

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2010050508

v.

SAN RAMON VALLEY UNIFIED SCHOOL  
DISTRICT.

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DECISION

Administrative Law Judge (ALJ) Adeniyi Ayoade, State of California, Office of Administrative Hearings (OAH), heard this matter in San Ramon, California on September 20, 21, 23, 29 and 30, and November 2, 2010.

Laurette Garcia, Attorney at Law, represented Parents on behalf of Student (Student). Student's mother (Mother) attended all hearing days, and father (Father) was present on two days for parts of the proceedings. Student was not present.

Elizabeth Rho-Ng, Attorney at Law, represented the San Ramon Valley Unified School District (District). Karen Heilbronner, District's Director of Secondary Special Education, attended all hearing days.

Student filed this request for a due process hearing (complaint) on May 14, 2010. On June 29, 2010, the parties requested and received a continuance of the hearing dates. Oral and documentary evidence were received at the hearing. At the close of the hearing, the parties requested and were granted a continuance in order to file written

closing briefs. District and Student timely filed their closing briefs on December 9, 2010, at which time the matter was submitted and the ALJ closed the record.<sup>1</sup>

## ISSUES<sup>2</sup>

Did District's offer to place Student at the San Ramon High School Special Day Class (SDC) for the 2009-2010 school year (SY) and the 2010 extended SY (2010 ESY)<sup>3</sup> deny Student a free and appropriate public education (FAPE), because the SDC lacked:

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<sup>1</sup> To maintain a clear record, the closing briefs have been marked as exhibits. Student's brief has been marked as Exhibit S-50, and District's brief has been marked as Exhibit D-100.

<sup>2</sup> The singular issue, and the seven sub-issues, which are for resolution in this due process hearing, have been clarified and reframed for clarity, and as set forth herein. While initially raised in Student's prehearing conference (PHC) statement, the issue of procedural violations relating to the notice of the August 14, 2009 individualized education program (IEP) team meeting, was abandoned by Student upon the finalization of the issues at the PHC and the written order following PHC which contained only the issues identified herein. At hearing, the parties presented some evidence regarding alleged procedural violations. However, neither party asserted that the procedural violation remained an issue for resolution following the PHC and Student did not address the issue in his closing brief. Accordingly, the issue of whether District committed procedural violations with respect to the notice of the August 14, 2009 IEP team meeting, resulting in a denial of a free appropriate public education to Student is considered abandoned and is not addressed in this decision.

- a. A safe and appropriate bathroom designed to meet Student's unique need to have a bathroom located in close proximity to his classroom;
- b. A meaningful movement program with adequate opportunity for Student to engage in movement activities, and an aide specifically trained in movement therapy and exercising sufficient to meet Student's unique needs;
- c. Trained classroom staff to address Student's unique needs;
- d. A designated area for Student to engage in physical activities as necessary to meets his needs;
- e. A designated area for Student to participate in a movement program as necessary to meets his unique needs;
- f. Meaningful social interaction with peers because Student's peers in the SDC were ambulatory and verbal, unlike Student; and
- g. A large screen text projector recommended by Dr. Carina Grandison<sup>4</sup> as necessary to meet Student's reading needs?<sup>5</sup>

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<sup>3</sup> Wherein used in this decision, "SY" means the 2009-2010 school year, and "ESY" refers to the 2010 extended school year, unless otherwise indicated.

<sup>4</sup> Dr. Grandison is a clinical neuro-psychologist in private practice. She holds a doctorate degree in developmental psychology, and a master's and bachelor's degrees in psychology. She is licensed to practice as a clinical psychologist by the states of California and Massachusetts. A member of various psychological organizations, including the American Psychological Association, Dr. Grandison has worked in the field of psychology since around 1986. For the purpose of this proceeding, she is deemed qualified as a neuro-psychologist.

<sup>5</sup> In his closing brief, Student has abandoned the issue, and concedes that District would have provided a large screen text projector to Student during the SY and ESY.

## PROPOSED REMEDY

Student requests that OAH issue an order requiring District to reimburse Parents for tuition and other out-of-pocket costs for Student's private placement at Avalon Academy during the SY and the ESY, including costs of physical therapy (PT), vision services, speech and language (SAL) therapy, assistive technology (AT) and transportation. Further, Student requests that District be ordered to reimburse Parents for the costs of a September 14, 2009 progress update, a December 14, 2009 observation of District's SDC by Dr. Grandison, and for an Assistive Augmentative Communication (AAC) independent assessment of Student.

## CONTENTIONS OF PARTIES

Student contends that District's proposed SDC placement, based on District's August 14, 2009 individualized education program (IEP)'s offer, did not offer him a FAPE. Specifically, Student contends that the proposed SDC placement was lacking in the necessary components as described in the statement of the Issues above. Student argues that, had he agreed to the SDC placement for the SY and the ESY, District would not have been able to appropriately implement the goals and programs provided for in his IEP because of his many health and physical needs. Student maintains that a "gentle movement program," such as practiced in the AnatBaniel Method of movement (ABM), is what Student requires in order to receive educational benefit.<sup>6</sup>

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Therefore, this issue is considered withdrawn by Student and no finding will be made thereon.

<sup>6</sup> According to Kinga Czegeni, Program Director at Avalon, and Student's witness who testified on his behalf, ABM is a movement intervention method done in a group or individual setting, and uses gentle movement to bring greater coordination of

District contends that its SDC placement offer for the SY and the ESY was reasonably calculated to meet Student's unique needs and provide him with a FAPE in the least restrictive environment (LRE).<sup>7</sup> District contends that it properly determined and considered Student's many needs and proposed an appropriate placement to meet his unique needs. It argues that Student would have received a FAPE, had Parents agreed to enroll Student at the SDC during the SY and the ESY, as proposed by District. Thus, District maintains that its offer of placement and services were appropriate and reasonably calculated to enable Student to obtain educational benefit at the times the offers were made.

## FACTUAL FINDINGS

### BACKGROUND AND JURISDICTIONAL FACTS

1. Student is sixteen years old at the time of this hearing. At all relevant times, Student resided within the boundaries of the District with his Parents. Student is eligible for special education services as a student with orthopedic and vision impairments. Student is in the 12th grade and there is no dispute that Student is still eligible for special education services. From 2005 to August 2010, Student was enrolled at and attended the Avalon Academy (Avalon), a private school for children with cerebral palsy and other movement disorders. Avalon is a certified non public school from kindergarten through the eighth-grade level, but not certified for high school

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movement to clients. Ms. Czegeni is a special education teacher and a co-founder of Avalon. She has a master's degree and California teaching credentials in special education, physical and health impairments. She has been working with special needs students, particularly those with movement disorder, since about 1997.

<sup>7</sup> Parents have not raised LRE as an issue.

education. Student started attending the San Ramon High School Special Day Class for the 2010-2011 SY, on August 23, 2010. The 2010-2011 SY is not an issue in this due process hearing<sup>8</sup>.

#### THE AUGUST 14, 2009 IEP MEETING

2. An IEP team meeting was held on August 14, 2009, in order to develop an IEP offer for Student. Parents were unable to attend, and the IEP meeting was reconvened on October 7, 2009, in order to accommodate Parents. The evidence established that District convened the August 14, 2009 IEP team meeting in order to comply with the terms of a prior settlement agreement between the parties, which required District to hold an IEP meeting prior to the end of August 2009, in order to make an IEP offer prior to the beginning of the SY. District established that, in order to meet the requirement of the agreement, it had no choice but to proceed with the August 14, 2009 IEP even though Parents had indicated that they would not be able to

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<sup>8</sup> At the hearing, both parties spent a considerable amount of time describing the implementation of Student IEP programs for the 2010-2011 SY, as a way of showing that District's offer was or was not reasonably calculated to provide a FAPE during the SY and ESY at issue. The 2010-2011 SY is not at issue in this case and the ALJ has decided nothing concerning that SY. Therefore, this evidence regarding 2010-2011 SY was not useful. It was very speculative and not persuasive regarding the issue of how fully, or whether, District could have implemented Student's IEP during the SY and the ESY at issue, had Parents enrolled Student. Further, parties admitted that the SDC classroom has been changed and neither established that same circumstances exist now as would have existed during the SY at issue. Therefore, those parts of parties' evidence regarding the 2010-2011 SY are not considered or given any weight.

attend. The IEP team reviewed and considered all of the assessment reports and medical records. The evidence established that District understood Student's health issues, disabilities and needs. The evidence shows that the District developed Student's IEP goals and objectives based on Student's unique needs. There were extensive collaborations between Parents, staff at Avalon and District's IEP team members.

3. The goals and objectives reflected those that Student had at Avalon as suggested by Parents and Avalon staff, and were based on District's assessments of Student and information obtained from other professionals, including Student's primary treating physician, Dr. Jonathan Humphrey, District's assessors and retained medical consultant, and staff at Avalon. The appropriateness of District's offers is evaluated throughout this Decision.

#### STUDENT'S UNIQUE NEEDS AND PRESENT LEVELS OF PERFORMANCE<sup>9</sup>

4. The 2004 Individuals with Disabilities Education Improvement Act (IDEA) provides that an IEP must contain, among other things, a statement of the current levels of educational performance, measurable annual goals, and a means to measure progress towards the goals. Additionally, the IEP team must take into account the results of the Student's most recent assessments in formulating the IEP, determining the present levels of performance and unique needs, and in setting appropriate goals.

5. District conducted a psychoeducational assessment of Student on July 30, 2009 and August 4, 2010, an occupational therapy (OT) assessment on August 11, 2009, a PT assessment on July 30, 2009, a SAL assessment on August 11, 2009, a functional

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<sup>9</sup> There has been no allegation made that the assessments were incomplete or inappropriate and there is no dispute regarding Student's deficits, levels of performance and unique needs.

vision assessment on August 12, 2009, an AT assessment on August 11, 2009, and a school nurse's review of Student's medical record dated August 3, 2009. As part of the assessments, District's personnel visited Avalon on more than one occasion to observe Student.

6. Dawn Graeme, District's physical therapist during the SY, testified that she assessed Student in 2009 and produced a written report dated August 4, 2009.<sup>10</sup> Her assessment lasted over five hours. Based on her assessment, she concluded that Student's areas of needs are motor and mobility. Student has a need and opportunity to move, need to be repositioned for self esteem and skin integrity, among others. Thus, she recommended an integrated movement program for Student. Her recommendations regarding the equipment Student would require were based on her observation of Student at Avalon, and information obtained from Mother and Avalon's staff. District had some of the equipment, and the others would have been procured and made available to Student, had he enrolled. Ms. Graeme recommended that PT services should be front-loaded at the beginning of the SY for the first four weeks. All staff would be trained and Student would be seen everyday in order to get to know him.

