

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS on behalf of STUDENT,

v.

CABRILLO UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2009010191

DECISION

Administrative Law Judge (ALJ) Rebecca P. Freie, Office of Administrative Hearings (OAH), heard this matter in Half Moon Bay, California, on May 19 through 22, 2009.

Attorney Susan Foley represented Student. Student's mother (Mother) was present throughout the hearing. Student's father (Father) was present for much of the hearing.¹ Attorney John Nibbelin represented Cabrillo Unified School District (District). Kimberly Kopp, Director of Special Services for the District, was present on behalf of the District.

Student filed the request for due process hearing (complaint) on January 8, 2009. The matter was continued on February 11, 2009. Oral and documentary evidence were received during the hearing. On May 22, 2009, the ALJ granted a continuance to June 26, 2009, so the parties could file written closing briefs. The record was closed on June 29, 2009,² although for purposes of calculating the due date of this decision, the matter is

¹ Student's parents are collectively referred to as "Parents."

² Student's closing argument was not received by OAH until June 27, 2009. The District was served with Student's closing brief on June 26, 2009, and did not object to the

deemed to have been submitted for decision on June 26, 2009.³

ISSUES⁴

1. For the 2006-2007 school year, beginning on January 8, 2007,⁵ to the end of the 2007-2008 school year, did the District deny Student a free appropriate public education (FAPE) by violating Parents' procedural rights by failing to reassess Student in the area of speech and language, thereby significantly impeding Parents' opportunity to

delayed transmission of the brief to OAH.

³ The Student's written argument has been designated as Student's Exhibit N, and the District's closing argument has been designated as District's Exhibit 11.

⁴ The issues have been reorganized and reframed from those in the Order Following Prehearing Conference for clarity, and some sub-issues have been converted to primary issues. However, the issues remain the same as those pled by Student. Student's issues 3 a) and 4 a), as framed in the complaint, refer to a classroom with a four-to-one student/teacher ratio. Student uses the term "teacher" rather than adult. However, the evidence established that Student was asking for a classroom with an appropriately credentialed teacher and adult support staff, and she did not have an expectation that the classroom would contain one credentialed teacher for every four students. In addition, the evidence established that the four/one ratio was an approximation, and an appropriate classroom might have a slightly higher student/adult ratio.

⁵ The statute of limitations in special education cases is two years. Therefore, Student's issues date back to January 8, 2007, which was two years before Student filed her complaint, and all references to the 2006-2007 school year pertain only to claims from January 8, 2007, to the end of the 2006-2007 school year.

meaningfully participate in the individualized educational program (IEP) decision-making process because Parents did not know Student's levels performance in this domain?

2. Did the District deny Student a FAPE from January 8, 2007, to the end of the 2006-2007 school year, and for the 2007-2008 school year, by failing to make a clear and concise offer of services in the areas of speech and language therapy and occupational therapy?

3. For the 2006-2007 school year, beginning on January 8, 2007, and the 2007-2008 school year, did the District deny Student a FAPE because it:

- a) Placed her in a general education classroom, rather than a classroom with a low student/adult ratio?
- b) Failed to provide Student direct speech and language therapy?
- c) Failed to offer Student direct occupational therapy?
- d) Failed to develop goals and offer services in the area of socialization?

4. Did the District's offer of June 9, 2008, deny Student a FAPE because it:

- a) Placed her in a general education classroom, rather than a classroom with a low student/adult ratio?
- b) Failed to offer Student appropriate speech and language therapy?
- c) Failed to offer Student direct occupational therapy?
- d) Failed to develop goals and offer services in the area of socialization?

DISTRICT'S AFFIRMATIVE DEFENSES

The District asserts that it was required to place Student in the general education classroom because it was the least restrictive environment (LRE) for Student, and that it did provide and offer Student a FAPE for all the time periods at issue.⁶

⁶ In its closing argument, the District also argued that Parents agreed to the IEPs for both the 2006-2007 and 2007-2008 school years, and implied that this forecloses them

CONTENTIONS

Student contends that she required direct speech and language services, rather than collaboration and consultation by the speech and language therapist, for both the 2006-2007 and 2007-2008 school years. The District stopped providing direct speech and language services to Student at the beginning of the 2006-2007 school year. Student claims that the District made this change without reassessing Student or consulting Parents. Parents contend that this denied them meaningful participation in the IEP process as they had to make IEP decisions without knowing Student's current levels of functioning in the area of speech and language. Parents claim that this lack of meaningful parental participation in the IEP process denied Student a FAPE. In addition, Student claims that the offers of speech and language services and occupational therapy services in the IEPs of May 30, 2006, and May 8, 2007, were so imprecise that this also resulted in a denial of a FAPE.

Student also claims she was denied a FAPE for the 2006-2007 school year, beginning January 8, 2007, and for the 2007-2008 school year, because the District placed her in a general education classroom with services of a resource specialist in a resource specialist program (RSP) classroom. Student contends that she required full-time placement in a classroom with a low student/adult ratio, such as a special day class (SDC). As a result of placement in the general education class with RSP services, Student claims she did not progress academically, in spite of her time in the RSP classroom where the student/adult ratio was very low. In addition, Student contends that she required direct speech and language and occupational therapy services, and the District did not provide

from now complaining that the IEPs did not offer Student a FAPE. There is no statutory or case authority to support this claim, nor did it appear to be a defense raised during the presentation of the evidence. Accordingly, it will not be addressed.

her with these services for the school years in question. Student argues that she requires occupational therapy because she is unable to fasten and unfasten clothing to attend to toileting needs, and her parents have observed other fine and gross motor deficits. Finally, for the 2006-2007 school year, beginning January 8, 2007, and for the 2007-2008 school year, Student claims that she was denied a FAPE because, although she was diagnosed as a child with autism, the District never developed social skills goals in her IEPs, and she was not provided with social skills services. Student claims she did not receive educational benefit for each of the school years named in the complaint because the District did not provide her with appropriate educational placement and services, and she is therefore entitled to compensatory education.

Student also contends that the District's offer of placement for the 2008-2009 school year was not reasonably calculated to provide educational benefit and therefore denied her a FAPE because she was again to be placed in a general education classroom with RSP services, with an offer of 60 minutes weekly of group speech and language therapy, no occupational therapy, and no social skills goals or services. Due to the alleged insufficiency of the District's offer of placement and services for this school year, Student's parents placed her in a nonpublic school (NPS), Arbor Bay School (Arbor Bay), for the 2008-2009 school year. Student asks that she be reimbursed for tuition and cost of transportation to and from Arbor Bay. Student also asks that the District fund placement at Arbor Bay for the 2009-2010 school year as compensatory education for the denial of a FAPE for the 2006-2007 and 2007-2008 school years.

The District argues that Student was offered and provided with a FAPE for the 2006-2007 and 2007-2008 school years. According to the District, Student did not require speech and language reassessment during those years, since she was assessed in 2005 and again in 2008, and none of her teachers or parents had asked for new assessments between 2005 and 2008. The District further contends that placing Student in general

education classrooms with some instruction provided in the RSP classroom provided her with a FAPE in the least restrictive environment (LRE) for all three school years at issue. The District contends that Student did not require direct speech and language therapy, or occupational therapy for the 2006-2007 and 2007-2008 school years. Further, the District claims that school personnel saw Student playing with friends frequently, and placement in a general education classroom provided her with peer models for socialization purposes. Therefore, she did not require goals and services for socialization in order to receive a FAPE. In addition, the District argues that parents fully participated in all IEP team meetings, and agreed to the IEPs for both the 2006-2007 and 2007-2008 school years. Finally, the District contends that its offer of placement and services for the 2008-2009 school year was an offer of FAPE.

FACTUAL FINDINGS

JURISDICTION

1. Student is eleven years of age. In 2005, the District found her eligible for special education with the handicapping condition of speech and language impairment. She began attending school at El Granada Elementary School (El Granada) in the District at the beginning of the 2005-2006 school year, and has resided continuously with her parents (Parents) within District boundaries during the time periods at issue.

DENIAL OF FAPE BY FAILING TO REASSESS STUDENT IN THE AREA OF SPEECH AND LANGUAGE

2. School districts are required to assess a student in all areas related to a suspected disability when they conduct an assessment of a student for the first time, or when a student already eligible for special education services is suspected of having another disability or other needs. A district's failure to assess in all areas related to a suspected disability may result in a denial of FAPE. When assessing a child, districts are

required to gather data from a variety of sources, including observations and interviews with teachers and parents. School districts also have the duty to conduct a meaningful IEP meeting with the appropriate parties. Those parties who have first-hand knowledge of the child's needs and who are most concerned about the child must be involved in the IEP creation process. Parents play a significant role in the development of the IEP and are required and vital members of the IEP team. A parent has meaningfully participated in the development of an IEP when, for example, the parent is informed of the child's problems, attends the IEP meeting, expresses disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. If district violates the procedural rights of a student or parent, the violation constitutes a denial of FAPE only if it significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of FAPE to their child, or caused a deprivation of educational benefits to the child.

3. Student contends that for the 2006-2007 school year, beginning on January 8, 2007, to the end of the 2007-2008 school year, the District denied Student a FAPE by failing to reassess Student in the area of speech and language, thereby significantly impeding Parents' opportunity to meaningfully participate in the IEP decision-making process because Parents did not know Student's levels performance in this domain. Specifically, Student contends that District personnel made a unilateral decision to provide speech and language services in the consultation/collaboration mode without first assessing Student, and without involving Parents in the decision-making process.

JANUARY 8, 2007, TO THE END OF THE 2006-2007 SCHOOL YEAR

4. It is undisputed that speech and language are areas of unique need for Student. The evidence established that in June 2005, the District assessed Student in the areas of psycho-educational functioning, speech and language, and occupational therapy. The District convened an IEP team meeting on June 28, 2005, to review its assessment results and develop an IEP for the 2005-2006 school year. At the IEP meeting on June 28,

2005, Student was found eligible for special education due to a speech and language impairment that was described as “non-severe” in subsequent IEP documents. The evidence established that Student’s speech and language test results in 2005 placed her below the seventh percentile in both receptive and expressive language, and contributed to her being found eligible for special education services and direct speech and language therapy services.⁷

5. On May 30, 2006, Student’s IEP team met to determine Student’s placement for the remainder of the current school year, and placement for the 2006-2007 school year. The District’s IEP team members recommended that Student receive either “direct or collaborative/consultation” speech and language services for 120 minutes per month. Parents attended Student’s IEP meeting of May 30, 2006. The IEP stated that Student would receive 120 minutes per month of “direct or consult/collaboration” speech and language services from the speech and language therapist. The IEP team developed two speech and language goals. One goal was that Student’s expressive language be monitored for correct syntax, especially when using auxiliary verbs and formulating “WH” questions.⁸ The second goal was that Student would independently follow classroom directions and would understand the concepts of “before and after,” and “greater than and less than.” Parents subsequently signed the IEP.

6. In August 2006, Student was assigned a new speech and language therapist,

⁷ Speech and language services are offered to students below the seventh percentile in speech and language testing according to state and federal law.

⁸ “WH” questions are those that incorporate the words “who,” “when,” “why,” “where,” or “how.”

Nicole Monaghan (Monaghan).⁹ The evidence established that Monaghan, after consulting with Student's previous speech and language therapist and Student's teachers, Angelica Bruno (Bruno) and Margaret Macres (Macres), neither of whom had taught Student before, decided that she would not provide direct services to Student because she did not believe they were necessary. Instead, she and the teachers agreed that if Student was having problems in their classes that might be attributed to speech and language issues, they would consult with Monaghan, and she would assist the teachers in formulating solutions. At the time the decision was made to just provide speech and language consultation services, Monaghan had not observed Student, nor had she assessed her. Therefore, for the 2006-2007 school year, Student received only consultation services from the speech and language therapist.

7. The evidence established that Parents were not included when the determination was made that Student would receive speech and language services only in the consultation mode. In addition, at no time during the 2006-2007 school year were Student's parents told that Student was no longer receiving direct speech therapy services

⁹ Monaghan has been a speech and language pathologist for the District for three years. She has a Bachelor of Science degree in speech and hearing science from Arizona State University, and a Master's degree in speech and language from Hofstra University. She has a California teaching credential in the area of speech and language pathology. She has not worked as a speech and language therapist anywhere other than the District. Her license as a speech pathologist with the California Speech-Language and Audiology Board was issued in July 2007, and is "delinquent" as of April 30, 2009, according to the Board's website on July 25, 2009. She has a Preliminary Speech-Language Pathologist Credential with the California Commission of Teacher Credentialing according to the Commissions website on July 25, 2009.

as she had the year before. No testing was done to confirm that the consultation mode was the appropriate manner in which to provide these services to Student. The evidence established that neither Monaghan, nor anyone else from District, discussed with Parents Student's needs in the area of speech and language during the 2006-2007 school year, nor were they told that the IEP team could reconsider decisions made at the previous IEP team meeting if Student required additional or different services.

