

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2012120476

v.

TORRANCE UNIFIED SCHOOL DISTRICT.

DECISION

The due process hearing in this matter proceeded on July 16, 2013, in Torrance, California, before Administrative Law Judge (ALJ) Clifford H. Woosley, from the Office of Administrative Hearings (OAH), State of California. Attorney Geoffrey A. Berkin appeared on behalf of Student (Student). Student's Mother was present throughout the hearing. Sharon A. Watt, Filarsky & Watt LLP, appeared on behalf of Torrance Unified School District (District). Special Education Director, Jacqueline Williams, attended the hearing for District.

On December 11, 2012, Mother filed a Request for Due Process on behalf of Student. The matter was continued several times as Mother completed the process of obtaining letters of conservatorship for Student, who was more than 18 years of age. On July 16, 2013, at the close of hearing, the matter was continued to July 26, 2013, for the parties to file written closing arguments. On July 26, 2013, upon receipt of the written closing arguments, the record was closed and the matter submitted.

ISSUES¹

1. Did District fail to provide speech and language (SAL) services in accordance with the Student's November 1, 2010 Individualized Education Program (IEP) and, if so, did such failure amount to a denial of a free appropriate public education (FAPE) to Student?
2. Did District deny Student a FAPE by failing to offer appropriate SAL services in Student's February 7, 2012 IEP?
3. Was the speech and language therapist (SLP) who provided Student with SAL services a proper provider of such services and, if not, did District therefore deny Student a FAPE?

FACTUAL FINDINGS

1. Student is 19 years old, has a medical diagnosis of Down syndrome, and is eligible for special education (SE) placement and related services as a student with an intellectual disability (ID).² He is a resident of the District and attends Carousel School

¹ At the commencement of the hearing, the parties agreed that these three issues accurately stated the issues raised by Student's complaint.

² This eligibility was previously called "mental retardation," the term used in many of Student's special education assessments and reports. In April 2012, the California legislature passed a series of bills, subsequently signed by the Governor, which eliminated the terms "mental retardation" and "mentally retarded" from all State laws, regulations, and publications. Though the term changed to "intellectual disability," the eligibility criteria remained unchanged.

(Carousel), a nonpublic school (NPS) in which Student was placed by his IEP team, beginning in January 2008.

2. Mother testified at the hearing. She reviewed the two SAL receptive and expressive language annual goals and short-term objectives from the November 8, 2008 IEP and the November 2, 2009 IEP. She said she could not recall if she understood the annual goals in November 2008, but believed she did in November 2009. She understood all the SAL measurable annual goals at the time of her testimony.

MARCH 2010 AT/AAC ASSESSMENT

3. District SLP and assistive technology practitioner (ATP) Keichea Reeve-Mitchell, Ed.D., conducted an assistive technology (AT)/augmentative and alternative communication (AAC) assessment on March 19, 2010. Student's IEP team requested the assessment to assist in determining Student's most effective mode of communication; Mother testified that she had asked for the AT/AAC evaluation. Dr. Reeve-Mitchell, who did not testify at hearing, was from Creating Real and Equal Assess through Technology and Education (CREATE), a division of the District's SE department, at District's Madrona Middle School. At the time of referral, Student was communicating using signs, facial expressions, gestures, and the Picture Exchange Communication System (PECS). Dr. Reeve-Mitchell observed Student, reviewed his records, interviewed Student's SLP, and conducted trials with two AAC devices – the Tech Talk and the Tech Speak.

4. During the assessment, Student was first presented with the Tech Talk, a static display voice output with eight locations of three-inch colored pictures paired with text for message retrieval. The device had multiple levels for storing several vocabulary sets. The examiner demonstrated to Student how to use the Tech Talk to request desired objects and activities. Student was able to request a snack in three out of four trials, spontaneously. Overall, Student increased his functional communication skills

using the Tech Talk. However, Dr. Reeve-Mitchell's report stated that the device did not have the capacity to hold the amount of functional words that Student would need to effectively communicate.

5. Student was then presented with a Tech Speak, a static display voice output communication device with 32 locations of one-inch colored pictures paired with text for message retrieval. The device has six levels with a capacity for 192 recorded messages. Student did not need the examiner to demonstrate how to use the Tech Speak. The report stated that Student quickly generalized the skill acquired in using the Tech Talk.

6. During the assessment, Student spontaneously requested a snack using single icons and icon sequences up to four. For example, Student used the Tech Speak to make the following requests: "more," "give me," "I want more" and "I want more that." Student spontaneously used the Tech Speak to make these requests over 20 times during the observation session. In her report, Dr. Reeve-Mitchell concluded that the AAC device tremendously increased Student's communicative effectiveness.

7. Dr. Reeve-Mitchell determined that the addition of an AAC device as an additional mode of communication would increase Student's functional communication with peers and adults. She recommended that Student be provided with a multi-level static-display communication device with up to 32 locations, along with follow-up training regarding programming and uses of the voice output for Student, school staff, and parents. She encouraged the use of a total communication approach in all settings, which included the use of vocalizations, words, facial expressions, gestures or signs, pictures, and a voice output communication device, such as the Tech Speak.

8. Thereafter, Carousel provided Student with an AAC voice output device, with the recommended layers of icons and locations. Student started to incorporate the "TechTalk32"³ into his communication model at school.

OCTOBER 2010 SPEECH AND LANGUAGE REPORT

9. SLP Elise Bowles prepared an October 25, 2010 report for Student's upcoming annual IEP team meeting. Ms. Bowles is the Director of Speech and Language Services at Carousel, and she testified at the hearing. She provided SAL services to Student from 2008 into 2012. Ms. Bowles earned her bachelor of science in speech sciences from University College London in 2001 and is pursuing her masters of arts in special education. She possessed a current speech-language pathology services credential from the California Commission on Teacher Credentialing (CCTC) and obtained a Certificate of Clinical Competence in Speech-Language Pathology (CCC-SLP) in 2005 from the American Speech-Language-Hearing Association (ASHA).

10. Ms. Bowles has worked with nonverbal children having developmental disabilities since 2001. She was an SAL therapist with the Enfield Primary Care Trust in Enfield, United Kingdom, from 2001 to 2006. She also worked for a private SAL service provider during 2005. From 2006 to 2008, she was an SLP's assistant with EBS Healthcare, Irvine, California. In September 2008, she came to her present position as director of SAL services at Carousel. Her duties include coordinating SAL services for students from preschool through twelfth grade, in accordance with their IEP's. She manages and supervises two SLP's and one SLP assistant. She carries her own caseload of up to 40 students with severe special needs, including autism. She regularly consults

³ Throughout the decision, Student's AAC device is referred to as "TechTalk32," even though the IEP's, assessments, and related documents used various spellings.

with teachers regarding curriculum planning to assure students' access to the classroom teaching. Ms. Bowles education, training and experience qualified her to knowledgeably testify as an expert regarding children with SAL disabilities, including nonverbal means of communication.