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<sup>10</sup> Ms. Graeme has two bachelor's degrees, one in physical therapy and the other in health science. She is currently undergoing her doctorate degree in pediatric physical therapy. Since 1982, she has held a Physical Therapy Board of California license, and has certificates/licenses from the American Physical Therapy Association, Neuro-Developmental Treatment Association and Association of Pediatric Therapists. She has worked as a physical therapist since 1982 and has worked for District for about seven years. Also, she has experience working with both adults and school age children, including student athletes for about 21 years, and has consulted for students needing access. Parties stipulated that Ms. Graeme is qualified as a physical therapist.



7. According to Ms. Graeme, Student is able to roll with assistance, and hold his head up for about five minutes. It would be beneficial for Student to work at moving from the classroom to the bathroom as a practice for real life activity, because movement is "part of interaction and engagement with the community." Student would have been able to do that at the proposed SDC placement with assistance, using his wheelchair. She described age-appropriate activities for Student to include engagement with peers, going out to lunch, into the library and the community, choice making, peer relationships, and interacting with different students with different needs, interests and activity level. Regarding the functional skills Student needs, Ms. Graeme believes Student should be able to participate in transfers in and out of activities and able to use hands to access his devices.

8. Ms. Burkhardt, District's AT specialist, assessed Student's AT needs and produced a report dated August 11, 2009. As part of their assessments of Student, Ms. Burkhardt and Jennifer Reynoso, District's SAL therapist, went to Avalon to observe Student, where he was observed using a number of AT and AAC devices. In her assessment report, Ms. Burkhardt recommended similar or the same devices that Student was using at Avalon, and included a transition plan for AT services for Student. She testified that a SAL assessment of Student was also conducted. Also, Ms. Reynoso conducted the SAL assessment and produced a report dated August 11, 2009.

9. Ms. Burkhardt participated in all of Student's IEP team meetings, and consulted with the team members regarding Student's AT needs, use of devices and training. She would have been consulting and supporting the SDC staff in all areas including classroom activities and positioning help for Student's switch access, among others, had Student been enrolled in District during the SY and the ESY. Based on the information obtained from the assessments, she determined that Student has unique AT

and communication needs, as Student communicates through switch access,<sup>11</sup> head turn, eye gaze and smiles, and because Student is not verbal.

10. Kathy Gunderson, District's school nurse and a registered nurse (RN), assessed Student in August 2009. Ms. Gunderson is a registered and a public health nurse with a bachelor's degree. She holds many credentials and/or certificates including the health services, public health, health services designated and audiometric evaluation. She has worked as a nurse since 1975 and with District since 1986.<sup>12</sup> As part of her assessment, she observed Student, reviewed his medical records, and produced a report dated August 3, 2009. Her report discussed and made recommendations regarding various needs of Student, including feeding, toileting, hygiene, physical support, movement, one-on-one aide and equipment needs in the school setting, among others. Her report was updated during the IEP process based on information obtained from Student's doctor.

11. As established by the assessments and information available about him, Student has multiple disabilities and was diagnosed with cerebral palsy at birth due to birth injury, and with cortical vision impairment (CVI) at age five. He is also noted to have cognitive delays, compromised immunity, and had developed a seizure disorder at the age of 18 months. He is documented to have chronic respiratory issues and is susceptible to pneumonia. Student is non-ambulatory and uses a manual wheelchair to move. He is fed by a gastronomy tube (tube) and is dependant on others for all activities

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<sup>11</sup> "Access" simply means "a way," while a "switch" is a device, like a board (low tech device), which Student can tap to communicate.

<sup>12</sup> Ms. Gunderson was not the nurse assigned to the SDC campus during the SY. Instead it was Yvette Buich, who is also an RN and has necessary state credentials to work in District.

of daily living including toileting or diapering,<sup>13</sup> hygiene, dressing, feeding, movement and positioning. He is non-verbal and uses communication devices, which he accesses through his hands. Recently, he has also developed a problem with his right hip (right hip dysplasia). Due to difficulties with communication, Student's cognitive level and functioning have not been fully evaluated.

12. Based on the factual issues alleged in the complaint and the discussion between the parties, Parents have not alleged that the goals, objectives and related services, contained in the August 14, 2009 IEP offer, as updated for the 2009-2010 school year (SY) and the extended SY, were inappropriately designed to meet Student's unique needs and provide Student with a FAPE. Further, the evidence established that Parents were able to participate in the IEP process and the IEP offers were designed by the IEP team members including Parents, to mirror the programs, goals and services that Student was receiving at Avalon, where Parents had placed Student. Parent consented to the IEP on March 16, 2010, with objection to the SDC placement, which Parents considered unsafe and unhygienic due to Student's health issues.

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<sup>13</sup> Student is not potty trained and uses a potty chair.

## DISTRICT'S AUGUST 14, 2009 IEP OFFER<sup>14</sup>

13. An IEP is not judged in hindsight, and the reasonableness of an IEP offer is evaluated based on the information available at the time the offer is made. Further, to offer a FAPE, an IEP offer must be designed to meet the student's unique needs, and must be reasonably calculated to enable the student to receive an educational benefit.

14. District made its IEP offer prior to the beginning of the SY as required by law. District's offer was initially contained in the August 14, 2009 IEP document, which was again presented and discussed at the October 7, 2009 IEP. Other than the addition of a scooter board goal in the October 7, 2009 IEP based on Parents' request, the final IEP offer was essentially the same in all of the IEP. The August 2009 IEP, as later modified or updated, offered Student the following for the regular SY and the ESY:

- a. SDC placement at the San Ramon Valley High School for 6.5 hours each day;
- b. Health and nursing services, individual, monitoring and consultation, once per week for 10 minutes, to monitor any health concerns and consult with staff;
- c. OT monitoring and consultation, 10 times per year at 30 minutes per session;
- d. Vision services individual and consultation, once a month for 30 minutes;

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<sup>14</sup> The August 2009 IEP was continued to October 7, 2009, November 10, 2009, December 9, 2009, and January 8, 2010, in order to discuss and evaluate additional information that had been received from Student's experts, address those issues that had been raised by Parents and the experts, and discuss possible alternative placements, including Avalon. Other than the addition of a scooter board goal at the October 7, 2009 IEP team meeting, District's offer remained essentially the same as in the August 14, 2009 initial offer. The scooter board goal was added by District due to Parents' insistence, even though District did not believe Student needed a scooter board goal in order to receive a FAPE and make educational benefit.

- e. PT, individual and group, direct service and collaboration with staff, five times per week at 30 minutes per session;
- f. Vision services individual, direct, once per week for 30 minutes;
- g. SAL individual, direct service and collaboration with staff, two times per week at 30 minutes per session;
- h. AT services (staff training) regarding Student's AT needs, individual, direct and collaboration with staff, twice per week at 60 minutes per session;
- i. One-to-one paraeducator support, individual and direct, for each full day of school;
- j. Adapted Physical Education (APE) services, individual and consultation, two times per month at 30 minutes per session;
- k. Assistive services (staff training) regarding Student's PT needs, individual, collaboration, twice per week at 30 minutes per session;
- l. PT, individual and group, direct service and collaboration with staff, to provide staff training regarding Student's PT needs, twice per week at 30 minutes per session; and
- m. Assistive services (staff training) regarding Student's PT needs, once per week for 30 minutes for ESY

15. Additionally, in order to enable Student to access his academic and school curriculum, District would provide appropriate assistive devices, including Mighty Mo (an AAC/AT device), Classroom Suite software, wobble switch, Rifton Chair, standing frame, adapted toileting, mat or carpet area for stretching, Scan View attachment for projection, and door-to-door transportation for each school day through the 2010 ESY. District would provide transition services to enable Student move successfully from Avalon to the SDC placement.

16. According to the August 14, 2009 IEP, as updated, Student's goals and objectives would enable him to match numbers, orient himself towards speakers, communicate personal experiences using his AAC devices, make choices using his switch access devices, answer "who," "what," "where," and "when" questions using live voice auditory scanning or other devices or programs, perform functional movements using his extremities, use his adapted toileting seat for controlled toileting, use eye gaze to communicate, use his standing frame (to stand) for strength and stamina, initiate and respond to greetings and farewells using his Voice Output Communication Aid (VOCA) device, express clear "yes" or "no," when prompted, use his mobility-adapted tricycle, scooter board, use his legs to bear weight during transfers, and interact in the community, with support, using his device to greet others. The goals, or their appropriateness are not an issue in this case.

17. Parents contend that the District could not meet Student's needs in the SDC, because the SDC classroom did not have a safe and appropriate bathroom, a large screen text projector, a designated area for Student to engage in physical activities, a designated area for Student to participate in a movement program, and a meaningful opportunity for social interactions with peers, because peers at the SDC were verbal and ambulatory unlike Student. Also, Parents contend that District's offer was inappropriate because the IEP lacked a meaningful movement program allowing Student the opportunity to engage in movement activities, a trained aide in movement therapy and exercising, and trained classroom staff.

18. Therefore, Student was not enrolled in District or at the proposed SDC classroom during the SY or the ESY, which are at issue in this case. As a result, the evidence offered was not about what happened at the SDC, but rather, about what "could" or "could not" have happened at the SDC. The issue for resolution is whether District could have fully implemented Student's IEP at the SDC so as to meet his unique

needs and whether District's offer of APE, OT and PT services could have provided Student a "meaningful movement program," so that Student, ultimately, could have received an educational benefit from District's placement. Therefore, in this decision, the focus is on how District could or could not have been able to meet Student's needs at the SDC, so that Student could, or could not have received an educational benefit from District's placement, and thus received a FAPE from District's programs as designed and offered.

LACK OF A SAFE AND APPROPRIATE BATHROOM DESIGNED TO MEET STUDENT'S  
UNIQUE NEED TO HAVE A BATHROOM LOCATED IN CLOSE PROXIMITY OF HIS  
CLASSROOM

19. Parents objected to the District's August 2009 IEP offer due to the SDC placement, which they considered to be inappropriate, unsafe and unhygienic due to Student's many health issues. As found above, Student is incontinent and wears disposable undergarments, and would have to be changed in a bathroom. Parents allege that the SDC lacked a safe and appropriate bathroom designed to meet Student's unique need to have a bathroom located in close proximity of his classroom. Parents contend that the distance from the classroom to the bathroom was unreasonable, and that taking Student through the hallway, some of which was uncovered, in order to reach the bathroom would have exposed Student to cold weather, and thus would have been unsafe for him, because Student is susceptible to pneumonia. Parents argue that Student has "compromised immunity," and would have been exposed to sickness-inducing germs on a daily basis because the bathroom designated for Student to be used was located in the school nurse's office, which would have had sick students. As discussed below, Student fails to establish that the SDC lacked a safe and appropriate bathroom designed to meet Student's unique need.

