

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL DISTRICT.

OAH Case No. 2018030787

DECISION

Student filed a due process hearing request with the Office of Administrative Hearings, State of California, on March 16, 2018, naming San Diego Unified School District. The matter was continued for good cause on April 18, 2018.

Administrative Law Judge Rommel P. Cruz heard this matter in San Diego, California, on May 30 and 31, and June 5 and 6, 2018.

Gabriella Torres and Paul Ingram, Attorneys at Law, represented Student. Mother attended the hearing on all days. Father attended the hearing on May 30 and 31, 2018. Student did not attend the hearing.

Sarah Orloff and Jonathan Read, Attorneys at Law, represented San Diego Unified. Brian Spry, Due Process Administrator, attended the hearing on all days on behalf of San Diego Unified.

OAH granted a continuance at the parties' request for the parties to file written closing arguments. On June 20, 2018, upon timely receipt of the written closing arguments, the record was closed and the matter was submitted for decision.

ISSUES¹

1. Did San Diego Unified deny Student a free appropriate public education by failing to provide appropriate goals in the November 9, 2017 individualized education program in the areas of:

- a. Academics and;
- b. Communication?

2. Did San Diego Unified deny Student a FAPE from May 2017 to March 16, 2018, by:

- a. Failing to offer Student typing as a related service and;
- b. Failing to provide Student the Keep It Simple Program as a related service?

3. Did San Diego Unified deny Student a FAPE from May 2017 to March 16, 2018, by denying Parents meaningful participation in the development of Student's IEP by:

- a. Failing to conduct an assessment of the Keep It Simple program of Alternative Teaching Strategies as requested by Parents and;

¹ On May 29, 2018, Student filed a Notice of Withdrawal of Allegations, withdrawing Issues 1, 2, and 3(b) and (c) in their entirety as set forth in the May 21, 2018 Order Following Prehearing Conference. In addition, Student withdrew issues related to the October 19, 2016 individualized education program. Furthermore, Student narrowed the relevant time period of the remaining issues to May 2017 to March 16, 2018. 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.) There was no consent at hearing to expand the issues for hearing. (20 U.S.C. 1415(f)(3)(B); 34 C.F.R. 300.511(d).)

- b. Failing to consider Parents' request to allow Student to type?

SUMMARY OF DECISION

This Decision holds that Student did not prove that the academic and communication goals proposed in the November 9, 2017 IEP were inappropriate. The goals were sufficiently clear, measurable, and reasonably calculated to address Student's unique needs in the areas of math, reading, and communication.

Furthermore, the evidence did not demonstrate that Student was denied a FAPE when he was not offered the Keep It Simple program or typing as related services in his IEP. The weight of the evidence established that Student did not require the Keep It Simple program or typing as related services to benefit from special education.

This Decision further holds that Student did not meet his burden of proving Parents were denied an opportunity to meaningfully participate in the development of Student's IEP. Parents made no request to include the Keep It Simple program in Student's curriculum at Hage Elementary. Parents also did not request San Diego Unified to provide Student with typing instruction as a related service. Parents were afforded an opportunity to voice their concerns regarding the November 9, 2017 IEP and San Diego Unified was receptive to Parents' input and considered their suggestions.

FACTUAL FINDINGS

1. Student was a six-year-old boy at the time of the hearing, who resided with Parents within the boundaries of San Diego Unified at all relevant times. Student was eligible for special education under the category of Autism. In addition, Student was diagnosed with speech and language disorder, hypotonia, and delayed motor coordination. Student could say a few words, but was mainly non-verbal. At the time of hearing, Student was enrolled full-time through unilateral parental placement at World Class Learning Academy.

2. Student began the 2016-2017 school year at San Diego Unified's Lafayette Elementary School as a kindergartner. Parents removed him from Lafayette Elementary after Student's behavior deteriorated and he refused to attend school. In November 2016, Parents enrolled Student at another San Diego Unified school, Hage Elementary School. Student was placed in a moderate/severe classroom with two special education teachers, one of whom was Amy Satter.

3. Ms. Satter was an education specialist for 18 years with San Diego Unified. She taught in both mild/moderate and moderate/severe classes. Ms. Satter possessed a master's degree in special education and in 2010 was board-certified by the National Board for Professional Teaching Standards as an Exceptional Needs Specialist. Ms. Satter was Student's special education teacher for the 2016-2017 and 2017-2018 school years at Hage Elementary.

