

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SAN BRUNO PARK UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2015110053

DECISION

On October 30, 2015, San Bruno Park Unified School District filed a due process hearing request naming Student as respondent. On November 16, 2016, the matter was continued for good cause.

Administrative Law Judge Joy Redmon heard this matter in San Bruno, California, on February 22, 23, 24, 25, and 29, 2016, and March 1, 2016. The record remained open until March 24, 2016, for the parties to file written closing arguments. Written closing arguments were timely received, the record was closed, and the matter was submitted for decision.

Attorney Shawn Olson Brown represented San Bruno. Ellen Merritt, director of student services and special education, was also present on San Bruno's behalf. Mother represented Student. Sue Digre attended to support Mother throughout the majority of the due process hearing. Father and Student were present for a short time on the first day of hearing. Administrative Law Judge Jamie Errecart observed the due process hearing.

ISSUE

Did San Bruno's July 21, 2015, individualized education program offer Student a free appropriate public education in the least restrictive environment?

SUMMARY OF DECISION

This Decision holds that San Bruno's July 21, 2015, IEP offered Student a FAPE in the least restrictive environment. No determination is reached regarding the 2015-2016 extended school year program.

FACTUAL FINDINGS

JURISDICTION

1. Student is a six-year-old Student who resides with Parents within San Bruno's jurisdictional boundaries. He is eligible for special education and related services with autism as a primary eligibility category and speech and language impairment as a secondary category.

SEPTEMBER 2014 SETTLEMENT AGREEMENT

2. In September 2014, the parties entered into a settlement agreement that resolved earlier claims Parent raised against San Bruno. In addition to the services Student received pursuant to his IEP during the 2014-2015 school year, Student received 30 hours of individual academic instruction after school and one-to-one aide support throughout his school day at Learning Links preschool pursuant to the settlement agreement. Additionally, San Bruno agreed to fund independent speech and language,

occupational therapy, and psychoeducational evaluations.¹ These evaluations served as Student's triennial assessments. Parents selected the independent assessors. Parents also privately provided Student weekly aquatic therapy.

PRESCHOOL

3. During the 2014-2015 school year, Student attended a preschool program at Learning Links four days per week pursuant to an IEP from San Bruno. Learning Links is operated by Community Gatepath. While at Learning Links, Student was generally cheerful and enjoyed attending preschool. Student received two weekly thirty-minute sessions of individual speech and language services in a small therapy room.² Student also received one individual thirty-five minute occupational therapy session weekly

4. Jennifer Martinez, a credentialed special education teacher working at Learning Links, worked with Student and primarily oversaw the pre-academic portions of Student's IEP. Ms. Martinez also observed and assisted Student's transition between activities throughout the day. Student was able to decode words and could read multiple word sentences; however, his comprehension significantly lagged behind his decoding ability. Student had limited focus and difficulty with task completion due to distractedness. Student's focus and task completion were improved by using a picture

¹ The terms evaluation and assessment are used synonymously throughout this decision.

² There is a dispute among the parties regarding whether Student's last agreed upon and implemented IEP from 2012 called for individual or small group therapy. It is unnecessary to resolve that matter as the issue litigated herein is only the appropriateness of San Bruno's July 21, 2015, IEP offer. Additionally, the parties' settlement agreement in September 2014 resolved all past claims.

schedule and with adult prompting and redirection. Ms. Martinez established that at the end of the 2014-2015 school year, Student exhibited kindergarten readiness skills across academic domains.

5. Student's speech therapy was provided by licensed speech and language pathologist Angie Marshall. Ms. Marshall's practice has focused on providing services to children with autism. Additionally, she received training on executive functioning and the intersection between executive functioning and communication deficits. Student's therapy focused primarily on social and pragmatic language development and communication. At the beginning of the school year, Student did not independently initiate social interaction with peers. Over the course of the 2014-2015 school year, Student was more engaged with peers and began initiating social conversation with his neurotypical peers both in the classroom and on the playground.

6. Student enjoyed being included with and accepted by neurotypical peers. Often an adult was needed to facilitate ongoing reciprocal conversations beyond one or two exchanges. Student and his peers readily accepted the adult prompting and continued to participate in adult facilitated conversations. These interactions were more common during outside playtime than in the classroom. If Student approached a peer independently and asked a question but did not receive an answer, he would not follow-up and ask again or try a different way. Student made progress in both receptive and expressive language development and use, including in social pragmatic language, throughout the 2014-2015 school year.

7. Occupational therapy was provided at Learning Links at the end of the 2014-2015 school year by licensed occupational therapist Marina Gonzalez either in a larger motor room that contained a ball pit and other activity centers or in a smaller therapy room. Although Student's occupational therapy services were provided individually, there were up to two other children and up to three adults working in the

motor room at the same time as Student. At times, Student was distracted by others during therapy. Ms. Gonzalez explained that when distracted, Student did not tantrum or attempt to run away, but would stop his activity and stare in the direction of the distraction; sometimes he would cover his ears.

8. Student was more distracted when working on a less preferred task than a higher interest activity, such as watching a peer play in the ball pit or knocking down bowling pins. Ms. Gonzalez established that although it could take five minutes, Student was redirected using a combination of visual cues (pointing toward the intended activity), auditory cues, and physical cues (for example, placing a ball in Student's hand if that was the intended activity). Student generally complied with Ms. Gonzalez's requests made during occupational therapy.

9. Student's occupational therapy goals focused on developing fine motor skills such as using the correct pencil grasp and other prewriting skills. His goals also included working on gross motor skills such as improving balance and awareness of his body in space by navigating a multi-step course without bumping into or crossing physical boundaries. Student had four occupational therapy goals; he made substantial progress on three and met one.

10. During the 2014-2015 school year, Student's placement was in a blended program spending the majority of the day in a full inclusion preschool class (Dragonflies) with typically developing peers and approximately 30 minutes in a special day class program (Bumblebees). The Dragonflies class had approximately 30 students who were divided into two groups. The two groups spent a portion of their day together, for example during snack time, and a portion of their day separated. When half of the Dragonflies participated in circle time the other half were playing outside. The groups would then come together for a period of time and then separate again with the outside group now participating in circle time and the circle time group now playing

outside. Student had a fulltime one-to-one aide who accompanied him throughout his day.

11. Student's independent educational evaluations agreed upon in the parties' settlement agreement were conducted over the course of the entire 2014-2015 school year. Michelle Limon Freeman, neuropsychologist, and Daniel Peters, psychologist, conducted a psychoeducational evaluation of Student in October and December 2014, and produced a report summarizing their findings in January 2015. Patti Hamaguchi, speech and language pathologist assessed Student in October 2014 and produced her report in December 2014. Sahana Baker-Malone, occupational therapist, assessed Student in April and May 2015, and produced her report shortly thereafter.

12. During the 2014-2015 school year, Student made progress in all areas of need in his Learning Links program. Student's placement in the blended program was appropriate and he made progress in the full-inclusion classroom.

13. In May 2015 Mother notified Ellen Merritt, San Bruno's director of special education, that she had selected a school, classroom, and specific teacher for Student's kindergarten placement. The requested placement, however, was in a general education kindergarten class in a neighboring school district and not within San Bruno's boundaries. Ms. Merritt provided Mother the forms to request an inter-district transfer but told Mother that the IEP process must continue in San Bruno. Mother informed Ms. Merritt that she met with the superintendent of the neighboring school district and that he would only agree to accept Student pursuant to a valid IEP placement and an accompanying memorandum of understanding fully funding the cost of Student's program. Mother did not submit a request for an inter-district transfer.³ The inter-

³ The issue of the inter-district transfer and memorandum of understanding came up repeatedly throughout the due process hearing. The undersigned ALJ informed both parties that even if it was determined that San Bruno's July 21, 2015, IEP offer did not

district transfer process is a general education function within a school district and not typically part of the IEP development process.

14. San Bruno scheduled an IEP team meeting in June 2015 after receiving the three independent evaluations.

JUNE 9, 2015, IEP TEAM MEETING

15. Ms. Merritt requested that Parents agree to have Anjanette Pelletier from San Mateo county's special education local plan area facilitate the June 9, 2015, IEP team meeting. Parents agreed. Ms. Pelletier spoke with Parents prior to the IEP team meeting to discuss her role as facilitator. They also developed an agenda and agreed that Student's IEP would be developed over the course of two meetings rather than one. The first meeting was scheduled for two hours on June 9, 2015.

16. At the beginning of the IEP team meeting, individual participants were asked to give notice of their time limitations which they did. The primary objective during the June 9, 2015, IEP team meeting was to discuss the results of the independent educational evaluations and to plan for Student's transition to kindergarten for the 2015-2016 school year.

