

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011010371

DECISION

Carla L. Garrett, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), heard this matter on June 13, 15, and 16, 2011, in Van Nuys, California.

Student's mother (Mother) represented Student, and attended all three days of hearing.

Lauri A. LaFoe, Attorney at Law, represented the Los Angeles Unified School District (District). District representative, Lisa Kendrick, Administrative Coordinator for District's Due Process Unit, attended the first day of hearing. Sandi Naba, Due Process Specialist, and Zach Ulrich, District's legal intern, attended the second day of hearing. Joyce Kantor, Due Process Specialist, attended the final day of hearing.

Student filed his request for due process hearing (complaint) on January 13, 2011. On February 24, 2011, and again on April 25, 2011, for good cause shown, OAH granted the parties' joint request to continue the due process hearing. On June 16, 2011, at the close of the hearing, the parties were granted permission to file written closing arguments by June 30, 2011. After the parties' timely filed their closing briefs, the matter was submitted and the record was closed. On July 20, 2011, the ALJ reopened the record and ordered Mother to provide, by July 25, 2011, evidence showing that she was the holder of Student's educational rights. On July 25, 2011, Mother submitted

documentation representing that she was the holder of Student's educational rights. As such, the record was closed on July 25, 2011.

ISSUES

1. Did District deny Student a free appropriate public education (FAPE) from January 13, 2009 through January 13, 2011, by:
 - (a) failing to offer Student an appropriate school placement;
 - (b) failing to offer Student deaf and hard of hearing (DHH) materials and services, including a DHH teacher and the use of total communication (signing as well as talking) in the classroom;
 - (c) failing to offer appropriate speech and language services;
 - (d) failing to offer appropriate occupational therapy (OT) services; and
 - (e) failing to notify Mother when school personnel wrote incident or accident reports regarding Student or when the school changed the type of equipment or assistance Student received.

FACTUAL FINDINGS

JURISDICTION AND BACKGROUND INFORMATION

1. Student is an 18-year-old young man, who, at all relevant times, resided within the boundaries of District, and is eligible for special education under multiple eligibility categories. Student is autistic, hearing impaired, cognitively delayed, and has attention deficit hyperactivity disorder (ADHD). Student is also vision impaired, and required lens implants in both eyes when he was 13-years-old.
2. From September 2004 to June 2008, Student attended Walter Reed Middle School (Reed Middle School) in a special day class (SDC) for students with mild to moderate disabilities, where he required a full-time one-on-one instructional aide for the deaf and the hard of hearing (DHH). While there, Student engaged in a number of

extreme behaviors, such as head banging, hitting himself, hitting others, spitting, throwing himself onto the ground, and throwing objects. Consequently, Student required a full-time one-on-one behaviorist to help manage his behaviors. Because Student's behaviors were extreme and pervasive, District offered Student placement at Leichman Special Education Center (Leichman) for the 2008-2009 school year. Leichman had considerable experience in managing students with disabilities who have extreme behavioral problems.

2008-2009 SCHOOL YEAR

3. In September 2008, when Student was 16-years-old, he began attending ninth grade at Leichman in a SDC for autistic students. At Leichman, where the student body was comprised of approximately 200 students who had disabilities, many with severe behaviors, Student had a full-time behaviorist, and a full-time DHH instructional aide.

4. Student was assigned to Deseree Gonzalez's SDC for the 2008-2009 school year. Ms. Gonzalez, who provided testimony at hearing, has been a teacher at Leichman for three years. She received her level-one teaching credential in 2010, and is working on her level-two teaching credential in moderate to severe disabilities. Prior, she was a District substitute teacher for one and one-half years. Ms. Gonzalez's SDC included 12 to 15 students, one special education aide, and seven to eight one-on-one aides assigned to various students in the class. When Student began attending her class in September 2008, he could do single digit addition and subtraction, write fairly legibly, participate in classroom activities, and had some computer skills. Because of his hearing impairment, combined with his refusal to wear his hearing aides for more than 30 minutes a day, she communicated with him using a method called "total communication." Total communication involves the simultaneous use of verbal speech and American Sign

Language. Ms. Gonzalez learned how to use American Sign Language in high school, where she took three years of sign language in lieu of taking a foreign language.

5. At hearing, Ms. Gonzalez explained that Student did very little signing. He usually used one word signs like "bathroom," "hurt," and "medicine." Whenever he signed the word "medicine" or "hurt", she would send Student to the nurse's office. Student's behaviorist, his DHH instructional assistant, or Ms. Gonzalez would accompany Student to the nurse's office. On the occasions in which she accompanied Student to the nurse's office, she never witnessed the nurse refusing to give Student his medication.

6. In Ms. Gonzalez's class, Student exhibited a number of behavioral problems. Specifically, Student spit, threw things off desks, pushed his desk or chair, bit himself, hit himself, and banged his head on objects around him.

FAA (September 2008 – November 2008)

7. Because of the extreme behaviors Student exhibited in middle school, as well as the behaviors Student began demonstrating in Ms. Gonzalez's class, District conducted a functional analysis assessment (FAA) of Student beginning in September 2008, and ending in November 2008. Behavior specialist, Laura Zeff, conducted the assessment, and observed Student in various locations on campus to determine whether Student engaged in the following targeted aggressive behaviors: (1) hitting adults and peers with an open hand or closed hand; (2) pinching others; (3) spitting; (4) biting himself; (5) biting others; (6) banging his hand against the table or wall; (7) hitting doors; (8) knocking down chairs; (9) throwing and/or banging the computer mouse; (10) breaking pencils; (11) tearing books or assignments; and (12) ripping his shirts. Ms. Zeff, who prepared a report on November 18, 2008, noted that in September 2008, Student's aggressive episodes would last, on average, 15 minutes; but by November 2008, his episodes would last no more than two minutes. Ms. Zeff concluded that Student engaged in aggressive episodes on an average of five to seven times a day, and that the

function of this behavior was to escape tasks or demands, to get attention from adults and peers, or to express his frustration when he had trouble communicating his needs.

8. Ms. Zeff recommended that Leichman staff provide Student with clear classroom and school-wide behavioral expectations; a clear, visual schedule of the day; social skills training on a regular and on-going basis; transition skills training; attention for appropriate behaviors; continued work on signing the word "break" or using a break card to communicate when he needed a break; and encouragement to increase his independence, such as giving him more physical space.

November 18, 2008 IEP

9. On November 18, 2008, the IEP team met for Student's annual review and to discuss the FAA report. The IEP team consisted of Mother, Ms. Zeff who conducted the FAA, Ms. Gonzalez, Pauline Furman, who was the principal at Leichman, and another behaviorist. The team noted that Student had a history of developmental delays and medical issues, and that Leichman had received all authorizations for medications to be administered to Student by trained personnel for the 2008-2009 school year. The team reviewed Student's present levels of performance and noted that Student had not met most of the goals developed while he was attending Reed. Specifically, Student failed to meet his vocational education, functional reading, functional math, behavior, and adaptive physical education (APE) goals. He did, however, meet his functional writing goal. The team concluded that Student required improvement in several areas, such as functional reading, where the team determined that Student needed to develop his vocabulary and increase his sight words, work on reading written phrases, follow simple written directions, and stay on task with minimal prompting. In the area of functional math, the team determined that Student needed to identify, distinguish, and become more familiar with real coins and bills.

10. In the area of behavior, the team noted that Student's aggressive and off task behaviors required constant intervention. Common daily behaviors included spitting, hitting, knocking articles from tables, hitting the table, breaking pencils, ripping paper, and requesting work avoidance activities. Student also exhibited emotional or physical outbursts when he became upset or frustrated. The team reviewed the FAA report, and noted that because Student's aggressive episodes had decreased in length since attending Leichman, he was making progress in his new setting.