4. At hearing, Ms. Satter described Student as a visual and kinesthetic learner. Student relied on visual tools, cues, and prompts to acquire new language. He enjoyed learning by doing, through a variety of opportunities that involved movement and hands-on activities. Technology played a key role in Student's education, as it provided the predictability he required to help him acquire new skills. San Diego Unified provided Student with an augmentative and alternative communication device.² His communication device consisted of an iPad which contained, among other features, word processing, word prediction, digital books, voice output, touchscreen access, access to core vocabulary, and an array of approximately 20 icons per page to support Student's communication, written language, and reading objectives. Ms. Satter used technology to springboard Student's new skills. Student would start with his

² In this Decision, the augmentative and alternative communication device used by Student will be referred to as a "communication device."

communication device to learn a skill, and then moved on to real-life scenarios to generalize the newly learned skill.

5. Ms. Satter used a form to monitor Student's progress towards each IEP goal. Included with each goal listed was a rating from 1 to 10, with 1 representing 10 percent accuracy with moderate prompting and 10 representing 100 percent accuracy with moderate prompting. There was also a page in the form that tracked the level of prompts Student needed to complete a goal. For example on December 6, 2016, Ms. Satter noted that Student responded to bids for social interaction by engaging in a reciprocal interaction by taking turns using appropriate vocalization, gestures, motor movements, or eye gaze. He completed this task with at least two different interactive partners and across two different activities with 10 percent accuracy with moderate prompting. By November 6, 2017, Ms. Satter noted Student's improvement as he could then perform the task with 80 percent accuracy with only moderate gestural or visual prompts.

OCTOBER 19, 2016 IEP

6. On October 19, 2016, an IEP team meeting was held to review Student's annual IEP. Parents and all other legally required IEP team members attended. The October 19, 2016 IEP offered 16 annual goals, three of which were in the area of communication, one in writing, one in reading, and two in mathematics.

7. The October 19, 2016 IEP provided specialized academic instruction five hours a week in the general education classroom and 25 hours a week in a separate classroom. The IEP also provided 30 hours a year of speech and language services, 16 hours a year of occupational therapy services, and 16 hours a year of adapted physical education; each service to be provided in a separate classroom. The October 19, 2016 IEP also provided services through the extended school year. San Diego Unified did not offer typing as a related service. Parents consented to the October 19, 2016 IEP.

KEEP IT SIMPLE PROGRAM

8. Gary Shkedy and Dahlia Shkedy founded Alternative Teaching Strategies, a nonpublic agency located in San Diego County. Alternative Teaching Strategies aspired to help children with autism through visual communication analysis. At hearing, Mr. Shkedy described visual communication, explaining that some students are visual learners. They think in pictures and information must be presented in a specific way for them to process and retain information. To teach children with autism using visual communication analysis, Mr. Shkedy developed a software program called Keep It Simple.

9. At Alternative Teaching Strategies, students were provided the Keep It Simple program by way of an iPad. Thousands of images were included in the program. Typing was taught using the program's various keyboards. There were a number of levels of progress in the program and a particular keyboard was used for each level. Each keyboard provided a level of assistance to the student. As the student progressed to the next level, a new keyboard was introduced that provided less assistance, with the goal of having the student type whole sentences independently when they reached the final level. The software measured and collected every interaction a student had with the iPad, such as the total time that a student worked in a session and for how long before a break was requested.

10. Students at Alternative Teaching Strategies received one-to-one instruction, in a small room with little to no décor. A schedule was written on a board. Lessons were two hours long and only restroom breaks were permitted. Students were videotaped and clips of their participation were shown to parents and made available on YouTube, a video-sharing website.

11. Parents felt the curriculum at Hage Elementary did not focus enough on Student's academics, so they had Student evaluated by Alternative Teaching Strategies

in December 2016. Student began receiving instruction at Alternative Teaching Strategies in January 2017. He attended three days a week for two hours each day, from January 2017 to January 2018. Parents stayed throughout the two-hour session and the instructor or Mr. Shkedy briefed Parents on Student's progress. Though written reports were available, none were provided to Parents and Parents made no request for them. Parents also did not obtain video clips of Student to share with San Diego Unified staff.

12. At hearing, Mr. Shkedy discussed Student's progress using the Keep It Simple program. From January 2017 to March 2017, Student could identify a letter accurately through typing five to 20 percent of the time. By December 2017, Student's accuracy improved to 35 to 50 percent. By May 2018, Student was performing at 45 to 60 percent accuracy. Mr. Shkedy also testified that Student required physical support to access the iPad keyboard when he started at Alternative Teaching Strategies; by May 2017, he had graduated to the second keyboard and no longer required hand-over-hand support to access the keyboard.

13. On May 30, 2017, Mother emailed Ms. Satter inviting her to observe Student at Alternative Teaching Strategies. Mother indicated that the staff at Alternative Teaching Strategies was willing to share Student's progress and to discuss some strategies with Ms. Satter. Mother stated in the email that the idea was to have Student typing.