11. Ms. Bowles stated that Carousel was an NPS where the majority of students were nonverbal or minimally verbal. Ms. Bowles had known Student since she started in 2008 and, when she prepared the October 2010 SAL report, had been providing direct SAL services to Student. When she was directly servicing Student, she had 20 students on her caseload. She provided Student's SAL services in a therapy room; Student's one-to-one aide was present. Student's SAL therapy was individual and never in a group. Mother never attended a SAL therapy session.

12. Ms. Bowles testified that, when she first started at Carousel, Student was essentially nonverbal, able to say about five words. This did not change; Student's ability to speak and communicate with words remained very limited. Ms. Bowles explained that Student made progress in communication through the use of a multimodal communication system in the classroom setting, which was a combination of vocalizations, signs, gestures, and AAC device. She stated that Student's goals always reflected his individual and unique need for a multimodal communication system because traditional SAL therapy would not have effectively expanded Student's spoken vocabulary. Her testimony generally demonstrated a thorough knowledge of Student's speech and communication needs.

13. Her report reviewed the language arts and SAL goals from the November 2009 IEP, which she was responsible for implementing. The first goal was designed to increase Student's participation within the therapy/classroom activities: Student would be supported by use of a five token reward chart to work for a chosen reward, with minimal prompts, on five occasions throughout the day. Student met this goal.

14. The second goal was designed to assist non-familiar people in understanding Student. Student would indicate his basic wants/needs within his daily routine by selecting a picture/icon from his communication book, and from a familiar vocabulary set of 15 icons, exchanging it with a communicative partner, with 80 percent accuracy, across three out of five sessions, as measured by teacher's and therapist's observations. Student attained this goal.

15. The third goal was designed to demonstrate Student's understanding and measure his receptive language. Student would answer a range of "wh" questions from a field of three (icons, written words also presented verbally) with 80 percent accuracy across three out of four sessions, as measured by teacher's and therapist's observations. Student did not meet this goal. There were two objectives, or measurable partial steps, toward this annual goal. Student met the first objective of 60 percent accuracy but did not meet the second objective of 70 percent accuracy.

16. Ms. Bowles reported that Student had made great progress with his communication and social skills since his last IEP. He was developing relationships with his peers and demonstrated a marked decrease in inappropriate behaviors. Student initially struggled to make his wants and needs met within the classroom environment because his behaviors and gestures required interpretation by familiar staff members. However, Student had formalized some signs and was using his TechTalk32 to make requests of highly preferred items. Student was able to make a selection or request from the field of 32 icons. Student was also able to sequence a range of signs to make his needs known, but these were usually limited to expressing concrete wants or needs, such as requesting food or wanting something that was within sight.

NOVEMBER 1, 2010 ANNUAL IEP

17. On November 1, 2010, Carousel convened Student's annual IEP team meeting.⁴ All legally required members of the IEP team attended including: Mother; Ms. Bowles; Carousel Director of Special Education, Nelly V. Chaves; a District program specialist; a Carousel SE teacher; the Harbor Regional Center Counselor; and an occupational therapist (OT), from Big Fun Therapy and Recreational Services, which was providing occupational therapy services.

18. The IEP team reviewed Student's present levels of academic performance and functional achievement, which included Ms. Bowles report of Student's progress in his communication and social skills. The IEP reflected Student's increasing use of his TechTalk32 to express his wants and needs. Student had generally improved his behaviors both in and out of the classroom, listening to verbal prompts and instructions, though his inattention affected his participation in activities. He continued to require the services of his one-on-one aide for redirection and support in order to access his curriculum.

19. As to adaptive and daily living skills, Student was independent when eating, used utensils to eat, and cleaned his desks before and after eating. Student continued to require minimal assistance when using the restroom. When seeking food, Student pointed to his mouth when interacting with an adult. As a support, the IEP stated that Student would continue to use his communicative device to express his wants and needs.

⁴ Student does not allege that the November 2010 IEP was procedurally or substantively deficient so as not to provide a FAPE. Consequently, this decision does not include detailed factual findings regarding the 2010 IEP, placement, and services, other than those facts related to the issues herein.

20. The IEP team reviewed the OT's recommendations. Much of the discussions addressed the OT and Mother's concerns regarding the reduction of clinic OT. Mother believed Student's inappropriate behaviors would increase. The OT, Mother and the IEP team discussed various means of addressing Student's sensory needs, without increasing his behaviors. The OT assured Mother that if the Student's behaviors increased, the OT would call an IEP meeting to again discuss the OT services.

21. Ms. Bowles presented her findings from her SAL report, including Student's progress on his annual SAL goals and present performance. She noted both at the IEP and in her testimony that Student was using his TechTalk32 to speak phrases. Student would press a sequence of icon buttons to build an audio message. For example, he would press the "I want" button, then the "markers" button, followed by the "please" button. Student's AAC device would then speak the phrase, "I want markers, please." At the time of the IEP, Student was using five to six phrases on his AAC device. Ms. Bowles testified, and the IEP confirmed, that Mother did not raise any concerns regarding Student's SAL services, goals, or objectives.

22. Ms. Bowles recommended and the IEP team adopted two new annual SAL goals. Ms. Bowles was primarily responsible for implementing both goals, along with the SE teacher. For expressive language, the IEP noted Student had met his previous annual goal and adopted the following new annual goal:

By November 2011, [Student] will be able to complete a sequence consisting of three elements, either icons to build the sentence, or pictures to sequence a familiar activity of daily life, with 80 percent accuracy across three out of four sessions, as measured by teacher and therapist observations.

23. The first objective, or measurable partial step, toward the expressive language annual goal was for Student to complete a sequence of three elements with 60 percent accuracy. The second objective was to complete the sequence with 70 percent accuracy.

24. For comprehension or receptive language, the IEP noted Student had partially met his previous annual goal and adopted the following new annual goal:

By November 2011, [Student] will answer a range of "wh" questions from a field of three (icons, written words also presented verbally) with 80 percent accuracy across three out of four sessions, as measured by teacher and therapist's observations.

25. The first objective, or measurable partial step, toward the comprehension language annual goal was for Student to answer the questions with 60 percent accuracy. The second objective was to answer the questions with 70 percent accuracy.

26. The IEP team drafted 10 goals with short-term objectives, a behavior support plan (BSP), and an individual transition plan (ITP). The behavior goal addressed Student's tendency to push other people when he got frustrated. The goal was for Student to use his TechTalk32 device as a way of communication instead of getting frustrated and physical. Student's post-secondary goal in his ITP was that, upon completion of school, he would use a communication device to express wants and needs.

27. The IEP team found that Student required assistive technology and referred to the TechTalk32, which had already been provided. Student continued to need a one-on-one aide. He required a small group specialized program to meet his functional needs and would be outside the regular education environment 100 percent

of the time. Student was on a Special Education Administrators of County Offices (SEACO) alternative diploma track. He would take the California Alternate Performance Assessment (CAPA), instead of the California Standards Test (CST) or California Modified Assessment Test (CMAT). Student qualified for extended school year (ESY) for 2011.

