

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. 2012061201

DECISION

Carla L. Garrett, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), heard this matter on October 15, 16, and 17, 2012, in Van Nuys, California.

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

Patrick Balucan, Attorney at Law, represented the Los Angeles Unified School District (District). District's representative, Diana Masseria, Coordinator of Compliance Support and Monitoring of the Special Education Division, attended all three days of hearing. Joelle Mervin, a legal intern with District, also attended all three days of hearing.

Student filed his request for due process hearing (complaint) on June 27, 2012. On August 9, 2012, for good cause shown, OAH granted the parties' joint request for continuance.

On October 17, 2012, at the close of the hearing, the parties were granted an additional continuance to file written closing arguments by November 2, 2012. Upon the timely receipt of the written closing arguments, the record was closed and the matter was submitted.

## ISSUE

Did District deny Student a free appropriate public education (FAPE) by failing to provide Student with appropriate assistive technology services, namely an iPad for Student to use touchscreen technology, pursuant to the recommendations of an April 21, 2011 independent assessment report conducted by the Assistive Technology Exchange Center (ATEC)?

## FACTUAL FINDINGS

### JURISDICTION AND BACKGROUND INFORMATION

1. Student is a seven-year-old boy, who, at all relevant times, resided within the boundaries of the District. Student is eligible for special education under the eligibility category of orthopedic impairment (OI).

2. Student was born with hydrocephalus and multiple brain deformities, which impacted his physical development. He also suffered from seizure disorder. When he was two years old, Student was diagnosed with mitochondrial disease, which impacted his ability to maintain energy for his organs and muscles, and affected his fine and gross motor abilities. Student required assistance with ambulation and other activities.

3. When Student was six months old, he began receiving physical and occupational therapy from the Frank D. Lanterman Regional Center (the regional center). The regional center also provided Student with speech therapy when he was two years old.

4. When Student was three years old, he began preschool, and the regional center ceased all therapies. He remained in preschool for two years, and demonstrated difficulty with fine motor skills, such as grasping writing utensils, writing, and coloring.

May 24, 2010 Individualized Educational Program (IEP)

5. On May 24, 2010, one month before Student's fifth birthday, an IEP team convened to discuss placement and services for Student's upcoming kindergarten year (2010-2011 school year). At this meeting, the team discussed, among other things, Student's present level of performance (PLOP) in fine motor skills. Specifically, the team noted that due to Student's decreased dexterity and strength in his hands, Student might benefit from using available assistive technology (AT) for drawing, coloring, reading, and writing tasks. The team also reviewed Student's PLOPs in the areas of motor abilities, health, social and emotional development, physical development, cognitive development, language development, communication, access, mobility, positioning, and general ability, and developed goals in those areas.

6. District's offer of placement and services included placement in a special day program at Eagle Rock Elementary School (Eagle Rock), occupational therapy (OT), physical therapy (PT), adaptive physical education (APE), and speech and language therapy. Mother consented to the IEP.

District's October 6, 2010 AT Assessment

7. Approximately one month after Student started kindergarten, District's AT assessor, Rosario Valdez, conducted an AT assessment of Student on October 4, 2010, and prepared a written report on October 6, 2010. Occupational therapist, Bryan Saavedra, was present and involved in the assessment process.

8. Mr. Valdez, who provided testimony at hearing, has been employed with District since 1989. He has been an AT assessor for nearly 13 years. Prior, he was a classroom teacher for six years, where he taught a general education first grade class, an autism special education class, and was a long-term substitute teacher. He was also in charge of a computer lab for three years, and was a teacher's assistant for six years. He received his bachelor's degree in 1994 in Mexican-American studies from California State University at Los Angeles (CSULA), his master's degree from CSULA in 2002 in new media, with an emphasis in incorporating technology into the classroom, and earned his multiple subject matter credential. He also held an AT application certificate program credential through California State University at Northridge (CSUN).

9. Mr. Valdez assessed Student because the IEP team expressed concern about Student's fine motor deficits and how the deficits impacted Student educationally. For this assessment, Mr. Valdez interviewed Student's current teacher, interviewed Mother, conducted classroom and clinical observations, and reviewed Student's school records, including IEP documents and classroom work.

10. Student's teacher advised Mr. Valdez that Student was not able to produce any written work. Specifically, when given a pencil or a crayon, Student could only scribble on the paper. Student required hand-over-hand assistance to produce written work. Mother advised that Student did not have the strength in his hands to press on paper to produce any written work. She also reported that Student could recognize letters on a computer keyboard and had no vision problems.

11. Mr. Valdez's review of Student's work samples showed that Student's written output was illegible. Mr. Valdez's classroom observations of

Student included Student sitting at his desk in a chair designed to help him maintain the correct position to access his desk. Student browsed a book at his desk, but was able to turn the pages easier when the teacher replaced his book with a smaller one.

12. Mr. Valdez's clinical observations of Student occurred in a quiet room, where the occupational therapist, Mr. Saavedra, was present. Mr. Saavedra, who provided testimony at hearing, has been a school occupational therapist for 14 years, the last nine with District. He received his bachelor's degree in occupational therapy in 1998 from Velez College in the Philippines, and thereafter received his occupational therapy license in California. He was also nationally board certified. Mr. Saavedra's role in the assessment was to observe Student's motor access.

13. Both Mr. Valdez and Mr. Saavedra noted Student was cooperative, attended throughout the assessment process, and tried his best to complete the tasks. Student presented with decreased postural stability and needed adult support for mobility. However, he was able to maintain a seated posture for functional tabletop activities using his adapted chair. His functional passive range of motion on both upper extremities was within functional limits for school tasks, but his active range of motion was decreased. His muscle strength was sufficient for him to raise both arms and reach for materials on the table for tabletop activities, as well as access the switch for computer use. He used both hands to perform classroom tasks, and presented with decreased grasp, prehension, and in-hand manipulation skills (i.e., the ability to move items between fingers and palm). He was given adult assistance to hold writing utensils appropriately, and was unable to isolate his index, middle, and ring fingers for functional fine motor tasks.

14. Also during clinical observations, Mr. Valdez noted that although Student demonstrated the use of both hands to perform tabletop tasks, he presented with decreased bilateral coordination (the ability to move each hand separately and together). He demonstrated difficulty manipulating classroom materials requiring the use of both hands, which impacted his ability to participate in his school curriculum. He presented with adequate visual-perceptual skills, but due to the nature of his disability, demonstrated decreased visual-motor skills. Student did not demonstrate any behavior indicating he had sensory processing or motor planning issues.