20. District maintains that the nurse's bathroom would have been appropriate to meet Student's unique need to have a bathroom located in close proximity of his classroom in order to change quickly and safely. It contends that the distance, which would have taken about two minutes to walk with Student in a wheelchair, was not unreasonable. District contends that the bathroom would have been maintained with high standard of hygiene, and travel to the bathroom would not have endangered Student's health and safety. As discussed below, District established that it offered Student a safe and appropriate bathroom designed to meet Student's unique need.

21. At the hearing, Mother described many of Student's health issues and the many challenges Student faces due to those health issues. She established that Parents had presented a letter by Student's primary physician, Dr. Jonathan Humphrey,<sup>15</sup> dated October 22, 2009, regarding Student's health issues, to District and the IEP team members at the November 10, 2009 IEP team meeting. In the letter, Dr. Humphrey discussed Student's various health and safety issues and recommended specialized therapeutic and educational services. With regard to Student's toileting needs, Dr. Humphrey recommended that a bathroom should be in close proximity of Student's classroom, and wrote that the nurse's bathroom was not appropriate. Despite the letter, Mother established that District continued to offer the nurse's bathroom, insisting that the bathroom was appropriate to meet Student's toileting needs. Mother explained that through an email message dated October 9, 2009, she advised District that Student

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<sup>15</sup> Dr. Humphrey received his bachelor's of science degree from the University of California (UC) Davis and his medical doctorate degree from UC San Diego in 1988. He is a family physician in pediatrics, and a partner in the Blackhawk Medical Group, a private medical practice group since 1994. Dr. Humphrey is a member of the America Academy of Family Practice.



would be placed at Avalon for the remainder of the SY. She consented to the goals and services in the IEP offer, but did not consent to the SDC placement, mainly because of the bathroom issue.<sup>16</sup>

22. Dr. Humphrey testified that the bathroom in the nurse's office would have been inappropriate for Student during the SY. He established that he has known and treated Student for about 10 years. He established that Student has a respiratory illness because Student has problems clearing his airways due to the cerebral palsy. Further, he testified that Student has a high risk for pneumonia. Dr. Humphrey was therefore of the opinion that using the nurse's bathroom would significantly expose student to infection. He believed that Student would be exposed to secondary infection from air-borne viruses and from sick pupils who would be visiting the nurse's office. He did not think that the nurse's bathroom was in close proximity to the proposed SDC classroom, and thus, he concluded that the bathroom was inappropriate for Student.

23. Dr. Humphrey's testimony was not persuasive. Dr. Humphrey admitted that, other than what Mother had told him, he does not have any independent knowledge regarding how and where Student's potty-chair would be stored in the nurse's bathroom. When he "wrote"<sup>17</sup> his letter, he had not visited the SDC classroom or inspected the nurse's bathroom, and did not know what type of bathroom Student was using at Avalon because he had not visited the school. Regarding Student's susceptibility to pneumonia, Dr. Humphrey admitted not knowing how many times Student has contracted pneumonia since he has been treating him. He could not

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<sup>16</sup> Mother has agreed, and now placed Student at District SDC classroom for the 2010-2011 SY because District built a new bathroom next to the SDC.

<sup>17</sup> Dr. Humphrey admitted that he did not write the letter, but that he had reviewed it and signed it.

remember when Student was last hospitalized, but believes it was not “in the last year or two.” In the last five years, Dr. Humphrey could not remember when Student last had a seizure episode.

24. Therefore, it appears that his opinion regarding the inappropriateness of the bathroom was based mainly on his prior experience and information obtained from Parents. His admitted health goal for Student was to minimize Student’s risk of infection. Dr. Humphrey conceded that Student could use the nurse’s bathroom if proper hygiene standards are followed, as sick children, including those with compromised immunity, go to the hospitals and medical clinics all the time. He does not have any reason to believe that District would not use an appropriate standard of care to ensure Student’s safety at the SDC. He conceded that most school nurses work to minimize risks at schools. Overall, Dr. Humphrey was not persuasive. His credibility was compromised because his opinion was based primarily on a desire to support the Parents’ desired placement, over District’s SDC.

25. Ms. Gunderson established that the distance between Student’s SDC classroom and the nurse’s bathroom would have taken about two minutes to walk with Student in a wheelchair because she had walked the distance from the SDC classroom to the nurse’s bathroom while pushing a student in a wheelchair. Thus she concluded that that the distance was appropriate to meet Student’s need for a quick diaper change. Ms. Gunderson’s November 20, 2009 and January 7, 2009 reports specifically acknowledged Dr. Humphrey’s October 22, 2009 letter, while adopting most of his recommendations. She stated that had she known that Mother had written Dr. Humphrey’s October 22, 2009 letter, or that when the letter was written, Dr. Humphrey had not observed the SDC, she would have wanted to know more about the specifics of the immune, pulmonary or allergy issues.

26. Ms. Gunderson found nothing in the assessment that established a need for Student to be toileted within a specific distance, and thus, believed that the nurse's bathroom would have been appropriate for Student's use during the SY. She established that the nurse's bathroom would have accommodated Student's toileting needs, and that distance was not inappropriate. Regarding possible exposure to inclement weather on Student's way to the nurse's bathroom, Ms. Gunderson established that most of the hallway was covered, and Student would have been safely transported to the bathroom.

27. Ms. Heilbronner, who also testified for District, corroborated Ms. Gunderson's testimony when she established that the distance of about 149 yards between the SDC classroom and the nurse's bathroom would have taken about two minutes to walk with Student. Ms. Heilbronner also established that Student would have been protected from inclement weather, as needed, for his safe transport to and from the bathroom.

28. Regarding the health and safety component of Parents' objection to the SDC due to the location of the bathroom in the nurse's office, other than generalized apprehension, neither Dr. Humphrey nor any of Student's other witnesses established that the location of the bathroom would have posed additional risks to Student. Dr. Humphrey admitted that he did not write the first letter that he signed, where the issue of the bathroom was discussed in detail. He also had not observed either the nurse's bathroom or the bathroom at Avalon when he signed the letter, which he admitted Mother might have written.<sup>18</sup> Even though Dr. Humphrey believes the letter fairly presented a summary of Student's medical issues, the medical opinions expressed in the

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<sup>18</sup> Two additional letters, dated January 4 and 6, 2010, were written by Dr. Humphrey to clarify the October 22, 2009 letter and provided additional information to District regarding Student's medical and other needs.

letter and the basis for the opinions, including those relating to Student's movement needs, were attributed to Mother. Therefore, the recommendations made by Dr. Humphrey in the October 22, 2009 letter are given very little weight.

29. Due to ongoing disputes between the Parents and District regarding Student's health issues and needs, District retained Dr. Howard Taras<sup>19</sup> to act as its

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<sup>19</sup> Dr. Taras is a professor of clinical pediatrics at the University of California, San Diego (UCSD). He is licensed to practice medicine in the Province of OntarioCanada, and the states of California and New York. He is board certified by the American Board of Pediatrics and holds many awards and honors. He received his M.D. in 1982, and joined UCSD's pediatric practice in 1986. Currently, he holds many positions at UCSD, including the Medical Consultant/Director of the Center for Medically-Fragile Children, the Co-Director of the UCSD Pediatric Continuity Clinic, among others. Dr. Taras is serving in many peer review panels and has published several research articles and texts, several on school health issues and pediatrics. Dr. Taras consults with many school districts regarding students' needs, and since 1993, he has been the Chief Medical Consultant for the San DiegoUnifiedSchool District and has been involved in various school health programs and services. He has done medical assessments regarding many students' needs and attended at least one IEP per month for the past 10 years. He consults with school nurses, treating physicians and often speaks with parents regarding students' needs. About a third of his consultations is done in cases of students with neurological conditions, with about 80 percent having cerebral palsy. Dr. Taras understands the nature of cerebral palsy, the neurological issues involved and how those affect extremities and movement. He has worked with about 100 students with spastic quadriplegia (with marked motor impairment of all limbs) and seizure disorder. He has also consulted in cases of students with CVI, a form of blindness and in cases involving medically fragile students. After he has assessed and reviewed the records of a student,

medical consultant in Student's case, in order to address Parents concerns, Dr. Humphrey's letters and also prepare for its IEP offer for the following school year. Dr. Taras was retained in April of 2010 by District, in order to observe Avalon and determine if the Avalon program could be replicated at District's SDC, and whether the SDC, which he also observed, could be an equally safe placement for Student. District retained Dr. Taras because it did not have enough information about Student and his needs, and because Parents would not allow access to Dr. Humphrey. Ms. Heilbronner explained that she thought that the medical issues being raised by Dr. Humphrey were appropriate for another doctor, and thus had wanted Dr. Taras to look at the nurse's bathroom in the hope that he would help District talk to Student's doctor.

30. Regarding the distance between the nurse's office and the SDC classroom, Dr. Taras explained that while the distance might have presented some inconvenience, it did not present a health or medical issue. He received "very little" of Student's medical records. He was provided Dr. Humphrey's October 22, 2009 letter, and two others expressing similar concerns about Student. He also reviewed a "parent attachment" to the IEP dated January 8, 2010. From the information provided to him, Dr. Taras understands Parents were concerned that the SDC would not meet Student's toileting needs, or that the environment might expose Student to infection, extreme temperatures, or that Student may have a problem the District would not be able to

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usually, his role is to make recommendations, and work with the IEP team and the school nurse, regarding what a safe environment should be for a student with special needs. Sometimes, he has recommended against public school placement of a student if such placement would have been unsafe, or when enough resources are not or could not have been provided to the student.

handle. He was called to testify regarding Student's medical, health and toileting needs, among others.

31. Dr. Taras was persuasive that Dr. Humphrey's letters were not particularly helpful to him or District, because they lacked specifics about Student's health issues. For example, Dr. Humphrey's mention of Student's immune disease was not clarified enough in order for District to design a program to meet Student's needs. No diagnosis was provided regarding Student's skin issues, and he fails to understand how Dr. Humphrey could assert that student could lie on a carpet, but not on other mats. Also, and regarding Student's respiratory issues, Dr. Taras noted that Dr. Humphrey failed to provide any guidance regarding what to look for and how to address them. He requested to speak with Dr. Humphrey but Parents did not authorize it. Further, and regarding the fact that Parents might have written the letter that Dr. Humphrey signed, Dr. Taras was convincing that such a practice of having a doctor sign a letter written by a client is improper because the letter may reflect unwarranted emotions one would expect from a parent, and not the professional view point of the doctor. He stated it is also a good practice, if possible, for a treating physician to speak with school personnel regarding how to handle a student's school-based needs.