11. The team also discussed Student's motor ability, and noted that although he did not meet his goal, Student could run the 50-yard dash, a shuttle run, balance on one foot, throw, bounce, kick, bat, and catch balls, hit hockey pucks with a hockey stick, and perform curl-ups. Student had made some progress in his adaptive physical education (APE) class, but his perceptual motor abilities directly impacted his ability to access a general education curriculum. As such, the team concluded that Student should continue receiving APE services.

12. The team concluded that Student continued to be eligible for special education services under the categories of multiple disabilities, encompassing hearing impairment, autism, and other health impaired. The team developed goals to address Student's deficits in the areas of functional reading, writing, and math, vocational education, and motor skills, as well as goals to address his behavioral issues.

13. District then offered Student continued placement at Leichman in the SDC for students with multiple disabilities, continued full-time services of two one-on-one aides. Specifically, the offer included one full-time one-on-one behaviorist, and one full-time one-on-one DHH instructional aide. The IEP also included APE services for 250 minutes a week, transportation services, a behavior support plan, and an individual transition plan. In addition, District offered to provide Student with instructional accommodations, such as a small structured classroom environment, a protected

structured campus, pre-teaching and re-teaching of material, frequent checks for comprehension, individual administration of state and District assessments, individualized and small group instruction, visual and physical cues, hand-over-hand assistance, simple and minimal step directions, extended wait time for responses, and positive verbal encouragement and reinforcement.

14. Mother agreed to all of the goals and services, but contended that a placement on a general education campus in a SDC would be a better fit for Student. Mother felt the students in Leichman's SDC were lower functioning than Student, and, consequently, Student was not learning as much as he should. Mother also felt that Student was not getting enough homework. Mother also did not agree with Student's eligibility category including a reference to "mental retardation;" however, this was corrected by a December 12, 2008 amendment to the November 18, 2008 IEP.

15. Leichman's principal, Ms. Furman, attended the November 18, 2008 IEP, and provided testimony at hearing. Ms. Furman has worked for District for over 37 years, and had been Leichman's principal for the last four years. Prior, she had been the principal of another District special education center for 14 years. She has an early childhood credential, a special education credential for mild-to-moderate disabilities, a general credential, an administrative credential, and an adult learning credential. Ms. Furman explained that, given her review of Student's records prior to his enrollment at Leichman, combined with what she understood about Student's developmental and cognitive delays, as well as his behavioral and medical issues, she believed Leichman was an appropriate placement for Student for the 2008-2009 school year. Leichman's small campus size of 200 students made it possible for Student to navigate the campus with relative ease, have his educational and behavioral needs met in a small group environment with a special education teacher and staff qualified to address his needs. Also, Student could have his medical needs met with Leichman's registered nurse.

16. At hearing, Ms. Gonzalez explained that she believed Leichman was an appropriate placement for Student for the 2008-2009 school year, because she and other Leichman staff were accustomed to dealing with the kind of behaviors Student exhibited, including his self-injurious behaviors. As such, it provided Student with a safe place, as Leichman had measures in place to address his behaviors, such as a token system to reinforce positive behaviors, as well as the accommodations noted in the IEP. Leichman also provided opportunities for Student to decompress on cushioned, full-size floor mat located in the classroom. As a result, Student had more opportunity to participate in class and have his academic needs met.

17. During winter break of the 2008-2009 school year, Student fell down at home, and hit his head and hip. Mother, who testified at hearing, took Student to the emergency room (ER) at UCLA Hospital. The ER doctor advised that Student did not suffer a brain injury, and that his hip, which had become stiff, would improve with movement. The ER doctor did not prescribe any medication, but instructed Mother to give Student Tylenol on an as-needed basis.

18. When Student returned to Leichman after winter break, Student could no longer walk unassisted. His gross and fine motor skills declined significantly. At hearing, Ms. Gonzalez explained that the change in his stability level had been substantial, as he not only had problems walking, he could hardly stand. Also, upon his return from winter break, he had two swollen black eyes. Leichman staff requested Mother to provide the school with information concerning the nature of Student's injury and his physical condition.

19. In February 2009, while Student was at school in the bathroom, Student suffered a prolapsed rectum as a result of excessive pushing to defecate. As a result, Student came home with bloody underwear.

April 2009 FBA

20. From April 2, 2009 to April 22, 2009, District conducted a functional behavior assessment (FBA) of Student, because Leichman staff was concerned about Student's self-injurious behavior. The assessor interviewed Ms. Gonzalez and Student's one-on-one aides, as well as reviewed Student's background information, including his school records. The target behaviors included Student hitting his head with an open or closed hand, biting himself, and banging his hand against a table or wall. The assessor observed Student in his SDC, on the playground, and other school environments on multiple occasions during various times of the school day. The assessor concluded that there were several reasons Student engaged in the targeted behavior. Specifically, Student had poor impulse control, and used the behavior to get the attention from the staff, and escape from tasks and activities. The assessor also concluded that Student's behaviors could result from Student's difficulty expressing his frustrations.

21. The assessor recommended: implementation of an individualized visual schedule indicating activities to be completed; opportunities for Student to practice waiting skills; access to highly desirable tangibles throughout the day; giving Student systematic warnings; providing Student with clear and simple instructions; providing Student with opportunities to make choices; reinforcing Student to ask for adult assistance; provide Student with positive reinforcement, visual cues, and transitional suggestions; fading the proximity of Student's aides to foster independence.

April 22, 2009 Triennial IEP

22. On April 22, 2009, the IEP team met for Student's triennial review. The attendees included Mother, Ms. Furman, Ms. Gonzalez, a District administrative designee, a general education teacher, a behaviorist supervisor, and Student's full-time one-on-one behaviorist. The team discussed Student's present level of performance in the area of health, and noted that since winter break, Student walked with an abnormal,

unsteady gait that required assistance, and that he was unable to stand unsupported. Student participated minimally in self-help skills, and required supervision in the areas of daily living activities and safety awareness. The team also discussed Student's present level of performance in the area of motor ability, and confirmed that pursuant to the administration of District's Special Schools Motor Assessment Scale, the APE Assessment Scale, Leichman's Physical Fitness Survey, and through teacher observation, Student's performance had decreased significantly since returning from winter break, and that he was having difficulty balancing on his own. Despite repeated representations from Mother that she would provide information from Student's doctor concerning Student's physical condition related to the injury he suffered over winter break, Mother had not provided the requested information.

23. The team also discussed Student's work samples, recorded observations, and functional assessments in the areas of functional reading, writing, and math. In the area of functional reading, the team noted that Student needed to learn how to follow two-step written directions with minimal prompting. In the area of functional writing, Student needed to print legibly during writing assignments with minimal prompting, and practice minimizing letters to a more appropriate size, while exhibiting proper on-task behavior. In the area of functional math, Student needed to practice matching coins and bills with minimal prompting.

24. In the area of behavior, the team noted that Student could communicate desired reinforcements and activities to staff and support team, sustain social interactions with familiar staff members, and show interest in his peers with physical interactions and communicating with them in sign language. In addition, Student demonstrated an ability to follow directions, classroom rules, and maintain on-task behavior, but was inconsistent depending on the day. Student continued to engage in negative behaviors on a daily basis. Specifically, Student would spit, hit, knock articles

from the table, tip over the trash can, hit the table, break pencils, rip paper, scream, tear clothing, engage in self-injurious behavior, and request work avoidance activities. Student also exhibited emotional or physical outbursts when he became upset or frustrated, and would engage in self-destructive and self-injurious behavior when experiencing stress, anger, frustration, or illness.