8. The evidence also established that Parents reasonably believed that Student was being provided with direct speech and language services during the 2006-2007 school year because she had received direct services the previous school year, and had not met all of her speech and language goals during the previous school year. The unilateral decision by the District to stop providing direct services to Student without parental input was a procedural violation that denied Parents meaningful participation in the IEP process. If Parents had been provided with accurate information about Student's functioning in the area of speech and language, the evidence established that they would not have consented, after January 8, 2007, to speech and language services in the consultation mode, rather than direct speech and language services. The evidence established that the District's procedural violation resulted in Parents being denied meaningful participation in the IEP process, and as a result Student was denied a FAPE for the remainder of the 2006-2007 school year.

THE 2007-2008 SCHOOL YEAR

9. Student contends that the District's failure to reassess Student in the area of speech and language during the 2007-2008 school year, denied them meaningful participation in the IEP process. When Mother attended the IEP team meeting on May 8, 2007, to plan Student's program for the 2007-2008 school year, she was not provided with sufficient information about Student's speech and language deficits to give her the opportunity to meaningfully participate in the discussion about speech and language

services for the 2007-2008 school year.

10. The evidence established that before Student's IEP team met to plan for the 2007-2008 school year on May 8, 2007, Monaghan asked Bruno and Macres to provide her with information concerning Student's progress in meeting her speech and language goals for the 2006-2007 school year. When Mother attended the meeting, the information she received concerning Student's progress in meeting her speech and language goals for the 2006-2007 school year was that provided to Monaghan by Bruno and Macres. Mother signed and consented to the IEP at the meeting of May 8, 2007. The IEP called for 120 minutes per week of "consultation and collaboration" of the speech and language therapist with school staff and parents "as needed to support IEP goal objectives and academic standards," Mother was not provided with sufficient information about Student's current speech and language functioning and needs to determine whether Student should again be provided with speech and language services in a consultation mode for the 2007-2008 school year, and whether Student required speech and language goals for the 2007-2008 school year.

11. The evidence established that Monaghan continued to provide Student with speech and language services in the consultation mode for the 2007-2008 school year. Although Monaghan would occasionally see Student on the school grounds during that school year, Monaghan did not conduct a formal observation of Student until April and/or May 2008, when Monaghan conducted formal testing of Student using several instruments as part of the triennial assessment. These evaluations, especially the Clinical Evaluation of Language Fundamentals, Fourth Edition (CELF-4), demonstrated that Student still had severe speech and language deficits. Student was in the first percentile for age-matched peers in the area of receptive language on the CELF-4, and at one-half of the first percentile in the area of expressive language on the CELF-4. These results support Student's contention that the District should have assessed Student during the 2007-2008

school year to determine if she needed more direct speech and language services.

12. As established above, as a result of District's failure to reassess Student in the area of speech and language during the 2007-2008 school year, Parents were not provided with basic information that would have enabled them to have the opportunity to meaningfully participate in the IEP team meeting or process that school year. This inability to meaningfully participate in the IEP meeting resulted in them consenting to a District offer to provide Student with speech and language services in a consultation mode for that school year, when the evidence at hearing established that she needed direct speech and language services. This procedural violation resulted in a denial of FAPE for Student. The evidence established that the District violated Parents procedural rights by failing to provide them with accurate current information that would allow them to meaningfully participate in the IEP process at the time the IEP team was making decisions about speech and language services and goals and objectives.

DENIAL OF FAPE AS A RESULT OF FAILURE TO MAKE A CLEAR AND CONCISE OFFER OF SPEECH AND LANGUAGE SERVICES AND OCCUPATIONAL THERAPY SERVICES

13. A school district is required to make a "clear, written offer" of placement or services in the IEP documents. An IEP offer must be sufficiently clear for a parent to understand it and make intelligent decisions based on it. 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. A clear, written offer also helps parents to decide whether to oppose or accept the offered placement or services, and assists parents in presenting complaints with respect to any matter relating to the educational placement of the child. Further, if an offer is not clear and concise, school district personnel may not understand how to implement the IEP. Student contends that the District's failure to make a clear and concise offer of speech and language and occupational therapy services denied

her a FAPE from January 8, 2007, through the end of the 2007-2008 school year. The procedural violation of failing to make a "clear, written offer" of placement and services constitutes a denial of FAPE only if it significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of FAPE to their child, or caused a deprivation of educational benefits to the child.

SPEECH AND LANGUAGE THERAPY OFFER

January 8, 2007, to the End of the 2006-2007 School Year

14. The IEP of May 30, 2006, states that Student will receive "120 min/mo. direct service or collaboration" under the category of speech and language services. The notes taken during the IEP meeting do not reflect any discussion about how the determination would be made as to what type of speech and language services would be provided to Student, nor how a consultation model would work.

15. The offer for speech and language services for the 2006-2007 school year is vague and unclear because there is no indication whether the services provided will be direct or in the collaborative/consultation mode. The evidence showed that the difference between direct service and collaborative/consultation service is significant because with direct services, Student would interact with the speech and language therapist on a regular basis, and the therapist would be better able to determine what services Student needed at any given point of time. However, in the collaborative/consultation model, as it was implemented by the District, the speech and language therapist consulted only with teachers who indicated that they needed her assistance, and then provided the teachers with strategies they could use to assist them in teaching Student. The therapist's determination of what services Student needed was dependent on the information she received from the teachers.

16. There is no indication that Parents were ever informed whether the service

would be direct or the collaborative/consultation model. Mother testified credibly that she did not understand the difference between direct speech and language services and the collaborative/consultation model, and was surprised to learn at the end of the school year that Student had not received any direct speech and language therapy. In addition, it was the unclear language of the offer for speech and language therapy that led Monaghan and Student's teachers to believe that Monaghan could provide services to the teachers in the consultation/collaboration mode, and not provide direct services to Student. Further, the unclear language led Monaghan to believe that she could make this decision without consulting Parents. This lack of information, made it difficult for Parents to challenge the speech and language services provided to Student that school year. The evidence established that the lack of clear language concerning speech and language therapy made it difficult for District personnel to determine how to implement the service, and also difficult to determine whether the service was actually implemented.

17. Based on the foregoing, District's failure to provide a clear and concise offer constituted a procedural violation. In addition, it denied Parents meaningful participation in the IEP process and caused a deprivation of educational benefits because Student did not receive the speech and language services she required from January 8, 2007, through the end of the 2006-2007 school year. Therefore, she was denied a FAPE.

The 2007-2008 School Year

18. The IEP of May 8, 2007, states that Student will receive speech and language services for "120 min served [or]--Any other frequency or as needed." These services are to be provided as "consultation and collaboration with school staff (RSP, OT, Psychologist, Classroom Teacher; PE [physical education] teacher; parent) as needed to support IEP goal objectives and academic standards." The phrase, "Any other frequency or as needed," creates an unclear offer as one cannot determine whether the stated frequency is mandatory or discretionary, and if discretionary, there is an implication the duration can be

reduced, or the services can be eliminated. Therefore, the durations of 120 minutes and 60 minutes per month for these services are meaningless. Mother could not have understood what speech and language and services she was actually consenting to at the IEP meeting of May 8, 2007 because the wording of the offer was so unclear.

19. Based on the foregoing, District's failure to provide a clear and concise offer constituted a procedural violation. In addition, it denied Parents meaningful participation in the IEP process and caused a deprivation of educational benefits because Student did not receive the speech and language services she required during the 2007-2008 school year. Therefore, she was denied a FAPE.

OCCUPATIONAL THERAPY OFFER

January 8, 2007, to the End of the 2006-2007 School Year

20. The IEP of May 30, 2006, states that Student will receive "60 min/month consultation/collaboration" under the category of occupational therapy. The notes for the IEP for the 2006-2007 school year explain how the consultation/collaboration model will work in relation to the offer for occupational therapy. The notes state that, "A consultation/collaboration model appears to be the most appropriate model to support [Student] without pulling her out of the classroom. OT [occupational therapist] will monitor progress toward grade benchmarks with 60 min/month of consultation/collaboration with parents, teachers and service providers with the district." The offer for occupational therapy services for the 2006-2007 school year is clear and concise because the notes from the IEP meeting of May 30, 2006 describe the method in which the District would implement the consultation/collaboration model. Therefore, Parents could understand that the occupational therapist would consult with her teachers, and if it was determined that she needed occupational therapy services, the occupational therapist would work collaboratively with the teachers to develop a plan for providing Student with whatever

was necessary. There is no indication that Student would be receiving direct services from the occupational therapist for that school year on a regular basis.

21. Mother testified that she believed that if there was an indication that Student required occupational therapy, the occupational therapist would be available to see that Student received the service. Mother understood that Student would not be seeing the occupational therapist on a regular schedule to receive direct services each month. The occupational therapist, Leslie Bourdan (Bourdan), testified that she understood that she was to consult each month with Student's teachers to determine if Student had any motor skills issues in the educational setting that she needed to address. Each month she consulted with Student's teachers, and they told her that they had no concerns about Student's motor skills.

22. The evidence established that the District did not procedurally violate Parent's rights when making the offer of occupational therapy for the 2006-2007 school year, because that offer was clear and concise.

The 2007-2008 School Year

23. The IEP of May 8, 2007, states that Student will receive occupational therapy services for "120 min served [or]--Any other frequency or as needed." These services are to be provided as "consultation and collaboration with school staff (RSP, SLP (speech and language pathologist), Psychologist, Classroom Teacher; PE [physical education] teacher; parent) as needed to support IEP goal objectives and academic standards."

24. This offer was not clear and concise because it does not describe the frequency and duration of consultation/collaboration services of the occupational therapist. However, the evidence did not establish that Student required occupational therapy during the 2007-2008 school year and, therefore, it did not establish that the lack of clarity of the offer resulted in Student being denied a FAPE in the area of occupational therapy.

FAPE FROM JANUARY 8, 2007 TO THE END OF THE 2006-2007 SCHOOL YEAR,
AND FOR THE 2007-2008 SCHOOL YEAR

25. The Individuals with Disabilities Education Act (IDEA) requires school districts to offer a FAPE to students with disabilities who are eligible for services. This requires the district to provide a student with a disability a program that will address his unique needs and is reasonably calculated to provide him or her with educational benefit. An IEP must target all of a student's unique educational needs, whether academic or non-academic. The term "unique educational needs" is to be broadly construed and includes the student's academic, social, emotional, communicative, physical, and vocational needs. Placement, for purposes of a FAPE determination, is a combination of program and services offered to a student with a disability. Placement not only includes the type of classroom in which the student is educated, but also the type of program in the classroom and the related services provided to the student. To determine whether the District offered Student a FAPE, the focus is on the appropriateness of the placement offered by the District at the time, and not on the alternative preferred by the parents. However, the IDEA permits the amendment of IEPs during the school year when a student's needs are not being met

Placement in a General Education Classroom

26. Student contends that she was denied a FAPE from January 8, 2007, to the end of the 2007-2008 school year because the District placed her in a general education classroom for most of the school day, and pulled her out to the RSP classroom for some academic instruction. Student argues that during that period of time, she required full-time placement in a classroom such as an SDC with a low student/adult ratio. The District's failure to place her in an SDC denied Student a FAPE because the offer of placement was not reasonably calculated to provide her with educational benefit, and did not provide her with educational benefit.

The 2006-2007 school year, beginning on January 8, 2007

27. For the 2005-2006 school year, Student was placed at El Granada in the District's kindergarten through third grade special day class (SDC) for children with mild to moderate impairments. That class had a five-to-one student/adult ratio, and it was taught by Carol Owens (Owens) a credentialed special education teacher with more than 10 years of experience teaching children with special needs.¹⁰ There were 10 children in the class, and Owens was assisted by a full-time instructional aide. Many of the students in the SDC had social skills and cognitive issues similar to those of Student. At the end of the school year, Student was reading at the mid-first grade level, and doing math at the early first grade level. Social skills were a focus in the SDC. Student was mainstreamed for writing in a general education first grade class of 20 students, where she was reported to make progress. Student was very successful during the 2005-2006 school year in both the SDC and general education setting.