14. On June 5, 2017, Ms. Satter emailed Mother expressing her interest in visiting Alternative Teaching Strategies, but she was uncertain when she would be available to do so. On June 7, 2017, and July 5, 2017, Mother emailed Ms. Satter to follow up on visiting Alternative Teaching Strategies. Student continued to attend Alternative Teaching Strategies three days a week for two hours a day during the summer of 2017.

15. On September 7, 2017, Mother emailed Ms. Satter informing Ms. Satter of

Gary and Dahlia Shkedys' interest in visiting Hage Elementary to observe Student during an academic activity. That same day, Ms. Satter replied by email, advising Mother of her intent to contact Dahlia Shkedy to schedule a visit at Alternative Teaching Strategies. Ms. Satter also stated that Ms. Shkedy could visit Ms. Satter's classroom to observe Student any time after September 18, 2017. At the time of hearing, no staff of Alternative Teaching Strategies observed Student at Hage Elementary.

16. Ms. Satter left voice messages with Ms. Shkedy on September 12, 13, and 14, 2017, to schedule her visit to Alternative Teaching Strategies. Ms. Satter testified that Alternative Teaching Strategies did not respond to her voice messages. At hearing, Mr. Shkedy explained that Alternative Teaching Strategies' used Google Voice call and voice message service, which directly linked to Ms. Shkedy's phone and generated an email with a transcription of a voice message and an audio clip of the message attached to the email. Mr. Shkedy testified that Alternative Teaching Strategies did not receive any voice messages from Ms. Satter. Mr. Shkedy explained that Alternative Teaching Strategies received hundreds of messages a day, which took time to review.

17. At hearing, Parents shared that it was their hope San Diego Unified would incorporate the Keep It Simple program in Student's curriculum at Hage Elementary. Parents wanted Student to receive an education and to strengthen his ability to communicate through typing, not simply through the selection of icons. However, Parents never shared these goals and concerns with San Diego Unified while Student was enrolled at Hage Elementary. Instead, Parents simply suggested Ms. Satter visit Alternative Teaching Strategies to observe Student's progress and to discuss strategies. Though Father spoke to Ms. Satter frequently, he made no request for the Keep It Simple program to be incorporated into Student's curriculum at Hage Elementary. Mother testified that Student was fairly happy at Hage Elementary.

MULTI-DISCIPLINARY TRIENNIAL ASSESSMENTS

18. San Diego Unified assessed Student in the areas of psychoeducation, speech and language/communication, adapted physical education, academic achievement, motor skills/sensory motor development, social/emotional/behavior skills, adaptive skills/self-help, and health as part of his triennial IEP review.

Psychoeducational Assessment Report

19. San Diego Unified school psychologist Ayako Ikeda conducted a psychoeducational assessment and prepared a report dated November 1, 2017. Ms. Ikeda conducted observations of Student and attempted to administer the Comprehensive Test of Nonverbal Intelligence – Second Edition, however, Student could not understand the verbal and nonverbal instructions and therefore, the test was discontinued. Ms. Ikeda also administered the Adaptive Behavior Assessment System – Third Edition. This assessment examined Student’s functioning in a variety of areas that included conceptual abilities, social skills, and practical skills. Ms. Ikeda opined that Student continued to meet the eligibility criteria for Autism as he displayed difficulty with verbal and nonverbal communication, social interaction, and engaged in stereotypical movements and resistance to change.

Speech and Language/Communication Assessment

20. San Diego Unified’s speech-language pathologist Heidi Kennedy conducted a speech and language/communication assessment of Student and prepared an assessment report dated November 9, 2017. Ms. Kennedy concluded that Student was transitioning from the Presymbolic Partner Stage to the Emerging Language Partner stage. She explained that students at the Presymbolic Partner Stage do not use or understand pictures, signs, or words. These students may or may not be deliberately using gestures or vocalizations to communicate. Ms. Kennedy further explained that

students at the Emerging Language Partner Stage used single words or occasional word combinations that may include spoken words, signs, pictures, or picture symbols.

21. Ms. Kennedy also opined that Student was learning to communicate for a variety of purposes. He used his body to communicate. Student requested objects by running to a particular item or activity. He pushed away items he did not want. He brought an item to an adult to request help. In addition, Ms. Kennedy found imitation to be an emerging skill for Student. She opined that imitation is the key to language and communication as it is through imitation that one learns to express oneself in accordance to conversational rules. Ms. Kennedy noted that during her assessment, Student at times required "a prompt or support to his hand" to select an icon on an iPad to respond to a question.

Occupational Therapy Assessment

22. Ms. Kercher conducted an occupational therapy assessment of Student and prepared an assessment report dated November 3, 2017. Ms. Kercher found that Student required "some assistance" to access classroom technology such as tablets, touch screens, and keyboards. Her report defined "some assistance" as the ability to perform "given some physical assistance and/or accommodations." Ms. Kercher also concluded that Student required "significant assistance" to engage in appropriate play and leisure activities by following directions and rules, sharing materials, taking turns, demonstrating sportsmanship, collaborating with others, and resolving conflict. "Significant assistance" was defined as "significant physical assistance and/or intensive training."

Health Assessment

23. School nurse Amanda Griffin conducted a health assessment of Student and prepared an assessment report dated November 1, 2017. Parents reported that

Student enjoyed going to the learning center after school. Ms. Griffin observed Student in his class at Hage Elementary and he appeared to enjoy using the iPad to play matching games, tracing letters with his finger, and identifying objects that go into a landscape.

Specialized Academic Instruction Assessment

24. Ms. Satter conducted a specialized academic instruction assessment and prepared a report dated November 4, 2017. Ms. Satter reviewed Student's educational records, considered Parents' input, conducted observations and academic assessments, and administered the Autism Language Learning Application assessment. Ms. Satter found Student to be capable of identifying letters of the alphabet with 80 percent accuracy and numbers one to 10 with 100 percent accuracy with the use of tablet applications. He enjoyed familiar learning songs and interactive games. He also learned basic reading and counting skills through regular engagement of videos. Student required assistive technology to support his communication, written language, and reading objectives. Ms. Satter opined that Student was most successful using facilitated support to help him control his movements when selecting icons to demonstrate his knowledge and communicate his wants and needs.

25. In her assessment report, Ms. Satter opined that communication was an area of weakness for Student. In her opinion, Student needed to continue developing the ability to initiate and use language for a variety of purposes such as greeting, needs, wants, and comments, using gestures, eye gaze, and the iPad communication application.

NOVEMBER 9, 2017 IEP

26. On November 5, 2017, Ms. Satter emailed Parents a draft of the proposed November 9, 2017 IEP. The IEP team meeting was scheduled for one hour and Ms. Satter

asked Parents to review the draft of the IEP to keep the meeting on schedule. Ms. Satter indicated that she would provide Parents with updated drafts of the IEP as other IEP team members submitted their assessment reports and present levels of functioning. Ms. Satter encouraged Parents to review the proposed plan and goals, and to send her their ideas, questions, and concerns.

27. The draft November 9, 2017 IEP contained proposed baselines, goals, services, and placement. Father testified that he and Mother skimmed over the draft of the IEP. At hearing, Parents explained they went into the IEP team meeting with one primary objective: to include typing as a related service added to the IEP.

28. On November 9, 2017, an IEP team meeting was held for Student's triennial IEP review. Mother, Ms. Satter, school principal and administrator James Lee, general education teacher Erin Gage, school nurse Amanda Griffin, adapted physical education teacher Brandon Cahoon, speech-language pathologist Heidi Kennedy, occupational therapist Julie Kercher, and school psychologist Ayako Ikeda attended.

Present Levels of Academic and Functional Performance

29. The IEP team discussed Student's present levels of academic and functional performance. Each assessor presented their triennial assessment report. The assessment reports were attached to the November 9, 2017 IEP. San Diego Unified invited Mother to share her thoughts, questions, and concerns regarding the assessments. Mother had no questions and expressed no concerns regarding the assessment reports at the meeting.

READING

30. Student made significant progress on his prior reading goal. He answered basic yes/no questions about familiar events. He also used his communication device and picture choice cards to answer yes/no questions as well as "what" questions.

Student's literacy skills were at the pre-kindergarten level. He identified the colors blue, yellow, red, orange, purple, green, white, pink, and black, and the shapes square, circle, and triangle with minimal auditory cues using pointing and his communication application. Student identified 80 percent of the alphabet both upper and lowercase, using tablet applications. He performed best when he referenced a song with visual supports. Student also matched a variety of letters, colors, and animals to objects and/or pictures.

31. However, Student was still developing the ability to attend to actions and words during whole group songs and rhymes with the support of physical prompts, and visual and auditory cues. He needed to improve his ability to answer "wh" and yes/no questions about a story and familiar events using his communication application. He also needed to strengthen his knowledge of letters and sounds. Furthermore, Student needed to improve his ability to communicate his knowledge of a variety of basic consonant-vowel-consonant words using his communication application. Reading was identified as an area of need.

WRITING

32. Student's writing was also an area of need. Student made partial progress on his prior writing goal, which called for him to trace or imitate simple pre-writing strokes such as a circle, +, /, or square and to trace the letters of his first name both upper and lower case. He performed writing tasks at the pre-kindergarten level. Student could use crayons, markers, and pencils to write his name or letters. He was improving his ability to trace sight words, and could do this with light physical support. Light adult support benefitted Student in slowing down his motor movements and provided him with needed stability. The support consisted of placing a finger in his writing hand to provide resistance to slow his movement.

33. Student independently grasped a stylus pen using an appropriate grasp

and trace letters on an interactive writing board. He enjoyed using his writing application to practice his pre-writing skills and using the dry eraser board and markers to write. However, Student still needed to improve his ability to trace letters of the alphabet, his name, words, and basic shapes.

MATH

34. Student met his previous math goal that called for him to count to 10 with a group of objects. He performed math at a pre-kindergarten level. He identified objects to five using music, visual cues, and his communication application with facilitated support. He demonstrated understanding of concepts involving one-to-one matching up to five, shape attributes, object puzzles, and big or little. Student matched and sorted colors and objects independently. He completed basic shape and object puzzles independently. He used a variety of Velcro matching boards to identify and match colors, numbers, and letters. However, Student needed to improve his ability to count, identify, represent, and compare using more/less/equal for numbers up to 30 using his communication device. Math was identified as an area of need.

COMMUNICATION

35. The IEP noted Student's difficulties with imitating actions, sounds, or gestures, as well as initiating and responding to bids for social interactions as these remained areas of need. He made small gains in his ability to initiate and respond to bids for social interaction. Student engaged more with the adults in the classroom than his peers. Student was usually focused on tasks during small group speech and language instruction, generally participating by pointing to a picture symbol on a card and/or using a communication program with the assistance of a teacher. His ability to stay on task improved. Student required teacher assistance to use the iPad device to greet others. Student's delays in verbal and nonverbal communication, as well as social

interaction and repetitive/restricted behaviors due to his Autism, limited his ability to communicate successfully. Communication was identified as an area of need.

36. The IEP noted parent concerns were in all areas of development – social, communication, academic, self-help, independence, and safety. At hearing, Ms. Satter testified she completed the parent concern portion of the IEP herself as a part of the draft that was provided to Parents prior to the IEP team meeting. During the IEP team meeting, Mother was asked if she wanted to make any changes to the parent concern section; Mother did not request any changes.

Annual Goals

ACADEMICS

37. In the area of academics, the IEP offered one reading goal and one math goal. Both goals designated the special education teacher to be the responsible person. No “writing” goal was proposed, but a goal in the area of motor skills/sensory motor development was offered that addressed Student’s need to improve his ability to trace letters of the alphabet, his name, words, and basic shapes. Mother did not raise any concerns at the IEP team meeting regarding the academic goals.

READING

38. The baseline for the reading goal stated that “given facilitated support,” Student navigated his communication device to create basic agent-action-object sentences to communicate his wants and needs. The baseline further read, he was “developing the ability” to express his knowledge using his communication device. He was also “developing the ability” to use flash cards and his iPad communication application to help him express what he was looking at on the card.

39. As an annual goal, Student was expected to identify and demonstrate an understanding of two to three letter consonant-vowel-consonant words by matching

words to pictures, typing the word in a text-to-speech application, and/or identifying the word using his iPad communication application. As of November 9, 2017, Student accurately performed the task only 15 percent of the time. To meet the annual goal, Student had to be 80 percent accurate in four out of five trials as measured by teacher observations and data. The goal aimed to meet California's grade level standard of decoding regularly spelled consonant-vowel-consonant words.

40. At hearing, Mother opined the baseline had little relevance. At the November 9, 2017 IEP team meeting, Ms. Satter explained that "facilitated support" meant light physical guidance with the teacher's hand under Student's hand to help him select the intended icon or item. Mother shared at hearing that Student did not need facilitated support at home. Additionally, Mother testified that Student could already understand consonant-vowel-consonant words. She opined that the goal had no benefit to Student. However, Mother did not share with the IEP team her understanding of Student's knowledge of consonant-vowel-consonant words, any concern she had about the reading goal, or that Student did not require facilitated support at home.

41. Dr. Renzi Haytasingh testified on behalf of Student at hearing. Dr. Haytasingh was a licensed educational psychologist for 17 years. He possessed a doctorate of psychology in the field of educational psychology and a post-doctoral certificate in school neuropsychology. He was board certified by the American Board of School Neuropsychology. Dr. Haytasingh was the owner of Brain Learning Psychological Corporation, which conducted school neuropsychological and psychoeducational assessments, independent educational evaluations, and mental health assessments.

42. Parents hired Dr. Haytasingh to conduct an independent psychoeducational evaluation of Student. For the evaluation, Dr. Haytasingh reviewed the October 19, 2016 IEP, the November 2017 triennial assessments, and the November 9, 2017 IEP. He also conducted assessments of Student on April 12, 2018, observed him

at Alternative Teaching Strategies on April 23, 2018, and prepared an independent educational evaluation report dated May 2, 2018.³ Dr. Haytasingh did not observe Student at Hage Elementary or contact San Diego Unified staff as part of his independent psychoeducational evaluation.

43. At hearing, Dr. Haytasingh opined that the baseline for the reading goal was unclear, as “facilitated support” could mean physical, verbal, or visual support. He also did not understand what it meant for Student to be “developing the ability” to use his device to express his knowledge. Dr. Haytasingh opined that a goal to address consonant-vowel-consonant words was a good approach to learning to read, however, there was no relationship between the baseline, which he believed to be about interacting with the iPad, and the goal, which was to address reading. Dr. Haytasingh also opined that a phonics goal should have been offered in the November 9, 2017 IEP based on San Diego Unified’s finding that Student needed to continue to develop his knowledge of letters and sounds.

44. At hearing, Ms. Satter testified that as of November 9, 2017, Student was gaining the ability to understand consonant-vowel-consonant words. She opined the goal was appropriate as it sought to move Student beyond simply identifying letters to understanding basic words.

MATH

45. The math goal’s baseline indicated that “given facilitated support,” Student used his communication device to identify and match numbers one to 10. He was “developing the ability” to match quantities but required multiple opportunities to count

³ Dr. Haytasingh’s May 2, 2018 independent psychoeducational evaluation report was admitted into evidence for purposes of remedies only.

objects. Student was “developing the ability” to count two different quantities and then describe one as more or less than the other using his communication device and the yes/no button. He counted along with his communication device using music and video.

46. The IEP’s annual math goal called for Student to use his communication device to count, identify, represent, and compare numbers up to 30 with the help of musical and visual cues. When comparing numbers, he was to determine whether the numbers were either more, less, or equal. As of November 9, 2017, Student could only accomplish the task with 15 percent accuracy. To meet the annual goal, he was expected to demonstrate this with 80 percent accuracy in four out of five trials as measured by teacher observations and data. The goal was designed to meet California’s grade level standard of rote counting up to 31.

47. At hearing, Mother testified that at the time of the IEP team meeting, Student had surpassed the baseline and could count, identify, represent, and compare numbers one to 20, with 60 to 80 percent accuracy. Mother opined that counting numbers one to 30 through the use of songs had no educational benefit to Student. However, Mother did not share her concerns regarding the math goal with San Diego Unified at the IEP team meeting.

48. At hearing, Dr. Haytasingh expressed the same concern regarding the ambiguity of the term “facilitated support.” Furthermore, he opined the goal was unclear as it did not identify the level of prompts sought to meet the goal.

49. Ms. Satter opined at hearing that the goal was appropriate and sought to help Student perform all of the number skills described in the goal with the use of only musical and visual cues, with no facilitated support. As of November 9, 2017, Student demonstrated the ability to understand numbers one to 10. The annual goal sought to increase his understanding to the number 30.

50. Student called special education teacher Jose Javier Montes Castro to

testify as to the appropriateness of the reading and math goals. Since August 2010, Mr. Montes taught students in a moderate/severe class for South Bay Union School District. From October 2004 to August 2010, Mr. Montes was a Special Education Instructional Support Autism Specialist with South Bay Union. South Bay Union School District is located in San Diego County. At the time of hearing he taught fourth, fifth, and sixth graders. Similar to Ms. Satter, developing and implementing IEP goals was a substantial part of his responsibilities as a special education teacher.

51. Mr. Montes opined that both the reading and math goals as written in the November 9, 2017 IEP were sufficiently clear and workable. Though he may have wanted to tweak the goals to his personal specifications, the goals were written in a way that was understandable. He could see where Student was at and where the goals wanted to take Student. As to the reading goal, he opined that improving Student's understanding of consonant-vowel-consonant words was a good goal. As for math, he would have wanted more clarification of what facilitated support meant and the level of prompting Student required. However, Mr. Montes did not review the entire IEP along with the attached triennial assessment reports.

COMMUNICATION

52. The November 9, 2017 IEP offered three communication goals. The special education teacher and speech-language pathologist were designated as the responsible people for each goal. Mother did not raise any concerns regarding the communication goals at the November 9, 2017 IEP team meeting.

53. As a baseline, the first communication goal noted Student was "developing the ability" to initiate language using his communication device to express basic needs such as hungry, thirsty, and bathroom. He used vocalizations to protest and was learning to imitate words. Student could say the word "go." He at times could imitate some numbers, body parts, and letters and was "developing the ability" to make

comments about learned concepts using his communication device.

54. The first communication annual goal expected Student to initiate and use language for a variety of purposes such as greetings, needs, wants, and comments using gestures, verbal approximations, and his communication device. Minimal verbal cues would be offered. To meet this goal, Student had to demonstrate 80 percent accuracy in four out of five occasions as measured by teacher observations and data. As of November 9, 2017, Student could only perform the skill with 15 percent accuracy. At hearing, Ms. Satter explained that Student at times required a teacher to prompt him to use his communication device when he wanted something; the goal aimed for Student to initiate greetings, needs, wants, and comments with minimal teacher prompts.

55. The second communication goal focused on improving Student's play skills. As a baseline, Student was "developing the ability" to imitate actions and play schemes. He could imitate movements with the help of physical prompting for three to five seconds to get him started. He required moderate physical assistance to engage in structured parallel play and turn-taking activities. As an annual goal, Student was expected to demonstrate beginning play skills by imitating movements, taking turns, and demonstrating parallel play with minimal assistance. He was required to accomplish the goal with minimal assistance in four out of five trials as measured by teacher observations and data.

56. At hearing, Ms. Satter stated that Student came to Hage Elementary with the ability to parallel play in unstructured play. The goal intended to improve Student's play skills by learning to take turns and interact with his peers during play in a more coordinated, structured play.

57. The third communication goal was designed to improve Student's ability to answer basic "wh" and yes/no questions. Given "facilitated support," the baseline indicated Student was able to answer yes/no questions about his needs and wants using

his communication device and/or the Picture Exchange Communication System. He was “developing the ability” to answer questions about familiar concepts. Student required many opportunities to answer yes/no questions throughout his entire day using both his communication device and visual cards. At hearing, Ms. Satter explained the goal was designed to improve Student’s ability to reciprocate communication.

58. As an annual goal, the November 9, 2017 IEP called for Student to answer basic “wh” and yes/no questions using verbal language, gestures, visual cards, and his iPad communication application. Familiar grade level stories, routines, and events would be used. Student had to demonstrate 80 percent accuracy in four out of five trials as measured by teacher observations and data. As of November 9, 2017, Student could accurately complete the task only 15 percent of the time.

59. At hearing, Mother expressed concerns about the communication baselines as Student had been parallel playing for years and could already say a few words such as “eat” by November 2017. She also opined that Student did not listen to stories, which made the third communication goal unworkable.

60. At hearing, Dr. Haytasingh also expressed concerns about the communication goals. He again raised concerns about the ambiguity of the phrase “developing the ability” and the term “facilitated support.” He also noted that the first communication goal did not specifically identify the targeted skill and whether Student’s ability to meet that goal could accurately be determined.

PLACEMENT, ACCOMMODATIONS, AND SERVICES

61. The November 9, 2017 IEP offered six hours daily of supplemental support in a separate classroom to support Student’s independence, safety, self-help, adaptive behavior, functional communication, emotional regulation skills, and academics. In addition, the IEP offered 30 hours a year of direct and collaborative speech and language services in either individual, small group, or large group settings. Furthermore,

the IEP offered 16 hours a year of both occupational therapy and adapted physical education services to take place in a separate classroom. Extended school year services were also offered.

62. At hearing, Ms. Satter opined that Student did not require typing as a related service. Typing was an activity that Student was provided through the use of keyboards, both virtual and stand-alone keyboards. Ms. Satter informed Mother at the November 9, 2017 IEP team meeting that Student's iPad had a QWERTY keyboard, and all tablets in her classroom had word processing capabilities with keyboards. Ms. Satter explained that though typing was not specifically taught, typing on keyboards was an activity incorporated in Student's curriculum at Hage Elementary.

63. At the November 9, 2017 IEP team meeting, Mother inquired if Student had access to typing devices and whether he was provided opportunities for typing in Ms. Satter's class. She also inquired if hands-on science experiments, such as an erupting volcano, were part of the curriculum. However, Mother did not request for Student to be provided more opportunities to type at Hage Elementary, nor did she request to include the Keep It Simple program or typing in the IEP as related services during the November 9, 2017 IEP team meeting.

64. Parents requested additional time to consider the November 9, 2017 IEP. At the time of hearing, Parents had not consented to the IEP. Student's last day of attendance at Hage Elementary was December 15, 2017.

