BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: CORONA-NORCO UNIFIED SCHOOL DISTRICT, v. PARENTS on behalf of STUDENT.	OAH CASE NO. 2009061130

DECISION

Administrative Law Judge (ALJ) Susan Ruff, Office of Administrative Hearings (OAH), State of California, heard this matter in Norco, California, on October 13 and 15, 2009, December 7 and 8, 2009, and January 7, 2010.[1]

Howard Fulfrost, Esq., represented the Corona-Norco Unified School District (District). Jason Ramirez, Supervisor of Special Education, and Linda White, Executive

[1] The case was also set for hearing on November 4, 2009. However, when the ALJ and both counsel had assembled at the hearing room, it was learned that Student's mother was unable to attend that day due to health reasons, so a trial setting conference was held instead. At Student's request, the hearing was continued and new dates were set in December 2009. During the hearing dates in December, Student's advocate explained that his expert witnesses were not available to testify and requested that additional hearing dates be set. Student's request was granted, over the District's objection, and additional hearing dates were set in January 2010. Student's experts testified on January 7, 2010, and the hearing was completed.

Administrative Director of Special Education/SELPA (special education local plan area) for the District, also appeared on behalf of the District at various times during the hearing.

James Peters III, an advocate working for the Peter Collisson law firm, appeared on behalf of Student and his parents (Student). Mr. Collisson did not personally appear at the hearing, but Student's mother gave permission for the advocate to represent her. Student's mother was present during most of the hearing. Student was not present.

The District filed its due process request on June 22, 2009. On July 13, 2009, OAH granted the parties' request for a continuance of the hearing. At the close of the hearing, at the District's request, the parties were given time to file written closing arguments. The matter was submitted upon receipt of the written closing arguments on February 2, 2010.[2]

ISSUE

Did the District's March 25, 2009 proposed individualized education program (IEP) offer Student a free appropriate public education (FAPE) for the IEP year beginning March 25, 2009, through and including the date of Student's next annual IEP team meeting to be held on or before March 25, 2010?

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[2] Student's written closing argument states that the ALJ "requested" written closing arguments from the parties. That is not correct. The request for written closing arguments came from District's counsel, not the ALJ. To maintain a clear record, Student's written closing argument has been marked as Exhibit S-1, and the District's written closing argument has been marked as Exhibit D-32. Student had previously pre-marked a different document as Exhibit S-1, but Student withdrew that document prior to the end of the hearing.

FACTUAL FINDINGS

1. Student is a 12-year-old boy who lives within the jurisdiction of the District. Student has received special education services pursuant to a settlement agreement that was signed in March 2008.

2. The IEP offer at issue in this case was made at an IEP meeting held on March 25, 2009, when Student was in fourth grade. The District's proposed IEP found Student eligible for special education under the eligibility category of speech and language impairment. The proposed IEP called for Student to be placed in a general education classroom with related services including pull-out speech and language instruction twice a week for 30 minutes a session, in-class speech and language collaboration nine times a year for 20 minutes per session, and occupational therapy consultation services four times a year for 15 minutes a session. The IEP included goals in the areas of organization and planning, working memory, sensory processing, written expression, semantics, and written composition/working independently. Student's parents did not consent to this IEP, and the District filed the current due process case seeking a determination of whether the proposed IEP offered a FAPE to Student.

3. In order to prove that a proposed IEP offered a pupil a FAPE, a district must show that the proposed IEP met both the substantive and procedural requirements of the Individuals with Disabilities Education Act (IDEA). In this particular case, Student contends that the District's proposed IEP failed to offer Student a FAPE both procedurally and substantively. Student contends that the District committed violations of the procedures required under the IDEA by holding an IEP meeting without his parents in attendance and by failing to have certain individuals attend the IEP meeting as members of the IEP team. From a substantive point of view, Student contends that the District's proposed IEP failed to offer Student a FAPE because it failed to include a formal behavior assessment such as a functional analysis assessment (FAA)

or a functional behavior assessment (FBA), did not include direct occupational therapy (OT) services for Student, did not contain sufficient speech and language services, did not contain a social skills class, did not include counseling, and had inadequate goals and objectives.[3]

DID THE DISTRICT FOLLOW THE PROCEDURES CONTAINED IN THE IDEA IN MAKING ITS MARCH 25, 2009 IEP OFFER?

4. In March 2008, Student and the District entered into a settlement agreement in OAH case number 2007120513. Under the terms of that settlement agreement, among other things, the parties agreed that the District would assess Student in all areas of suspected disability. Student's parents agreed to cooperate in the implementation of the assessment plan. The District also agreed to contract with a non-public agency (NPA) called Big Fun Therapy (Big Fun) for two 60-minute sessions per week of clinic-based OT for Student until the date of the IEP team meeting held after the assessment. The parties agreed that these NPA OT services would not constitute "stay put" in the case of a future dispute between the parties. Student agreed to release and waive all claims up through and including the date of the IEP team meeting to be held under the terms of the agreement.[4]

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[3] Because these are the main areas of contention raised by the Student during the hearing, this Decision will focus on these disputed areas rather than the procedural and substantive aspects of the proposed IEP that are not in dispute. For example, there is no dispute that the classroom placement called for in the IEP was appropriate.

[4] Student objected to the introduction into evidence of the settlement agreement on the basis that it violated the confidentiality of the agreement. However, because the settlement established services relevant to this case, the terms of the agreement are directly at issue here. The agreement confidentiality clause contained an exception

5. Pursuant to the terms of the settlement agreement, the District provided a proposed assessment plan to Student's parents in March 2008. Student's mother signed the proposed assessment plan on April 11, 2008. The District conducted the OT evaluation and psychoeducational assessment in April and May 2008.

6. Before the District began the speech and language portion of the assessment, the District learned that Student's parents were in the process of obtaining a private speech and language assessment at their expense.

7. When two assessments of the same child are done within a short amount of time, it is important to make certain that the same tests are not repeated by both assessors. If the same test is repeated with a child too soon, it can affect the test results. For example, a child may remember parts of the test when taking it a second time and obtain a better score. When the District assessors learned that Student's parents were obtaining a private speech and language assessment, they needed to make certain there was no duplication of testing which might invalidate the District's speech and language assessment.

8. On more than one occasion, the District requested that Student's mother provide a copy of the private assessment report or a list of the test instruments used by the private assessor. Student's mother did not provide the District with such a list and did not provide a copy of that private assessment report until August 2008, so the District was unable to complete its speech and language assessment until September 2008.