28. At the IEP team meeting on May 30, 2006, Owens recommended to the IEP team that Student be mainstreamed in a general education classroom for second grade, and pulled out of that classroom for RSP instruction in reading and math. Mother testified persuasively that Owens told her that the SDC classroom would serve students more disabled than Student the following school year, which is why placement in the general education environment was recommended. Many of the students in the SDC who were with Student in the SDC for the 2005-2006 school year are still placed there. Consistent

¹⁰ Owens has a bachelor's degree in liberal studies. She has a multiple subject credential for kindergarten through eighth grade, and a special education credential for learning handicapped. She has been a teacher for over 20 years, and a special education teacher for more than 15 years.

with Mother's testimony regarding what Owens told her, Owens testified that she believed that Student would be more suitably placed in the general education classroom for the 2006-2007 school year because she was more academically advanced than the other students in the SDC, although she admitted that socially and cognitively the SDC students functioned at a similar level as Student.

29. For the 2006-2007 school year, Student attended class in the second grade general education classroom taught by Bruno, except when she was in the RSP classroom. Student spent 115 minutes each day in RSP, with the exception of Tuesdays, when she stayed in Bruno's class all day. Bruno's class had 20 students and no aides or other adults to assist Bruno. The evidence established that Student was usually in Bruno's classroom when she was teaching her other students reading and mathematics, so it was unclear when, if ever, Student received social studies and science instruction. According to several District witnesses, social studies and science often involve small group and hands-on activities that might have provided Student with meaningful interaction with typically developing peers, had she participated in those activities in Bruno's classroom. Student received her writing instruction in Bruno's classroom and made some progress in writing, but she did not meet any of the goals or objectives in writing for that school year. Bruno testified that did not have any reason to consult with Monaghan about Student's speech and language needs, and only saw Monaghan "a couple of times" that school year. Student was very well-behaved in class, but Bruno testified that when she would ask questions, Student would not raise her hand. Also, if Student was confused about something in class, she would not ask questions. Bruno also noticed that about twice a week, Student did not appear to be focused or responsive to instruction in her classroom.

30. For the 2006-2007 school year, Student received 55 minutes of instruction in mathematics and 60 minutes of instruction in reading from Macres in the RSP classroom every day except Tuesdays. Eight to ten students attended the RSP class at

a time. Macres had an instructional aide in the RSP room some of the time who would provide assistance to individual students. Macres would instruct the group as a whole, and then students would work individually with the aide, or in smaller groups. When the instructional aide was in the class, the student/adult ratio was four-to-one or five-to-one. Instruction was specialized for the students in the RSP classroom. Although Student made some progress on the reading and math goals and objectives in her IEP both years, she did not meet most of these goals. Student's very slow progress in reading and math at El Granada was even more remarkable because she was privately tutored by the RSP classroom aide in reading and math for two hours each week after school for the time periods at issue. Macres consulted with Monaghan at least once a month at length about developing strategies to effectively teach Student because her speech and language impairment impeded her ability to comprehend what she was reading, and to understand concepts in mathematics, particularly subtraction. Macres seemed puzzled about the difficulty she had teaching student.¹¹ Student's lack of progress in reading and math demonstrate that she did not receive educational benefit from January 8, 2007, to the end of the 2006-2007 school year.

31. The evidence established that Student received little educational benefit in the RSP classroom for instruction in reading and math, even though the RSP class was smaller, and the adult/student ratio was low. Student was often instructed in groups larger than three or four students, and her speech and language impairments prevented her from understanding the instruction she received.

¹¹ It was evident that Macres is a skilled and committed teacher of children with special needs, and it did not appear that Student's lack of progress was caused by any lack of commitment or effort on the part of Macres.

32. Dorothy McMullan (McMullan) of Morrissey/Compton Educational Center, Incorporated (Morrissey/Compton), a certified educational specialist, testified on behalf of Student.¹² McMullan was part of a Morrissey/Compton team that evaluated Student in April 2008 at Parents' request. McMullan testified that in her opinion, Student needs a classroom setting of no more than ten to twelve students and three adults, including a credentialed special education teacher, to obtain the maximum instructional benefit. Student also requires a classroom where there is a focus on communication, and the building of social skills. This describes the Arbor Bay classroom in which Student was placed by Parents for the 2008-2009 school year. At Arbor Bay, Student is in a class of 12 students and a four-to-one student adult ratio, and she is often taught in groups of four or fewer students. McMullan's testimony was persuasive. It appears that the RSP classroom taught by Macres somewhat replicated this instructional setting, but more instruction was provided to the students in larger groups than the three or four student groups in the Arbor Bay classroom, and the evidence established that communication and social skills were not a focus in the RSP classroom.

33. Witnesses consistently testified that Student's physical appearance is that of a typically developing child. She is compliant and does not present with behavior problems in any of her classrooms. Teachers and other witnesses described her as "sweet," with a

¹² McMullan has been employed as an educational specialist by Morrissey/Compton since 2002. She has 12 years experience teaching children with IEPs in New York. She has over 50 graduate credits in education and special education, as well as certification as an educational therapist from University of California Santa Cruz. She has assessed more than 500 students. McMullan works closely with Morrissey/Compton psychologists. She observes educational programs in NPS and public school classrooms to assist parents in determining the most appropriate educational placement for their children.

“sparkly personality.” She travels extensively with her family. Therefore, at the time of the IEP meeting of May 30, 2006, it was not unreasonable for the District to believe that the offer of placement in a general education second grade classroom with pull-out RSP services for instruction in reading and math was appropriate. However, the evidence demonstrated that during the school year it became clear that Student was not succeeding in this placement. At that point, the District should have convened another IEP team meeting to discuss alternative placements and services.

34. Based on the foregoing, the evidence established that the District did not provide Student with a placement that was reasonably calculated to provide her with educational benefit from January 8, 2007, through the end of the 2006-2007 school year. The evidence established that Student required placement in a classroom with a low student/adult ratio in order to receive educational benefit. The District’s placement of Student in a general education class of 20 students and one teacher did not provide Student with a FAPE. When it became apparent that the educational placement was not providing Student with a FAPE, the District should have convened another IEP team meeting to develop an IEP with a program and services that would provide Student with a FAPE. Thus, the evidence established that the District did not provide Student with a FAPE from January 8, 2007, through the end of the 2006-2007 school year.

The 2007-2008 School Year

35. Student’s IEP for the 2007-2008 school year offered Student placement in a general education third grade classroom, with 440 minutes per week in the RSP classroom. In addition, the IEP called for 120 minutes per week of “consultation and collaboration” of the speech and language therapist with school staff and parents “as needed to support IEP goal objectives and academic standards,” and 60 minutes of similar consultation and collaboration by the occupational therapist.

36. The evidence established that the IEP was not reasonably calculated to

provide Student with educational benefit because Student requires placement in a classroom with a low student/adult ratio in order to receive educational benefit. The District's placement of Student in a general education class of 20 students and one teacher did not provide Student with a FAPE (see Factual Findings 27 to 34).

37. The evidence also established that the placement was, in fact, not appropriate for Student. Student worked on writing, social studies, and science in that class of 20 students. Student did not have writing goals during this school year. At a parent-teacher conference, there was discussion about Student having difficulty understanding social studies concepts. The evidence established that Student was "below average" in many areas in that classroom. Although she was not a behavior problem in class, Student had difficulty paying attention and listening in class. Student received the same amount and type of RSP services in the RSP classroom taught by Macres as she received the previous year, as described in Factual Finding 30. However, she made very little educational progress. For example, in both the 2006-2007 and 2007-2008 school years, Student had a goal that she be able to subtract two digit numbers without regrouping. At the end of the 2007-2008 school year, Student was still unable to do this. When it became apparent that the educational placement was not providing Student with a FAPE, the District should have convened another IEP team meeting to develop an IEP with a program and services that would provide Student with a FAPE.

38. Based on the foregoing, the evidence established that the District did not provide Student with a placement that was reasonably calculated to provide her with educational benefit for the 2007-2008 school year, and did not provide her with educational benefit.

Direct Speech and Language Services

39. In California, related services are called designated instructional services (DIS). DIS includes speech-language services and other services as may be required to

assist the child in benefiting from special education. A district is required to provide DIS services "when the instruction and services are necessary for the pupil to benefit educationally from his or her instructional program."

40. Student contends that she should have been provided with direct speech and language services for the 2006-2007, beginning January 8, 2007, and for the 2007-2008 school year, rather than a consultation/collaboration model, and therefore she was denied a FAPE.

THE 2006-2007 SCHOOL YEAR, BEGINNING ON JANUARY 8, 2007

41. It is undisputed that Student has needs in the area of speech and language. Speech and language assessments by Children's Health Center (CHC) in 2003, Morrissey Compton in 2008, and the District in 2005 and 2008, clearly established Student's significant deficits in the area of speech and language.

42. As discussed above, Student's IEP of May 30, 2006, provides for either "direct or collaborative/consultation" speech and language services for 120 minutes per month, and 60 minutes per month of collaborative/consultation occupational therapy services. The IEP established two goals in the area of speech and language.

43. Although Monaghan was to provide 120 minutes each month of either direct speech and language services, or consultation services, during the 2006-2007 school year, the evidence established that she did not. Bruno, Student's second grade general education teacher, felt she had no need for the services to assist Student, although Student was not an active participant in her classroom when she was there. Bruno testified credibly that she only saw Monaghan "a couple of times" during that school year for consultation, but there was no evidence that Monaghan ever observed Student in her class. Macres, a special education teacher since 1972, frequently consulted with Monaghan to develop strategies to teach Student reading and mathematics. Macres found that Student's

communication deficits made it very difficult for her to teach Student without guidance from the speech and language pathologist. Together, Monaghan and Macres worked to develop strategies so that Macres could provide meaningful instruction to Student. Monaghan testified that she observed Student on several occasions during the time periods at issue in this case. However, other than Monaghan's testimony, there was no evidence that Monaghan ever observed Student in either the general education class taught by Bruno, or the RSP classroom. In addition, Monaghan never contacted Parents to see if there were any other speech and language needs that might be impacting Student's educational progress.

44. Alexandra Nikulina (Nikulina),¹³ a speech and language therapist at Arbor Bay for the 2008-2009 school year, and Student's speech and language therapist at Arbor Bay for seven weeks prior to the hearing, reviewed the District's speech and language assessments of 2005 and 2008. She established through her testimony that based on the test results from 2005, Student required direct speech and language services for both the 2006-2007 school year.

45. Consistent with Nikulina's testimony, without direct speech and language therapy, Student did not completely meet one of her two speech and language goals for

¹³ Nikulina has an undergraduate degree in early childhood education from St. Petersburg University in Russia, and a Master's degree in speech and language pathology from California State University East Bay. She has a valid license as a speech pathologist issued by the California Speech-Language Pathologist and Audiology Board since July 2008. She has passed the test for her California teaching credential as a speech pathologist, and is waiting for the credential to be issued by the California Commission on Teacher Credentialing.

the 2006-2007 school year - that she know the difference between "greater than and less than" - although she did learn the concept of "before and after" that year.

46. Moreover, the evidence established that with direct service Student was capable of making progress. For example, during the 2005-2006 school year, which is not at issue in this case, Student participated in group speech and language services for 60 minutes per week. One session each week also incorporated occupational therapy services. Student was an active participant in the small group of students from both the SDC and the general education classroom who received these services, and she achieved all but one of the five objectives for her two speech and language goals for that school year.

47. Based on the foregoing, the evidence established that Student required direct speech and language therapy in order to obtain educational benefit in both the general education and RSP classrooms. The evidence established that Student regressed without it, yet, she was not provided with direct speech and language services from January 8, 2007, to the end of the 2007-2008 school year. Therefore, District's failure to provide direct speech and language therapy services during that time period resulted in a denial of FAPE to Student.

THE 2007-2008 SCHOOL YEAR

48. Student's May 8, 2007 IEP provided for 120 minutes per week of "consultation and collaboration" of the speech and language therapist with school staff and parents "as needed to support IEP goal objectives and academic standards." The IEP did not provide for direct speech and language therapy. No speech and language goals were formulated for the 2007-2008 school year, and once again, direct services were not provided.

49. During the 2007-2008 school year, like during the previous year, Monaghan did not provide consultation services to Student's teachers for the entire 120 minutes per month that she was allotted. Although the IEP stated that Monaghan was to consult and

collaborate with Parents, as well as other providers, she never contacted Parents to see if they had concerns about Student that Monaghan needed to address in the educational arena. Neither Stacey Ward (Ward) nor Danyelle Brannon (Brannon), teachers of the general education third grade class, consulted with Monaghan that year, although Macres did so frequently.¹⁴ Brannon testified that she thought Monaghan was providing Student with direct speech and language services because Monaghan took Student from the general education classroom on several occasions. However, Monaghan testified she never provided direct services to Student. The 2008 assessment report refers to student being assessed in the area of speech and language by an “unfamiliar examiner.” Monaghan performed the speech and language assessment with no assistance.

