

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ROSEDALE UNION ELEMENTARY SCHOOL
DISTRICT.

OAH Case No. 2015090094

DECISION

Parent on behalf of Student filed this due process hearing request with the Office of Administrative Hearings, State of California, on August 31, 2015, naming Rosedale Union Elementary School District. The matter was continued for good cause on October 12, 2015.

Administrative Law Judge Judith L. Pasewark heard this matter on November 16, 17, 18, and 19, 2015. The first day of hearing was held in the OAH office in Van Nuys, California to accommodate Student's witness, Dr. Bill Takeshita. Counsel for both parties waived the appearance of Mother and District's representative for the first day of hearing. The remainder of the hearing was held in Bakersfield, California.

Diane B. Weissburg, Attorney at Law, represented Student. Mother, Attorney at Law, also represented Student for part of the hearing, and attended two days of hearing on behalf of Student.

Stacy L. Inman, Attorney at Law, represented District. Crystal Silver-Hill, Director of Special Education, attended the hearing on behalf of District.

Testimony was completed on November 19, 2015, and, at the request of the

parties, the matter was continued to December 13, 2015, for receipt of written closing briefs. The record was closed, and the matter submitted for decision on December 13, 2015.

ISSUES

Issue One: Whether District denied Student a free appropriate public education by failing to offer or provide vision therapy for the 2015-2016 school year.

Issue Two: Whether District denied Mother the opportunity to meaningfully participate in the development of Student's 2015-2016 individualized education program by failing to address Mother's concerns regarding Student's need for vision therapy.

SUMMARY OF DECISION

The evidence in this case did not establish whether Student actually requires educationally related vision therapy. Student's evidence was not sufficiently persuasive to establish that vision therapy provided by an optometrist or ophthalmologist was educationally necessary thereby denying Student a FAPE in Student's March 13, 2015 IEP.

On the other hand, Student sustained his burden of proof to support a finding that the IEP team decision to deny vision therapy services was predetermined. Predetermination in this matter resulted from District's own lack of its inquisitive participation in the vision therapy assessment discussion. The IEP team merely rubber stamped Dr. Kirschen's vision therapy assessment and recommendations without sufficient information or consideration, thereby rendering Mother's participation in the IEP discussion useless.

FACTUAL FINDINGS

BACKGROUND AND JURISDICTION

1. Student is a three year old with cerebral palsy, infantile spasms, complex partial seizures and a visual field deficit or neglect. His cerebral palsy results in a right-sided hemiplegia which inhibits his ability to use his arm, hand and leg on his right side. Student has a global developmental delay and functions at the level of a 12-15 month old child.

2. On March 13, 2015, Student was found eligible for special education and related services through the Fruitvale School District (Fruitvale). Student's primary eligibility is multiple disabilities. His secondary disability is orthopedic impairment. Student is also eligible under vision impairment. Fruitvale developed Student's initial IEP, which Mother approved, subject to several minor changes. Fruitvale initially provided a vision assessment, but not a vision therapy assessment. At Mother's request, Fruitvale agreed to obtain a vision therapy assessment. While awaiting the vision therapy assessment, the March 13, 2015 IEP was implemented in Fruitvale until the end of the 2014-2015 school year.¹ In July 2015, Student and his parents moved within Rosedale Union School District boundaries, which resulted in Student's March 13, 2015 IEP transferring to District. Subsequent to Student's move to District, the vision therapy assessment and report was completed, and an IEP team meeting was held in District on August 25, 2015, to discuss whether vision therapy was necessary for Student to access his education. District declined to provide vision therapy services for Student.

3. Student is also a client of the Kern Regional Center due to cerebral palsy

¹ Student's placement, goals and accommodations as developed in the March 13, 2015 individualized education plan are not at issue in this matter.

and mild intellectual disability.² Regional Center paid for Student's vision therapy prior to Student's third birthday. In 2014, Regional Center determined that Student's vision therapy was experimental, and subsequently denied service. Mother filed for fair hearing. Student's vision therapy was reinstated. Student will continue to receive vision therapy three times per week through Regional Center until approximately April 2016, pursuant to a settlement agreement with Regional Center. Mother believes Kern Regional Center mandates consumers to exhaust all possible financial providers, including school districts, before it will pay for vision therapy services after age three. Therefore, at the IEP team meeting on August 25, 2015, Mother notified District she would file for a due process hearing to fulfill Regional Center's requirement.

THE AUGUST 25, 2015 IEP

4. Student began school in District on August 20, 2015. District implemented Student's May 13, 2015 IEP from Fruitvale by placing Student in a pre-kindergarten special day class with six students, and providing the related services specified in the IEP. Vision therapy was not provided by District as vision therapy had not been provided by Fruitvale nor included in Student's March 13, 2015 IEP. Fruitvale, however, had initiated a vision therapy assessment, which was completed by Dr. David Kirschen.

5. Dr. Kirschen is a highly qualified doctor of optometry and has a Ph.D. in physiological optics. He maintains a diagnostic pharmaceutical license, therapeutic pharmaceutical license, and glaucoma certification. Dr. Kirschen also maintains academic affiliation at the UCLA Center for the Health Sciences, Jules Stein Eye Institute, and Southern California College of Optometry. He also maintains a private optometric

² Regional Centers operate under authority of the Lanterman Developmental Disabilities Act (Welf. & Inst. Code, § 4500 et seq.), and provide daily living services and supports to persons with developmental disabilities.

practice in Brea, California. Dr. Kirschen's 24-page curriculum vitae provide extensive additional lists of publications, lectures and awards pertaining to vision and vision therapy.

6. Dr. Kirschen prepared a one-page assessment report, which was not reviewed at Fruitvale prior to Student's move to District.