17. The June 9, 2015, IEP team meeting included, among others, Parents; Student's then current special education preschool teacher Ms. Martinez, and service

constitute an offer of FAPE, placement could not and would not be ordered in the neighboring school district as that district is not a party in this due process hearing. The information regarding Parents' request and Mother's discussion with that district's superintendent is included herein as contextual information; however, no findings are made regarding the inter-district transfer process, the memorandum of understanding process between the two school districts, nor the appropriateness of the general education class in the neighboring district.

providers from Learning Links: Ms. Gonzalez and Ms. Marshall; Rebecca Reddy general education kindergarten teacher from Rollingwood Elementary School –Student’s school of residence; Leigh Schwartz, Rollingwood’s principal; San Bruno special education staff including Ms. Merritt; Martha Youman, school psychologist; Kylie Hunter⁴, occupational therapist; and Bailey Levis, speech and language therapist. Additionally, Dr. Peters and Ms. Baker-Malone participated telephonically. The IEP team meeting was facilitated by Ms. Pelletier.

18. Each member of the IEP team signed in upon arrival. As discussed at the beginning of the meeting, some members of the team, including Ms. Gonzalez (OT), were not able to stay until the conclusion of the IEP team meeting. As the designated time approached, the team member excused themselves. Mother testified at hearing that she believed that before a person could leave the IEP team meeting, the law requires that she sign a form excusing them from the remainder of the meeting before they could leave. No such form was provided. Mother did not raise this concern during the meeting but was frustrated not to have been asked.

Student’s Needs as of June 9, 2015

19. As noted above, Dr. Freeman and Dr. Peters conducted a psychoeducational evaluation of Student in October and December 2014, and produced a report in January 2015. Patti Hamaguchi, speech and language pathologist assessed Student in October 2014 and produced her report in December 2014. Sahana Baker-Malone, occupational therapist, assessed Student in April and May 2015, and produced her report shortly thereafter. Parents provided copies of the three evaluations to San Bruno before the IEP team meeting held on June 9, 2015.

⁴ Ms. Hunter’s last name at the time of the IEP team meeting was Veverke. The signature page from the IEP team meeting reflects Ms. Hunter’s former last name.

20. At the end of the 2014-2015 school year, Learning Link's staff and service providers Ms. Marshall, Ms. Gonzalez, and Ms. Martinez evaluated Student's progress toward his IEP goals. Each produced a progress report that also included a review of Student's needs. These progress reports were provided to Parents and San Bruno staff and were to be discussed during the June 9, 2015, IEP team meeting.

21. Although the recommendations to meet Student's needs varied among assessors as discussed below, there was general agreement regarding his areas of need. When sharing the findings from his report, Dr. Peters cautioned that the testing conducted likely underestimated Student's ability and achievement levels because Student's language impairment suppressed his ability to fully demonstrate both. Student's teachers and service providers concurred with Dr. Peters and the weight of the evidence established that Student's cognitive ability and academic readiness skills are more advanced than reported in the assessments.

22. Regarding needs, the independent assessments as well as Student's teachers and service providers from Learning Links established that Student has a sensory processing disorder and severe deficits in receptive, expressive, and pragmatic language consistent with autism. Student has difficulty understanding social cues and social interaction.

23. Student has deficits in auditory processing and executive functioning. Student is easily distracted and has been diagnosed with hyperacusis; sensitivity to auditory stimuli. When overwhelmed by sound, Student puts his hands over his ears in an attempt to "escape" from the uncomfortable sound and becomes emotionally dysregulated. Behaviorally, having a predictable routine supplemented with visual cues and auditory prompts helps Student remain emotionally regulated in the face of auditory stimuli. Student can become overwhelmed, shut down, or disrupt a peer's activity, for example, knocking over blocks, when emotionally dysregulated.

24. Physically, Student also has weak core muscles, and challenges with balance and coordination and fine motor skills. Student was diagnosed with hypotonic cerebral palsy in approximately May 2014 and wears ankle supports. Student's fine motor needs impact his ability to draw and write.

25. Student's skills are categorized at the kindergarten readiness and academically advanced level as he is able to read, count with one-to-one correspondence, recognize all letters, numbers, basic colors and shapes, write his name with the letters in the correct sequence, and follow two-step familiar directions. Student struggles to comprehend what he reads, has strong rote spelling memorization skills but difficulty spelling new or unfamiliar words, and requires additional time to learn and practice new skills when taught in a group environment with visual and auditory distractions.

26. At the time of the IEP team meeting on June 9, 2015, Student had needs in the following areas: self-regulation and sensory processing; pre-academics; social development and peer engagement; behavior and auditory processing; expressive language; pragmatic language; semantics and language processing; receptive language and auditory processing; syntax and morphology; executive functioning and narrative language; speech and self-monitoring; reading comprehension; fine motor; visual motor and perception; completing multi-step tasks; attention and focus; and sensory processing. All of Student's areas of need were appropriately identified by Student's IEP team.

NEED FOR ADDITIONAL ASSESSMENTS

27. Parent asserts that San Bruno's IEP is deficient because San Bruno failed to conduct a central auditory processing assessment and an executive functioning assessment. Parent asserts that Student has a central auditory processing disorder. San Bruno does not dispute that Student has needs in both auditory processing and

executive functioning and these needs were addressed in the IEP at issue. It asserts that these areas of need do not require additional assessments at this time due to Student's age. San Bruno's arguments were more persuasive on this point. Student's age, coupled with the information contained in Student's most recent assessment reports, provides the IEP team with adequate information regarding his needs in these areas.

Central Auditory Processing Assessment

28. A central auditory processing disorder involves deficits in the function of the central auditory nervous system. Among other potential deficits, it generally manifests as difficulty with language, learning, and reading. The recommendation for a central auditory processing assessment was included in Student's independent psychoeducational evaluation and endorsed by Dr. Peters during the June 9, 2015, IEP team meeting. Dr. Peters did not testify at hearing. The report did not explain why he recommended this specific assessment or what information the results of such an assessment would provide to the team planning Student's educational program.

29. Ms. Merritt, in addition to serving as San Bruno's director of special education, has been a licensed speech and language pathologist for over 25 years. Ms. Merritt established that only an audiologist is qualified by license to conduct a central auditory processing assessment. However, speech pathologists typically provide services to people with a central auditory processing disorder. Ms. Merritt established that a central auditory processing assessment garners unreliable results for children younger than seven to nine and is, therefore, not recommended for children in that age group. Her opinion is based on articles and guidelines published both by the American Journal of Audiology and the American Speech Language Hearing Association.

30. Ms. Marshall testified consistently with Ms. Merritt regarding the requirements for both an audiologist to conduct the assessment and the minimum age for a central auditory processing assessment. The testimony of both Ms. Marshall and

Ms. Merritt credibly support San Bruno's position that its IEP offer was not deficient due to the lack of a central auditory processing assessment because Student was only five years old at the time.

31. The recommendation from Dr. Peters for this assessment is given little weight. The report did not indicate that a central auditory processing assessment was necessary but merely indicates that Student would "benefit" from the assessment. It goes on to recommend that the assessment be completed by Dr. Deborah Swain who is identified in the report as a speech pathologist and expert in auditory processing. It does not indicate she is an audiologist. During the IEP team meeting on June 9, 2015, Dr. Peters said he "always" recommends Dr. Swain but did not address Student's young age nor the fact that an audiologist and not a speech pathologist is permitted to conduct the assessment.

32. San Bruno's position was also supported by Student's independent speech assessment conducted by Patti Hamaguchi and Laura Riley. They did not testify at hearing; however, their report addresses the topic. It states in relevant part:

In terms of "auditory processing" as a separate disorder or diagnosis, at this age and with his ASD [autism spectrum disorder] diagnosis, we would indeed expect to see difficulties in this area. However, he is not a candidate for a separate auditory processing diagnosis due to the fact that children with ASD have weak auditory systems as part of their diagnostic profile. They are visual in nature – attending to patterns, parts, letters, numbers, etc. and tuning out or being overwhelmed, with sounds and speech. By teaching Student what all of the talking "noise" is trying to tell us, his disconnect from understanding and attending to what he

hears should improve.

33. Ms. Merritt and Ms. Marshall agreed with Ms. Hamaguchi's conclusion on this point and established that Student has auditory processing needs that can be addressed in his IEP via goals and services. The appropriateness of the goals and services is discussed below. The evidence established, however, that Student did not require a central auditory processing assessment.

Executive Functioning Assessment

34. Mother asserted that San Bruno's July 21, 2015, IEP is deficient because Student required an executive functioning assessment. Executive functioning involves tasks that require planning, organization, memory, time management, and flexible thinking. According to Ms. Marshall, executive functioning deficits can also impact speech and language because it can result in disordered speech.

35. No witnesses other than Mother testified that Student required an executive functioning assessment. A separate assessment in this area was not recommended in Student's independent educational evaluations.