15. Mr. Valdez then conducted trials of three AT devices. The first device, entitled the Neo 2 keyboard, was an electronic portable keyboard with built-in spell check and the ability to upload files to Mac or PC computers, or to print directly to a printer. Mr. Valdez requested Student to identify a few letters on the keyboard, but Student showed no interest.

16. The second device was a laptop computer with a Classroom Suite program, described as word processing software with features such as built-in auditory feedback (Intellitalk). Mr. Valdez asked Student to type his name as Mr. Valdez had written it on a sample. Student impulsively pressed the keys in a random fashion on the keyboard, using his index, middle, and ring fingers simultaneously on both hands. He demonstrated decreased accuracy and was unable to produce the typing sample requested of him.

17. The third device was a Jelly Bean switch on a laptop computer with an Early Learning Suite program, described as a switch for computer access that functioned as a mouse click. Mr. Valdez placed the computer on a table close to Student. Student was able to access the switch without difficulty while the computer was positioned in front of him. Mr. Valdez ran the Early Learning Suite

program, a cause and effect program, which included activities for the selection of colors, shapes, numbers, and alphabet. He gave Student moderate to maximum prompting to wait and press the switch at appropriate times, but Student mostly pressed the switch indiscriminately despite the prompting. However, Student seemed aware that the switch activated the cause and effect program, which provided visual and auditory feedback to Student, but he did not demonstrate that he understood the concept of cause and effect. Student appeared to enjoy the program, and got excited working on it.

18. Mr. Valdez did not conduct any trials on an iPad, or on any other touchscreen devices. At hearing, Mr. Valdez explained that he conducted no touchscreen trials because District had no touchscreen laptops or tablets available at that time. Touchscreen technology was new in 2010, and the iPad was released in April 2010, just six months prior to the assessment. Consequently, the effectiveness of these touchscreen devices as they related to the educational needs of special education students had not been established to District at the time of the assessment.

19. Mr. Valdez concluded that Student required AT to assist him to benefit from his specially designed instruction, and recommended the use of cause and effect software programs that could be customized with scanning options. He also recommended switch interface and a switch for accessing the recommended software programs on the computer. As additional classroom accommodations, Mr. Valdez recommended appropriate seat and table height when using AT devices, as well as the use of visual and verbal cues.

20. On October 18, 2010, the IEP team met for the purpose of discussing the AT assessment report. The attendees included Mother, a District administrator, Student's special education teacher, two general education

teachers, and Mr. Valdez. Mr. Valdez reported his findings of the assessments, and recommended to the team that Student receive AT services, namely cause and effect software programs that could be customized with scanning options, as well as switch interface and a switch for accessing the recommended software programs. District team members adopted Mr. Valdez's recommendations. Mother did not understand how his recommendations would help Student with his writing skills. Consequently, Mother did not consent to the IEP.<sup>1</sup>

#### ATEC's April 21, 2011 Independent AT Report

21. The regional center referred Student to ATEC for an AT assessment, and listed as a concern Student's inability to express himself in writing. Kevin A. Daugherty, a rehabilitation engineer with ATEC, conducted the assessment of Student on March 3, 2011, and prepared a report on April 21, 2011. Mr. Daugherty, who provided expert testimony at hearing on Student's behalf, received his bachelor's degree in biomedical engineering in 1995 from Wright State University (Wright State). In 1996, he received his master's degree from Wright State in engineering with an emphasis in rehabilitation, and exploring how engineering principles could assist those with disabilities. He also received an assistive technology professional (ATP) credential from the Rehabilitation Engineering Society of North America (RESNA). He has no educational training and has no educational credentials. Mr. Daugherty has been employed with

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<sup>1</sup> District's specific offer relating to AT services is unclear, as Student's exhibit (i.e., the October 18, 2010 IEP) is incomplete. However, this lack of information does not impact the overall analysis of the issue at hand.

ATEC since 1998. His duties include conducting assessments and trainings. As an employee of ATEC, he has worked with 70 school districts.

22. Mr. Daugherty conducted the assessment at Student's home. The assessment lasted approximately two hours. He interviewed Mother, reviewed writing samples, and reviewed documents provided by the regional center. According to the documentation provided by the regional center, Student suffered from mild to moderate intellectual disability, seizures, mitochondrial disorder, and hydrocephalus.

23. Mr. Daugherty's report noted that Student's problems consisted of the following: (1) difficulty producing legible writing and applying enough pressure to write with a pencil; (2) limited strength in his arms and legs for most daily tasks; (3) difficulty walking that required the use of a walker at school, as well as the support of an adapted chair for sitting; and (4) maladaptive social and emotional behaviors at home and school.

24. Mr. Daugherty considered the following AT equipment or software: (1) portable keyboards, which were basic word processors that could be used in the classroom for writing, such as AlphaSmart Neo and Fusion; (2) talking word processors, which were software programs that predicted words after typing a few letters, such as the Write Outloud program, the Writing Buddy program, and the Classroom Suite program; (3) the iPad, which was a tablet computer marketed for consumption of media, such as books, periodicals, movies, and games, and for general web and email access; (4) single switch software and adaptive switches, such as Choose It Maker, Choose N Tell Nursery Rhymes, Jellybean and Switch; and (5) alternative keyboards and mice, such as BigKeys LX, Kensington Expert, and Tracksys Joystick.

25. When testing Student's ability to use keyboards, Mr. Daugherty asked Student to type on a laptop keyboard in Microsoft Word, but Student did not appear to understand that a letter would appear on the laptop screen when he pressed a letter on the keyboard. Student typed random letters, was not always able to press the keys, and was not always able to select the appropriate letter on the keyboard. When testing a portable keyboard, specifically the AlphaSmart Neo, Student again typed random letters and was not intentional at selecting letters, due to his unfamiliarity with the device. Mr. Daugherty noted that the AlphaSmart Neo was a single purpose writing device, and a good device for limiting distractions when writing.

26. When testing talking word processor software, Mr. Daugherty noted that Student ignored the spoken text of the program as he typed. Mr. Daugherty concluded that a talking word processor should not be purchased at that time, but should be considered again in the future.

27. Mr. Daugherty also tried an iPad with Student, because it was small and Student could use it at his desk. Mr. Daugherty observed that Student could use the onscreen keyboard to type words in the built-in notepad, and verified that Student could touch the buttons with his index finger. Mother noted that because Student's hands were constricted with his index fingers sticking out, he could use the iPad with relative ease. Mr. Daugherty noted that one advantage of the iPad was that Student could see the letter appear immediately, instead of having to look up at a computer screen. He was more accurate and motivated to type on the iPad than on the laptop or the AlphaSmart Neo. He appeared to understand the direct correlation between the letter and the immediate visual and audible feedback. Mr. Daugherty concluded that Student's best access to a computer device was through touch interface, either through an iPad or through

a touchscreen laptop. After the assessment, Mr. Daugherty found an iPad application called Dr. Peet's Writing Buddy that functioned as a talking word processor. Mr. Daugherty believed the audible feedback would be helpful, but noted that Student would benefit from any application that allowed him to type or select words.

28. During the trial of adapted switches and software, Mr. Daugherty set up a Jellybean Switch. With modeling and verbal prompting, Student appeared to understand basic cause and effect, but did not wait for the appropriate time to activate the switch. Mr. Daugherty noted that switches, particularly single switch scanning, were extremely slow methods of access because of the amount of time necessary to wait for each option to appear. He felt that direct selection use of a touchscreen or an iPad would be faster and more efficient.

29. During the trial of alternative keyboards or mice, Mr. Daugherty noted that Student did not seem to understand the correlation between moving the mouse and controlling the mouse pointer on the computer screen. Mr. Daugherty concluded that although Student did not know how to use the mouse, he appeared to have the physical capacity to learn. Mr. Daugherty recommended frequent practice with various mice, joysticks, or trackballs to control the mouse.

30. Mr. Daugherty determined that the best method for Student to access computer software for writing was a touch interface, and that Student was most successful with using the iPad. However, Student should continue to explore typing, using a mouse, and possibly switches for access to other devices and software. Should Student become more familiar with using a keyboard and/or a mouse, Student should be able to learn to use a computer to type.

31. Mr. Daugherty made the following recommendations: (1) a touch interface, such as an iPad or touchscreen laptop, for the most direct and efficient method of access to a computer for writing and interaction with computer software, as he would benefit from the immediate visual and auditory feedback of a touchscreen; (2) the purchase of an iPad for Student because he could access this device better than a keyboard, laptop, or AlphaSmart Neo, and because future iPad applications could be used to supplement his classroom instruction and independence at home; (3) frequent typing practice on a keyboard at least two to three times per week so that he could learn how to use a standard keyboard; (4) learn to use a computer mouse, even though a touchscreen was the most efficient method of computer access for Student; and (5) a clear training plan with goals, if Student used adaptive switches, to help Student transition from activating a single switch to writing. However, Mr. Daugherty believed that direct selection using a touchscreen or iPad would be faster and more efficient than using switches. At hearing, Mr. Daugherty explained that even though he primarily recommended an iPad or a touchscreen laptop in his report, other touch screen devices, such as those using the Android operating system, despite the subtle differences, would also be appropriate if it was set where Student could access it appropriately.

32. Mr. Daugherty did not visit Student's school during the evaluation, and did not conduct the assessment for the purpose of determining how AT services could help Student in a school setting. Rather, he assessed Student for the purpose of determining how AT could help Student with his general writing. Mr. Daugherty did not talk to Student's teachers or review Student's IEP or his academic goals.

33. Mother purchased an iPad for the home after Mr. Daugherty's assessment, which Student has used on a daily basis since.

May 20, 2011 and June 21, 2011 IEPs

34. On May 20, 2011, the IEP team convened for Student's annual review. The attendees included Mother, a District administrator, Student's special education teacher, a general education teacher, and District's speech and language and OT specialists. The team discussed Student's PLOPs in the areas of object control, fine motor skills, communication, articulation, access, mobility, positioning, school readiness, and language arts.

35. In the area of fine motor skills, Student's occupational therapist, Jessica Voelker, noted that Student demonstrated decreased upper extremity strength and postural stability, which impacted Student's fine motor control when using classroom tools and his participation in fine motor activities, such as using scissors, pencils, crayons, and turning pages in classroom books. Ms. Voelker, who provided testimony at hearing, has worked as an OT specialist at District for 10 years. She received her bachelor's degree in occupational therapy from Southern Methodist University in 1992, her master's degree in occupational therapy from the University of Southern California in 2002, and holds a license for occupational therapy. She had been providing OT services to Student since 2010, and had worked with Student in the development of precursor skills to help him learn to write. Student had been using two hands to hold a pencil, and Ms. Voelker had worked with Student to help him learn to write with one hand. She also worked with him to imitate lines in an exaggerated way over a large space, so he could eventually learn to write letters. At the time of the IEP, Student had been making slow progress, but had shown an interest in writing.

36. The IEP developed fine motor goals to improve Student's ability to turn consecutive book pages with minimal physical assistance, and to color in a two-inch picture on a classroom worksheet with or without adaptive equipment.

37. In the area of language arts and school readiness skills, Student's special education teacher, Michelle Rowland, noted that Student's disability impacted his ability to produce legible written output, and his expressive and receptive language delays impacted his ability to participate in classroom activities, access the curriculum, and interact with peers. Ms. Rowland, who provided testimony at hearing, worked for the District for 26 years, eight years as a general education substitute teacher, and the balance as a special education teacher. She has taught the special day program (Early Education) class for the last 10 years. She received her bachelor's degree in sociology from CSUN in 1972, and earned her special education credential in 2010. Student began attending her class at the beginning of the 2010-2011 school year.

38. Ms. Rowland conducted informal assessments of Student and noted he could identify many letters, knew the sounds of some letters, and could express wants and needs in short phrases. He required hand-over-hand assistance, because his poor fine motor skills impacted his ability to write. The writing standards at that time required students to produce written work and to perform pencil and paper tasks. Student had made little progress in writing since the beginning of the school year, and his fine motor skills continued to be a problem. He produced written work in a modified way, like tracing his name in large letters and coloring large areas.

39. Mother provided the team with a copy of the ATEC report at the meeting. The team agreed to reconvene the meeting on June 21, 2011, to discuss the report.

40. On June 21, 2011, the IEP team reconvened. The attendees included the same teachers and administrators as the May 20, 2011 meeting, but included different related service staff. Specifically, the team included Ms. Voelker and AT assessor, Carol Casperson.

41. Ms. Casperson discussed the ATEC report with the team. Ms. Casperson, who provided testimony at hearing, has been employed with District since 1983, and began as an assessor in 1998. She became a coordinator of the AT program in 2003, and then returned to assessing in 2010. Prior, she was a program specialist for four years, as well as a teacher at Salvin Special Education Center. She received her bachelor's degree in psychology from State University College of New York at Geneseo in 1976, and her master's degree in special education from Adelphi University in New York in 1980. She is credentialed in the areas of special education for mild to moderate students, physical disabilities, language development, and has an administrative credential.

42. Ms. Casperson was concerned that the ATEC report included no school or classroom observations, and that it was not created for the purpose of addressing Student's educational needs aside from writing. Specifically, it did not mention what Student's educational needs were, did not list his eligibility category, or how his disability impacted him educationally. The ATEC assessment also did not include the assistance of an OT specialist, which she found problematic because she believed AT assessments should include an evaluation of a child's motor abilities. Ms. Casperson recommended a touchscreen desktop with touch monitor, because it was in alignment with what Student seemed to be able to do based on the report. Mother expressed her concern about Student using a desktop given his muscle tone and compromised physical abilities.

Mother expressed her preference for Student to receive an iPad, however, Ms. Casperson advised District had no iPads or other tablet devices.

43. The IEP team agreed that, for a 60 day trial period, Student would use a desktop computer with a touchscreen monitor and specialized software with audio and visual support, beginning with the new school year (2011-2012). The IEP noted that during the 60 day period at the school site, staff would evaluate the effectiveness of the equipment and explore other options as appropriate and necessary, including the possibility of an adjustable height table. Mother consented, but at hearing, Mother explained that it was her understanding that if Student did not do well on the touchscreen desktop, District would consider using a touchscreen tablet. Mother's understanding was not corroborated by any other witness or by any documentary evidence.

#### 60 Day Trial

44. In September 2011, Student was assigned to the caseload of AT assessor, Diane Kawaguchi. On September 12, 2011, Ms. Kawaguchi, delivered a Lenovo touchscreen desktop computer to Student's class, to implement the 60 day trial pursuant to the terms of the May 20, 2011 IEP. The computer also included a keyboard, but it was programmed for Student to access through the touchscreen. Ms. Kawaguchi, who provided testimony at hearing, has been employed with District for 21 years, and has been an AT assessor for 13 of those years. Prior, she was a general education teacher for eight years at District, where she taught first through fifth grades. Before working for District, Ms. Kawaguchi was a substitute teacher for the Montebello Unified School District for 10 years. She received her bachelor's degree in American studies in 1978 from California State University, Los Angeles. She has a multiple subject credential, a Cross-Cultural Language and Academic Development (CLAD) certificate, and an

Assistive Technology Access Partnership (ATAP) certificate. Her duties as an AT assessor include assessing students and determining the kind of specialized equipment they need to access the curriculum.

45. The desktop touchscreen came from District's AT Lending Library (lending library), which was created in December 2010. At the time, the AT Lending Library only had personal computer (PC) tablet technology available, such as software, hardware, keyboards, and specialized mice. The PC tablets were tabletop and laptop computers that students could lay flat on their laps or on tables, and use them as touchscreen tablets. However, they were heavy.

46. When Ms. Kawaguchi delivered the touchscreen desktop computer, she trained staff how use it. The classroom assistant began training Student at that time. Ms. Kawaguchi, in collaboration with the classroom assistant, worked with Student on the touchscreen desktop on September 21, 2011, for 20 to 30 minutes.

47. During the 60 day trial period, Student's OT specialist, Ms. Voelker, observed that although Student had decreased upper extremity strength and posture, it did not impact Student's ability to use the desktop touchscreen if he was seated properly. Ms. Kawaguchi communicated with Ms. Voelker, Ms. Rowland, and the classroom assistant approximately five times a month concerning Student's progress on the desktop touchscreen, during the two month trial. During these communications, Ms. Kawaguchi learned that Student purposely got answers wrong on the desktop touchscreen, because he liked the sound of the error buzzer emitted by the desktop touchscreen. He did the same thing when Ms. Voelker attempted to have Student use her iPhone. Student tended to use the desktop touchscreen as a toy, like the iPhone, as opposed to using it to access his curriculum. Student would sometimes tantrum when he was

required to use the desktop touchscreen. He often lost interest after about 10 minutes. Sometimes he would touch the keys with one finger, other times with multiple fingers, and sometimes with his fist.

48. When Mother learned that Student had been answering questions incorrectly in order to hear the error buzzer, Mother asked the teacher and Ms. Voelker to turn off the volume of the desktop touchscreen for negative feedback, and keep the volume on for positive feedback. However, the teacher and Ms. Voelker advised Mother that the computer did not have that capacity, and that they would need to turn off the volume altogether. Mother explained to them that she used an application on the home iPad that allowed the volume to be turned off for negative feedback, and on for positive feedback, which worked well with Student at home. As such, Mother requested District to get a similar application for the desktop touchscreen. However, District never did so.

49. The activities Student did on the desktop touchscreen, such as identifying shapes, colors, and numbers, were activities Ms. Rowland did in her class with her students, and she reported to Ms. Kawaguchi that he showed more accuracy when he was able to touch and handle manipulatives, than when he worked on the desktop touchscreen. Ms. Rowland reported that Student demonstrated he could learn at a concrete level, but not necessarily at an abstract one. For example, Student could identify shapes on a flat surface, like on the desktop touchscreen, but could not identify which two shapes were the same. In addition, he could only count up to six on a flat surface, but with manipulatives, he could count past six. Also, although Student could identify some sight words and identify letters, he could not demonstrate that he could spell words, could not spell his name, and was just learning to blend words.

50. On November 14, 2011, Ms. Kawaguchi, with the help of the classroom assistant, observed, for a second time, Student's use of the touchscreen desktop. She noted that Student did not demonstrate the mastery of letters. For example, he failed to touch the letter "C" when she asked him to touch the letter "C". She also observed that Student showed more accuracy when he was able to touch manipulatives when working with numbers (e.g., number cards), than when he worked on the desktop touchscreen. Finally, she observed that Student used too much force when using the touchscreen. Specifically, he "punched" the touchscreen with his index finger, and the classroom assistant reported that Student often "knuckle-punched" the screen.

November 15, 2011 IEP

51. On November 15, 2011, the IEP team met to discuss, among other things, the outcome of the 60 day trial of the desktop touchscreen. The attendees included Mother, Ms. Kawaguchi, Student's special education teacher, a general education teacher, an administrator, and Ms. Voelker.

52. The IEP team noted that Student had met his fine motor goals and objectives in the area of coloring, and using scissors, but only met one of his two objectives in turning book pages. Student also met his goals and objectives in the areas of object control, access, mobility, and positioning, but met only one of two objectives in language arts (i.e., matching consonant and short vowel sounds to the appropriate letter), and met no behavior support, math, or vocational goals.

53. Ms. Kawaguchi prepared Student's PLOP regarding the AT trial of the desktop touchscreen. She reported that Student demonstrated an understanding of cause and effect. While Student could isolate his fingers, he did not use a grading amount of force (i.e., a light touch). He also consistently failed

to identify the correct alphabet letters from two letters ("C" and "P"), despite his PLOP for school readiness/language arts, which showed he could identify 19 of 26 lowercase letters, and 23 of 26 uppercase letters. He was unable to count items independently, and required hand-over-hand assistance to count each item. She concluded that Student's level of understanding was at a concrete level, that the use of manipulatives would be an appropriate approach to provide a more comprehensive vehicle for the mastery of concepts. For these reasons, she concluded that the use of a touchscreen was not appropriate for Student at this time.

54. Ms. Kawaguchi never reviewed the ATEC assessment report, did not explore the use of a touchscreen tablet with Student, including an iPad, and made no recommendations for any other AT devices. Ms. Kawaguchi believed a tablet was not an appropriate option, because the tablet was more fragile than a desktop touchscreen, and Student used a non-grading force (punching) when using the touchscreen, as opposed to touching it lightly. She also felt no other AT options were appropriate. While she acknowledged that Student's physical problems sometimes made it difficult for him to access the desktop touchscreen device, she did not try other devices to alleviate some of his motor difficulty because she felt they were OT issues.

55. At hearing, Ms. Voelker advised she did not know if Student would be able to write effectively. But she agreed that a touchscreen was not appropriate for Student at that time, because she believed Student could engage in more concrete activities next to his peers to address his needs, such as using manipulatives, than away from his peers using a touchscreen that appeared too abstract for Student, and which he used more as a toy than as an educational device. She did not forever preclude that Student could use a touchscreen device

in the future. Similarly, Ms. Rowland believed Student could use a touchscreen in the future, after he developed more maturity and learned more abstract concepts.

56. Mother disagreed that the use of a touchscreen was inappropriate, and restated her request that District provide Student with an iPad. Mother expressed to the IEP team that Student needed an iPad to help express himself in written language, that he could type the letters of his name, that he had the framework to write (i.e., could recognize letters, sounds, and sight words), but that his disability did not allow him to do so. Mother told the team that the iPad was an accommodation to allow Student to benefit from his curriculum in language arts, and that he used his iPad at home without difficulty.

57. District IEP team members disagreed with Mother's request for an iPad, based on Ms. Kawaguchi's conclusion that a touchscreen device was not appropriate. In addition, District IEP team members advised that District had no iPads.

58. At hearing, while Ms. Kawaguchi could not recall whether Mother raised the iPad issue again at the IEP meeting, she admitted that at that time, she had no prior experience with iPads, did not own an iPad until July 2012, and did not receive training on how to operate an iPad until September 2012.

59. At hearing, Ms. Voelker explained she did not believe an iPad or touchscreen device would help Student access his curriculum at that time, as she believed a multi-modal approach was more appropriate for Student, such as methods that required touching (e.g., manipulatives) and hearing, and not a method that strictly addressed visual output, like an iPad. Ms. Voelker never used an iPad with Student, did not have an iPad, and had never used an iPad with a child in the classroom.

60. At hearing, Ms. Rowland agreed Student required no touchscreen device in the classroom, as she believed she could address Student's unique needs using the modifications and accommodations in the classroom, as well as manipulatives to help Student access the curriculum. Ms. Rowland believed that Student understood and grasped concepts easier when he could manipulate objects, in a way more beneficial to him than using the touchscreen computer, particularly in the area of writing. For example, Student would manipulate Playdoh by rolling it out and forming letters, use shaving cream to form letters, make letters in the air with his hands, and benefit from hand-over-hand writing. In addition, Student had demonstrated to her using the desktop touchscreen was not a preferred activity, as he often tantrummed when he was required to use it, or maintained interest for approximately 10 minutes.

61. At hearing, Mr. Daugherty from ATEC disagreed that a touchscreen was not appropriate, and added that a touchscreen, such as an iPad, played to Student's strengths of his motor movements, because Student could touch the iPad with his index fingers. He added that it would take a lot longer and be more frustrating to Student for him to write things out on paper. While he did not advocate the abandonment of pencil and paper writing tasks for Student, Mr. Daugherty believed a touchscreen device like an iPad would help Student benefit from his curriculum in accessing language arts and writing.

62. The IEP team did not complete the November 15, 2011 IEP, and agreed to reconvene the IEP at a later time.

May 29, 2012 IEP

63. The IEP team reconvened on May 29, 2012.<sup>2</sup> The attendees included Mother, Ms. Garcia, Ms. Rowland, a general education teacher, the school nurse, the APE teacher, the PT specialist, and Ms. Voelker.

64. The IEP noted that Student had met his fine motor goals and objectives in the area of coloring, and using scissors, but only met one of his two objectives in turning book pages. Student also met his goals and objectives in the areas of object control, access, mobility, and positioning, but met only one of two objectives in language arts (i.e., matching consonant and short vowel sounds to the appropriate letter), and met no behavior support, math, or vocational goals.

65. The team was unable to complete the IEP, and agreed to reconvene at a later time.

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<sup>2</sup> At hearing, Ramona Garcia, who was assistant principal and IEP administrator at Eaglerock, advised that she had attempted on several occasions to reconvene the IEP before May 29, 2012, but Mother was not cooperative during this process. Mother denied this, and advised that she was not the cause of the six month delay for the reconvening of the IEP meeting. Given the narrow issue involved in this case (i.e., whether District denied Student a FAPE by failing to provide Student an iPad pursuant to the recommendations of the April 21, 2011 ATEC report), and not whether District committed any potential violations for the delay in reconvening the IEP, it is not necessary to resolve why the IEP team meeting was reconvened six months later.

June 14, 2012 IEP

66. The IEP team reconvened on June 14, 2012. The attendees included Mother, Ms. Garcia, Ms. Rowland, a general education teacher, a speech pathologist, a physical therapist, an APE teacher, Ms. Voelker, and a representative from Whittier Law Clinic.

67. In the area of fine motor skills, the IEP noted that Student had difficulty manipulating classroom tools, such as pencils and crayons, due to fluctuating muscle tone in his hands and arms, decreased range of motion and muscle strength in his hands, and poor bilateral hand skills. Student's motor deficits limited his participation in and completion of educationally-related fine motor activities, such as coloring, writing, and using manipulatives, unless provided with adult assistance. Student failed to meet his fine motor goal in the area of coloring, because he often refused to engage in coloring activities.

68. The IEP noted in the area of mathematics, and continued to note in the area of language arts and school readiness skills, that Student's disability impacted his ability to produce legible written output, and his expressive and receptive language delays impacted his ability to participate in classroom activities, access the curriculum, and interact with peers.

69. The IEP team developed goals to address Student's needs, including a fine motor goal stating that Student will hold a crayon, marker, or pencil with a functional grasp when completing a classroom coloring or writing activity with minimal verbal or physical prompts, with adaptive equipment as needed. The IEP also included a visual-motor goal stating that Student would write his initials on his worksheets with minimal assistance, using adaptive equipment as needed, such as a pencil grip or a slant-board. The IEP provided that as a first incremental goal, Student would trace his initials on his classroom worksheets.

70. Mother renewed her request for an iPad for Student. District members agreed to prepare an assessment plan for a new AT assessment for the purpose of determining whether a tablet or other touchscreen devices would be appropriate for Student.

71. The District members offered placement in a special day program, with mainstreaming in the general education setting for visual arts, social studies, dramatic play, and socialization for 30 minutes a day, five days a week. District members also offered APE for 60 minutes a week, speech and language therapy for 60 minutes a week, OI services for 30 minutes a month, OT services for 90 minutes a week, PT services for 60 minutes a week, adult assistance for the entire school day and on the bus to and from school, transportation, a behavior support plan, and extended school year. The District members also offered to provide Student with access to a desktop touchscreen at the beginning of the 2012-2013 school year during the period set to conduct Student's new AT assessment.

72. On June 27, 2012, Mother consented to the IEP. On the same day, Mother also filed the instant due process complaint on Student's behalf.

#### ATEC's October 5, 2012 Independent AT Report

73. On September 27, 2012, Mr. Daugherty of ATEC met with Mother and Student for the purpose of conducting an AT assessment, and to make recommendations based on Student's current abilities and environments. It was ATEC's general practice to follow up with a reassessment to determine a student's current status, and to determine whether there was current technology to assist the student. Mr. Daugherty completed the assessment, and prepared a report on October 5, 2012.

74. Mother reported to Mr. Daugherty that Student used his iPad at home every day. Student demonstrated that he could play some of his favorite

applications on his iPad, such as Animal Pre-School Circus, YouTube (The Wiggles), Photo Sight Words, iTouchLearn Numbers, iTouchLearn Words, Talking Tom, Bus, and the Monster at the End of this Book. Student primarily used his index finger to tap or drag the desired item on the application.

75. Mr. Daugherty' report mentioned Student's use of a desktop touchscreen computer at school for a 60 day trial period. Mr. Daugherty did not observe Student at school at any time before, during, or after the 60 day trial.

76. Mr. Daugherty noted the areas of concern as Student's difficulty writing and applying enough pressure to write with a pencil legibly, limited strength in his arms and legs for most daily tasks, and required the support of an adapted chair for sitting. Student usually required hand-over-hand prompting, and worked with his occupational therapist to improve letter formation and writing skills. Mr. Daugherty noted in his report that because of Student's writing difficulties, he may be able to use assistive technology software to improve his written output.

77. Mr. Daugherty assessed Student's ability to use a keyboard. He noted that during the April 2011 assessment, Student typed random keys on the keyboard. Student had improved his ability to recognize letters and follow directions to type a specific letter on a keyboard. He was able to select keys on the keyboard using his index fingers, but used his left finger more often. Student was able to reach the keys on a compact keyboard, which was approximately the same size as a laptop keyboard. Even though the size of the keys was the same as a standard keyboard, most of the keys were directly in front of him when he typed. Typing was not a preferred activity for Student, and he did not always comply with the request on the first time. He was not always able to select the requested letter on the iPad keyboard on the first attempt. If he selected a

neighboring letter, he usually selected the desired letter after one or two attempts. Mr. Daugherty concluded that with keyboarding practice, Student may be able to type on a keyboard.

78. During the evaluation, Student demonstrated he could type on a modified keyboard on an iPad. Student had more success selecting letters on an iPad when the key size was one inch by one inch or seven-eighths of an inch by seven-eighths of an inch. Mr. Daugherty requested Student to type sight words that he knew. He did well typing these words because he could use the iPad on the floor or on his lap. He was not always able to select the right letter the first time, but always selected the correct letter when asked to try again. Student made more typing errors using the standard iPad keyboard. He did not type on a keyboard or iPad very often. Typing was not a preferred task, and he was often compulsive or noncompliant when typing. However, he appeared to be successful when typing using his two index fingers to type on smaller keyboards, especially when the size of the keys was larger (between three-quarters of an inch and one inch squares).

79. Although Mr. Daugherty did not test the Alphasmart Neo and the Fusion keyboards during this assessment as he had during the April 2011 assessment, he indicated in his report that these portable devices, which had keyboard sizes similar to that of a laptop keyboard, would be very easy to incorporate into the classroom. Student could use it without having to leave the group or the classroom to visit a computer or to wait for a laptop computer to start, as these devices, which were solely used for writing, turned on in approximately 15 seconds. Mr. Daugherty opined the portable keyboard could be a good device to allow Student to practice typing on a standard keyboard if an iPad, laptop, or desktop computer was not available.

80. Mr. Daugherty referenced his April 2011 report where he recommended that a touchscreen, specifically an iPad or a touchscreen laptop, would be the most direct and efficient method of access to a computer for writing and interacting with computer software. After observing Student using his iPad at home, Mr. Daugherty continued to recommend using a touchscreen, because it was the most accurate method to interact with a device. He noted that Student was successful using an iPad because he was able to place the device on his lap or on the floor close to his body. He further noted that Student struggled to use a desktop touchscreen computer because he had to hold his hand up to use it, whereas an iPad allowed for the close placement of it to his body, which allowed for easier access. During the evaluation, Student used the iPad for approximately an hour with a couple of breaks. In contrast, he could only use the desktop touchscreen for five or 10 minutes before needing to take a break and rest.

81. Mr. Daugherty also concluded that Student could benefit from a talking word processor when working on his writing and keyboarding goals. The speech feedback provided by a talking word processor could encourage Student to type and help him to know when he pressed the wrong letter or misspelled a word. Student typed on an iPad that spoke as he typed. Student looked up at the screen several times when the iPad spoke the wrong word or the wrong letter. However, most of the time, he ignored the speech and did not always know how to correct the word. The speech feedback of a talking word processor may be helpful for Student, and this speech feature could be turned off as necessary.

82. Mr. Daugherty listed iPad applications that could be helpful to support Student with specific academic goals, such as writing and spelling.

Specifically, he listed AbiliPad, which combined the functionality of a notepad with word prediction, text-to-speech, and a customizable keyboard; WritingBuddy, which was a simple word processor that spoke text aloud; and spelling applications, such as Spell-A-Word, SpellBoard, Sight Words, 1000 Sight Words Superhero HD Free, Basic Sequencing Skills, and Making Sequences.

83. At the conclusion of his report, Mr. Daugherty made the following recommendations: (1) an iPad, because it was the most direct and efficient method of access to a computer for writing and interacting with computer software, and because Student could access this device better than a keyboard, laptop, or AlphaSmart Neo; (2) no desktop touchscreen because of Student's difficulty to reach it, and no single switch scanning because Student had direct access to using his fingers to a touchscreen; (3) an AbiliPad for Student to practice typing vocabulary words, sentence strips, and picture supports; (4) spelling applications, particularly SpellBoard, and Spell-A-Word; (5) frequent typing practice; and (6) a standard mouse, adaptive joysticks, trackballs and/or touchpad all be used with Student, even though a touchscreen was the most efficient method of computer access for Student.

#### Student's Percipient Witness

84. Kristina Hubbard, who had known Student since he was born, provided testimony at hearing. Ms. Hubbard was a researcher and program specialist from 2002 to 2010, who studied research participants with dementia, as well as the developmental disabilities of adults and children, such as fetal alcohol syndrome, cerebral palsy, and autism. She received her bachelor's degree in psychology from the University of the Pacific in Stockton, California in 2002, and her master's degree in psychology with an emphasis in teratology and child neuropsychology in 2005. In her capacity as a researcher and program specialist,

she used a number of tools to assess children's motor skills, such as touchscreen computers, MRIs, and other tools.

85. Ms. Hubbard and Mother had been friends since they were young children, and Ms. Hubbard saw Student three or four times a year. Student was a very happy and polite little boy, but lacked the reflexes for walking, and could grasp items with his hands with a modified grasp, but often dropped things. His hands were folded down toward his wrists, and his wrists were severely bent downward. His arms were tense and tight, making it difficult to put his arms into his sleeves. His legs and ankles were limp, and his toes dragged when he attempted to walk, which he could not do without assistance. He scooted on his bottom most of the time.

86. Despite having the basic framework to perform tasks to write, color, or draw, Ms. Hubbard noted that over the last two years, Student had made very little progress in his fine motor skills, particularly his overall writing skills, and did not believe Student would ever be able to hold a pencil or pen.

87. Ms. Hubbard spent 10 days with Student in September 2012, and witnessed Student independently use his iPad three or four times a day on interactive games, such as letter tracing, letter recognition, and interlocking puzzles. He also used the AbiliPad program where he could choose words on his keys and drag the words up to the top of the screen to make a sentence. Ms. Hubbard believed the iPad would help Student with his writing, drawing, and tracing, because he did not have enough mobility in his hands, but could use his index finger to trace on his iPad, and to drag letters. He was more physically comfortable using his iPad in his lap than reaching onto a desktop, as reaching down did not hurt his arm. Trying to hold his arm up too long, like he would have to do writing with a regular pencil on a desktop, was difficult, as most

desktops were too high for Student. Given the low muscle tone in his shoulders, it made it difficult for Student to hold up his arm for any extended period of time, such as working on a desktop.

88. Ms. Hubbard believed an iPad would address Student's writing objectives and his fine motor goals.

89. Ms. Hubbard had not observed Student in a classroom setting, never talked to any teachers about Student's functioning, and had conducted no formal assessments of Student. She was unfamiliar with his eligibility category, and was unfamiliar with his curriculum. Ms. Hubbard had no teaching credential or any training in teaching, occupational therapy, physical therapy, or assistive technology. In addition, although she used touchscreen technology in a research setting with special education students, she had no training on how special education students should use touchscreens.

## LEGAL CONCLUSIONS

1. Student contends District denied him a FAPE by failing to provide him with an iPad, pursuant to the recommendations of an April 21, 2011 independent assessment report conducted by ATEC. Student argues he requires an iPad to help him express himself in writing, as his fine motor deficits interfere with his ability to do so independently. District disagrees, and contends that it considered ATEC's report, and provided Student with AT services designed to meet Student's unique needs.

## BURDEN OF PROOF

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

## DEFINITION OF A FAPE

3. California special education law and the 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.) A 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. An "assistive technology device" is defined as "any item, piece of equipment or product system [other than a surgically implanted device] . . . that is used to increase, maintain or improve functional capabilities of an individual with exceptional needs." (20 U.S.C. § 1401(1); Ed. Code, § 56020.5.) Each public agency must ensure that assistive technology devices are available to a student with a disability, if required as part of a student's special education or related services. As part of the IEP process, the IEP team must consider whether the child

requires assistive technology devices. (20 U.S.C. 1414(d)(3)(B)(v); 300.324(a)(2)(v) (2006); Ed. Code, § 56341.1, subd. (b)(5).) If the IEP team determines that a student needs assistive technology to receive a FAPE, the IEP must include a statement to that effect, and the nature and amount of such services. ( Off. of Special Education Programs, interpretative letter (November 27, 1991), 18 IDELR 1697.)

5. In *Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 200 [102 S.Ct. 3034, 73 L.Ed.2d 690] ("*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.) 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.)

6. 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 Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314 ("*Gregory K*").) 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.*)

7. The methodology to be used to implement an IEP 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, supra*, 458 U.S. at p. 208; *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 ("Adams"; *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.)

8. 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, supra*, 195 F.3d at p. 1149.) "An IEP is a snapshot, not a retrospective." (*Ibid.*, citing *Fuhrman, supra*, 93 F.2d at p. 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.*)

#### ANALYSIS

9. Student failed to demonstrate by a preponderance of the evidence that he was denied a FAPE by District's failure to provide him with an iPad, as set forth in the recommendations of an April 21, 2011 ATEC report. The evidence showed that, even though the ATEC assessment included no school or classroom observations, was not conducted by an individual with educational training or credentials, and was not created for the purpose of addressing Student's educational needs aside from writing, District did, in fact, consider the recommendations of the ATEC report. Specifically, in addition to listing an iPad as a potential device for Student's use, ATEC recommended other devices to address his AT needs, such as a touch interface for Student to access a computer

for writing and software, frequent typing practice on a standard keyboard, the use of a computer mouse, and a clear training plan with goals, should Student use adaptive switches. In that regard, District instituted a 60 day trial of a touch interface device, as recommended by the report, specifically a desktop touchscreen, to evaluate its effectiveness. According to the credible testimony of AT assessor, Ms. Casperson, suggested the desktop touchscreen device because it aligned with Student's abilities, based on the information presented in the ATEC report.

10. However, the results of the 60 day trial showed that Student benefitted more from the modifications, accommodations, and the manipulatives used in the classroom, than the desktop touchscreen itself. Specifically, according to the credible testimony of Ms. Rowland, Student understood and grasped concepts easier when he could manipulate objects, in a way more beneficial to him than using the touchscreen computer, particularly in the area of writing. For example, Student would manipulate Playdoh by rolling it out and forming letters, use shaving cream to form letters, make letters in the air with his hands, and benefit from hand-over-hand writing. In addition, according to the credible testimony of Ms. Voelker, Student would often tantrum when he was required to use the desktop touchscreen, rarely showed more than 10 minutes of interest in it, or used the desktop touchscreen as a toy by purposely getting answers wrong in order to hear the error buzzer. Also, according to the credible testimony of Ms. Kawaguchi, Student often used a non-grading force (punching) when using the touchscreen, and demonstrated he could learn at a concrete level, but not necessarily at an abstract one. For example, Student could identify shapes on a flat surface, like on the desktop touchscreen, but could not identify which two shapes were the same, according to Ms. Rowland. In addition, he

could only count up to six on a flat surface, but with manipulatives, he could count past six. Given these factors, Ms. Kawaguchi, who was a teacher for 18 years and an AT assessor for 13, and who had considered the input of Ms. Rowland, who also had extensive experience as an educator, specifically 26 years, as well as Ms. Voelker, who had 10 years of experience as an occupational therapist, reasonably concluded that Student's level of understanding was at a concrete level, and that the use of manipulatives would be an appropriate approach to provide a more comprehensive vehicle for the mastery of concepts. As such, she reasonably concluded that the use of a touchscreen was not appropriate for Student at that time.

11. Student argues, however, that a touchscreen device was, in fact, appropriate for him, particularly an iPad, in order to help him express himself in writing, not only because ATEC recommended it in its April 21, 2011 report, but because Student had shown that he could use an iPad independently and appropriately, which Mother had conveyed to the IEP team. Specifically, Mother, as well as her friend, Ms. Hubbard, and the ATEC assessor, Mr. Daugherty, testified that Student used his home iPad on a daily basis subsequent to the April 21, 2011 ATEC assessment. In addition, he used his index fingers to touch the screen, and could access interactive games independently, such as letter tracing, letter recognition, and interlocking puzzles. Also, Student was successful using an iPad for an extended period of time, because he was able to place the device on his lap or on the floor close to his body, alleviating the need for him to hold up his hand, as he had to do on the desktop touchscreen computer. Moreover, ATEC reiterated the appropriateness of an iPad in its October 5, 2012 reassessment report. Given these factors, Student contends that a touchscreen

tablet, such as an iPad, was the best device to help him access his language arts curriculum.

12. However, as set forth in Legal Conclusions 6 and 7, the methodology used to implement an IEP was left up to District's discretion so long as it met Student's needs and was reasonably calculated to provide him some educational benefit; and did not need to be delivered in a manner preferred by a parent, even if that preference would have provided Student with greater educational benefit. Here, District exercised its discretion to try a desktop touchscreen, which was reasonable given the information contained in the April 21, 2011 ATEC report, and ATEC's recommendation that Student use a device with touch interface.

13. While Student also relies on ATEC's October 5, 2012 assessment report, that more strongly recommended an iPad device for Student, case authority requires that an IEP 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 IEP must not be judged in hindsight. (*Ibid.*) Because the second ATEC assessment occurred well after the snapshot of time the IEP team developed Student's IEPs, and it involved assessment results and recommendations to which the IEP teams were not privy, the October 5, 2012 report is afforded minimal weight. Even if the October 5, 2012 report carried significant weight, the fact remains that the report was not limited to what was educationally appropriate for Student. Rather, it included recommendations for the best technology as a whole. As set forth in Legal Conclusion 5, the Supreme Court expressly rejected an interpretation of the IDEA that would require a school district to "maximize the potential" of a student, but rather held that a student is only entitled to specialized instruction and related

services designed to confer some educational benefit. (See *Rowley, supra*, 458 U.S. at p. 200.)

14. Thus, District's subsequent decision to forego touchscreen technology after the 60 day trial period, and focus, instead, on using other methods to address Student's needs, particularly in the area of writing, was reasonable, given the success Student had demonstrated using those methods, and given the lack of success Student had demonstrated on the desktop touchscreen. Moreover, District continued to provide Student with OT services to continue to address Student's fine motor deficits, which was reasonable given the progress Student had made in his fine motor goals, as indicated in his November 15, 2011 and May 29, 2012 IEPs. These factors, as a whole, demonstrated that District's methodologies were reasonably calculated to provide some educational benefit to Student.

15. Notwithstanding this, Student further contends that District failed to offer him an iPad, not because touchscreen technology was inappropriate for Student, but because District had no iPads in its lending library, and because District staff neither had experience with iPads, nor had used iPads with students. Whether this assertion is true or not does not outweigh the fact that District's 60 day trial of a touchscreen device demonstrated, overall, that Student could not or would not use the touchscreen properly at school, and instead appeared to make more academic and fine motor progress using manipulatives. As such, and for the reasons set forth above, District was reasonable in its conclusion that a touchscreen device was not appropriate for Student at that time. However, when Student demonstrated difficulty in achieving his fine motor goals, as documented in the June 15, 2012 IEP, particularly in the area of writing (coloring), District responded appropriately by agreeing to conduct a new AT assessment to

determine whether a tablet or other touchscreen devices would be appropriate for Student, as it had been more than 20 months since District's previous AT assessment, and more than 14 months since ATEC's.

16. In sum, Student failed to establish by the preponderance of the evidence that District denied him a FAPE when it did not provide him with an iPad. (Factual Findings 1 - 89; Legal Conclusions 1 - 16.)

## ORDER

Student's request for relief is 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 the issue.

## RIGHT TO APPEAL THIS DECISION

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

DATED: November 29, 2012

\_\_\_\_\_/s/\_\_\_\_\_

CARLA L. GARRETT

Administrative Law Judge

Office of Administrative Hearings