32. Dr. Taras admitted that he has always been hired by districts and has never testified on behalf of a student before. He has however testified in support of students' needs before. Including the current hearing, he has testified in only three hearings. In his practice, he sees patients three times per week, and in conducting assessments, he often speaks with various professionals, including treating physicians, specialist and others, depending of the issues involved.

33. Dr. Taras has observed both the SDC classroom and the nurse's bathroom. Based on what he saw at Avalon, he did not see any health risks for Student to use the nurse's bathroom, and did not have any concern regarding Student's feeding,

respiration or immune system. He does not believe the nurse's bathroom would have exposed Student to additional risks, because "people contract cold through contacts – person to person," or through coughing and sneezing within about two to three feet of a sick person. Therefore, he saw nothing in the nurse's office/bathroom that would have increased Student's chance of getting cold more than what was observed at Avalon when other students "were even closer" to Student.

34. Based on his observation of Student and review of records, Dr. Taras produced a written report dated June 8, 2010, regarding his understanding of Student's health issues and needs, and made recommendations. He believed that his report was not typical because he was not able to speak with Dr. Humphrey directly. Two times, he sent questions, through District to Dr. Humphrey, but did not receive responses. His recommendations regarding Student's needs were meant to address the concerns that were raised in Dr. Humphrey's letters and by Parents, and were based mainly on the information he had received from District.

35. Dr. Taras spoke with Ms. Gunderson regarding Student's medical issues, and based on their discussion he did not have any concern regarding his health and safety needs. He credibly testified that people, even those with severe immune deficiencies are not barred from using nurse's bathroom, clinic or hospital bathrooms, or for that matter, from going to clinics and hospitals where sick people would be. Just like at hospitals and clinics, he believes the school nurse would have been able to take the necessary precautions to prevent infections or injury to Student. He does not believe the distance between the SDC and the nurse's bathroom presented any health issues, nor the issue relating to thermal regulation because Student could have been protected as needed when transported. He is not concerned about District's ability to maintain a high standard of hygiene at the nurse's bathroom.

36. He credibly testified that, to the extent that sick children, including those with compromised immunity, are not barred from going to hospital and clinic, Student could have used the nurse's bathroom with good hygiene standards. He established that Student would not have been exposed to additional pathogens, than at any other place, because District had a policy in place to distance sick students from other. He explained that two to three feet of distance between Student and a sick pupil would prevent the contract of infections. Other District's witnesses corroborated Dr. Taras' testimony, and established that District had policy in place to separate sick children from others by distance, and by requiring that sick children not be in school. Based on District's witnesses, the school nurse, or other District's staff, would have monitored the hygiene standard in the bathroom.

37. Mr. John Blake, District's SDC classroom teacher, testified for District. He has a bachelor's degree, California teaching credential and special education moderate/severe, Level 1 and 2, credential, among others. He is credentialed to teach students with multiple disabilities and has taught District's SDC class for moderately to severely disabled students since 1997. Prior to that, he worked as a one-on-one paraeducator (aide) in a SDC classroom. In the SDC classroom, he had a 17-year-old student in a wheelchair that had cerebral palsy and with similar needs as Student. In his career, Mr. Blake has taught other students with cerebral palsy and those with seizure disorder, and with needs similar to Student's. He has experience teaching students with multiple disabilities, including CVI and cognitive impairments. Mr. Blake knows Student, and he is in his current SDC class for the 2010-11 SY. He observed Student at Avalon during the SY with Ms. English and others, and believes that District could have provided Student with a meaningful movement program during the SY and ESY.

38. Mr. Blake attended all of Student's IEPs, and was familiar with Student's IEP, goals and services. Mr. Blake established that, as part of Student's IEP, Dr.



Humphrey's opinions were considered. Student was offered placement at his SDC classroom, which he believed was appropriate because the classroom was a functional skills classroom that would have benefited Student. During the ESY, he and another special education teacher, Keiko Arimatsu, taught the SDC class. Ms. Arimatsu has taught special education for about 10 years and had worked with District for the past four years. No issue has been raised regarding Ms. Arimatsu's credential or qualifications. About 30 students participated in the ESY program, including students from the SDC class, Doherty Valley High School (Doherty Valley) and Cal High School (Cal High). Mr. Blake was persuasive that Student would have benefited from the ESY program, which took place at the Doherty Valley campus.

39. Regarding bathroom and toileting during the SY, Mr. Blake established that students in wheelchairs or needing assistance used the nurse's bathroom. There were three students who were using the nurse's bathroom, including one who was a medically fragile student with cerebral palsy. There was no safety or health issues as a result of the use of the nurse's bathroom. The bathroom was big enough to accommodate Student in a wheel chair with up to two aides. Regarding hygiene, the potty chair would have been stored away in a closet by the nurse's office, and the other students would not have been able to touch it indiscriminately. In emergencies, it would have been possible to change Student in the classroom, by moving other students and adults that are not needed out of the classroom.

40. Regarding the bathroom space, District established that the space was big enough to accommodate Student in a wheelchair, with two aides, and permit his safe transfer on and off the wheelchair, as could be necessary to change him. Further, during the SY, District established that it served other students who were medically fragile, susceptible to cold, or otherwise similar to Student, and those students were able to use the nurse's bathroom without a compromise of their health and safety. Thus, Student

failed to establish a medical, health or other need that would have made the bathroom inappropriate for Student during the SY. Finally, the ESY class was held at the Doherty Valley campus, with a bathroom in the classroom. Student did not establish that the ESY bathroom would have been inappropriate to meet Student's needs.

41. Neither Mother nor Dr. Humphrey, or any of Student's other witnesses established a medical, health or other need, for Student to be changed within a specified amount of time that would have been compromised by the brief travel to the nurse's bathroom. Student has a need to be changed timely. Two or three minutes of walking distance to the bathroom would not have prevented District from meeting that need. Therefore, the evidence established that District offered Student a safe and appropriate bathroom designed to meet Student's unique need to have a bathroom located in close proximity of his classroom during the SY and ESY. The evidence established that the nurse's bathroom would have been appropriate for Student's use during the SY and Student failed to meet his burden on this sub-issue.

LACK OF A MEANINGFUL MOVEMENT PROGRAM WITH ADEQUATE OPPORTUNITY FOR STUDENT TO ENGAGE IN MOVEMENT ACTIVITIES, AND AN AIDE SPECIFICALLY TRAINED IN MOVEMENT THERAPY AND EXERCISING SUFFICIENT TO MEET STUDENT'S UNIQUE NEEDS

42. A special education student is entitled to special education and related services that meet the state educational standards and that conform to the student's individualized education program, at no charge to the parent or guardian. "Related services" may include such services as transportation and other developmental, corrective, and supportive services, which may be required to assist a child to benefit from education.

43. There is no dispute that Student has various needs related to his movement in and out of his wheelchair and requires services to meet those movement

needs in order for him to access his educational curriculum and receive educational benefit. Parents have not alleged that the frequency or duration of the services District has offered related to Student's PT, OT, or APE needs was inadequate. Rather, Student contends that a separate movement therapy program should have been offered in addition to the other services because District's SDC movement services were different from that which Student had received at Avalon.

44. Parents contend that District's August 2009 offer, as updated, failed to provide Student with a meaningful movement program with adequate opportunity for Student to engage in movement activities. Parents allege that Student requires a gentle movement program, like the one practiced and offered at Avalon, and not the OT and PT that District had offered. Therefore, Parents contend that the offer was inappropriate because District failed to offer an aide trained in movement therapy and exercising, in order to meet Student's unique movement needs.

45. Dr. Grandison testified on behalf of Student. She is familiar with issues affecting individuals with cerebral palsy due to her work with children with neurological deficits, including cerebral palsy. She does not have any training regarding education of students with cerebral palsy but has participated on about 30 IEPs involving students with cerebral palsy. In those cases, she has offered her opinions regarding the students' educational and other needs, and her opinions have sometimes been included in the development of the IEPs. She first met Student in 2008 and has assessed him. As part of the assessment, she observed Student twice at Avalon for a total of about four hours, and has observed District's proposed placement. She spent about one hour observing District's campus and the SDC classroom. Based on her observation of the SDC on December 14, 2009, Dr. Grandison testified that she does not believe the SDC classroom had the space for Student to self-propel, or to accommodate his movement program.

46. Ms. Czegeni, Avalon's Program Director, described the Avalon "movement program," as based on the ABM, and as done in a group setting, with Student lying on a carpet with other students. An aide would perform various movement exercises, including rolling, pushing, moving the arms and legs and weight bearing with Student. Both Ms. Czegeni and Dr. Grandison, who have observed Student engaged in the Avalon program, believe that Student benefited in the Avalon program. All, including Ms. Noreen Ringlein,<sup>20</sup> testified that District's movement program was inappropriate. Their testimonies were not persuasive because they did not establish that the services offered by District to address Student's movement needs were inappropriate or inadequate to meet his needs. The fact that Avalon's approach to dealing with Student's movement needs might have been beneficial for him and preferred by Parents, was insufficient, without more, to support a finding that District's offer to address Student's movement need was not designed to benefit Student.

47. Ms. Ringlein participated in all of Student's IEPs. Her testimony that Student has needs for movement, modification, socialization and engaging curriculum was consistent with District's assessments. She is familiar with Student's movement

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<sup>20</sup> Ms. Ringlein is a special education advocate. She has a master's degree in journalism and bachelor's degree in political science and sociology. She has many years of experience working with students with special needs and has worked as an advocate for students and parents for about 17 years. She currently works as a special education advocate with Community Alliance for Special Education in San Francisco, providing direct advocacy to families with exceptional needs students. She has participated in several IEP meetings, and is familiar with special education needs of students with disabilities, including those with cerebral palsy and CVI, and those needing AT and AAC services.

program at Avalon, and is aware of his medical fragility, toileting, medical and environmental needs, among others. MsRinglein was critical of District's SDC class, opined that District would not have been able to implement Student's August 2009 IEP, and testified that District's movement program offer lacked specificity, especially regarding who would work with Student and where the movement would take place. However, lack of a specific offer and overall inadequacy of District's SDC placement are not issues in this case and consequently much of her testimony was irrelevant.

48. Mother is trained in the Feldenkrais method of movement (FMM), and is a practitioner. She testified that the FMM method is useful in teaching Student regarding his capabilities. According to Mother, a functional movement program like FMM would allow Student to have purposeful use of his hands to choose things, breath easier, work with his shoulders and chest, while learning and participating in the educational program. Mother testified that the ABM, and the FMM are superior to other forms of movement therapies but was unable to provide any specifics data or information regarding their superior benefits over traditional PT, or OT and APE. She believes that District's offer of PT, OT and APE services would have provided Student only a passive range of motion exercises, which is not engaging - Student would lay on a surface and another person would stretch his arms, fingers and joints. When pressed on cross examination, Mother admitted that such range of motion exercises would prevent Student from getting contractures and tightness, and that repositioning Student and stretching his limbs would have been beneficial for him.