7. Prior to the commencement of school, on August 3, 2015, Mother sent a 95-page email to Crystal Silver-Hill, District's special education director. This email included extensive pertinent information regarding Student. Those documents included, but were not limited to: (1) a copy of the Kern County Superintendent of Schools nurse's assessment report dated January 23, 2015, which reference Student receiving vision therapy three times per week; (2) copy of Student's psychoeducation assessment report dated January 23, 2015, which referenced Student's participation in vision therapy clinic to work with his right side visual-spatial *neglect*; (3) copy of Student's speech and language assessment report dated February 18, 2015, which referenced Student's participation in vision *training* and recommended use of visual cues and assistive technology. This assessment also recommended continuing to follow through with ophthalmological recommendations to ensure that Student functions with adequate vision levels for further development of his speech and language skills; (4) a copy of a functional vision assessment, learning media assessment, and orientation and mobility assessment, dated February 26, 2015, which referenced Student's participation in vision therapy. This assessment provided substantial information regarding Student's vision issues, and made recommendations for vision accommodations and consultation; (5) a copy of Student's occupational therapy assessment report dated March 6, 2015, which referenced Student's right portion field *cut* in his vision, and reported Student's balance and coordination had improved since receiving vision therapy; (6) a copy of a neuro-optometric vision evaluation dated June 17, 2015, prepared by Dr. Penelope Suter,

regarding Student's vision therapy; (7) a copy of Dr. Kirschen's vision therapy assessment report dated June 2, 2015; and (8) a copy of a letter of rebuttal to Dr. Kirschen's report, from Dr. Suter, dated June 15, 2015. Given her busy schedule during the beginning of the school year, Ms. Silver-Hill acknowledged she did not read Mother's email in its entirety prior to the August 25, 2015 IEP team meeting.

8. Dr. Suter has provided Student with vision therapy since 2014. She did not attend any of Student's IEP team meetings, and did not testify at hearing. Accordingly, only judicial notice of her state license as a doctor of optometry can be noted. Nonetheless, she provided written information to Fruitvale, which was also provided to District prior to the August 25, 2015 IEP team meeting. Dr. Suter's evaluation report, dated June 17, 2014, provided a short history, and findings regarding Student's medical diagnosis and medical treatment by Dr. Stacy Pineles at UCLA in conjunction with Student's cerebral palsy. Dr. Suter's evaluation relied heavily on Dr. Pineles' diagnosis.³ Dr. Suter reported that she wrote Student a prescription for prism glasses to aid his balance and spatial awareness using Dr. Pineles refractive findings. She further recommended at least six weeks of three, weekly vision therapy visits to work with Student's visual spatial *neglect*. Her treatment of choice for visual spatial *neglect* is therapeutic yoked prism work with ballistic movement, and scanning activities. Dr. Suter reported that "frequently, remediating visual spatial neglect will allow for great improvements in visual-spatial neglect when physical and occupational therapists are

³ Dr. Pineles did not attend the IEP team meeting, nor did she testify at hearing. The only recent information provided by Dr. Pineles was a letter dated March 20, 2015, which stated, in full, Student "is my patient which I am following for estropia and hemianopia. He is currently undergoing vision therapy and has had subjective improvement in his visual fields."

working on the motor aspects of *neglect*."

9. The IEP team reviewed Dr. Kirschen's report to determine whether Student required vision therapy services at the August 25, 2015 meeting. Due to statutory timelines, the IEP team meeting was a mere three days after school started. The IEP team meeting was attended by a speech and language pathologist, orientation and mobility specialist, school principal, adaptive physical education specialist, general education teacher, occupational therapist, school nurse, special education teacher, school psychologist, special education director, Mother and her attorney, as well as the District's attorney. Some of the attendees were employed by the Kern County Superintendent of Education, rather than District, as District contracts for county services when needed in areas such as physical therapy, adaptive physical education, and vision services.

10. Dr. Kirschen teleconferenced the IEP team meeting and presented his vision therapy assessment findings and recommendations. The assessment report was one-page in length and was written in highly technical language, without extensive details. In essence Dr. Kirschen determined Student had a partial sixth nerve paresis in which he cannot move his right eye sufficiently to the right. He has a visual field *defect* in which he cannot perceive targets off to his right and has a need for the prescription glasses, which he currently wears. Dr. Kirschen reported that there was no vision or optical reason for *vision training* at this time, but Student could benefit from additional occupational therapy to help his gross and fine motor coordination.

11. Mother clearly disagreed with Dr. Kirschen's assessment and recommendations. In support of her position, she provided the IEP team members with copies of Dr. Suter's June 16, 2015 letter, as well as a letter, dated February 17, 2014, from George Leckner, a teacher of the visually impaired. These documents were reviewed at the IEP team meeting.

12. George Leckner's letter dated February 17, 2014, reported that Student had completed a successful series of functional vision exercises in 2012 and 2013. He reiterated Dr. Pineles' finding of a right side visual neglect in both eyes. Based upon his reevaluation in 2014, Mr. Leckner concluded that another round of *vision services* would be warranted on a weekly basis, as "most cortical brain involvements with regard to vision to improve with exercises and stimulation, and the first seven years of a child's life are the most critical." He further recommended that Student be assessed by an optometrist trained in vision therapy, as vision therapy provides the stimulation to various regions of the brain to improve clarity of sight, tracking, eye coordination and visual processing. Some of this will be covered in the realm of vision services, but not all. Unfortunately, no evidence was presented to establish Mr. Leckner's qualifications or areas of expertise in making these statements.

13. Dr. Suter's June 16, 2015 letter was disturbing in tone. The correspondence relays Dr. Suter's discussion with Dr. Kirschen in extremely condescending and unflattering terms which are not becoming of professionals with differing opinions.⁴ Dr. Suter disagreed with Dr. Kirschen's finding of a *visual field defect*. She indicated that Student's vision problems are, for the most part, brain injury related. She opined that Student's vision problem is related to a very well researched diagnosis called *visual-spatial neglect* for which there is a large literature on therapeutic treatment. In her opinion, it was probable that Student would require between zero and 50 sessions of

⁴ As an example, Dr. Suter states that she was being courteous in informing Dr. Kirschen about Student's diagnosis so that he would not appear uneducated in his report. She recommended that he read a book she wrote on the subject, "although there is not a dearth of literature (on the subject) with which to educate oneself."

vision rehabilitation therapy for his visual-spatial neglect each year until he reached the age of majority, depending on the changes in his cognitive growth, functional demand, and therapeutic regression. Although Dr. Suter was providing Student with vision therapy in June 2015, she did not recommend a specific amount of vision therapy sessions needed at that time. Additionally, she did not explain how or why vision therapy was necessary for Student to access his education. Dr. Suter's letter goes on to express her disappointment with Dr. Kirschen, but she did not testify at hearing to explain or support her findings and opinions under oath, as Dr. Kirschen did.