36. The evidence established that Student's assessments had determined he had needs in the area of executive functioning. Ms. Youman, San Bruno school psychologist, confirmed Dr. Peters' findings that Student has executive functioning deficits. Student's need in executive functioning is recognized on the June 9, 2015, IEP. The appropriateness of the offered goals and services is discussed below. San Bruno established that despite Student having needs stemming from deficits with executive functioning; those needs have been established through assessments already completed and observations. The evidence further established that Student did not require an executive functioning assessment.

Present Levels, Goals, Services, and Placement

37. Student's present levels of performance were discussed during the June 9, 2015, IEP team meeting. The present levels were derived from the independent assessments and Student's teachers and service providers from Learning Links. There was a present level of performance identified for each area of need. The present levels of performance that formed the basis for each goal discussed below were clear and supported by the evidence.

38. Student's Learning Links teacher and service providers drafted proposed goals before the June 9, 2015, IEP team meeting. Additionally, each independent assessor drafted proposed goals that were submitted with their reports. Parents also drafted proposed goals. This resulted in an excessive number of goals, some of which were duplicative. Prior to the IEP team meeting, Ms. Merritt gathered all of the proposed goals and, in an attempt to streamline the discussion during the IEP team meeting, made a chart incorporating each proposed goal organized by topic.

39. During the IEP team meeting, Dr. Peters and Ms. Baker-Malone provided a summary of their reports. San Bruno's speech and language pathologist, Mr. Levis, summarized Ms. Hamaguchi's report, as she was unable to attend the IEP team meeting. Learning Links staff then presented Student's progress toward his IEP goals made during the 2014-2015 school year and shared his then present levels of performance. Thereafter, there was a robust discussion regarding goals. Mother had significant questions regarding the wording of the present levels of performance and the specific goals. It was decided that rather than fine tune the goals during the IEP team meeting, Mother would meet with Student's then current service providers outside of the IEP team process to draft goals that could be presented at the continuing IEP team meeting.

40. During the June 9, 2015, IEP team meeting there was also discussion throughout regarding the recommended amount and configuration of related services,

specifically whether or not speech and language and occupational therapy would be provided in a small group or one-to-one setting. Mother expressed her view that only individual services benefitted Student. The basis of her opinion was that during the 2013-2014 school year he was provided related services in a small group and, according to Mother, made no progress. When services were provided individually during the 2014-2015 school year, Student made progress. Therefore, Mother opined, Student could only make progress receiving services individually.

41. The Learning Links service providers and district members of Student's IEP team did not share Mother's view. Various members expressed their view that Student's greatest area of need was in social and pragmatic communication stemming from his expressive and receptive language deficits. They opined that for Student to improve his social and pragmatic language communication he needed to work with other children in a small group setting and not just an adult. Ultimately, the discussion was tabled without a specific offer of related services being made during the June 9, 2015, IEP team meeting.

42. As with related services, a discussion regarding placement was woven throughout the June 9, 2015, IEP team meeting. According to Mother, during the 2014-2015 school year she accompanied Ms. Youman during an observation of Student at Learning Links. During the observation, Mother overheard Ms. Youman express her belief that Student should be placed in a special day class for kindergarten. This concerned Mother because she believed that Student benefitted more from the time he spent in the full inclusion preschool program rather than the special day class portion. Mother's belief was based primarily on the fact that Student models peer's behavior and he benefitted more from modeling the behavior of neurotypical peers.

43. The IEP draft generated before the June 9, 2015, IEP team is consistent with Mother's testimony on this point. Although a final placement offer was not made

during the June 9 meeting, the draft prepared before the meeting states in relevant part that a, “[s]pecial day class with support services incorporated is the Least Restrictive Environment for FAPE.” There was only brief discussion during the meeting about a special day class. Rather, the bulk of the conversation regarding placement centered around placement in a full inclusion general education kindergarten class at Rollingwood Elementary School, Student’s school of residence.

44. Ms. Merritt and Mr. Schwartz established at hearing that during the 2014-2015 school year, San Bruno worked to develop a full inclusion kindergarten program within the district that would be launched during the 2015-2016 school year. The program was designed as a general education class that would include additional classroom aide support and would have related services provided in class to ensure students generalized the skills they learned in individual and small group therapy. It was intended that the selected general education teacher also have a special education background and that all adults working in the program would receive specialized training on the full inclusion model. The goal of the program was to select approximately three or four special education students whose IEP teams determined that the students demonstrated academic readiness skills, emotional preparedness for the pace and demands of a general education kindergarten, and would benefit from placement in a general education setting with the amount of additional related services recommended by their respective IEP teams. The final decision was made that the program would operate on the Rollingwood campus.

45. Ms. Merritt believed after reviewing Student’s independent educational evaluations that the full inclusion program at Rollingwood may be an appropriate placement for Student. Therefore, she invited Mr. Schwartz and Rebecca Reddy a general education kindergarten teacher at Rollingwood who participated in designing the full inclusion program, to participate in Student’s June 9, 2015, IEP team meeting.

46. During the meeting Ms. Reddy and Mr. Schwartz explained the program and after listening to the discussion regarding Student's areas of need, proposed goals, and likely related services, expressed their belief that Student would be an excellent candidate for the class. Mother asked several questions regarding the school and proposed classroom environment. Ms. Reddy answered her questions. Mr. Schwartz also invited Mother to observe a kindergarten class at Rollingwood before the end of the school year to get a sense of the school environment and culture. A final placement offer was deferred until the following IEP team meeting.

47. After exceeding the initial time allotted for the IEP team meeting, it was determined that the team would reconvene in July. In the interim, Mother would work with the service providers to fine tune goals to be presented at the next meeting. These meetings did take place and substantial work was completed on the proposed goals. Ms. Pelletier worked with Parents to prepare an agenda for the reconvened IEP team meeting. Mother did not observe Rollingwood between the two meetings. The July meeting was scheduled not to exceed three hours.

JULY 21, 2015, IEP TEAM MEETING

48. The participants for the reconvened meeting were Parents; Ms. Merritt and Ms. Youman from San Bruno; and from Learning Links Jenny Chien the director and general education teacher, Ms. Marshall, Ms. Martinez, and Ms. Gonzalez. Ms. Gonzalez was only present for a portion of the IEP team meeting. Rollingwood principal Mr. Schwartz was available via phone if needed. The meeting was facilitated by Ms. Pelletier.

49. Parents requested some changes to the IEP's description of Student's strengths and areas of concern, as written on the June 9, 2015, document. For example, at Mother's request more detail was added regarding how Student's attention, auditory processing, sensory processing, and executive functioning deficits impact Student's ability to access the curriculum.

50. Student's IEP also revisited Student's eligibility for special education and related services. He was previously eligible under the category of autism. Significant information was obtained from the independent assessors and Student's teachers and providers regarding the impact of his receptive and expressive language disorder. Student's IEP team added a secondary eligibility category of speech and language impairment. The evidence established that this was an appropriate change to Student's IEP.

Measurable Goals

51. Student's baselines and newly revised goals were addressed again during the meeting. Parents suggested additional changes and modifications be made to the goals, for example requesting the number of trials to demonstrate mastery be changed. These requests were granted. The present levels of performance were listed clearly on the IEP and were in all areas of need. Each goal proposed considered and was based upon Student's then present level of performance in that area.

52. At the conclusion of this robust discussion, Student's IEP team proposed 17 goals with an additional math goal to be developed within the first 30 days of starting kindergarten if Student demonstrated a need for an additional goal in that area. The evidence established that the baselines included in the goals were accurate. The goals addressed the following areas of need:

- Self-regulation and sensory processing;
- Pre academics;
- Social development and peer engagement;
- Behavior and auditory processing;
- Expressive language;
- Pragmatic language;
- Semantics and language processing;

- Receptive language and auditory processing;
- Syntax and Morphology;
- Executive functioning and narrative language;
- Speech and self-monitoring;
- Reading comprehension;
- Fine motor—functional pencil grasp;
- Fine motor/visual motor/visual perception;
- Fine motor and multi-step tasks;
- Attention and focus; and
- Sensory processing—desensitize to undesired touch.

53. All of Student's areas of need as discussed above and determined during the June 9, 2015, IEP team meeting were addressed in these goals. For example, Student's IEP included a goal in the area of behavior and auditory processing. According to that goal, "[b]y June 9, 2016, when given verbal requests, Student will comply with [an] adult's request such as, but not limited to, 'Please stop' and 'Please wait' (for 15 sec), 'Come here' (adult 8-10 feet away), 'Sit down', 'Hands down', etc., without getting upset (i.e. yelling, running away, etc), with no more than 1 adult prompt (verbal or visual), with 80% accuracy in 4 of 5 opportunities across 3 different adults, as measured by teacher charted data and observation." This goal is clear, measurable, and could be reasonably achieved by Student within one year's time given his then present level of performance. Each of the goals contained in Student's IEP were similarly specific, measurable, and could reasonably be achieved by Student within a year.