49. Mother admitted that she has no personal training in OT or PT, but continued to maintain that they were not appropriate. Other than exhibiting a personal preference towards ABM and FMM, Mother's testimony was not persuasive to establish that District's OT, PT and APE services, movement exercises, and scooter boarding goal were not appropriate to meet Student's movement needs. In addition, Mother actively

prevented the District from communicating with Dr. Humphrey. Mother admitted denying District or its medical consultant access to Student's treating physician, Dr. Humphrey, because she felt "uncomfortable giving District's expert full access" to Student's doctor and was not sure what type of information would be released about Student. Also, neither Mother nor Dr. Humphrey responded fully to Dr. Taras' questions regarding Student's medical issues.

50. District's witnesses<sup>21</sup> established that District adequately considered all relevant information, including those obtained from the assessments performed of Student, Avalon staff, Parents and Student's physician, and District's medical consultant, in making its offer regarding Student's movement needs, among others. For example, Dr. Taras credibly testified that the PT and OT services offered to Student are research-proven to benefit individuals with movement disorders, including cerebral palsy. He explained that, unlike other therapies like ABM and FMM, because OT and PT are often billed to insurance for payments, their techniques are required to be research-based and must be justified as proven therapies.

51. Dr. Taras agreed that having purposeful movement is beneficial to everyone. He was persuasive that Student would have benefited for District's services because, through practice and research, PT techniques have been shown to be beneficial, and exercising prior to class may increase alertness in the class. Regarding the movement needs of individuals with cerebral palsy, he believes that goal is to prevent contractures (stiff joints), therefore, providing movement frequently has been known to help. He only became familiar with ABM when he observed the practices at Avalon on

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<sup>21</sup> Those witnesses included Dawn Graeme; John Blake; Frances English; Kathy Gunderson, the school nurse; and Dr. Howard Taras, the medical consultant retained by District to provide advice regarding Student's health need and placement.

June 7, 2010, and has since researched it. He does not believe there is any substantiation for ABM's claim that movement leads to permanent cognitive gains.

52. District physical education (PE) in Student's class was a general education PE, in other to mainstream Student with other students and offer additional opportunities for socialization. Yoga would have been offered for one period daily, lasting about 45 minutes. During yoga, Student would have been taken out of his wheelchair, onto a mat to participate with adult help in the poses, stretching, social facilitation and other activities. District established that socialization would have been going on because everyone would have been in the same place with opportunities for interaction. Student would have been able to use his scooter board to propel, as appropriate. Further, District established that its offer to meet Student's movement needs, would have prevented Student from having pain, made him comfortable, and enabled him to reach for objects and switches, and respond to others.

53. Ms. Graeme, District's physical therapist, has worked with between 40 and 50 students with cerebral palsy, participating in the development of the IEPs. She has experience and has taken classes in movement therapies, including FMM. She explained that movement is essential for all children including those with cerebral palsy, and that every child requires movement activities. She was persuasive that traditional PT is supported by research regarding what works, and extensive literature exists regarding PT and cerebral palsy, showing that PT is generally effective in relaxing muscle tones, among others. She uses evidence-based PT, using a combination of movement techniques, in designing movement programs for her students.

54. She established that an appropriate PT program includes a variety of movements, and active and passive, similar to the "facilitated movement exercise" she observed at Avalon, when an adult was working on Student's leg, trunk and arm in a "calm manner". She did not observe Student use an adaptive bicycle, as Student could

not be expected to use one until his hip healed. Ms. Graeme was persuasive that there is nothing, movement techniques, methods or otherwise, that she observed at Avalon that could not have been implemented at the SDC placement.

55. Also, Ms. Graeme agreed that Student did not need to have the movement program every 45 minutes, or that each session should have lasted 45 minutes. Based on his IEP, Student would have benefited from District's offer regarding his movement needs. She worked during the ESY and would have served Student. Ms. Graeme believes that Avalon uses the FMM. She explained that there is no research supporting the effectiveness of FMM therapies for candidates like Student, and cited a 2005 University of Rochester Medical Center's research article.<sup>22</sup> The article concluded that neither FMM, nor conductive movement education, has been proven to be effective for individuals with cerebral palsy.

56. Ms. Graeme would have provided PT services and staff would have been trained to provide PT, OT and other services. Regarding the frequency of Student's need for movement therapy services, referred to by Parents as "the movement program," both Dr. Taras and Dr. Grandison agree that Student requires frequent movement. Mother was credible that it is not good for student to remain in one position for too long. However, no evidence established that student's movement services needed to take place every 45 minutes. Mr. Blake testified that District's offer involved taking Student out of his wheelchair about every hour for movement and exercise, and as needed to change him and make him comfortable. Even though the October 22, 2009 letter signed by Dr. Humphrey indicated that Student must not be in one position for

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<sup>22</sup> The research paper titled: Complementary and Alternative Therapies for Cerebral Palsy," was published in the "Mental Retardation and Developmental Disabilities Research Reviews 11:156-163 (2005)".



more than 45 minutes in order to clear his lungs and stretch his limbs frequently, Dr. Humphrey admitted at the hearing that he did not write the letter and that Mother might have written it. Further, he failed to establish that a movement program is required every 45 minutes, or that moving student's body every 60 minutes would have been too infrequent or harmful.

57. Regarding training, Mr. Blake consulted with District's occupational and physical therapists about the movement needs of the students in his class last year. Further, both therapists come to his class to present training and talk regarding movement methods and programs, about three times per year. Also, based on the schedule of training in the IEP, the physical therapist would be consulting and conducting staff training a couple of times per week regarding Student's movement needs and how to meet them.

58. Regarding the contention that the SDC lacked an aide trained in movement therapy and exercising, District's offer provided that Student would receive OT, PT and APE services (direct, individual, consultation and monitoring) from qualified and credentialed District's staff, including the occupational and physical therapists. Further, Mr. Blake, the teacher, and the SDC aide would receive trainings which would be coordinated by various District staff, including the school nurse, the therapists, the AT and Vision specialists, among others, in order to ensure appropriate delivery of services and supports to Student in the SDC classroom. The evidence established that the schedule of the training, as presented in the offer, and established at the hearing, is adequate and appropriate to meet Student's needs in the SDC classroom. Further, Ms. Heilbronner credibly testified that staff would have been trained appropriately in order to meet Student's unique needs. Mr. Blake the SDC teacher, participates, and would have participated in monthly District's trainings, and a four-times-per-year training offered by the diagnostic center. The evidence established that the SDC aide and

Student's specialized physical health care assistant (SPHCA), would have received proper and adequate training. The evidence also showed that District's OT, PT and nursing staff were qualified and would have provided required training to staff in order to meet Student's unique movement needs.

59. The evidence failed to establish that District's offer of movement-related services was not reasonably calculated to enable Student to obtain educational benefit. When asked whether Student could only benefit from the Avalon program, Ms. Czegeni replied that she could not say. She admitted that she is not aware of any research regarding the use of ABM or its efficacy for individuals with cerebral palsy (CP). Dr. Humphrey admitted that he was not familiar with the Avalon movement program. Further, Student's witness, Ms. Ringlein, has never met Student, and most of what Ms. Ringlein knew about Student's movement needs was from Mother, Dr. Humphrey's questionable October 22, 2009 letter, and a video she saw at an IEP team meeting. Ms. Ringlein admitted not having any certification in PT, OT, AT or AAC, and not having any certification to design educational programs for a student. She does not have any formal qualifications to evaluate curriculum or academic programs taught in public school. She concedes that District has discretion choosing methodology, and that the ABM used at Avalon is a methodology.

60. District established that it understood Student's need for periodic movement due to his cerebral palsy and related disability. In its offer of August 14, 2009, District offered Student OT, PT and APE services regarding his movement needs. District established that its OT, PT, and APE services offered to Student have scientific bases for helping children with movement disorders, including cerebral palsy. Therefore, District established that its IEP offer relating to Student's movement needs was appropriate.

61. Further, based on its IEP offer and evidence received at the hearing, District's IEP offer was reasonably calculated to enable Student to obtain educational

benefit with a meaningful movement program with adequate opportunity for Student to engage in movement activities every hour. Staff and aides would have been properly trained to implement Student's movement program. Therefore, and based on the totality of the evidence, District demonstrates that its offer of PT, APE and OT services to Student regarding his movement needs for the SY and the ESY, was appropriate to meet his unique movement needs.

#### LACK OF TRAINED CLASSROOM STAFF TO ADDRESS STUDENT'S UNIQUE NEEDS

62. Also, a student's IEP must be reasonably calculated to provide the student with some educational benefit, but school districts are not required to provide special education students with the best education available or to provide instruction or services that maximize a student's abilities.

63. Here, Student contends that District's SDC classroom personnel are not properly trained and would have been incapable of addressing Student's academic, health and safety, AT and AAC needs, among others. Even though Parents generally allege that the SDC staff are not trained to address Student's unique needs; Parents fail to specifically identify what training District's staff should have had, or how the failure to have such training could have denied Student educational benefit.

64. Student failed to establish that Mr. Blake or the aides in the SDC classroom were unqualified or untrained to meet Student's unique needs. District established that Mr. Blake and the SPHCA who would have been assigned to Student, Mary Jo Reese, were properly trained. Both have worked with students with similar needs as Student in the past, and both have experience working with students with multiple disabilities, including cerebral palsy and CVI. Mr. Blake credibly testified that he and the SDC staff would have been able to meet Student's toileting, feeding, academic, nursing, health and safety needs, among others.

65. In Ms. Burkhardt's transition plan, which was part of the IEP offer, she provided for direct consultation with staff, and training of staff. The training and consultation, which were organized into phases based on staff competencies and Student's access, would have been provided during the regular SY and the ESY. The transition plan was in part developed as a response to Parents' expressed concerns regarding staff's training.

66. Ms. Burkhardt established that she consulted with Ms. Reynoso regarding the development of Student's communication goals. In order to implement those goals, staff would have been trained regarding how to determine Student's responses, where to place items so Student could be looking at preferred items, data collection, placement and use of switches, while providing feedback to staff. Ms. Burkhardt would have worked with staff regarding the current switch and development of alternative switch for "yes" and "no" responses. She believed that Parents' concerns were adequately addressed. Ms. Burkhardt had worked with Mr. Blake before, and did not have any concern regarding his ability to fully implement the goals and serve Student's AT/AAC needs during the SY and ESY. Also, she established that the SDC staff had always been open to training and learning about their students' needs.