14. At hearing Dr. Kirschen expounded on the rationale behind his findings. Vision therapy can be appropriate in some cases. There must be an identified condition to improve, and a prescription of a specific therapy to address the condition. Dr. Kirschen defined visual impairments as those on the "front end," which relate to the visual system's ability to efficiently and accurately acquire visual information which is transferred to the brain. The second part of visual processing is referred to as "back end," which relates to how the brain processes the information received from the front end. The back end is neurological and involves higher brain functions and visual information processing. Front end impairment can often be corrected or improved, i.e., through prescriptive eyewear. Back end or neurological impairment cannot be improved. Similar to Dr. Suter, Dr. Kirschen described Student's visual impairment as a traumatic brain injury resulting from his stroke. Student has a right visual field *defect*, which renders him unable to see items in his visual field on the right. This is a neurological injury, and it is most likely permanent. As a result of this neurological defect, vision therapy will not restore or improve Student's vision.

15. Dr. Kirschen does not believe *vision training* is useful to Student at this time. Vision training is often confused with vision therapy. Vision training, however, is different and may be appropriate to improve front end impairment, i.e., to strengthen

the eyes to use together appropriately. Instead, Student would benefit from *accommodations* and strategies to compensate for his vision loss. Student can learn with only the use of one eye. He could learn even if totally blind. He needs to be taught compensation skills, i.e., turning his head. These coping skills do not require a doctor of optometry or ophthalmologist, and can be provided by anyone who is trained to work with disabled children, such as an occupational therapist, physical therapist, or aide. Student's vision requires low vision services, which were being provided by District.

16. At the IEP team meeting, Mother wished to discuss Dr. Suter's June 15, 2015 letter and recommendations. Given the nature of insult and disagreement contained in that letter, Dr. Kirschen diplomatically declined to comment, and stated that his role in the IEP team meeting was to review his recommendations and answer questions about his report. Mother found this dodge to be unacceptable, and concluded she was being denied parental participation in the IEP team meeting when Dr. Kirschen hung up without debating Dr. Suter's letter.

17. Mother also asked questions to establish whether Dr. Kirschen had reviewed Student's medical and vision records as part of his assessment. It is disconcerting to note that, in completing his assessment; Dr. Kirschen merely obtained Student's history from Mother and briefly conferred with Dr. Pineles. Nor did he review prior assessments and information which was available to him from either Fruitvale or District. Diagnostically, his assessment results described Student's visual impairment similarly to those of his critics. The primary differences of opinion diagnosis revolved around defect versus neglect, and whether a licensed optometrist or ophthalmologist was required to provide services. Mother expressed great concern that Dr. Kirschen did not acknowledge that Student was participating in vision therapy outside of school or consider the impact of that therapy in his assessment. Mother's concerns were reinforced when additional questions were ignored and remained unanswered.

18. Joe Gutcher attended both the March 13, 2015 and August 25, 2015 IEP team meetings. Mr. Gutcher is employed by the Kern County Superintendent of Schools and provides assessments and instruction to students with visual impairments. He has a master's degree in special education-orientation and mobility, and holds an education specialist credential in visual impairment. Mr. Gutcher provides services to school districts throughout Kern County to assist students with accessing school curriculum due to visual impairments. Mr. Gutcher's focus is on vision issues in a functional context, primarily addressing concerns about mobility, safety, and disability accommodations.

19. Mr. Gutcher initially assessed Student in February 2015, for Student's initial IEP team meeting in Fruitvale. The clinical information in his assessment report regarding Student's low vision is based upon information obtained from Mother, Student's medical doctors and Dr. Suter. Dr. Pinnacles, Student's medical doctor, reported Student's peripheral vision as a "field loss" or *defect*. Dr. Suter described Student's peripheral vision impairment as a *neglect*, to which Student had demonstrated ability to respond to visual therapy. It is unclear whether Mr. Gutcher recognized a difference between a *defect* and a *neglect*, however, his written assessment report suggested a neglect as he determined that Student's visual prognosis was capable of improvement.

20. Based upon his assessment of Student, Mr. Gutcher determined that functionally, Student used visual input as his dominant way of interacting with his environment; displayed no loss of acuity (ability to distinguish detail); and could distinguish and identify everyday objects he was familiar with. Student displayed poor balance and stability when walking over uneven terrain or when dealing with curbs or stairs, however, not all of Student's mobility issues were due to low vision. Mr. Gutcher recommended several accommodations, such as classroom seating and presentation of information within Student's left-center vision. Significantly, Mr. Gutcher concluded

Student displayed the functional vision capabilities to access a developmentally appropriate curriculum, and safely travel in and outside of a classroom with supervision. He did not recommend Student receive direct vision services, but only consultation services from an orientation and mobility specialist. These recommendations were adopted by the Fruitvale IEP team.

21. Mr. Gutcher also attended the August 25, 2015 IEP team meeting. He was reluctant in his testimony at hearing, and claimed he did not have a great understanding of vision therapy, nor has he ever seen visual therapy conducted as a direct service as part of any IEP. Mr. Gutcher's recommendations were not designed to *improve* vision; rather he assesses students to determine how a student's low vision can be assisted through adaptations and accommodations. Mr. Gutcher had observed Student, and noted he was navigating his environment well. Student could access his environment similarly to his peers. For example, it is not unusual for three year old children to trip or fall. Further, some of Student's mobility limitations were not vision related. Some issues of visual acuity, such as print size, were currently immaterial. All three year olds are utilizing big pictures and large print. Based upon his observations of Student, Mr. Gutcher did not believe Student needed direct vision services. He defined vision services as those services which could not be provided by other school district staff. In his opinion, direct services were more likely to occur when vision was a child's primary disability. It was not so with Student. Further, Student did not need direct services in his current placement, as many of Student's adaptations and accommodations were already embedded in his classroom, and other staff, such as Student's 1:1 aide, could assist Student appropriately.