28. The IEP offered continued placement at Carousel and OT designated instructional services (DIS). The IEP provided for individual SAL therapy, two times a week for 30 minutes a session, and for consultation SAL services two times a month, for 30 minutes each session. Mother signed and agreed with the IEP, with the exception of the changes to the OT services.

SAL SERVICES PURSUANT TO 2010 IEP

29. Ms. Bowles reviewed the SAL services, as provided by the November 2010 IEP, and testified she was responsible for delivering the SAL therapy. In addition to the consultation SAL, Ms. Bowles gave one-on-one SAL therapy to Student. Ms. Bowles testified that she delivered the SAL services to Student at the frequency and rate, as indicated in the IEP, up until the end of extended school year (ESY) 2012. She implemented the SAL expressive and receptive goals, which she authored and the IEP team adopted. Student continued to use the TechTalk32 as part of Student's multimodal communication system.

30. On January 12, 2011, Ms. Bowles authored a handwritten letter to Mother, including copies of the overlays used on Student's TechTalk32. She wanted Mother to see what Student was using in the classroom. Ms. Bowles asked if the overlays were something Mother could use with Student on the AAC device at home. She offered to schedule a meeting with Mother, after she had reviewed the overlays, to discuss implementing the AAC device in the home. Ms. Bowles also indicated that there was

consideration of using the AAC device during the OT sessions. Mother did not schedule a meeting or otherwise respond to Ms. Bowles letter.

31. Mother testified that she never saw the TechTalk32, was unaware of how Student used the device, and was unsure of what the device did. She stated that the school had requested her to sign an agreement to indemnify the school in the amount of \$2,000 before Student could bring his AAC device home. She did not sign. Student never used the AAC device at home.

32. Ms. Bowles testified that Student had two extended absences during the 2011 calendar. The first was in the spring 2011; the second was in the late fall and/or early winter 2011. Mother testified that Student was absent in the late fall and/or early winter 2011 for more than three and a half weeks, which included an extended hospitalization in Miller Children's Hospital at Long Beach Memorial Medical Center.⁵ As a consequence, Carousel, District and Mother agreed to delay Student's next IEP, which would have taken place in November 2011, until early 2012, after the winter break.

33. Mother testified that Student received SAL therapy, for 20 to 30 minutes a day, from a male therapist during most of his hospitalization. She claimed that the therapy, which was provided by the hospital and not the District, was very effective and Student greatly improved. She never observed the hospital's SAL therapy and she never talked to the SLP who delivered the therapy. The hospital therapist did not testify at hearing or submit a written evaluation or report.

34. Mother testified that Student's spoken vocabulary increased as a result of the hospital's SAL therapy. Mother generally asserted that Student's spoken vocabulary had substantively and steadily decreased since he started at Carousel. She said that

⁵ Mother was unclear as to the exact dates of Student's hospitalization and return to school. The documentary evidence also did not specify the dates.

before attending Carousel, Student could speak 35 to 40 words and some phrases. For example, he said "Mom," "Dad," "okay," and "juice." Student spoke phrases, such as "come here," "are you all right," and "how are you." Since attending Carousel, Student regressed to just a few spoken, single words. After exiting the hospital, he was again saying words, such as "out." He said this three or four times after going home. He stopped saying "out" after three or four weeks back at school.

35. Mother also stated that Student's ability to communicate with the hospital staff improved because the hospital SAL therapist assembled a picture book with photographs of the actual objects in Student's life. Mother said that Student effectively employed this picture book to make his desires known to the hospital staff and, afterward, at home. Mother stated that Carousel used generic pictures or drawings of objects, which she felt was less successful. She stated that she had previously requested that Carousel use pictures of the objects in Student's life, as opposed to the generic.

36. When Student returned to school following his hospitalization, Mother told Carousel to stop using the AAC device. Instead, she instructed Carousel to use the picture book that the hospital SAL therapist had assembled. Ms. Bowles confirmed this and stated that Student did not thereafter use his TechTalk32 but the picture book that Mother provided.

37. Mother testified that she had lost confidence in Carousel's and the District's ability to fairly evaluate Student's speech and language capabilities and needs. She stated that Carousel consistently referred to her son as nonverbal, utilizing testing procedures which unfairly or inaccurately measured Student's ability to communicate with speech. She concluded that the school's evaluations were biased and came to believe that Student had not been properly assessed.

38. Mother admitted that the school might very well have provided all the SAL services as listed in the November 2010 IEP. However, since Student's ability to speak

continued to regress, she concluded that he was not receiving the services or that the services were not being delivered as required by the IEP. Accordingly, Mother testified that she asked District's SE Program Specialist, Dr. Reeve-Mitchell, for an independent educational evaluation (IEE) of Student's speech and language before the next IEP. Mother said that Dr. Reeve-Mitchell asked that she put the IEE request in writing.

39. On or about November 30, 2011, Mother emailed Dr. Reeve-Mitchell, asking about the scheduling of the IEP "this year or next year." Mother also stated, "I still want a speech evaluation done and not by PTN." PTN was Pediatric Therapy Network, an NPA used by District for SAL evaluations. Mother acknowledged that her email did not use the term "IEE," but she intended this email to be the writing that Dr. Reeve-Mitchell requested in response to Mother's demand for an SAL assessment by someone other than Carousel or the District.

40. Dr. Reeve-Mitchell responded with a November 30, 2011 email, stating that she would contact Carousel to coordinate schedules for the next IEP meeting. She also inquired as to whether Mother recently signed an assessment plan for SAL. Mother said she did not receive any further response to her request for an SAL IEE. Dr. Reeve-Mitchell did not testify.

FEBRUARY 2012 SAL ASSESSMENT FOR TRIENNIAL ISP

41. Ms. Bowles conducted an SAL assessment of Student, at the request of District, for Student's next IEP, which would be a triennial review. She conducted interviews with staff and observations in the classroom and therapy session. She also utilized the following assessment instruments:

Pre-Verbal Communication Schedule (PVCS); Kiernan, C. and
Reid, B., (1987)

Functional Communication Profile – Revised; Kleiman, L. (2003)

Receptive One-Word Picture Vocabulary Test (ROWPVT);

academic Therapy Publications (2000)

Test of Aided-Communication Symbol Performance (TASP);

Bruno, J. (2003)

42. The report noted that Student had a diagnosis of Down syndrome and stated he "is considered non-verbal." Ms. Bowles reported that Student had two long periods of absence from school related to digestive and intestinal concerns. Student experienced health issues common to individuals with his diagnosis, including frequent colds and mouth breathing. He had no known vision, hearing, gross or fine motor concerns that impacted him in the areas of speech and language.