50. As established above, Nikulina, a speech and language therapist at Arbor Bay for the 2008-2009 school year, and Student’s speech and language therapist at Arbor Bay for seven weeks prior to the hearing, reviewed the District’s speech and language assessments of 2005 and 2008, and determined that Student required direct speech therapy during the 2007-2008 school year in order to receive educational benefit and make academic progress.

51. Although Nikulina has less experience as a speech and language pathologist than Monaghan, and had been working directly with Student at Arbor Bay for a few only weeks at the time of the hearing, Nikulina was much more knowledgeable about Student’s needs for speech and language therapy, based on own observation and work with Student in group speech and language therapy at Arbor Bay. Although Nikulina’s experience in the public school setting was limited to her internship in the 2007-2008 school year, she was a

¹⁴ Brannon substituted for Ward from April 2008 to the end of the school year, while Ward took a leave of absence.

persuasive and credible witness, and her testimony was supported by the CHC, Morrissey/Compton and District reports showing Student's longstanding needs in the area of speech and language. Moreover, as discussed above, the results of the CELF-4 Monaghan administered to Student in 2008 revealed that Student continued to have severe speech and language deficits. At the IEP meeting on June 8, 2008, Monaghan proposed speech and language goals that were incorporated into the proposed IEP, and the District also proposed providing Student with group speech and language therapy for two 30 minute sessions per week.

52. Monaghan testified that the District was now proposing goals and offering direct speech and language therapy due to the demands of a fourth grade curriculum, with its emphasis on more abstract concepts. However, although Monaghan may have been partially correct in this regard, evidence also established that Student made no progress in the area of speech and language from January 8, 2007, to the end of the 2007-2008 school year, and may have even regressed based on the testing results of 2008.

53. Based on the foregoing, the evidence established that Student required direct speech and language therapy in order to obtain educational benefit in both the general education and RSP classrooms. The evidence established that Student regressed without it, yet she was not provided with direct speech and language services from January 8, 2007, to the end of the 2007-2008 school year. Therefore, District's failure to provide direct speech and language therapy services during that time period resulted in a denial of FAPE to Student.

Direct Occupational Therapy Services

54. DIS includes occupational therapy services and other services as may be required to assist the child in benefiting from special education. DIS services shall be provided "when the instruction and services are necessary for the pupil to benefit educationally from his or her instructional program."

55. Student contends that she should have been provided with direct occupational therapy services beginning January 8, 2007, through the end of the 2007-2008 school year rather than a consultation/collaboration model, and therefore she was denied a FAPE.

56. The evidence established that Student was diagnosed with a developmental coordination disorder by CHC in late 2003. The District's 2005 assessment recommended occupational therapy in a group setting for Student, although the testing reflected that she was performing in the low average to average range in both fine and gross motor skills, as well as sensory integration. During the 2005-2006 school year, Student received occupational therapy services for 75 minutes per week in a group setting. She had four occupational therapy goals in the June 28, 2005 IEP, and at the end of the 2005-2006 school year, she had met each of these goals.

57. Student was provided with consultation occupational therapy services for both the 2006-2007 and 2007-2008 school years. The occupational therapist, Leslie Bourdan (Bourdan),¹⁵ observed Student in classroom and playground settings on a regular basis both school years. Student did not exhibit any sensory/motor issues in these settings that would require occupational therapy services. Student's teachers, Bruno, Macres, Ward and Brannon, did not report any issues that might require Bourdan's services. In addition, Bourdan conducted a formal occupational therapy evaluation of Student for the triennial

¹⁵ Bourdan has 10 years of experience as an occupational therapist, and has been employed by the District for seven years. She received her Bachelor's degree in occupational therapy from Quinnipiac University, and advanced certification in sensory integration from the University of Southern California. She is licensed by the State of California as an occupational therapist, and also is certified by the National Board of Certification in Occupational therapy.

assessment in 2008 and found no need for services. Based on the foregoing, the evidence established that Student did not require direct occupational therapy in order to obtain educational benefit.

58. However, the consultation model for occupational therapy in the IEPs for the 2006-2007 and 2007-2008 school years required Bourdan to consult with the parents as well as other District personnel who worked with Student. The evidence Bourdan did not consult with the parents for either the 2006-2007 or the 2007-2008 school years to determine if they had any concerns about Student's fine or gross motor skills that might create difficulties for her in the school setting or for any other reason. However, this was not raised as an issue by Student.

59. Based on the foregoing, Student did not establish through evidence produced at hearing that Student required direct occupational therapy services, or that District denied her a FAPE by failing to provide them.

Social Skills Goals and Services

60. An IEP is an educational package that must target all of a student's unique educational needs, both academic and non-academic. The term "unique educational needs" is to be broadly construed and includes the student's academic, social, emotional, communicative, physical, and vocational needs. If a student has a unique need in the area of social skills, a district is required to provide goals and services to address the need.

61. Student contends that she required social skills goals and services and the District failed to provide her with these goals and services, which denied her a FAPE from January 8, 2007, to the end of the 2007-2008 school year.

62. Student's eligibility for special education and need for services in the area of speech and language are not disputed. The evidence established that Student also had needs for her autistic-like behaviors and that Student is a child with autism. For example, at the end of 2003, CHC determined that Student was mildly mentally retarded with a full

scale intelligence quotient (IQ) of 66, and further found that she was a child with autism, although the degree of autism was not addressed.

63. The evidence established that Student had two "friends" at El Granada, both of whom she had known since preschool. She had very limited interaction with these students during most school days, other than in after-school day care. It was unclear whether these students were part of the general education classrooms in which Student was placed during the 2006-2007 and 2007-2008 school years. When Student occasionally interacted with other students on the playground, they were students in the RSP classroom, or students she knew from the SDC classroom she attended in the first grade who were still attending the SDC. Mother testified persuasively that during the 2006-2007 and 2007-2008 school years, Student was never invited to a birthday party, or invited to play at the homes of other students, including the homes of her "friends." Yet, Parents have provided Student with dance lessons, and she also participates in a local theatre group, and performs in local musical productions. Despite Parents' efforts, Student's needs remain. Mother testified about a recent incident where one of Student's "friends," approached Student her after a performance and presented her with a flower, saying, "Good job!" Student responded by saying, "I don't want a flower," and walked away. Student is also obsessed with the "High School Musical" movies from the Walt Disney Studios.

64. District personnel repeatedly testified that they believed Student benefited socially from being exposed to the typically developing peers in the general education classrooms in second and third grades, the 2006-2007, and 2007-2008 school years. However, there was no facilitated social interaction with these students in or out of classroom. Instead, outside of the occasional group project in the classroom, Student had no interaction with these students.

65. Student does not interact in a typical manner with other children, including

the two children she knew in preschool. Although several District personnel described Student as playing with others at lunch and recess, the evidence established that she was usually engaged in parallel play on playground equipment, talking to one of her teachers, or performing musical numbers while standing on a cement bench during recess and lunch. Student rarely, if ever, engaged in interactive play. Occasionally Student would approach other students on the playground and would ask them if they wanted to see what she could do. She would then perform a song and dance routine from a musical. Brannon testified that when she had yard duty, she often engaged in conversation with Student about Student's interest in musicals and performing. The evidence established that Student's interest in "High School Musical," and the musical routines she learned in her outside activities, were perseverative behaviors, not a form of social interaction.

66. Student did not ask questions in the classroom environment, even the RSP classroom, and was not an active participant in instruction in the general education environment. She never raised her hand to respond to questioning. She could not ask for help when she did not understand what was being taught. This impeded her ability to access the academic curriculum.

67. Macres, Brannon, and the assistant director of the after-school child care program Student attended at El Granada, completed the Adaptive Behavior Assessment System, Second Edition (ABAS-II), as part of the 2008 triennial assessment. Macres, a credentialed special education teacher since 1972, rated Student as below average in the three areas assessed, Conceptual Skills, Social Skills and Practical Skills. Brannon and the assistant director of the childcare program also rated Student as below average in the area of Social Skills.

68. As discussed in Factual Finding 33, Student's physical appearance is that of a typically developing child. She is compliant and does not present with behavior problems in any of her classrooms. Teachers and other witnesses described her as "sweet," with a

“sparkly personality.” However, the presence of these positive traits does not negate the fact that Student had social deficits, and the evidence established that she had unique needs in that area.

69. Although El Granada has a campus-wide “kindness” program, there was no evidence that during the 2006-2007 and 2007-2008 school years Student received any social skills training specific to her disabilities of autism or speech and language impairment in either the general education classroom or the RSP classroom. The District stipulated that no social skills goals were formulated in the IEPs for Student when she attended El Granada.

70. Based on the foregoing, Student had unique needs in the area of social skills, and District’s failure to offer goals and services to Student to address her needs in this area denied her a FAPE from January 8, 2007, to the end of the 2007-2008 school year.

OFFER OF PLACEMENT AND SERVICES FOR THE 2008-2009 SCHOOL YEAR

71. As discussed above, the IDEA requires school districts to offer a FAPE to students with disabilities who are eligible for services. This requires the district to provide a student with a disability a program that is reasonably calculated to provide a child with a disability educational benefit. An IEP must target all of a student’s unique educational needs. The term “unique educational needs” is to be broadly construed and includes the student’s academic, social, emotional, communicative, physical, and vocational needs. Placement is a combination of program and services offered to a student with a disability. Placement not only includes the type of classroom in which the student is educated, but also the type of program in the classroom and the related services provided to the student. To determine whether the District offered Student a FAPE, the focus is on the appropriateness of the placement offered by the District at the time, and whether it was reasonably calculated to provide the child with educational benefit. It is not the alternative preferred by the parents.

72. Student contends that for the 2008-2009 school year, the district proposed a placement and services that were not reasonably calculated to provide her with educational benefit. Student contends that she required placement in an SDC rather than in a general education classroom, direct speech and language therapy and occupational therapy, and goals and services in the areas of socialization and social skills, none of which the District offered.

73. With regard to District's offer of placement for the 2008-2009 school year, the evidence established that District conducted its triennial assessment of Student in April, May, and June 2008. The District conducted evaluations in the areas of psycho-education, speech and language, and occupational therapy. Shawna Lieber (Lieber), the District's school psychologist, administered the Wechsler Intelligence Scale for Children, Fourth Edition (WISC-IV) to Student.¹⁶ Student's full-scale IQ was determined to be 60 according to this assessment. The District's assessment report found that Student was still eligible for special education services due to a speech and language impairment based on the results of the speech and language evaluation. The District did not conduct specific testing for autism.¹⁷ The assessor used the Wechsler Individual Achievement Test, Second Edition (WIAT-II), to measure Student's academic achievements. The academic testing results reported by the District's assessor are difficult to interpret. However, the report states that "standard scores" for children at Student's grade level are 90 to 110, and Student's

¹⁶ Lieber testified persuasively that her WISC-IV results were not affected by the prior testing.

¹⁷ The evidence also established that when the District initially assessed Student in 2005, it had the CHC assessment which diagnosed her with autism, but the District did not conduct specific testing for autism at that time.

composite score in mathematics was 69, her composite score in reading was 82, and her composite score in written language was 90. Speech and language testing results reflected a strong need for services in that area.

74. On June 9, 2008, Student's IEP team met to determine placement and services for the 2008-2009 school year, and to review the results of Student's triennial assessment by the District. At that meeting, Parents provided the District with the Morrissey/Compton assessment. For the 2008-2009 school year, the District IEP team members proposed that Student be placed in a general education fourth grade classroom with 30 or more students at El Granada, and further recommended that she spend 650 minutes per week in the RSP classroom for instruction in reading, mathematics, and written language. Student would also receive 60 minutes per week of group speech and language therapy. Student was given goals and objectives in the areas of reading, writing, mathematics, and speech and language.¹⁸

75. In August 2008, Parents informed the District that they were removing Student from the public school setting and placing her at Arbor Bay. Parents are requesting reimbursement for that placement and the cost of transporting Student to and from Arbor Bay.

Placement in a General Education Classroom

76. As established previously, for the 2008-2009 school year, the District offered to place Student in a general education fourth-grade classroom with 650 minutes per week in the RSP classroom for instruction in reading, mathematics and written language.