22. Student can identify an abstract item, and see it as well. Although Student does not access his environment the same way as typical peers, he knows where he is in a room, and can navigate obstacles with the help of his aide. His aide has been trained

to prompt awareness of dangers in the environment. Accommodations have been provided to address Student's limited range of vision. Typically, treatment of issues such as learning to move one's head to read would not be handled by a vision specialist. It would more likely be addressed by a resource specialist or occupational therapist.

23. Mr. Gutcher's input at the August 25, 2015 IEP team meeting was limited. Dr. Kirschen presented his report, and the IEP team discussed vision therapy. Mother asked Dr. Kirschen questions, but did not get desired responses. The IEP team voted to reject Mother's request for direct vision therapy services. Each member of the IEP team was asked their opinion on vision therapy. Mr. Gutcher abstained from voting, as he did not feel qualified to vote on vision therapy. He emphasized that nothing in his training prepared him with specialized knowledge about vision therapy.⁵ Further explanations from Dr. Kirschen or Dr. Suter would not have changed his abstention. Mr. Gutcher explained that for him to vote in favor of vision therapy, he would have needed to hear that Student could not navigate his environment or could not access his education due to his vision. That was not the case with the information presented at the IEP team meeting.

24. Ms. Silver-Hill chaired the IEP team meeting as the director of special education. Ms. Silver-Hill has a master's degree in education-educational administration. She has a California multiple subject teaching credential, as well as an administrative credential. Ms. Silver-Hill acknowledged she had no specific expertise with vision disabilities, nor did she research vision therapy prior to the IEP team meeting. Student's request was the first she had asking for direct vision therapy services. If the IEP team concluded vision therapy services were needed, she would obtain contract services from

⁵ This appears to be a modest response, as Mr. Gutcher's wife is a vision therapist who has worked for Dr. Suter.

the County Office of the Superintendent of Schools. Prior to the IEP team meeting, Ms. Silver-Hill spoke with Carrie Jager, the director of special education at Fruitvale, to discuss Student's progress and to discuss appropriate classroom placement in District. She did not discuss Dr. Kirschen's report, Mr. Leckner's letter, or Dr. Suter's reports with anyone prior to the August 25, 2015 IEP team meeting.

25. Dr. Kirschen's assessment was reviewed at the IEP team meeting. Questions and discussion followed. Mother asked questions and provided copies of Dr. Suter's and Mr. Leckner's letters to IEP team members. Time was provided for the IEP team members to review these documents. Everyone had the opportunity to ask questions and participate in the IEP team discussion. Mother's intent to file a due process complaint to exhaust remedies was also discussed.

26. At the end of the discussion, Ms. Silver-Hill stated she did not believe Student required vision therapy to access his education and school environment. In coming to her decision, she relied upon the information she had from Fruitvale, including her discussions with Ms. Jager. She also relied heavily upon Dr. Kirschen's assessment, as he was the vision therapy assessor selected by Fruitvale. She concluded that Student has made progress at Fruitvale without educationally based vision therapy. He had sufficient supports to access his education within District without additional vision therapy. After she stated her belief, the remainder of the IEP team was polled as to their opinions. While the three representatives from the Office of the Superintendent abstained from voicing opinions, the remaining District members agreed with Ms. Silver-Hill.

27. Mother did not consider her questions appropriately answered. Ms. Silver-Hill was not explicit in explaining her decision to deny Student vision therapy services. Mother prepared a handwritten note disagreeing with the IEP team decision, which was attached to the final IEP document.

28. Vicki Ewing provides District speech and language services to Student. She attended the August 25, 2015 IEP team meeting. She recalled having been provided email copies of Student's records prior to the IEP team meeting. Ms. Ewing supported Dr. Kirschen's findings that Student did not currently require vision therapy to access his education. Further, although she was aware Student was receiving vision therapy from Dr. Suter, she did not find that Dr. Suter's letter established that vision therapy was actually educationally necessary.

29. Ms. Ewing recalled that Dr. Kirschen's vision therapy assessment and recommendations were discussed at the IEP team meeting. Mother asked questions about Dr. Suter's letter to which Dr. Kirschen did not respond to Mother's satisfaction. Mr. Gutcher and Student's teacher asked questions as well.

30. Ms. Ewing believes Mother has misidentified the IEP team's determination as "a vote." She considered it more of a polling for opinions after the discussion of vision therapy. Ms. Ewing does not believe Student requires vision therapy as he can navigate his classroom, with assistance; he is positioned in the classroom to maximize his visual area; and he can interact using the smart board. Student's prism glasses have helped his peripheral vision and he can utilize classroom steps with the assistance of the handrail and prompting from his aide. Student utilizes books with pictures and is able to access printed materials. Student can point at pictures. Ms. Ewing did not notice any significant difficulty with Student in accessing information.

31. Melinda Parham is Student's preschool teacher at District. She also attended the August 25, 2015 IEP team meeting. Ms. Parham was an excellent witness; composed, informative, and knowledgeable. Ms. Parham had read the documents Mother had emailed to District prior to the start of school. She reviews all student documents before school starts to get a picture of each child as a whole. On the first day of school, Ms. Parham met with Mr. Gutcher to discuss Student's visual needs in the

classroom, and to discuss strategies to assist Student, such as prompting him to look down. Some of the accommodations recommended for Student were already embedded in the classroom, such as the use of visual icons, and color contrasts. During the first few days of class, she noted that Student was excited about school. He engaged in learning activities and was able to follow directions. Student adjusted to navigating the classroom. Ms. Parham did not recommend vision therapy services. Student used books in class, and could identify symbols and pictures, such as hearts and diamonds. He was able to look at books and could access learning activities with her. Mother's concerns regarding Student's safety and mobility did not raise concerns with Ms. Parham. She acknowledged concerns about Student's toileting; however she had the same concerns for all of her students in the special day class. At recess, Student reacted the same way as any other three year old. Ms. Parham conveyed a good understanding of what it takes for a child to access a school day. Her testimony distinguished the differences between clinical and educational settings. At hearing, cross examination of Ms. Parham merely reinforced the appropriateness of her classroom, accommodations, and access.

