

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

OAH CASE NO. 2007100455

v.

ACALANES UNION HIGH SCHOOL
DISTRICT.

DECISION

Administrative Law Judge (ALJ) Charles Marson, Office of Administrative Hearings (OAH), State of California, heard this matter in Walnut Creek, California on April 28, 29, and 30, and June 2, 3, and 4, 2008.

Student's Father and Mother (Parents) represented him. Tracy L. Tibbals, Attorney at Law, represented the Acalanes Union High School District (District). Cheryl Hazell-Small, the District's Director of Special Education and Auxiliary Services, was present each day of hearing.

Student filed a third amended due process hearing request (complaint) on March 5, 2008. On April 30, 2008, the hearing was continued to June 2, 2008. At the conclusion of the hearing the parties requested and obtained leave to file closing briefs by June 23, 2008. By agreement of the parties that date was extended to June 30, 2008, when briefs were submitted and the record closed.

ISSUES

1. After the first 30 days of Student's presence in the District, did the District

violate procedural provisions of the IDEIA by:

- a. failing to assess Student in the areas of ability to encode visual information, memory of meaningful stimuli, adaptive skills, pragmatic language, and critical thinking skills;
- b. failing to have appropriate people at IEP meetings who had first-hand knowledge of Student;
- c. predetermining Student's IEP offer;
- d. failing to consider Parents' views;
- e. failing to make a clear and coherent IEP offer; or
- f. failing in its obligation to refer Student to the local mental health agency under AB3632?¹

2. After the first 30 days of Student's presence in the District, did the District substantively fail to offer to Student a free appropriate public education (FAPE) by:

- a. failing in its IEP offer to address Student's need for social skills training;
- b. offering an inappropriate study skills class;
- c. failing to develop an IEP offer containing adequate present levels of performance and measurable goals and objectives; or
- d. failing to offer Student a one-to-one instructional assistant?

3. During the first 30 days of Student's presence in the District, did the District violate procedural provisions of the Individuals with Disabilities in Education Improvement Act (IDEIA) by:

- a. failing to provide Student an educational program comparable to the one he
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¹ Parents originally argued that the District failed adequately to notify Parents about the purpose of an IEP team meeting or about the people who would attend. Parents abandoned this argument at hearing and it is not addressed here.

- most recently had in the Oakland Unified School District (OUSD);
- b. failing to develop an Individualized Education Plan (IEP) for Student; or
 - c. failing to adopt Student's latest IEP from OUSD?
4. Was Student appropriately placed in the Orion Academy?²

REQUESTED RESOLUTIONS

Student seeks an order entitling him to daily structured social skill training in a small group setting; an adequately trained one-to-one instructional assistant during general education classes; assessments and services in the areas of ability to encode visual information, memory of meaningful stimuli, adaptive skills, pragmatic language, and critical thinking skills; extended school year services to address his social skills needs; compensatory education in the form of counseling and social skills development; reimbursement for expenses in placing him at the Orion Academy; and/or a District-funded placement at the Orion Academy.

FACTUAL FINDINGS

BACKGROUND

1. Student is a fourteen-year-old boy who was a ninth grader in the school year (SY) 2007-2008. He resides with Parents within the boundaries of the District. He has Asperger's Syndrome (Asperger's) and is eligible for, and has been receiving, special education and related services due to autistic-like behaviors. He is intellectually gifted and academically successful, but he has significant social deficits and is subject to depression and suicidal thinking. He also has Attention Deficit Hyperactivity Disorder (ADHD) and has difficulty concentrating in class.

2. Until the summer of 2007, Student resided with Parents within the

² The ALJ has reordered, renumbered, and edited the issues for clarity.

boundaries of the Oakland Unified School District (OUSD). Since the fifth grade he had attended OUSD's Asperger's Syndrome Inclusion Program (ASIP), a program for gifted and talented students with Asperger's. His most recent IEP at OUSD, dated March 13, 2007, placed him for one period every day in the ASIP classroom, primarily for social skills training, and for the rest of the day in general education classes. Student made some social progress in the ASIP program and excelled academically.

3. Student and Parents moved to the District in the summer of 2007. Parents enrolled Student at the Orion Academy (Orion), a private school in Moraga, California, primarily for above-average students with Asperger's. Orion's school year began on August 9, 2007. The District's school year began on August 29, 2007.

4. On or about August 14, 2007, Parents applied to enroll Student in the District, hoping to transfer Student to an appropriate District program. District staff gathered information about Student from OUSD and set an interim IEP meeting for September 6, 2007. At that meeting the District offered Student an interim 30-day placement in ninth grade general education classes at Acalanes High School (Acalanes) in Lafayette, with one period a day in the Instructional Support Program (ISP), a class taught in a resource room where students are primarily taught study skills. Parents declined the offer, and Student remained at Orion.

5. On October 12, 2007, the District held an annual IEP meeting to determine Student's program for the remainder of the SY 2007-2008. At the end of the meeting the District offered Student a placement in general education classes at Acalanes, one period a day in the ISP, and one period a week of social skills training in a small class dedicated to that purpose. Parents declined the offer and filed the complaint leading to this proceeding. Student remained at Orion for the rest of the SY 2007-2008, where he excelled academically and his social skills improved somewhat.

THE OCTOBER 12, 2007 IEP: ALLEGED PROCEDURAL VIOLATIONS

Failure to assess in all areas of suspected disability

6. Assessments upon which a special education determination is based must comply with numerous legal requirements. In relevant part, they must occur at least every three years, or more frequently if circumstances require it, or if a parent or teacher requests it. Assessments for educational need must be done in all areas related to any suspected disability the student may have.

7. Parents contend that the District should have assessed Student for encoding of visual information, memory of meaningful stimuli, adaptive skills, pragmatic language, and critical thinking skills. The District contends that OUSD's triennial assessment in 2006 were sufficiently recent and accurate that no further assessments were required.

8. The evidence did not show that parents ever requested an assessment. Ms. Cheryl Hazell-Small, the District's Director of Special Education and Auxiliary Services, testified that at the September 6, 2007 IEP meeting Parents seemed satisfied with the Oakland assessments. Parents did not contradict that statement at hearing. No document was introduced in evidence containing any reference to a request for assessment, and no mention of a request was made at the October 12, 2007 IEP meeting.

9. As part of Student's triennial review, a psychoeducational assessment of Student was conducted on January 19 and 23, 2006, by Karin Laursen, a school psychologist for OUSD. Ms. Laursen's assessment was thorough. It assessed Student for encoding of visual information, memory of meaningful stimuli, adaptive skills, pragmatic language, and critical thinking skills. Ms. Laursen found, inter alia, that "[w]hile [Student's] rote memory is well-developed, his memory for meaningful stimuli (e.g. familiar objects) is very poor." She found he did not possess sufficient critical thinking skills to understand how his actions affect others. She measured his social and emotional functioning and concluded that Student was "at risk" in both adaptability and functional communication,

and recommended that goals be developed to address his "significant adaptive skill deficits, particularly in the area of socialization" Ms. Laursen also tested Student's pragmatic language skills, and found that Student "does not demonstrate an understanding of hints or indirect cues in a conversation" She described his pragmatic language difficulties as "pervasive."

10. Parents do not argue that any changed circumstances required a new psychoeducational assessment of encoding of visual information, memory of meaningful stimuli, adaptive skills, pragmatic language, or critical thinking skills, all of which were appropriately assessed by Ms. Laursen. There was no evidence that Student's needs in those areas had changed between January 2006 and October 2007. To the contrary, Ms. Laursen's conclusions were consistent with all the data about Student developed after her assessment.³

11. The evidence showed that the District was not required to assess Student in the areas of encoding of visual information, memory of meaningful stimuli, adaptive skills, pragmatic language, and critical thinking skills. The January 2006 assessment by Ms. Laursen in Oakland was current and reliable for educational decision-making, and the District was not required to repeat it.

FAILURE TO HAVE APPROPRIATE PERSONNEL AT THE MEETING

12. An IEP team must include not less than one special education teacher of the student. If the student will, or may, be exposed to the regular education environment, the team must also include a general education teacher of the student. Attendance of the teachers is mandatory unless waived in writing. Parents contend that the District failed to

³ The parties dispute the degree to which Student's critical thinking is impaired. There is no need to resolve that dispute here, as the evidence underlying the parties' positions is sufficient for educational decision-making and not in controversy.

ensure the presence of such teachers. The evidence supported their contention.⁴

13. Student had primarily been in general education classes in Oakland, with services and supports, and the District knew on October 12, 2007, that any offer it made of placement in a District school would place Student primarily in the general education environment.

14. On October 7, 2007, the District's speech and language pathologist Jacqueline Chiavini observed Student for approximately 45 minutes in his language arts class at Orion, and wrote a report for the IEP team. Ms. Chiavini scheduled a different meeting at the same time as the August 12, 2007 IEP for Student. As a result, she did not arrive at the meeting until its end, after the parties' decisions had been made, and after Father had signed the IEP offer, declining it. Her appearance was too late to be meaningful. Effectively, she did not attend.

15. On October 11, 2007, school psychologist Liz Ng observed Student for approximately an hour and a half at lunch and in class at Orion, and wrote a report. For reasons not in the record, Ms. Ng did not attend the August 12, 2007 IEP meeting.

16. The District was represented at the meeting by Ms. Hazell-Small; Karin Kauzer, the ISP teacher; and Cathy Challacombe, a general education English teacher. None of the District representatives had ever met Student or knew much about him. Ms. Hazell-Small and Ms. Kauzer had read the reports of Ms. Chiavini and Ms. Ng and the triennial and March 2007 IEP documents sent by OUSD. Ms. Challacombe knew nothing about Student, and had been invited simply to satisfy the requirement that a general education teacher attend. She read some documents about Student, but the record does not clearly

⁴ Parents also argue that a number of others who knew Student should have been at the meeting, but their attendance was discretionary, not mandatory, under governing law.

show whether this occurred before or after the meeting.

17. The District first set the IEP meeting for October 5, 2007, and asked Dr. Cathryn Stewart, the Director of Orion School, to attend. Dr. Stewart knew Student, had participated in teaching him, and agreed to attend the October 5 meeting. The District did not invite anyone from OUSD or any other past or present general or special education teacher of Student to the meeting, and none attended.

18. Shortly before the meeting scheduled for October 5, 2007, the District unilaterally cancelled the meeting without explanation and reset it for October 12. Parents protested by telephone and in writing because Dr. Stewart could not attend on October 12. The District did not respond to their protests until the meeting itself. The District now asserts in its closing brief that the District cancelled the meeting "in an effort to get Orion director Dr. Kathryn Stewart to serve on the team" but "it turned out" she could not make the meeting on October 12. The record does not support that assertion. Ms. Hazell-Small testified that she did not remember why the meeting on October 5 was cancelled. The only apparent reason was that neither Ms. Chiavini nor Ms. Ng had observed Student at Orion by October 5. There was no evidence the District sought to arrange Dr. Stewart's presence at the meeting on October 12. Because the District rescheduled the meeting from October 5 to October 12, Dr. Stewart did not attend it.

19. On October 5, 2007, Father wrote to the District about the cancellation of the IEP meeting that had been scheduled for that day. After two paragraphs protesting the cancellation because Dr. Stewart could not attend the rescheduled meeting, Father stated:

At this moment, in order to move along with my son's IEP, my wife and I would still attend the 10/12/07 meeting. Depending on what will be discussed at the meeting, I'd like to reserve the right for an additional meeting to ensure we have proper representation from the Orion Academy.

The District claims this letter waived Parents' entitlement to the presence of Dr. Stewart at the meeting. However, Father testified that he had no such intent, and the text of the letter supported his testimony. The announcement that Parents "would still attend" the meeting is not an express waiver. The next sentence shows that Parents would attend under protest and did not intend to waive their right to Dr. Stewart's presence. The letter did not waive that right.

20. At the beginning of the IEP meeting on October 12, 2007, Ms. Hazell-Small offered to delay the meeting again if Parents wanted to wait for a time at which Dr. Stewart could attend. Parents knew from experience that Dr. Stewart was extremely busy and her presence would be difficult to obtain, and they correctly viewed the October 12 meeting as late in the school year, so they chose to decline that offer and proceed with the meeting. That choice did not waive the presence of Dr. Stewart or anyone else at the IEP meeting. Parents made the choice only to obtain an offer that was already more than 30 days after the interim IEP meeting. Moreover, it was the District's responsibility, not that of Parents, to have appropriate personnel in attendance. Such a waiver must be in writing and was not.

21. The evidence showed that the District committed a procedural violation of IDEIA and related state statutes because it failed to ensure the presence at the October 12, 2007 IEP meeting of either a regular education teacher or a special education teacher who was teaching or had ever taught Student.

22. The District's failure to ensure the attendance of the required teachers at the October 12, 2007 IEP meeting denied Student a FAPE because it denied him educational opportunity and substantially impeded Parents' right to participate in the decision-making process with respect to the provision of a FAPE to Student. The District's failure to ensure that there was anyone at the meeting who had ever taught Student was worsened by the fact that the only two District employees who had ever seen Student even briefly were absent from the meeting. As a result, there was no educator at the meeting who could

from personal knowledge answer questions based on direct observation of Student's needs, or discuss the extent of his social skills deficits, the impact of his ADHD on his concentration in class, the extent of his need for prompting in class to stay on task, or the possibility that he might need a small class environment in order to stay on task. As shown below, these issues were central to the decisions the IEP team had to make. Dr. Stewart had important and well-informed views about them to offer, but the team did not hear them. In the absence of knowledgeable personnel, the IEP team proceeded without enough information to make critical decisions. As Ms. Kauzer candidly testified, "[t]his was our offer because we have never had the child and didn't know the child."

FAIR CONSIDERATION OF PARENTS' VIEWS / PREDETERMINATION OF IEP OFFER

23. Parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, assessment, educational placement, and provision of a FAPE to their child. A district must fairly and honestly consider the views of Parents expressed in an IEP meeting. School officials may not arrive at an IEP meeting having already decided on the program to be offered. A district does not predetermine an IEP simply by meeting to review and discuss a child's evaluation and programming in advance of an IEP meeting, but a district that predetermines the child's program and does not consider the parents' requests with an open mind has violated the parents' right to participate in the IEP process. The test is whether the school district comes to the IEP meeting with an open mind, and discusses and considers the parents' placement recommendations and concerns before the IEP team makes a final recommendation.

24. Parents contend that their views were not fairly considered at the IEP meeting of October 12, 2007, and that the District's offer was determined in advance. The two most important issues at the meeting were whether to place Student at Acalanes or Orion, and whether one day a week of social skills training was sufficient. On those issues,

the weight of evidence supported Parents' claim.

25. Ms. Hazell-Small, who ran the IEP meeting on October 12, 2007, arrived with blank IEP forms and filled them out during the meeting. She knew that Parents wanted the District to place Student at Orion. Parents spoke at length about their desire that Student receive social skills training five days a week, as he had in Oakland. However, Ms. Hazell-Small wrote in the District's offer that Student would be placed at Acalanes in general education classes, with one period a day in Karin Kauzer's ISP class and 45 minutes a week in Ms. Ng's social skills class.

26. Ms. Hazell-Small further testified that she had conversations with Ms. Chiavini and Ms. Ng shortly before the meeting, at which the choice between a private or public school placement was discussed. In those conversations Ms. Chiavini and Ms. Ng both stated in substance that Student could be appropriately served at a District school, although neither of their reports stated that view or made any placement recommendation. Since they were the only District employees who actually had met and observed Student, Ms. Hazell-Small accepted their views. These conversations were not described to Parents at the IEP meeting, and the substance of the conversations did not appear in the written reports of the observations that were given to Parents at the beginning of the meeting. Parents were unaware during the meeting that these conversations had occurred.

27. At hearing, Ms. Kauzer confirmed that in her pre-meeting conversation with Ms. Hazell-Small she stated that Student could be served at a District school and needed support for social skills, but she did not recall recommending any particular amount of social skills instruction. Ms. Ng also confirmed that she had discussed Student with Ms. Hazell-Small before the meeting. She denied, however, that she discussed placement options at that time; she testified "that is only for an IEP process." She told Ms. Hazell-Small only that Student "would be a student that we could serve in our school if

that's what the [IEP] team decides is what is necessary." She made no recommendation concerning the amount of social skills training Student needed.

28. Districts may, of course, lawfully hold preliminary conversations before an IEP meeting. But those conversations must truly be preliminary; they must be continued with the parents before a final decision is made. Neither the audio recording nor the notes of the meeting contains any discussion of the relative merits of placing Student at Acalanes or Orion. Ms. Hazell-Small testified on cross-examination that neither the option of a placement at Orion nor any other placement except Acalanes was discussed at the meeting. There was only one option presented, she testified, because there was only one "appropriate" for Student. While Father spoke at length at the meeting of Student's need for daily social skills training, District team members remained silent. No dialogue occurred.

29. The audio recording of the meeting showed that Ms. Kauzer must have been aware of the nature of the District's offer when the meeting began, because Father asked her during the meeting to confirm the amount of social skills training to be offered, and she did so. That knowledge did not come from any discussion in the meeting. The audio recording also showed that the two critical issues were not decided in the meeting through dialogue with Parents. The weight of evidence showed, therefore, that the decisions to offer placement at Acalanes and to offer only 45 minutes a week of social skills training were not fairly discussed with Parents, nor were Parents' views on those matters fairly considered. It follows that the evidence also showed that these two critical decisions were predetermined, since they were reached outside the meeting, without parental participation, and were known to Ms. Kauzer, and therefore probably by Ms. Hazell-Small, before the meeting began.

30. The District argues that Parents' placement decision was predetermined, but does not explain why that would have any legal consequence. The evidence of its claim

consists only of the subjective impressions of District staff at the October meeting that Parents were rigid and had closed minds. The recording of the meeting, however, showed that Parents argued vigorously and at length for improving the District's IEP offer by, for example, providing social skills training five days a week and providing a one-to-one instructional assistant.⁵ Father testified that Parents would have transferred Student to Acalanes under an appropriate IEP, and the evidence did not establish that Parents would not have done so.

31. The evidence showed that the District committed a procedural violation of IDEIA and related state statutes at the October 12, 2007 IEP meeting by failing to fairly consider Parents' views that Student should be placed at Orion and that Student needed social skills training five days a week, not one, and by predetermining those elements of its offer. These procedural violations denied Student a FAPE because it denied him educational opportunity and substantially impeded Parents' right to participate in the decision-making process. It deprived Student of fair consideration of the two most important issues at the meeting, and deprived Parents of a fair opportunity to discuss those issues with open-minded District representatives.

CLEAR AND COHERENT IEP OFFER

32. A school district must make an IEP offer sufficiently clear and coherent that informed parents may intelligently decide whether to accept it.

33. In the October 12, 2007 IEP offer (the October IEP), Student was offered placement in the general education program at Acalanes with one 50-minute period a day in the ISP class and one 45-minute period a week in Ms. Ng's social skills class. He was also

⁵ The District did consider and respond to Parents' preference for a one-to-one aide by arguing that its system of targeted classes, described below, was an adequate substitute.

given four specific accommodations. The statement of these elements of Student's offered program are clear, and Parents do not argue otherwise.

34. Parents argue in their closing brief that the offer was not sufficiently clear and coherent for Parents to make an informed decision because it did not set forth the format or content of social skills training, the identity of providers of services, or "when and where, how and how much" of the services would be provided.⁶ Parents' contention might better be described as a claim that the IEP did not contain what it was required to contain. However, the required content of an IEP is set forth in detail by statute. It is also limited by statute to the content described; that is, nothing that is not required by the statute is required in an IEP. There is no requirement that an IEP include the matters Parents observe are missing from the October IEP offer. The evidence showed that the District's October IEP offer was clear and coherent.

THE OCTOBER 12, 2007 IEP: ALLEGED SUBSTANTIVE VIOLATIONS

Student's need for social skills training

35. In an adequate IEP, a school district must address each unique need of a special education student, and must offer a program that is reasonably calculated to bring him some educational benefit. Student's most pressing unique need was for social skills training. Parents argue that it was not adequately addressed in the October IEP. The evidence supported their argument.

36. Substantial information was before the IEP team on October 12, 2007, showing that Student's social skills deficits were severe. The psychological report completed in January 2006 by school psychologist Karen Laursen of OUSD showed that

⁶ Parents also argue that the written offer is vague because it was not consistent with oral statements made in the IEP meeting. However, it is the written offer that governs.

Student was in the highest ranges of cognitive ability. His general conceptual ability score put him in the 99.9th percentile, the “very high and gifted range of intellectual functioning.” He achieved a verbal cluster score in the 99th percentile and a nonverbal reasoning cluster score in the 99.9th percentile.

37. However, Ms. Laursen’s report is replete with references to Student’s social deficits. On the Vineland Adaptive Behavior Scales, Student’s communication skills were in the tenth percentile and his socialization skills were in the first percentile. For the Behavior Assessment System for Children Second Edition (BASC-2), Ms. Laursen obtained reports from Ms. Bruin, Student’s ASIP teacher in Oakland, and from Parents and Student himself. Ms. Bruin responded that Student was often sad and sometimes lonely, negative about things, and easily upset; that he often acted strangely, and sometimes seemed out of touch with reality and unaware of others. She also stated that Student “almost always has trouble making new friends, sometimes refuses to join group activities, and sometimes avoids other adolescents.”

38. Parents responded to Ms. Laursen’s BASC-2 inquiry by reporting that Student often said “I don’t have any friends,” almost always seemed lonely, and sometimes cried easily. They reported he engaged in suicidal ideation, saying “I want to kill myself” or “I want to die” or “I wish I were dead.” They confirmed he almost always had trouble making new friends, often preferred to be alone, and sometimes refused to join group activities. In a separate interview with Ms. Laursen, Parents stated that Student does not have a sense of appropriate behavior in social situations, talks about things others do not understand, and does not understand how his behavior affects others.

39. Parents reported to Ms. Laursen an incident at a Cub Scout race track event in which Student dangled a screwdriver over an adult’s head, making it appear he was about to stab the adult. Student said he was conducting an experiment to see if he could pick up an electronic signal from the race track, and could not understand how his action

could be interpreted as threatening or dangerous.

40. Student reported to Ms. Laursen on the BASC-2 that he felt other kids hated to be with him, that his life was getting worse, that no one understood him, and that he was often slow to make friends. These themes recurred throughout his responses.

41. Ms. Laursen concluded from her tests, observations, and interviews of Parents and Student that Student's social difficulties were "pervasive." She concluded that his significant social skills deficits and lack of social interest made it difficult for him to initiate social interaction, interpret social cues accurately, respond appropriately to complex social situations, and understand how his behavior affects those around him. She concluded that Student's social and psychological state was worsening, and that he had become increasingly withdrawn and inattentive. "While he used to be cheerful and interested in participating in activities with others, he now often chooses not to participate and sleeps instead." She made this recommendation, among others:

[Student]'s program should help foster appropriate peer relationships and age- appropriate social skills. [Student] will benefit from explicit social skill instruction that specifically addresses how to deal with peer relationships and conflicts. It is important that [Student] has numerous opportunities to practice new skills taught so that he may generalize them in other settings.

The District accepts Ms. Laursen's report as current and accurate for decision-making.

42. In September 2006 Alameda County Mental Health Services assessed Student and found him eligible for services under AB 3632. According to the agency's eligibility report, Student had been referred "because of poor social skills, withdrawing behaviors, possible depression, and suicidal ideation." The assessor agreed with the

diagnoses of Asperger's and depression, concluding that Student "continues to display social inappropriateness and withdrawing behaviors." She found that Student's "emotional and behavioral problems significantly interfere with his ability to benefit fully from his special education program" and that he was eligible for AB 3632 services. She recommended individual therapy once a week and family therapy once a week, which he received.⁷

43. The reports from Ms. Laursen and Alameda County Mental Health Services were considered by OUSD's IEP team. On March 13, 2007, the team proposed, and Parents accepted, an IEP that continued to place Student in the ASIP program with social skills training five days a week. While the team recognized that Student had made significant progress as a result of that training, they found that he needed to continue it because he still exhibited sufficient troubling social behavior that five days a week of social skills training was appropriate. The team agreed on eight goals, five of which addressed social skills.

44. The only other information about Student's social skills needs that the District possessed on October 12, 2007, was the report from its own school psychologist, Liz Ng, of her observation of Student at Orion the day before the IEP meeting. Ms. Ng observed Student for about an hour and a half, during which he was at lunch and then in history class. She reported that Student walked into the lunchroom where eight other

⁷ The seriousness of Student's suicidal thinking is in dispute. At hearing, Parents recount several incidents that occurred outside of school that suggest the problem is serious, and suicidal thoughts are mentioned repeatedly in Ms. Laursen's evaluation. On the other hand, the AB 3632 assessor looked for and did not find evidence of suicidal ideation, and the Oakland IEP does not mention it. Student's suicidal ideation apparently occurs outside of school and presumably is addressed in individual therapy.

students were eating and talking, and sat at an empty table by himself next to a table with five other students. He occasionally looked at the other students but did not say anything, and remained apart from them or walked around them. Once he talked to a student sitting at the other table about a class subject, but when another student introduced himself and remarked that he and Student had the same name, Student did not look up or respond. Ms. Ng asked the students what they liked about Orion, and all but Student responded. Student waited to leave until three minutes after the others had gone. A teacher commented that this behavior was common for Student. In history class, Ms. Ng reported, Student had only one interaction with a peer, when the student next to him asked a question about the assignment.

45. Ms. Ng's report confirmed that Student still exhibited significant social skills deficits in October 2007. Nothing in it was inconsistent with the information the IEP team had from Oakland, or suggested his social skills training could appropriately be reduced from five a days a week to one. Ms. Ng did not attend the IEP meeting, and testified she did not recall making any particular recommendation about the amount of social skills training Student should receive. That issue, she testified, was for the IEP team to decide.

46. Nothing before the IEP team on October 12, 2007, supported its decision to offer Student only 45 minutes a week of social skills training. To the contrary, their information showed that Student needed a great deal of social skills training. Ms. Laursen had recommended that Student's program offer "numerous opportunities to practice new skills taught so that he may generalize them in other settings." Alameda County's AB 3632 assessor had noted that Oakland's ASIP classroom (where Student received social skills training every school day) was benefiting Student, but he "would still benefit from individual therapy that would additionally focus on improving social interaction and skills with peers." Oakland's IEP team had decided Student needed to continue his social skills class five days a week in addition to receiving AB 3632 services.

47. Moreover, had the District not failed to have Dr. Stewart at the meeting, it would have heard significant professional support for Parents' argument. Dr. Stewart is the founder as well as the Director of Orion Academy. She has extensive experience with children with Asperger's both from her private practice and from her eight years at Orion, where 70 percent of the students have Asperger's. She has a doctor's degree in clinical psychology, and before she founded Orion, was the clinical director at the Amador Family Center for 15 years, where she also treated children with Asperger's. In 2000 she published a book entitled *Helping Children with Asperger's and Nonverbal Learning Disability*, which was recently republished in a second edition. She maintains a private practice for children with Asperger's. Dr. Stewart was an impressive witness at hearing. Her testimony was especially credible because of her excellent qualifications and because she had far more exposure to Student than any other educator or professional who testified.⁸

48. At hearing Dr. Stewart described Student as one of the most socially impaired students at Orion. She confirmed Ms. Ng's observation that Student sometimes would not respond to peers who talked to him. She was recently forced to suspend Student for a day when he struck a fellow student with a chair in frustration with his own inability to cope in a simple social situation. She saw him bang his head against a wall out of that frustration, and lie on the ground among people in a group. In Dr. Stewart's opinion, 45 minutes a week of social skills training and five days a week of ISP class would not have been an adequate program for Student. He needed social skills support "woven into his program" and needed to be able to address his social problems when they occur.

⁸ Not all of Dr. Stewart's information about Student was available to her in October 2007, because Student had then been at Orion for just over two months. However, that time was sufficient to inform her opinion, and substantially more than the time Ms. Challacombe and Ms. Ng spent observing Student.

49. The District does not argue that Ms. Ng's Friday social skills class would by itself have been adequate to address Student's social skills deficits. Instead, conflating social skills training with social development, social interaction, and social opportunities, the District argues that Student would have received social skills training every day of the week in the offered ISP class and in general education classes. The evidence did not support that claim.

50. The nature of structured social skills training is well illustrated by the teaching methods used in the ASIP class Student attended in Oakland and in Ms. Ng's Friday social skills class at Acalanes. In the ASIP class, a variety of strategies and materials was used, including the materials of Dr. Mel Levine and Michelle Garcia Winner. The class focused on supporting and building social cognition by exploring what works socially and what does not, criteria for good group behavior, and the development of vocabulary and skills for understanding social phenomena in school such as social groups, defenders, bullies, victims, social language, humor regulation, and control of boasting.

51. In her social skills class on Fridays, Ms. Ng brings up things that have happened to her students, or upcoming events, like football games or finals. These are selected because they are areas of weakness or areas students want to discuss. Role-plays are organized, and problem-solving is discussed. Students practice on each other and play games selected for their instructional value. Ms. Ng uses a game, for example, in which a student draws a card that describes a social situation in which someone responds in an inappropriate way. The student's job is to identify the thinking error the person made. If the group agrees, it explores the appropriate way to respond, and students who are right earn points. Ms. Ng provides readings from which students can guess facial cues and expressions. She also uses Mindreading, which is software designed specifically for Asperger's students in high school and which teaches the reading of social cues from body language and the expressions of others in the context of more than 200 types of emotions.

Ms. Ng also assigns work to be done out of class. For example, she might assign students to watch for someone else – perhaps a brother or sister – getting angry, identify the thinking error that led to the anger, and determine what should have been done. Students bring these observations to class for discussion. The exercises are structured for the individual needs of each student.

52. The affirmative, planned, structured nature of the activities in the ASIP class in Oakland and in Ms. Ng’s class at Acalanes constitute the sort of “explicit social skill instruction” that Ms. Laursen of OUSD reported Student required.

53. Ms. Kauzer’s ISP class, which Student would have attended five days a week under the October IEP, shows none of the planned and structured approach to social skills training typical of the classes described above. The District claims that the ISP class is “structured to encourage, prompt, and scaffold social interaction,” and “works daily on ... self-advocacy, social scenarios, and practice through role-playing and simulation,” but the evidence showed otherwise.

54. To test the District’s assertion that an ISP class teaches social skills, Father visited the ISP class of resource teacher Lee Storey at Acalanes on October 30, 2007, and documented his observations. The class contained eight students. For seven minutes at the start of the 50-minute class, the teacher read a bulletin announcing school events and led a discussion of taking notes in class. Then the group broke up for independent study. All students worked independently except one who got help from a peer tutor. The teacher worked with one student on literature while an aide circulated among students offering individual assistance. Some students asked for help; others did not. One kept his head down on his desk throughout the class. Other than the assistance given one student by the peer tutor, there was no interaction between students. The teacher told Father it had been a fairly typical day, and at hearing there was no evidence that Father’s description of the class was inaccurate.

55. The District and its Special Education Local Planning Area (SELPA) arranged Father's visit to Ms. Storey's class, apparently assuming that it was sufficiently like Ms. Kauzer's class that it would give Father an accurate impression of the latter. Ms. Kauzer testified that her class was only "slightly" different from Ms. Storey's class, and the evidence did not reveal any material difference. Asked at hearing to describe a typical day in her class, Ms. Kauzer testified that her curriculum addresses organizational and planning skills; time management; reading skills; writing skills; brainstorming; outlining; citations; test-taking; study and vocabulary strategies; "all the skills that [students] need to be successful in the regular classroom." Students work on papers on computers while she circulates, helping them revise papers. She checks organizational binders and consults with general education teachers. Ms. Kauzer testified that her ISP class is basically a resource room, and that the students call it a skills class.

56. Nothing in Ms. Kauzer's description of her curriculum or of a typical day in her class addressed social skills. Asked what she does for social skills, she said that everything she does is geared to advancing self-esteem by teaching skills. She addresses known social skills deficits by working individually with the student. She might learn from a general education teacher of an incident, discuss it with a student, and propose that the student make a new plan for the next day. She testified that the class addresses social needs because it is small and interactive. She testified further that to address self-advocacy, she might organize a role-playing exercise in which students practice approaching a teacher for help. On this record, that is the only planned social exercise her class offers, and it is not clear how often it occurs. Aside from that single self-help simulation, there was no evidence that there was any planned or structured interaction between students in Ms. Kauzer's ISP class, or that any organized social skills training occurred. In the study skills goal Ms. Kauzer wrote for Student and presented at the October meeting, the only mention of social skills was that Student needed to use self-

advocacy to seek help in completing assignments. The evidence showed that Ms. Kauzer's ISP class, with one minor exception, offered no structured social skills training to Student. Social skills are generally addressed there only reactively, when some occurrence suggests intervention.

57. The District argues that the mere process of working together on class projects in the ISP classroom fosters social skills development. That is no doubt true, in the limited sense that cooperative human interaction always involves social skills. But all the material before the District's IEP team in October 2007 showed that Student needed the sort of planned, structured, programmatic, individually tailored training offered in Oakland's ASIP class and Ms. Ng's social skills class. The unplanned, unstructured social experiences created by chance and the proximity of students in an ISP class focused on study skills were not adequate substitutes.

58. The October IEP would have placed Student in general education classes of about 20 students each for all but one period a day. The District alludes vaguely to the social "development" that might occur in such classes, but does not argue that any planned social skills training occurs there. There was no evidence that significant social interaction among students occurs in those classes. Ms. Kauzer described a general education classroom as a place "where you're not getting the social interaction."

59. In arguing that Student's social skills needs would be met under the October IEP, District witnesses praised the extensive communication among general education and special education staff, and noted that the resource teachers and Ms. Ng make themselves readily available to students who want to discuss problems. However, one of Student's deficits is in self-advocacy, and the IEP documents from OUSD suggested he would not approach teachers for help on his own initiative. The degree of communication among faculty of Acalanes is laudable, but it would not necessarily result in affirmatively teaching Student social skills. At best it could enable the faculty to react to events.

60. District witnesses uniformly testified that they believed Student would progress at Acalanes because other students with Asperger's have succeeded there. Some testified they had never known an Asperger's student at Acalanes not to succeed. Ms. Hazell-Small testified that she was confident that Student would progress at Acalanes because he fit the "profile" of other students with Asperger's who did well there. However, the Asperger's students who attend Acalanes are in a select group that excludes the students with Asperger's whom the District places at Orion and elsewhere, and also excludes those whose parents send them to private school in the belief that they cannot succeed at Acalanes. More importantly, it is the central premise of IDEIA that every disabled student is unique, and that a program that works for one student does not necessarily work for another student with the same disability. The fact that "similar" students with Asperger's succeed at Acalanes does not prove that Student would. The District argues that these other students with Asperger's could furnish ready role models for Student, but does not explain how they would have been involved in the school day of an incoming ninth grader. Nothing in the offered IEP would have required exposure to those students.

61. District witnesses also testified that if for some reason Student's IEP did not result in a successful program, the school was prepared to adjust its services as required; assuming that to be true, that willingness does not rescue an otherwise inadequate IEP. An IEP is required to contain all the services and supports a student will receive so parents can decide whether to accept it and so it can be enforced.

62. Based on all the evidence, the District's decision to reduce Student's small class social skills training from five days a week to one was unsupported by the information before it on October 12, 2007. It was unreasonable and inappropriate. The October IEP did not adequately address Student's unique need for such training, and was not reasonably calculated to allow Student to benefit from the social aspects of his

education. It therefore denied him a FAPE.

THE APPROPRIATENESS OF OFFERING THE ISP CLASS

63. Parents argue that since Student has no difficulty studying, offering to place him in an ISP class was inappropriate because it was unnecessary. However, the evidence showed that Student does need study skills training. Ms. Laursen's psychological report recommended it. The Oakland IEP noted that Student had problems with organization, and provided a goal for improvement of study skills. Parents also argue that the ISP class was inappropriate for Student because it contained students in grades nine through twelve and with varying disabilities, and that Student would get depressed by being in such a class. This depression would also flow in part, Parents argue, from the fact that Student would be cognitively superior to his classmates.

64. Parents' own experts testified that Student needs study skills training. Dr. John Aldava, a specialist in child and adolescent psychiatry in the mental health unit of Kaiser Permanente Hospital in Walnut Creek, had examined Student and held several discussions with Parents. He testified that Student needed help with study skills and time management because of his deficit in executive functioning. Dr. Stewart described the study skills assistance Student receives at Orion, and Dr. Katherine Mountain, a neuropsychologist at Kaiser Hospital in Oakland who had met Student repeatedly, wrote in a 2003 report that Student struggles with writing, organization, and composition. No professional testified to the contrary.

65. The evidence showed that Student needed substantial assistance with study skills, time management, writing and organization, all of which would have been provided to him in the ISP class at Acalanes. The inclusion of the ISP class in the October IEP offer properly addressed one of Student's needs.

66. The evidence did not support Parent's contention that the mix of students in the ISP class was inappropriate for Student. It showed that he mixed successfully with

disabled and typically developing students in Oakland at lunch and recess. District witnesses testified that mixing students with Asperger's at Acalanes in a class with students of other ages and with other disabilities had never caused noticeable problems, and there was no proof to the contrary. Dr. Aldava opined that it was "possible" being in a class with such a mix of students might worsen Student's depression, and Dr. Mountain agreed, but it was clear from their testimony that this danger was speculative. Moreover, both experts expressed those opinions after the October IEP meeting, so the IEP team cannot be faulted for not considering those views.⁹

67. The evidence did not show that the District's offer to place Student in the ISP class was inappropriate.¹⁰

GOALS AND OBJECTIVES

68. An annual IEP must contain a statement of measurable annual goals designed to meet the student's needs that result from his disability to enable him to be involved in and make progress in the general curriculum. It must also contain a statement of the student's present levels of academic achievement and functional performance

⁹ Drs. Aldava and Mountain testified extensively in support of Parents' contentions, but their views were not before the IEP team in October 2007 and therefore do not bear on the validity of the IEP offer when it was made.

¹⁰ In large part, Parents' dislike of the ISP class appears grounded in their belief that Student should be educated only among other gifted students with Asperger's. But the IDEIA does not entitle a student to education only among people like himself. The law's strong preference is for mixing diverse students in the least restrictive setting in which education can be satisfactorily accomplished. Student's cognitive functioning is so high that he will be among the most intelligent of students no matter what his setting.

(present levels of performance, or PLOPs) in order to establish a baseline for measuring the child's progress throughout the year. Knowledge of a student's progress from his PLOPs in one year toward his annual goals is essential for drafting appropriate goals for the next year. Unless a student's progress toward meaningful annual goals is accurately measured, new PLOPs cannot accurately be derived and new goals cannot adequately be written. Parents contend that the two goals offered Student in the October IEP did not contain adequate PLOPs and were not measurable.

69. Ms. Ng wrote the social and emotional goal based on her review of Student's Oakland records and her visit to Orion. The PLOPs in that goal stated that Student was strong academically, and addressed a few specifics Ms. Ng had noticed at Orion: "refusing to comply or follow teacher's directions, not using the laptop appropriately (emails, plays games, etc.), and work completion." On larger social skills issues, however, the PLOPs were vague, stating only that Student "has difficulty with social interaction with peers" and "needs to improve social skills." The body of the goal set forth some specific social skills in which Student needed assistance, but the PLOPs did not provide any comparative measurements in those areas so that progress on those skills could be accurately monitored by staff. As Parents correctly argue, a generalized plan to monitor whether Student improves in certain skills is not sufficiently measurable. Greater reliance on the PLOPs in the Oakland IEP, which were much more detailed, would have allowed the District to write meaningful PLOPs. The social skills goals for Student in the Oakland IEP illustrate how social progress can in some cases be quantified. One required, for example, that he orally communicate his need for assistance to an adult "in 4 out of 5 trials as measured by staff reports and observations." Because the District's social skills goal lacked accurate PLOPs, it lacked any such units of measurement by which progress could be monitored. The evidence therefore showed that the social and emotional goal was inadequate and inappropriate.

70. Ms. Kauzer wrote the study skills goals. Nothing on the face of the goal showed any relationship to anything in the Oakland records or the observation reports by Ms. Ng or Ms. Chiavini. Ms. Kauzer candidly stated at the October IEP meeting that the study skills goal was unrelated to Student. "I do not know [Student]," she stated, "I've never met [Student], and so these are pretty standard study skills we work on with all our students." Later she stated that she was proposing "something that is sort of generic." The goal was not tailored to Student's unique needs, and did not reflect his individual PLOPs. The evidence therefore showed that the study skills goal was inappropriate and inadequate.

71. The District's failure to offer Student adequate social skills and study skills goals denied him a FAPE.¹¹

NEED FOR A ONE-TO-ONE INSTRUCTIONAL ASSISTANT

72. Parents argue that because of his ADHD and Asperger's, Student requires a one-to-one instructional assistant to keep him focused in a regular education classroom, and that the October IEP failed to address that need. The evidence supported most of their claim.

73. Substantial uncontradicted information before the IEP team on October 12, 2007, showed that Student was frequently off task in class and needed regular prompting and redirection. Ms. Laursen's psychoeducational assessment for OUSD in 2006 noted that, during classroom observation of Student, he twice separated himself from class activities

¹¹ Since the 2004 amendments to the IDEA, the requirement to develop short-term objectives or benchmarks only concerns children with disabilities who are assessed using alternate assessments aligned to alternate achievement standards. (See, 20 U.S.C. § 1414 (d)(1)(A)(i)(I)(cc).) With other students, states and their districts have the option to continue to use objectives, but are not required to do so.

and lay on a couch, and had to be prompted by an aide to return. In English class, while the teacher instructed the class, Student played with a pencil and a rubber band, and required frequent prompting from an aide to stay on task. On the BASC-2, Student's ASIP teacher in Oakland reported that he was "often easily distracted from class work, did not pay attention to lectures, and has a short attention span" Parents reported that the same distraction occurred at home. Student reported he "almost always has trouble paying attention to what he is doing, and sometimes has trouble paying attention to the teacher" Ms. Laursen concluded that "everyone is in agreement that inattention/hyperactivity are an area of difficulty." She recommended that Parents seek therapy for Student's inattention and consult a physician. She also recommended the development of a self-monitoring checklist for school so that Student's aide "does not have to constantly prompt him verbally"

74. The September 2006 AB 3632 eligibility statement from Alameda County Mental Health Services noted that Student withdrew from classroom activities when he became frustrated. The March 13, 2007 Oakland IEP referred to statements from Student's teachers that he would sometimes day dream in class, be off task, and miss out on critical information. The Oakland IEP contained a statement from Student's counselor James Kelly that Student is "easily distracted" and that it was "worrying to think of him without supports."

75. Under his March 2007 IEP in Oakland, Student was given considerable aide support in his general education classes, although the precise extent of it is not clear in the record. At least one instructional assistant was in every general education class with ASIP students to help keep them on task. Father testified that the rough ratio of assistants to ASIP students in those classes was one to two. The IEP documents noted that Student would receive "100% aide support in his general ed. classes, which mainly consists of keeping him attending and focused on the activities of his classes."

76. The District's speech and language pathologist Jacqueline Chiavini observed Student in his language arts class at Orion and reported that his classroom performance was excellent in all respects. She mentioned no off task behavior.

77. The observations of the District's school psychologist Liz Ng at Orion were different from those of Ms. Chiavini. In History class, where Ms. Ng could see the screen of his laptop computer, Student "frequently used the laptop to email, play video games, adjust the toolbar function, and [bring up] other information" when the teacher was not looking. He spent seven of the allotted 30 minutes on the assignment. Even after the teacher warned him about his misuse of the laptop, Student continued to view unrelated items when the teacher was not watching. He was aware he was off task; when the teacher looked at him he would return to the assignment. Ms. Ng summarized her classroom observation as follows: "[inattention] to work, off task, passively refusing to comply (defiance)."¹² Under "problem behaviors" she listed 20 incidents of not working and 18 of inappropriate use of a computer.

78. Thus, the District's October 2007 IEP team had before it many indications, both from the Oakland IEP documents and from its own school psychologist, that Student could not stay on task in class without help, and one report implying that he did not.¹³ In the IEP meeting Parents repeatedly argued that Student's program should contain support to keep him on task, preferably by offering a one-to-one aide. Nonetheless, the October IEP team did not address the issue in any detail, or make any attempt to reconcile the

¹² Ms. Ng regarded Student's behavior as willfully defiant. Parents' experts opined that his off task behavior was a function of his ADHD and Asperger's. It is not necessary to resolve this conflict, because in either case Student needs intervention to keep him on task.

¹³ Ms. Chiavini admitted at hearing that she had no way of knowing whether the conduct she observed was typical.

reports of Ms. Chiavini and Ms. Ng. The resulting IEP offered no service or support that would help Student stay on task in large classes. It did not mention Student's need for such support, or Parents' concern about it, in the meeting notes. Neither of the goals proposed for Student addressed off task behavior, although the District concedes in its closing brief that "staying on task is [Student's] primary need in the academic setting."

79. The District now argues that middle school and high school are very different, and that a method appropriate in middle school is not necessarily appropriate in high school. However, the District does not identify any difference that would ameliorate Student's need for help in staying on task. Moreover, the March 2007 Oakland IEP offered 100 percent aide support until March 2008, when Student would have been in high school for most of an academic year.

80. The District also argues it would have been able to keep Student on task through methodologies other than the presence of an instructional aide. The only such methodology described was a program of "targeted classes" in which special education teachers visit general education classrooms. Ms. Kauzer explained at hearing that under the program, she and two other full-time special education teachers and a number of aides visit general education classes. They concentrate on ninth grade classes but visit classes in other grades as well. Ms. Kauzer visits one such class a day according to a schedule. The visits by the other two special education teachers and the aides are governed by the same schedule. Collectively, the teachers and aides visit eight classes a day under the program. In order to avoid stigmatizing special education students, the visiting teachers and aides provide support to all the students in the classes, so they do not attend to any particular student.

81. The evidence did not show that the program of targeted classes would operate to keep Student on task in general education classes. Ms. Kauzer could not estimate the proportion of classes covered in this manner, because she did not know how

many sections of the eight subject matter classes (i.e., how many Algebra classes) there were at Acalanes. She admitted that at any given time a special education teacher or aide might or might not be in a class when a special education student needed support. Even if a special education teacher or aide were present when Student needed redirection to stay on task in a targeted class, there is nothing in the record to suggest that the visiting teacher or aide would necessarily notice his off task behavior among a group of nineteen other students. In any event, the targeted classes program was not offered in the October IEP.

82. The District argues that Student's inattention would be remedied because all the general education teachers at Acalanes have been trained at staff meetings to deal with students with Asperger's. However, Student's difficulties in concentrating are also related to his ADHD. Moreover, the record showed that the training of Acalanes's general education teachers in Asperger's is limited. The only evidence of the extent of that training came from Ms. Challacombe, the 12th grade general education English teacher. She remembered receiving one 20-minute session of training in Asperger's at a staff meeting from Ms. Ng and special education teachers. She testified that she would have received additional training if she had a student with Asperger's in her class, but in nine years of teaching English at Acalanes she had not had such a student. If Ms. Challacombe's Asperger's training was typical of that of the general education faculty, there is no reason to believe that their training would somehow ensure that Student would be kept on task. General training in Asperger's does not necessarily equip a teacher who is lecturing 20 students to notice that a particular student is off task and to take steps to redirect him.

83. Parents did not prove that a one-to-one aide was essential to keeping Student on task in large classrooms. Student did well under a ratio of one aide to two students in Oakland. Parents' experts did not think a one-to-one aide was appropriate for Student in this stage of his development, since it would mean he would be singled out as

different by other students when he interacted with the aide. Parents did prove, however, that Student needed some sort of active, effective intervention to keep him on task in general education classes, and the October IEP offered nothing to meet that need. Because the October IEP failed to address his unique need for such support, it denied him a FAPE.

THE DISTRICT'S OBLIGATION TO STUDENT AS A TRANSFERRING STUDENT

84. When a special education student having an approved IEP transfers from one California district to a new California district in a different SELPA, the transferee district has specific obligations. It must provide the student a FAPE during the first 30 days of the Student's residence, including services comparable to those described in his previously approved IEP. Within the 30-day period the transferee district must also adopt the previously approved IEP or develop, adopt, and implement a new IEP that is consistent with federal and state law. However, those obligation only apply when a special education student with an IEP transfers into the new district within the same academic year that he was in the previous district.

85. Parents contend that the District failed, in the first 30 days of Student's presence in the District, to adopt his Oakland IEP, provide services comparable to his Oakland IEP, or develop, adopt, and implement a new IEP that was consistent with state and federal law. However, Student did not transfer from Oakland to the District during an academic year. He transferred in the summer between the 2006-2007 school year, which he completed in Oakland, and the 2007-2008 school year, which he began after arriving in the District. Because Student did not transfer within an academic year, the statutes under which Parents claim Student was entitled to these rights do not apply to him.

THE VALIDITY OF THE INTERIM IEP

86. The interim IEP that the District offered Student on September 6, 2007, which was to govern his special education until the October meeting, was identical to the

District's October offer except that it did not offer to place Student in Ms. Ng's social skills class or to provide any other social skills training. The September 6, 2007 IEP was therefore a denial of FAPE for the same substantive reasons that the October IEP was inadequate: it failed to meet Student's needs for social skills training and for support in class to keep him on task, and it was not reasonably calculated to allow him to benefit from the social aspects of his education or from the materials presented in his general education classes.

ISSUES CONCERNING RELIEF

Retrospective relief

TUITION REIMBURSEMENT

87. Parents may be entitled to reimbursement for the costs of placement or services they have procured for their child when the school district has failed to provide a FAPE, and the private placement or services were proper under the IDEIA and replaced services that the district failed to provide. The parents' unilateral placement is not required to meet all requirements of the IDEIA or of state statutes governing public schools. It need not strictly conform to the requirement that a student be educated in the least restrictive environment.

88. Without conceding that it denied Student a FAPE, the District does not dispute that placement in the Orion Academy is a proper placement for Student except to note that it may not be the least restrictive environment in which he could be educated. The evidence showed that Orion offers an excellent program for high-functioning students with Asperger's. It operates on a full 180-day school year, has a teacher-student ratio of one to eight, and graduates students nearly all of whom attend college. It is a paperless environment on which students work on laptop computers observed by faculty through a network. Students receive structured social skills training twice a week in a small group setting, additional social skills training in academic classes, and have available immediate

social skills guidance outside of class because they are allowed to leave class for individual support whenever they feel uncomfortable. The school is a nonpublic school certified by the State of California and is accredited by the Western Association of Schools and Colleges. Ms. Hazell-Small testified that the District has three students with Asperger's placed in Orion at present under agreed-upon IEPs. She testified that she has visited Orion, observed its classes and programs, and placed other students there in past years. She also testified that Orion has a very good success rate in graduating students who go on to college or the work world; "it's a good program."

89. The evidence showed that Student has prospered at Orion. Academically, he is on the Honors List, which requires a 3.4 grade average. His social skills have improved and he has acquired some friends, although he still has significant social deficits. The uncontested evidence therefore showed that Orion is a proper alternative placement for Student.

90. For the SY 2007-2008 at Orion, Parents paid a \$300 registration fee and \$27,500 in tuition. Orion's school year of 180 days started on August 9, 2007, and ended on May 30, 2008. The District's school year of 180 days started on August 29, 2007, and ended on June 13, 2007. Parents paid for fourteen school days in August 2007 before the District's school year began and before it had any obligation to provide Student a FAPE, so they cannot be reimbursed for those days. On the other hand, the District denied Student a FAPE for fourteen days during part of a winter break and at the end of its school year, when Orion was out of session but the District was in session, and compensatory relief is appropriate for those days. Student is currently enrolled in Orion. In the interest of stability in his education, the most appropriate relief is to reimburse Parents for all of the school days in which both schools were in session, and in addition for Orion's tuition for fourteen school days in August 2008 in compensation for the District's denial of FAPE to Student during the days in SY 2007-2008 when the District was in session but Orion was not.

Parents will therefore be reimbursed for a full 180-day school year at Orion.

AB 3632 SERVICES

91. A school district or a parent may initiate a referral to a county mental health agency for assessment of a special education student's social and emotional status. Based on the results of that assessment, if the student is suspected of needing mental health services, an IEP team may refer the student for services by the county agency if he meets several designated criteria. The referral is accomplished by sending a referral package to the agency within five working days of the of the district's receipt of parental consent for the referral. The resulting mental health services are popularly known as AB 3632 services. The referral for treatment may only be accomplished by the IEP team.

92. In the SY 2006-2007 Student had been found eligible for, and was receiving, AB 3632 services under his IEP from OUSD. He was provided one individual session a week with a therapist and one session a week with his family and the therapist. He lost his eligibility for services from Alameda County when he moved to Contra Costa County in July 2007. Parents argue that because of the District's failure to offer an appropriate IEP the services were never restored, and that Student should therefore receive compensatory relief in the form of equivalent therapy.

93. At or shortly after the interim IEP meeting on September 6, 2007, the District agreed to refer Student to Contra Costa County Mental Health (CMH) for AB 3632 services. The District did not send the required consent form to Parents until after the October 12, 2007 IEP meeting, and Parents did not sign and return it until October 30, 2007. Each party blames the other for this delay, but it is not necessary to resolve that dispute. On October 31, 2007, the District sent the form to County Mental Health (CMH), but on January 19, 2008, CMH replied that it could not provide services to Student "if he does not also attend a public school and we have an IEP to recommend services." Since, as Parents concede, the law required CMH to refuse services on that ground, it would have done so at any point in

the school year, and the tardiness of the referral had no consequence.

94. The evidence showed, and the parties agree, that Student requires AB 3632 services, and that the District would have included those services in any IEP on which it and Parents could agree. The sole cause of CMH's denial of AB 3632 services to Student was the failure of Parents and the District to agree on an IEP.

95. The District argues that CMH's refusal to provide services to Student was that agency's unilateral act and that the District is not responsible for it. However, the denial was caused by the District's failure to offer an appropriate IEP. AB 3632 leaves the primary responsibility for an IEP, including mental health services, to the District, not the agency. Under the Joint Regulations implementing AB 3632, when Student moved into the District with an IEP providing for AB 3632 services, the District had an obligation promptly to notify CMH of that fact so that Student could receive 30 days' interim services, and an obligation to convene an IEP meeting within 30 days that included someone from CMH to determine future services. The District discharged neither of these duties. Nothing prevented the District from providing mental health services for Student from some source other than CMH. Since the District had primary responsibility for Student's education, including his mental health services, it is equitable that the District provide Student therapy equivalent to what he lost as the result of the District's failures.

Prospective relief

96. In their Third Amended Complaint, Parents sought not only reimbursement for previous denials of FAPE to their son, but also a variety of prospective relief that mirrored their substantive arguments: daily social skills training; a one-to-one aide during general education classes; assessment of Student's ability to encode visual information, memory of meaningful stimuli, adaptive skills, pragmatic language, and critical thinking skills; services to address deficits in those areas; extended school year services; counseling; and a District-funded placement at the Orion Academy.

97. For the SY 2007-2008 these requests are moot. For the SY 2008-2009, such relief is not appropriate. Whether the District has denied, or would deny, Student a FAPE for the upcoming year was not an issue set forth in Parents' Third Amended Complaint and therefore is not an issue in this matter. A requested resolution is distinct from an issue, and state and federal law limit a due process hearing to issues actually raised in the complaint.

98. In addition, such relief would be premature. The District's IEP team has not yet met to propose an IEP for Student for the upcoming school year. Most of Parents' argument that only a placement in Orion can provide Student a FAPE depends on opinions of experts expressed after the IEP team met in October 2007 and unavailable to the team at that time. There is no way to know what the IEP team will offer for the next academic year, since it now has recent information it did not have last October, including data on Student's ninth grade year. It cannot be assumed in advance that the District will fail to offer a FAPE, and it is not the province of the ALJ to write an IEP before the District has a chance to do so.

LEGAL CONCLUSIONS

BURDEN OF PROOF

1. Student, as the party seeking relief, has the burden of proving the essential elements of his claim. (*Schaffer v. Weast* (2005) 546 U.S. 49 [163 L.Ed.2d 387].)