77. The evidence established that in the District's second and third grade general education classrooms, Student was one of twenty students. However, in the fourth

¹⁸ Some goals were labeled "Reasoning/Problem Solving," which appear to be speech and language goals.

grade, class size increased to 30 or more students. As determined previously, McMullan of Morrissey/Compton established that Student needs a classroom setting of no more than ten to twelve students and three adults, including a credentialed special education teacher, to obtain the maximum instructional benefit. Student also requires a classroom where there is a focus on communication, and the building of social skills. McMullan's testimony was persuasive.

78. Consistent with McMullan's testimony was evidence that Student made only de minimus educational progress in her placement (general education plus RSP and services) during the 2006-2007 and 2007-2008 school years. As an example, in both the 2006-2007 and 2007-2008 school years, Student had a goal that she be able to subtract two digit numbers without regrouping. At the end of the 2007-2008 school year, Student was still unable to do this. In addition, the evidence established that the IEP team determined that that Student could no longer benefit from writing instruction in the general education classroom.

79. Moreover, as established by Factual Findings 31 and 37, Student, in the previous two years, made little educational progress in the RSP classroom where the adult/student ratio approximated one adult for every four students, and instruction was individualized. McMullan established through her testimony that the type of instruction Student requires to make academic progress is more than just a classroom with a small ratio of students to adults for academic instruction. The evidence established that Student requires placement in an SDC class with "step-by-step" instruction at her level, and individual instruction to learn new skills. She also needs a classroom environment with similarly developing students where she feels comfortable enough to participate in classroom activities. For example, when McMullan observed Student at Arbor Bay, she was very impressed by Student's active participation in the classroom, as well as the fact that Student was consistently on task. This demonstrates that the offer for the 2008-2009

school year of placement in a general education classroom and 650 minutes of instruction per week in RSP classroom was not reasonably calculated to provide Student with educational benefit.

80. Based on the foregoing, the evidence established that Student required placement in a classroom with a low student/adult ratio in order to receive educational benefit. The District's placement of Student in a general education class of 30 students and one teacher, with pull-out services in an RSP classroom, was not reasonably calculated to provide Student with a FAPE.

Direct Speech and Language Services

81. District's IEP offer for the 2008-2009 school year provides for 60 minutes of group speech and language therapy. Student contends that she required direct speech and language services to benefit educationally from her instructional program, and that the District's offer of 60 minutes per week of group speech and language therapy for the 2008-2009 school year was not reasonably calculated to provide her with educational benefit.

82. It is undisputed that Student has needs in the area of speech and language. Monaghan, District's speech and language therapist, established through her testimony that in April and/or May, 2008, she conducted formal testing of Student using several instruments as part of the triennial assessment. These evaluations, especially the CELF-4, demonstrated that Student had severe speech and language deficits. At the IEP meeting on June 8, 2008, Monaghan proposed speech and language goals that were incorporated into the proposed IEP, and the District also proposed providing Student with group speech and language therapy for two 30 minute sessions per week.

83. Monaghan testified that the District was now proposing goals and offering direct speech and language therapy due to the demands of a fourth grade curriculum, with its emphasis on more abstract concepts. However, although Monaghan may have been

partially correct in this regard, the evidence also established that Student had made no progress in the area of speech and language from January 8, 2007, to the end of the 2007-2008 school year, and may have even regressed based on the testing results of 2008. Moreover, Nikulina established through her testimony that Student requires 90 minutes per week of direct speech and language therapy.

84. Based on the foregoing, the evidence established that Student required direct speech and language services to benefit educationally from her instructional program, but the District's offer of 60 minutes per week group speech and language therapy was not reasonably calculated to provide Student with educational benefit. The evidence established that Student requires some individual speech and language therapy, not just group speech and language therapy. Therefore, the District's offer in this area for the 2008-2009 school year is not reasonably calculated to provide her with educational benefit, i.e., a FAPE. The evidence established that Student requires at least 90 minutes per week of speech and language services to benefit educationally from her educational program. This is especially true in light of the District's failure to provide Student any direct speech and language therapy for the two preceding school years.

Direct Occupational Therapy

85. District did not offer Student occupational therapy services as part of the 2008-2009 IEP offer. Student contends that she required direct occupational therapy services to benefit educationally from her instructional program, and that the District's offer of no occupational therapy services for the 2008-2009 school year was not reasonably calculated to provide her with educational benefit.

86. As established previously, Bourdan observed Student in classroom and playground settings on a regular basis during the 2006-2007 and the 2007-2008 school years. Bourdan established through her testimony that Student did not exhibit any sensory/motor issues in these settings that would require occupational therapy services.

Student's teachers, Bruno, Macres, Ward and Brannon, did not report any issues that might require Bourdan's services. In addition, Bourdan conducted a formal occupational therapy evaluation of Student for the triennial assessment in 2008 and found no need for services. Based on the foregoing, the evidence established that Student did not require direct occupational therapy in order to obtain educational benefit. While Mother testified credibly that Student had difficulty in fastening and unfastening her clothing for purposes of toileting, it would be speculative to conclude that this difficulty made it necessary to Student to receive direct OT to benefit educationally from her instructional program.

87. Based on the foregoing, the evidence did not establish that Student required direct occupational therapy in either a group or individual setting for the 2008-2009 school year. However, as determined in Factual Finding 58, although the consultation model for occupational therapy required Bourdan to consult with Parents about Student's needs in this area, and Bourdan failed to do so, this failure to implement the IEP fully was not raised as an issue by Student.

Socialization and Social Skills Goals

88. If a student has unique needs in the area of socialization and social skills, it must be addressed in the IEP. A district is required, in this situation, to include in the student's IEP a statement of measurable annual goals designed to meet the student's needs that result from the disability, a description of the manner in which progress of the student towards meeting the annual goals will be measured, the specific services to be provided, the extent to which the student can participate in regular educational programs, the projected initiation date and anticipated duration, and the procedures for determining whether the instructional objectives are achieved. The district is also required to include a statement of the program modifications or supports for school personnel that will be provided to the student to allow the student to advance appropriately toward attaining the annual goals and be involved and make progress in the general education curriculum and

to participate in extracurricular activities and other nonacademic activities.

89. The District did not offer Student goals or services in the area of socialization and social skills as part of the IEP offer for the 2008-2009 school year. Student contends that she required social skills goals and services to benefit educationally from her instructional program, and that the District's offer of June 9, 2008, for the 2008-2009 school year was not reasonably calculated to provide her with educational benefit.

90. As previously discussed in Factual Findings 62 through 66, the evidence established that Student has "autism" or "autistic-like" behaviors and required social skills goals and services. District personnel consistently testified that Student did not need social skills or a social skills group because she benefited by being around typically developing peers who acted as role models. For example, Monaghan testified that Student "was able to follow the kids and blend in and not really stand out, and could pick up social skills without being specifically taught them." However, she provided no specific examples, so her testimony in this regard carried little weight. Brannon testified that general education classes were beneficial for Student socially because she could advance socially and academically if she was spending time with typically developing peers. The evidence established that Student made no social progress and very little academic progress in her general education classes with typically developing peers during the 2006-2007 and 2007-2008 school years. However, the evidence showed that Student made significant academic and social progress in her SDC classroom during the 2005-2006 school year in which social skills were stressed and taught directly. In addition, as discussed below, the evidence established that Student also made similar progress in her classroom at Arbor Bay that resembles an SDC.

91. As established by Factual Findings 63 through 70, Student requires social skills goals and instruction in the area of socialization so she can interact appropriately with her peers, benefit from classroom instruction, and become more independent as she

grows older. Without the goals in this area, there was no plan to facilitate Student's social interaction with others, and no basis on which to monitor progress in this area. Without services, progress was not likely.

92. Based on the foregoing, Student required socialization and social skills goals and services to benefit educationally from her instructional program the District's offer of placement and services for the 2008-2009 school year that did not include these goals and services was not reasonably calculated to provide Student with educational benefit. Therefore, the District's offer for the 2008-2009 school year denied her a FAPE.

LRE

93. A special education student must be educated with nondisabled peers to the maximum extent appropriate and may be removed from the regular education environment only when the nature or severity of the student's disabilities is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. Placement must foster maximum interaction between disabled students and their nondisabled peers.

94. District personnel repeatedly testified that placement of Student in general education classes was necessary because those classes, with the addition of pull-out services to the RSP class, constituted the LRE for Student. The Morrissey/Compton evaluation recommended that Student be placed in an SDC and that Student receive social skills and self-help training. As established previously, McMullan's testimony corroborated these recommendations. Moreover, the evidence established that Student has an IQ in the mildly mentally retarded range, and that she has significant deficits in social skills. There was no evidence that Student benefited either academically or socially from placement in her general education classes. Although she was not disruptive in those classes, the evidence established that she was unable to access the curriculum, and made no social progress. Based on the foregoing, the evidence established that an SDC class is the LRE for

Student because the nature and severity of her disabilities are such that placement in regular classes, even with the use of supplementary aids and services, will not provide Student with educational benefit.

REMEDIES

Reimbursement

95. A school district may be required to reimburse a parent for the costs of a private school if the child previously received special education services from the district and the district failed to make a FAPE available to the child. Parents may receive reimbursement for their unilateral placement if the placement met the child's needs and provided the child with educational benefit. The award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place. Reimbursement for the cost of a private school may be reduced or denied if the parents did not, prior to removing the child from the public school, provide notice that rejects the proposed placement, states their concerns, and expresses the intent to enroll the student in a private school. Equitable considerations, such as the conduct of both parties, may be evaluated when determining what, if any, relief is appropriate. Several factors may be considered when determining the amount of reimbursement to be ordered: the effort the parents expended in securing alternative placements; the availability of other more suitable placements; and the cooperative or uncooperative position of the school district. Transportation costs may also be reimbursed.

96. On August 4, 2008, Parents informed the District that they were removing Student from the public school setting, and placing her at Arbor Bay. School began at Arbor Bay on August 26, 2008. Parents are requesting reimbursement for that placement and the cost of transporting Student to and from Arbor Bay. Parents placed Student at

Arbor Bay because they disagreed with the District's proposed offer of placement and services for the 2008-2009 school year, which did not offer Student a FAPE. The written notice explained why Parents were rejecting the District's offer of placement and services for the 2008-2009 school year. Parents also advised the District that they would be seeking reimbursement for the placement at a later date. There was no evidence that the District responded in any way to this letter. Parents were familiar with Arbor Bay because it is operated under the auspices of Associated Learning and Language Specialists (ALLS), a nonpublic agency (NPA) which operated the preschool and kindergarten Student attended from 2003 through the end of the 2004-2005 school year. Arbor Bay is an NPS that is certified by the California Department of Education (CDE).

97. At Arbor Bay, Student is one of 12 students in a third/fourth grade classroom taught by Karin Herndon (Herndon).¹⁹ Another teacher and a full-time classroom aide assist Herndon in the classroom. Some of the students have been placed at Arbor Bay by public schools pursuant to an IEP. Arbor Bay offers a language-based program with a multi-sensory approach. The evidence established that at Arbor Bay, the needs of a student drive teaching, and children are grouped by needs and abilities to facilitate learning. The evidence also established that instruction is individualized, with a great deal of scaffolding to ensure learning.²⁰ Students are assessed throughout the year by

¹⁹ Herndon has a Preliminary Level 1 Education Specialist Instruction Credential for mild to moderate disabilities and English learners from California State University, San Jose. She has been teaching elementary school since the beginning of the 2004-2005 school year, and has taught at Arbor Bay since 2005. She was a first grade teacher during the 2004-2005 school year in a public school district.

²⁰ Instruction is "scaffolded" by making sure students learn the vocabulary before teaching begins, and concepts are taught step by step, with instruction moving on to the

determining current skills levels based on grade-level standards developed by the CDE. For example, Herndon testified that if a student is reading at a second grade level, progress will be tracked using second-grade standards. Once the Student achieves that reading level, progress will be checked using third grade standards, and so forth.

98. Socialization is embedded in the program at Arbor Bay, and also explicitly taught in the classroom. Herndon testified that some students in class have good social skills but dyslexia, and others have good academic skills but great social needs. A speech and language therapist spends thirty minutes each morning in the classroom. She teaches social skills such as eye-contact, active listening, and body posture. She also teaches the children how to follow verbal instructions, take turns in a conversation, and understand information that is inferred or implied. At recess, adults facilitate social interaction between the students. When she came to Arbor Bay, Student spent recess time “performing” routines from musicals. She no longer does this. Student is one of three students in the class diagnosed with autism.