STUDENT'S VISUAL DISABILITIES

32. Dr. Bill Takeshita,⁶ known throughout the hearing as Dr. Bill, is a highly

⁶ Dr. Takeshita is a board member of the Institute for Families of Children with Vision Impairment. He is a doctor of optometry, a fellow of the American Academy of Optometry and a fellow of the College of Optometrists in Vision Development. He is licensed to practice optometry in California and also holds diagnostic pharmaceutical approval. Dr. Takeshita has held positions as a faculty instructor, board of directors and consultant for many of southern California's blind and vision related organizations. Dr. Takeshita's 34-page curriculum vitae provides a significant

qualified doctor of optometry, who testified at hearing. Dr. Takeshita was hired by Mother to assess Student's functional vision and determine how his vision effects his education. Dr. Takeshita assessed Student on October 21, 2015; therefore, District was unaware of his specific findings and recommendations at the IEP team meeting on August 25, 2015. Nonetheless, Dr. Takeshita provided the primary and most comprehensible information at hearing which defined Student's vision impairments. Further, the findings of each of the vision professionals relied upon in this matter made similar findings of Student's existing visual condition but disagree on either scientific philosophy, semantics, or Student's potential prognosis. As will be discussed later in this decision, the vision therapy assessment which was considered by the IEP team, made similar assessment findings, without the inclusion of layman definitions or reference to education implications. Dr. Takeshita provided a great insight into how Student sees and its effect on Student's ability to access his education.

33. Student is not blind or legally blind, but is defined as "partially sighted." Student has vision, but it is blurred, and he qualifies for assistance as a child with low vision. Student has a cortical vision impairment, which is the result of brain damage from a stroke. His impairment is neurological rather than optical; one-half of Student's vision is gone. Therefore, even with glasses, his vision cannot be made normal. He has

list of other publications, lectures and awards related to vision and vision therapy. Dr. Takeshita lost his eyesight in 2009, and currently acts as an independent medical examiner with the assistance of Dr. Angela Schahadel. Dr. Takeshita evaluates the degree of functional vision and visual impairment in people and provides expert witness testimony regarding rehabilitative treatment programs, including low vision aids, assistive technology and work place modifications for the blind and visually impaired.

restricted peripheral vision on the right side of both eyes. His visual field is limited to midline, i.e., directly in front of him. He cannot move his right eye to the right, which affects his depth perception.

34. It is undisputed that Student's low vision has an effect on his education and is interlinked with his other disabilities. Student's loss of peripheral vision on his right side affects his ability to see letters and words on the right side of paper when he reads and writes. He may only see the first letter of a word when he begins to read. In addition, the loss of peripheral vision affects his ability to see obstacles when he walks. There is no treatment to restore his loss of peripheral vision on the right side.

35. Student's eye coordination is limited. He is able to move his left eye freely, but cannot move his right eye due to a reduced abduction which is the result of damage to the sixth cranial nerve. This reduced eye movement affects his ability to move his eye from left to right in a reading pattern and will cause him to lose his place when he reads. His eye movement is jerky which will cause him to lose his place when he reads, and will not allow him to follow a sentence with his finger. He cannot move his eyes smoothly to follow a moving object, i.e., following a moving ball when he plays.

36. Student's left and right eye are not aligned. The alignment of Student's eyes is straight when he looks straight ahead. When he looks towards the right, his right eye misaligns and crosses. This is called a non-concomitant esotropia and suggests that his right and left eyes do not point at the same target when he will read or look at objects on the right of midline. Student's poor eye alignment will also affect his ability to maintain his place when he reads.

37. Student has limited stereopsis, or depth perception with the use of two eyes. He does not have normal binocular depth perception as the result of the misalignment of his eyes. His reduced depth perception affects how close or far steps and curbs are when he walks. It also negatively affects his ability to judge how close or

far an object is, i.e., a ball that approaches when he plays.

38. Student's distance clarity of sight is reduced. He is farsighted and astigmatic. He wears prism glasses which help with peripheral vision. He is able to identify 24 point font from a distance of eight inches. He cannot identify conventional print in books and will have difficulty identifying information written on a wall board unless he is positioned within 10-feet from the board. As a result, Student will require use of a low vision optical magnifier, computerized camera and/or video magnifier.

39. Dr. Takeshita is clearly a proponent of vision therapy, and opined that Student requires a program of vision therapy provided by a licensed doctor of optometry or ophthalmology to develop Student's vision skills used for learning. Student must learn to move his head towards his right side to become aware of what is on the right side of his midline when he reads. A vision therapy program will also teach Student to move his eyes and head more accurately in a reading pattern so that he does not lose his place. Student will also benefit from being taught how to use optical magnifiers when he reads. Dr. Takeshita points out, however, Student's vision therapy program is not intended to reverse the loss of his peripheral vision on the right side of both eyes. He stressed that in vision therapy a doctor of optometry or ophthalmology treats only vision, and teaches techniques to compensate for limited vision, and does not provide treatment to correct or restore vision. This is the basis of difference diagnosis of a vision *defect or cut*, which cannot be remediated, versus a vision *neglect* which may respond to improvement. This remains an area of scientific dispute.

40. Dr. Takeshita agreed that Student can access education without vision therapy, through his other senses, such as hearing and touch, but not visually, without vision therapy. Further, although other services, such as occupational therapy and physical therapy can address some vision issues, they cannot develop motor coordination if Student is unaware of one-half the space around him.

MOTHER'S DISAGREEMENT

41. Mother testified at hearing and provided additional background regarding Student's visual deficits. Dr. Pineles initially diagnosed Student with a visual field defect. She was informed that vision therapy might help, however her medical insurance excluded vision therapy. Regional Center provided vision services upon the recommendation of a doctor of optometry. Regional Center initiated vision therapy in July 2014, with Dr. Suter. Student received approximately 21 weeks of vision therapy consisting of three-weekly *vision rehabilitation* therapy with assigned homework. Mother reported Student made improvements. His gait improved and he was tripping less often.

42. Student's health declined, and he was unable to continue with vision therapy for a period of 12 weeks. When Student returned to Dr. Suter, he was reassessed and it was determined that he had regressed, and needed more therapy. Student's vision therapy continued only through a settlement agreement with Regional Center, and it will terminate in April 2016.

43. Student cannot accurately envision the physical hazards around him. Mother supported Dr. Suter's finding. At hearing, Mother voiced primary concerns about mobility and safety issues.