25. The team developed goals to address Student's deficits in the areas of functional reading, writing, and math, vocational education, communication, and motor skills, as well as goals to address his behavioral issues.

26. District then offered Student continued placement at Leichman in the SDC for students with multiple disabilities, as well as continued full-time services of a one-on-one behaviorist, and of a one-on-one DHH instructional aide. The IEP also included APE services for 250 minutes a week, transportation services, a behavior support plan, an individual transition plan, and an extended school year (ESY). In addition, District offered to provide Student with instructional accommodations, such as a small structured classroom environment on a protected campus, preferential seating, frequent comprehension questions to make sure he understood what was stated, sign language, visual and verbal cues, positive reinforcement and praise, sight words with pictures, worksheets with large letters and words, additional wait time for his response, small group instruction, and follow-up activities.

27. At hearing, both Ms. Gonzalez and Ms. Furman explained that they believed Leichman was an appropriate placement for Student given the nature of his disabilities. Both explained that the small and protected campus was designed to promote student safety, and the trained personnel at Leichman qualified to address Student's unique needs. Also, given the low teacher-to-student ratio, Ms. Gonzalez could provide Student with individualized academic instruction in a structured environment, help Student with achieving the classroom goals set forth in the IEP,

continue to communicate with Student using total communication, and provide Student with the accommodations and supports set forth in the IEP, including those to address his academic and behavior needs. In addition, Mr. Furman explained that given Leichman's nursing staff, which included a qualified registered nurse, Student could have his medical needs met as they related to the administration of medication or first aide.

28. Mother advised the IEP team that she would not consent to the IEP. She requested that Student be removed from Leichman, as she believed Student was medically endangered as the result of the school nurse's inaction. During the course of the school year, Mother had submitted to Leichman a number of letters requesting the nurse to administer cold medications, Tylenol, Benadryl, silver sulfadiazine, gas relief medication, eye medication, and anal cream. Mother believed that the school nurse had not been administering the requested medications to Student, especially his Tylenol. As such, Mother concluded that Student had been in pain, which caused him to engage in head-banging. Mother also believed Student would be better suited in a SDC on a general education campus, where Student could be around classmates who were higher functioning than his classmates at Leichman.

29. Leichman's full-time nurse, Beverly Bassada, provided testimony at hearing. Ms. Bassada, who has been a registered nurse for District for the last 23 years, has been working at Leichman for four years. She received her bachelor's degree in nursing, with an emphasis in critical care, and her school health credential from California State University at Los Angeles in 1981. Ms. Bassada explained that there are strict District guidelines for the administration of medication to students. Nurses are prohibited from administering any medication without physician authorization, which must include the name of the medication, the dosage, the length of time the child would require the medication, the exact times of day the child should receive the

medication, and any other pertinent information concerning the administration of the medication. Whenever she received any correspondence from Mother regarding a request for Ms. Bassada to administer medication, she would first check to determine if there was physician authorization on file to administer the requested medication. If there was no physician authorization, Ms. Bassada would either provide Mother with an authorization form for the doctor to complete, or would contact the doctor directly, and fax an authorization form to the doctor for him/her to complete, and return to her. From August 2008 through April 2009, Ms. Bassada had received a number of authorization forms from physicians for her to administer medications to Student to address his anal pain, itch, and inflammation, allergies, colds, pain, eye medication, skin tears, skin infections, and medication to reduce agitation. If Ms. Bassada ever needed clarification concerning the administration of medication, particularly after receiving a request from Mother to administer medication that was inconsistent with a physician's authorization, she would contact the physician, and request him/her to submit an authorization form that included the pertinent clarification. Ms. Bassada, without exception, administered all medications to Student in the manner in which the physician's ordered. She never refused giving Student medication if she had the authorization to give him medication, including pain medication. However, if Student was in pain and she did not have a physician authorization form, Ms. Bassada would contact Mother, and invite her to come to the school and administer the medication herself.

30. On May 5, 2009, when Leichman still had not received any information from Mother or from any of Student's doctors regarding Student's altered physical condition after returning to school from winter break, Ms. Bassada requested information about Student's physical status from Dr. Martin Anderson, who was one of Student's doctors at the UCLA Department of Pediatrics (UCLA). Ms. Bassada also

requested physician information about how to address Student's physical needs at school.

31. In May 2009, Jose Pallares, a behavior supervisor for District who supervised Student's one-on-one behaviorist, requested Mother to consult with Student's doctor about obtaining permission for Student to use a walker at school. Mr. Pallares, who testified at hearing, has been a District behavior supervisor for four years. He received his associate's degree in liberal arts from Valley College in 2008, and his bachelor's degree in anthropology from California State University at Northridge in 2010. He started working for District in 1998, and has held positions as a substitute special education trainee in an autism center and in a classroom for emotionally disturbed children. He also worked as a health care assistant. At hearing, Mr. Pallares explained that he requested the walker because Student needed the assistance of the behaviorist and the DHH aide, collectively, to help Student access his environment, and move across campus. When moving Student from one place to another, it was a slow, arduous process that resulted in the physical exhaustion of the aides. Student, who was dead weight when the aides assisted him, compounded the problem by having, on a daily basis, multiple tantrums during the process, where he would attempt to bite the aides, and throw himself onto the ground.

32. On May 13, 2009, Dr. Anderson faxed a letter to Leichman requesting that Student be provided with a walker at school until Student's insurance approved physical therapy for Student. Leichman staff began assisting Student to walk with a walker. However, Student continued to demonstrate problems walking even with a use of a walker. He needed constant supervision, and he often impeded the process by engaging in tantrums designed to hurt the aides or himself. Consequently, to keep Student and themselves safe, the aides, in July 2009, after consulting Ms. Bassada, began using a wheelchair to transport Student on an as-needed basis. The wheelchair included a

seatbelt to keep Student from falling out or throwing himself to the floor. Leichman staff did not advise Mother of the aides' decision to use a wheelchair.

2009-2010 SCHOOL YEAR

33. Student was reassigned to Ms. Gonzalez's SDC for the 2009-2010 school year. Like in the previous school year, Ms. Gonzalez's SDC included 12 to 15 students, one special education aide, and seven to eight one-on-one aides assigned to various students in the class. In addition, Student continued to receive full-time one-on-one services from his behaviorist, and DHH instructional aide. Student continued to engage in the same type of behaviors he did during the 2008-2009 school year.

Physical Therapy Assessment

34. As of September of 2009, Leichman staff became more concerned about Student's mobility issues, and Mother had yet to provide Leichman with medical information concerning Student's physical condition resulting from his fall during the winter break in the prior school year. Consequently, with Mother's consent, District conducted a school-based physical therapy assessment on September 9, 2009. The assessment, which consisted of interviews of Student's teachers and one-on-one aides, as well as clinical and school observations, showed that Student had active joint range and muscles strength to be able to use a walker with close adult supervision. Student had active movement in his legs in a sitting position in a wheelchair, and demonstrated good standing and walking postures with a support of a walker. He was able to sit on a common classroom chair demonstrating functional sitting balance, and he was able to demonstrate normal muscle tone at rest and when walking with a walker. He could stand momentarily to transition from sitting to standing with a walker, and could stand from his wheelchair and hold onto a walker with supervision.

35. The physical therapy assessor noted that, overall, Student demonstrated poor dynamic standing balance and walking balance, and that he had poor “righting reactions” when standing or walking, due to his poor balance. To address that need, the assessor noted that Student was provided with a walker at school, and could walk using the walker with close adult supervision. Student was also provided with a loaner school wheelchair for mobility to be used with adult assistance. Mother was not aware that Leichman had been providing Student with a wheelchair to address his mobility issues.