Related Services

54. The amount and configuration of related services is among the central disputes in this case. Mother asserts that all direct related services must be provided to Student in a one-to-one setting. Mother's position is supported by the written

recommendations of the independent assessors; however, none of the assessors testified at hearing. Student's pediatrician, Dr. Debra Barra-Stevens, did testify at hearing. Dr. Barra-Stevens testified that Student would gain the maximum benefit from receiving services in a one-to-one setting. She also testified that the greatest emphasis should be placed on developing Student's language and communication skills so he can fully realize his potential.

55. The San Bruno members of Student's IEP team agree that language and communication development is critically important for Student. Where these providers' opinions differ from Dr. Barra-Stevens and Mother is in the mode of delivery. Ms. Merritt and Ms. Youman from San Bruno, as well as Ms. Martinez, Ms. Marshall, and Ms. Gonzalez from Learning Links established that to develop better receptive, expressive, and pragmatic skills as well as the ability to physically and socially interact with his neuro-typical peers, Student must be given an opportunity to learn and practice those skills both individually and with a peer or two. For the reasons discussed below, San Bruno was more persuasive on this point.

SPEECH AND LANGUAGE

56. San Bruno offered Student 90 minutes per week of direct speech and language services divided into three sessions. Two sessions could be delivered either individually or in a small group not to exceed two (Student and one peer). During the third session, the speech and language pathologist would provide services to Student in the classroom and in so doing also provide additional instruction and training to the general education teacher and aide, "during 'real' classroom activities," to ensure what was taught in the pull-out sessions was generalized in the classroom environment. Additionally, San Bruno offered 15 minutes per week of consultation services to be provided to school staff and Parents. The goal of the consultation services is to ensure carry-over into the home environment.

57. This offer is clear and unambiguous even though both the box for individual and group services was checked. The IEP also called for Student to receive his speech and language in the small group except for times where he needed the more intensive individual instruction in order to learn a specific skill. The evidence established that both the explanation regarding the services and including the parameter defining a "small group" as not to exceed Student and one other, provided the necessary specificity to ensure that both Parents and any implementing service provider understood the offer.

58. In addition to being clear, the offer was designed to meet Student's unique needs. Mother testified that because Student did not make progress receiving services in a push-in and small group setting during the 2013-2014 school year, but did receive benefit with exclusively pull-out services during the 2014-2015 school year, he can only benefit from individual pull-out services. This argument is unpersuasive. It fails to take into consideration Student's natural maturation because he was, at the time San Bruno's offer was to be implemented, older than he was during the 2013-2014 school year. More importantly, however, it fails to consider the considerable progress Student made with social interaction and pragmatic language development during the 2014-2015 school year.

59. The evidence established that at the beginning of the 2014-2015 school year, Student rarely engaged with his peers. Most, if not all communication was facilitated and prompted by an adult. By the end of the 2014-2015 school year, the Learning Links staff persuasively established that Student progressed to the point of independently initiating communication with peers. Ms. Marshall established that despite having provided individual services to Student, it was time to build on this growth by incorporating a peer into his speech therapy when working on the goals that targeted social and pragmatic language. She also persuasively explained that it was

important that the third weekly session be conducted in-class to ensure that Student is generalizing across settings what he is working on during his pull-out sessions.

60. As noted above, Mother also points to the recommendation for individual speech and language services in Ms. Hamaguchi's report. While the report recommends individual sessions, the reason is not as clear. It states that Student should have, "a minimum of two individual speech-language social play sessions per week..." Ms. Merritt and Ms. Marshall persuasively questioned how an individual speech-language therapy session with just the service provider and Student constitutes a "social play session." Additionally, Ms. Hamaguchi's assessment was conducted in October 2014, nine months before San Bruno's July 21, 2015 offer was made. Therefore, Ms. Hamaguchi's assessment did not include Student's progress over the course of the year. Ms. Hamaguchi did not participate in the IEP team meeting or testify at hearing to clarify her recommendation or determine if it changed in light of his progress. Accordingly, the recommendation is given little weight.

61. In addition to Ms. Hamaguchi, Dr. Barra-Stevens also recommended individual sessions. Dr. Barra-Stevens has not observed Student in a school setting. She is a pediatrician and not a speech and language pathologist. More importantly, however, Dr. Barra-Stevens testified repeatedly that Student's "ideal" or "perfect" program would offer all services, including all academic instruction as discussed more fully below, in a one-to-one setting. San Bruno is not obligated to offer an ideal or perfect program. That aside, Dr. Barra-Stevens' opinion that Student be educated in virtual isolation is extreme and given little weight. The reason Student needs to develop language is to be able to interact with the world around him, which includes other children. Relegating him to receiving all services in a one-to-one setting does little to build on the success he has enjoyed with his language and social development thus far.

62. The weight of the evidence establishes that San Bruno's offer of two 30-

minute sessions of individual and small group not to exceed two students, and one 30-minute push-in session per week is an appropriate service frequency, duration, and configuration to implement Student's speech and language goals and for Student to receive benefit from his special education. The additional 15 minutes per week of consultation services is also appropriate and designed to meet Student's needs.

OCCUPATIONAL THERAPY

63. San Bruno offered Student 60 minutes per week of direct occupational therapy separated into two 30-minute sessions. One session of one-to-one individual therapy and the second session with one to two other students, "to embed and facilitate carry-over of social skills such as using language to make requests of peers, turn-taking, etc..." Additionally, San Bruno offered 15 minutes weekly of consultation services between the occupational therapist, staff, and Parents to ensure consistency and carry over at home. San Bruno also offered an additional 60 minutes per month of consultation services between the occupational therapist and classroom staff. The offer of occupational therapy is clear and unambiguous. It was understood by Parents and could be implemented by any occupational therapist tasked with its implementation.

64. Ms. Gonzalez, Student's occupational therapist at Learning Links, established that this was an appropriate amount and configuration to implement Student's goals and meet his needs. She opined that his occupational therapist would likely work on fine motor goals, such as improving his tripod grasp, during the individual sessions. Student also had gross motor needs and goals addressing completing a seven-to-10 step course without bumping into or crossing over established barriers. Additionally, Student has goals desensitizing him to "messy" activities such as art activities. Ms. Gonzalez established that it was important for Student to have one or two peers to work with on these latter goals. This testimony was persuasive and given great weight.

65. Ms. Baker-Malone's assessment did not make recommendation inconsistent with San Bruno's offer regarding occupational therapy. Mother and Dr. Barra-Stevens generally challenged the offer of small group services in their testimony that Student should only receive services in a one-to-one setting. For the same reasons stated regarding speech and language, these arguments are unpersuasive. San Bruno established that it offered an appropriate amount and configuration of occupational therapy services to implement Student's goals. Additionally, the offer of consultation was designed to meet Student's needs.

SPECIALIZED ACADEMIC INSTRUCTION

66. San Bruno offered Student 30 minutes daily of specialized academic instruction to be provided either individually or in a small group setting. The offer stated that the, "[a]cademic support [would be] provided by RSP with pull-out or push-in based on nature of academic activity." Prior to kindergarten, Student was in a play-based preschool program. The evidence established that the academic demands in kindergarten would be greater and the pace faster than Student received previously. Ms. Martinez established that despite some low academic scores scattered across domains contained within Student's psychoeducational assessment, he possessed kindergarten readiness skills. Dr. Peters' statements during the June 9, 2015, IEP team meeting regarding the underreporting of Student's ability and achievement level was consistent with Ms. Martinez's personal experience working with Student.

66. San Bruno members of Student's IEP team were concerned that Student would require pre-teaching and possibly re-teaching of some academic subjects. Mother was also concerned that in a classroom setting the auditory stimulation and visual distraction would negatively impact Student's ability to learn and retain academic information.

67. The offer of specialized academic instruction was clear and unambiguous

with the additional clarification that the decision to provide individual or small group instruction would be based upon the specific academic activity being taught. The evidence established that this was an appropriate amount of services and configuration to implement Student's academic goals and meet Student's needs.

68. Mother's primary objection to the specialized academic instruction arose during the 2015-2016 school year. Mother went to Rollingwood on the second day of school and on another occasion to observe the school environment. Mother testified that during one of the meetings she spoke with the resource specialist program teacher assigned to Rollingwood and that teacher, Iris Clifford, informed Mother that she is only on campus three days per week. Based upon this representation, Mother contends that even if the specialized academic instruction is appropriate, it cannot be implemented because Ms. Clifford is not on campus five days per week. Whether or not Ms. Clifford was on campus five days per week at the beginning of the 2015-2016 school year is not dispositive of San Bruno's ability to implement this offered service. Parents have never consented to the IEP. Ms. Merritt and Mr. Schwartz established that all services offered in Student's IEP can be implemented at Rollingwood upon acceptance.

BEHAVIOR INTERVENTION SERVICES

69. As discussed above, when Student becomes overwhelmed by excessive auditory or visual stimuli he shuts down and puts his hands over his ears. According to Ms. Gonzalez, although easily redirected with adult prompting, it can take five minutes for Student to return to task. In addition to one-to-one aide support as discussed below, San Bruno offered 46 individual 60 minute behavior intervention service sessions throughout the school year to be provided by a non-public agency. Additionally, to support Student's transition to kindergarten, San Bruno offered 10 additional hours to be used within the first four weeks of school.