43. Student demonstrated attention to highly preferred tasks or activities, but usually with one-on-one engagement. Student would seemingly have good attention, but struggled to visually attend to the tasks that used to be easy. For example, picture matching bingo games required a high level of prompting and encouragement to "look again."

44. Ms. Bowles's report noted that Student was social, greeting and interacting with a large circle of familiar adults and peers. He approached individuals and initiated communication by tapping them on the arm and vocalizing. Student used a variety of non-verbal communication during these interactions, including facial expressions, gestures, and vocalizations. Student was able to communicate his emotions by chuckling when he was happy and expressing anger through shouts or physical gestures, with clear evidence of an intent to communicate.

45. Ms. Bowles formally assessed Student's single-word level of receptive language by administering the ROWPVT, which is a norm-referenced assessment of how well individuals can match a word that is heard to objects, actions, or concepts presented in full-color pictures. Student scored below the one percentile, which Ms.

Bowles opined did not reflect his actual abilities. She stated that Student has demonstrated a high level of functional receptive language, seen in his response to verbal directions. Student's vocabulary knowledge primarily consisted of nouns and verbs; he did not show an understanding of pronouns, prepositions, or comparatives. He was also inconsistent with familiar adjectives, such as color. Student was able to sequence several steps within a task if given a series of instructions, but his ability to follow them accurately was affected by his motivation and attention. Even when supported visually, Student required repetition and reminders, as he tended to listen to one or two keywords within a phrase.

46. Ms. Bowles found that Student had developed an understanding and association of visual cues, including symbolic icons. He was able to object-picture and picture-picture match, as well as answering "wh" questions (Where is the...? Which one...?), including categorization questions from a visual field of three, thereby demonstrating comprehension. Student's consistency, though, was affected by his attention to task.

47. For expressive language, Student was able to demonstrate a clear communicative intent and, at basic level, was able to make his needs and preferences known in the classroom. His strongest form of expressive language was through the use of natural gestures, manipulation, and pointing. Since returning from his school absence, he started to again use some American sign language (ASL) gestures that he formerly used, such as "more," "me/my," "eat," and "cat." Ms. Bowles noted that Student still primarily utilized natural gestures. When in the hospital, Student used photos to indicate wants and needs. Student had been able to sequence three icons on his AAC device to request highly referred items, although this was no longer consistent. Ms. Bowles testified that Student acquired skills in utilizing the TechTalk32 had diminished during his lengthy hospitalization.

48. In reviewing Student's speech and speech musculature, Ms. Bowles noted that Student had a limited verbal repertoire, although he was able to alter its use to express enjoyment, displeasure, or to gain attention. He used a few throaty sounds and vowels, but did not produce any fricatives (e.g., s, p, f, v, sh, ch) or voiceless plosives (e.g., p, t, k). He could repeat the same syllable two or three times, but was unable to combine different sounds in vocal play. Student did not imitate speech sounds. Student had speech musculature common in individuals with Down syndrome, but had appropriate control in normal breathing required for speech.

49. Ms. Bowles reviewed Student's performance with his AAC communication device. The TechTalk32 voice output was set up with sentence starters, some adjectives, and familiar objects for items that Student would request in the classroom but could not always point (e.g., food, drink, markers, paper towel, etc.). Student was consistent in using the single word level and was able to sequence two icons with minimal prompting and three icons with moderate prompting.

50. Ms. Bowles administered the TASP, which assessed Student's symbolic skills. TASP results are often used to design communication boards and establish appropriate AAC intervention goals and strategies targeting symbolic and syntactic development. Student was able to scan 32 cells, but required icons between one-and-a-quarter to one-and-a-half inch in size to help with his visual attention. He was able to understand icons of nouns, but not the icon representations of verbs or adjectives. Student was able to categorize by familiar categories of transportation, food, clothes, and animals. Ms. Bowles reported Mother had stated, via e-mail, that Student had shown an interest in the iPad and Blackberry texting and email functions. Collaborative work with his OT also showed that Student had awareness of letter recognition but was not able to use this as a communicative tool at that time.

51. Ms. Bowles reported Student's progress toward his expressive and receptive language goals from the November 2010 IEP. Student did not meet his expressive language annual goal (80 percent accuracy) and the second short-term objective (70 percent). He met his first short-term objective, which had a 60 percent accuracy standard. Student did not meet his receptive language annual goal (80 percent accuracy). He did meet the first short-term objective, with 60 percent accuracy, and the second short-term objective, with 70 percent.

52. Ms. Bowles concluded that the two long periods of absence from school during the previous year had affected Student's ability to progress toward his annual goals.

53. In summarizing her report's findings, Ms. Bowles affirmed Student's eligibility for speech and language services. Student's strengths were in the areas of social skills and comprehension of language. He demonstrated abilities to use formal methods of expressive language and was able to make his wants and needs known in the classroom at a single word level, as indicated by his use of symbols and pictures for nouns. He continued to require support to maintain attention and listen within sessions. He struggled to follow directions, unless it related to his own agenda. Student required further work to establish his expressive language skills.

FEBRUARY 7, 2012 TRIENNIAL IEP

54. On February 7, 2012, Carousel convened Student's triennial IEP team meeting. All legally required members of the IEP team attended including: Mother; Ms. Bowles; Ms. Chaves; a District program specialist; a District school psychologist; a Carousel SE teacher; and an OT.⁶ The IEP team reviewed Student's present levels of

⁶ Student's only assertion related to the triennial IEP was that the offered SAL services were inadequate and, therefore, the triennial IEP failed to provide Student with

academic performance and functional achievement. Ms. Bowles presented her SAL assessment report and Student's progress toward his annual SAL goals. The IEP team discussed Student's AAC device, organizational skills, and attending skills. Ms. Bowles informed the IEP team that Student had made great progress in his expressive language, even though he did not meet his annual goal, by using his multi-modal communication model to express his needs and wants in the classroom.

55. Mother testified that she disagreed with Carousel's SAL assessment at the IEP; she did not put her disagreement in writing. Mother contended that Ms. Bowles was administering tests which were inappropriate because of Student's nonverbal nature. She testified that she told the IEP team that the report was not a fair assessment of Student's performance and SAL needs.

56. Ms. Bowles had drafted two new annual SAL goals. For expressive language, the IEP included the following new annual goal:

By February 2013, in order to develop consistent expressive communication, using multimodal communication (e.g., communication binder, signs, gestures, etc.), [Student] will indicate wants and needs within the classroom and therapy environments, with 80 percent accuracy and minimal

a FAPE. Student further claimed that District declined to provide additional SAL services, such as the NPA SAL therapy requested by Mother, which would have cured the claimed deficiency in the IEP's speech services and FAPE offer. Consequently, this decision does not include detailed factual findings or analysis regarding the February 2012 triennial IEP, placement and other services, except those related to the issues herein.

prompts, across five to six opportunities on a daily basis, as measured by class staff and therapist's observations.