99. Student is an active participant in classroom discussions, raising her hand to respond to questions, and actively listening and participating. She is consistently on task. Student entered Arbor Bay significantly below grade level in reading, writing and mathematics. She has made moderate progress during the school year, according to testing completed by McMullan shortly before the due process hearing began. Student now understands subtraction. Arbor Bay, had Student work on the goals and objectives formulated at the IEP meeting of June 9, 2008, and Student met most of those goals and objectives. McMullan’s testimony that Student made moderate progress at Arbor Bay for the 2008-2009 school year persuasively established that Arbor Bay provided Student with educational benefit.

next step only when it is clear that the student understands the preceding steps.

100. Mother testified that since attending Arbor Bay, Student has been invited to three birthday parties. In November 2008, Student's father returned from a business trip and Student initiated a discussion with him in which she described in detail a field trip she had taken. This was something she had never done before.

101. Based on the foregoing, the evidence established that the District did not offer Student a FAPE for the 2008-2009 school year. The evidence also established Arbor Bay provided Student with an appropriate education for the 2008-2009 school year and is an appropriate placement for Student in light of all of her needs. Parents provided the District with timely written notice of their intent to place Student at Arbor Bay. Therefore, Student's parents should be reimbursed for the tuition they paid to Arbor Bay for the 2008-2009 school year in the amount of \$28,500.²¹

102. Student was transported by her parents to and from Arbor Bay each day she attended school. The evidence established that the one-way trip to school from Student's home is 19.16 miles. Student attended Arbor Bay for 78 days from August 25, 2008, through the month of December 2008, and 69 days from January 2009 through April 2009. Parents are entitled to reimbursement for round trip mileage for each school day attended according to Internal Revenue Service (IRS) guidelines, \$.585 per mile for mileage from July 1, 2008, to December 31, 2008, and \$.55 per mile for mileage in 2009.²² Therefore, the

²¹ There was testimony that Arbor Bay charges a greater amount for fees and tuition than \$28,500 when placement is pursuant to an IEP and funded by a school district. However, OAH only has jurisdiction to reimburse parents their actual out-of-pocket costs for a private placement. Parents also paid an additional \$450 per month for a "therapeutic after-school program" at Arbor Bay, but they are not seeking reimbursement for this.

²² Mileage reimbursement shall be limited to a single round trip to school each

District shall reimburse Parents a total of \$2,236.18 for transportation costs to and from Arbor Bay through the month of April, and shall also reimburse Parents transportation costs at the rate of \$.55 per mile for the remainder of the 2008-2009 school year when parents present the District with proof of Student's attendance for that period of time.

Compensatory Education

103. When a school district fails to provide a FAPE to a student with a disability, the student is entitled to relief that is "appropriate" in light of the purposes of the IDEA. Compensatory education is a form of equitable relief that may be granted for the denial of appropriate special education services. The purpose of compensatory education is to ensure that the student is appropriately educated within the meaning of the law, and to help overcome lost educational opportunity. Where the actions of parents are unreasonable, equitable relief may be reduced or denied.

104. The evidence established that Student was denied a FAPE from January 8, 2007, to the end of the 2007-2008 school year when she attended El Granada. Parents fully cooperated with the District during this period of time. They attended all IEP meetings, consented without reservation to the District's assessment plans, provided the District with copies of independent assessments they obtained at their own expense, and signed a release for the District to speak to Morrissey/Compton.

105. The evidence established that Student made much better progress in the Arbor Bay program than at El Granada. If Student were to return to the District and be provided with the necessary hours of compensatory education to make up for the District's failure to provide her with a FAPE from January 8, 2007, to the end of the 2007-2008 school year, the number hours of compensatory services added on to each school day school day Student attended at Arbor Bay. Administrative notice is taken of mileage rates from the IRS website.

would overburden Student. At the time of the due process hearing in this matter, an IEP to determine placement and services for the 2009-2010 school year had not been held.

Although during the hearing the ALJ ruled that a determination would not be made as to prospective placement for the 2009-2010 school year, it now appears that appropriate compensatory education for the denial of a FAPE to Student from January 8, 2007, to the end of the 2007-2008 school year is for the District to pay for Student to be placed at Arbor Bay for the 2009-2010 school year.

106. The evidence established that Arbor Bay will need to reassess Student to determine the type and amount of speech and language services Student now needs in light of the testimony of Nikulina. Therefore, the District shall pay for this assessment, and if Student requires related services in the areas of speech and language, above and beyond those that are provided as part of the standard Arbor Bay curriculum, the District shall pay for those services to be provided by either Arbor Bay, or an NPA.

107. The evidence also established that Student needs further assessment in the area of occupational therapy to determine if she has self-help needs that affect her in the educational environment. The District shall also pay for an assessment in the area of occupational therapy.

APPLICABLE LAW AND LEGAL CONCLUSIONS

BURDEN OF PROOF

1. Under *Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528], the party who files the request for due process has the burden of persuasion at the due process hearing. Student filed the request for due process, and therefore has the burden of persuasion in this matter.

ELEMENTS OF A FREE APPROPRIATE EDUCATION (FAPE)

2. Under both the federal IDEA and state law, students with disabilities have the

right to a FAPE. (20 U.S.C. § 1400; Ed. Code, § 56000.)²³ A FAPE means special education and related services that are available to the student at no charge to the parent or guardian, that meet the state educational standards, and conform to the student's IEP. (20 U.S.C. § 1401(9).) A child with a disability has the right to a FAPE under the IDEA and California law. (20 U.S.C. § 1412(a)(1)(A); Ed. Code, § 56000.)

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176 [102 S.Ct. 3034] (hereafter *Rowley*), the United States Supreme Court addressed the level of instruction and services that must be provided to a student with a disability to satisfy the requirements of the IDEA. The Court determined that a student's IEP must be reasonably calculated to provide the student with some educational benefit, but that the IDEA does not require school districts to provide the student with the best education available or to provide instruction or services that maximize a student's abilities. (*Rowley, Id.* at pp. 198-200.) The Court stated that school districts are required to provide only a "basic floor of opportunity" that consists of access to specialized instructional and related services that are individually designed to provide educational benefit to the student. (*Rowley, Id.* at p. 201.) The Ninth Circuit refers to the "some educational benefit" standard of *Rowley* simply as "educational benefit." (See, e.g., *M.L. v. Fed. Way School Dist.* (2004) 394 F.3d 634.) It has also referred to the educational benefit standard as "meaningful educational benefit." (*N.B. v. Hellgate Elementary School Dist.* (9th Cir. 2007) 541 F.3d 1202, 1212-1213; *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) Other circuits have interpreted the standard to mean more than trivial or "de minimis" benefit, or "at least meaningful" benefit. (See, e.g., *Houston Indep. Sch. Dist. v. Bobby R.* (5th Cir. 2000) 200 F.3d 341; *L.E. v. Ramsey Bd. of Educ.* (3d Cir. 2006) 435 F.3d

²³ All statutory citations to the Education Code are to California law, unless otherwise noted.

384.) A child's academic progress must be viewed in light of the limitations imposed by his or her disability and must be gauged in relation to the child's potential. (*Mrs. B. v. Milford Board of Education* (2d Cir. 1997) 103 F.3d 1114, 1121.)

THE IEP

4. An IEP is an educational package that must target all of a student's unique educational needs, whether academic or non-academic. (*Lenn v. Portland School Committee* (1st Cir. 1993) 998 F.2d 1083, 1089.) The term "unique educational needs" is to be broadly construed and includes the student's academic, social, emotional, communicative, physical, and vocational needs. (*Seattle Sch. Dist. No. 1 v. B.S.*, 82 F.3d 1493, 1500 (9th Cir. 1996) [citing J.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2106].)

5. The IEP is the "centerpiece of the [IDEA's] education delivery system for disabled children" and consists of a detailed written statement that must be developed, reviewed, and revised for each child with a disability. (*Honig v. Doe* (1988) 484 U.S. 305, 311 [108 S.Ct. 592, 98 L.Ed.2d 686]; 20 U.S.C. §§ 1401 (14), 1414 (d)(1)(A); Ed. Code, §§ 56032, 56345.) An IEP is a written statement that includes a statement of the present performance of the student, a statement of measurable annual goals designed to meet the student's needs that result from the disability, a description of the manner in which progress of the student towards meeting the annual goals will be measured, the specific services to be provided, the extent to which the student can participate in regular educational programs, the projected initiation date and anticipated duration, and the procedures for determining whether the instructional objectives are achieved. (20 U.S.C. § 1414 (d)(1)(A)(i),(ii); 34 C.F.R. § 300.320(a)(2), (3); Ed. Code, § 56345, subds. (a)(2), (3).) It shall also include a statement of the program modifications or supports for school personnel that will be provided to the student to allow the student to advance appropriately toward attaining the annual goals and be involved and make progress in the general education curriculum and to participate in extracurricular activities and other nonacademic activities.

(34 C.F.R. § 300.320(a)(4)(i), (ii); Ed. Code, § 56345, subds. (a)(4)(A), (B).)

6. In developing the IEP, the IEP team shall consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial evaluation or most recent evaluation of the child and the academic, functional and developmental needs of the child. (20 U.S.C. § 1414(d)(3)(A).) For each area in which a special education student has an identified need, the IEP team must develop measurable annual goals that are based upon the child's present levels of academic achievement and functional performance, and which the child has a reasonable chance of attaining within a year. (Ed. Code, § 56344.)

7. For a school district's IEP to offer a student a substantive FAPE, the proposed program must be specially designed to address the student's unique needs, must be reasonably calculated to provide the student with some educational benefit, and must comport with the student's IEP. (20 U. S.C. § 1401(9).) To determine whether the District offered Student a FAPE, the focus is on the appropriateness of the placement offered by the District and not on the alternative preferred by the parents. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F. 2d 1307, 1314.)

8. "In striving for 'appropriateness,' an IEP must take into account what was, and was not, objectively reasonable... at the time the IEP was drafted." (*Adams v. State of Oregon, supra*, 195 F.3d 1141, 1149, quoting *Fuhrmann v. East Hanover Board of Education*, 993 F.2d 1031, 1041 (3d Cir. 1993).) A school district is obligated to revise a student's educational program if it becomes apparent over the course of the school year that the student's educational needs have changed and/or the student is not receiving educational benefit. (Ed. Code, § 56380, subd. (a).)

DETERMINATION OF ISSUES

For the 2006-2007 school year, beginning on January 8, 2007, to the end of the 2007-2008 school year, did the District deny Student a free appropriate public education

(FAPE) by violating Parents' procedural rights by failing to reassess Student in the area of speech and language, thereby significantly impeding Parents' opportunity to meaningfully participate in the individualized educational program (IEP) decision-making process because Parents did not know Student's levels performance in this domain?

Assessment

9. A child must be assessed by a school district in all areas related to the suspected disability. (20 U.S.C. § 1414(A)(2), (3); 34 C.F.R. § 300.304 (c)(4); Ed. Code, § 56330(f).) A parent who wishes that a child receive special education services must allow reassessment if conditions warrant; "if the parents want [their child] to receive special education under the Act, they are obliged to permit such testing." (*Gregory K. v Longview School Dist. supra*, 811 F.2d 130, 1315.) "A parent who desires for her child to receive special education must allow the school district to reevaluate the child using its own personnel; there is no exception to this rule." (*Andress v. Cleveland Independent School Dist.* (5th Cir. 1995) 64 F.3d 176, 179.)

10. A student must be reassessed every three years, unless the parents agree otherwise, and a student cannot be assessed more than once per year. (Ed. Code, § 56381, subd. (a)(2).) If a district "determines that the educational or related services needs, including improved academic achievement and functional performance of the [student] warrant a reassessment," the District can request a reassessment. (Ed. Code § 56381(a).) A reassessment requires parental consent. (20 U.S.C. § 1414(c)(3); Ed. Code, §§ 56321, subd. (c), 56381, subd. (f).) To obtain consent, a school district must develop and propose a reassessment plan. (20 U.S.C. § 1414(b)(1); Ed. Code, §§ 56321, subd. (a), 56381, subd. (f).)

11. A school district's failure to assess in all areas of suspected disability may constitute a procedural denial of a FAPE. (*Park v. Anaheim Union High Sch. Dist.* (9th Cir. 2006) 464 F.3d 1025, 1031-1033.)