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which stated: "However, for purposes of implementation and enforcement of the Agreement, the Parties mutually consent to disclosure and admissibility of this Agreement."

9. After completing the speech and language assessment in September 2008, the District attempted to schedule an IEP meeting with Student's parents to review the assessment reports and discuss Student's eligibility for special education services. On October 8, 2008, the District sent a written notice of an IEP meeting to be held on October 24, 2008, to Student's parents by certified mail. The evidence was unclear whether Student's parents failed to respond to the notice or responded but requested to change the meeting date, but either way, the meeting did not go forward on October 24, 2008. The District noticed another meeting for November 20, 2008, but once again the parents either did not respond or requested that the date be changed.

10. On December 17, 2008, the District sent a written notice of an IEP meeting to be held on January 21, 2009, to Student's parents by certified mail. Student's parents subsequently contacted the District to request a change of the proposed date of the meeting.

11. On January 21, 2009, the District sent, by certified mail, a written response to the parents' request to change the date of the IEP meeting. The District proposed three possible dates for the IEP meeting: February 10, 2009; February 11, 2009; or February 13, 2009. The District requested that the parents choose one of those three dates and inform the District of the day chosen. The parents did not respond to the District's letter.

12. On January 30, 2009, the District sent a follow-up letter once again asking Student's parents to let the District know which of the three days would be acceptable to the parents for the IEP meeting.

13. On February 9, 2009, the day before the first of the three proposed dates for the IEP meeting, Student's parents faxed a letter explaining that they could not consent to the February meeting "because we do not feel we have enough information to make informed decisions or attend on the scheduled date and we request it be

rescheduled." The letter requested that the IEP meeting be rescheduled on one of three dates: March 18, 24, or 25, 2009.

14. On February 10, 2009, the District responded to the parents' letter, explaining that the District would reschedule the IEP meeting for one of the three dates proposed by the parents. The District's letter also requested that the parents provide the District with an explanation regarding the information that the parents felt they needed to actively and meaningfully participate in the IEP team meeting. The letter stated in part: "the District requires this information as soon as possible so that it may provide you with this information well in advance of the IEP team meeting."

15. On February 13, 2009, four days after the parents sent their letter requesting that the meeting be rescheduled, the District noticed the rescheduled IEP meeting for March 25, 2009, one of the dates proposed by the parents. The notice of rescheduled IEP meeting was sent to the parents by certified mail.

16. On March 4, 2009, the parents informed the District that they were no longer available to attend an IEP meeting on March 25, 2009. The parents proposed dates in April 2009 for the meeting. During the hearing, Student's mother testified that she requested to change the date of the meeting because, by the time she received written notice of the IEP meeting, the March 25 date had already been filled on her calendar. She could not recall what other event had filled the calendar date. She also did not explain why she waited so long after the notice was sent to tell the District she was not available on the date chosen. She testified that prior to the time her letter was sent she had already spoken to Jim Huckeba, the District/SELPA Administrative Director, to tell him that she could not attend, but gave no details as to the date or time of such a conversation.

17. On March 9, 2009, the District sent the parents a letter explaining that the District was going to move forward with the IEP team meeting on March 25, 2009, as scheduled.

18. On March 25, 2009, the District held the IEP team meeting for Student. Student's parents did not attend the IEP team meeting. The following individuals attended the IEP team meeting: Jim Huckeba, District/SELPA Administrative Director; Doris Hust, school principal; Doug Dean, school psychologist; Jill Hotujec, occupational therapist; Netta Leach, special education teacher; Lauren Ourn, Student's general education teacher; Shannon Manriquez, speech pathologist; Cherry Macalino, school nurse; David Schepps, program specialist; George Whitmore, speech and language pathologist; and Howard Fulfrost, attorney for the District. The District invited a representative from Big Fun to attend the meeting, but no one from that company was available to attend.

19. At the beginning of the meeting, the District attempted to reach Student's parents by telephone to see if they planned to attend the meeting. The District left a voicemail message for the parents, but the parents did not contact the District or respond to that message. The District included a page in the IEP meeting notes which documented in detail the attempts by the District to arrange with the parents a mutually-agreeable time and place for the IEP meeting.

20. The IEP team reviewed the assessment reports done by the District and discussed the reports from the various private assessors who had evaluated Student.

21. During her testimony, Student's mother gave no explanation as to why she was unable to attend the various IEP meetings scheduled by the District from October 2008 to March 2009. She testified that she did not recall receiving some of the notices for the meetings. However, she admitted that she was receiving a lot of mail from the District during that time.

22. On April 13, 2009, the District sent a letter by certified mail to the parents which included a copy of the proposed IEP. The letter requested that the parents review the proposed IEP and sign it as soon as possible so that the District could implement the IEP.

23. On April 16, 2009, Student's mother sent a letter to the District which stated, in part:

> "I informed you we were not available for the IEP meeting scheduled for March 25, 2009 and provided you with alternate dates we were available on, however, you held the meeting without us. We are requesting the IEP meeting be scheduled to continue the IEP meeting held on March 25, 2009. We want to attend and be part of the IEP team and participate. We are available the following dates. May 5, 6, 7, 2009."

24. On April 17, 2009, the District responded to the parents' letter. The response explained that the District had completed the IEP team meeting on March 25, 2009, and viewed the parents' April 16 letter as a request for a "parent-requested" IEP team meeting. The letter explained that the District was not available to hold the meeting on May 5, 6, or 7, 2009. However, the District scheduled a meeting to be held on May 15, 2009. The District included a formal notice of the IEP team meeting with the letter. The parents thereafter sent the District a fax requesting that the May 15, 2009 IEP date be rescheduled. They proposed five dates for a rescheduled meeting, including the date of May 27, 2009.

25. On May 7, 2009, the District sent the parents a notice of the rescheduled IEP team meeting to be held on May 27, 2009. On May 26, 2009, Student's advocate

requested that the IEP meeting scheduled for May 27 be canceled. The District's counsel sent an email to the advocate confirming that the advocate would provide proposed dates to reschedule the meeting. There was no further contact from the parents regarding scheduling the IEP meeting and no additional IEP meetings were held for Student during the 2008 – 2009 school year. During the hearing, Student's mother testified that the May meeting was problematic for her because the District had scheduled IEP meetings for two of her sons on the same day.