57. The first short-term objective toward the expressive language annual goal was for Student to perform with 60 percent accuracy by June 2012, while the second objective was to be with 70 percent accuracy by December 2012.

58. For receptive language, the IEP included the following new annual goal:

By February 2013, in order to develop receptive language vocabulary, [Student] will answer a variety of "wh" questions (e.g., who, what, where, when) related to his functional curriculum from a visual field of four choices with minimal prompts, with 80 percent accuracy as measured by teacher and therapist observations.

59. The first objective toward the comprehension language annual goal was for Student to perform with 60 percent accuracy by June 2012, while the second objective was to be with 70 percent accuracy by December 2012.

60. The IEP team developed nine more goals with short-term objectives, a behavior support plan (BSP), and an individual transition plan (ITP). The IEP offered continued placement at Carousel, a one-to-one aide, accommodations and modifications, and OT DIS. The IEP provided for individual SAL therapy, two times a week for 30 minutes a session, and for consultation SAL services two times a month, for 30 minutes each session.

61. Mother took the IEP with her and later signed and agreed with the IEP, with the exception of "speech and OT at Carousel School to be defined and frequency of

services.” Mother also noted on the IEP that she requested more SAL services with an NPA.

62. Mother testified that she requested NPA SAL services at the IEP because she had lost confidence that Carousel was appropriately assessing and meeting Student’s SAL needs. She continued to contend that Student’s ability to speak had regressed, Carousel did not properly assess his speech, and Carousel SAL services were not helping Student improve or maintain his speaking vocabulary. Mother believed that an SAL provider, unrelated to Carousel or District, would provide “another set of eyes” with more impactful services, which would increase Student’s ability to speak. Mother contended that Student should be using more oral language.

63. Ms. Bowles testified that she did not believe the individual NPA SAL services requested by Mother would benefit Student. She opined that Student’s expressive communication would benefit from more integration in the classroom and across all his environments. More one-on-one speech services would do little to improve Student’s functional expressive language.

64. Ms. Bowles testified that her observations, testing, and experience indicated Student was essentially nonverbal. She had never heard Student use full phrases. She had never known Student to have a vocabulary of 30 to 35 words. No documents evidenced Student having a spoken vocabulary of more than a handful of words. Ms. Bowles had never heard Student say the word “out;” he did not say the word “out” when he returned to school from his 2011 hospitalization.

65. Based upon her professional training and experience, Ms. Bowles testified that the likelihood of a student developing spoken language decreases with the approach of puberty. Typically, a child needs to develop spoken language by the age of five; that is, when the child starts school. If a student did not develop spoken language by the age of 13 or 14, the student was unlikely to thereafter develop spoken language.

66. Ms. Bowles's professional opinion was that Student required the multi-modal communication model to communicate his needs and wants to others. Ms. Bowles emphasized that none of Student's SAL goals and objectives had ever focused on spoken language. Additionally, the use of pictures, to the exclusion of the AAC device, was preventing Student from developing more functional and expressive communication. Student could not develop phrases with pictures. The TechTalk32 enabled Student to generalize with the icon overlays and to assemble phrases. In Ms. Bowles's opinion, Student's expressive communication had been hampered when Carousel, at Mother's direction, removed his AAC device.

DISTRICT'S APRIL 2012 LETTER TO MOTHER RE NPA SAL SERVICES

67. District authored and sent an April 16, 2012 letter to Mother regarding her request for additional speech therapy through an NPA. The letter stated that the letter was a notice of refused action by the District, in accordance with the provisions of 34 Code of Federal Regulations, Section 300.503. District noted that Mother had requested the additional NPA speech therapy at the February 7, 2012 IEP and during an amendment to the IEP held on March 1, 2012.⁷

68. The District stated that staff had considered the request for the additional services and concluded that it would not provide increased speech services because the requested level of support would exceed the level necessary to provide educational benefit to Student. The services and support offered at the February 7, 2012 IEP, and the amendment IEP of March 2012, provided the necessary support for Student to make progress toward his goals and objectives. The District then restated the IEP services to

⁷ The March 2012 amendment addressed NPA OT services and is, therefore, not reviewed herein.

be provided Student. District further stated that its determination and recommendations were based upon the assessments which were presented at the triennial IEP, including the SAL assessment conducted by Ms. Bowles.

SAL SERVICES AFTER FEBRUARY 2012 IEP

69. Ms. Bowles continued to provide SAL services to Student following the February 2012 IEP and continued to do so until the end of ESY in summer 2012. Ms. Bowles delivered the SAL services to Student, at the frequency and rate required by the IEP. She implemented the SAL expressive and receptive goals.

70. Ms. Chavez testified at the hearing. She said that in September 2012, another speech pathologist, Alan Ashkenazy, was assigned to deliver Student's SAL services. However, Mr. Ashkenazy left Carousel as of November 30, 2012. She reviewed his human resources file and confirmed that Mr. Ashkenazy was, throughout his employment with Carousel, a properly credentialed SLP authorized to provide SAL services. Ms. Chavez also reviewed the logs maintained by Carousel for Student's SAL services, both individual and consultation. She determined that Mr. Ashkenazy, while at Carousel, delivered and implemented all of the SAL services required by Student's IEP.

71. In her capacity as director of Carousel's SAL services, Ms. Bowles authored a December 3, 2012, form letter to all parents who had been receiving SAL therapy from Mr. Ashkenazy. She stated that, because of staff changes, she would be the SLP for their child.

72. On December 4, 2012, Mother sent Ms. Bowles an email which stated:

I received your letter regarding [Student's] speech therapy. If you are the only alternative, I will decline speak [sic] therapy until another solution is found. I have no confidence in your ability to help [Student] improve.

73. On January 30, 2013, Ms. Bowles wrote a letter to Carousel parents, including Mother, introducing staff member Connie Nadler who would be the new credentialed SLP for their children. Mother and District are agreed that Student did not receive SAL services for the period of time between Mr. Ashkenazy's departure to Ms. Nadler's retention.

LEGAL CONCLUSIONS

1. In a special education administrative due process hearing, the party seeking relief has the burden of proving the essential elements of its claim. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].) In this matter, the Student has the burden of proof.

APPLICABLE LAW

2. Under the Individuals with Disability Education Act (IDEA) and state law, children with disabilities have the right to a FAPE. (20 U.S.C. § 1400(a); 34 C.F.R. § 300.101 (2006); Ed. Code, § 56000.) A FAPE means special education and related services that are available to the special needs pupil at no charge to the parents, that meet state educational standards, and that conform to the child's IEP. (20 U.S.C. § 1401(a)(9); 34 C.F.R. § 300.17 (2006); Cal. Code Regs., tit. 5, § 3001, subd. (p).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(a)(29); 34 C.F.R. § 300.39 (2006); Ed. Code, § 56031, subd. (a).) Specially designed instruction also includes accommodations that address a child's unique needs and that ensure access to the general curriculum. (34 C.F.R. § 300.39(b)(3) (2006).) "Related services" are developmental, corrective and support services that are required to assist a special needs pupil to benefit from special education. (20 U.S.C. § 1401(a)(26);

34 C.F.R. § 300.34(a) (2006); Ed. Code, § 56363, subd. (a).) In California, related services are called designated instruction and services (DIS).