36. The assessor declined to recommend school-based physical therapy, because Student’s medical diagnosis regarding his mobility issues was unknown. As such, the assessor recommended discontinued use of the wheelchair until the school received a medical diagnosis.

Physician Communication

37. On September 14, 2009, Student’s physician, Dr. Robert Morris, who was responsible for Student’s overall care, sent Leichman an authorization form requesting that the school discontinue administering all medications to Student. Dr. Morris advised Ms. Bassada that he was concerned about Student suffering from potential liver toxicity.

38. On September 23, 2009, Ms. Bassada sent Dr. Morris an email advising that Student had been repeatedly biting at an open wound on his hand, even when the wound was covered with the prescribed medication and gauze. Ms. Bassada further advised that she had begun placing a vinyl glove on Student’s hand, over the medication and gauze, to ensure that the medication remained on the wound, and to discourage Student from biting his hand. At hearing, Ms. Bassada explained that she wanted to facilitate Student’s healing, and to reduce any discomfort he could be feeling from the open wound. On the same day, Dr. Morris sent a reply email to Ms. Bassada stating that it appeared that she was doing everything that had the best probability of keeping Student from biting his hand.

November 2, 2009 Amendment IEP

39. On November 2, 2009, the IEP team met for the purpose of discussing the physical therapy assessment. The attendees included Mother, the physical therapist who assessed Student, Ms. Gonzalez, Ms. Furman, and a behaviorist. After the physical therapist presented her report, Mother advised the team that she did not know that the school had been using a wheelchair for Student. She disagreed with the use of a walker or a wheelchair, as she, pursuant to instructions from UCLA, had been walking Student one and one-half miles every day for the last three weeks, by holding Student's shirt in the back. She felt that Student was fully capable of walking without the use of a walker, and felt that a wheelchair was completely unnecessary. She also believed that the wheelchair hindered Student's ability to strengthen his legs to improve his mobility. Mother advised that she would provide information from UCLA relating to physical therapy which Student had recently received. The physical therapist advised that she would reevaluate Student after she received information from UCLA.

40. The team also discussed Student's negative behaviors, and noted that the frequency of his negative behaviors had been increasing. Mother requested another FAA of Student. District agreed, and Mother signed an assessment plan. Mother indicated on the assessment plan that she wanted Student to have OT services to address his sensory issues. District also agreed to conduct an OT assessment to determine whether Student required OT services.

November 2009 FAA

41. On November 23 and 30, 2009, school psychologist, Janet Robertson, conducted a FAA of Student, which resulted in a report dated December 17, 2009. Ms. Robertson, who provided testimony at hearing, has been a school psychologist for 23 years. She received her bachelor's degree from California Polytechnic State University in social sciences in 1974, and her master's degree from California State University at

Bakersfield in education in 1977. She received a second master's degree in education, with an emphasis in home economics, from California State University at Northridge in 1978. She received a third master's degree from Loyola University in educational psychology, as well as her credential in school psychology in 1988.

42. Ms. Robertson explained that Leichman staff was concerned about Student's behaviors during the school day. Specifically, Student repeatedly banged his head on hard objects; hit his head and face with an open or closed hand; bit his left hand, upper arms, and forearm; fell to the ground; knocked over items; and grabbed his anus area. Leichman staff wanted Ms. Robertson, through her FAA, to provide them with additional information to assist them in addressing Student's behavior needs.

43. In preparation for the FAA, Ms. Robertson examined Student's behavioral history. Specifically, she reviewed the FAA report of November 2008, as well as one conducted in April 2003 when Student was in the fourth grade. She also reviewed an April 2009 report from the nonpublic agency that provided behavior services to Student, as well as psychoeducational evaluations dating back to 1996. Ms. Robertson also interviewed Mother, Student's one-on-one behaviorist, special education teacher, and Student's one-on-one DHH instructional aide. Ms. Robertson also reviewed Student's cumulative file, and previous IEPs.

44. After observing Student, Ms. Robertson concluded that Student engaged in self-injurious behaviors, such as head banging and biting himself, to obtain sensory input, to avoid or escape tasks being asked of him, and to gain attention from adults. Ms. Robertson further concluded that the recommendations from the November 2008 FAA were still appropriate for Student, and recommended that Leichman staff continue to provide Student with clear classroom and school-wide behavioral expectations. She also recommended that Leichman staff provide Student with a visual schedule of his day, a plastic sheet on the desk to protect it from Student's frequent spitting, and

laminated picture cards to decrease frustration when he could not quickly communicate his needs. Finally, Ms. Robertson recommended that Student's peers be encouraged to sit with him during nutrition or lunch to encourage interaction.

45. At hearing, Ms. Robertson explained that it was her belief that Leichman was meeting Student's needs at the time of her assessment, because the school individualized each child's program based on the curriculum level at which a child was performing, and implemented the program on Leichman's small campus, in a small class, in a protective environment. In addition, Leichman provided Student with an opportunity to take frequent breaks, provided a special physical education program, as well as opportunities to go to the library, art class, and to work on a computer. As such, she concluded Leichman could meet the academic, social, and emotional needs of Student.

OT ASSESSMENT

46. After Mother signed the assessment plan in November 2009, Andrew Kukla, who was a District OT specialist, conducted an OT assessment of Student. Mr. Kukla's assessment included clinical and classroom observations, a teacher interview, and a review of Student's work samples. Mr. Kukla concluded from the assessment results that Student had sufficient range of motion throughout his upper extremities for Student to access his educational curriculum. Specifically, Mr. Kukla found that Student had adequate postural stability, endurance, and muscle strength, and he was able to sit at his classroom desk for extended periods of time. He was also able to manipulate classroom materials with adequate functional ability, and demonstrated adequate visual perceptual abilities as it related to his curriculum. He was able to discriminate between shapes of objects, identify a same color object from a varied background with good accuracy, and demonstrate adequate bilateral coordination when writing. In addition, Student was able to color and cut with good accuracy for successful participation in

classroom activities. He could also write his first and last name with functional legibility. Student demonstrated no major seeking or avoiding behaviors related to sensory modulation concerns, and demonstrated adequate sensory processing to successfully participate in his educational environment.

47. Mr. Kukla noted that school-based OT considered the underlying motor components that impacted fine motor, visual motor, and sensory motor skills that fell outside the teacher's area of expertise, which could prevent a student from accessing his or her curriculum. In Student's case, Mr. Kukla concluded that Student had the necessary underlying components to successfully participate in the educational curriculum. Consequently, Mr. Kukla recommended no OT services for Student, as Student presented with no need in any areas addressed by school-based OT.

January 12, 2010 Amendment IEP

48. On January 12, 2010, the IEP team met to discuss the FAA and OT assessments. The attendees included Mother, Ms. Furman, Ms. Gonzalez, Ms. Robertson, Mr. Kukla, and a behaviorist. Ms. Robertson presented her report, followed by Mr. Kukla. When Mr. Kukla explained that he would not be making any recommendations that Student receive OT services, Mother became insistent that Student receive sensory integration services in a clinic setting. The team then agreed that Student would receive OT consultation services until Student's annual review in April. At hearing, Ms. Furman explained that consultation services could be delivered in a number of formats, such as the OT specialist speaking to Student's teachers, his aides, or working directly with the Student.

49. At the meeting, Mother again expressed that Student should not, under any circumstances, be walking with a walker or transported in a wheelchair. Ms. Gonzalez reported that Leichman staff had stopped using mobility equipment to assist

Student. Instead, Leichman staff had been using a gait belt to help Student walk, pursuant to instructions Leichman had recently received from UCLA.