44. Dr. Suter's report indicated that although Student had made great improvement in his visual-spatial neglect, he still needed vision rehabilitation therapy to continue remediation. Dr. Suter estimated it would take between six months to a year of additional effective therapy to remediate Student's visual-spatial neglect to the extent that it was possible at his age. Student would probably require additional therapy as he grew, as it is common for visual-spatial neglect patients who discontinue therapy without the neglect being entirely remediated, to regress and show increasing neglect with time. Again, Mother concurred, and expressed considerable concern about

potential regression, such as Student had previously experienced when unable to participate in his vision therapy sessions. Dr. Kirschen did not review this information; therefore, it was not part of his assessment report or the IEP team discussion.

45. Mother is a practicing attorney and highly articulate. She believes the medical terminology of defect and neglect is interchangeable, which implies that the possibility of neurological improvement is the same under both definitions. Mother is sided with those in the neurologic and optometric fields who contend that the brain can be rewired, and Student's vision improved. On the other hand, she also rationalizes Student's progress in his Fruitvale classroom as limited. Mother suggests Student is not really learning but is only parroting the other children in his class. If her observation is true, then Student's benefit from vision therapy has been poor. Student's classroom in District is smaller than at Fruitvale, but she remains concerned because Student is now around older children; yet she has not observed Student in class or on the playground. Mother references the diagnoses of the myriad of qualified medical doctors who have treated Student over his short life, and recommended vision therapy but does not differentiate between medical and educational models which are determinative of special education services. She is also extremely dubious that Student's participation in outside vision therapy was appropriately considered by the IEP team when they determined Student did not require vision therapy as part of his IEP. In Mother's view, special education law contains provisions for vision therapy, and as she stated herself, it is impossible to contemplate that vision therapy would not be necessary for Student to access his education.

LEGAL CONCLUSIONS

INTRODUCTION: LEGAL FRAMEWORK UNDER THE IDEA⁷

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et seq.; 34 C.F.R. § 300.1 (2006)⁸ 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 an appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for 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 free appropriate public education means special education and related services that are available to an eligible child at no charge to the parent or guardian, which meet state educational standards, and which conform to the child's individualized education program. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) "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).)

⁷ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

⁸ All citations to Code of Federal Regulations refer to the 2006 edition, unless otherwise noted.

3. In *Board of Education of the Hendrick Hudson Central School District 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 definition of a FAPE 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. 950, fn. 10.)

4. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents to expansion of the issues. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56505, subd. (i).) 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].) Here, Student has the burden of persuasion.

ISSUE 1: VISION THERAPY FOR THE 2015-2016 SCHOOL YEAR

5. Student contends that District failed to offer or provide vision therapy because Dr. Kirscher's assessment was flawed. The assessment did not reflect outside medical and optical reports in general, and specifically did not consider the recommendations in Dr. Suter's reports. For the reasons set forth below, Student failed to prove he required visual therapy in order to obtain educational benefit from his IEP.

6. An IEP meets the *Rowley* standard and is substantively adequate if the plan is likely to produce progress, not regression, and is likely to produce more than trivial advancement such that the door of public education is opened for the disabled child. (*D.F. v. Ramapo Central School Dist.* (2nd Cir. 2005) 430 F.3d 595, 598.) The focus must be on the placement of the school district, not the alternative preferred by the parents. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) An educational agency need not prepare an IEP that offers a potential maximizing education for a disabled child. (*Rowley, supra*, 458 U.S. at p. 197, fn. 21.) Instead, "(T)he assistance that the IDEA mandates is limited in scope. The Act does not require that States do whatever is necessary to ensure that all students achieve a particular standardized level of ability and knowledge. Rather, it much more modestly calls for the creation of individualized programs reasonably calculated to enable the student to make some progress towards the goals in that program." (*Thompson R2-J School v. Luke P.* (10th Cir. 2008) 540 F.3d 1143, 1155.)

7. An IEP must be upheld if the school district's offer was reasonably calculated to provide the child with educational benefit. (*Gregory K, supra*, at p. 1314.)

As the Ninth Circuit held in *Mercer Island, supra*, the phrases “educational benefit,” “some educational benefit,” or “meaningful educational benefit,” all refer to the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Mercer Island, supra*, 592 F.3d at p. 950, fn. 10.)

8. An IEP for a disabled child is measured at the time that it was created. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149; *Tracy N. v. Dept. of Educ., State of Hawaii* (D.Hawaii 2010) 715 F.Supp.2d 1093, 1112.) This evaluation standard is known as the “snapshot rule.” (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 439.) Under the snapshot rule, the decision concerning an IEP is not evaluated retrospectively or in hindsight. (*Ibid*; *JG v. Douglas County School Dist.* (9th Cir. 2008) 552 F.3d 786, 801.)

9. In California, vision services are considered to be a related service and include vision therapy. (Ed. Code, § 56363, sub. (b); tit. 5 C.C.R § 3051.75.) Vision therapy may include remedial and/or developmental instruction provided directly by or in consultation with the optometrist, ophthalmologist, or other qualified licensed physician and surgeon providing ongoing care to the individual. Such therapy must be prescribed by a licensed optometrist, ophthalmologist or other qualified licensed physician and surgeon and the vision therapy procedures are those authorized by federal and state laws and regulations performed in accordance with these laws and regulations and standards of the profession. (Tit. 5, C.C.R § 3051.75.)

10. The factual findings in this matter acknowledge a distinction in semantics used by the experts as well as a scientific and philosophical disagreements regarding Student’s neurological status. The phrases vision therapy, vision training, and visual accommodations, often italicized in this decision, have been presented by the parties as interchangeable, which they are not. With multiple disabilities, Student presents as a complicated child. At hearing, however, few distinctions were made between that which

is educationally necessary and that which is medically or neurologically recommended. Little was presented to separate that which is vision related from that which is orthopedically related from that which may be a combination of several disabling factors.