3. In *Board of Education of the Hendrick Hudson Central Sch. Dist. v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the United States Supreme Court addressed the level of instruction and services that must be provided to a pupil with a disability to provide a FAPE. The Court determined that a student's IEP must be reasonably calculated to provide the student with some educational benefit, but that the IDEA does not require school districts to provide the student with the best education available or to provide instruction or services that maximize a student's abilities. (*Id.* at pp. 198-200.) The Court stated that school districts are required to provide a "basic floor of opportunity" that consists of access to specialized instructional and related services that are individually designed to provide educational benefit to the student. (*Id.* at p. 201; *J.L. v. Mercer Island Sch. Dist.* (9th Cir. 2010) 592 F.3d 938, 947-948, 951, fn. 10 (*Mercer Island*).)

4. There is no one test for measuring the adequacy of educational benefits conferred under an IEP. (*Rowley, supra*, 458 U.S. at pp. 202, 203 fn. 25.) A student may derive educational benefit under *Rowley* if some of his goals and objectives are not fully met, or if he makes no progress toward some of them, as long as he makes progress toward others. A student's failure to perform at grade level is not necessarily indicative of a denial of a FAPE, as long as the student is making progress commensurate with his abilities. (*Walczak v. Florida Union Free Sch. Dist.* (2nd Cir. 1998) 142 F.3d 119, 130 (*Walczak*); *E.S. v. Independent Sch. Dist., No. 196* (8th Cir. 1998) 135 F.3d 566, 569; *In re Conklin* (4th Cir. 1991) 946 F.2d 306, 313; *El Paso Indep. Sch. Dist. v. Robert W.* (W.D.Tex. 1995) 898 F.Supp.442, 449-450.)

5. Under *Rowley*, the factual showing required to establish that a student received some educational benefit is not demanding. For a student in a mainstream

class, "the attainment of passing grades and the regular advancement from grade to grade are generally accepted indicators of satisfactory progress." (*Walczak, supra*, 142 F.3d at p. 130.) A district need not guarantee that a student will make a month's academic progress in a month's instruction; a student may benefit even though his progress is far less than one grade level in one school year. (See, e.g., *Houston Indep. Sch. Dist. v. Bobby R.* (5th Cir. 2000) 200 F.3d 341, 349 n.3.) A two-month gain in reading in 10 instructional months has been held an adequate showing. (*Delaware Valley Sch. Dist. v. Daniel G.* (Pa. Cmwlth. 2002) 800 A.2d 989, 993-994.) A student derives benefit under *Rowley* when he improves in some areas even though he fails to improve in others. (See, e.g., *Fort Zumwalt Sch. Dist. v. Clynes* (8th Cir. 1997) 119 F.3d 607, 613; *Carlisle Area Sch. v. Scott P.* (3d Cir. 1995) 62 F.3d 520, 530.) A student may derive benefit while passing in four courses and failing in two. (*Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.* (S.D.Tex. 1995) 931 F.Supp. 474, 481.)

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 Sch. 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.*) Nor must an IEP conform to a parent's wishes in order to be sufficient or appropriate. (*Shaw v. Dist. of Columbia* (D.D.C. 2002) 238 F.Supp.2d 127, 139.) 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*, 458 U.S. at p. 208; *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 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.)

7. The IEP is the “centerpiece of the [IDEA’s] education delivery system for disabled children” and consists of a detailed written statement that must be developed, reviewed, and revised for each child with a disability. (*Honig v. Doe* (1988) 484 U.S. 305, 311 [108 S.Ct. 592, 98 L.Ed.2d 686]; 20 U.S.C. §§ 1401 (14), 1414 (d)(1)(A); Ed. Code, §§ 56032, 56345.) In developing the IEP, the IEP team shall consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial evaluation or most recent evaluation of the child, and the academic, functional and developmental needs of the child. (20 U.S.C. § 1414(d)(3)(A).) To determine whether a pupil was denied a FAPE, an IEP must be examined in terms of what was objectively reasonable at the time it was developed, not in hindsight. (*Adams, supra*, at p. 1149; *Roland M. v. Concord Sch. Comm.* (1st Cir. 1990) 910 F.2d 983, 992 (*Roland*).)

8. Minor implementation failures are not actionable given that “special education and related services” need only be provided “in conformity with” the IEP. There is no statutory requirement of perfect adherence to the IEP, nor any reason rooted in the statutory text to view minor implementation failures as denials of a FAPE. (*Van Duyn v. Baker Sch. Dist. 5J* (9th Cir. 2007) 502 F.3d 811, 821.) A “material” failure to implement, though, is actionable. A failure is material “when there is more than a minor discrepancy between the service a school provides to a disabled child and the service required by the child’s IEP.” (*Id.* at p. 822.) The materiality standard does not require that the child suffer demonstrable educational harm in order to prevail. (*Ibid.*)

ISSUE ONE – DELIVERY OF SAL SERVICES PER NOVEMBER 1, 2010 IEP

9. In Issue One, Student contends that the District failed to provide Student with SAL services in accordance with the Student’s November 2010 IEP, that such failure was material, and that Student was therefore denied a FAPE. Student asserts that he did

not make any progress in his speech vocabulary, and had in fact regressed, thus establishing that he did not receive the SAL services or that such services were not delivered in accordance with the IEP so as to provide him with the IEP's contemplated educational benefit.

10. District contends that Student received all the SAL services provided by the IEP, except when Mother refused such services from December 2012 through January 2013.⁸ District further argues that Student failed to produce any credible evidence that Student's oral speech regressed and that the great weight of testimonial and documentary evidence established that Student did not possess a verbal vocabulary beyond a few words and that his SAL goals and services – to which Mother had agreed – had been designed to provide Student with a means of expressive language despite his minimal verbal abilities.

11. Student has not demonstrated by the preponderance of the evidence that the District failed to provide Student a FAPE by failing to deliver SAL services in accordance with the November 2010 IEP. District has established that the SAL services were designed and delivered to support Student's use of a multimodal communication system, with which he could functionally express his needs and wants.

12. Mother acknowledged that she had no evidence that the SAL services were not delivered. The evidence establishes the District delivered the services. Ms. Bowles demonstrated a keen recall of Student's SAL services, as well as an insightful awareness of Student's SAL performance and needs. She convincingly testified that she provided SAL DIS to Student following and in accordance with the November 2010 IEP,

⁸ Since Mother did not accept the SAL services when she signed the February 2012 IEP, Carousel continued to provide SAL services in accordance with the last, fully implemented IEP of November 2010.

until the end of ESY in 2012. Ms. Chavez then testified, having reviewed the SAL service logs for Student, that the SAL pathologist Mr. Ashkenazy provided SAL services to Student from September to the end of November 2012, when he left Carousel's employ. (Factual Findings 29-38; 69-73.)