70. The evidence established that the related behavioral intervention services

were appropriate and necessary for Student's goals to be implemented. No allegations were made to the contrary. It is determined that the offered behavior intervention services were designed to meet Student's behavioral needs and help him access his education.

ACCOMMODATIONS

71. Student's IEP team offered numerous accommodations including taking short breaks in a designated break area; receiving hand squeezes, shoulder pushes, animal walks and deep breathing to support emotional regulation; verbal, visual, and physical prompts to return to task; opportunity use large vertical surface and lined paper to support fine motor activities. The evidence established that these were necessary and appropriate accommodations to implement Student's goals and were designed to meet his needs.

TRANSPORTATION

72. Student's prior IEP's offered Student transportation to and from Learning Links. Learning Links is not Student's school of residence and is located outside of the jurisdictional boundaries of San Bruno, in another city.

73. San Bruno offered Student placement at Rollingwood. Rollingwood is Student's school of residence. San Bruno does not provide transportation to non-disabled students to and from their school of residence. San Bruno did not offer Student transportation as a related service. Mother is home with Student and is his primary caretaker during the day.

74. Student was to be five and six years old during the operative time period covered by the July 21, 2015, IEP. It may be ill advised to expect or encourage any kindergartener to walk to and from school because kindergartners, by virtue of their tender age, require constant supervision. While Student has autism and expressive and

receptive language delays, there was no evidence presented that his adaptive skills or physical condition are deficient requiring bus transportation for Student to access his education. The San Bruno members of Student's IEP team who testified established that Student's impairments do not limit his ability to traverse to and from school to a degree greater than typically developing kindergarteners who, due to their age, also require constant supervision and assistance.

EXTENDED SCHOOL YEAR SERVICES

75. Student's IEP team offered Student extended school year services for the summer following kindergarten. The amount, configuration, and location of those services were not included in the July 21, 2015, IEP. Ms. Merritt credibly explained that as the following extended school year was almost a full year after the IEP offer was being made, and given the transition to kindergarten, Student's specific needs for the extended school year would not be known until several months into the school year. Understanding Student's then current needs, it was reasonable for Student's IEP team to preemptively offer extended school year services. It was also reasonable that Student's IEP team would meet again later in the school year to finalize the specifics of Student's extended school year program.

Appropriateness of General Education Placement with One-to-One Aide Support and Predetermination

76. San Bruno offered Student placement in a full inclusion general education kindergarten class at Rollingwood Elementary School with full time one-to-one aide support throughout his entire school day, including while receiving related services. This placement offer is the primary dispute in this case. San Bruno contends that with the robust related services offered, the least restrictive environment for Student is in a general education class with his typically developing peers at his home school. Parents

agree that Student should be placed in a full inclusion program because he has academic strengths, successfully models the appropriate behavior of typically developing peers, and seeks out opportunities for social interaction. It is undisputed that a special day class with other special needs children is not an appropriate placement for Student at this time.

77. Parents' objection to the placement is the number of other students in the class. Mother contends that due to Student's unique needs, he requires a class of no more than 15 students divided into an "early bird—late bird" schedule so that only seven or eight students are present at certain times of the day.

78. San Bruno contends that with the related services in place, in particular the dedicated one-to-one aide, a general education class of not more than 29 Students divided into an "early bird—late bird" schedule is the appropriate placement for Student. Ultimately, San Bruno was more persuasive on this point.

79. Mr. Schwartz and Ms. Merritt described the full-inclusion class at Rollingwood. For the 2015-2016 school year the total number of students has fluctuated between 22-25 students; however, the class can have a maximum of 29 students with up to four students on active IEP's.⁵ The classroom teacher receives additional training specific to integrating special needs students into a general education classroom because it is designated as a full inclusion classroom. Additionally, there is a full time aide assigned to the classroom, this would be in addition to the aide provided to Student as part of his services. The service providers also "push into" the classroom, consistent with individual IEP's, to help facilitate generalizing skills and also to help develop appropriate social interaction among all students in the classroom.

⁵ The maximum of 29 students is considered in this Decision in analyzing the appropriateness of the placement for Student.

80. The class is divided into two groups with an “early bird—late bird” schedule. The first group attends from 8:10 a.m. to 11:50 a.m. and the second group attends from 9:20 a.m. to 1:25 p.m. Accordingly, for approximately one hour and ten minutes each day the total number of students does not exceed 15 with a minimum of two adults. Typically, the class works on writing activities during that time and the teacher works with small groups of approximately 2-3 students. When the full group arrives, the teacher typically conducts direct instruction, circle time, recess, physical education, music, and other activities. After the early birds leave, the teacher repeats the morning lesson with the late birds.

81. Ms. Martinez established that this is a similar program to the one Student participated in at Learning Links during the 2014-2015 school year. The full inclusion Butterfly preschool class also has approximately 30 students divided into an “early bird—late bird” schedule. Student spent a portion of his day with all 30 students but also spent a portion of his day in the Bumblebee special day class with fewer students. Mother established that Student received greater educational benefit in the Butterfly class than the Bumblebee class primarily due to modeling typically developing peers.

82. Mother is concerned that due to Student’s auditory processing deficient and sensitivity to auditory and visual stimuli he will shut down with so many students in the room and not be able to access his education. This concern is shared by Dr. Peters and Dr. Barra-Stevens.

83. Dr. Peters’ report states that Student, “would benefit from a specialized school placement that can provide a behavioral intervention program to help him improve his social skills, behaviors, and management of distress related to the Autism Spectrum Disorder in a small classroom that still allows him to learn with neurotypical children.” As discussed above, Dr. Barra-Stevens testified that “in a perfect world” Student would ideally be educated in a one-to-one setting due to his language deficits.

If not a one-to-one setting, Dr. Barra-Stevens also concluded that a class of no more than 15 Students could be appropriate.

84. Neither Dr. Peters nor Dr. Barra-Stevens have observed Student in a school placement. They did not interview or obtain information from Student's teachers or service providers in reaching their conclusions. Dr. Peters evaluated Student in October and December 2014. By the time Dr. Peters' report was considered and he made his recommendations to Student's IEP team, Student had an additional six-month's growth.

85. Ms. Martinez observed Student in each setting throughout the course of the 2014-2015 school year and credibly testified that Student was able to access his preschool curriculum even in a group of 30 students. Ms. Martinez, Ms. Marshall, and Ms. Gonzalez established that Student has strong academic and pre-academic skills, has a desire to interact socially with typically developing peers, and does not have severe maladaptive behaviors.

86. Greater weight was given the opinions of the Learning Links' staff than to Dr. Peters and Dr. Barra-Stevens due to the staffs' personal knowledge working with Student and their knowledge of his needs in July 2015. The evidence established that Student can and has received educational benefit in a similarly configured classroom at Learning Links. Student received substantial non-academic benefits in modeling the behavior of his typically developing peers. Given the supports offered there was no evidence presented that Student would have a negative effect on either his teacher or classroom peers. There is no evidence that cost was a factor in San Bruno's placement offer.

87. Mother's concern regarding the number of students in the class is valid. Student's teacher and service providers from Learning Links established, however, that with one-to-one aide support to help prompt, redirect, and if necessary remove him from the classroom for a sensory break due to environmental stimuli, that the full

inclusion class at Rollingwood is an appropriate placement for Student.

88. Mother also asserted that the July 21, 2015, IEP was invalid because the offer of placement at Rollingwood was predetermined. This is not supported by the evidence. Mother's testimony established that prior to the June 9, 2015, IEP team meeting that Ms. Youman believed a special day class was an appropriate placement for kindergarten. The draft IEP from June 9, 2015, further supports that conclusion. After receiving the independent educational evaluations, however, Ms. Merritt believing that a general education placement may be considered by the team, invited Mr. Schwartz and Ms. Reddy to participate in Student's IEP team meeting. Ultimately, the full inclusion program at Rollingwood was offered. This progression by the San Bruno members of Student's IEP team establishes that the placement offer was not predetermined.

89. Mother's true allegation regarding predetermination is that the IEP team did not give due consideration to her preferred placement in a neighboring district. Ms. Merritt explained to Parents during the IEP team meeting and testified at hearing that an IEP team in one district lacked the legal authority to place a student in a general education kindergarten program within another school district. The fact that Student's IEP team did not consider placing Student in the neighboring district, putting aside the question of whether they had the legal authority to do so, does not render the placement offer at Rollingwood predetermined.

LEGAL CONCLUSIONS

INTRODUCTION: LEGAL FRAMEWORK UNDER THE IDEA⁶

1. This hearing was held under the Individuals with Disabilities Education Act

⁶ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

(IDEA), its regulations, and California statutes and their implementing regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006)⁷ et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's individualized education program (IEP). (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; 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(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a) [In California, related services are also called designated instruction and services].) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education

⁷ All subsequent references to the Code of Federal Regulations are to the 2006 version.

curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a).)