11. Dr. Kirschen's assessment was the only expert assessment presented at the August 25, 2015 IEP team meeting, and Dr. Kirschen was the only expert to attend the IEP team meeting to support his finding. Although Student described Dr. Kirschen's assessment as worthless, it is noted that Student made no request for an independent education evaluation. The evidence provided on behalf of Dr. Suter has been liberally reported and considered in this decision. Dr. Suter's opinions, however, bear limited weight as hearsay as she did not testify at hearing.⁹ For whatever reason, she did not specifically assess Student for his educational needs; she did not attend the August 25, 2015 IEP team meeting; and she did not testify at hearing to support her recommendations that Student required additional vision therapy.

12. Without Dr. Takashita's primer on Student's visual disabilities in relation to vision therapy and educational needs, the evidence presented in this hearing would have remained a mish-mash of confusion and double meaning. Dr. Takashita's assessment and testimony presented an understandable picture of Student and his visual needs. This information, however, was not available to the IEP team, and cannot be the determining factor in this decision. Experts still disagree about defects versus neglects. Even with Dr. Takashita's valuable input, Student did not establish that vision therapy was necessary for Student to access his education. Further, Student did not establish that the development of compensatory skills for vision loss as described by

⁹ Hearsay evidence is admissible if it corroborates direct evidence and information can be considered reliable. (Cal. Code Regs., tit. 5, § 3082, subd. (b).)

both Dr. Takashita and Dr. Kischen, such as developing head movement, had to be provided by an optometrist or ophthalmologist and could not be implemented by other District staff, through other related services.

13. With certain minor exceptions, Mother consented to the March 13, 2015 IEP which was fully implemented in Fruitvale. No issues were raised to suggest the Fruitvale IEP failed to provide Student a FAPE. Additionally, Mother's fundamental concern for exhausting remedies to continue Regional Center funding of vision therapy also suggested motive other than denial of FAPE. Student has not shown that the failure to include or continue undefined vision therapy, anywhere from zero to 50 sessions, will deny Student educational benefit, or even meaningful educational benefit.

ISSUE 2: MOTHER'S OPPORTUNITY TO MEANINGFULLY PARTICIPATE IN THE DEVELOPMENT OF STUDENT'S 2015-2016 INDIVIDUALIZED EDUCATION PROGRAM

14. Student contends District's decision to reject Mother's request for vision therapy at the August 25, 2015 IEP team meeting was predetermined. For the reasons set forth below, Student demonstrated District did not appropriately consider Student's unique vision needs, and predetermined its conclusion that Student did not need visual therapy.

15. A school district may not predetermine its IEP offer. Predetermination occurs when an educational agency has decided on its offer to the IEP team meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives. (*Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004) 392 F.3d 840, 858.) A district may not arrive at an IEP team meeting with a "take it or leave it" offer. (*JG v. Douglas, supra*, p. 801, fn. 10.) Where a district has predetermined the child's placement, parents are denied the right to meaningfully participate in the decision making process.

16. Federal and state law requires that an IEP team must consider certain

information, including the results of the initial or most recent evaluation of the child. (20 U.S.C. § 1414(d)(3)(A)(iii); 34 C.F.R. § 300.324(a)(1)(iii) (2006); Ed. Code, § 56341.1, subd. (a)(3).) This procedure requires an educational agency to “consider” outside assessments of a child; it does not mandate that the agency incorporate recommendations from the assessments when developing an IEP. (*K.E. v. Independent School Dist. No. 15* (8th Cir. 2011) 647 F.3d 795, 805-806; *G.D. v. Westmoreland* (1st Cir. 1991) 930 F.2d 942, 947.)

17. A procedural violation constitutes a denial of FAPE only if it impeded the child’s right to a FAPE, significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to the child, or caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E); Ed. Code, § 56505, subd. (f); see also, *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1483-1484.)

18. Student noted in his closing argument that, the chief value of an expert’s testimony in [his] field, as in all other fields, rests upon the material from which his opinion is fashioned and the reasoning by which he progresses from his material to his conclusion; in the explanation of the condition and its dynamics, that is how it occurred, developed, and affected the examinee; and it does not lie in his mere expression of conclusion. (*People v. Bassett* (1968) 69 Cal. 2d 122, 141.) This is also true in assessing special education matters. Predetermination in this matter lies with District’s own lack of its inquisitive participation in the vision therapy assessment discussion.

19. Dr. Kirschen’s one-page assessment report failed to include standard assessment components, and only briefly reported its conclusions regarding a highly complex and low incident disability in decidedly technical language. By his own admission, Dr. Kirschen stated he did not review Student’s medical records or vision therapy information which was in his possession or readily available to him. Dr. Kirschen did not consider Student’s progress with vision therapy over the last year. He did not

explain the relevance or irrelevance of those sessions; and he failed to even acknowledge Student's weekly participation in vision therapy sessions throughout his time at Fruitvale.

20. The IEP team merely rubber stamped Dr. Kirschen's vision therapy assessment and recommendations without sufficient information or consideration. By accepting the assessment carte blanche, the IEP team failed to appropriately discuss Student's unique vision needs. There was no inquiry concerning the content of the report: Was vision therapy consultation advisable to connect with the recommended services such as occupational and physical therapy? Did Student have appropriate vision related goals in place? Of greater concern is the lack of discussion regarding the impact (or lack thereof) of the vision therapy Student was receiving from Dr. Suter. While it is true Student did not receive vision therapy from either school district, District knew Student had been participating in thrice weekly vision therapy sessions for over a year. There was no inquiry to discern whether these sessions were effective or how they affected Student's functional education skills.

21. It is understandable that Dr. Kirschen did not wish to debate Dr. Suter's criticisms. Nevertheless, the questions presented by Mother were relevant and were intended to obtain badly needed supplemental information which should have been presented and discussed in Dr. Kirschen's assessment report. The assessment report was presented in highly technical language, on a subject matter which is still highly debated in scientific as well as educational arenas. Certainly, IEP team members are not held to a standard of expertise in all areas of disabilities. The IEP team, however, is made up of professionals who are familiar with special education and related services. While some or all of the District team members may not have had extensive experience with vision therapy, they certainly knew the perimeters and required content of a legally valid assessment. No questions were asked regarding the content of the assessment. No

questions were asked regarding the information District knew was missing from the assessment.