50. On March 20, 2010, Student had emergency eye surgery to correct a detached retina in his right eye. The surgeon advised Mother that Student's retina had become detached as a result of severe trauma Student had suffered.

51. In April 2010, Mother requested Leichman to provide her with a copy of all incident and behavioral reports concerning Student to determine whether Student suffered any trauma at school. Approximately three days later, District provided Mother with a copy of approximately 72 incident reports dating from September 2009 to April 2010. These reports set forth multiple incidents of Student banging his head against floors, bus windows, floor mats, desks, walls, and lawns. Also, the reports noted incidents of Student biting himself or others, hitting himself, spitting, and adults having to physically restrain him. Mother claimed to have had no prior knowledge of these specific incident reports, as District never provided her with a copy of them before she specifically requested them to do so. Mother concluded that Student suffered a detached retina from as a result of the head banging he exhibited at school. Mother further concluded that Student banged his head because he was in pain, and the nurse refused to administer Tylenol to Student on at least a dozen occasions from January 2009 to April 2009. Mother also concluded that the nurse had not been applying Student's anal cream, which, she believed, resulted in Student's prolapsed rectum in February 2009.

52. At hearing, Ms. Bassada explained that the copy of incident reports that Mother received were internal documents for administrative record keeping purposes, and not generally distributed to parents without a specific request. However, Ms. Bassada explained that whenever Student, or any other pupil, required first aid as a result of an injury suffered at school, she would send a first aid notice home to Mother

on the day of the injury, and, if the injury was severe, she would call the parent. In Student's case, Ms. Bassada sent first aid notices to Mother for injuries such as repeated self-inflicted bite wounds on his hands and fingers, nose bleeds, prolapsed rectum, open wounds enlarging on hand, multiple areas of redness and discoloration resulting from Student pulling at his skin, self-inflicted scratch marks on his face and knuckles, open wounds on his upper arm, self-inflicted injury to a pre-existing open wound on his hand, self-inflicted skin wound over healing site of a previous injury on the left forearm, broken skin on his left and right arms, self-inflicted open wounds over old shoulder and forearm wounds, a superficial cut above left outer eye brow as a result of throwing himself onto the floor, and puncture wounds inside his right lower lip from Student hitting his mouth on a chair. She also called Mother when Student had suffered a significant injury, or had become ill at school.

May 25, 2010 IEP

53. On May 25, 2010, the IEP team met for the purpose of conducting Student's annual review. The attendees included Mother, Ms. Gonzalez, Ms. Furman, a DHH supervisor, a behaviorist, and a behaviorist supervisor. The team noted that Student met his math goal, but did not meet his communication, APE, behavior, functional writing, and functional reading goals. The team also noted that Student's undesirable behaviors got in the way of him completing his some of goals. However, when his behavior and health allowed, Student, in the area of functional reading and communication, could identify, recognize, and sign all letters of the alphabet. In addition, Student understood approximately 100 signs, and could independently sign "bathroom," "paper," "medicine," "no," "more," "computer," "blue," "eat," "candy," "cake," "stand," "trashcan," "please," "push," and other words without prompting. Student also showed interest in interacting with peers and staff in and out of the classroom, and was able to communicate his needs and wants. However, Student needed to improve in

following two-step written directions, and utilize the sign “no work,” or “break,” instead of exhibiting undesirable behavior (i.e., yelling, pushing things off the table, falling onto the ground, etc.) when working on a non-preferred task.

54. In the area of functional math, Student could identify, write, and sign the numbers 1 through 50, sequence numbers up to 50, identify the number of objects, identify basic shapes, and perform single digit addition and subtraction problems. However, Student needed to improve in following a picture/word sequence schedule of his daily activities, and the approximate time of the activities. In the area of functional writing, Student could print all letters of the alphabet and the numbers 1 through 50. The team noted that Student could hold a pencil correctly, but since his accident during winter break, he demonstrated difficulty applying pressure to the page. He could also print words and simple sentences during classroom and individual work time, and practice writing his personal information such as his name, his mother’s name, his address, and telephone number. However, Student needed to improve in printing legibly, minimizing letters to a more appropriate size, and exhibit on-task behavior.

55. In the area of behavior, Student had shown improvement in refraining from spitting on himself, the table, the floor, or others, and spitting instead into a trashcan. He had also shown improvement in refraining from off-task behavior, and requesting bathroom and health office breaks 60 percent less frequently than in the previous year. However, Student still engaged in a number of undesirable behaviors on a daily basis, such as hitting, knocking articles from tables, tipping over the trashcan, hitting the table, ripping paper, screaming, biting himself, banging his head, requesting work avoidance activities, and attempting to injure others.

56. In the area of perceptual motor skills, Student could, when given sufficient time, walk/run the 50-yard dash with assistance, throw, bounce, kick, bat, and catch

balls, hit hockey pucks with a hockey stick, and perform two curl-ups. Student only made slight improvement due to his absences in APE class.

57. The team developed goals in the areas of functional reading, math, and writing, communication, behavior, and APE. District then offered Student continued placement at Leichman in the SDC for students with multiple disabilities, continued full-time one-on-one services of a behaviorist and a DHH instructional aide, APE services for 250 minutes a week, transportation services, a behavior support plan, an individual transition plan, and an extended school year (ESY). In addition, District offered to continue providing Student with instructional accommodations, such as a small structured classroom environment on a protected campus, preferential seating, frequent comprehension questions to make sure he understood what was stated, sign language, visual and verbal cues, positive reinforcement and praise, sight words with pictures, worksheets with large letters and words, additional wait time for his response, small group instruction, and follow-up activities.

58. At the meeting, Mother expressed her concern about Student's ability to only sign 100 words, and that the students were not going outside everyday for recess and lunch, which impacted Student's behaviors. At hearing, Ms. Gonzalez explained that Student's 100 words was an improvement from the number of words Student could sign when he entered Leichman. Also, on a typical school day, the children, including Student, would go outside during nutrition, lunch, and during PE, depending on weather. In addition, on those occasions when Student became agitated, or requested nutrition early, Student's aides would take him outside.

59. At the meeting, Mother also complained about not having knowledge of the incidents of injury concerning Student, especially his head banging, as revealed in the incident reports she had recently received from District. Ms. Furman explained at hearing that Student had been engaged in head banging since he attended Reed

Middle School. Student's head banging was a continuing problem, which the team, including Mother, had been trying to address through behavior interventions. Ms. Furman further explained that, regarding incident reports, the policy was that the person who witnessed the incident was required to prepare an incident report, and then submit the report to Leichman's administrative assistant. The administrative assistant would then log the report, and if the incident involved a serious injury, the nurse would be advised. The purpose of the incident reports was for the school to maintain a record of all injuries or incidents involving their students.

60. At hearing, Student's DHH instructional aide, Mario Cristales, provided testimony. Mr. Cristales has been Student's DHH instructional aide for the last five years, including the time Student attended Reed Middle School. Prior, he worked for eight years at Mulholland Middle School for deaf and hard of hearing students. In order to become a DHH instructional aide, he had to take and pass a proficiency test. As Student's DHH instructional aide, his duties included signing to Student to help him access the curriculum, and to communicate with others. Also, his duties included riding the school bus with Student from his home to school and back every school day. During those times, he regularly communicated with Mother regarding Student's school day, and would report incidents where Student banged his head, which was often, as well as engaging in other self-injurious behaviors, such as biting himself, hitting himself, and falling onto the floor. Whenever Student engaged in self-injurious behavior, including head banging, he would take Student to the nurse's office. Student did not receive medication every time Mr. Cristales accompanied Student to the nurse's office. Mr. Cristales also completed incident reports and submitted them to the administration when he witnessed Student engaging in injurious behavior.

61. Mother advised the team that she had explored other placement options she felt were more appropriate to address Student's needs. Specifically, Mother visited

Taft High School (Taft), which had a DHH program with an itinerant teacher, DHH interpreters, and regular DHH teachers. Also, the Taft program employed total communication when interacting with the students. Mother also visited some non-public schools (NPS) including the Era Center which had a DHH program. In addition, Mother visited Student's home school, North Hollywood High School, which had a special day class (SDC) that Mother felt Student could attend, and required no bus ride. Finally, Mother looked at Grant High School, which had a vision teacher who had experience working with children with hearing loss.

62. At hearing, both Ms. Gonzalez and Ms. Furman advised that they continued to believe that Leichman was an appropriate placement for Student given the nature of his disabilities, the small and protected campus designed to promote student safety, and the trained personnel at Leichman qualified to address Student's unique needs. Also, given the low teacher-to-student ratio in the SDC, Student could receive individualized academic instruction in a structured environment, with accommodations and supports designed to address his needs, including his academic, social, and behavior needs. Moreover, Ms. Furman believed that it would not be appropriate to place Student on a general education campus, such as the ones suggested by Mother, as those campuses were too large, had five times the number of students than Leichman, and could result in greater risk of injury for Student. In sum, Ms. Furman persuasively concluded that a general education campus would not be safe for Student given his physical disabilities, and could not offer the level of individualized or small group instruction that Student needed to address his significant academic and behavioral needs.

2010-2011 SCHOOL YEAR

63. Student was assigned to Lisa Pchakjian's autism-specific SDC for the 2010-2011 school year. Ms. Pchakjian's SDC included 12 to 15 students, one special education

aide, and seven to eight one-on-one aides assigned to various students in the class. Like in the previous school year, Student had a full-time behaviorist, and a full-time DHH instructional aide.

64. Several days after the commencement of the 2010-2011 school year, Student had a second emergency surgery to correct a detached retina in his right eye. Mother initially believed that Student's detached retina occurred as a result of trauma Student suffered at school, but conceded it could have happened elsewhere, as school had only been in session for a few days. Student did not return to school until approximately November 1, 2010.

65. At hearing, Ms. Pchakjian provided testimony. Ms. Pchakjian began a teaching internship at Leichman in October 2007, and completed it in the spring of 2009. She received her bachelor's degree in liberal studies at California State University at Long Beach in 2007. She completed her teaching credential program at California Lutheran University in 2009, and holds a credential for moderate to severe disabilities. Ms. Pchakjian explained that it was difficult to establish a consistent routine with Student, because he was frequently absent from school. From September 15, 2010 to January 12, 2011, Student missed 40 days of school, not including holidays and winter break. As a result, it was difficult to monitor Student's academic progress, especially in the areas of vocabulary and object identification. It was also difficult to note whether Student had made behavioral progress, but Ms. Pchakjian had witnessed Student engaging in self-injurious behavior, such as biting his hand.

66. In her class, Student would not wear his hearing aides for more than two minutes a day. Ms. Pchakjian communicated with Student through total communication. Although Ms. Pchakjian had not received professional sign language training, she had enough functional sign language at a level where most of her students were, including

Student. On those occasions she needed assistance with a sign, she asked Student's DHH instructional assistant for help.

67. Ms. Pchakjian believed that Leichman was an appropriate placement for Student, because she believed that the school was like one big family, where the staff knew all of the students, the staff worked together, and collectively looked out for the students' needs.

LEGAL CONCLUSIONS

1. As the petitioning party, Student has the burden of persuasion on all issues. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].)

2. Mother contends that, from January 13, 2009 to January 13, 2011, District denied Student a FAPE by failing to offer him with an appropriate placement. (Issue 1(a).) Specifically, Mother alleges that Student was more advanced in his SDC at Leichman than his classmates, and was, therefore, missing out on educational opportunities that he could have been receiving at a SDC on a general education campus with higher functioning students. In addition, Mother alleges that Student was endangered at Leichman because the nurse had repeatedly refused to administer medication to Student, including pain medication. Mother contends that as a result, Student, who engaged in head-banging when he was in pain, suffered a detached retina, which resulted in emergency surgery in March 2010. Mother further contends that District denied Student a FAPE by failing to provide Student with DHH materials and services, including a DHH teacher, and the use of total communication in the classroom. (Issue 1(b).) Moreover, Mother alleges that District denied Student a FAPE by failing to offer him speech and language services (Issue 1(c)) or OT services to address his sensory needs. (Issue 1(d).) Finally, Mother contends that District denied Student a FAPE by failing to advise her when school personnel wrote incident or accident reports regarding Student or when the school began using a wheelchair to transport Student.

(Issue 1(e).) District disagrees and contends that it offered Student an appropriate placement and services, and appropriately advised her of incidents involving Student. In addition, District's use of a wheelchair was designed to keep Student safe, and did not result in a deprivation of educational benefit.

APPLICABLE LAW

3. California special education law and the Individuals with Disabilities Education Act (IDEA) provide that children with disabilities have the right to a FAPE that emphasizes special education and related services designed to meet their unique needs and to prepare them for employment and independent living. (20 U.S.C. § 1400(d); Ed. Code § 56000.) FAPE consists of special education and related services that are available to the child at no charge to the parent or guardian, meet the standards of the State educational agency, and conform to the student's individual education program. (20 U.S.C. § 1401(9).) "Special education" is defined as "specially designed instruction at no cost to the parents, to meet the unique needs of a child with a disability...." (20 U.S.C. § 1401(29).) California law also defines special education as instruction designed to meet the unique needs of individuals with exceptional needs coupled with related services as needed to enable the student to benefit fully from instruction. (Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective and supportive services as may be required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26).) In California, related services are called designated instruction and services (DIS), which must be provided if they may be required to assist the child in benefiting from special education. (Ed. Code, § 56363, subd. (a).)

4. In *Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 200 [102 S.Ct. 3034] ("*Rowley*"), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational

benefit to” a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to “maximize the potential” of each special needs child “commensurate with the opportunity provided” to typically developing peers. (*Id.* at p. 200.) *Rowley* also made clear that the IDEA does not provide for an “education...designed according to the parent’s desires.” (*Id.* at p. 207.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to “confer some educational benefit” upon the child. (*Id.* at pp. 200, 203-204.)

5. In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district’s proposed program. (See *Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1307, 1314.) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Ibid.*) For a school district’s offer of special education services to a disabled pupil to constitute a FAPE under the IDEA, a school district’s offer of educational services and/or placement must be designed to meet the student’s unique needs, comport with the student’s IEP, and be reasonably calculated to provide the pupil with some educational benefit in the least restrictive environment. (*Ibid.*)

6. School districts are also required to provide each special education student with a program in the least restrictive environment. In order to provide the least restrictive environment, school districts must ensure, to the maximum extent appropriate, that children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature and the severity of the disability of the child is such that education in regular classes with the use of

supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); Ed. Code, § 56031; 34 C.F.R. § 300.114(a) (2006).)

7. To determine whether a special education student could be satisfactorily educated in a regular education environment, the Ninth Circuit Court of Appeals has balanced the following factors: (1) "the educational benefits of placement full-time in a regular class," (2) "the non-academic benefits of such placement," (3) "the effect [the student] had on the teacher and children in the regular class," and (4) "the costs of mainstreaming [the student]." (*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*) [adopting factors identified in *Daniel R.R. v. State Board of Ed.* (5th Cir. 1989) 874 F.2d 1036, 1948-1050]; see also *Clyde K. v. Puyallup School Dist. No. 3* (9th Cir. 1994) 35 F.3d 1396, 1401-1402 [applying *Rachel H.* factors to determine that self-contained placement outside of a general education environment was the least restrictive environment for an aggressive and disruptive student with attention deficit hyperactivity disorder and Tourette's Syndrome.].) If it is determined that a child cannot be educated in a general education environment, then the least restrictive environment analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (*Daniel R.R. v. State Board of Ed., supra.*, 874 F.2d at p. 1050.)

8. The continuum of program options includes, but is not limited to: regular education; resource specialist programs; designated instruction and services; special classes; nonpublic, nonsectarian schools; state special schools; specially designed instruction in settings other than classrooms; itinerant instruction in settings other than classrooms; and instruction using telecommunication instruction in the home or instructions in hospitals or institutions. (Ed. Code, § 56361.)

9. An IEP is evaluated in light of the information available to the IEP team at the time it was developed; it is not judged in hindsight. (*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 *Fuhrman v. East Hanover Bd. of Education* (3d Cir. 1993) 93 F.2d 1031, 1041.)

Whether a student was denied a FAPE must be evaluated in terms of what was objectively reasonable at the time the IEP was developed. (*Ibid.*)

10. An educational agency is required to give written notice to the parents of a child with a disability when it proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child, or when it refuses to initiate or change the identification, evaluation, or the educational placement of the child or the provision of FAPE to the child. (34 C.F.R. § 300.1503(a).)

11. The methodology to be used to implement an IEP, even IEPs for children with autism, is left up to the district's discretion so long as it meets a student's needs and is reasonably calculated to provide some educational benefit to the child. (See *Rowley*, 458 U.S. at p. 208; *Adams v. State of Oregon*, 195 F.3d at p. 1149; *Pitchford v. Salem-Keizer Sch. Dist.* (D. Or. 2001) 155 F.Supp.2d 1213, 1230-32; *T.B. v. Warwick Sch. Comm.* (1st Cir. 2004) 361 F.3d 80, 84.)

12. The definition of a FAPE requires that special education and related services be provided in conformance with a child's IEP. (See 20 U.S.C. § 1401(9).) However, to amount to a denial of FAPE, the failure to implement the IEP must be "material," i.e., the services actually provided to the child must fall "significantly short of the services required by the IEP." (*Van Duyn v. Baker School District 5J* (9th Cir. 2007) 502 F.3d 811, 822.) Minor discrepancies between the IEP and the special education and related services actually provided do not give rise to a denial of FAPE. (*Ibid.*)

ISSUE 1(A) - PLACEMENT

13. Mother asserts that in Student's IEPs between January 13, 2009 and January 13, 2011 (i.e., the April 22, 2009, November 2, 2009, January 12, 2010, and May 25, 2010 IEPs), District should have offered Student a placement on a general education

campus in a SDC, with students who were higher functioning than the ones at Leichman. However, Mother presented absolutely no evidence to support this position. Specifically, Mother presented no evidence about Student's academic abilities, the cognitive abilities of other students in the Leichman SDC, or the functional abilities of students in a SDC on a general education campus. She also presented no evidence demonstrating that, as a rule, the functional level of other students impacted Student's ability to access his curriculum.

14. Overall, a determination of whether a district has placed a pupil in the least restrictive environment (i.e., a general education setting) involves the analysis of four factors: (1) the educational benefits to the child of placement full time in a regular class; (2) the non-academic benefits to the child of such placement; (3) the effect the disabled child will have on the teacher and children in the regular class; and (4) the costs of mainstreaming the child. (See *Rachel H.*, *supra*, 14 F.3d at p. 1404.) Regarding the first factor, although the parties presented no evidence concerning the dynamics of a general education class, the evidence clearly established through the credible testimony of Ms. Gonzalez, Ms. Furman, Ms. Robertson, and Ms. Pchakjian, as well as the assessment results of the FAAs and FBA, that Student, in order to address his extreme behavioral challenges and to access the curriculum, required the specialized teaching methods and small group instruction by qualified special education teachers, particularly in a SDC setting. Specifically, Student required substantial assistance in addressing his self-injurious behaviors, such as head banging, hitting himself, biting himself, and throwing himself onto the floor, as well as assistance in addressing his functional reading, writing, math, and communication skills. Given the extent of Student's needs, it is reasonable to conclude that Student's receipt of educational benefit in a general education setting would have been limited, at best.

15. Regarding the second *Rachel H.* factor, Student could receive a non-academic benefit of interacting with his peers, giving Student more opportunity to practice his socialization skills. However, the third factor, specifically the effect Student's full time presence would have on the teacher and children in the regular class, poses several problems. The evidence showed that Student's behavioral problems were quite extensive and disruptive. Specifically, in addition to engaging in self-injurious behaviors, Student would hit and bite others. Moreover, according to the credible testimony of Ms. Furman, a larger general education campus with nearly five times the number of students than at Leichman, could expose Student to greater risk of injury. Such factors would have required the staff in a general education setting to focus a significant amount of time and resources on Student to keep him safe and keep the other students in the class safe. Consequently, Student's presence could result in him taking away significant teacher attention from the other students in the class.

16. Finally, regarding the fourth *Rachel H.* factor, neither party introduced any evidence demonstrating the costs associated with educating Student in a general education setting versus a special education setting. Weighing the above factors, which show that the only benefit to Student of a general education placement is social, a general education placement for Student would not be appropriate.

17. The evidence further showed that at the time the team developed Student's IEPs between January 13, 2009 and January 13, 2011, District offered Student an appropriate placement, given the extent of Student's disabilities. Specifically, District offered Student continued placement in the Leichman SDC for Students with autism. The evidence established, given the extent of Student's behavioral and academic challenges, that the Leichman SDC could provide Student with instructional accommodations, such as a small structured classroom environment on a protected campus, preferential seating, frequent comprehension questions to make sure he

understood what was stated, sign language, visual and verbal cues, positive reinforcement and praise, sight words with pictures, worksheets with large letters and words, additional wait time for his response, small group instruction, and follow-up activities. The credible testimony of Ms. Gonzalez and Ms. Furman, as well as Student's lack of achievement on his academic goals, such as his functional reading and math and behavioral goals, established that Student required a setting with a smaller environment in order to address those deficits, such as that offered in the Leichman SDC. The Leichman SDC, which generally included no more than 15 students, a special education teacher, a special education assistant, and had a lower teacher-to-student ratio than could have been provided elsewhere. The Leichman SDC provided more opportunities to give Student individualized attention should he require it, and to work on Student's goals. Also, the IEP teams, with the guidance of the FAA and FBA results, developed goals and strategies to help Student address his behaviors in the Leichman SDC. Moreover, the IEPs provided Student with a full-time one-on-one behaviorist and DHH instructional assistant to help him access his curriculum, which could be accommodated in the Leichman SDC. Finally, the Leichman placement provided a full-time registered nurse to address Student's medical and first aid needs, which, given the extent of his self-injurious behaviors, was necessary.