ELEMENTS OF A FAPE

2. Under the IDEIA and state law, children with disabilities have the right to a FAPE. (20 U.S.C. § 1400(d); Ed. Code, § 56000.) FAPE means special education and related services that are available to the child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(a)(9).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(a)(29).) "Related services" are transportation and other

developmental, corrective and supportive services as may be required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26).) In California, related services are called designated instruction and services (DIS), which must be provided if they may be required to assist the child in benefiting from special education. (Ed. Code, § 56363, subd. (a).)

3. There are two parts to the legal analysis of a school district's compliance with the IDEIA. First, the tribunal must determine whether the district has complied with the procedures set forth in the IDEIA. (*Board of Educ. v. Rowley* (1982) 458 U.S. 176, 206-07 [73 L.Ed.2d 690].) Second, the tribunal must decide whether the IEP developed through those procedures was reasonably calculated to enable the child to receive educational benefit. (*Ibid.*)

4. In *Rowley*, the Supreme Court held that the IDEIA does not require school districts to provide special education students the best education available, or to provide instruction or services that maximize a student's abilities. (*Rowley, supra*, at p. 198.) School districts are required to provide only a "basic floor of opportunity" that consists of access to specialized instruction and related services individually designed to provide educational benefit to the student. (*Id.* at p. 201.)

5. The fact that a student excels academically does not mean he does not require special education. (*Seattle Sch. Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500-1501.) Special education is directed at functional disabilities as well as academic challenges. (See, e.g., 20 U.S.C. § 1414(d)(1)(A)(i)(I), (IV)(b); Ed. Code, § 56345, subds. (a)(2), (4)(B).) Fostering the non-academic benefits of public education such as social development is an important purpose of the law's requirement that a student be placed in the least restrictive environment in which he can be satisfactorily educated. (*Sacramento City Unified School Dist., Bd. of Educ. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404.)

6. *Issue 2a: Based on Factual Findings 35-62 and 86 and Legal Conclusions 1-5,*

the District failed to meet Student's need for social skills training and offered an IEP that was not reasonably calculated to allow him to obtain the social benefits of his education. He needed far more affirmative, structured social skills training than the District offered to provide.

7. *Issue 2b:* Based on Factual Findings 63-67 and Legal Conclusions 1-5, the District's offer to place Student in its ISP class to learn study skills was appropriate. Student required individual assistance with those skills. The information before the IEP team on October 12, 2007, did not show that the class would worsen his depression or place him in an inappropriate mix of students.

8. *Issue 2d:* Based on Factual Findings 72-83 and 86 and Legal Conclusions 1-5, the District failed to meet Student's need for individualized support in general education classrooms to keep him on task, and offered an IEP that was not reasonably calculated to allow him to benefit from those classes. Although the evidence did not show he required a one-to-one instructional assistant, it did show that he required some specific attention and support to keep him on task. The IEP did not offer any such support.

REQUIREMENTS FOR ASSESSMENTS

9. Before any action is taken with respect to the initial placement of a special education student, an assessment of the student's educational needs shall be conducted. (Ed. Code, § 56320.) Thereafter, a special education student must be reassessed at least once every three years, or more frequently if conditions warrant, or if a parent or teacher requests an assessment. (Ed. Code, § 56381, subd. (a).)

10. In California, a district assessing a student's eligibility for special education must use tests and other tools tailored to assessing specific areas of educational need, and must ensure that a child is assessed in all areas related to a suspected disability. (Ed. Code, § 56320, subds. (c), (f); see also, 20 U.S.C. § 1414(b)(3)(B).)

11. *Issue 1a:* Based on Factual Findings 1 and 7-11 and Legal Conclusions 9-10,

the District was not obligated to assess Student's ability to encode visual information, memory of meaningful stimuli, adaptive skills, pragmatic language, and critical thinking skills because those assessments had been done in the January 2006 psychoeducational assessment conducted for the OUSD. The relevant circumstances had not changed, and Parents did not request a new assessment.

REQUIRED PARTICIPATION OF TEACHERS AS MEMBERS OF AN IEP TEAM

12. An IEP team must include at least one parent, a representative of the local educational agency, an individual who can interpret the instructional implications of the assessment results, and other individuals who have knowledge or special expertise regarding the pupil, as invited at the discretion of the parent, and when appropriate, the student. (20 U.S.C. § 1414(d)(1)(B)(i), (iv-vi); Ed. Code, § 56341, subds. (b)(1), (5-6).) "Not less than 1 special education teacher, or where appropriate, not less than 1 special education provider of such child" must be a member of the IEP team. (20 U.S.C. § 1414(d)(1)(B)(iii); Ed. Code, § 56341, subd. (b)(3).) If a student is, or may be, participating in the regular education environment, "not less than 1 regular education teacher of such child" must also be a member. (20 U.S.C. § 1414(d)(1)(B)(ii); Ed. Code, § 56341, subd. (b)(2).) Others with special knowledge or expertise may attend "at the discretion of the parent or the agency" (20 U.S.C. § 1414(d)(1)(B)(vi); Ed. Code, § 56341, subd. (b)(6).)

13. The requirement that each special and general education teacher who must be on an IEP team must be a "teacher ... of such child" means that the teacher must either currently teach the student or have done so at some time in the past. In *Shapiro v. Paradise Valley Unified Sch. Dist. No. 69* (9th Cir. 2003) 317 F.3d 1072, 1077, the court interpreted an earlier provision of the IDEIA that required "the teacher" of the student be present at the IEP. That section was amended in 1997 by deleting "the teacher" and adding the current text. (See, 20 U.S.C. §1414(d)(1)(B)(ii), (iii); Ed. Code § 56341, subds. (b), (c).) Since that amendment the Ninth Circuit has clarified that the new statute no longer

requires the attendance of a current teacher of the student, but it still requires the attendance of a teacher "who has actually taught the student." (*R.B. v. Napa Valley Unified Sch. Dist.* (9th Cir. 2007) 496 F.3d 932, 940.) A school principal involved in a student's education qualifies as such a teacher. (*Id.* at p. 936, fn. 6.)

14. For a student in private school, the teacher who must attend the IEP team meeting must be from the private school the student attends, even if the private school is at some distance. (*Shapiro, supra*, 317 F.3d at 1076-1077.) In *Shapiro* the Ninth Circuit held that failure to include the pupil's private school teacher at the IEP was a denial of FAPE. Even though the child had been attending a private school in another state, the current teacher of the child was still required to attend. (*Id.*; see also *W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.)

15. A parent may waive the participation of a regular IEP team member even if that member's area of curriculum or related services is being modified or discussed at the meeting. However, the parent and the local educational agency must consent to the excusal after conferring with the IEP team member, and the member must submit input into the development of the individualized education program in writing to the parent and the team before the IEP meeting. The parent's consent must be in writing. (20 U.S.C. § 1414 (d)(1)(C)(iii); Ed. Code, § 56341, subds. (g), (h).)

16. *Issue 1b:* Based on Factual Findings 12-22 and Legal Conclusions 12-15, the District failed to have a general or special education teacher who was teaching or had ever taught student at the October 12, 2007 IEP meeting. Parents did not waive their right to the presence of those teachers. The failure denied Student educational opportunity and substantially impeded Parents' right to participate in the decision-making process because the presence of such teachers would have provided to the IEP team critical information for its decisions about placement and services that it needed and did not have.

DUTY TO FAIRLY CONSIDER PARENTS' VIEWS

17. A parent is a required member of the IEP team. (20 U.S.C. § 1414(d)(1)(B)(i); Ed. Code, § 56341, subd. (b)(1).) The team must consider the concerns of the parents throughout the IEP process. (20 U.S.C. § 1414(c)(1)(B), (d)(3)(A)(i), (d)(4)(A)(ii)(III); Ed. Code, § 56341.1, subds. (a)(1), (d)(3), (e).) While the IEP team should work toward reaching a consensus, the school district has the ultimate responsibility to determine that the IEP offers a FAPE. (App.A to 34 C.F.R. part 300, Notice of Interpretation, 64 Fed.Reg. 12473 (Mar. 12, 1999).)

PREDETERMINATION OF OFFER

18. Federal and state law require that parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, assessment, educational placement, and provision of a FAPE to their child. (20 U.S.C. § 1414(d)(1)(B)(i); Ed. Code, §§ 56304, 56342.5.) The meeting must be meaningful; school officials may not make a placement decision in advance of the meeting. (*Target Range, supra*, 960 F.2d at p. 1484.)

19. School officials and staff do not predetermine an IEP simply by meeting to review and discuss a child's evaluation and programming in advance of an IEP meeting. (*N.L. v. Knox County Schs.* (6th Cir. 2003) 315 F.3d 688, 693 fn.3.) However, a school district that predetermines the child's program and does not consider the parents' requests with an open mind has denied the parents' right to participate in the IEP process. (*Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004) 392 F.3d 840, 858; see also, *Ms. S. ex rel G. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131.) Predetermination occurs "when an educational agency has made its determination prior to the IEP meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives." (*H.B., et al. v. Las Virgenes Unified School Dist.* (9th Cir. 2007)

107 LRP 37880, 48 IDELR 31.) The test is whether the school district comes to the IEP meeting with an open mind and several options, and discusses and considers the parents' placement recommendations and/or concerns before the IEP team makes a final recommendation. (*Hanson v. Smith*, (D. Md. 2002) 212 F.Supp.2d 474, 486; *Doyle v. Arlington County Sch. Bd.* (E.D.Va. 1992) 806 F.Supp. 1253, 1262.)

20. *Issues 1c, 1d*: Based on Factual Findings 23-31 and Legal Conclusions 17-19, the District failed to consider fairly the views of Parents that Student should be placed at Orion or, if placed at Acalanes, should be given five days a week of social skills training. The District also predetermined those issues; they were not decided at the October 12, 2007 IEP meeting. These failures denied Student educational opportunity and substantially impeded Parents' right to participate in the decision-making process because it deprived Student of fair consideration of an alternative placement and of the amount of social skills training he needed. It also deprived Parents of a fair opportunity to discuss those issues with open-minded District representatives.