26. On June 22, 2009, the District filed this due process case, seeking to defend its March 25, 2009 IEP offer.

THE DISTRICT'S 2008 ASSESSMENT AND THE INFORMATION AVAILABLE TO THE IEP TEAM

27. Student raises several substantive challenges to the March 25, 2009 IEP. Student contends that the District's proposed IEP did not offer a FAPE because it did not contain a formal behavioral assessment, direct OT services, sufficient speech and language services, a social skills class, and counseling, and because it did not contain adequate goals and objectives. Each of these contentions will be addressed in turn below. In each case, in order to determine whether the March 25, 2009 IEP offer was reasonably calculated to provide educational benefit at the time it was developed, it is first necessary to look at the information available to the District as of March 25, 2009. These facts are also related to Student's procedural contention that the private assessors should have been invited to attend the March 2009 IEP meeting.

28. As stated in Factual Finding 4 above, the settlement agreement between the parties called for the District to assess Student in all areas of suspected disability. The District completed its psychoeducational assessment and OT assessment in April and May 2008. The District completed its speech and language assessment in September 2008.

29. Douglas Dean conducted the psychoeducational assessment of Student. Dean has been a school psychologist for approximately 25 years and has worked as a school psychologist for the District for the past 10 years. As part of his assessment, he reviewed Student's records and the previous assessments done by the District and private assessors. He also conducted testing of Student, including standardized testing, interviewed Student's second and third grade teachers, interviewed the school principal and Student's mother, and observed Student on the playground and in the classroom.

30. To test Student's cognitive ability, Dean used the Weschler Intelligence Scales for Children – Fourth Edition (WISC-IV). He determined that Student's full-scale IQ score was 92, in the average range of intelligence. To test Student's academic achievement, he used the Weschler Individual Achievement Test – Second Edition (WIAT).

31. Dean had to use a slightly different scoring method than usual to score Student's achievement test because of Student's age. Student's mother had waited before enrolling him in the public school, so Student was about two years older than the typical children in his third-grade class. At the time of Dean's assessment, Student was 10 years old.

32. Because Student was older than most third-graders, Dean used Student's grade level to determine the test scoring rather than Student's age. The test manufacturer's instructions permitted him to do so. Student's scores on the WIAT were comparable to his full-scale IQ score: his composite reading score was 91, his composite mathematics score was 96, and his composite written language score was 88.

33. Dean also assessed Student in the areas of behavior and emotional development. In addition to conducting the interviews and observations noted in Factual Finding 29 above, Dean administered the Behavior Assessment System for Children – Second Edition (BASC-2) to Student and to Student's parents, teacher, and

principal. The BASC-2 is a written survey completed by individuals who have knowledge of a pupil. It is a comprehensive measurement of common behavioral and emotional problems in pupils. Dean also administered the Attention Deficit Disorders and Evaluation Scale. This is a rating scale questionnaire completed by the parents, teacher, and school principal.

34. As a result of the assessment, Dean determined that Student had behavioral difficulties when he first entered school, but Student's behavior had improved significantly over the years. At the time of Dean's assessment in Student's third-grade year, Student was no longer a behavioral problem in school, and the school staff described his behaviors as being typical for his grade level.

35. In addition to the results of Dean's psychoeducational assessment, the March 2009 IEP team had information regarding Student from a prior District assessment conducted in 2006[5] and a private assessment done at the parents' request by David Paltin, Ph.D., in early 2007. The IEP team also had input from Student's current teacher for the 2008-2009 school year and the other members of the IEP team.

36. Student contends that the District should have invited Paltin to attend the March 2009 IEP meeting and that the failure to have Paltin in attendance violated the procedures set forth in the IDEA. However, the evidence does not support Student's contention. Dean reviewed Paltin's report at the time he conducted his assessment and

[5] There was a question during the hearing about whether the District's 2006 assessment had properly determined Student's eligibility for special education. However, it is not necessary to address that issue in this Decision. The March 2009 IEP team relied primarily upon Dean's 2008 assessment in determining Student's eligibility, so any problems with the District's 2006 assessment did not invalidate the March 2009 IEP offer.

was very familiar with Paltin's findings. Paltin did not meet with Student between his assessment in early 2007 and the March 2009 IEP meeting, so he did not have current information regarding Student at the time of the meeting. If Student's parents wanted to invite Paltin to attend the meeting, they could have done so, but the District had sufficient information to determine Student's psychoeducational and behavioral needs without Paltin's attendance. There was no procedural violation based on the District's failure to invite him to attend.

37. The evidence supports a finding that the District had sufficient information to determine Student's psychoeducational and behavioral needs at the time of the March 2009 IEP.

38. George Whitmore, a speech-language pathologist (SLP) working for the District, conducted the District's speech and language assessment of Student in September 2008, when Student was in the fourth grade. Whitmore has been an SLP for over 30 years and has conducted thousands of assessments. In the past, he was a licensed SLP with the State of California, but he let his license lapse when he retired two years ago. He has a lifetime credential that allows him to practice as an SLP for school districts, so he does not need an active state license.

39. As part of his assessment, Whitmore reviewed prior speech and language assessments done of Student, including a June 2008 private assessment conducted by the Speech and Language Development Center located in Buena Park (Buena Park Speech or Buena Park). Whitmore met with Student and attempted to speak with Student's mother, but he was unable to reach her by telephone. Whitmore administered tests to Student, including: 1) Assessing Semantic Skills through Everyday Themes; 2) the Language Processing Test; and 3) the Test of Auditory Processing Skills. He did not administer the Comprehensive Assessment of Spoken Language, the Test of Problem Solving, or the Test of Pragmatic Language because those tests had previously been

administered in June 2008 by the private assessor. Whitmore also conducted an informal analysis of Student's conversational skills.

40. Whitmore determined that Student had a speech and language impairment in the areas of auditory processing and semantics, and that Student required special education and related services because of his difficulties in these areas. Whitmore noted that Student required a longer amount of time than usual to complete the assessment battery and that Student exhibited a specific pattern of response to questions. When Student did not immediately know the answer to a question he would say he did not know. If given time to think about the request, he would sometimes talk quietly to himself and then provide a response. Whitmore believed that Student used this verbal "looping" method to check himself for understanding and give himself time to process the answer.

41. Whitmore attended the March 2009 IEP meeting and helped to draft the goals in the proposed IEP. He agreed that the District's offer of speech and language services was sufficient to meet Student's needs.

42. In addition to Whitmore's input through his assessment report and his participation in the IEP meeting, the IEP team had information regarding Student's needs in the area of speech and language through the private assessment conducted at the parents' request in June 2008 by Buena Park Speech. Sara Jones and Sallie Dashiell, speech-language pathologists working for Buena Park, conducted the assessment. They administered tests, including the Comprehensive Assessment of Spoken Language, the Test of Problem Solving, and the Test of Pragmatic Language. They also conducted the Test of Narrative Language and analyzed a language sample for Student. They noticed the same types of difficulties with processing that Whitmore noticed during his assessment. When Student was initially asked a question, he would give a random or non-responsive answer. When given further time to work through the question, he

would then respond with an answer that was either correct or related to what had been asked.

43. Student contends that one or both of the speech-language pathologists from Buena Park Speech should have been invited to attend the March 2009 IEP team meeting and that the District's failure to invite them constituted a procedural violation of the IDEA. However, the evidence does not support Student's contention. Whitmore explained during his testimony that he reviewed the Buena Park assessment in conducting his own assessment. His findings regarding Student's needs and deficits in the area of speech and language were similar to those found by the Buena Park assessors. Whitmore, a very experienced speech and language pathologist, was fully capable of interpreting the Buena Park assessment and discussing the ramifications of that assessment with the IEP team. When Sara Jones testified on Student's behalf during the hearing, she admitted that she could not speak to his needs as of March 2009, almost a year after her report. While Student's parents could certainly have invited one or both of the Buena Park assessors to attend the IEP meeting, it was not required for them to attend.

44. The IEP team had sufficient information to determine Student's needs in the area of speech and language for purposes of making the March 2009 IEP offer. There was no procedural violation based on the District's failure to invite one or both of the Buena Park assessors to attend the March 2009 IEP team meeting.

45. Lisa Cahill, a licensed occupational therapist working for the District, conducted the District's OT assessment of Student in April 2008. As part of her assessment, Cahill reviewed Student's records and prior assessment results, including an occupational therapy assessment conducted in December 2006 and information from Big Fun. Cahill also conducted a telephone interview with Student's mother, tested Student, and obtained information from Student's parents and teachers through

questionnaires. The tests utilized by Cahill included: the Bruininks-Oseretsky Test of Motor Proficiency – Second Edition (BOT-2), a standardized test which measures fine and gross motor skills in children; the Print Tool, an evaluation tool used to assess a child's handwriting skills; and the Sensory Profile School Companion and Sensory Profile, surveys filled out by Student's teacher and parents to help determine Student's needs related to sensory processing.

46. As a result of her assessment, Cahill found that Student's fine motor coordination, visual motor skills and bilateral coordination were in the average or above-average range. Student had a need for frequent movement breaks, and his teacher had made appropriate modifications within the classroom to allow for this. With respect to sensory processing, there was a discrepancy between the surveys filled out by Student's parents and the one filled out by the teacher. The parents reported many sensory processing difficulties for Student at home, while the teacher reported very few problems at school. Cahill concluded that it might be beneficial for an occupational therapist to consult with Student's teacher during the following school year, but that there was no need for direct OT services for Student.

47. Student contends that the District should have invited a representative of Big Fun to attend the March 2009 IEP team meeting, and that the failure to have such a representative in attendance constituted a procedural violation of the IDEA. Student's position is not well taken. First of all, as discussed in Factual Finding 18 above, the IEP meeting notes reflect that the District made efforts to have a representative of Big Fun attend the meeting, but no one was available. However, even if Big Fun had not been invited, there would have been no procedural violation. The IEP team had adequate information regarding Student's OT needs. Jill Hotujec, a District occupational therapist, attended the March 2009 IEP meeting. Hotujec reviewed Cahill's report and was able to address Student's OT needs during the IEP team meeting.

48. The evidence supports a finding that the District had sufficient information to determine Students needs with respect to OT at the March 2009 IEP team meeting. There was no procedural violation of the IDEA based on the failure to have a representative from Big Fun at the meeting.

49. The District's 2008 assessments were thorough, complete, conducted by appropriate professionals, and sufficient to determine Student's educational needs. Those assessments, along with the other information available to the IEP team and the professionals who attended the IEP team meeting, were sufficient to allow the IEP team to determine Student's unique educational needs and present levels of performance.

WERE THE GOALS AND OBJECTIVES DEVELOPED AT THE MARCH 2009 IEP TEAM MEETING APPROPRIATE TO MEET STUDENTS NEEDS?

50. Student contends that the District's March 2009 proposed IEP did not contain sufficient goals and objectives to meet Student's needs.[6] The District disagrees and contends that the goals and objectives contained in the March 2009 IEP were appropriate.

51. The March 2009 IEP team determined that Student had needs in working memory, written expression, sensory processing, work habits (planning and organization), semantics (vocabulary development at both the sentence and paragraph levels) and working independently on written assignments. The team noted that Student needed frequent "movement breaks" and that his teacher had made accommodations in the classroom to allow for that.

[6] Student's written closing argument did not specify the nature of Student's objection to the goals, so it is unclear whether Student objects to the way the goals were written or if Student contends that additional goals should have been added.

52. The IEP team proposed seven goals for Student. Goal number one addressed organization and planning, and called for Student to use a "memory reminder" such as a planner to record school assignments, due dates and similar things. Goal number two called for Student to use a sub-vocal "looping" technique to assist his processing time when answering questions. Goal number three called for Student to demonstrate knowledge of antonyms, synonyms, and multiple meanings of 50 new vocabulary words. Goal number four called for Student to compose compound and complex sentences. Goal number five called for Student to participate in sensory-based activities to increase his arousal and attention to teacher-led tasks. Goal number six addressed initiating work and working on an assigned task for a minimum number of minutes. Goal number seven called for Student to produce "an indented multiple-paragraph composition that includes an introductory paragraph with a topic sentence, supporting paragraphs with facts/details/explanations, and a concluding paragraph with 80% accuracy in grammar, capitalization/punctuation, subject/verb agreement and 75% accuracy in spelling."

53. The District witnesses were in agreement that these goals and objectives were appropriate and sufficient to address Student's areas of need. Lauren Ourn, Student's fourth grade teacher at the time of the March 2009 IEP meeting, testified that the goals were appropriate to address Student's unique needs and could be implemented in her classroom. Huckeba opined that the goals were appropriate to address Student's needs. Cahill testified that the IEP goals were sufficient to address his OT needs. Whitmore believed that the goals were appropriate and sufficient to meet Student's needs related to speech and language. Even Student's speech and language expert, Sara Jones, agreed that the District's proposed speech and language goals were appropriate for Student.

54. Student's mother testified that the OT goals listed in the Big Fun assessment dated December 6, 2006, should have been included in the March 2009 IEP. In particular, she believed that the IEP should have included a goal related to improving communication with peers and ability to play with them, a goal related to improving "distal bilateral strength and coordination," and goals related to the various areas in which Big Fun had provided services to Student (including aspects of sensory discrimination, bilateral control, motor planning and postural/motor). No one from Big Fun testified at the hearing to explain why goals recommended in December 2006 would still be appropriate over two years later in March 2009. Student called no OT expert to testify on Student's behalf at the hearing, and Student's mother admitted during her testimony that she is not an occupational therapist.

55. Student's psychoeducational expert Dr. Paltin testified that the goals and objectives in the IEP were "insufficient," but did not elaborate on why he believed that or in what manner they were insufficient.

56. The evidence supports a finding that the goals and objectives contained in the March 2009 proposed IEP were appropriate and sufficient to address Student's areas of unique need. The District's assessments were thorough and completed by competent professionals. The Big Fun assessment relied upon by Student's mother in challenging the District's proposed goals was over two years old at the time of the March 2009 IEP team meeting. Without the testimony of an occupational therapist with recent information regarding Student's OT needs, there was nothing to contradict Cahill's testimony that the goals and objectives were sufficient.

DID THE DISTRICT DENY STUDENT A FAPE BY FAILING TO CONDUCT A FORMAL BEHAVIORAL ASSESSMENT OR TO OFFER STUDENT A SOCIAL SKILLS CLASS AND COUNSELING SERVICES IN THE MARCH 2009 IEP?

57. Student contends that the District's proposed March 2009 IEP failed to offer Student a FAPE because the District did not conduct or offer to conduct a formal behavioral assessment of Student. The District contends that Student did not exhibit the types of behaviors at school that would necessitate a formal behavioral assessment.

58. When Dean conducted his psychoeducational assessment in 2008, he did not find any need for a formal behavioral assessment of Student. Although Student had exhibited problem behaviors during his early years in school, by third grade his behaviors were within acceptable limits and similar to those of a typical third-grader.

59. Dean's opinions were supported by the observations of Student's fourth grade teacher Lauren Ourn, who reported that Student's behavior in her classroom was no different than that of his typical classroom peers. The testimony of school principal Doris Hust also supported the District's position. She concurred that Student had behavioral problems during his early years of school, but explained that those problems had gone away by his third grade year and by the time of the March 2009 IEP.

60. Student's expert Paltin disagreed with the District's position. Paltin conducted an assessment of Student in February 2007, when Student was in the second grade. As part of the assessment, Paltin reviewed records, including the District's 2006 assessment report, interviewed Student's mother, conducted testing of Student and observed Student on the playground and in class. He reported that Student "displayed little meaningful interaction with peers during the playground period. He did not engage in verbal communication with his classmates when entering the playground or at any time during the remainder of the recess period." He observed that Student was not responsive in the classroom and had his head on the desk approximately 60 percent of the time. Based on this observation, the testing he conducted, his review of the

District's 2006 assessment, and the information provided by Student's parents regarding Student's serious behavior problems at home, Paltin found that Student suffered from oppositional defiant disorder and had learning disabilities in multiple areas. He concluded that Student should be eligible for special education under the eligibility categories of specific learning disability and serious emotional disturbance. He recommended, among other things, that Student be provided with behavioral counseling on a weekly basis and that Student should receive "social coaching" to increase his integration into playground groups. He also concluded that Student "may benefit from a formal behavioral analysis to identify possible sources of reinforcement that contribute to negative patterns of behavior and possible sources of positive reinforcement."

61. At hearing, Paltin reiterated his opinions regarding Student's needs. He explained that he did not see Student between the time of his assessment in February 2007 and the time of the IEP meeting in March 2009.[7] However, he believed that his recommendations from his 2007 assessment report would still have been appropriate as

[7] Paltin also observed Student in December 2009, after the hearing for this due process case began, as part of a new assessment of Student. The District objected to Paltin's testimony regarding that new assessment because the District did not possess that assessment at the time the District made the March 2009 IEP offer. The District's objection was sustained on the basis that the new assessment was not relevant to what the District knew or reasonably should have known at the time of the March 2009 assessment. As explained in Legal Conclusion 15 below, the Ninth Circuit relies on a "snapshot" rule for determining a FAPE, based on what the school district knew or should have known at the time the IEP offer was made.

of the time of the March 2009 IEP meeting. In his opinion, the District's March 2009 IEP did not offer Student a FAPE.

62. Student's mother also believed that the March 2009 IEP should have contained a behavioral assessment, counseling, and a social skills class. At the time of Dean's assessment and during her testimony, she provided information regarding a variety of maladaptive behaviors that Student exhibited at home. The behaviors noted by Student's mother during Dean's assessment included refusal to do homework, rocking back and forth throughout the day, cursing loudly in public, yelling, kicking, and running into the street in an unsafe manner. During the hearing, she testified that Student's school behaviors have improved since first and second grade, but maintained that there were ongoing behavioral issues.

63. Student also relied upon the testimony of Michael Coppers, a one-to-one behavioral aid who used to work with Student's autistic brother. Coppers described the problem behaviors that Student exhibited while Coppers was working in Student's home during 2006 through 2008. He observed Student pound on the couch, hit his head on the couch, rock back and forth with his eyes closed, curse, and act in a disruptive and angry fashion. He would occasionally observe Student at school at the end of the school day. Student would have something negative to say to him and would race ahead of his brother because it irritated his brother. Coppers believed that Student would benefit from instruction using applied behavior analysis methodologies.

64. During his testimony, Dean explained that he had considered Paltin's report when he conducted his assessment but disagreed with many of the things stated in the report. He disagreed with Paltin's conclusion that Student should be found eligible for special education under the eligibility category of emotional distress, because Dean did not see Student during his third grade year exhibit any of the serious behaviors noted in Paltin's report. Dean believed that Paltin's report looked at Student

from a clinical perspective and emphasized Student's problems at home, rather than focusing on what was necessary at school for his education. Paltin disagreed, and maintained that his assessment was intended to address Student's education, not just his clinical needs.

65. The evidence supports a finding that the District did not deny Student a FAPE by failing to conduct or offer to conduct a formal behavioral assessment. While Student had behavioral problems during his early years of school, by the time of Dean's assessment in third grade and his March 2009 IEP during fourth grade, Student was not exhibiting the type of maladaptive behaviors that would necessitate such an assessment. Dean's testimony and the testimony of Student's fourth grade teacher and school principal are persuasive on this issue. Student continued to have behavioral problems at home, but those problems did not occur at school and the District reasonably believed that his behavior was not interfering with his education at the time of the March 2009 IEP. While Paltin was a credible witness and experienced psychologist, his 2007 observations had been conducted long before the IEP meeting in question and they seemed to focus greatly on Student's behaviors at home. During Paltin's school observation of Student in the second grade, Paltin did not observe kicking, yelling, rocking back and forth, or the other serious behaviors that Student exhibited at home. Coppers, likewise, did not observe any serious misbehavior by Student at school.

66. During the hearing, Student's mother testified regarding behavioral citations that Student had received at school during his fourth grade year. For example, Student placed into evidence a November 5, 2008 citation based on "wrong use of equipment" and a "10/10" detention slip based on "no homework." However, these two citations do not demonstrate the frequency or severity of problems that might indicate a serious behavioral problem. If anything, the lack of citations for serious misconduct supports the District's position that no separate behavior assessment was necessary.

67. For the same reason, there was no need for the District to include a social skills class or counseling in the March 2009 IEP offer. Dean, Ourn, and the school principal observed Student as having friends and participating typically in school activities. Paltin's observations in February 2007, in which he described Student's social isolation at recess, were made over two years before the IEP meeting in question. Further, those observations were made on a single day and the District witnesses testified that the behavior Paltin observed was not typical for Student at that time. The District witnesses indicated that Student may have behaved differently because he knew that Dr. Paltin was observing him. Dean's 2008 assessment and the current information from the fourth grade teacher and principal were sufficient for the IEP team to reach the conclusion that it did. At the time of the March 2009 IEP meeting, Student was behaving in the fashion of a typical boy in his class. There was no need for any IEP services related to counseling, behavior or social skills. There was no denial of a FAPE.

DID THE DISTRICT DENY STUDENT A FAPE BY FAILING TO INCLUDE SUFFICIENT SPEECH AND LANGUAGE SERVICES IN THE MARCH 2009 IEP?

68. In order to offer a child a FAPE, an IEP must contain any related services (also known as designated instruction and services) that a special needs child may require in order to benefit from his or her special education. Those related services include speech and language services.

69. As stated in Factual Finding 2 above, the March 25, 2009 IEP offered Student pull-out speech and language instruction twice a week for 30 minutes a session in a small group setting and in-class collaboration between the teacher and SLP nine times a year for 20 minutes per session. Student contends that these services were not sufficient to meet Student's needs in the area of speech and language.

70. Whitmore testified that the speech and language services offered in the March 2009 IEP would provide sufficient time to work on Student's goals related to

speech and language and would be sufficient to meet his needs in the area of speech and language.

71. Sara Jones, Student's speech and language expert, testified that, at the time of her assessment in June 2008, Student required 60 minutes per week of group speech and language and 30 minutes per week of individual speech and language. She believed that the individual speech and language session should work on word retrieval and auditory issues, while the group speech and language session would work on pragmatic issues. In her opinion, individual speech and language sessions were necessary for Student's self-esteem, because he was very aware of what he could and could not do. However, Jones candidly admitted during her testimony that she did not feel comfortable stating what Student's needs would have been in March 2009, almost a year after her report.

72. The evidence supports a finding that the District's March 2009 proposed IEP offered Student a FAPE with respect to the proposed speech and language services. The speech and language services called for in the IEP were reasonably calculated to meet Student's unique needs and to enable him to gain benefit from his special education. While Whitmore and Jones were both credible and qualified witnesses, Whitmore's opinion is more persuasive in this case. Whitmore had conducted a comprehensive assessment of Student, had reviewed Jones' report, and had the benefit of the input from Student's fourth grade teacher during the IEP meeting. Jones' assessment was conducted many months before the IEP team meeting, and even she admitted that she did not feel comfortable speaking to his needs at the time of the March 2009 IEP meeting.

DID THE DISTRICT DENY STUDENT A FAPE BY FAILING TO INCLUDE DIRECT OT SERVICES IN THE MARCH 2009 IEP?

73. Student also contends that the District denied Student a FAPE by failing to offer direct OT services for Student. Student relies on the Big Fun assessment from 2006. However, that assessment was conducted long before the IEP meeting in question, and long before Cahill completed the District's 2008 assessment of Student. Student called no OT expert to testify at the hearing, so there was no persuasive evidence to refute Cahill's opinion. Cahill was well qualified to give her opinions based on her 2008 assessment of Student and her opinion is persuasive in this matter that Student did not need direct OT services at the time of the March 2009 IEP.

74. The evidence supports a finding that the District's March 2009 proposed IEP offered student a FAPE with respect to OT services. As discussed in Factual Findings 2 and 45 – 46 above, the offer of four 15-minute sessions per year of OT consultation was reasonably calculated to meet Student's unique needs and allow Student to benefit from his special education.

LEGAL CONCLUSIONS

1. The District, as the party requesting relief, has the burden of proof in this proceeding. (*Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528].)

2. Under the IDEA and corresponding state law, students with disabilities have the right to a free appropriate public education (FAPE). (20 U.S.C. § 1400 et seq.; Ed. Code, § 56000 et seq.) A FAPE means special education and related services that are available to the student at no cost to the parents, that meet the state educational standards, and that conform to the student's IEP. (20 U.S.C. § 1401(9); Cal. Code Regs., tit. 5, § 3001, subd. (p).)

3. The congressional mandate to provide a FAPE to a child includes both a procedural and a substantive component. In *Board of Education of the Hendrick Hudson*

Central School District v. Rowley (1982) 458 U.S. 176 [102 S.Ct. 3034] (*Rowley*), the United States Supreme Court utilized a two-prong test to determine if a school district had complied with the IDEA. First, the district is required to comply with statutory procedures. Second, a court will examine the child's IEP to determine if it was reasonably calculated to enable the child to receive educational benefit. (*Id.* at pp. 206 - 207.)

4. Not every procedural violation of the IDEA results in a substantive denial of FAPE. (*W.G. v. Board of Trustees of Target Range School District* (9th Cir. 1992) 960 F.2d 1479, 1484.) According to Education Code section 56505, subdivision (f)(2), a procedural violation may constitute a substantive denial of a FAPE only if it:

(A) Impeded the child's right to a free appropriate public education;

(B) Significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents' child; or

(C) Caused a deprivation of educational benefits.

DID THE DISTRICT FOLLOW THE PROCEDURES SET FORTH IN THE IDEA AND STATE LAW IN FORMULATING THE PROPOSED MARCH 25, 2009 IEP?

5. Student contends that the District's March 25, 2009 IEP meeting violated the procedures required by federal and state law because the District held a meeting without the parents in attendance. Student also contends that the March 25 meeting violated federal and state law because no representative from Big Fun or Student's private assessors attended the meeting. The District contends that all required individuals attended the meeting and that the District made sufficient attempts to have the parents attend the meeting to satisfy the requirements of the law.

6. The IDEA and California education law require certain individuals to be in attendance at every IEP meeting. In particular, the IEP team must include:

(A) the parents of the child with a disability;

(B) not less than one regular education teacher of the child, if the child is or may be participating in the regular education environment;

(C) not less than one special education teacher, or where appropriate, not less than one special education provider of the child;

(D) a representative of the school district who is knowledgeable about the availability of the resources of the district, is qualified to provide or supervise the provision of special education services and is knowledgeable about the general education curriculum;

(E) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described above;

(F) at the discretion of the parent or the district, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and

(G) whenever appropriate, the child with a disability.

(20 U.S.C. § 1414 (d)(1)(B); Ed. Code, § 56341, subd. (b).)

7. The parents of the child with a disability are critical members of the IEP team. California law requires that the parents be given notice of the meeting early enough to ensure an opportunity to attend. (Ed. Code, § 56341.5, subd. (b).) The law also requires the IEP team meeting to be scheduled at a mutually agreed-upon time and place. (Ed. Code, § 56341.5 (c).)

8. A district may hold an IEP meeting without a parent in attendance if the district is unable to convince the parent that he or she should attend. (Ed. Code, § 56341.5, subd. (h).) However, if a district holds a meeting without the parent in attendance, it must "maintain a record of its attempts to arrange a mutually agreed-upon time and place" such as detailed records of telephone calls made or attempted, or copies of correspondence sent to the parent. (*Ibid.*)

9. In the instant case, the District made many attempts to hold the IEP team meeting with the parents in attendance. The District attempted to hold the meeting in October 2008, in November 2008, in January 2009, in February 2009, and in March 2009. In each case, Student's parents either failed to respond to the IEP team meeting notice or requested that the meeting be postponed. After the parents requested that the February 2009 meeting be postponed, the District rescheduled the meeting for a date suggested by the parents. Despite the fact that they had suggested the date and despite the fact that the meeting was noticed for their suggested date only four days after they made the suggestion, the parents waited almost a month and then once again attempted to reschedule the meeting. The District attempted to reach the parents by telephone during the March meeting, but the parents did not return the call.

10. As discussed in Factual Findings 4 – 26 above, the IEP team meeting contemplated by the parties' March 2008 settlement agreement was delayed for many months due to the parents' actions. First, the assessment was delayed because information regarding the private speech and language assessment was not provided to the District. Then, once the assessment was finally completed, Student's parents continually requested delays of the IEP team meeting. By the time the District finally held a meeting in March 2009, it was about a year after the March 2008 settlement agreement. During that year, Student had been without a current IEP and without goals and objectives designed to address his current educational needs. While the law requires a school district to make every effort to include parents at a child's IEP meeting, there comes a point where a district must hold a meeting without the parents in order to meet its duty to the child. After four postponements of the IEP meeting and after selecting a date specifically requested by Student's parents, it was appropriate for the District to hold the IEP team meeting without the parents. At no point in the documentation or the testimony at the hearing did Student establish specifically why his

parents needed to postpone the March meeting. Under those circumstances, the District could reasonably have believed that Student's parents would continue to be unavailable or seek to delay the IEP meeting. Indeed, as discussed in Factual Findings 24 – 25 above, when the District scheduled a subsequent IEP meeting in May 2009, at the parents' request and on the date requested by the parents, the parents' advocate once again canceled the meeting on the day before it was due to be held.

11. Under all these circumstances, the District's conduct in holding the March 2009 IEP meeting in the parents' absence was justified and was necessary for the District to meet its duty to have a current IEP in place for this child. As discussed in Factual Finding 19 above, the District complied with the documentation requirements of Education Code section 56341.5, subdivision (h). There was no procedural violation of the IDEA, and no denial of a FAPE.

12. Likewise, as discussed in Factual Findings 18 and 27 – 49 above, the District did not violate the procedures set forth in the IDEA by failing to invite Dr. Paltin, Sara Jones, or a representative from Big Fun to the March 2009 IEP team meeting. There is no requirement in the law that a district must invite private assessors or private providers of services to an IEP team meeting. Under United States Code, title 20, section 1414, and California Education Code section 56341, private assessors and providers can be part of an IEP team meeting at either the district's or parents' discretion, but they are not required members. If Student's parents had truly believed that those individuals were necessary for the IEP team meeting, the parents could have invited them to attend. As discussed in Factual Finding 18 above, the District had Student's general education teacher, special education teachers, the school psychologist, individuals capable of interpreting the instructional implications of the assessments, and a school administrator at the meeting as required by law.

13. As discussed in Factual Findings 18 and 27 – 49 above, the District had sufficient information regarding Student's unique educational needs at the meeting and had qualified experts at the meeting to discuss the District's assessments and Student's present levels of performance. Each of the District assessors considered input and reports from the various private assessors and providers. The District had all the required IEP team members at the meeting and there was no denial of a FAPE.

WAS THE DISTRICT'S MARCH 25, 2009 PROPOSED IEP REASONABLY CALCULATED TO PROVIDE STUDENT WITH EDUCATIONAL BENEFIT?

14. To determine whether a district's proposed IEP offered a pupil a FAPE, the analysis must focus on the adequacy of the district's proposed program. (*Gregory K. v. Longview School District* (9th Cir. 1987) 811 F. 2d 1307, 1314 (*Gregory K.*)) An IEP need not conform to the parents' wishes in order to be sufficient or appropriate. (*Shaw v. District of Columbia* (D.D.C. 2002) 238 F.Supp.2d 127, 139 [The IDEA does not provide for an "education... designed according to the parent's desires"], citing *Rowley*, 458 U. S. at p. 207.) Nor does the IDEA require school districts to provide special education pupils with the best education available or to provide instruction or services that maximize a pupil's potential. (*Rowley*, *supra*, 458 U. S. at pp. 198-200.) Rather, the *Rowley* court held that school districts must provide only a "basic floor of opportunity" that consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the pupil. (*Id.*, at p. 200.) Hence, if the school district's program met the substantive *Rowley* factors, then that district provided a FAPE, even if the pupil's parents preferred another program, and even if the parents' preferred program would have resulted in greater educational benefit. (*Gregory K.*, *supra*, 811 F.2d at p. 1314.)

15. An IEP is evaluated in light of information available at the time it was developed, and is not to be evaluated in hindsight. (*Adams v. State of Oregon* (9th Cir.

1999) 195 F.3d 1141, 1149.) The Ninth Circuit has endorsed the "snapshot rule," explaining that an IEP "is a snapshot, not a retrospective." The IEP must be evaluated in terms of what was objectively reasonable when it was developed. As long as the proposed IEP was reasonably calculated to provide the child with educational benefit at the time it was proposed, that is sufficient to offer a FAPE. (*Ibid.*)

THE GOALS AND OBJECTIVES DEVELOPED BY THE IEP TEAM AT THE MARCH 2009 IEP TEAM MEETING WERE APPROPRIATE TO MEET STUDENT'S NEEDS.

16. An IEP is required to contain, among other things, a statement of measurable annual goals, including academic and functional goals, designed: 1) to meet the needs of the pupil that result from the disability to enable the pupil to be involved in and to make progress in the general education curriculum; and 2) to meet each of the other educational needs of the pupil that result from the disability. (Ed. Code, § 56345, subd. (a)(2).)

17. As discussed in Factual Findings 50 – 56 above, the goals and objectives contained in the March 2009 IEP were sufficient to address all of Student's areas of unique educational need, were properly drafted, and could be implemented in the general education classroom. There was no denial of a FAPE.

THE DISTRICT DID NOT DENY STUDENT A FAPE BY FAILING TO CONDUCT A BEHAVIORAL ASSESSMENT OR BY FAILING TO INCLUDE A SOCIAL SKILLS CLASS AND COUNSELING IN THE MARCH 2009 IEP.

18. If the IEP team determines that a pupil's behavior impedes his or her learning or that of others, the IEP team must "consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior." (Ed. Code, § 56341.1, subd. (b)(1).) When a pupil exhibits a serious behavior problem that significantly interferes with the implementation of the goals and objectives of the pupil's

IEP, the IEP team may develop a behavioral intervention plan. (Cal. Code Regs., tit. 5, § 3001, sub. (g).) In order to develop a behavioral intervention plan, the District must first conduct a functional analysis assessment (FAA). (Cal. Code Regs., tit. 5, § 3001, subd (g)(1).) The term "serious behavior problems" refers to behaviors which are "self-injurious, assaultive, or cause serious property damage or other severe behavior problems that are pervasive and maladaptive for which instructional/behavioral approaches specified in the student's IEP are found to be ineffective." (Cal. Code Regs., tit. 5, § 3001, subd. (ab).)

19. As discussed in Factual Findings 29 – 37 and 57 – 67 above, the District's March 2009 IEP was reasonably calculated to provide educational benefit to Student based on the knowledge the District possessed at the time of the meeting. At the time of the meeting, the District knew that Student had exhibited maladaptive behaviors in his early years in school and that Student also had serious behavior problems at home. However, the District's 2008 assessments, the observations conducted by the District's assessors, and the reports from the teacher and principal indicated that those behaviors were not occurring at school in Student's third or fourth grade years. Instead, Student behaved in class in the same manner as the typical third or fourth graders. Given the information that the District had, there was no need for the District to conduct a behavioral assessment or to include counseling or a social skills class in the proposed IEP. There was no denial of a FAPE.

DID THE DISTRICT'S PROPOSED MARCH 25, 2009 IEP FAIL TO OFFER STUDENT A FAPE BECAUSE IT FAILED TO INCLUDE DIRECT OT SERVICES FOR STUDENT?

20. Special education includes related services that may be needed to assist a pupil to benefit from specially designed instruction. (Cal. Code Regs., tit. 5, § 3001, subd. (ac).) Related services, which are also referred to as designated instruction and services (DIS services) in California, include "such developmental, corrective, and other

supportive services (including speech pathology…occupational therapy…) as required to assist an individual with exceptional needs to benefit from special education….” (Cal. Code Regs., tit. 5, § 3001, subd. (aa).)

21. As discussed in Factual Findings 45 – 48 and 73 – 74 above, the March 2009 IEP was reasonably calculated to meet Student’s needs with respect to OT. As Cahill explained in her assessment report and her testimony, Student did not have any serious OT needs for which he required assistance in order to benefit from special education. Instead, Student performed in the average or above average range on the tests that Cahill conducted. However, in light of the concerns raised by the parents and the minor concerns raised by the teacher with respect to sensory processing, it was appropriate for the IEP team to call for an OT consultation with the classroom teacher. There was no denial of a FAPE.

DID THE DISTRICT’S PROPOSED MARCH 25, 2009 IEP FAIL TO OFFER STUDENT A FAPE BECAUSE IT FAILED TO INCLUDE SUFFICIENT SPEECH AND LANGUAGE SERVICES FOR STUDENT?

22. As discussed in Legal Conclusion 20 above, a district may be required to provide speech and language DIS services if those services are required to assist a child with exceptional needs to benefit from special education. As stated above in Factual Finding 2, the District’s proposed offer called for Student to receive speech and language services as part of his special education. Student contends that the amount of speech and language services called for in the District’s offer were not sufficient to meet his needs.

23. As discussed in Factual Findings 2, 38 – 44 and 68 – 72 above, the evidence supports a finding that the speech and language services called for in the March 2009 IEP were sufficient to meet Student's needs. Whitmore's testimony on this issue was persuasive.

24. The District has met its burden of proving that the March 2009 IEP offered Student a FAPE from both a procedural and substantive point of view. The District followed the procedures set forth in the IDEA and California education law in formulating the IEP. The goals and objectives were appropriate and sufficient to address Student's unique needs. The placement and services called for in the IEP were reasonably calculated to address Student's unique needs and to provide him with educational benefit.

ORDER

The District's IEP of March 25, 2009 offered Student a FAPE. The District may implement that IEP for Student.

PREVAILING PARTY

Pursuant to Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. In accordance with that section the following finding is made: The District prevailed on all issues heard and decided in this case.

RIGHT TO APPEAL THIS DECISION

The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within 90 days of receipt of this Decision in accordance with Education Code section 56505, subdivision (k)

Dated: February 22, 2010

_____/s/_____

SUSAN RUFF

Administrative Law Judge

Office of Administrative Hearings