18. Mother's contention that the placement was inappropriate because the nurse had endangered Student fails. Specifically, Mother alleged that Ms. Bassada refused to administer medication to Student, particularly his pain medication, which resulted in Student banging his head, causing his retina to become detached. Mother further alleged that because Student's retina had become detached, he missed two straight months of school, which impeded his academic progress. However, Mother failed to present any evidence demonstrating that Ms. Bassada had inappropriately withheld medication. On the contrary, the credible testimony of Ms. Bassada

demonstrated that she only administered medication pursuant to the instructions on the physician's authorization forms, and even contacted Student's physicians requesting them to submit clarifying authorization forms when necessary. At one time, Ms. Bassada contacted Student's doctor to confirm that she could take measures to keep Student's wounded hand covered with a vinyl glove over the gauze and medication the doctor prescribed, in order to keep Student from biting at the wound. Ms. Bassada testified that she wanted to facilitate Student's healing, and reduce any discomfort he could be feeling from the open wound. Ms. Bassada also credibly testified that if she believed Student was in pain, but had no authorization to administer pain medication to Student at the time Student came to her office, she would contact Mother and invite her to come to the school and administer the medication.

19. Moreover, case authority requires that an IEP, including its offer of placement, be evaluated in terms of what was objectively reasonable at the time the IEP was developed. (See *Adams, supra*, 195 F.3d at p. 1149; *Fuhrman, supra*, 93 F.2d at p. 1041.) In other words, the placement offer must not be judged in hindsight. (*Ibid.*) When the team developed the IEPs between January 13, 2009 and January 13, 2011, there was no evidence demonstrating that the team knew of any facts suggesting that any District staff had compromised Student's health. On the contrary, the evidence shows that, at the time the team developed each IEP between January 13, 2009 and January 13, 2011, it considered Student's health status. Notably, at the April 22, 2009 IEP meeting, the team discussed Student's decline in his physical health, evidenced by Student's inability to walk and stand without adult assistance following the winter break of the 2008-2009 school year. Consequently, Ms. Bassada sent Student's physician a letter inquiring into his medical status, and asked for input on how to address Student's physical needs at school. This resulted in Student acquiring a walker shortly thereafter. In addition, District, prior to the November 2, 2009 IEP, conducted a physical therapy assessment to obtain

more information about Student's physical status and abilities. These factors demonstrated that District contemplated Student's physical well-being when developing his IEPs, and concluded that, in addition to addressing Student's academic and behavioral needs, the decline in Student's ability to stand and walk further established that Leichman continued to be an appropriate placement for Student. Given the above, Mother failed to establish that District denied Student a FAPE by failing to offer Student an appropriate placement. (Factual Findings 1 - 67; Legal Conclusions 1 - 19.)

ISSUE 1(B) - DHH SERVICES

20. Mother alleges that District denied Student a FAPE by not offering Student DHH materials and services, including a DHH teacher and the use of total communication in the classroom. However, Mother presented absolutely no evidence to establish why Student required DHH services above and beyond that offered in the form of full-time one-on-one DHH instructional aide services to meet his needs. Moreover, the evidence established, contrary to Mother's contention, that Ms. Gonzalez and Ms. Pchakjian, when communicating with Student, signed and spoke simultaneously (i.e., total communication). Not only did the evidence establish that DHH services were included in the IEP, no evidence was presented showing that District failed to implement the IEP services. Given the above, Mother has failed to demonstrate the District denied Student a FAPE by not offering Student additional DHH services. (Factual Findings 1 - 67; Legal Conclusions 1 - 12, and 20.)

ISSUE 1(C) - SPEECH AND LANGUAGE SERVICES

21. Mother contends that District denied Student a FAPE by not offering Student speech and language services. However, Mother presented no evidence demonstrating that Student required speech and language services. Instead, the evidence showed that consistent with Student's needs, he was provided support with

signing and using visual aides to communicate. This approach was consistent with Student's refusal to wear his required hearing aides, and the evidence showed it permitted him to access his education. As such, Mother has failed to prove that District denied Student a FAPE by not offering Student speech and language services. (Factual Findings 1 - 67; Legal Conclusions 1 - 12, and 21.)

ISSUE 1(D) - OT SERVICES

22. Mother alleges that District denied Student a FAPE by not offering Student OT services to address his sensory issues. However, Mother presented no evidence to demonstrate that Student required OT as a related service in order to benefit from the specialized instruction that was provided to him. On the contrary, the evidence showed that District conducted an OT assessment of Student after Mother signed an assessment plan in November 2009. The OT assessment results showed that Student had the necessary underlying components to successfully participate in the educational curriculum. Consequently, the IEP team on January 10, 2010 did not offer Student any OT services, as Student presented with no need in any areas addressed by school-based OT. Mother offered no evidence to controvert the assessment results, or to prove that District conducted the assessment improperly. Given these factors, Mother failed to demonstrate that District denied Student a FAPE by not offering OT services. (Factual Findings 1 - 67; Legal Conclusions 1 - 12, and 22.)

ISSUE 1(E) - INCIDENT REPORTS/WHEELCHAIR

23. Mother contends that District denied Student a FAPE by failing to provide her with copies of incident and accident reports immediately following incidents at school. However, the evidence showed, through the credible testimony of Ms. Furman, that the incident reports were internal documents for record-keeping purposes, which were generated by Leichman staff who witnessed incidents. Despite this, Mother failed

to show how District's failure to provide the incident or accident reports resulted in Student's denial of access to his educational program, or denied Mother an opportunity to meaningfully participate in the IEP process. The evidence showed that Mother, as a member of the IEP team, knew about Student's repeated incidents of self-injurious behaviors, such as his head banging, biting of arms, hands, and shoulders, and other behaviors that created the kind of injuries set forth in the incident reports. These incidents were so pervasive that there were IEP goals created to address them, and they had been the subject of behavior analysis. In addition, the evidence showed, through the credible and uncontroverted testimony of Ms. Bassada, that, as a rule, whenever Student injured himself at school, Ms. Bassada would generate a first aid notice to go to Student's home, or, in the case of serious injury, she would call Student's Mother. In addition to first aid notice reports, and telephone calls from Ms. Bassada, there was regular communication between Leichman and Mother through daily verbal reports by Student's DHH aide, who rode the bus with Student to and from school. Given the above factors, Mother failed to demonstrate that District denied Student a FAPE when it failed to provide her with incident reports immediately after the events. (Factual Findings 1 - 67; Legal Conclusions 1 - 12, and 23.)

24. Mother also contends that District denied Student a FAPE when Leichman staff began using a wheelchair, on an as-needed basis, to transport Student without Mother's consent. In matters alleging procedural violations, a denial of FAPE may only be shown if the procedural violations impeded the child's right to FAPE, significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of FAPE, or caused a deprivation of educational benefits. (Ed. Code, § 56505, subd. (f)(2) Here, the essence of Mother's claim is that she should have been notified under District's prior written notice obligation, that District staff was temporarily using a wheelchair with Student. However, at hearing, Mother failed to show

how District's use of a wheelchair to assist Student, when he could not stand or walk without assistance, resulted in a deprivation of educational benefit. In addition, Mother failed to show that District's use of the wheelchair denied her an opportunity to participate in the IEP process. The temporary use of the wheelchair, from July 2009 to November 2009, resulted in no change in the identification, evaluation, or educational placement of Student, therefore there was no requirement for District to provide official notice to Mother. Rather than deprive Student of a FAPE, the evidence was clear that District's use of the wheelchair helped Student access the curriculum, as it assisted Student in moving from one part of the campus to another in a safe and efficient manner, following Student's unexplained mobility limitations. Given the above factors, Mother failed to demonstrate that District denied Student a FAPE when it failed to notify her that a wheelchair was being used. (Factual Findings 1 - 67; Legal Conclusions 1 - 12, and 24.)

ORDER

All of Student's requests for relief are denied.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, District prevailed on all issues.

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

DATED: July 29, 2011

A handwritten signature in black ink, reading "Carla L. Garrett", is written over a horizontal line. The signature is fluid and cursive.

CARLA L. GARRETT
Administrative Law Judge
Office of Administrative Hearings