REQUIREMENT OF CLEAR WRITTEN OFFER

21. An IEP is by definition a written statement setting forth the disabled student's educational program and services. (20 U.S.C. § 1401(14); Ed. Code, § 56345, subd. (a).) The Ninth Circuit has observed that formal requirements of an IEP are not merely technical, and therefore should be enforced rigorously. The requirement of a coherent, formal, written offer creates a clear record that helps eliminate factual disputes about when placements were offered, what placements were offered, and what additional assistance was offered to supplement a placement. It also assists parents in presenting complaints with respect to any matter relating to the educational placement of the child. (*Union School Dist. v. Smith* (1994) 15 F.3d 1519, 1526.) The principal mechanism for enforcement of an IEP is the provision that, in order to provide a FAPE, inter alia, the special education and services set forth in it "are provided in conformity with the [IEP] ..."

(20 U.S.C. § 1401(9).) Oral supplements to an IEP are not binding on a school district, even if made by district staff at an IEP meeting, unless they are written into the offer itself. (See, *Mill Valley Elem. Sch. Dist. v. Eastin* (N.D.Cal. 1999) 32 LRP 6047, 32 IDELR 140; *Letter to Anonymous* (OSEP 1994) 20 LRP 2397, 20 IDELR 1460.)

22. An IEP is not required to contain anything that is not expressly required by statute. (20 U.S.C. 1414 (d)(1)(A)(ii)(I); Ed. Code, § 56345, subd. (i).) Thus an IEP need not contain such matters as the identification of particular teachers or other educational personnel or commitments to educational methodology. (*Letter to Hall* (OSEP 1994) 21 LRP 2743, 21 IDELR 58.)

23. *Issue 1e*: Based on Factual Findings 32-34 and Legal Conclusions 21-22, the District did not fail to present a clear and coherent offer. The offer contained the matters required by statute and was not required to contain answers to all of Parents' substantive questions.

REQUIRED CONTENTS OF AN IEP

24. Federal and state law specify in detail what an IEP must contain. (20 U.S.C. § 1414(d)(1)(A)(i); Ed. Code, § 56345.) An annual IEP must contain, inter alia, a statement of the individual's present levels of academic achievement and functional performance, including the manner in which the disability of the individual affects his or her involvement and progress in the regular education curriculum. (20 U.S.C. § 1414(d)(1)(A)(i)(I)(aa); Ed. Code, § 56345, subd. (a)(1)(A).) It must also contain a statement of measurable annual goals designed to: (1) meet the individual's needs that result from the individual's disability to enable the pupil to be involved in and make progress in the general curriculum; and (2) meet each of the pupil's other educational needs that result from the individual's disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); Ed. Code, § 56345, subd. (a)(2).) It must include a statement of how the pupil's progress toward the goals will be measured, and when periodic reports on his progress will be made. (20 U.S.C. § 1414(d)(1)(A)(i)(III); Ed. Code, § 56345, subd. (a)(3).)

25. *Issue 2c:* Based on Factual Findings 63-67 and Legal Conclusion 24, the social skills goal that was proposed as part of the October IEP contained inadequate present levels of performance and was not sufficiently measurable. The proposed study skills goal was generic and admittedly unrelated to Student. It did not contain individualized levels of performance or goals. The absence of adequate social skills and study skills goals denied Student a FAPE.

RIGHTS OF TRANSFERRING STUDENT

26. Education Code section 56325, subdivision (a)(1) sets forth procedures for the transfer of a special education student with an IEP from one California district to another in a different SELPA. During the first 30 days the transferring student is in the transferee district, that district must provide the student a FAPE, including services "comparable" to those described in his previously approved IEP. Within those 30 days, the transferee district must either adopt the previously approved IEP or develop, adopt, and implement a new IEP that is consistent with federal and state law. (See also, 20 U.S.C. § 1414(d)(2)(C)(i)(I).) However, that obligation only applies in the case of a special education student with an IEP who "transfers into a district ... within the same academic year" that he was in the previous district. (Ed. Code, § 56325, subd. (a)(1); see, 20 U.S.C. § 1414(d)(2)(C)(i)(I).)

27. *Issues 3a, 3b, and 3c:* Based on Factual Findings 84-85 and Legal Conclusion 26, Student transferred from district to district between the academic years 2006-2007 and 2007-2008, not within an academic year, and therefore was not entitled in the first 30 days of his presence in the District to an educational program that was comparable to his program in Oakland, or to the adoption of the Oakland IEP.

AB 3632 SERVICES

28. Government Code sections 7570 et seq. set forth a comprehensive system by which a school district may refer a special education student suspected of being in need of mental health treatment to the local county mental health agency for such treatment. The county mental health agency "is responsible for the provision of mental health services" to the student "if required in the individualized education program" of the student. (Gov. Code § 7576, subd. (a).)

29. The school district remains ultimately responsible for making a complete FAPE available to a student needing mental health services. (20 U.S.C. § 1414(d)(2); Ed. Code § 56040(a).) A school district, an IEP team, or a parent may initiate a referral to county mental health by requesting a mental health assessment, but only the IEP team may actually make the referral. (Gov. Code § 7576, subd. (b).)

30. When a special education pupil transfers from a district in which he received AB 3632 services under an IEP into a new district, the transferee district must refer the pupil to the local mental health agency, and that agency must ensure that the pupil receives interim mental health services, as specified in the IEP, for 30 days. (Cal. Code Regs., tit. 2, § 60055, subds. (a), (b).) Within that 30 days the district must convene an IEP team that meeting includes a representative of the mental health agency to review the interim services and make a new determination of services. (Cal. Code Regs., tit. 2, § 60055, subd. (c).)

31. *Issue 1f:* Based on Factual Findings 91-95 and Legal Conclusions 28-30, the District's failure to offer Student a FAPE caused Student to lose the interim AB 3632 services to which he was entitled during the first 30 days of his residence in the District, and the services to which he would have been entitled during the school year under an adequate and agreed-upon IEP.

AVAILABILITY OF RELIEF

Reimbursement

32. Parents may be entitled to reimbursement for the costs of placement or services they have procured for their child when the school district has failed to provide a FAPE, and the private placement or services were proper under the IDEIA and replaced services that the district failed to provide. (20 U.S.C. § 1412(a)(10)(C); *School Comm. of Burlington v. Dept. of Educ.* (1985) 471 U.S. 359, 369-371 [85 L.Ed.2d 385].) Parents may receive reimbursement for the unilateral placement if it is in an appropriate private setting. (34 C.F.R. § 300.148(c)(2006); *Florence County Sch. Dist. Four v. Carter* (1993) 510 U.S. 7, 15-16 [126 L.Ed.2d 284].) The private placement need not conform to the requirement that a student be educated in the least restrictive environment. (*Seattle Sch. Dist. No. 1, supra*, 82 F.3d at p. 1501; see also, *Warren G. v. Cumberland County Sch. Dist.* (3d Cir. 1999) 190 F.3d 80, 84.) The propriety of the private placement is instead governed by equitable considerations. (*Carter, supra*, 510 U.S. at pp. 15-16.)

33. *Issue No. 4*: Based on Factual Findings 84-85 and Legal Conclusion 32, the Orion Academy was a proper alternative placement for Student since the District had denied him a FAPE. It met all his unique needs. It gave him far more social skills training than the District offered, and could better keep him on task in its smaller classes due to its use of networked computers watched by staff and its higher ratio of staff to students. Its faculty members are skilled and experienced in educating students with Asperger's. Student has progressed socially and excelled academically at Orion.

Compensatory relief

34. ALJs have broad latitude to fashion equitable remedies appropriate for the denial of a FAPE. (*School Comm. of Burlington v. Department of Educ., supra*, 471 U.S. at pp. 359, 370; *Parents of Student W. v. Puyallup School Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496.)

Limitation of issues

35. A party who requests a due process hearing may not raise issues at the hearing that were not raised in the request, unless the opposing party agrees otherwise. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *County of San Diego v. California Special Education Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1465.) Issues and requested resolutions are separate requirements in a due process hearing request. (See, 20 U.S.C. § 1415(b)(7)(A)(ii)(III-IV); Ed. Code, § 56502, subds. (c)(1)(C-D).)

ORDER

1. Within 45 days of the date of this decision, the District shall reimburse Parents in the amount of \$27,800 for tuition and fees incurred for a 180-day school year at the Orion Academy.

2. The District, after consulting with Parents, shall provide, contract for, or compensate Parents for obtaining one weekly session of individual psychological therapy for Student, and one weekly session of family therapy for Student and Parents, for one year. The therapy shall be provided by a therapist with credentials equivalent to those of therapists employed by or under contract to Contra Costa County Mental Health to deliver AB 3632 services.

3. All other requests for relief are denied.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, Student prevailed on issues 1b, 1c, 1d, 1f, 2a, 2c, 2d, and 4. The District prevailed on issues 1a, 1e, 2b, 3a, 3b, and 3c.

RIGHT TO APPEAL THIS DECISION

The parties to this case have the right to appeal this decision to a court of competent jurisdiction. If an appeal is made, it must be made within 90 days of receipt of this decision. (Ed. Code, § 56505, subd. (k).)

DATED: July 17, 2008

A handwritten signature in black ink that reads "Charles Marson". The signature is written in a cursive style with a large initial "C".

CHARLES MARSON

Administrative Law Judge

Office of Administrative Hearings