13. When Ms. Bowles stated that she would provide SAL services to Student until a new pathologist came on staff, Mother pointedly refused the SAL services. She told Ms. Bowles that if she was the only alternative, she declined speech therapy. Carousel hired Ms. Nadler at the end of January 2013, and Ms. Nadler began delivering SAL services to Student. Given that Carousel was able to provide the SAL services, and Mother specifically declined, District is not accountable for Student not receiving the services until Ms. Nadler started at the end of January 2013. (Factual Findings 69-73.)

14. Mother never attended an SAL therapy session. Yet, she asserts the services were not properly delivered because of the alleged regression in Student's ability to communicate by speaking. Student's contention in this regard does not withstand critical analysis.

15. Carousel is an NPS designed to primarily service nonverbal or minimally verbal students. The 2008 and 2009 SAL goals to which Mother referred in her testimony were not designed to increase Student's spoken vocabulary but, instead, proposed the use of different methods for receptive and expressive communication. In other words, Student was placed at Carousel because he was essentially nonverbal and required SAL services that would provide him with other means of functional expressive language. The IEP's goals and services were not designed to increase Student's spoken vocabulary. Therefore, Student's spoken vocabulary is not a proper measure of the SAL service delivery because increasing or maintaining Student's limited vocabulary was not the purpose of the SAL services.

16. Student also failed to produce persuasive evidence that he had a speaking vocabulary of 35 to 40 words before attending Carousel. All the documentary evidence, submitted by both parties, supports the finding that Student was minimally verbal, at best. For example, District conducted the March 2010 AT/AAC Assessment at Mother's request. The purpose of the contemplated AAC device was to provide Student with a means of communication because he could not verbally make his needs and wants known. Dr. Reeve-Mitchell stated that Student communicated with signs, facial expressions, gestures and PECS. She reported that Student spontaneously utilized the AAC devices, making specific requests. She concluded that an AAC voice output device tremendously increased Student's communicative effectiveness. She encouraged that Student be provided the AAC device and that it be incorporated as part of his total communication approach in all settings.

17. District provided Student with the TechTalk32 voice output communication device. Student successfully started to incorporate his AAC device into his multi-modal communication system. The November 2010 IEP recognized Student's productive use of the TechTalk32 and identified his AAC as the means of achieving many of his goals. For example, when seeking food, Student pointed to his mouth when interacting with an adult. As a support, the IEP stated that Student would continue to use his AAC device. His behavior goal was for Student to use his AAC device as a way of communication instead of getting frustrated and physical. In his ITP, his first post-secondary goal was that he would use a communication device to express his wants and needs and that he would take his device with him on weekly community based instruction (CBI) trips. The November 2010 IEP generally recognized that Student could not functionally communicate verbally. With the exception of a proposed reduction in OT, Mother signed and provided full consent to the IEP.

18. Ms. Bowles effectively and persuasively testified about Student's verbal capabilities, his progress, and his continuing SAL needs. She demonstrated a keen awareness of Student's needs and challenges, given that she serviced Student for more than three years and formally evaluated and assessed Student on many occasions. When she first started to provide service to Student in 2008, he was essentially nonverbal, and he was only able to say about five words. This did not change. Student's ability to speak and communicate with words remained very limited. However, Student steadily made progress in communication through the use of his multimodal communication system, which was a combination of vocalizations, signs, gestures and, in 2010, an AAC device.

19. Ms. Bowles emphasized that the IEP's and Student's goals reflected his individual and unique need for a multimodal communication system because traditional SAL therapy would not have effectively expanded Student's spoken vocabulary. As summarized above, the documentary evidence further confirmed Student's very limited verbal capabilities. The SAL goals did not contemplate Student expanding his verbal vocabulary. Therefore, the alleged reduction of Student's spoken vocabulary does not indicate a failure to properly deliver the SAL services.

20. Given the above factors, Student failed to meet his burden of establishing a material failure to implement the November 2010 IEP's SAL services, and therefore did not establish that Student was denied a FAPE. (Factual Findings 1-73; Legal Conclusions 1-19.)

ISSUE TWO – FAILURE TO OFFER APPROPRIATE SAL SERVICES AT FEBRUARY TRIENNIAL IEP

21. Student contends that the February 2012 triennial IEP failed to provide Student a FAPE because District failed to offer appropriate SAL services to Student. Student asserts that the triennial IEP's SAL services were the same as the previous IEP's

SAL services, that Student did not make progress, and that his spoken vocabulary regressed. Therefore, Student required additional NPA SAL services, such as those provided by the SLP while Student was hospitalized shortly before the IEP, which allegedly increased Student's spoken vocabulary.

22. District contends the triennial IEP provided SAL services that were designed to meet Student's unique SAL needs and that had, in fact, provided educational benefit to Student. Further, Mother's contention that Student's verbal abilities regressed is unsupported by persuasive or credible evidence, as is her contention that the hospital SAL therapy had quickly and substantively increased Student's verbal vocabulary.

23. Student failed to demonstrate by a preponderance of the evidence that the February 2012 triennial IEP did not provide him a FAPE because it did not offer sufficient or appropriate SAL services. District established that the SAL services were designed to meet Student's unique needs, were reasonably calculated to provide Student with educational benefit, and did in fact provide educational benefit to Student. Thus, the February 2012 triennial IEP provided Student with a FAPE.

24. Specifically, the evidence showed that the IEP team's communication strategy was for Student to develop and use a multimodal communication system, which is a combination of vocalizations, gestures, expressions, and a voice output device. Therefore, the primary goal was to support Student's need to communicate, not to merely verbalize. Ms. Bowles convincingly testified that traditional SAL therapy would not have effectively expanded Student's spoken vocabulary. Instead, the SAL goals and services focused on developing Student's functional expressive communication.

25. Mother's assertion that Student could speak 35 to 40 words and some phrases, before attending Carousel, was discussed above at Factual Findings 15 through 17, which are incorporated herein. All the documentary evidence submitted by both

parties indicated that Student was minimally verbal, at best. Student did not produce any witness, assessment, or observation that Student had or could achieve greater verbal acuity. Additionally, since increasing Student's verbal vocabulary was not the intent of Student's SAL goals and services, the lack of increased verbal vocabulary cannot indicate the SAL services were insufficient.

26. Mother testified that one of the reasons she asked for additional SAL services was because of the alleged success of the pathologist during Student's hospitalization a few months before the IEP. She testified that Student's spoken vocabulary increased as a result of the hospital's SAL therapy. After exiting the hospital, Student was again saying words, such as "out." He said this three or four times after going home. He stopped saying "out" after three or four weeks back at school. However, no other evidence supports Mother's characterization of the hospital pathologist's success. She did not talk to the hospital pathologist nor did she observe a therapy session; the hospital pathologist did not testify at hearing.