3. In *Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201 [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.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the FAPE definition articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so].) Although sometimes described in Ninth Circuit cases as “educational benefit,” “some educational benefit” or “meaningful educational benefit,” all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 951, fn. 10.)

4. At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) In this case San Bruno bears the burden of proof.

PROCEDURAL COMPLIANCE –JUNE 9, 2015, AND JULY 21, 2015, IEP TEAM MEETINGS AND OFFER

5. There are two parts to the legal analysis of a school district's compliance with the IDEA. First, the tribunal must determine whether the district has complied with the procedures set forth in the IDEA. (*Rowley, supra*, 458 U.S. at pp. 206-207.) Second, the tribunal must decide whether the IEP developed through those procedures was designed to meet the child's unique needs, and was reasonably calculated to enable the child to receive educational benefit. (*Ibid.*)

6. A procedural violation such as a school district's failure to conduct appropriate assessments, or to assess in all areas of suspected disability, may constitute a procedural violation of the IDEA. (*Park v. Anaheim Union High School District* (9th Cir. 2006), 464 F.3d 1025, 1031-1033.) In the event of a procedural violation, denial of a FAPE *may only* be found if that procedural violation impeded the child's right to a FAPE, significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a FAPE, or caused deprivation of educational benefits. (Ed. Code, § 56505, subd. (f)(2).)

Assess in All Areas of Suspected Disability

7. A local educational agency must assess a special education student in all areas of suspected disability, including if appropriate, health and development, vision, hearing, motor abilities, language function, general intelligence, academic performance, communicative status, self-help, orientation and mobility skills, career and vocational abilities and interests, and social and emotional status. (20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304 (c)(4); Ed. Code, § 56320, subd. (f).) A local educational agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information. (20 U.S.C. § 1414(b)(2)(A)). No single measure or assessment shall be the sole criterion for determining whether a child is a child with a

disability. (20 U.S.C. § 1414(b)(2)(B); 34 C.F.R. § 300.304(b)(2); Ed. Code, § 56320, subd. (e)). Assessments must be sufficiently comprehensive to identify all of the child's special education and related service needs, whether or not commonly linked to the disability category of the child. (34 C.F.R. § 300.304 (c)(6).) The local educational agency must use technically sound testing instruments that demonstrate the effect that cognitive, behavioral, physical and developmental factors have on the functioning of the student. (20 U.S.C. § 1414(b)(2)(C); 34 C.F.R. § 300.304 (b)(3).) The IEP team must consider the assessments in determining the child's educational program. (34 C.F.R. § 300.324(a)(1)(iii)).

8. Mother contends that San Bruno's IEP offer is defective because it failed to conduct a central auditory processing assessment and an executive functioning assessment. The evidence established that Student was not a candidate for a central auditory processing assessment in July 2015 because he was not old enough to garner valid results. Additionally, Student's IEP team was aware, based upon observations, teacher and service provider reports, and the comprehensive assessments that were completed, that Student had needs in both auditory processing and executive functioning. Accordingly, additional assessments in these areas were not warranted. Therefore, the failure to complete these specific assessments does not constitute a procedural violation of the IDEA.

Necessary Team Members

9. An IEP team is composed of the parents; at least one regular education teacher if the pupil is, or may be, participating in the regular education environment; at least one special education teacher or, if appropriate, at least one of the student's special education providers; a qualified person to interpret assessments; and other persons who have knowledge or special expertise regarding the student, at the discretion of the parent or school district; and the child, whenever appropriate. (20 U.S.C.

§ 1414(d)(1)(B); Ed. Code, § 56341, subd. (b).) Further, it is within the discretion of the school district to determine which of its personnel will fill the roles for the district's required participants at the IEP meeting. (71 Fed.Reg. 46674 (Aug. 14, 2006).) The regular education teacher who is a member of the IEP team need not be the child's current regular education teacher. (*R.B. v. Napa Valley Unified Sch. Dist.* (9th Cir. 2007) 496 F.3d 932, 939.)

10. A member of the team shall not be required to attend the meeting, in whole or in part, if the parent and school district agree, in writing, that the attendance of the member is not necessary because the member's area of curriculum or related services is not being modified or discussed in the meeting. (Ed. Code, § 56341, subd. (f).) A member of the team whose area of curriculum or related services is being modified or discussed may also be excused by written parental consent if the excused member submits a written report to the IEP team in advance. (Ed. Code, § 56341, subd. (g)(1), (2).)

11. It is undisputed that the relevant IEP team members were present over the course of the June 9 and July 21, 2015, IEP team meetings. Mother contended that the entire IEP team was not present at the end of the July 21, 2015, IEP team meeting when San Bruno made its offer of FAPE. She contends that no one other than Ms. Merritt contributed to the offer of related services and placement and therefore it was invalid. Mother also contends that she was not asked to sign a form giving permission for individuals to leave the IEP team meeting before it concluded.

12. Regarding the participants attending the IEP team meeting, at least one individual serving in each required role attended the entire first IEP team meeting held on June 9, 2015. Mother argued that Ms. Gonzalez, Student's occupational therapist, only attended a portion of each meeting and therefore, Student's IEP was defective. This was not supported by the evidence.

13. Ms. Gonzalez was one of three occupational therapists who attended the

June 9, 2015, IEP team meeting. San Bruno's occupational therapist, Ms. Hunter, attended the entire meeting. Additionally, Student's independent assessor Ms. Baker-Malone attended a significant portion of the June 9, 2015, IEP team meeting. The majority of the relevant discussion regarding occupational therapy took place during the first meeting. It was agreed, however, that because Mother wanted more specificity regarding Student's goals that she and Ms. Gonzalez would meet again between the two meetings. That additional meeting did occur. On July 21, 2015, Ms. Gonzalez attended only a portion of the IEP team meeting before leaving. Her time constraints were shared during this meeting; she reviewed her revised goals and answered Parents' questions. Parents even agreed upon Student's occupational therapy goals during the meeting.

14. Student's occupational therapy needs were fully discussed, analyzed, and appropriately addressed. Neither parent voiced any concern when she left the meeting. The extensive conversations regarding Student's occupational therapy needs during the two IEP team meetings, coupled with Mother's meeting with Ms. Gonzalez between meetings, establishes that the requirements for a service provider whose services are to be modified or discussed at the IEP team meeting was met. The overwhelming evidence establishes that Parents' fully participated in the decision making process regarding the provision of a FAPE and Student suffered no negative impact to his educational benefit throughout the IEP development process including regarding occupational therapy. Student's IEP was not defective in this regard and he was not denied a FAPE due to Ms. Gonzalez's early departure from the July 21, 2015, IEP team meeting.

15. Mother argued repeatedly at hearing that Student's IEP team was "not functional" because it did not follow the "correct process." She explained her understanding that the fully comprised team must draft goals together, then turn to a discussion of services with each team member providing his or her recommendation,

and then finally turning to a discussion regarding placement where again each member makes their recommendation. Mother is correct that to meet the spirit of the IDEA, the team must generally have goals before determining related services. A placement recommendation is not typically finalized until after the forgoing because the IEP team must ensure that the recommended goals and services can be implemented in the offered placement.

16. Mother's description of the "functional" process, however, is very linear. Her protest that the relevant members of Student's IEP team did not provide their input or recommendations is not supported by the recording of the IEP team meetings. Additionally, this rigid view of the meeting process ignores the valuable and rich contributions that were made by multiple team members and the robust discussions that took place during the more than five hours over the course of two IEP team meetings. In this particular case, often as goals were developed for a specific area, for instance speech therapy, the IEP team stayed on the same topic to discuss the services that could implement the goals. This worked well for this IEP team. There is no requirement that every goal be developed before services in a discrete area are discussed, only that the goals for that area are drafted before the final offer of services is made.

17. San Bruno's final offer of FAPE was presented at the conclusion of the second meeting by Ms. Merritt. Others were also in attendance at the end of the meeting when the offer was presented including Ms. Youman, and additional Learning Links staff. It was the culmination of several hours of active, robust, and informative discussions that took place with an appropriately configured IEP team. Moreover, during the due process hearing each witness (other than Mother) who also attended the IEP team meetings unequivocally established their belief that the offered IEP was appropriate. There is no evidence to suggest that anyone's opinion, including Ms.

Gonzalez's, would have changed had they been present when Ms. Merritt vocalized the completed offer of FAPE.

18. The final task of presenting the offer was ministerial in nature. The fact that it was presented orally by Ms. Merritt at the end of the second IEP team meeting when not all team members were present was not a procedural violation of the IDEA. Although some individuals were not present for the entire second meeting, such as Ms. Gonzalez, there is no legal prohibition against a team member leaving a meeting before its conclusion. Mother also equates the law regarding excusal from an IEP team meeting all together with requiring consent before their departure. That is not a requirement under the law.