12. The assessments shall be conducted by trained and knowledgeable

personnel, except that individually administered tests of intellectual or emotional functioning shall be administered by a credentialed school psychologist. (Ed. Code, § 56320, subd. (b)(3).) In conducting an assessment, a district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student. This may include information provided by the parent that may assist in determining whether the student is a child with a disability, and the content of the student's IEP, including information related to enabling the child to be involved and progress in the general education curriculum. (34 C.F.R. § 300.304(b)(1)(i), (ii) (2006).) No single measure or assessment shall be used as the sole criterion for determining whether a student is a child with a disability or for determining an appropriate educational program for the student. (34 C.F.R. § 300.304 (b) (2) (2006).) Tests and assessment materials must be validated for the specific purpose for which they are used; must be selected and administered so as not to be racially, culturally or sexually discriminatory; and must be provided and administered in the student's native language or other mode of communication unless this is clearly not feasible. (Ed. Code, § 56320, subd. (a); 20 U.S.C. § 1414(b)(2), (3); 34 C.F.R. § 300.304(c)(1)(i), (ii) (2006).)

Procedural Violations

13. A procedural violation constitutes a denial of FAPE only if it impeded the child's right to a FAPE, significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a FAPE to their child, or caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E); Ed. Code, § 56505, subd. (f); see also, *W.G. v. Board of Trustees of Target Range Sch. Dist. No. 23*, *supra*, 960 F.2d 1479, 1483-1484.) Recent Ninth Circuit Court of Appeals cases have confirmed that not all procedural violations deny the child a FAPE. (*Park v. Anaheim Union High Sch. Dist.* *supra*, 464 F.3d 1025, 1033, n.3; *Ford v. Long Beach Unified Sch. Dist.* (9th Cir. 2002) 291 F.3d 1086, 1089.) A procedural violation constitutes a denial of FAPE only if the violation: (1)

impeded the child's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision-making process; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).)

Meaningful Participation

14. The IDEA imposes upon the school district the duty to conduct a meaningful IEP meeting with the appropriate parties. (*W.G. v. Board of Trustees of Target Range Unif. Sch. Dist. No. 23*, *supra*, at p. 1485.) Those parties who have first hand knowledge of the child's needs and who are most concerned about the child must be involved in the IEP creation process. (*Shapiro v. Paradise Valley Unified School District No. 69* (9th Cir. 2003) 317 F.3d. 1072, 1079, citing *Amanda J.*, *supra*, 267 F.3d. 877, 891.) Parents play a "significant role" in the development of the IEP and are required and vital members of the IEP team. (*Winkelman v. Parma City School Dist.* (2007) 549 U.S. 1190 [127 S.Ct. 1994, 2000-2001; 167 L.Ed. 2d 904.]; 20 U.S.C. § 1414 (d)(1)(B)(i); 35 C.F.R. § 300.322; Ed. Code, § 56341, subd. (b)(1).) In order to fulfill the goal of parental participation in the IEP process, the school district is required to conduct, not just an IEP meeting, but also a meaningful IEP meeting. (*W.G. v. Board of Trustees of Target Range School District No. 23* *supra*, 960 F.2d 1479, 1485(*Target Range*); *Fuhrmann v. East Hanover Bd. of Educ.* *supra*, 993 F.2d 1031, 1036.) A parent has meaningfully participated in the development of an IEP when she is informed of her child's problems, attends the IEP meeting, expresses her disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools*. (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann*, *supra*, 993 F.2d at p. 1036.)

15. Legal Conclusions 4-8 demonstrate that the IEP process is the mechanism by which a team comprised of school personnel and parents work collaboratively to determine a students' placement and services. Parents are an integral part of the IEP team, and they must be full participants in the process, as established by Legal Conclusion 14. Legal Conclusion 13 established that if a school district impedes parents' meaningful

participation in the IEP process, it is a procedural violation which may be actionable if the denial of meaningful participation results in the student not receiving a FAPE. Parents cannot meaningfully participate in an IEP team meeting if they are not fully informed of their child's problems and current levels of functioning. In addition, as established by Legal Conclusion 9, a district must assess a child in all suspected areas of disability, and can reassess a child if it appears a reassessment is necessary. Legal Conclusion 24 establishes that a student must be provided with speech and language services if the student requires these services to access the curriculum and be provided with an educational benefit, as discussed in Legal Conclusion 3.

January 8, 2007, through the End of the 2006-2007 School Year

16. As determined in Factual Findings 5 through 8, Student's IEP for the 2006-2007 school year did not specify whether Student's speech and language services were to be provided directly to Student or in a consult mode. At the beginning of the 2006-2007 school year, Monaghan and Student's teachers, Macres and Bruno, decided that Student should not receive direct speech and language services. This decision was made before the beginning of the school year, when Monaghan had never met or observed Student or provided her with services. Parents were not consulted or advised that Student was no longer receiving direct speech and language services.

17. Factual Findings 30, 43, and 49, establish that during the 2006-2007 school year, Macres consulted Monaghan frequently about developing strategies to teach Student reading and math. Nevertheless, the evidence established that District did not reassess Student, or reconsider the decision to provide speech and language services only in the consultation mode. As established by Factual Findings 8 and 14 through 17, neither Monaghan or anyone else from District discussed with Parents Student's needs in the area of speech and language, and did not inform them of the fact that the IEP was not a clear

and concise offer and that the IEP team could consider specifying that Student should receive direct services. As established by Legal Conclusion 10, District, and Monaghan in particular, should have so informed Parents, and should have asked to reassess Student for speech and language needs, but did not do so.

18. Had Parents been fully informed about Student's speech and language needs for that school year, the evidence established that they would have requested direct speech and language services. The failure of the District to assess Student in the area of speech and language before making the decision to not provide her with direct speech and language services, combined with the District's unilateral decision to not provide her with direct services denied Parents meaningful participation in the IEP process, as established by Factual Findings 4 through 8. As a result, Student was denied a FAPE from January 8, 2007 through the end of the 2006-2007 school year.

The 2007-2008 School Year

19. Factual Finding 10 establishes that before the IEP meeting of May 8, 2007, Monaghan merely consulted with Bruno and Macres to determine Student's progress in meeting her speech and language goals at the end of that school year. This, in conjunction with Monaghan's failure to provide Student with any direct services, resulted in Parents not having accurate information about Student's speech and language needs and functioning when they attended the IEP team meeting of May 8, 2007. As a result, Parents' procedural rights were violated. Moreover, Parents were denied meaningful participation in the IEP meeting of May 8, 2007, when decisions were made about placement and services for the upcoming 2007-2008 school year.

20. As established by Factual Findings 39 through 47, Student required direct speech and language services during the 2007-2008 school year. As was the case the previous school year, District, and particularly Monaghan, should have asked to reassess Student for speech and language needs during the school year, but did not do so.

21. Factual Findings 43 and 49 establish that Macres frequently consulted Monaghan during the 2007-2008 school year about strategies for instructing Student because Macres was having such difficulty communicating certain concepts to her. Parents were never informed about these problems. Monaghan only assessed Student at the end of the 2007-2008 school year because it was time for Student's triennial assessment. Again, Parents were denied important information about Student, and this prevented them from taking steps to ensure that she received the speech and language services she needed to receive a FAPE for that school year. Finally, there was nothing to prevent Monaghan from convening an IEP team meeting to modify the IEP for the 2007-2008 school year so she could provide Student with direct speech and language services as established by Legal Conclusion 8.

22. Factual Findings 9 through 12 and Legal Conclusions 13 and 14 establish that the District violated Parents' procedural rights by failing to share with Parents information needed to meaningfully participate in the IEP process. This failure on District's part denied Parents meaningful participation in the IEP process. As a result, Student was denied a FAPE for the 2007-2008 school year.

Did the District deny Student a FAPE from January 8, 2007, to the end of the 2006-2007 school year, and for the 2007-2008 school year, by failing to make a clear and concise offer of services in the areas of speech and language therapy and occupational therapy?

23. In California, related services are called designated instructional services (DIS). (Ed. Code, § 56363.) DIS includes speech-language services and other services as may be required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26)(A); Ed. Code, § 56363, subd. (a); *Irving Independent School Dist. v. Tatro* (1984) 468 U.S. 883, 891 *Union School District v. B. Smith* (9th Cir. 1994) 15 F. 3d 1519, 1527.) [104 S.Ct. 3371; 82 L.Ed.2d. 664].) DIS services shall be provided "when the instruction and services are necessary for the pupil to benefit educationally from his or her instructional program." (Ed.

Code, § 56363, subd. (a).)

24. An IEP offer must be sufficiently clear that a parent can understand it and make intelligent decisions based on it. (*Union School Dist. v. Smith, supra*, 15 F.3d 1519, 1526.) In *Union*, the Ninth Circuit observed that the 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. (*Id.* at p. 1526). The requirement of a formal, written offer creates a clear record that helps eliminate troublesome factual disputes years later, and alerts the parents to the need to consider seriously whether the offered placement was an appropriate placement under the IDEA, so that the parents can decide whether to oppose the offered placement or to accept it with the supplement of additional education services. (*Glendale Unified School Dist. v. Almasi* (C.D. Cal. 2000) 122 F.Supp.2d 1093, 1107 (citing *Union, supra*, 15 F.3d at p. 1526).)

Speech and Language Therapy Offer

JANUARY 8, 2007, TO THE END OF THE 2006-2007 SCHOOL YEAR

25. As established by Legal Conclusion 25, a school district must make a clear and concise offer of placement and services so that parents can understand what is being offered, and make intelligent decisions about their child's IEP. As established by Factual Findings 39 through 47, Student required direct speech and language services which she did not receive. As established by Factual Findings 14 through 17, the offer of speech and language services in the May 30, 2006 IEP was not clear and concise, and as a result, Parents were denied meaningful participation in the IEP process. In addition, this denial caused a deprivation of educational benefits because she did not receive the direct speech

and language services she required from January 8, 2007, through the end of the 2006-2007 school year. Therefore, she was denied a FAPE.

THE 2007-2008 SCHOOL YEAR

26. Factual Findings 18 and 19 establish that although the offer of speech and language services for the 2007-2008 school year made it clear that the services offered were in the collaboration/consultation mode, the language of the offer was unclear as to the frequency and duration of these services. This, combined with the Parents' lack of knowledge about Student's actual functioning in the area of speech and language contributed to a denial of FAPE to Student for that school year, because the Parents again were denied meaningful participation in the IEP process and Student was again caused a deprivation of educational benefits because she did not receive the direct speech and language services she needed during the 2007-2008 school year.

Occupational Therapy Offer

JANUARY 8, 2007, THROUGH THE END OF THE 2006-2007 SCHOOL YEAR

27. Factual Findings 20 through 22 establish that the offer of occupational therapy services in the consultation mode for the 2006-2007 school year in the IEP of May 30, 2006, was clear and concise as it delineated that the occupational therapist was to consult with all school personnel providing direct services and instruction to Student, as well as Parents. Therefore, Parents were able to meaningfully participate in the IEP process as related to occupational therapy.

THE 2007-2008 SCHOOL YEAR

28. As established by Factual Findings 23 and 24, the offer of occupational therapy services for the 2007-2008 school year was unclear as to frequency and duration of the consultation/collaboration services of the occupational therapist. This denied the

parents, meaningful participation in the May 30, 2007 IEP team meeting. However, the evidence did not establish that this resulted in a denial of a FAPE to Student because the evidence established that Student did not need occupational therapy services that year, and Student did not raise the issue of the failure of the district to fully implement this aspect of the IEP.

For the 2006-2007 school year, beginning on January 8, 2007, and the 2007-2008 school year, did the District deny Student a FAPE because it placed her in a general education classroom, rather than a classroom with a low student/adult ratio?

29. Legal Conclusions 2-8 establish that a student should be placed in an educational program that meets her unique needs and will provide her with educational benefit. This program is not necessarily the program preferred by the student's parents. Legal Conclusions 41 and 42 establish that placement in a mainstream program is not automatically the LRE for every student with special needs.

JANUARY 7, 2007, THROUGH THE END OF THE 2006-2007 SCHOOL YEAR

30. Based on Factual Findings 27 through 34, the evidence established that the District did not provide Student with a placement that was reasonably calculated to provide her with educational benefit from January 8, 2007, through the end of the 2006-2007 school year. The evidence established that Student required placement in a classroom with a low student/adult ratio in order to receive educational benefit. The District's placement of Student in a general education class of 20 students and one teacher did not provide Student with a FAPE. When it became apparent that the educational placement was not providing Student with a FAPE, the District should have convened another IEP team meeting to develop an IEP with a program and services that would provide Student with a FAPE. The evidence established that the District failed to offer or provide Student with a FAPE from January 8, 2007 through the end of the 2006-2007 school year.