67. Ms. Burkhardt determined that Student needed assistive devices and services. Her recommendations for assistive devices and services that were part of Student's IEPs were based on student's needs, and took into consideration what student was using at Avalon. A text projection system was recommended by Avalon because Student was using one there. She is familiar with the projection system and how to use it, and the system could have been implemented in the SDC. The screen could have been obtained and mounted over the board or on the wall. She recommended a trial of various AT devices, starting with a live voice auditory scanning system or a VOCA device like the DynaVox (DV4), which Student was using, and moving to others in order to see

if another would be more appropriate. She would have trained the SDC staff during the trials. She established that her recommendations for AT services for Student were adequate and appropriate to meet Student's needs.

68. Based on the IEP offer, the SDC staff would receive adequate trainings in how to identify and meet Student's AT, AAC, movement (PT, OT, APE), vision, toileting, and health and safety needs, among others. Further, the evidence established that the OT, AT/AAC and PT specialists, as well as the school nurse would have been supporting the SDC staff in implementing Student's IEP. Ms. Gunderson has relevant experience, and was qualified to develop health care plan for students with special needs, including those with cerebral palsy like Student. According to Ms. Gunderson, she would have trained and supervised one of District's specialized physical health care assistants (SPHCAs), in order to serve Student's health care, medical and other related needs including the g-tube feeding, while monitoring Student's health and safety generally. A SPHCA would also have been consulting with Parents, the SDC teacher and aides regarding the specific and special needs of Student, and how to ensure a safe and appropriate classroom environment, among others.

69. During the SY, the special education teacher gave ongoing lectures once a month regarding how to meet students' needs, new processes and special education requirements in general. All of SDC staff would have participated in the training. The evidence established that Mr. Blake had sufficient access to, and would have consulted with the school nurse regarding the health and safety issues of his students. He would have been trained in Student's AT devices, and be able to facilitate social interactions and jokes between Student and others.

70. Regarding safety, Mr. Blake demonstrated that he is always concerned about the safety of all of his students, and was persuasive that Student's safety would not have been an issue "because they would have set it up to keep him safe." He

explained that when any student was on the floor, an aide and other adults were always directed to focus on such student's safety. Also, when on community outings, safety precautions were always exercised. He would have been concerned more about Student's safety, than the other students in his SDC class during the SY, due to Student's limited mobility, fragility and "the way he eats," he explained.

71. Based on Student's needs, Ms. Gunderson established that the SDC staff and individuals serving Student had been through training in seizure protocols, would have been trained in how to administer g-tube feeding, as well as in how to meet Student's toileting and hygiene needs, and follow up and consultation would have been provided. Ms. Gunderson had enough information about Student and was credible and persuasive that District's care plan in District's August 14, 2009 IEP offer, as updated, appropriately addressed Student's safety and health needs, based on all available information. She established that District's offer would have met Student's daily health needs. Ms. Gunderson agreed with Dr. Taras that Dr. Humphrey's letters failed to provide any specific information regarding Student's allergies, thermal regulation (how extreme his reaction could be), or whether Student was tested for allergies. She would have preferred access to Dr. Humphrey, but Parents did not allow her the access.

72. Ms. Heilbronner established that she is familiar with the qualifications of the SPHCAs, and what they do. They are assigned to students with orthopedic impairments. She testified that even though teachers with moderate to severe credentials are seen as more appropriate and thus assigned to the SDC, the SPHCAs are also trained to work with students with multiple disabilities or cognitive impairment. She believes that Mary Jo Reese, a SPHCA, would have been assigned to Student.

73. Regarding training, Ms. Reese and the other assistants have had crisis training, lifting training, training to address seizures, and cardio-pulmonary resuscitation (CPR) training, among others. She has served medically fragile students, like Student, in

the past. She would also have been receiving ongoing District's mandated training once per month, on various subjects involving special education issues. Ms. Heilbronner established that, if and when, Ms. Reese was not available, another SPHCA would have been assigned. The SPHCAs have monthly 90-minute training. Further, Ms. Graeme established that staff would have been appropriately trained regarding PT services and the delivery of PT to Student. She would have trained the one-on-one aide by having her shadowed and observed her during the first four weeks of the PT services, and then she would have observed the aide as she delivered services to Student, to ensure appropriateness in the delivery. She would also have discussed Student's PT needs with the SDC teacher and have him observe some of the sessions, as a way of training him regarding Student's movement needs. She was persuasive that staff would have been able to appropriately implement Student's IEP, with the trainings.

74. Mr. Blake receives mandatory monthly District training for two hours per month, and participates in the training that the diagnostic center gives to District staff, four times per year during each SY. The trainings would have been taking place at the same level and frequency during the SY at issue. Mr. Blake was also required to have his CPR training renewed every year. Ms. Heilbronner did not have any concern regarding Mr. Blake's ability to teach the SDC class during the SY and the ESY.

75. Further and regarding the training and qualifications of other staff, Yvette Buich, the school nurse that was assigned to the SDC campus in the SY, is a registered nurse and has held school nurse credential for about five years. Ms. Gunderson would have involved Ms. Buich in all training and follow up. When Ms. Buich was not on school site, the nurse's bathroom would still have been kept clean by District's custodial staff. The evidence established that Ms. Buich would have provided training to staff regarding Student's medical or health issues in the SDC.

76. District's AT specialist, Wendy Burkhadt was called on behalf of District to testify. She has a bachelor's degree in elementary education and a master's degree in special education. She has Level 1 and 2 credentials in early intervention and early childhood special education, and is in the process of obtaining her certificate in AT program. Prior to becoming the AT specialist about two years ago, Ms. Burkhadt was a SDC teacher, moderate to severe, for about five years. She has worked in the field of special education for about 15 years, and has experience working with special needs students including those with cerebral palsy and CVI. She often works with other specialists to ensure accurate sharing of relevant information about the served students.

77. Ms. Burkhadt is familiar with most AT devices, dynamic screens, high, low and no-tech techniques, and had experience working with IEP teams and other professionals in developing and supporting use of various devices. She has, and has had, experience working with VOCA devices, including Mighty-Mo and DynaVox, which Student had used. She has worked with students in diverse settings, including integrated and self-contained classrooms, and with various age groups. Even though the AT specialist, Ms. Burkhadt, was still receiving her credential, none of the parties established that such a credential was required before Ms. Burkhadt could train staff on AT or AAC devices. Ms. Heilbronner explained that Ms. Burkhadt was qualified to act as District's AT specialist, as she has been qualified by the state.

78. Based on the testimonies of District's witnesses, the evidence supports a finding that Student's IEP would have been implemented by trained and qualified staff. District established that its staff and aides would have been properly trained to implement Student's movement program, and Student would have received educational benefit. Therefore, Student's failed to meet his burden on this sub-issue.



## LACK OF A DESIGNATED AREA FOR STUDENT TO ENGAGE IN PHYSICAL ACTIVITIES AS NECESSARY TO MEETS HIS NEEDS

79. Parents allege that that the proposed SDC placement was inappropriate because the proposed classroom space was cluttered and physically too small to allow Student the opportunity to engage in physical activities necessary to meet his unique needs. Further, Parents contend that Student would have been unable to make functional use of his scooter board in the SDC due to the space issue. In support of Student's contention, Ms. Ringlein testified that, she, Mother and Dr. Grandison had expressed concerns to the IEP members about space for the movement program because the SDC classroom was filled with tables and the floor was not clear. As established below, Parents' contentions were not substantiated.

80. Ms. Ringlein established that she observed District's SDC once in January 2010, but admitted she has never met Student in person. This admission is troubling and raises questions regarding her credibility. Also, she never observed Student at Avalon and never spoke with Dr. Humphrey, Student's treating doctor, regarding Student's needs, or how or where those need could be met. Therefore, the basis of most of her testimony was lacking in personal knowledge and exhibited a bias towards Parents' preferences due to her role as a professional advocate for Parents.

81. District admitted that Student had a need to engage in physical activities, and that a safe and clean space was needed for such activities. District however maintained that its placement offer was appropriate. The evidence established that during the SY and at the time that most of the witnesses visited the proposed SDC classroom, it was filled with tables, desks, posters and various items. District's medical consultant, Dr. Taras, agreed that the classroom was cluttered, and had recommended that the room be cleaned, carpet removed and certain cabinets and furniture eliminated because they collect dust.

82. Student was not enrolled at District and was not attending the SDC when the SDC was cluttered and filled up with items. Mr. Blake was persuasive and established that he had informed Parents that the classroom would be cleaned and cleared, in order to make room for Student. He established that he would have implemented Student's IEP in accordance with his care plan, while following Dr. Humphrey and Dr. Taras' recommendations regarding the need to keep the SDC classroom clean and safe for Student. Student's movement activities would have been done on a clean carpet placed on the floor.<sup>23</sup>

83. The evidence established that the SDC had adequate floor space, as students in the SDC classroom were doing yoga and other physical exercises on the floor during the SY. Student could have engaged in his scooter boarding in the classroom or at another location. Mr. Blake credibly established that Student would have been able to use his adaptive bicycle, and there was no lack of space that would have prevented Student from using it. He explained that SDC classroom, Room C9, was busy looking during the SY, as it had over 15 years of decorations and accumulated various items over the years. He established that he would have cleared out the room and got rid of items as necessary to make room for Student and his needs.

84. Ms. Graeme corroborated Mr. Blake's testimony. She testified that PT would have been performed in the SDC classroom on a mat or carpet that would be covered with a cotton sheet. The mat would be placed on the floor. There was space in the classroom for the PT, and the range of motion exercises that Student could do on the mat with other students. The room would be rearranged, in order to create the required space for Student's movement activities and to scooter board, as necessary to

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<sup>23</sup> During the 2010-2011 SY, Student's movement is being done on a table or cot, off the ground, based on Parents' preference.

meet his needs. She established that Student would have been able to use his adaptive bicycle also.

85. Student failed to establish that there was a need for him to use his scooter board and the adaptive bicycle in one particular location rather than another. Of course, all witnesses, including District's, agree that Student has a need for movement due to his disability. However, District appropriately retained discretion to determine where Student would engage in his movement-related activities and there was no lack of space that would have impeded Student's access to educational benefit. During the SY, two students had movement needs due to disabilities, and they were taken out of their wheelchairs by staff for stretching, relaxation and strength exercises, and yoga, all of which were done on mats placed on the floor in the SDC classroom. District established that it had the required space for Student to engage in all of his physical activities as provided for in his IEP. Based on the evidence, District demonstrated that, had Parents accepted the IEP offer and enrolled Student at District during the SY and the ESY, Student would have been able to engage in those physical activities as necessary to meet Student's needs, and Student would have received a FAPE.