19. The purpose of the IDEA is that an IEP team work together to develop an IEP for a student. In this case, there was an appropriately configured IEP team for the majority of the IEP team meetings that were conducted over more than five hours. There was substantial evidence that at least one regular education teacher, special education teacher, speech therapist, occupational therapist, school psychologist, administrator, and Parent were in attendance for the vast majority of both meetings. The robust conversation in the development of the IEP and finished IEP document show that all required members participated fully and helped develop the final offer.

Predetermination

20. A school district that predetermines the child's program and does not consider the parents' requests with an open mind has denied the parents' right to participate in the IEP process. (*Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004) 392 F.3d 840, 858; see also, *Ms. S. ex rel G. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131.) Predetermination occurs "when an educational agency has made its determination prior to the IEP meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives." (*H.B., et al. v. Las*

Virgenes Unified School Dist. (9th Cir. 2007) 107 LRP 37880, 48 IDELR 31.) The test is whether the school district comes to the IEP meeting with an open mind and several options, and discusses and considers the parents' placement recommendations or concerns before the IEP team makes a final recommendation. (*Hanson v. Smith*, (D. Md. 2002) 212 F.Supp.2d 474, 486; *Doyle v. Arlington County Sch. Bd.* (E.D.Va. 1992) 806 F.Supp. 1253, 1262.)

21. Mother argues that the general education full inclusion kindergarten placement at Rollingwood was predetermined. She asserts that the San Bruno members of Student's IEP team did not come with an open mind or consider Parents' placement recommendations because it dismissed their requested placement without discussion. The evidence does not support this conclusion.

22. Mother is correct that the San Bruno's IEP team did not consider the specific classroom she requested due to San Bruno's understanding that it is not legally authorized to place one of its students in a neighboring public school's general education classroom. The IEP team did consider Parents' placement recommendations. Specifically, Parents believed Student should be placed with typically developing peers in a full inclusion general education class with a full time one-to-one aide. Initially, some members of Student's IEP team, such as Ms. Youman, believed that a special day class may be an appropriate placement. After reviewing the independent educational evaluations and participating in both IEP team meetings, she became convinced that that the placement at Rollingwood was appropriate for Student.

23. The evidence establishes that San Bruno's staff did not come to consensus regarding placement and services prior to the meeting or exhibit an unwillingness to consider any alternatives. Therefore, the placement offer was not predetermined and does not constitute a procedural violation of the IDEA.

Clarity of Placement Offer

24. This matter was filed by San Bruno. Parent did not allege that the offer was not clear; however, San Bruno bears the burden of proof that it offered Student a FAPE. As clarity is a necessary component of determining if the offer constitutes an offer of FAPE, it is analyzed herein.

25. In *Union School Dist. v. Smith* ((1994) 15 F.3d 1519, cert. den., 513 U.S. 965 (*Union*)), the Ninth Circuit held that a district is required by the IDEA to make a clear, written IEP offer that parents can understand. The Court emphasized the need for rigorous compliance with this requirement:

We find that this formal requirement has an important purpose that is not merely technical, and we therefore believe it should be enforced rigorously. The requirement of a formal, written offer creates a clear record that will do much to eliminate troublesome factual disputes many years later about when placements were offered, what placements were offered, and what additional educational assistance was offered to supplement a placement, if any. Furthermore, a formal, specific offer from a school District will greatly assist parents in "present[ing] complaints with respect to any matter relating to the ... educational placement of the child." 20 U.S.C. § 1415(b)(1)(E). (*Union*, *supra*, 15 F.3d at p. 1526; see also *J.W. v. Fresno Unified School Dist.* (E.D. Cal. 2009) 626 F.3d 431, 459-461; *Redding Elementary School Dist. v. Goyne* (E.D.Cal., March 6, 2001 (No. Civ. S001174)) 2001 WL 34098658, pp. 4-5.)

26. *Union* involved a district's failure to produce any formal written offer. However, numerous judicial decisions invalidate IEP's that, though offered, were insufficiently clear and specific to permit parents to make an intelligent decision whether to agree, disagree, or seek relief through a due process hearing. (See, e.g., *A.K. v. Alexandria City School Bd.* (4th Cir. 2007) 484 F.3d 672, 681; *Knable v. Bexley City School Dist.* (6th Cir. 2001) 238 F.3d 755, 769; *Bend LaPine School Dist. v. K.H.* (D.Ore., June 2, 2005, No. 04-1468) 2005 WL 1587241, p. 10; *Glendale Unified School Dist. v. Almasi* (C.D.Cal. 2000) 122 F.Supp.2d 1093, 1108; *Mill Valley Elem. School Dist. v. Eastin* (N.D.Cal., Oct. 1, 1999, No. 98-03812) 32 IDELR 140, 32 LRP 6047; see also *Marcus I. v. Department of Educ.* (D. Hawai'i, May 9, 2011, No. 10-00381) 2011 WL 1833207, pp. 1, 7-8.)

27. San Bruno's offer has the boxes checked for both individual and small group specialized academic instruction, occupational therapy, and speech and language therapy. In certain circumstances this can be the basis for a lack of clarity and inconsistent with the *Union* standard. That is not the case here, however. In the comment area under each related service the criteria and parameters are specific, clear, and driven by the activity being conducted or the specific goal being implemented. This degree of specificity brings San Bruno's offer into compliance with *Union* and is not a procedural violation of the IDEA.

28. San Bruno established that it complied with the procedural requirements of the IDEA regarding Student's June 9, and July 21, 2015, IEP team meetings and July 21, 2015, offer.

SUBSTANTIVE APPROPRIATENESS OF JULY 21, 2015, IEP OFFER

29. 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.) An IEP is a written statement that includes a statement of the present performance of the student, a statement of measurable annual goals designed to meet the student's needs that result from the disability, a description of the manner in which progress of the student towards meeting the annual goals will be measured, the specific services to be provided, the extent to which the student can participate in regular educational programs, the projected initiation date and anticipated duration, and the procedures for determining whether the instructional objectives are achieved. (20 U.S.C. § 1414 (d)(1)(A)(i),(ii); 34 C.F.R. § 300.320(a)(2), (3); Ed. Code, § 56345, subds. (a)(2), (3).) The IEP shall also include a statement of the program modifications or supports for school personnel that will be provided to the student to allow the student to advance appropriately toward attaining the annual goals, to be involved and make progress in the general education curriculum, and to participate in extracurricular activities and other nonacademic activities. (34 C.F.R. § 300.320(a)(4)(i), (ii); Ed. Code, § 56345, subds. (a)(4)(A), (B).)

30. The IEP is the "modus operandi" of the IDEA; it is "a comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs." (*School Comm. of Town of Burlington, Mass. v. Department of Educ.* (1985) 471 U.S. 359, 368 [105 S.Ct. 1996].)

31. 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. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Ibid.*) Whether a student was offered or denied a FAPE is determined by looking to what was reasonable at the time

the IEP was developed, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrman v. East Hanover Bd. of Education* (3rd Cir. 1993) 993 F.2d 1031, 1041.)

Needs and Present Levels of Performance

32. Student has autism and an expressive and receptive language disorder. This manifests in a constellation of academic, social, behavioral, and communicative needs. The IEP addressed all of Student's needs. The present levels were developed based on parental input; three independent educational evaluations including a psychoeducational evaluation, a speech and language evaluation, and an occupational evaluation; and teacher and service provider reports of Student's progress toward his prior goals. Student's present levels of performance were listed accurately and completely, as they existed in July 2015.

Goals

33. Student's IEP includes 17 measurable annual goals designed to meet each of Student's identified areas of need. The IEP included language that an 18th goal would be drafted in math within 30 days of Student starting kindergarten if that became a demonstrated area of need. The IEP includes a detailed description of the manner in which Student's progress toward meeting the annual goals will be measured.

Related Services

34. The term "related services" (in California, "designated instruction and services"), includes transportation and other developmental, corrective, and supportive services as may be required to assist a child to benefit from special education. (20 U.S.C. §1401(26); Ed. Code, § 56363, subd. (a).), the specific services to be provided, the extent to which the student can participate in regular educational programs, the projected

initiation date and anticipated duration, and the procedures for determining whether the instructional objectives are achieved.

35. San Bruno offered Student daily designated academic instruction as part of the resource specialist program either push-in or pull out depending upon the academic activity. Student was also offered a combination of three weekly individual or small group (not to exceed Student and one other) speech and language services, push-in speech and language services, and consultation services that include Parents. It offered weekly one individual and one small group (not to exceed Student and two others) occupational therapy sessions, push-in occupational therapy services, and weekly consultation services that include Parents. San Bruno also offered Student weekly behavior intervention services from a non-public agency to help with emotional regulation and transitions. To ease the transition to kindergarten, San Bruno offered an additional 10 hours of behavior intervention services within the first four weeks of his enrollment in kindergarten. The most significant related service that San Bruno offered Student was full time daily one-to-one aide services. The offered aide services also included attending Student's individual and small group related services and consultation with the aide to help facilitate Student's ability to generalize the learned skills across settings.

36. The evidence established that the related services discussed above were an amount, frequency, duration, and configuration necessary for Student to benefit from his special education. The evidence did not establish that Student exclusively required individual services to receive educational benefit. The IEP included the specific services to be provided and the projected start date for services. Additionally, Student's IEP contained goals for academics, speech and language, occupational therapy, behavior, and communication that included the instructional objectives to be achieved utilizing the related services. San Bruno established that the offered related services were

appropriate and would enable Student to benefit from his special education.

TRANSPORTATION

37. The only requested but denied related service was transportation. The IDEA regulations define transportation as: (i) travel to and from school and between schools; (ii) travel in and around school buildings; and (iii) specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide transportation for a child with a disability. (34 C.F.R. § 300.34(c)(16).) The IDEA does not explicitly define transportation as door-to-door services. Decisions regarding such services are left to the discretion of the IEP team. (Analysis of Comments and Changes to 2006 IDEA Part B Regulations, 71 Fed.Reg. 46576 (August 14, 2006).)

38. A school district must provide transportation to disabled students if it provides transportation to non-disabled students. If a school district does not provide transportation to non-disabled students, "the issue of transportation to students with disabilities must be decided on a case-by-case basis. If a [school district] determines that a disabled student needs transportation to benefit from special education, it must be provided as a related service at no cost to the student and his or her parents." (*Letter to Smith*, (23 IDELR 344 [23 LRP 3398]).)

39. Student's previous IEP's provided transportation to and from Learning Links. Learning Links was located outside San Bruno's jurisdictional boundaries and in another city. Student was offered placement at Rollingwood, his school of residence, in the July 21, 2015 IEP. It was anticipated that Student would be five and six years old during the time the offered IEP would be operative. It can be argued that at this age, Student is not capable of independently getting to and from school. It is his young age, however, and not his disability that makes it unreasonable for Student to transport himself to school. San Bruno does not provide transportation to and from school for non-disabled students to their school of residence regardless of age.

40. Mother called Dr. Barra-Stevens, Student's pediatrician, as a witness at hearing. She did not elicit any testimony from Dr. Barra-Stevens establishing that based upon a medical condition or disability, Student requires transportation to benefit from special education. Additionally, Mother did not seek to establish that she is not able or capable of transporting Student to school. The weight of the evidence presented by San Bruno's witnesses established that Student does not need transportation to benefit from special education. Therefore, San Bruno's offer does not deny student a FAPE by not offering Student transportation as a related service.

Accommodations

41. An IEP must contain a statement of the program modifications or supports that will be provided for the student to advance appropriately toward attaining his annual goals and to be involved in and make progress in the regular education curriculum, and a statement of any individual accommodations that are necessary to measure the student's academic achievement and functional performance. (20 U.S.C. § 1414(d)(1)(A)(i)(IV), (VI)(aa); Ed. Code, § 56345, subds. (a)(4), (6)(A).)

42. The accommodations contained in Student's IEP are substantively appropriate and enable him to advance appropriately toward attaining his annual goals and to be involved in and make progress in the regular education curriculum. Student's IEP did not contain any program modifications and there was no evidence Student needed any.

Placement Least Restrictive Environment

43. Both federal and state laws require a special education child to be educated in the least restrictive environment appropriate to meet the child's needs. (20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.114(a) (2006); Ed. Code, § 56040.1.) This means that a school district must educate a special needs pupil with non-disabled peers "to the

maximum extent appropriate.” (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114 (2006); Ed. Code, § 56040.1.) The least restrictive environment doctrine requires a school district, in making placement decisions, to offer a placement “as close as possible to the child’s home.” (34 C.F.R. § 300.116(b)(3) (2006); see 71 Fed.Reg. 46588 (Aug. 14, 2006) [“The Department has consistently maintained that a child with a disability should be educated in a school as close to the child’s home as possible, unless the services identified in the child’s IEP require a different location.”].)

44. In *Sacramento City Unified School District v. Rachel H.* ((9th Cir. 1994) 14 F.3d 1398, 1400-1402), the Ninth Circuit held that the determination of whether a particular placement is the “least restrictive environment” for a particular child involves an analysis of four factors, including: (1) the educational benefits to the child of placement fulltime in a regular class; (2) the non-academic benefits to the child of such placement; (3) the effect the disabled child will have on the teacher and children in the regular class; and (4) the costs of educating the child in a regular classroom with appropriate services, as compared to the cost of educating the child in the district’s proposed setting. However, the Supreme Court has noted that IDEA’s use of the word “appropriate” reflects Congressional recognition “that some settings simply are not suitable environments for the participation of some handicapped children.” (*Rowley*, *supra*, 458 U.S. at p. 197.)

45. Mother argues that Student should be in a full inclusion general education kindergarten class with typically developing peers, she asserts it should be capped at 15 students. San Bruno has voluntarily capped the class at 29 students and its actual enrollment has not exceeded 25 throughout the 2014-2015 school year. Education Code sections 41376 and 41378 prescribe that the average class size for kindergarten is not to exceed 31 students and that no class shall be larger than 33 students. San Bruno’s kindergarten class complies with the limits imposed on class size by state law.

46. The evidence also established that with the support of a one-to-one aide to assist with transitions, redirection, repeating, and using visual and verbal prompts, Student's needs can be met in full inclusion general education program of up to 29 children. The remaining question is whether or not this constitutes the least restrictive environment for Student. When applying the *Holland* factors, the answer is yes. It is anticipated that Student will receive educational benefit by being placed fulltime in a regular class because he models the academic and social behavior of his typically developing peers. Additionally, Student will receive non-academic benefit because he actively seeks out and is interested in socially engaging with typically developing peers. Student's greatest area of need is language development. He will have greater opportunity to observe and practice appropriate language skills in a general education setting. The evidence presented established that Student will have no detrimental impact on the teacher or his fellow students in the class. By all accounts Student is kind, cooperative, and does not typically exhibit maladaptive behaviors. If he becomes emotionally dysregulated and cannot be easily redirected, he will have the support of a one-to-one aide to ensure that minimal disruption in the class activities occur. Finally, there was no evidence presented that cost was a factor in developing Student's proposed placement.

47. San Bruno established that the full inclusion general education kindergarten class at Rollingwood, with the robust offer of related services including a full time one-to-one aide, is the least restrictive environment to meet his unique needs.

Extended School Year

48. Extended school year services must be offered if the IEP team determines, on an individual basis, that the services are necessary for a child to receive a FAPE. (34 C.F.R. § 300.106 (2006); Ed. Code, § 56345, subd. (b)(3).) California Code of Regulations, title 5, section 3043, provides that extended school year services shall be provided for

each individual with unique and exceptional needs who requires special education and related services in excess of the regular academic year. Pupils to whom extended school year services must be offered under section 3043 “. . . shall have handicaps which are likely to continue indefinitely or for a prolonged period, and interruption of the pupil’s educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her handicapping condition.” (See also 34. C.F.R. § 300.106 (2006); Ed. Code, § 56345, subd. (b)(3).)

49. San Bruno’s July 21, 2015, IEP indicated that it would provide student extended school year services during the summer of 2016. The offer of specific services and dates was deferred until later in the school year after Student transitioned to kindergarten. Ms. Merritt established that Student’s IEP team would meet again during the 2015-2016 school year to make a specific offer regarding the services and dates of the extended school year program after Student had transitioned to kindergarten. As the offer was made nearly one year before the extended school year was to be implemented it was reasonable to defer the final offer. Under the circumstances and timing in this case, that decision did not constitute a denial of FAPE. However, no determination is made in this Decision as to whether or not the extended school year services to be offered are appropriate.

50. San Bruno established that its July 21, 2015, IEP was both procedurally and substantively appropriate, exclusive of the specific extended school year program. The IEP was designed to meet Student’s unique needs and was reasonably calculated to provide educational benefit. San Bruno also established that it stands ready, willing, and able to implement the July 21, 2015, IEP as written if Parents present Student at Rollingwood.

ORDER

San Bruno's July 21, 2015, IEP offered Student a free appropriate public education in the least restrictive environment with the limited exception that no finding is made regarding the appropriateness of the 2015-2016 extended school year offer.

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, San Bruno prevailed on the sole issue heard and decided.

RIGHT TO APPEAL

This Decision is the final administrative determination and is binding on all parties. (Ed. Code, § 56505, subd. (h).) Any party has the right to appeal this Decision to a court of competent jurisdiction within 90 days of receiving it. (Ed. Code, § 56505, subd. (k).)

DATE: April 11, 2016

/s/

JOY REDMON

Administrative Law Judge

Office of Administrative Hearings