THE 2007-2008 SCHOOL YEAR

31. Based on Factual Findings 35 through 38, the evidence established that Student required placement in a classroom with a low student/adult ratio in order to receive educational benefit. The District's placement of Student in a general education classroom of 20 students, with pull-out services, did not provide Student with a placement that was reasonably calculated to provide her with educational benefit for the 2007-2008 school year, and provided her with only de minimus educational benefit, thereby denying her a FAPE.

For the 2006-2007 school year, beginning on January 8, 2007, and the 2007-2008 school year, did the District deny Student a FAPE because it failed to provide Student with direct speech and language therapy and direct occupational therapy?

SPEECH AND LANGUAGE THERAPY

January 7, 2007, to the End of the 2006-2007 School Year

32. Legal Conclusions 2-8, and 24, and Factual Findings 39 through 47, establish that a student may require direct services in the areas of speech and language in order to receive a FAPE. Factual Findings 38 through 37 establish that Student did not benefit from receiving speech and language services in a consultation/collaboration mode, and required direct speech and language from January 8, 2007, to the end of the 2006-2007 school year. The District denied her a FAPE by failing to provide her with direct speech and language services.

2007-2008 School Year

33. Factual Findings 48 through 53 establish that Student did not benefit from receiving speech and language services in a consultation/collaboration mode, and required direct speech and language for the 2007-2008 school year in order to receive educational benefit. The evidence established that without these services, Student regressed and did

not receive educational benefit. Therefore, the District denied her a FAPE by failing to provide her with direct speech and language services.

OCCUPATIONAL THERAPY

34. Legal Conclusions 2-8, and 24, and Factual Findings 54 through 59, establish that a student may require direct services in the areas of speech and language in order to receive a FAPE. Factual Findings 54 through 59 established that Student did not require direct occupational therapy, from January 7, 2007, through the end of the 2007-2008 school year, in order to receive a FAPE.

For the 2006-2007 school year, beginning on January 8, 2007, and the 2007-2008 school year, did the District deny Student a FAPE because it failed to develop goals and offer services in the area of socialization?

35. Legal Conclusions 2-8 demonstrate that a school district is obligated to provide a student with special needs with a program and services that meet her unique needs. Factual Findings 60 through 70 establish that Student is autistic, and did not socially interact with other students at El Granada from January 8, 2007, to the end of the 2007-2008 school year. Instead, she engaged in parallel play on the playground equipment, or performed musical numbers that she had learned in her after-school lessons. She perseverated about "High School Musical." Student did not actively participate in her general education classes at El Granada, as established by Factual Finding 66. She did not ask or answer questions, and did not ask for help. The District had no social skills goals in any of the IEPs developed for her at El Granada. However, she did well academically and socially in the SDC with Owens during the 2005-2006 school year, and benefited both academically and socially in the class at Arbor Bay for the 2008-2009 school year, as demonstrated by Factual Findings 27 and 97 through 100. Both classes broadly incorporated social skills training in the classroom. The evidence established that Student required social skills goals and services from January 8, 2007, to the end of the 2007-2008

school year, and that District's failure to provide her with these denied her a FAPE.

Did the District's offer of June 9, 2008, deny Student a FAPE for the 2008-2009 school year because it a) failed to offer a classroom with a low student/adult ratio; b) failed to offer appropriate speech and language therapy; c) failed to offer Student direct occupational therapy; and d) failed to develop goals and offer services in the area of socialization?

36. Legal Conclusions 2-8 require school districts to develop an educational program that meets the unique needs of a student who is eligible for special education. The program must offer an appropriate classroom placement, as well as services and goals and objectives that meet the student's needs and provide the student with an IEP offer that is reasonably calculated to provide educational benefit.

Placement in a General Education Classroom

37. Factual Findings 76 through 80 establish that the District's offer of placement in a general education class with pull-out RSP services for the 2008-2009 school year was not reasonably calculated to provide her with educational benefit. Therefore, Student was denied a FAPE.

Direct Speech and Language Therapy Services

38. The evidence established, as determined by Factual Findings 48 and 53, that Student required direct speech and language services for the two previous school years. District's May 2008 speech and language assessment of Student showed that she had severe deficits in the area of speech and language, and the evidence established that Student required direct speech and language therapy services in order to obtain educational benefit. Instead, the District offered only 60 minutes of speech and language therapy, all in a group setting. As established by Factual Findings 81 through 84, this offer was not reasonably calculated to provide Student with educational benefit and denied

Student a FAPE.

Direct Occupational Therapy Services

39. The evidence did not establish that Student required direct occupational therapy services, as demonstrated by Factual Findings 54 through 59. Factual Findings 85 through 87 established that the District's failure to offer Student direct occupational therapy services for the 2008-2009 school year did not deny Student a FAPE.

Socialization and Social Skills Goals

40. Factual Findings 88 through 92, and Legal Conclusion 24, demonstrated that Student required social skills goals and services for the 2008-2009 school year, and the District did not offer her these goals and services in the IEP of June 9, 2008. Therefore, the evidence established that the District's offer for the 2008-2009 school year was not reasonably calculated to provide educational benefit, and deprived Student of a FAPE.

LRE

41. Federal and state law require school districts to offer a program in the least restrictive environment for each special education student. (See 20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. §§ 300.114, et seq. (2006).) A special education student must be educated with nondisabled peers "[t]o the maximum extent appropriate," and may be removed from the regular education environment only when the nature or severity of the student's disabilities is such that education in regular classes with the use of supplementary aids and services "cannot be achieved satisfactorily." (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2)(i) & (ii) (2006); Ed. Code, § 56364.2, subd. (a).) A placement must foster maximum interaction between disabled students and their nondisabled peers "in a manner that is appropriate to the needs of both." (Ed. Code § 56031.) The law demonstrates "a strong preference for 'mainstreaming' which rises to the level of a rebuttable

presumption.” (*Daniel R.R. v. State Bd. of Ed.* (9th Cir. 1989) 874 F.2d 1036, 1044-1045; see also § 1412 (a)(5)(A); *Rowley, supra*, 458 U.S. at p. 181 n.4; *Poolaw v. Bishop* (9th Cir. 1995) 67 F.3d 830, 834.) However, the Supreme Court has noted that IDEA’s use of the word “appropriate” reflects Congressional recognition “that some settings simply are not suitable environments for the participation of some handicapped children.” (*Rowley, supra*, 458 U.S. at p. 197.)

42. In *Sacramento City Unified Sch. Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1400-1402 (hereafter referred to as *Rachel H.*), the Ninth Circuit held that the determination of whether a particular placement is the “least restrictive environment” for a particular child involves an analysis of four factors, including (1) the educational benefits to the child of placement full-time in a regular class; (2) the non-academic benefits to the child of such placement; (3) the effect the disabled child will have on the teacher and children in the regular class; and (4) the costs of educating the child in a regular classroom with appropriate services, as compared to the cost of educating the child in the district’s proposed setting.

43. The District argued that its placement of Student in general education classes was appropriate because these classes were the LRE. As established by Factual Findings 27, 34, 36 through 38, 93 through 94, and 97 through 99, an SDC, or similar small class with a small student-adult ratio, that provides individualized and small group instruction, as well as social skills instruction and facilitation is the LRE for Student. Placement in general education classes with pull-out RSP services is not the LRE for Student. Although Student was compliant in her classes and was not disruptive to other students, Factual Findings 27 through 70 demonstrate that Student did not benefit socially or academically from placement in general education classes from January 8, 2007, to the end of the 2007-2008 school year, and would not have benefited from such a placement for the 2008-2009 school year.

REMEDIES

Reimbursement

44. In general, when a school district fails to provide FAPE to a student with a disability, the student is entitled to relief that is "appropriate" in light of the purposes of the IDEA. (*Sch. Comm. of Burlington v. Dep't of Educ.* (1985) 471 U.S. 359, 369-371 [105 S.Ct. 1996, 85 L.Ed.2d 385] [hereafter *Burlington*].) "The conduct of both parties must be reviewed to determine whether relief is appropriate." (*W.G. v. Board of Trustees of Target Range School Dist. No. 23, supra*, 960 F.2d at p. 1487.)

45. A parent may be entitled to reimbursement for placing a student in a private school without the agreement of the local school district if the parents prove at a due process hearing that: (1) the district had not made a FAPE available to the student in a timely manner prior to placement; and (2) that the private school placement is appropriate. (20 U.S.C. § 1412(a)(10)(C)(ii); 34 C.F.R. § 300.148(c); Ed. Code, § 56175; see also *Burlington, supra*, 471 U.S. at p. 369.) An award for reimbursement for placement in a private school after a denial of FAPE may be reduced or denied upon a judicial finding of unreasonableness with respect to actions by the Student's parents. (34 C.F.R. § 300.148(d)(3).)

46. Legal Conclusions 44 and 45 establish that if a school district fails to offer a student a FAPE, and her parents then place the student in a nonpublic school as an alternative, the District can be ordered to reimburse the parents for the costs of that placement. Legal Conclusions 36 through 40 established that the District's offer for the 2008-2009 school year was not an offer of FAPE. Factual Finding 96 establishes that Parents provided the District with timely notice that they were unilaterally placing Student outside the District, and the reasons why they were rejecting the District's offer of services for the 2008-2009 school year. Factual Findings 97 through 100 establish that Student did receive an appropriate education from Arbor Bay for that school year. Accordingly, the

District should reimburse the parents for the cost of that placement, as well as the cost of transportation to and from Arbor Bay. Factual Finding 101 establishes that the cost to Parents for tuition and fees at Arbor Bay was \$28,500 for the 2008-2009 school year, and Factual Finding 102 establishes that the cost of transportation was \$2,236.18. Accordingly, the District shall reimburse parents for the cost of placement at Arbor Bay, including the cost of transportation. The Parents shall provide the District with proof of Student's attendance at Arbor Bay from May 1, 2009 through the end of the 2008-2009 school year for additional reimbursement.

Compensatory Education

47. School districts may be ordered to provide compensatory education or additional services to a pupil who has been denied a free appropriate public education. (*Student W. v. Puyallup School District*, *supra* 31 F.3d 1489, 1496.) The conduct of both parties must be reviewed and considered to determine whether relief is appropriate. (*Ibid.*) These are equitable remedies that courts may employ to craft "appropriate relief" for a party. An award of compensatory education need not provide a "day-for-day compensation." (*Id.* at p. 1497.) An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student's needs. (*Reid ex rel. Reid v. District of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524.) The award must be "reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." (*Ibid.*)

48. Legal Conclusion 47 establishes that a student is entitled to compensatory education if she was denied of FAPE by a school district and now requires compensatory education to remedy that denial. Factual Findings 103 through 105 establish that Student requires compensatory education for the denial of FAPE from January 8, 2007, to the end of the 2007-2008 school year. Factual Findings 104 through 106 demonstrate that the

appropriate compensatory education for Student is placement at Arbor Bay for the 2009-2010 school year, with additional payment for speech and language, and occupational therapy services beyond those provided by Arbor Bay in its program, if these additional services are determined to be necessary by the IEP team, following an occupational therapy assessment in the area of self-care.

ORDER

1. The District shall reimburse parents, \$28,500 which is the amount they paid for tuition and fees for Student's attendance at Arbor Bay School for the 2008-2009 school year. This shall be paid within 45 days of this decision.

2. The District shall reimburse parents for transportation of Student to Arbor Bay School for the 2008-2009 school year through April 2009 in the amount of \$2,236.18, and an additional amount for the remainder of the 2008-2009 school year as established by Student's attendance records. The District shall pay the \$2236.18 within 45 days of this decision. Student must provide any additional proof for reimbursement of mileage no later than 45 days for the date of this decision and the District shall pay any additional reimbursement within 45 days of receiving any supplemental amounts for mileage reimbursement.

3. Student shall attend Arbor Bay School for the 2009-2010 school year as compensatory education for the District's denial of a FAPE from January 8, 2007, to the end of the 2008-2009 school year. In addition, the District shall pay for an NPA to provide one hour per week social skills services, and 90 minutes weekly speech and language services to Student if the Arbor Bay program is not able to provide this amount of services to Student as part of the standard Arbor Bay program.

4. The District shall pay for the cost of an assessment in the areas of occupational therapy and speech and language services.

PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that the hearing decision indicate the extent to which each party has prevailed on each issue heard and decided. Student prevailed on Issues 1, 2, 3 (a), (b) and (d), 4 (a), (b) and (d). Neither party prevailed on issues 3 (c) and 4 (c).

RIGHT TO APPEAL

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 ninety days of receipt of this decision. (Ed. Code, § 56505, subd. (k).)

Dated: August 3, 2009

_____/s/_____

REBECCA P. FREIE

Administrative Law Judge

Office of Administrative Hearings