27. Mother's response to the hospital pathologist's servicing of Student revealed an inconsistency in Mother's conduct regarding Student's SAL goals and services. The hospital pathologist assembled, over a number of days, a picture book composed of photographs of objects with which Student was familiar and would use. This picture book differed from the ones used by Carousel because the school used generic pictures or icons. Mother observed Student use the photo picture book to better communicate with hospital staff.

28. When Student returned to school after his hospitalization, Mother instructed Carousel to use the photo picture book from the hospital and to stop using the AAC device. She testified that she did not know how the TechTalk32 worked or what it did. She did not respond to Ms. Bowles' January 2011 offer to show Mother how to

use the AAC device in the home. Mother testified she believed the photo picture book was more effective than Carousel's generic pictures and the AAC device.

29. These choices stand in stark contrast to what Mother had requested and readily agreed in the November 2010 and January 2012 IEP's. In early 2010, Mother requested an AAC assessment, which determined that an AAC device would provide Student with more effective expressive communication. Both of the subsequent IEP's indicated that the AAC voice output device was central to the SAL general intent of providing Student with functional expressive communication. For example, the ITP post-secondary goal was to use the AAC communication device to express his wants and needs; and Student was to take his device with him on weekly CBI trips. By instructing the school to stop using the AAC device, Mother hampered the functional support which she requested and to which she previously agreed. Ms. Bowles knowledgeably testified that Student's expressive language had been compromised by reliance on the photo picture book to the exclusion of the TechTalk32.

30. Mother's testimony regarding the SAL services was inconsistent and diminished her testimony's persuasiveness. She initially testified that she understood the expressive and receptive language goals of the 2008, 2009, and 2010 IEP's. These goals reflected the IEP team's intent of increasing Student's functional communication; the goals did not propose increasing Student's verbal vocabulary. Yet, Mother testified that the SAL services were not sufficient because Student's verbal vocabulary decreased. In doing so, Mother did not explain, or submit any evaluation or report, that indicated increasing Student's verbal ability was a viable goal or could reasonably be expected to increase Student's functional expressive communication.

31. On February 1, 2012, Ms. Bowles produced an SAL assessment report that she had prepared for the triennial IEP. As part of the assessment, she conducted interviews with staff and observed Student in the classroom and therapy. She

administered four standardized instruments that were designed for nonverbal or minimally verbal students. The assessment affirmed Student's limited verbal ability and his need for SAL service to establish his expressive language skills. Her recommended SAL goals and objectives for the triennial IEP addressed Student's identified unique needs.

32. At the February 7, 2012 IEP, Ms. Bowles informed the IEP team that Student had made great progress in his expressive language, even though he did not meet his annual goals, by using his multimodal communication model to express his needs and wants in the classroom. Student made partial progress, having met the first objective on his expressive language annual goal and both objectives to his receptive language goal. Ms. Bowles attributed Student's inability to achieve both annual goals to Student's two long periods of absence over the previous year.

33. Mother testified that the SAL expressive and receptive language goals remained the same, thus indicating Student's lack of progress. The documentary evidence demonstrates differently. The February 2012 IEP team adopted SAL goals that differed from those in the November 2010 IEP, which implemented SAL goals that differed from those in 2009. The 2010 and 2012 IEP teams implemented goals which had been drafted following formal evaluation of Student's progress, present levels of performance, and future needs by his SAL pathologist. (Factual Findings 9 -16, 41-53.) In developing the IEP, the 2012 IEP team considered Student's strengths, his most recent evaluations, and his academic, functional and developmental needs. The 2012 triennial IEP's goals and objectives did not merely duplicate those from the prior IEP. The evidence indicated thoughtful and insightful consideration, consistent with the IEP team's legal obligations. (Legal Conclusion 7.)

34. The District offered the same SAL language services at the February 2012 triennial as those provided in the November 2010 annual IEP – two 30-minute sessions

per week of individual SAL DIS and two 30-minute blocks of consultation SAL DIS per month. The two 30-minute sessions of one-on-one SAL therapy had produced steady growth over the prior year. Ms. Bowles convincingly testified that Student's expressive communication would benefit from more integration in the classroom and across all his environments. More one-on-one speech services – whether from Carousel or an NPA – would do little to improve Student's functional expressive language. In contrast, Student did not present any credible or persuasive evidence demonstrating that Student would benefit from receiving more SAL services.

35. Given the above factors, Student failed to meet his burden of establishing that the February 2012 triennial IEP failed to provide a FAPE because the offered SAL services were insufficient or inappropriate. (Factual Findings 1-73; Legal Conclusions 1-34.)

ISSUE THREE – QUALIFICATIONS OF SAL PATHOLOGIST

36. Student contends that Ms. Bowles, the SLP, was not qualified to provide SAL therapy to Student. District asserts that Mother presented no evidence on the issue and that Ms. Bowles possessed all necessary credentials for an SLP.

37. Student failed to meet his burden, by a preponderance of the evidence, that Ms. Bowles was not qualified to provide SAL therapy to Student.⁹ Other than Mother's expressed lack of trust, Student presented no evidence relative to Ms. Bowles qualifications as an SLP.

⁹ Mother did not question the qualifications of SLP's Mr. Ashkenazy or Ms. Nadler. Her testimony established that Student only questions the qualifications of Ms. Bowles.

38. Ms. Bowles earned a bachelor of science in speech sciences in 2001 and is pursuing her masters of arts in special education. She has a current CCTC speech-language pathology services credential and obtained her CCC-SLP in 2005 from ASHA. Ms. Bowles has worked with nonverbal children having developmental disabilities since 2001. She had experience in numerous settings, serving learning-disabled children and providing SAL services, when she became director of SAL services at Carousel in 2008. Ms. Bowles's education, training, credential, certification, and experience qualify her as an SLP who was able to provide SAL services to Student.

39. Student failed to meet his burden of establishing that Ms. Bowles was not a proper provider of SAL services. (Factual Findings 1-73; Legal Conclusions 1-38.)

ORDER

All of Student's requests for relief are denied.¹⁰

PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that this Decision indicate the extent to which each party prevailed on each issue heard and decided in this due process matter. District prevailed on Issues One, Two, and Three. Student did not prevail on any issue.

RIGHT TO APPEAL THIS DECISION

This is a final administrative Decision, and all parties are bound by it. Pursuant to

¹⁰ District filed a motion to limit the relevant time period of Student's due process filing because of Mother's long delay in obtaining a conservatorship following the due process filing. Student filed opposition. Considering the outcome herein, a ruling on the motion is unnecessary; the issue is moot.

Education Code section 56506, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within ninety (90) days of receipt.

DATED: August 15, 2013

/s/
CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings