

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

CAPISTRANO UNIFIED SCHOOL DISTRICT.

OAH Case No. 2015100209

DECISION

Student filed a due process hearing request with the Office of Administrative Hearings, State of California, on September 29, 2015, naming Capistrano Unified School District. OAH continued the matter for good cause on November 12, 2015. Administrative Law Judge Robert G. Martin of OAH heard this matter on March 8, 9, 10, 16, and 30, 2016, in San Juan Capistrano, California.

Attorney Kathleen Loyer represented Student. Father attended the hearing on March 8, 9, 10, and 30, and mother attended on the mornings of March 8 and 9. Student did not attend the hearing. Attorney S. Daniel Harbottle represented District. District Special Education Legal Specialist Linda Koo attended the hearing on behalf of District on March 8, 10, 16, and 30, and District Special Education Director Sarah Young attended on District's behalf on March 9, 2016.

A continuance was granted for the parties to file written closing arguments and the record remained open until April 20, 2016. The parties timely filed written closing arguments, the record was closed and the matter was submitted for decision on April 20, 2016.

## ISSUES<sup>1</sup>

1. Did District deny Student a free appropriate public education during the 2012-2013 school year, beginning October 2, 2012,<sup>2</sup> by:

- a. Failing to offer appropriate assistive technology support and services;
- b. Failing to offer appropriate occupational therapy services;
- c. Failing to offer appropriate physical therapy and adapted physical education services;
- d. Failing to offer appropriate speech and language services;
- e. Failing to offer an appropriate vision assessment;
- f. Failing to offer appropriate vision services; and
- g. Failing to offer an appropriate educational placement?

2. Did District deny Student a free appropriate public education during the 2013-2014 school year, by:

- a. Failing to offer appropriate assistive technology support and services;
- b. Failing to offer appropriate occupational therapy services;
- c. Failing to offer appropriate physical therapy and adapted physical education services;
- d. Failing to offer appropriate speech and language services;
- e. Failing to offer an appropriate vision assessment;

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<sup>1</sup> The issues have been rephrased and reorganized for clarity. The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

<sup>2</sup> Student and District stipulated to extend the two year statute of limitations to October 2, 2012.

- f. Failing to offer appropriate vision services; and
  - g. Failing to offer an appropriate educational placement?
3. Did District deny Student a free appropriate public education during the 2014-2015 school year, by:
- a. Failing to offer appropriate assistive technology support and services;
  - b. Failing to offer appropriate occupational therapy services;
  - c. Failing to offer appropriate physical therapy and adapted physical education services;
  - d. Failing to offer appropriate speech and language services;
  - e. Failing to offer an appropriate vision assessment;
  - f. Failing to offer appropriate vision services; and
  - g. Failing to offer an appropriate educational placement.
4. Did District deny Student a free appropriate public education during the 2015-2016 school year, to October 5, 2015,<sup>3</sup> by:
- a. Failing to offer appropriate assistive technology support and services;
  - b. Failing to offer appropriate occupational therapy services;
  - c. Failing to offer appropriate physical therapy and adapted physical education services;
  - d. Failing to offer appropriate speech and language services;
  - e. Failing to offer an appropriate vision assessment;
  - f. Failing to offer appropriate vision services; and
  - g. Failing to offer an appropriate educational placement?

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<sup>3</sup> Student and District stipulated to extend the timeframe for issues by six days beyond the September 29, 2015 filing of the complaint, to October 5, 2015, the completion date for Student's IEP in process at the time of filing.

## SUMMARY OF DECISION

Student is a 10-year old fourth grader with severe orthopedic and intellectual disabilities who needs constant adult assistance with all daily living skills, and who cannot effectively communicate without assistive technology, or readily move about without a wheelchair or other mobility device. Student, through her parents, contended that District failed to provide Student appropriate assistive technology and speech and language services to support her development of effective communication, or appropriate occupational therapy, physical therapy, or adapted physical education services to support her development of motor skills and mobility. In addition, Student contended that District failed to offer Student an appropriate vision assessment or vision services. District contended that it offered Student appropriate technology and related services to meet her needs.

Student met her burden of proof on the issue of District's failure to provide Student appropriate assistive technology to enable her to effectively communicate from May 2013 to October 2015. In May 2013, District arranged a successful trial for Student of an eye-tracking, voice-output communication device that appeared likely to significantly improve Student's ability to communicate effectively, but failed to provide such a device to Student until October 2015, after Student obtained a private augmentative communication assessment confirming that an eye-tracking device was likely to be Student's most effective means of communication. As an equitable remedy, Student is entitled to compensatory education in the form of direct and/or consult assistive technology services for training of Student, Parents, staff, and service providers in the use of eye-tracking, voice-output communication technology utilized by Student, as well as a further private augmentative communication assessment to be considered by Student's IEP team at her 2017 annual IEP. Student failed to meet her burden of proof on all other issues; namely, speech and language services, occupational therapy,

physical therapy, adapted physical education, vision assessments and services, and placement, none of which were shown to have been inappropriate.

## FACTUAL FINDINGS

1. Student is a 10-year old fourth grader who at all relevant times resided in District with her parents. Student was injured during birth and, as a result, suffers from brain damage, spastic quadriplegia, cerebral palsy, dystonia (stiff, slow-moving muscles) and sensory integration deficits. Student was found eligible for special education in 2009 at age 3, and at all relevant times she was eligible for special education under the categories of orthopedic impairment and intellectual disability. Student and her family moved to District in 2010. In September 2010 Student began attending preschool in a severely handicapped class at District's R.H. Dana Exceptional Needs Facility, and she continued to attend R.H. Dana from 2010 through the time of hearing.

### FEBRUARY 2012 TRIENNIAL ASSESSMENTS AND IEP

2. In February 2012 Student was assessed in the areas of psychoeducation, speech and language, and adapted physical education for her triennial IEP.

3. District school psychologist Katrina Van Der Wal conducted Student's triennial psychoeducational assessment over four days in February 2012. Ms. Van Der Wal observed Student during two one-on-one testing sessions and also in class and during an occupational therapy session. Student visually explored the new surroundings of Ms. Van Der Wal's office, and generally demonstrated a 10 to 15-second attention span, but was able to attend for several minutes when she was shown books that made sounds and had textured pages. Student attempted to turn pages and reach and touch toys, but mostly used eye contact, eye gaze, and facial expressions to communicate. Student was able to use eye gaze to choose objects placed before her, generally choosing those placed to her right and/or at the top of her visual field. Student also had

difficulty using eye gaze to reliably choose between objects, because of her tendency to choose whichever object presented to her right and on top. She responded to the actions of her classroom support staff and smiled when they paid attention to her and played with her.

4. Student had difficulty using her hands to push buttons and grasp objects. For example, when instructed to push a button with a picture of the sun to activate a sound from one of her books, Student was able to reach her right finger within six inches of the button but needed hand over hand assistance to push the button and activate the sound. During circle time, when her class moved their arms and clapped to songs, Student smiled broadly and seemed very happy, but needed hand-over-hand assistance to move her arms and clap her hands. Student would reach towards objects that were presented to her, but did not open her hand to grasp the object. She unintentionally released objects that were placed in her hand, and exhibited stress during grasping exercises.

5. Ms. Van Der Wal administered the Mullen Scales of Early Learning to assess Student's visual perceptual and fine motor skills. Student's visual perceptual skills were equivalent to those of a typical child age six months. She was able to visually track a variety of items both horizontally and vertically, localize alternating items near and far, and look for a dropped item. Student's fine motor abilities were at an age approximation of two months. Her hands were often in a tight fist position with her thumbs tucked between her pointer and middle fingers. She held onto a ring reflexively when placed in her hand. Student reached out toward preferred or familiar objects such as a communication device, a book, and a stuffed animal, but did not attempt to reach out and grasp small objects such as a peg or small block.

6. Ms. Van Der Wal used the Southern California Ordinal Scales of Development-Developmental Scale of Cognition, a standardized criterion-referenced test, as an alternative means for assessing Student's cognitive ability. Student generally

functioned at the level of typical child age one to four months. She was beginning to explore her environment through attention to stimuli, to develop patterns of interacting with the environment through the coordination of reflexes, and to develop beginning memory skills. Student explored her environment visually and looked at objects. She alternated her glance between two visual stimuli. She demonstrated a listening response to items such as a bell and searched for the sound by moving her head and eyes toward the sound. Student reached for a hanging object as well as objects that were placed on a tray in front of her. She also demonstrated some emerging abilities at the four to eight-month level, such as beginning to coordinate motor actions to continue an external event, and increased memory allowing a beginning awareness of object constancy. Student was able to perform an action to make an object move, and use an object to make noise when placed in her hand. She also visually tracked a falling object.

7. Ms. Van Der Wal used the Vineland Adaptive Behavior Scales - Second Edition to measure Student's typical performance of the day-to-day activities required for personal and social self-sufficiency, based on rating scales completed by Mother and Student's kindergarten special education teacher Ms. Czajkowski. Compared to other children her age, Student's scores were below the first percentile in every area, with Mother and teacher giving Student composite standard scores of 41 and 30, respectively (with a score of 100 representing the mean score for all children). Student's overall communication skills were an area of relative strength. With respect to receptive language, Student usually demonstrated that she understood the meaning of "yes" in class, and she listened to a story for at least five minutes. At home, Student was usually able to point to, or reach toward, at least three major body parts (nose, hair, eyes, mouth), and move her foot when asked. She was able to follow simple instructions such as lifting up her leg during diaper changes. Student's expressive language was limited. Both in class and at home, Student made sounds to get other people's attention and often communicated using eye gaze rather than pointing or gesturing. At home,

Student would put her arm up to wave "hi" to others, verbalize the words, "mom," "hi," and "ey" for "hey," and sometimes attempt to repeat common words upon hearing them. With respect to written language, Mother reported that Student could recognize her first name.

8. Student's personal, domestic/academic, and community/school daily living skills were an area of relative weakness for her. To avoid aspiration of food, Student was primarily fed through a gastronomy tube through her abdomen to her stomach, but would open her mouth for tastes of pureed food. Student would let her parents know when she had soiled or wet her diaper, and sometimes lifted her leg up to help put on clothing such as a sock or pants. At school, Student was dependent on adult assistance for all personal needs. In the area of domestic skills, Student was not careful around hot objects, nor did she help with simple household chores. In the area of academic skills, Student did not recognize numbers or count objects. With respect to community skills, Student appeared to understand the function of a telephone, vocalized "hi" to family members, and produced sounds in response to other people's speech. In her school community skills, Student was able to follow simple instructions from her teacher.

9. Student's socialization skills in interpersonal relationships, play and leisure time, and coping skills were areas of relative strength. Student usually showed an interest in children her age, and made or tried to make social contact with others. At school, Student played simple interaction games with others, and showed a preference for certain people and objects. She usually cooperated with her teacher's requests, and she sometimes responded appropriately to reasonable changes in the school routine. At home, Student changed easily from one at-home activity to another, and changed her behavior depending on how well she knew another person.

10. Student's gross motor and fine motor skills were areas of relative weakness. Student was able to sit for at least one minute when supported, sometimes held her head erect for 15 seconds or longer, and was able to pivot when placed on her

stomach. With respect to fine motor skills, Student reached for toys and objects, sometimes reflexively picked up items such as wash cloths, and sometimes turned pages of a book, one page at a time.

11. District speech and language pathologist Tracy Kerins assessed Student's speech and language abilities and needs over three days using record review, standardized and non-standardized tests, observation, and parent, teacher and staff interviews. Ms. Kerins' findings supported her ultimate conclusion that Student needed an instructional setting that would address her communication deficits.

12. Ms. Kerins found that Student's hearing was normal, and she responded to sounds and words. Student's vision was 20/60, and she was able to visually track objects well side to side and up and down, despite demonstrating right eye muscle weakness.

13. Student demonstrated communicative intent, using vocalizations, gestures, facial expressions, simple eye gaze, and simple single switch voice output devices to interact with others. Student would request an item or action by vocalizing; greet and take leave by smiling, vocalizing or saying hi; and request assistance by vocalizing. She initiated communication occasionally, but was not able to answer or ask questions or engage in conversations. Student demonstrated understanding of familiar single words, phrases, and sentences (i.e., "Where's that smile?", "Give me a fist", head up, etc) with eye gaze and body language (i.e. facial expression, body movement, etc). Student responded to her name and to attention commands and looked at pictures positioned in her line of sight. She tried to accept objects presented by others, and to give objects to others, but was physically unable to do so.

14. Student was not able to produce fluent speech. She was able to produce occasional words or approximations of words or phrases, such as "hi," or "hi Dad," that were understood by familiar people in context. She produced the beginning sounds y, h, ai, m, b, k, and a. Student was not able to imitate speech sounds, non-speech sounds, and/or words.

15. Ms. Kerins assessed Student's ability to communicate non-verbally. Student was not able to produce sign language. She demonstrated an emerging ability to make choices between two objects and two pictures using eye gaze paired with facial expression. Student was sometimes able to press a switch placed within her reach that would play a word or sound when activated.

16. Ms. Kerins used the Communication Matrix as an assessment tool to describe how Student was communicating, and to provide a framework for determining communication goals for Student. The Matrix was designed to document the expressive communication skills of individuals with severe or multiple disabilities, including children with sensory, motor, and cognitive impairments, using a questionnaire directed to caregivers to collect information on the child's abilities. The Matrix covered seven stages of communication skills that a typical child would develop between the ages of 0 to 24 months:

Stage One: Pre-intentional Behavior (in typically developing children, this stage occurs between 0-3 months). Pre-intentional behavior is communication through behavior not under the individual's control, but reflecting his or her general state (such as comfortable, uncomfortable, hungry, or sleepy).

Stage Two: Intentional Behavior (3-8 months). Intentional behavior is communication through behavior under the individual's control, but not used to communicate intentionally. Caregivers interpret the individual's needs and desires from behaviors such as body movements, facial expressions, vocalizations and eye gaze.

Stage Three: Unconventional Communication (6-12 months). Unconventional Communication is intentional communication using behaviors such as body movements, facial expressions, vocalizations and eye gaze. These behaviors are called "unconventional" communication because they are not socially acceptable for older children to use.

Stage Four: Conventional Communication (12-18 months) Conventional communication is socially acceptable behaviors such as waving, nodding "yes" or shaking one's head "no".

Stage Five: Concrete Symbols (12-24 months). Concrete Symbols is communication using symbols that look like, feel like, move like, or sound like what they represent.

Stage Six: Abstract Symbols/Language (12-24 months). Abstract Symbols is communication using symbols that do not physically resemble what they represent, such as speech, manual signs, brail or printed words are used to communicate.

Stage Seven: Language (starts around 24 months). Language is defined as communication using symbols (concrete or abstract) combined into two or three symbol combinations ("want juice", me go out"), according to grammatical rules. The individual understands that the meaning of symbol combinations may differ depending upon how the symbols are ordered.

17. Student's communication level according to the Matrix ranged between the pre-intentional and intentional behavior and the conventional communication levels. Her skills were better at home, with familiar people in a familiar environment. Student had mastered pre-intentional and intentional behavior in both home and school environments, and had mastered unconventional communication in her home environment and had some emerging skills in the school environment. Student had mastered some conventional communication skills in the home environment and had some emerging in the school environment. She had mastered one concrete symbol to use at home, but did not use any concrete symbols at school. Student did not use abstract symbols or language in either setting.

18. Ms. Kerins also used the Preschool Language Scale-4, to assess Student's auditory comprehension of vocabulary and concepts, and expressive communication ability. Based on Ms. Kerins' observations and information from Parent, Student's language abilities were severely delayed, with her ability to comprehend language equivalent to those of a typical child age 5 to 14 months, and her ability to express herself at an age equivalent of 9 to 15 months.

19. Ms. Van Der Wal, Ms. Kerins, and Ms. Czajkowski issued a collective Multidisciplinary Assessment Report dated February 21, 2012. Student's limited intellectual functioning and concurrent deficits in adaptive functioning, language delays, and delayed academic skills adversely affected her educational performance, and she required significant modifications to the general education curriculum to provide her with meaningful instruction. Student met special education eligibility criteria for limited intellectual functioning. Also, Student's dystonic cerebral palsy significantly affected her motor skills and educational performance, and she therefore met special education eligibility criteria for orthopedic impairment.

20. District adapted physical education specialist Jan Collings issued a separate assessment report dated February 22, 2012, regarding Student's motor abilities

and continued eligibility for adapted physical education. Student was able to roll from lying on her side to her back, inconsistently sit and stand with moderate to maximum support, and move about the school environment and participate in PE and recess activities in a manual wheelchair that is pushed by an adult. As a result of Student's cerebral palsy, her gross motor strength, balance, mobility, and coordination fell below age expectancy, in the sensorimotor stage typical for children 0-2 years old, with Student's highest level of performance in the 8-12 month range. Ms. Collings recommended that Student continue to receive adapted physical education.

February 22, 2012 IEP

21. Student's triennial IEP team meeting was held on February 22, 2012. The team found Student eligible for special education based on a primary disability of orthopedic impairment and a secondary intellectual disability; she was offered continued placement in the special day class for severely handicapped students at R.H. Dana for the regular and extended school year, with daily recess and once a week library time in the general education environment during the regular school year. The IEP offered the following services: (i) health/nursing – specialized care service (2 x 60 minutes per day individual/direct); (ii) health/nursing – consultation (1 x 60 minutes per month group); (iii) physical therapy (to be provided "per prescription" by California Children's Services 2 x 30 minutes per week); (iv) additional program support of a one-on-one aide for the entire school day (210 minutes each day group/direct); (v) speech and language (1 x 30 minutes per week individual/collaborative, plus 1 x 30 minutes per month individual/collaborative); (vi) occupational therapy (to be provided "per prescription" by Children's Services 1 x 30 minutes per week individual/direct); (vii) adapted physical education (1 x 30 minutes per month group/consult during Student's regular PE class).

22. California Children's Services is a program administered as a partnership

between county health departments and the California Department of Health Care Services. It provides necessary medical services, including diagnostic and treatment services, medical case management, physical and occupational therapy services, and medical therapy services delivered at public schools, to children under age 21 with eligible medical conditions, including cerebral palsy and traumatic injuries.

23. Parents identified improved communication skills as a priority for them in Student's education. Explaining that Student at home was able to choose between two objects displayed on an iPad, they asked that Student be taught to use an iPad to communicate her wants and needs. The IEP team agreed that Student needed assistive devices and services to make progress towards her IEP goals. Although Ms. Kerins had been working on Student's ability to build and scan symbols in order to use an iPad more for communication, the IEP team did not recommend use of an iPad as a device to assist Student's communication at school. Instead, the team recommended use of a single switch, simple voice-output device and a low-tech eye-gaze board. The latter was a clear plastic board, with a hole in the center surrounded by up to six images or symbols representing responses such as yes or no, or wants or needs such as food, drink, or a particular person, that could be held in front of Student by another person who would look through the hole in the board while speaking to Student, and interpret Student's response to questions based on the image on which Student focused. No testimony was offered as to why Student's IEP team did not offer Student use of an iPad or other high-tech assistive technology at that time.

24. As program supports to enable Student to make progress, school personnel were to be provided consultation with an assistive technology specialist and speech-language pathologist, collaboration among service providers, and opportunities for continuing education and professional development to ensure access to the latest methods and strategies. District's physical therapist was to collaborate with the teacher and Children's Services' physical therapist regarding classroom physical therapy

equipment needs, such as her wheelchair, gait trainer, and stander.

25. The IEP team gave Student eight goals to be completed by February 2013 to develop her skills in the areas of communication, language arts, social/emotional interaction, and motor control. In the area of communication, Student's goals were to (i) improve her expressive language, prelinguistic skills, and the ability to engage in social interactions by indicating a choice between two objects and/or pictures in a manner that is clear to the communicative partner (clear eye gaze, clear facial expression, etc.) in a minimum of five contexts (such as, choose a book, toy, song, partner, activity, color, etc. during free play, centers, circle, speech, recess, PE, etc. with teacher, therapist, school staff, peer, etc.); and (ii) improve her expressive communication skills and the ability to participate in social interactions by using symbolic communication (i.e. word, word approximation, gesture, and/or picture symbol with and/or without voice output) to greet others. In language arts, Student's goal was to improve her communication and early literacy skills by activating a single switch with the turn symbol on it to indicate that it is time to turn pages of a book, and then, on request, assist with the task. To improve her social/emotional interaction skills, Student's goal was to be able to indicate her preference to classmates when shown two preferred real objects in her field of vision, by gesturing, eye gaze, or vocalizing.

26. In the area of motor skills, Student at the time of her 2012 IEP was able to position a crayon for writing with the aid of a rubber band; attempt to step when positioned in a gait trainer; and tolerate standing in a stander for up to 60 minutes, but needed frequent reminders to hold her head upright; and participate in group physical education activities. Student's goals were to: (i) demonstrate fine motor control by grasping a crayon with her right hand on request, and maintaining the grasp to make horizontal and vertical marks on a paper secured on her tray; (ii) improve her gross motor and recreational mobility skills by taking at least 10 steps once positioned in a gait trainer, when given assistance to move the gait trainer forward toward a desired

object and /or person given verbal prompts as needed; iii) tolerate standing in a stander for 60 minutes daily while engaging in table top activities and upper extremity weight bearing while keeping her head upright in at least 50% of trial sessions in three of five trial days; and (iv) participate in group physical education activities with her classmates with adult assistance for 90% of her adapted physical education session.

27. Parents consented to the February 22, 2012 IEP. Although Student's post-trial brief contended that Student's communication goals were not appropriately revised to allow Student to make progress in her communication skills, this allegation was not part of the Complaint. Student presented no evidence that Student's February 2012 IEP placement or instructional services were inappropriate, other than with respect to District's failure to provide Student a high-tech communication device.

#### 2012-2013 SCHOOL YEAR

28. In the fall of the 2012-2013 school year, Student returned to R.H. Dana and the educational program of her February 2012 IEP. By November, 2012, Student had made progress on all of her IEP goals, and was expected to meet all of them by her next IEP, except for her motor skills goals of grasping and using a crayon, and taking at least 10 steps once positioned in her gait trainer. Student had made progress on those goals, but it appeared she might not be able to meet them without a change in instructional strategies.

#### February 12, 2013 Annual IEP Meeting

29. Student's annual IEP during first grade was held on February 23, 2013. Student had met all of her February 2012 IEP goals, and the IEP team recommended continued placement at R.H. Dana. The IEP offered the same services as Student's prior IEP, except: (i) occupational therapy and physical therapy were eliminated from the IEP, without assessments or explanation; (ii) Student's health/nursing – specialized care

service was reduced from 60 minutes twice per day to 15 minutes twice per day; (iii) 30 minute sessions of adapted physical education was increased from once to four times per month; and (iv) Student was to be provided 30 minutes of specialized academic instruction daily on the playground with general education peers.

30. As in 2012, Parents voiced their principal concern that Student's communication skills needed to be improved. The IEP team agreed with the importance of improving Student's communication abilities, and agreed to start trials before the end of the school year to determine if high-tech voice output devices could improve Student's ability to use symbolic communication for a variety of pragmatic functions as well as her independence in communicating. The trials were to be in collaboration with Student's Child Services therapists, and many options were investigated, including different placements of screens, a toggle switch, and direct selection.

31. Additionally, the District members of Student's IEP team proposed eight new annual goals, all of which were drafted to focus on communication as the basis for all of Student's activities, to develop Student's skills in the areas of communication, academic readiness, social/emotional interaction, and motor control. In the area of communication, Student's goals were to improve her expressive language by: (i) indicating a choice between at least two pictures in a manner clear to the communicative partner (clear eye gaze, clear facial expression, reach towards, etc.) in a minimum of five contexts (choose a book, toy, song, partner, activity, color, etc. during free play, centers, circle, speech, recess, PE, etc. with teacher, therapist, school staff, peer, etc.); (ii) using symbolic communication (i.e., eye gaze, picture symbols with or without voice output, vocalizations, etc.) to request recurrence or cessation of an activity in 70% of obligatory contexts (events in which Student would like to continue or stop an activity); and (iii) when given a visual, tactile and/or auditory description/demonstration of common nouns/symbols, identify the vocabulary described from a field of 2 pictures/photos/objects(e.g. body parts, animals, colors, clothing) via touch or eye gaze.

To develop her readiness for reading, Student's goals were: (i) when presented with a "yes" and "no" card, to answer simple questions by using intentional behavior (eye gaze, reaching, scanning selection) to select her answer; and (ii) when shown a picture of one object, (e.g. colors, clothing, friends pictures) to make a choice (eye gaze, reaching) out of two other cards presented to her to identify "same." To develop her social social/emotional interaction skills, Student's goal was, when shown two pictures of classmates, to choose a friend and then participate in a small-group activity.

32. In the area of motor skills, Student's new goals were to: (i) tolerate standing in a stander for 60 minutes daily while engaging in table top activities and upper extremity weight bearing, while keeping her head upright at least 80% of trial sessions; and (ii) participate in group physical education activities with her classmates by using a AAC device to give instructions (e.g. get ready, set, go) with adult assistance for 50% of her collaborative APE session.

33. Parents consented to Student's 2013 IEP.

34. Although District eliminated occupational and physical therapy services from Student's 2013 IEP, Children's Services continued to provide Student physical therapy twice weekly for 45 minutes, and occupational therapy once per week for 45 minutes, until July 2014.

#### Successful Trial of Eye-Tracking, Voice Output Communication Device

35. In May 2013, District conducted a successful trial with Student of a high-tech communication device that tracked Student's eye movements as she looked at symbols, and triggered voice output based on where she looked. That trial indicated that Student might be able to utilize such a device to improve her communication. For reasons not clear from the evidence presented, District did not provide Student with the eye-tracking device on an ongoing basis following the successful trial, or hold an IEP to discuss the results of the trial.

## 2013-2014 SCHOOL YEAR

36. In fall 2013, Student returned to R.H. Dana for second grade under the educational program set forth in her February 2013 IEP.

37. During the 2013-2014 school year, Parents repeatedly asked that Student be provided a high-tech eye tracking device to improve her communication, and District told Parents it was working on getting such a device for Student.

### February 11, 2014, Annual IEP Meeting

38. Student's second-grade IEP team meeting was held on February 11, 2014. Student had met all of her IEP goals except her motor skills goal of standing in her stander with head upright for 60 minutes daily, which she failed to meet because she could only hold her head upright half of the time. The IEP team recommended continued placement at R.H. Dana, with the same services as had been offered in Student's 2013 IEP. The IEP noted that Children's Services continued to provide Student physical therapy twice weekly for 45 minutes, and occupational therapy once per week for 45 minutes.

39. As in 2012 and 2013, Parents' principal concern was for Student's communication skill; that she have a communication system that she could use to let them know her needs and feelings, and become independent in her ability to communicate. Parents complained at the 2014 IEP that Student's existing low-tech plastic eye-gaze board limited her communication to a maximum of six concepts represented by the images on the board, when she was capable of, but unable to, communicate more meaningfully. The IEP noted that Student had demonstrated understanding of common nouns and symbols in her environment, and needed to continue to develop her ability to expressively use symbolic communication; to demonstrate her understanding of concepts; and to have her communication needs addressed within the curriculum.

40. Student's February 11, 2014 IEP noted in Student's present levels of performance that she had been observed and/or reported to have activated a high tech voice output device using eye gaze in a field of four picture symbols of people, to select which person she wanted to see, and which person she was seeing. Except noting this in the present levels, the IEP did not otherwise address the May 2013 successful trial of the high-tech communication device that tracked Student's eye movements as she looked at symbols, and triggered voice output based on where she looked.

41. The IEP team proposed nine new annual goals to develop Student's skills in the areas of communication, academic readiness, social/emotional interaction, motor control, and science/social science. In the area of communication, Student's goals were to improve her expressive and pragmatic language skills and ability to engage in social interactions by (i) scanning and expressively using a minimum of six symbols (i.e., picture symbols with and/or without voice output with and/or without partner assisted scanning using an intentional behavior access method such as eye gaze and/or switch activation) to expressively communicate a minimum of six vocabulary words (i.e., yes, no, more, all done, stop, go, song, book, game, etc.) within a communication sample; and (ii) use symbolic communication (such as picture symbol with and/or without voice output with eye gaze and/or switch activation selection with and/or without partner assisted scanning) to express "stop" and "go" to respond to questions, make requests, command others, and/or to comment in at least 80% of obligatory contexts (situations in which such vocabulary would be appropriate) within a communication sample. In the area of readiness for language arts, Student's goal was to identify her name card when presented with a choice of two by eye gaze or touch and the first letter is touched so she can learn the starting letter of her name. Student's readiness goal for mathematics was to sort the items into their designated bins using eye gaze, when given two sets of grossly different items and bins where she could see the items inside (i.e. bean bags, small plastic animals, and plastic forks). Student's social/emotional interaction goal was

to develop personal social skills by working cooperatively in the classroom and therapy units when asked by staff to stay on task and complete her work without continual prompting by an adult.

42. Student's proposed new motor goals were to: (i) walk in her gait trainer and participate during warm-up exercises and class activities with minimal verbal prompts and physical assists over a 30 min. time period; (ii) use a name stamp to label her class work by stamping her name at the top of her work with minimal adult assistance; and (iii) stand in her stander for 45 minutes daily while engaging in table top activities and upper extremity weight bearing while keeping her head upright, using verbal or touch cues to lift head up if necessary, during four of five trial sessions.

43. Student's proposed new science/social science goal was, when shown pictures, word/symbols related to grade level social science and science themes, to label six items, related to a curriculum area, with no more than four verbal, gestural, or physical prompts.

44. District did not include an eye-tracking, voice-output device as an assistive technology for Student, nor goals related to Student developing communication skills using such a device.

45. Parents consented to Student's February 2014 IEP.

46. In May 2014, District arranged for Student to have a trial of a "Tobii" high-tech eye-tracking device. However, District told Parents that this trial was cancelled because the vendor was unavailable, and the trial would have to be conducted in the 2014-2015 school year.

#### July 2014 Termination of Children's Services Direct and In-School Occupational and Physical Therapy

47. In July 2014, Children's Services stopped providing Student individual, direct occupational therapy and physical therapy services at home and in school, and

switched to providing consultation only. Children's Services told Parents that it discontinued Student's individual, direct occupational therapy, because it was no longer necessary. No evidence was presented on whether Children's Services provided occupational therapy consultation at Student's home, school, or both, or how and when District became aware that Children's Services had discontinued Student's individual, direct occupational therapy and physical therapy services.

June-October 2014: Parents Obtain Private Physical Therapy and  
Augmentative Communication Assessments, and File a Due Process  
Complaint

48. Parents were frustrated by delays in obtaining communication devices for Student, and in summer 2014 hired private assessors and an attorney to represent Student. Parents obtained a private physical therapy assessment of Student from physical therapist Mark Klem. Mr. Klem's June 2014 assessment was not provided to District, and Mr. Klem did not testify at hearing. Mr. Klem recommended, among other things, that Student receive 180 minutes per week of direct physical therapy.

49. Parents also obtained a private augmentative communication assessment, completed October 16, 2014, from speech-language pathologist and augmentative communication specialist Cynthia Cottier. Ms. Cottier tested five different types of communication devices with Student to evaluate what type of device would be most appropriate to help Student communicate. After testing Student using Student's existing eye-gaze board, two types of hand activated switches, a head switch, and an eye-tracking system, Ms. Cottier concluded that the eye-tracking system was the most appropriate for her. Although Student was able to use her existing eye gaze board, it limited her communication partners to those familiar with how to use the board, and her communication choices to the six symbols on the board. Student lacked the fine and gross motor control necessary to utilize head or hand-operated switches to activate a communication device. On the other hand, when using a Tobii-I series eye-tracking

device, Student demonstrated excellent concentration and was able to make appropriate choices to answer yes/no questions with over 70% accuracy. Student was able to accurately make selections on displays with between four-to-six message areas in terms of the mechanics of looking at and maintaining her eye gaze long enough to satisfy the dwell time in terms of responding correctly with comprehension and intent. Ms. Cottier did not observe the right-eye muscle weakness noted in Student's February 2012 speech and language assessment. Ultimately, it appeared that Student would be able to utilize an eye-tracking system effectively and efficiently to not only respond appropriately during academic activities but to communicate her ideas, thoughts and needs more spontaneously and independently. Ms. Cottier found the eye-tracking system to be far superior to any other systems considered during the evaluation sessions, and recommended a three-week trial of a Tobii-I series eye-tracking device, followed by purchase of the device for Student if she was able to use it to make selections among four to six items with 80 percent accuracy. Ms. Cottier's report was provided to District. Ms. Cottier also recommended three-to-five hours of training in the operation and initial implementation of the Tobii for school staff, parents and service providers, and weekly intervention sessions with Student to be provided by an expert in augmentative communication for the purpose of expanding Student's communication abilities.

50. On October 2, 2014, Student filed a due process hearing request in OAH Case Number 2014100253, contending that District had denied Student a free appropriate public education by failing to provide Student an appropriate placement, services and assessments.

#### 2014-2015 SCHOOL YEAR

51. In fall 2014, Student returned to R.H. Dana for third grade under the educational program set forth in her February 2014 IEP.

52. On or about January 6, 2015, District sent Parents a triennial assessment plan that proposed to assess Student in the areas of academic/pre-academic achievement, speech and language (including assessment of alternative communication systems), intellectual development, social/emotional development and adaptive behavior, perceptual and processing skills (including auditory and visual processing ability, sensory motor skills, attention, association and conceptualization, and expression), health, gross and fine motor development, and career/vocational interests and abilities. Parents did not consent to this assessment plan in January 2015, but subsequently consented to it when it was re-sent dated April 13, 2015, indicating with their consent that they wished District to consider reports of Cynthia Cotter and Mark Klem.

53. Student's triennial IEP due February 2015 was not held at that time; however, its timeliness is not at issue.

#### March 2015 Interim Settlement Agreement

54. On March 1, 2015, Parents and District entered into an Interim Settlement Agreement, and Student withdrew OAH Case Number 2014100253. As part of the agreement, District agreed to conduct a trial of the Tobii eye tracking technology device as recommended by Ms. Cottier, to begin on or about April 15, 2015. District also agreed to permit Ms. Cottier, Mr. Klem, and other private educational providers selected by Parents to observe and collaborate with District staff. District also agreed to convene an IEP team meeting prior to June 19, 2015.

55. Also as part of the Interim Settlement Agreement, District agreed to reimburse Parents for past educational expenses, and to pay future costs incurred for compensatory education, in amounts that were redacted from the agreement and not otherwise put in evidence. In return for this consideration, Student released all claims for reimbursement and compensatory education arising out of Student's education through

June 19, 2015, with the exception of any challenge to the IEP generated at the IEP team meeting to be held prior to June 19, 2015. In her waiver, Student did not waive her claims that District had denied Student a FAPE, or her claims for remedies other than reimbursement and compensatory education.

#### 2015 Triennial Assessments

56. District began assessing Student in May 2015, and conducted a trial of the Tobii eye-tracking device in June 2015. However, when District had not completed all assessments prior to the June 19, 2015 date referenced in the parties' settlement, Parents indicated that they preferred to reschedule Student's IEP meeting for fall 2015 when all the assessments were completed.

57. District's Multidisciplinary Assessment Report, dated September 17, 2015, included assessments in the areas of psychoeducation, classroom performance, communication, occupational therapy, physical therapy, and adaptive physical education. District school psychologist Katrina Van Der Wal conducted Student's triennial psychoeducational assessment as she had in 2012, this time over seven days in June – August 2015. Ms. Van Der Wal observed Student during four one-on-one testing sessions and also in three classroom sessions and one adapted physical education class. Student's attention span had increased since she was last assessed in 2012. Student was able to maintain attention for the duration of a 10 to 15 minute classroom story and discussion. Student particularly enjoyed physical activities, smiling broadly when walking in her gait trainer in a sort of musical-chairs activity in PE class, throwing a ball, or racing against another student in her wheelchair. During one-on-one testing, Student was able to focus effort on a variety of tasks with an attention span from five to ten minutes. Student's attention span increased most notably when she was given an iPad, or engaged in pretend play with props. Student was able to use eye gaze, switches and the Tobii eye tracking device to communicate. Student used the eye tracking device to: (i)

say "hi" by selecting the symbol for "hi" from a field of nine symbols displayed on the device; (ii) choose her classroom job by selecting a picture of a flag helper; and (iii) say the shape of a ball she was given by selecting a circle from a field of eight choices. Student's ability to use her hands had improved somewhat from 2012. Using her right hand, she was able to grasp a crayon, a glue stick and a spoon, but required hand-over-hand assistance to color a picture and glue a card.

58. Ms. Van Der Wal administered the visual reception portion of the Mullen Scales of Early Learning. Student's visual perceptual skills had increased from six months age equivalent in 2012 to nineteen months in 2015. Student looked for a dropped item when initially placed above her head and dropped to her tray, used eye gaze to find fully hidden items, and made object associations (brush, spoon, and cup). She showed interest in books and attended to pictures. She also discriminated between two forms (a circle and a square), matched three objects, and sorted spoons and blocks by category using eye gaze.

59. Ms. Van Der Wal used the Insite Developmental Checklist to assess Student's cognitive skills in six areas. Student's mastery of skills varied by area. In the area of memory, she had mastered the skills of a typical child age 9-12 months; play (12-18 months); problem solving (4-9 months); control (12-18 months); relationship of body to objects (9-12 months); anticipation of future events (18-24 months). In all cognitive areas, Student had scattered skills of typical children age 18-24 months, and she demonstrated the more advanced skills of a typical two to three-year old in the areas of classification, sociodramatic play, awareness of time, and awareness of spatial relationships: Student could match colors (red, yellow, and blue), match an object to an identical picture of the object (ball, toothbrush, doll, spoon), match identical pictures of objects to each other, and sort grossly different objects (blocks and spoons). Student enjoyed playing with peers at school and home. Student was aware of home and school routines, and expected certain events to occur in their usual order. Student was aware of

relationships between her body and objects, and objects to each other, and she could move certain body parts up and down when asked to do so (i.e. she lifted up her arms when her tray was placed on her wheelchair, helped put on her shirt, and moved her foot up when being dressed in socks and shoes).

60. Ms. Van Der Wal used the Vineland Adaptive Behavior Scales - Second Edition to measure Student's typical performance of the day-to-day activities required for personal and social self-sufficiency, based on rating scales completed by Mother and Student's special education teacher, Ms. Caulkins. Compared to those of other children her age, Student's scores remained below the first percentile in all areas, as they had been in 2012, but there was some overall improvement. Mother and teacher gave Student composite standard scores of 57 and 38, respectively, compared to scores 41 and 30 three years previously. Student's gross motor and fine motor skills remained areas of relative weakness for Student, with both Mother and teacher giving Student the same standard scores in 2015 as in 2012 (28 and 23, respectively). Mother noted improvements in all other areas – communication, daily living skills, and socialization, while Student's third grade teacher gave her a slightly higher score in socialization than her kindergarten teacher, the same score in daily living skills, and a slightly lower score in communication.

61. District speech and language pathologist Tracy Kerins assessed Student's speech and language abilities and needs over twelve days. As in 2012, Ms. Kerins used the Communication Matrix as an assessment tool. Responses from Ms. Caulkins indicated that Student's communication skills at school had progressed to the point where Student had fully mastered unconventional communication, partially mastered conventional communication, with other emerging skills; and demonstrated emerging skills communicating with concrete and abstract symbols.

62. Ms. Kerins considered a number of augmentative and alternative communication devices that might be used to assist Student's communication, and

participated in Student's trial of the Tobii-I eye tracking device in June 2015. After considering speech, sign language, Student's low-tech eye gaze board, and various devices activated by a physical switch, Ms. Kerins concluded that the Tobii was a viable tool for Student to further develop her communication skills with access to more vocabulary and the ability to independently generate spoken language. Using the Tobii, Student was able to combine two symbols to produce more complex utterances, such as, "I want a big bubble," "I want to read a book," " Catch the bubbles," "I'm not so good," and "I want Debbie." Student could not do this using any other tested device or means. Ms. Kerins recommended a further trial of the Tobii with a wheelchair mount to determine the mounting mechanism that would give Student the best access to the device.

63. District occupational therapist Karyn Strong assessed Student's occupational therapy needs. She noted Student's teachers' concerns, related to occupational therapy that Student improve her ability to move so that she could continue to participate physically in educational activities. Ms. Strong also noted Parents' concerns that Student was eager to learn and desperate to communicate, and needed an integrated program of occupational therapy, physical therapy, and speech and language to facilitate goals of using a communication device to interact with her class, and to be in a walker to participate with her ambulatory peers.

64. Ms. Strong observed Student in class during an instruction period. Student was sitting in her wheelchair with her 1:1 aide assisting by her side. Student required 100% assistance to participate in the cutting, gluing, and glitter activity. The aide positioned the materials within Student's sight and used hand over hand assistance to squeeze the glue for her. Student participated in academic tasks using assistance from her one-to-one support aide to complete physical tasks and eye-gaze for communication.

65. Student had spastic muscle tone throughout her body, with noted

tightness at end ranges and in her elbows. Slow steady stretching could achieve normal limits of movement. Student required the support of a specialized wheelchair while sitting, a stander while standing, and a gait trainer to walk. Student's fine motor skills, involving coordination of the small muscles in the hands, were severely affected by her spastic muscle tone, and her functional hand use was very limited. Student had limited control of her right arm, and could open and close her hand, but her hands were often kept closed in a fist. Using the Southern California Ordinal Scales of Development - Developmental Scale of Fine Motor Abilities to assess Student's finger and hand dexterity, and perceptual motor coordination of fine motor muscles with visual, tactile, or muscular perception, Ms. Strong found that Student functioned at sensorimotor stage 2, primary circular reactions, meaning that she was beginning to coordinate her reflexes, a stage typically reached at age one to four months. Ms. Strong did not make any specific recommendations regarding Student's need for occupational therapy services in her report, but instead deferred discussion until Student's IEP team meeting.

66. District physical therapist Chris Luehe evaluated Student's gross motor function to determine whether Student needed physical therapy to safely and effectively access her education. Based on his observations of Student, Mr. Luehe determined, among other things, that Student: (i) could not move from lying down to sitting, or maintain a sitting position without significant support; (ii) could not sit unassisted on the floor; (iii) could support her weight through her legs when standing, but typically required at least moderate assistance to stay in a standing position; (iv) because Student's ability to stand could be suddenly affected by a change in muscle tone, standing presented a safety risk for Student without equipment to maintain her upright positioning; (v) had the muscular power-to support and move her body weight, but could not effectively utilize it through graded movement allowing for safe, effective, fluid mobility; (vi) had no functional balance and required significant external support to maintain an upright position when sitting or standing; (vii) had poor head and neck

alignment, and could only bring her head to an upright, centered, position for short periods of time (less than 60 seconds), affecting her ability to attend to many education tasks; (viii) required minimal to moderate assistance to transition from seated to standing, moderate to maximal assistance to roll left and right when lying down, and total assistance to transition from sitting on a floor to standing; (ix) could not walk effectively without mechanical support, but could travel up to 150 feet on flat level surfaces within a 30 minute period using her gait trainer; and (x) required her wheelchair or gait trainer to utilize the school playground. Mr. Luehe identified several areas where physical therapy supports or goals might be needed, but did not make any specific recommendations regarding Student's need for physical therapy services in his report.

67. District adapted physical education teacher Julie Vilcek assessed Student's need for adapted physical education. She found that, as in 2012, Student's gross motor skills fell in the first level of development, the sensorimotor stage, with her functional level of performance in the 1-4 month range, and scattered skills up to the 8-12 month range. Student enjoyed music, movement and interaction with teachers and peers. Ms. Vilcek recommended that Student continue to participate in physical education with her classmates, with adapted physical education on a consultative basis.

68. Student's assessment team found that Student continued to have the associated impairments of intellectual disability and orthopedic impairment, and therefore met eligibility criteria for multiple disabilities.

69. Parents also obtained, and provided to District, a second private physical therapy assessment prepared by Student's private physical therapist Mr. Klem. In his draft physical therapy evaluation dated September 11, 2015, Mr. Klem's findings regarding Student's motor function were similar to those of Mr. Luehe. Mr. Klem recommended, among other things, that: (i) Student receive direct physical therapy services in an unspecified frequency and duration; (ii) Mr. Klem collaborate with and train staff at R.H. Dana regarding Student's transfers to her walker and in the restroom

utilizing the walker and Student's manual wheelchair; (iii) Student be assessed for a powered wheelchair and a new walker; and (iv) that District monitor Student's ankle-foot orthotics and wrist-hand orthotics for fit, function, and implementation. Working with Mr. Klem from July 2014, Student experienced significant improvement in her motor skills. For example, Student was able to correct her gait and significantly increase her speed and endurance while walking, and learned to use her hand to grasp and hold a tray or handrail.

70. Mr. Klem's report also stated that a functional vision assessment "seem[ed] to be indicated, because "we do not know" Student's visual acuity and perception, or ability to use her vision.

#### September-October 2015 Triennial IEP Team Meetings

71. Following completion of Student's assessments, Student's IEP team met for her 2015 Triennial IEP on September 17, 30, and October 5, 2015. Parents, District team members, representatives from Children's Services, Mr. Klem, and District's and Student's counsel attended all three meetings. On September 17, 2015, the team reviewed Student's progress on her 2014 IEP goals. Student had met seven of her nine goals. She had progressed half way towards her goal in mathematics for sorting items into designated bins using eye gaze, and towards her goal of walking in her gait trainer with minimal assistance.

72. The team reviewed District's multi-disciplinary assessments and Mr. Klem's assessment. The team discussed Student's high degree of motivation to communicate, and recent progress made with Mr. Klem in the areas of muscular function and mobility.

73. Parents and Student's lawyer emphasized the need for more intensive intervention in use of the Tobii eye-gaze system, and with physical therapy and occupational therapy, to develop Student's communication skills, muscular function, and mobility. Parents requested that physical therapy be added as a service in Student's IEP.

74. Student filed her due process hearing request in this matter on September 29, 2015.

75. On September 30, 2015, Student's IEP team met again. The team agreed to order a Tobii eye-tracking device for Student and mountings to facilitate Student's access to the device. The team also agreed to purchase new equipment for Student to assist with mobility, including a lift, a walker/gait trainer, and a sit-to-stand stander. The team also discussed proposed new goals for Student in the areas of communication, language arts, social-emotional, adapted physical education, physical therapy, fine motor skills, reading and math. On October 5, 2015, the IEP team completed its discussion of proposed goals. District's occupational therapist Ms. Strong recommended that Student receive District occupational therapy in the form of consultation with Student's classroom staff, to advise Student's one-to-one aide on ways to assist Student with hand movements and grasping and releasing objects. Ms. Strong noted that nothing in her classroom assessment or on Parents' input form suggested that Student had sensory needs requiring individual therapy. District's physical therapist Mr. Luehe recommended that Student receive weekly direct physical therapy focused on Student's use of her equipment, and monthly consultation.

76. District offered Student continued placement at R.H. Dana, with Student in a general education environment five times per week for 30 minutes, and the following services: (i) health/nursing – specialized care service (5 x 30 minutes per day individual/direct); (ii) health/nursing – consultation (1 x 15 minutes per month group) (iii) physical therapy (provided by District 1 x 30 minutes per week); (iv) additional program support of a one-on-one aide for the entire school day; (v) speech and language (1 x 30 minutes per week group/direct contact/instruction, plus 1 x 30 minutes per week individual/direct contact/instruction); (vi) occupational therapy (provided by District 1 x 45 minutes per month consultation with staff); (vii) adapted physical education (1 x 30 minutes per month group/consult during Student's regular PE class).

77. Parents requested, but District declined to offer, individual occupational therapy services, consultation between Mr. Klem and District's physical therapist, and consideration of an iPad for home use. Parents consented to District's purchase of the Tobii, lift, walker/gait trainer, and sit-to-stand stander, but did not consent to the offered placement, goals or services.

#### Student's Expert Testimony at Hearing

78. At hearing, Student offered expert testimony from Ms. Cottier and from Student's Neurologist Terrance Sanger, M.D., PhD. Ms. Cottier testified concerning her October 16, 2014 augmentative communication assessment, which is discussed above. Dr. Sanger was head of the pediatric movement disorders clinic at Children's Hospital of Los Angeles, and had known Student since infancy. He testified that Student had exhibited communicative intent since an early age, which was consistent with the findings of District's assessors in February 2012. Dr. Sanger also testified that he believed that Student could have accessed and used a Tobii eye-tracking device since approximately age four. However, no evidence was presented that Dr. Sanger had recommended that Student be provided an eye tracking device in 2010, when Student was four or at any time prior to the complaint. Dr. Sanger also explained that Student required physical therapy on both a 1:1 and group basis, throughout her day, to prevent shortening of her tendons and regression of her motor skills and mobility, as well as significant levels of occupational therapy throughout the day focused on sensory and sensory-motor integration to improve Student's balance and coordination. Dr. Sanger emphasized that Student's motor deficits would not improve with age, but only with therapy, and it was his recommendation that she receive neuro developmental training and sensory integration therapy. Dr. Sanger did not explain these opinions in detail. During the last six years, Dr. Sanger had seen Student one time per year, for 45 minutes to an hour. In the last three years, he observed that Student had become more

interactive and engaged, and was making greater efforts to perform tasks, but that she was moving slower, and her legs were stiffer. Finally, Dr. Sanger opined that that Student's physical education program should include physical activity sufficient to increase Student's heart rate.

79. Dr. Sanger's opinion was based solely on his observations as Student's physician. Dr. Sanger did not conduct any testing or observation of Student's educationally-related need for occupational therapy in the school environment. Dr. Sanger reviewed Student's IEP's, and read the assessments Student's speech and language therapist, physical therapist, and occupational therapist, but did not speak with them. Dr. Sanger did not offer an opinion regarding any of Student's assessments, or the program and services that District offered, or should have offered, in any of Student's IEP's.

80. Student did not present expert testimony concerning a vision assessment or vision therapy, or concerning speech and language services, other than in relation to use of alternative communication devices.

## LEGAL CONCLUSIONS

### INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA<sup>4</sup>

1. This hearing was held under the Individuals with Disabilities Education Act (IDEA), 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)<sup>5</sup> et seq.; Ed. Code, § 56000 et seq.; Cal.

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<sup>4</sup> Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

<sup>5</sup> All subsequent references to the Code of Federal Regulations are to the 2006 version.

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 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 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 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. 951, 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) & (f); 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. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3)(C), (D); Ed. Code, § 56505, subd. (l).) 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].) Student filed the complaint in this matter, and therefore had the burden of persuasion.

#### ISSUES 1A , 2A, 3A, AND 4A: DISTRICT'S FAILURE TO OFFER STUDENT APPROPRIATE ASSISTIVE TECHNOLOGY SUPPORT

5. Student contended that District denied Student a free appropriate public education by failing and refusing to provide Student an appropriate communication device from October 2, 2012, to the filing of the complaint. Student contended that, in light of her physical limitations, she required an eye-tracking voice output device such as a Tobii in order to reliably communicate with others in all environments.

6. District contended that the assistive technology it provided, including Student's low-tech eye-gaze board and hand-operated switches, were appropriate for Student, and that in any event District conducted a trial of the Tobii and purchased and provided a Tobii to Student as part of Student's 2015 IEP.

7. The "educational benefit" to be provided to a child requiring special education is not limited to addressing the child's academic needs, but also social and emotional needs that affect academic progress, school behavior, and socialization. (*County of San Diego v. California Special Education Hearing Office, et al.* (9th Cir. 1996) 93 F.3d 1458, 1467.) A child's unique needs are to be broadly construed to include the child's academic, social, health, emotional, communicative, physical and vocational needs. (*Seattle Sch. Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500, citing H.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2106.)

8. Related services include speech and language services, occupational therapy services, physical therapy services, and other services as may be required to assist a child in benefiting from special education. (20 U.S.C. § 1401(26)(A); Ed. Code, § 56363, subd. (a); *Irving Independent School Dist. v. Tatro* (1984) 468 U.S. 883, 891 [104

S.Ct. 3371, 82 L.Ed.2d. 664]; *Union School Dist. v. Smith*, (9th Cir. 1994) 15 F.3d 1519, 1527 (*Union*)). Related services shall be provided “when the instruction and services are necessary for the pupil to benefit educationally from his or her instructional program.” (Ed. Code, § 56363, subd. (a).)

9. When developing a pupil’s IEP, an IEP team must consider the pupil’s communication needs. (20 U.S.C. § 1414(d)(3)(B)(iv); Ed. Code, § 56341.1, subd. (b)(4)), and whether assistive technology devices and services are needed for the child’s education. (20 U.S.C. § 1414(d)(3)(B)(v).) An “assistive technology device” is defined as “any item, piece of equipment or product system [other than a surgically implanted device] . . . that is used to increase, maintain or improve functional capabilities of an individual with exceptional needs.” (20 U.S.C. § 1401(1); Ed. Code, § 56020.5.) Assistive technology devices or services may be required as part of the child’s special education services, related services, or supplementary aids and services. (34 C. F. R. § 300.105.)

10. Here, the evidence established that District denied Student a FAPE by failing to provide Student a Tobii or other similar eye-tracking voice output device from May 2013 to the filing of the complaint.<sup>6</sup> At Student’s February 23, 2013 IEP, Student’s

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<sup>6</sup> Although Dr. Sanger testified that he believed that Student could have accessed and used a Tobii eye-tracking device since approximately age four (that is, commencing in 2010), Student’s February 2012 assessment results did not indicate that such a device would have increased, maintained or improved Student’s functional capabilities at that time. Student was just developing intentional communication skills in the school environment, and, although she demonstrated an emerging ability to make choices between two objects or pictures using eye gaze paired with facial expression, her eye gaze at that time was not a reliable means of communication, because Student generally chose whichever object or picture was placed to her right and/or at the top of her visual field. Ms. Cottier recommended purchase of an eye-tracking device if Student was able

IEP team agreed that it was important to improve Student's existing communication abilities, and agreed to start trials before the end of the school year to determine if high-tech voice output devices could improve Student's ability to use symbolic communication for a variety of pragmatic functions as well as her independence in communicating. In May 2013, District conducted a successful trial with Student of a high-tech communication device that tracked Student's eye movements as she looked at symbols, and triggered voice output based on where she looked. Student was able to activate the device using eye gaze in a field of four picture symbols of people, to select which person she wanted to see, and which person she was seeing. Considering the importance of improving Student's communication abilities, the successful trial of an eye-tracking device, and Student's inability to communicate as effectively using alternative devices such as switches or a simple eye-gaze board, District should have provided Student an eye-tracking voice output device as of May 2013. District's failure to provide such a device at that time, given the information available by that time, denied Student a FAPE.

#### ISSUES 1B, 2B, 3B, AND 4B: DISTRICT'S FAILURE TO OFFER STUDENT APPROPRIATE OCCUPATIONAL THERAPY SERVICES

11. Student contended that District denied Student a FAPE by failing to provide Student educationally-related occupational therapy services when Children's Services stopped providing occupational therapy services to Student. District contended

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to use it to make selections among four to six items with 80 percent accuracy. The evidence does not support a finding that Student would have been able to achieve anything approaching such a result -prior to May 2013. Instead, Student's low-tech eye gaze board was an appropriate tool to support Student's communication using eye-gaze, and to develop and improve her ability to reliably use eye gaze to select objects.

that: (i) Children's services, not District, was legally obligated to provide both medically and educationally-based occupational therapy for Student; (ii) District offered Student occupational therapy services in Student's 2015 IEP after Children's Services stopped providing direct services to Student; and (iii) Student put on no evidence that District failed to offer Student appropriate educationally-based occupational therapy services at any time.

12. As stated above in legal conclusion 8, above, related services include occupational therapy services. Related services shall be provided "when the instruction and services are necessary for the pupil to benefit educationally from his or her instructional program." (Ed. Code, § 56363, subd. (a).)

13. The IDEA leaves it to each state to establish mechanisms for determining which of the state's public agencies is responsible for providing special education services to a particular student, and procedures for resolving interagency disputes concerning financial responsibility. (20 U.S.C. § 1400(d)(12)(A); *Manchester School District v. Crisman* (1st Cir. 2002) 306 F.3d 1, 10-11.) Under California law, the public agency responsible for providing education to a child between the ages of 6 and 18 generally is the school district in which the child's parent or legal guardian resides. (Ed. Code §48200.)

14. Under certain circumstances, Children's Services may be responsible for providing occupational or physical therapy services to a special education student. Government Code, section 7575, subdivision (a), provides that: (1) Children's Services is responsible for providing a child occupational therapy or physical therapy that is determined to be medically necessary by reason of medical diagnosis and is contained in the child's IEP; and (2) the school district is responsible for providing educationally-related services that Children's Services has not deemed medically necessary. Thus, if occupational therapy or physical therapy that Children's Services has determined to be medically necessary is also found to be educationally necessary by an IEP team or OAH,

Children's Services, not the school district, is required to provide the therapy. (*Ibid.*)

15. District was responsible at all times for providing any educationally necessary occupational therapy that Children's Services was not already providing based on a determination that the therapy was medically necessary. Student's February 2012 IEP offered Student 30 minutes per week of individual, direct occupational therapy to be provided by Children's Services. Student did not dispute that the 30 minutes per week of individual, direct occupational therapy provided by Children's Services was sufficient to satisfy Student's educationally-related need for occupational therapy. Although District did not include occupational therapy as a related service in Student's 2013 and 2014 IEPs, Children's Services continued to provide Student individual, direct occupational therapy until July 2014, before discontinuing that therapy. Student did not contend that the occupational therapy services Student received from Children's services were inadequate to address her educational needs.

16. Student's evidence was insufficient to support the contention that District thereafter denied Student a FAPE by failing to replace the occupational therapy discontinued by Children's Services in July 2014, notwithstanding District's responsibility for providing any educationally-necessary occupational therapy not provided by Children's Services. First, Children's Services discontinued direct occupational therapy based on its determination that the services were no longer medically necessary, and Student put on no persuasive evidence that such therapy was educationally necessary. Dr. Sanger's broad opinion that Student required significant levels of occupational therapy throughout her day was not supported by any testing or observation of Student to determine her educationally-related need for occupational therapy in the school environment, or input from Student's speech and language therapist, physical therapist, or occupational therapist. Second, Student put on no evidence of when District knew, or should have known, that Children's Services had discontinued Student's occupational therapy, nor did Student challenge the timeliness of District's occupational therapy

assessment. Finally Student did not present persuasive evidence that Student required more occupational therapy support than the 45 minutes per month of consultation with Student's support staff that District included in Student's October 5, 2015 IEP. Thus, Student did not satisfy Student's burden of persuasion that District at any relevant time denied Student a FAPE by failing to provide appropriate occupational therapy.

#### ISSUES 1C, 2C, 3C, AND 4C: DISTRICT'S FAILURE TO OFFER STUDENT APPROPRIATE PHYSICAL THERAPY AND ADAPTED PHYSICAL EDUCATION SERVICES

17. Student contended that District denied Student a FAPE by failing to provide Student appropriate educationally-related physical therapy services and adapted physical education services to prevent Student from regressing in her mobility and ability to access her education. District contends that Children's Services was responsible for providing Student's physical therapy, and that Student presented no evidence that the physical therapy provided by Children's Services or offered by District in Student's October 2015 IEP, after Children's Services discontinued providing it, was inappropriate.

18. As discussed in the preceding section, District was responsible at all times for providing any educationally-necessary physical therapy occupational therapy that Children's Services did not provide.

19. Student's assessments and progress on her goals reflected in her IEP's from 2012 to 2015 show that Student made only modest progress in many aspects of gross motor skills, mobility, and coordination supported by physical therapy and adapted physical education. For example, in February 2012, Student's gross motor strength, balance, mobility, and coordination fell below age expectancy, in the sensorimotor stage that occurs in typical children 0-2 years old, with Student's highest level of performance in the 8-12 month range. Three years later in 2015, Student's gross motor skills still fell in the sensorimotor stage, with her functional level of performance

in the 1-4 month range, and scattered skills up to the 8-12 month range. Similarly, in February 2012, Student was able to roll from side lying to her back, but in 2015, Student required moderate to maximal assistance to roll left and right when lying down. In February 2013, Student could tolerate standing in a stander for 60 minutes daily while engaging in table top activities and upper extremity weight bearing while keeping her head upright in 50 percent of trial sessions on three of five trial days. However, by February 2015, Student had regressed, and her goal was to stand in her stander for 45 minutes daily while engaging in table top activities and upper extremity weight bearing while consistently keeping her head upright for more than two minutes, using verbal or touch cues to lift her head up if necessary during attempts in three of four trials on four of five days attempted.

20. While the modest nature of Student's motor skills progress is clear from the record, the reasons are not. Student presented no persuasive evidence on the question of whether Student's limited advancement was the result of inappropriate physical therapy and adapted physical education, or instead a medical consequence of her orthopedic disability that could not be reversed or significantly reduced by physical therapy or adapted physical education. Student's private physical therapist, Mr. Klem, did not testify. Dr. Sanger opined that Student would not progress without significant levels of physical therapy, including sensory integration training and neuro developmental therapy, but he did not explain these recommended therapies, nor did he state that the physical therapy and adapted therapy provided by District was inappropriate. As with the issue of occupational therapy, Dr. Sanger's opinion on level of physical therapy that Student required was medically-based rather than educationally-based, and it was not quantified. It also was not supported by any testing or observation of Student to determine her educationally-related need for physical therapy or adapted physical education in the school environment, or input from Student's speech and language therapist, physical therapist, or occupational therapist. Also, Student put on no

evidence of when District knew, or should have known, that Children's Services had discontinued Student's physical therapy, nor did Student challenge the timeliness of District's physical therapy assessment. Finally Student did not present persuasive evidence that Student required more occupational therapy support than the 30 minutes per week direct one-on-one physical therapy services that District included in Student's October 5, 2015 IEP, or more adapted physical education services than those provided for in Student's IEP's. Student did not satisfy Student's burden of persuasion that District at any relevant time denied Student a FAPE by failing to provide appropriate occupational therapy.

#### ISSUES 1D, 2D, 3D, AND 4D: DISTRICT'S FAILURE TO OFFER STUDENT APPROPRIATE SPEECH AND LANGUAGE SERVICES

21. Student contended that District failed to provide Student adequate speech and language services. Although Student's complaint alleged that District had failed to provide Student appropriate speech and language services to address Student's sensory and oral motor issues, Student at hearing presented no evidence concerning this allegation. Instead, Student's evidence on speech and language issues, including the report and testimony of Student's speech and language expert, Ms. Cottier, focused exclusively on the alleged failure of District's speech and language pathologist to provide appropriate assistive technology support and services. The issue of assistive technology has been addressed separately, above. Student did not satisfy Student's burden of persuasion that District at any relevant time denied Student a FAPE by failing to provide appropriate speech and language services.

#### ISSUES 1E & F, 2E & F, 3E & F, AND 4E & F: DISTRICT'S FAILURE TO OFFER STUDENT AN APPROPRIATE VISION ASSESSMENT AND VISION SERVICES

22. Student contended that District denied Student a FAPE by failing to offer Student a vision assessment and vision services. Student contends that District should

have suspected that Student had a vision impairment that was affecting her educational performance. District contends that District's obligation to assess Student's vision or offer Student vision services was never triggered, because there was never any reason to suspect that Student might have a vision impairment affecting her educational performance.

#### Applicable Law

23. The suspicion that a student may have an impairment that is affecting the student's educational performance, and requires special education, is sufficient to trigger a need for assessment. (See, e.g., *Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1032 ["The District is not required to assess double vision or optic nerve damage if it does not affect a child's educational needs"], citing Ed. Code, § 56320.)

#### Analysis

24. Student did not offer persuasive evidence that a District duty to conduct a vision assessment was ever triggered. Ms. Kerins' February 2012 speech and language report that noted right eye muscle weakness also noted that Student's eyes tracked well side to side and up and down. Student offered no expert or percipient testimony that Student's low score in the area of visual perception, which was consistent with her low test scores in all skills, indicated a specific vision problem. Petitioner's expert witness Ms. Cottier testified that Student's vision was a strength and that it was adequate for the purpose of utilizing the eye-tracking Tobii device. Mr. Klem's June 27, 2014 assessment report recommending that Student undergo a vision assessment was never provided to District. Student presented no expert testimony that any of the above observations or findings should have lead District to suspect that Student's vision might be impaired and affecting Student's educational performance, and required special education.

## ISSUES 1G, 2G, 3G, AND 4G: DISTRICT'S FAILURE TO OFFER STUDENT AN APPROPRIATE EDUCATIONAL PLACEMENT

25. Student contended that District failed to offer Student an appropriate educational placement. Student's counsel confirmed at hearing that Student was not objecting to Student's classroom placement in the severely disabled special day class at R.H. Dana, but instead to District's failure to provide an appropriate unique combination of facilities, personnel, location, and equipment necessary to provide Student instructional services. District contended that it provided Student an appropriate placement.

### Applicable Law

26. A specific educational placement is "that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs, as specified in the IEP, in any one or a combination of public, private, home and hospital, or residential settings." (Cal. Code Regs., tit. 5, § 3042(a).) A school district must deliver each child's FAPE in the least restrictive educational environment (LRE) appropriate to the needs of the child. (20 U.S.C. § 1412(5)(A); 34 C.F.R. § 300.114; Ed. Code, § 56342, subd. (b).)

### Analysis

27. Student's counsel expressly disavowed any claim by Student that her physical placement in the severely handicapped class R.H. Dana was not an appropriate least restrictive educational environment for Student. Student instead contended that, taken all together, the facilities, personnel, location and equipment provided to Student were not sufficient to provide instructional services to Student. Except for the failure to provide appropriate assistive technology communication equipment, addressed in Issues 1a , 2a, 3a, and 4a, above, Student offered no evidence that any of the facilities,

District personnel, location, or equipment necessary to provide the instructional services involved in Student's educational program were unqualified or unable to provide instructional services to Student. Therefore Student has failed to establish that District failed to offer Student an appropriate educational placement.

## REMEDIES

1. Student prevailed on Issues 1a, 2a, 3a, and 4a. District prevailed on all other issues. As a remedy with respect to the issues on which Student prevailed, Student requests that District be ordered to: (i) funding a follow-up private AT/AAC evaluation by Cynthia Cottier; and (ii) fund direct and consult AT services with Ms. Cottier or an alternate private clinician with equal experience and training.

## APPLICABLE LAW

2. Courts have broad equitable powers to remedy the failure of a school district to provide a FAPE to a disabled child. (20 U.S.C. § 1415(i)(1)(C)(iii); Ed. Code, § 56505, subd. (g); see *School Committee of the Town of Burlington, Massachusetts v. Dept. of Education* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996, 85 L.Ed.2d 385] (Burlington).) This broad equitable authority extends to an ALJ who hears and decides a special education administrative due process matter. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 244, n. 11 [129 S.Ct. 2484, 174 L.Ed.2d 168].)

3. When a school district fails to provide a FAPE to a student with a disability, the student is entitled to relief that is "appropriate" in light of the purposes of the IDEA. (*Burlington, supra*, 471 U.S. at p. 369-371.) A school district may be ordered to reimburse parents for the costs of placement or services that they have independently obtained for their child, or to provide the child compensatory education or additional services, when the school district has failed to provide a FAPE. (*Id*; *Student W. v. Puyallup School District* (9th Cir. 1994) 31 F. 3d 1489, 1496 (*Puyallup*).) 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. District of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524 (*Reid*), citing *Puyallup*.) 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, 401 F.3d 516, 524.)

#### ANALYSIS

4. Student prevailed on the claim that District denied Student a FAPE by failing to provide Student a Tobii or other similar eye-tracking voice output device from May 2013 to the filing of the complaint. As a result of District’s failure, Student was deprived of the opportunity to significantly improve her communication skills for more than two years. Student’s release of claims in the parties’ March 2015 Interim Settlement Agreement precludes reimbursement of the cost of Dr. Cottier’s assessment, or compensatory education for claims arising out of Student’s education through June 19, 2015. Student remains entitled to compensatory education for the period from June 20, 2015, to the filing of the complaint on September 29, 2015, a period of 16 weeks. Because the Tobii is a communication device that would have accompanied Student throughout the entire day, rather than a service of relatively short duration provided periodically it is not possible to award compensatory education on a day-by-day or hour-by-hour basis to make up for the time during which Student did not have access to the device. It is appropriate, however, to award compensatory education in the form of training for Student, Parents, staff, and providers in order to maximize the benefits of

the eye-tracking device District ultimately acquire for Student.

5. An award of 21 hours of direct and/or consult assistive technology services with Ms. Cottier or an alternate private clinician with comparable experience and training is appropriate in this instance, representing 16 hours of one-on-one training for Student in the use of the Tobii at the rate of one hour per week, plus five hours of training for Parents, staff, and providers, is reasonable. In addition, District shall be ordered to fund a follow-up private augmentative communication assessment of Student by Cynthia Cottier, for consideration by Student's IEP team at her annual IEP in 2017.

## ORDER

1. District shall reimburse Parents for Student 21 hours of direct and/or consult assistive technology services with Cynthia Cottier or an alternate private clinician with comparable experience and training and selected by Parents, with the time to be allocated by Parents for training of Student, Parents, staff, and service providers in the use of eye-tracking, voice-output communication technology utilized by Student. These hours are to be utilized over a time period not exceeding 12 months from the date of this decision. In addition, District shall provide funding for a follow-up private augmentative communication assessment of Student by Cynthia Cottier at her usual rate, in an amount not to exceed \$3,000.00, to be completed for consideration by Student's IEP team at her annual IEP in 2017.

## 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, Student prevailed on Issues 1(a), 2(a), 3(a) and 4(a). District prevailed on all other issues.

## 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).)

DATED: May 18, 2016

\_\_\_\_\_/s/\_\_\_\_\_  
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ROBERT G. MARTIN

Administrative Law Judge

Office of Administrative Hearings