86. Therefore, Student failed to establish that District's offer of SDC placement was not reasonably calculated to provide Student with an educational benefit. Further, District demonstrated that the SDC classroom would have enabled Student to participate in physical activities as necessary to meet his needs, and thus Student would have received educational benefit from District's placement. Therefore, Student's failed to meet his burden on this sub-issue.

#### LACK OF A DESIGNATED AREA FOR STUDENT TO PARTICIPATE IN A MOVEMENT PROGRAM AS NECESSARY TO MEETS HIS UNIQUE NEEDS

87. Here, Parents allege that that the proposed SDC placement was inappropriate because the proposed classroom space was unhygienic. Specifically,

Parents argue that Student was allergic to dust, and thus requires hypoallergenic carpet to exercise on. Regarding Student's allergies, Dr. Humphrey admitted that even though he thinks that Student has a dust allergy, Student was never tested for a dust allergy. He has not tested Student for cotton allergy, but does not believe that Student is allergic to cotton, and does not know what type of carpet or mat Student was using at Avalon.

88. However, as found above, District's medical consultant, Dr. Taras recommended to District that the SDC classroom should be cleaned, carpet removed and cabinets and furniture eliminated because they collect dust. He also recommended that a cotton sheet should be placed on the mat on which Student might exercise due to suspicion that Student might have a dust allergy.

89. Mr. Blake established that he would have followed both Dr. Humphrey and Dr. Taras' recommendations, and used a carpet covered by a cotton sheet, due to Parents' concern about Student's safety and respiratory issues. The movement program would have taken place on the floor, and Student would have participated in a circle with the other students as was done during the SY in the SDC class. Mr. Blake credibly explained that during the SY, students in his classroom participated in various movement programs, including yoga, physical education and other form of exercises. Student would have been included.

90. Mr. Blake established that he took precaution regarding hygiene for every student. There was a student with cerebral palsy who was in a wheelchair in his class during the SY was also susceptible to cold, and had similar needs as Student. Therefore, he ensured that those around her were clean and sanitized. During the SY, he also had a student that used oxygen due to respiratory issues in his SDC class, and he was able to meet his needs. He would have stayed in close contact with Parents regarding Student's medical issues and needs and would have invited Parents to come and help set up, and advise him about how best to meet Student's needs.

91. Mr. Blake established that the District attends to the cleanliness of the classroom. During the fifth period, the SDC classroom was vacuumed, wiped down, and the room was sanitized from the ground to shoulder level, during the SY. Parents were advised that sick pupils were not to come to school, and if they came, they were sent home. Mr. Blake would have taken additional precautions if Student were in his SDC classroom during the SY and ESY due to Student's medical fragility. During his observation of Student at Avalon, he did not observe any health or safety precautions that he and the SDC staff would not, or could not, have been able to implement in District or the SDC classroom during the SY or the ESY.

92. Finally, and regarding other health issues relating to Student, Dr. Taras does not believe there was a need to have a sink in the classroom, as a sink nearby would have been appropriate. He credibly explained that, so long as the sink was close enough, so that people touching Student could wash their hands, it would have met Student's needs. In place of washing their hands, SDC staff could also have used hand sanitizer.

93. Therefore, and based on the totality of the evidence, Student failed to establish that District would not have had an appropriate and designated safe, clean, and hygienic area for him to engage in movement activities. District demonstrated that the SDC classroom would have enabled Student to participate in OT, APE, PT and other movement activities as necessary to meet his needs, and thus Student would have received educational benefit from District's placement. Student's failed to meet his burden on this sub-issue.

#### LACK OF MEANINGFUL SOCIAL INTERACTION WITH PEERS BECAUSE THE SDC'S PEERS WERE AMBULATORY AND VERBAL, UNLIKE STUDENT

94. There is no dispute that Student has significant communication needs because he is non-verbal. Also, all of his activities are facilitated because of his many

needs. He requires others to be with him all the time. Student uses various communication and auditory technology and devices, including DV4, among others. District's AT and SAL assessments evaluated these devices and recommended their continued use as appropriate. Student uses the DV4 during calendar activities, lunch and other social times. Using the DV4, Student is able to make choices and initiate or participate in communication. For example, he is able to use the pre-programmed pages of DV4 to tell a joke or order an item from a restaurant during his once per week community outing.

95. Parents contend that Student would not have been able to socialize in the SDC during feeding, movement activities, or during scooter boarding. Further, Parents contend that because the SDC's peers were ambulatory and verbal, they could not have been appropriate peers for Student. District asserts that the SDC would have provided Student with appropriate opportunities for socialization with typical peers and in conformance with his needs and IEP.

96. Ms. Ringlein established that Student relies on communication and auditory devices for communication due to his disability. She testified even though District agreed it would order the devices for Student in order to implement the SY and the ESY offer, she does not believe that District would have been able to provide the devices timely. Her belief was based "on her experience with school districts" in general. However, she failed to provide any evidence that the District in this case would have done the same, therefore, her testimony in this area was speculative and given little or no weight. Further, her testimony was also evaluated in the context of the fact that she had never met Student, and her knowledge of Student was admittedly based on Dr. Grandison and Dr. Humphrey's reports, as well a video of Student presented by Avalon's staff at an IEP.

97. Based on her observation of the SDC, Dr. Grandison testified that she did not believe that District would have been able to meet Student's needs because she did not observe any of the AAC equipment offered in Student's IEP during her observation and does not believe that the classmates at the SDC were potential peers for Student because all were verbal, and all but one were ambulatory. She testified that socialization is important for all students and doubts whether the social interactions she observed of Student at Avalon could be facilitated at the District's SDC. She believes that District's SDC program was not integrated, but would have been individualized so that social interaction would have been impossible. She attended the October 7, 2009 District's IEP team meeting and made recommendations regarding Student's placement and services. Dr. Grandison's testimony was not persuasive because Dr. Grandison admitted that she never spoke with Dr. Humphrey regarding Student, prior to or after her assessment of Student. She had reviewed his "report" and relied on it regarding Student's needs to self-propel and his bathroom needs. The fact that Dr. Humphrey never saw the bathroom at the SDC would not have affected her opinion regarding the inappropriateness of Student's use of the nurse's bathroom.

98. During the SY, and regarding the daily schedule of his SDC classroom, Mr. Blake explained that the class began its day with a short walk in the morning. The non-ambulatory students were pushed by aides during the walk. After the walk, group stretching, done in a circle in order to encourage peer interaction, would follow. Then the class would go to the lessons, some in small learning groups, during the first period. The second period was for physical education and the third, for math skills, based on individual academic levels. Some math skill periods were interactive, and student could go and count classrooms, or practice other math skills outside the classroom. The fourth period was for lunch, and the goal was for the SDC students to be in the cafeteria with other students in the campus so his students could be part of the school. He went to

lunch with the students always, so he can teach them about safety and see them practice their social skills. During the fifth period, the SDC students participated in individualized academics, in order to recap the day's activities. During the sixth period, the class would go back to the classroom to do stretching or yoga, after which the school day would end, and students would go home. Safety skills were taught during community outing. If Student had attended his class, he would have been provided a one-on-one aide, and able to participate in most activities. Student would have been fed in the SDC due his health and unique feeding needs.

99. Regarding socialization, Mr. Blake explained that the goal of the community outing was to socialize and Student would have had the opportunity to do so. He believes that the SDC peers would have been appropriate for Student despite the fact that he is non-verbal or "limited verbal," as Mr. Blake described him. Regarding the ambulatory skills of his SDC students during the SY, Mr. Blake described them as varied; one student could run well, about two to three could walk at a good pace, the others not very quickly and two were in wheelchairs. Student would have been able to communicate with peers through eye gazes, smiles, and his switch access board. Student would also have participated and socialized in his "comrades club" activities, where his SDC students meet to play games, acknowledge birthdays, and general education students would come into his SDC classroom to socialize with his students for about 30 minutes, during lunch period every Thursday.

100. Mr. Blake was persuasive that during the SY, Students in the SDC participated in various social activities. The students went on community outings about once a week, and students were able to practice their social and safety skills. Further, Mr. Blake established that Student would have been able to watch comedy and sport related videos with other students, based on Student's interests. Mr. Blake was persuasive and was able to establish that the verbal and/or ambulatory skills of students in the SDC



classroom would not have interfered with socialization but would have enhanced Student's exposure to diverse peers. Student's IEP included social goals, including greetings and learning to say farewell to others.

101. Mr. Blake also established that Student also would have been able to socialize while participating in the movement program with others, while scooter boarding or using his adaptive bicycle. Contrary to Mother's testimony, Ms. Czegeni conceded that Student could benefit socially from verbal peers. Also, Dr. Grandison agreed that facilitated socialization could occur between Student and ambulatory and verbal peers at the SDC. Further, based on the credible testimony of Ms. Graeme, District established that Student would have had many opportunities to socialize in the SDC during various activities, and that there is no need for Student to socialize during any particular activity, whether movement or otherwise. Based on his IEP, Student would have benefited educationally at the SDC from District's IEP offer.

102. Further, according to Ms. Burkhardt, the verbal skills of the SDC students vary, as some were using communication devices, like the Step-by-Step, during the SY. Further, she established that having verbal peers around Student would have been beneficial to him and led to increased normalization, as the peers would have been able to respond to his jokes. She spent about four hours, in one day, observing Student at Avalon and spent additional time reviewing records. Therefore, she concluded that the students in the SDC would have been appropriate communication peers for Student. Ms. Burkhardt corroborated Mr. Blake's testimony that the peers at the SDC would have been appropriate for Student. She explained that many of the students were around the same age as Student with similar communication intents, and they would have been able to talk to Student and he would have been able to respond through his switch access. She explained that it is more normalizing to be among peers of one's age. She is familiar with Student's interests and believes two or three students in the SDC would

have had interests that are similar to Student. Like Student, those students also liked to skate board, and watch videos of comedy and sport related activities on computers. About three students were around Student's functional and physical level based on those students' IEP goals.

103. Therefore, Student failed to establish that District's IEP was not reasonably calculated to enable him an opportunity for meaningful social interaction with peers. Therefore, Student did not meet his burden on this sub-issue.

104. Based on the totality of the evidence, the evidence established that the District's August 2009 IEP offer, as updated, was reasonably calculated at the times it was made to enable Student to obtain a FAPE, meet his unique needs and provide educational benefit during the 2009-2010 SY and the 2010 ESY. Therefore, Student failed to meet his burden on the sole issue and all sub-issues.

## LEGAL CONCLUSIONS

### APPLICABLE LAW

### BURDEN OF PROOF

1. The Student, as the petitioning party seeking relief, has the burden of proof. (*Schaeffer v. Weast*(2005) 546 U.S. 49 [126 S.Ct. 528, 163 L.Ed.2d 387].)

### THE GENERAL PRINCIPLES OF THE IDEA

2. Under both the IDEA and state law, students with disabilities have the right to a FAPE. (20 U.S.C. § 1400; Ed. Code, § 56000.<sup>24</sup>) The term "free appropriate public education" means special education and related services that are available to the

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<sup>24</sup> All statutory citations to the Education Code are to California law, unless otherwise noted.

student at no charge to the parent or guardian, that meet the state educational standards, and that conform to the student's individualized education program. (20 U.S.C. § 1401(9).)

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176 [102 S.C. 3034] (hereafter *Rowley*), the United States Supreme Court addressed the level of instruction and services that must be provided to a student with disabilities to satisfy the 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 special education students 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.)

4. California's definition of special education includes both specially designed instruction to meet the unique needs of individuals with exceptional needs and related services to enable them to benefit from such specially designed instruction. (Ed. Code, § 56031). Related services may be referred to as designated instruction and services (DIS). (Ed. Code, § 56363, subd. (a).) The term "related services," includes transportation and other developmental, corrective, and supportive services as may be required to assist a child to benefit from the special education. (Ed. Code, § 56363, subd. (a); 20 U.S.C. § 1401(26).)

#### REQUIREMENTS OF AN IEP

5. The IEP is a written document for each child who needs special education and related services. The contents of the IEP are mandated by the IDEA. The IEP must include an assortment of information, including a statement of the child's present levels

of academic achievement and functional performance. The IEP must also include a statement of measurable annual goals and objectives that are based upon the child's present levels of academic achievement and functional performance and a description of how the child's progress toward meeting the annual goals will be measured. Finally, the IEP must include when periodic reports of the child's progress will be issued to the parent, and a statement of the special education and related services to be provided to the child. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. §§ 300.346, 300.347.)

6. There are two parts to the legal analysis of a school district's compliance with the IDEA. First, the tribunal must determine whether the district has complied with the procedures set forth in the IDEA. (*Rowley, supra*, at pp. 206-207.) Second, the tribunal must decide whether the IEP developed through those procedures was designed to meet the child's unique needs, and was reasonably calculated to enable the child to receive educational benefit. (*Ibid.*)

7. An IEP is evaluated in light of information available to the IEP team at the time it was developed; it is not judged in hindsight. (*JG v. Douglas County School Dist.* (9th Cir. 2008) 552 F.3d 786, 801; *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) "An IEP is a snapshot, not a retrospective." (*Id.* at p. 1149, citing *Fuhrmann v. East Hanover Bd. of Education* (3d Cir. 1993) 993 F.2d 1031, 1041.) An IEP must be evaluated in terms of what was objectively reasonable when it was developed. (*Ibid.*)

#### DETERMINATION OF ISSUES

Did District's offer to place Student at the San Ramon High School SDC for the 2009-2010 SY and the 2010 ESY deny Student a FAPE, because the SDC lacked a safe and appropriate bathroom designed to meet Student's unique need to have a bathroom located in close proximity to his classroom?

Pursuant to Factual Findings 19 through 41, Student failed to establish that District's offer to place Student at the San Ramon High School SDC for the 2009-2010

SY and the 2010 ESY denied him a FAPE, because the SDC lacked a safe and appropriate bathroom designed to meet Student's unique need to have a bathroom located in close proximity to his classroom. Further, the evidence established that the nurse's bathroom would have been safe and appropriate for Student to use and Student would have received educational benefit from District's placement at the SDC during the SY and ESY. Therefore, and based on the evidence, District's IEP offer of August 14, 2009 for the SY and ESY, as updated, was reasonably calculated to provide Student with some educational benefit and did not deny Student a FAPE.

Did District's offer to place Student at the San Ramon High School SDC for the 2009-2010 SY and the 2010 ESY deny Student a FAPE, because the SDC lacked a meaningful movement program with adequate opportunity for Student to engage in movement activities, and an aide specifically trained in movement therapy and exercising sufficient to meet Student's unique needs?

Pursuant to Factual Findings 42 through 61, Student failed to establish that District's offer to place Student at the San Ramon High School SDC for the 2009-2010 SY and the 2010 ESY denied him a FAPE, because the SDC lacked a meaningful movement program with adequate opportunity for Student to engage in movement activities, and an aide specifically trained in movement therapy and exercising sufficient to meet Student's unique needs. Contrary to the assertion, the evidence established that Student would have benefited from District OT, PT, APE and other movement activities had he been enrolled in District during the SY and the ESY, and would have received educational benefit from District's placement at the SDC. Therefore, and based on the evidence, District's IEP offer of August 14, 2009 for the SY and ESY, as updated, was reasonably calculated to provide Student with some educational benefit and did not deny Student a FAPE.

Did District's offer to place Student at the San Ramon High School SDC for the 2009-2010 SY and the 2010 ESY deny Student a FAPE, because the SDC lacked trained classroom staff to address Student's unique needs?

Pursuant to Factual Findings 62 through 78, Student failed to establish that District's offer to place Student at the San Ramon High School SDC for the 2009-2010 SY and the 2010 ESY denied him a FAPE, because the SDC lacked trained classroom staff to address Student's unique needs. Here, the evidence established that the SDC staff and District's supporting personnel were properly trained and experienced to serve individuals like Student. The SDC staff had experience dealing with students with multiple disabilities, including seizure disorder, CVI and cerebral palsy, among others. Most of them have had years of experience working with special needs students, and those with moderate to severe disabilities. The evidence established that all were well trained and had requisite credentials and qualifications. The school nurse, OT, PT and AT specialists would have been trained in coordinating and monitoring delivery of services to Student. District established that its staff would have been able to serve Student in conformance with his August 14, 2009 IEP, and Student would have received educational benefit from District's placement at the SDC. Therefore, and based on the evidence, District's IEP offer of August 14, 2009 for the SY and ESY, as updated, was reasonably calculated to provide Student with some educational benefit and did not deny Student a FAPE.

Did District's offer to place Student at the San Ramon High School SDC for the 2009-2010 SY and the 2010 ESY deny Student a FAPE, because the SDC lacked a designated area for Student to engage in physical activities as necessary to meet his needs?

Pursuant to Factual Findings 79 through 86, Student failed to establish that District's offer to place Student at the San Ramon High School SDC for the 2009-2010 SY and the 2010 ESY denied him a FAPE, because the SDC lacked a designated area for

Student to engage in physical activities as necessary to meet his needs. The evidence established that Student's needs could, and would have been appropriately met at the SDC. He would have been able to participate in the PT, OT and yoga in the SDC classroom, and participate with others in the APE, in a general education setting for inclusion. Student would have received educational benefit from District's placement at the SDC. Therefore, based on the evidence, District's IEP offer of August 14, 2009 for the SY and ESY, as updated, was reasonably calculated to provide Student with some educational benefit and did not deny Student a FAPE.

Did District's offer to place Student at the San Ramon High School SDC for the 2009-2010 SY and the 2010 ESY deny Student a FAPE, because the SDC lacked a designated area for Student to participate in a movement program as necessary to meets his unique needs?

Pursuant to Factual Findings 87 through 93, Student failed to establish that District's offer to place Student at the San Ramon High School SDC for the 2009-2010 SY and the 2010 ESY denied him a FAPE, because the SDC lacked a designated area for Student to participate in a movement program as necessary to meets his unique needs. Here, and as found above, the evidence established that Student's needs could, and would have been appropriately met at the SDC, with attention given to his health and safety needs due to his medical fragility. Student's movement activities would have taken place on a carpet, covered with a cotton sheet, in order to protect him from possible dust allergies. He would have been protected from other students as necessary, and able to use his adaptive bicycle and scooter board in the SDC classroom. Therefore, District established that Student would have had a clean, safe and hygienic space to do his movement activities, and Student would have received educational benefit from District's placement at the SDC. Therefore, and based on the evidence, District's August 14, 2009 IEP offer for the SY and ESY, as updated, was reasonably calculated to provide Student with some educational benefit and did not deny Student a FAPE.

Did District's offer to place Student at the San Ramon High School SDC for the 2009-2010 SY and the 2010 ESY deny Student a FAPE, because the SDC lacked meaningful social interaction with peers because Student's peers in the SDC were ambulatory and verbal, unlike Student?

Pursuant to Factual Findings 94 through 103, Student failed to establish that District's offer to place Student at the San Ramon High School SDC for the 2009-2010 SY and the 2010 ESY denied him a FAPE, because the SDC lacked meaningful social interaction with peers because Student's peers in the SDC were ambulatory and verbal, unlike Student. In contrast, the evidence established that Student would have had ample opportunities to participate and benefit from various social activities in various settings, including during his movement activities, "comrades club" social activities, community outings, and during walks and recess. He would have been able to watch videos with the SDC peers about comedy and sports, and Mr. Blake would have been able to facilitate social interactions between Student and his peers. Therefore, the evidence established that Student would have received educational benefit from District's placement at the SDC. Based on the evidence, District's IEP offer of August 14, 2009 for the SY and ESY, as updated, was reasonably calculated to provide Student with some educational benefit and did not deny Student a FAPE.

Did District's offer to place Student at the San Ramon High School SDC for the 2009-2010 SY and the 2010 ESY deny Student a FAPE, because the SDC lacked a large screen text projector recommended by Dr. Carina Grandison as necessary to meet Student's reading needs?

As indicated above, Student has abandoned the issue, and Student concedes that District would have provided a large screen text projector. Therefore, and based on this withdrawn sub-issue, Student fails to establish that he would not have received educational benefit from District's placement at the SDC. Therefore, and based on the evidence, District's IEP offer of August 14, 2009 for the SY and ESY, as updated, was



reasonably calculated to provide Student with educational benefit and did not deny Student a FAPE.

Overall, and pursuant to Factual Finding 104, because Student failed on the sole issue, and all seven sub-issues, District's IEP offer of August 14, 2009 for the SY and ESY, as updated, is found to be reasonably calculated to provide Student with educational benefit. The IEP offer did not deny Student a FAPE.

## ORDER

All of Student's requests are denied.

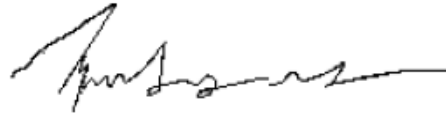
## PREVAILING PARTY

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. The District prevailed on the only issue and seven sub-issues presented for decision.

## RIGHT TO APPEAL THIS DECISION

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

Dated: December 30, 2010

A handwritten signature in black ink, appearing to read 'Adeniyi Ayoade', written over a horizontal line.

ADENIYI AYOADE

Administrative Law Judge

Office of Administrative Hearings