON PARENT'S OPPORTUNITY TO PARTICIPATE IN THE IEP PROCESS BY:

(A) Refusing or ignoring parent's input at IEP meetings regarding Student's food allergies and Student's safety during OT sessions?

27. Parents have the right to present information to the other members of the IEP team in person or through a representative, and the right to participate in meetings relating to eligibility for special education and related services, recommendations, and program

planning. (Ed. Code, § 56341.1, subd. (f); 20 U.S.C. § 1414(d)(1)(B)(i); 34 C.F.R. § 300.322.)

28. Based on Findings 4 through 16, the District and SELPA did not ignore Mother's expressions of concern at IEP team meetings (or otherwise) regarding Student's food allergies and safety. To the contrary, multiple assessments were performed which included the determination whether Student had disabilities relating to eating which required remediation. None were revealed and therefore no feeding program was recommended or implemented. Student's safety was not jeopardized.

(B) Failing to set forth a discussion of goals or a continuum of placements in the initial IEP of February 10, 2003?

29. The District and SELPA must ensure that a continuum of program options are available to meet the needs of special education students including regular education programs, a resource specialist program, designated instruction and services, and special classes. In determining the educational placement for a special education student, each public agency must ensure that the decision includes the parent. (Ed. Code, §§ 56360, 56361; 20 U.S.C. § 1412 (a)(5), 34 C.F.R. §§ 300.115, 300.116.) No provision of applicable law specifically requires that the IEP memorialize the continuum of placements discussed during team meetings.

30. As reflected in Findings 19 through 23, annual goals were written with input from Mother in fine and gross motor, communication, on task behavior, social interaction, cognitive, and self-help; and the District and SELPA did have a full continuum of services available and they were discussed. The discussions were noted in the February 10 and March 5, 2003 IEPs.

(C) Failing to provide prior written notice of the District's refusal to provide services parents requested at the July 11, 2005, August 22, 2005 and September 26, 2005 IEP meetings?

31. A District or SELPA must provide prior written notice to a parent of a child with a disability whenever the District or SELPA 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 FAPE to the child. The notice must include a description of the action proposed or refused, an explanation of why the action is proposed or refused, a description of each assessment procedure, assessment, record or report upon which the proposal or refusal is based, and other options considered and the reasons why they were rejected. The notice must also include reference to parent's procedural safeguards. (Ed. Code, § 56500.4; 20 U.S.C. § 1415(b)(3), (c); 34 C.F.R. § 300.503.)

32. As Findings 97 through 99 reflect, the July 11, 2005 IEP team meeting was a reconvened meeting to continue discussions relating to Student's transition from his in-home preschool program to a general education kindergarten class. The District proposed, and the parties discussed, initial training for the District in-home aides and follow up classroom "shadowing" of the District aide by ABC aides. Mother did not agree. No written notice was required to memorialize the discussions.

33. On August 22, 2005, the parties reached agreement on the provision of District in-school aides and the training to be provided to the District aides. No written notice was required to augment the IEP.

34. On September 26, 2005, the parties reconvened to discuss the status of the training of District aides. The District and SELPA offered to add an additional four weeks of training. Mother did not consent to the IEP changes proposed during this meeting.

35. No fundamental change in, or elimination of, a basic element of Student's educational program occurred at any of these meetings. (*Sherry A.D. v. Kirby* (5th Cir. 1992) 975 F.2d 193.)

36. Even if prior written notice was required to affirm the District's proposals for training its aides and to officially "refuse" Mother's insistence on the use of ABC aides exclusively in the classroom, this would constitute a technical procedural violation at worst. Student failed to establish that the failure to provide Mother with such a notice impeded Student's right to a FAPE, caused a loss of educational benefits to him, or significantly

impeded Mother's opportunity to participate in the IEP process. The parties were keenly aware of each other's position regarding the use of District aides in the classroom, rather than those in the employ of ABC. Mother attended the July 11, 2005 meeting with legal counsel, and the August 22 and September 26, 2005 meetings with a professional advocate. The sticking point at each was the use of District aides.

(D) Failing to provide prior written notice of a change in services when the NPA was removed two days per week from Student's program in November 2005?

37. This assertion requires the adoption of Student's premise that the curtailment of ABC aide services in the classroom constituted a change in services from those described in the operative IEP. Findings 67 through 73, establish that the last agreed upon IEP of August 22, 2005, provided for District aides in the classroom. ABC's only involvement was to train and supervise training for four weeks. The training period was extended by agreement and came to an end in late November of 2005. There was a typographical error in one part of the IEP which, under other circumstances, may have conveyed that the ABC services were to continue to September of 2006. However, as found, the parties only agreed to review the progress of the training of the District aides in September of 2005. There was never any agreement to continue ABC's services in the classroom beyond the time required to provide training to the District aides, and that was completed in November 2005. Thus, termination of services by ABC aides in the classroom was not a change in services identified in the IEP and did not require prior written notice by the District or SELPA.

ISSUE 6: IS STUDENT ENTITLED TO COMPENSATORY EDUCATIONAL SERVICES?

38. Compensatory education services may be awarded as appropriate equitable relief when a school district has denied a student a FAPE. (20 U.S.C. § 1415(i)(2)(B)(iii). *See also, Parents of Student W. v. Puyallup Sch. Dist.* (9th Cir. 1994) 31 F.3d 1489.) Appropriate relief is relief designed to ensure the student is appropriately educated within the meaning of the IDEA, and there is no obligation to provide a day-for-day compensation for time

missed. (*Id.*) An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student's needs. (*Reid v. District of Columbia* (D.D.C. 2005) 401 F.3d 516.) When determining an award of compensatory education, the inquiry must be fact-specific. (*Ibid.*) The award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place. (*Ibid.*)

39. Student failed to establish a denial of FAPE in school years 2003-2004, 2004-2005, and 2005-2006. Therefore, it is unnecessary to determine whether compensatory education is appropriate, and if so, in what manner and amount.

ISSUE 7: ARE PARENTS ENTITLED TO REIMBURSEMENT FOR COSTS INCURRED FOR NPA BEHAVIOR AIDE SERVICES?

40. A school district or SELPA may be required to reimburse parents for their expenditures for private educational services obtained for a student by his parents if the services offered by the District were inadequate or inappropriate, the services selected by the parent were appropriate, and equitable considerations support the parents' claim.

(*Burlington v. Dept. of Educ.* (1985) 471 U.S. 359, 85 L.Ed.2d 385, 105 S.Ct. 1996.)

"Reimbursement merely requires [a district] to belatedly pay expenses that it should have paid all along and would have borne in the first instance had it developed a proper IEP." (*Id.* at pp. 370-71. *See also*, 20 U.S.C. § 1412(a)(10)(C)(ii); 34 C.F.R. § 300.403.)

41. Mother failed to establish that the services offered and/or provided by the District and SELPA were inadequate or inappropriate, as measured by applicable statutory and case law. Thus, it is unnecessary to determine if services for which reimbursement is sought by Mother were appropriate, or to consider equitable considerations otherwise applicable to such claims.

ORDER

Petitioner/Student's requests for relief from Respondents Upland Unified School

District and West End SELPA are denied. Mother's request for reimbursement for NPA services is denied.

PREVAILING PARTY

Pursuant to Education Code section 56507, subdivision (d), Respondents Upland Unified School District and West END SELPA prevailed on each and every issue heard and decided in this matter.

NOTICE OF APPEAL RIGHTS

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

DATED: July 11, 2007



WENDY A. WEBER

Administrative Law Judge
Office of Administrative Hearings
Special Education Division