22. Taken on its face, Dr. Kirschen's assessment report is difficult for a layperson to decipher, without additional information regarding vision defects. Ms. Silver-Hill acknowledged she had no specific experience with vision therapy; she did not research the subject matter; nor did she read the documents which Mother had emailed her prior to the IEP team meeting. By her own statement, Ms. Silver-Hill simply intended to rely on Dr. Kirschen's assessment, as he was the expert. This was an unwavering acceptance of Dr. Kirschen's assessment, in spite of its shortcomings. In domino effect Ms. Silver-Hill's decision to deny vision therapy services was steadfastly accepted by all District IEP team members without question. Both Ms. Ewing and Ms. Parham testified they were simply following the recommendations of the expert. The non-District members of the IEP team refused to participate based upon their lack of expertise on the subject matter.

23. The IEP team's lack of measured consideration of Dr. Kirschen's assessment and vision therapy was further apparent when three members of the IEP team abstained from commenting on vision therapy services. Mr. Gutcher, in particular, as Kern County's go-to person on vision and mobility issues, stated he did not have a sufficient understanding of vision therapy to comment on Dr. Kirschen's assessment or the District's decision. Further, when questions were asked, answers were not forthcoming, and the decision to deny Student vision therapy services was made without additional input. There is no dispute that the August 25, 2015 IEP team meeting took place only a few days after school started. There was no reason that the IEP team could not have adjourned the meeting and reconvened when additional information regarding Student's existing vision therapy could be considered, or at minimum, the information already in District's possession, could be appropriately reviewed and

discussed. Instead District limited the discussion and followed Ms. Silver-Hill's lead to support an incomplete assessment favorable to District.

24. By remaining inert, and solely relying on an insufficient assessment, District abandoned its obligation to conduct a meaningful IEP meeting. Instead, Ms. Silver-Hill simply determined that a favorable recommendation came from the assessor, therefore nothing more need be asked. The others simply followed along.

25. Mother is an attorney herself, and is both articulate and highly knowledgeable. Clearly, she participated in the IEP team meeting in a traditional sense, by contributing to the IEP team discussion, asking questions, and providing relevant documents to the IEP team. District, however, remained inert in conducting a meaningful discussion at the IEP team meeting, thereby derailing consideration of any information which was not presented as part of Dr. Kirschen's assessment. This failure to explore additional information rendered Mother's participation useless and significantly impeded Student's right to a FAPE.

REMEDIES

1. School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Student W. v. Puyallup School Dist.* (9th Cir. 1994) 31 F.3d 1489, 1496.) These are equitable remedies that courts may employ to craft "appropriate relief" for a party. An award of compensatory education need not provide a "day-for-day compensation." (*Id.* at pp. 1496-1497.) The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Id.* at p. 1496.) An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student's needs. (*Reid ex rel. Reid v. Dist. of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524, citing *Student W. v. Puyallup School Dist.* (9th Cir. 1994) 31 F.3d 1489, 1497.) The award must be fact-specific and be "reasonably calculated to provide the

educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." (*Reid, supra at p. 524.*)

2. In this matter, it has been determined that District denied Mother the opportunity to meaningfully participate in the development of Student's 2015-2016 individualized education program, specifically in the discussion and determination of a request for vision therapy. As remedy, Student requests District be ordered to reimburse Mother for the cost of Student's vision therapy since March of 2015, and provide Student with ongoing vision therapy with Dr. Penelope Suter.

3. The evidence in this case has not established whether Student actually requires educationally related vision therapy. Student's evidence was not sufficiently persuasive to establish that vision therapy provided by an optometrist or ophthalmologist was educationally necessary as of the August 2015 IEP team meeting. Further, Student's preoccupation with exhausting remedies for Regional Center services, suggests a motive for filing a request for due process hearing, for reasons other than denial of FAPE or violation of special education law.

4. Nevertheless, District's decision to blindly accept Dr. Kirschen's vision therapy assessment, without question or discussion of relevant information knowingly omitted from the assessment, prevented Mother from meaningfully participating in the IEP process. More importantly, the lack of inquiry into Dr. Kirschen's assessment deprived the IEP team of complete information regarding Student's unique needs, in an area not well understood by laypersons. At best, Dr. Kirschen's assessment was merely skewed. At worst, it potentially deprived Student of vision therapy which is most effective at a young age. A more thorough assessment is necessary to consider all information and reports to determine whether vision therapy is necessary for Student to access his education and receive educational benefit.

5. Therefore, District shall pay for an independent vision therapy assessment

to be administered by an optometrist or ophthalmologist with experience treating low vision children with neurological or what was described as “back end” vision disabilities. District shall also pay for the selected assessor’s in person attendance at the IEP team meeting set to review and discuss the independent assessment. Neither Dr. Suter, Dr. Kirschen, nor Dr. Takashita shall perform the assessment, however complete information from each, shall be provided to the selected assessor.

6. Student has requested reimbursement for vision therapy retroactive to March 2015. This request is denied. Student did not enter school within District until August 20, 2015. Further, Mother did not present any evidence of out-of-pocket expenses for Student’s vision therapy sessions. Rather, Mother testified that Regional Center was financially responsible for Dr. Suter’s services through a prior settlement agreement.

7. Instead, to maintain consistency of Student’s vision therapy services pending the independent vision therapy assessment, which is necessary because District significantly impeded Mother’s ability to participate in the August 2015 IEP team meeting, commencing February 1, 2016, District shall pay for Student’s vision therapy sessions with Dr. Penelope Suter, three times a week, as currently scheduled, until the end of the 2015-2016 school year, including extended school year, provided that the Regional Center stops payment.

ORDER

1. District shall pay for an independent vision therapy assessment to be administered by an optometrist or ophthalmologist with experience treating low vision children with neurological or what was described as “back end” vision disabilities. This assessor shall also draft a report that discusses vision therapy needs as an educationally related service.

2. District shall pay for the selected assessor’s in person attendance at the IEP

team meeting set to review and discuss the independent assessment and report.

3. Commencing February 1, 2016, District shall pay for Student's vision therapy sessions with Dr. Penelope Suter, three times a week, as currently scheduled, until the end of the 2015-2016 school year, including extended school year, provided that the Regional Center stops payment.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, District was the prevailing party on Issue One and Student was the prevailing party on Issue Two.

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: January 12, 2016

/s/

JUDITH PASEWARK

Administrative Law Judge

Office of Administrative Hearings