PARENTS' UNILATERAL PLACEMENT

65. On January 3, 2018, Parents provided San Diego Unified with a 10-day notice of unilateral placement, stating their intent to unilaterally place Student in another school and seek reimbursement from San Diego Unified. Parents indicated they considered San Diego Unified's offer of placement and services for the 2017-2018 school year and extended school year and opined that Hage Elementary could not

provide Student with a FAPE.

66. In January 2018, Parents enrolled Student at World Class Learning Academy, a subsidiary of Alternative Teaching Strategies. World Class Learning Academy was a satellite homeschooling program that required a student to attend Alternative Teaching Strategies five times per week for two hours a day for academics and communication. World Class Learning Academy guided parents on the homeschooling program and provided the Keep It Simple program for their use in the home. Student spent the remainder of the school day at home where Parents were responsible for providing Student with physical education and socialization.

67. On January 5, 2018, San Diego Unified mailed Parents a written response to Parents' unilateral placement request and a Notice of Meeting to convene an IEP team meeting on January 10, 2018. That same day, Principal Lee emailed Parents, Ms. Satter, and Ms. Ikeda, with an attachment of the Notice of Meeting to convene an IEP team meeting. The purpose of the IEP team meeting was to discuss Parents' concerns.

68. On January 8, 2018, Ms. Satter followed up with Parents in an email as to whether they would attend the January 10, 2018 IEP team meeting. Parents did not respond to Ms. Satter.

69. On January 9, 2018, Mr. Lee left a voice message with Parents inquiring about their attendance to the IEP team meeting. That same day, Mr. Lee followed up the voice message with an email to Parents and other IEP team members, requesting confirmation from Parents as to whether or not they would be attending the IEP team meeting on January 10, 2018. Parents did not respond to Mr. Lee's voice message or email.

70. On January 10, 2018, San Diego Unified IEP team members met to discuss Parents' concerns regarding San Diego Unified's offer of FAPE to Student. Parents did not attend. On January 10, 2018, Ms. Satter mailed a letter to Parents advising them of

San Diego Unified's interest in discussing with them the concerns Parents had regarding the November 9, 2017 IEP.

71. On January 13, 2018, San Diego Unified mailed Parents a Notice of Meeting requesting Parents' attendance at an IEP team meeting for a proposed date of February 8, 2018. Having not heard from Parents, Ms. Satter followed up with an email to Parents on February 5, 2018, again reiterating San Diego Unified's desire to meet with them to discuss Parents' concerns and their level of consent to the November 9, 2017 IEP. Ms. Satter also noted that Student had not attended Hage Elementary since December 15, 2017, and inquired as to where Student was attending school. Parents did not respond to the request.

72. On February 8, 2018, San Diego Unified IEP team members again convened a meeting but Parents did not attend. Following the meeting that same day, Ms. Satter emailed Parents informing them of the meeting and again expressing San Diego Unified's interest to meet and discuss with Parents their concerns and level of consent to the November 9, 2017 IEP. Ms. Satter also advised them that San Diego Unified would be sending another Notice of Meeting to convene an IEP team meeting on March 22, 2018. Ms. Satter requested Parents respond to the email or call the school to confirm their attendance to the next IEP team meeting. Parents did not respond to Ms. Satter's email or call the school.

73. On February 22, 2018, Ms. Satter emailed Parents informing them that she had received notice on February 14, 2018, that Student was enrolled at the "Alternative Teaching Strategy Center." Ms. Satter indicated in her email that Student was dropped from her class and was no longer enrolled at Hage Elementary. Ms. Satter also indicated that the March 22, 2018 IEP team meeting was canceled.

74. On April 2018, Dr. Haytasingh observed Student at Alternative Teaching Strategies. He observed Student demonstrating a high degree of independence

accessing an iPad. Student required no reinforcements to remain engaged with the lesson. Student was matching consonant-vowel-consonant words, matching words to pictures, and adding single digit numbers.

75. Mr. Montes observed Student for an hour on May 30, 2018, at Alternative Teaching Strategies. He also viewed a video of Student receiving instruction at Alternative Teaching Strategies. Mr. Montes observed Student typing well from memory using two or three letters. Student was also counting, vocalizing a few numbers. Student was engaged and did not require reinforcements/rewards to remain engaged. Mr. Montes observed him to type a full sentence with the assistance of the "help" button on the Keep It Simple program.

PARENTS' EXPENDITURES

76. Parents provided proof of payment in the form of invoices and canceled checks for services to Student provided by Alternative Teaching Strategies and World Class Learning Academy. The payments totaled \$10, 920.

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA⁴

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006)⁵ et seq.; Ed. Code, § 56000 et seq.; Cal.

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

⁵ 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 FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).) In general, an individualized education program 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.)

4. 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.)

5. In *Endrew F. v. Douglas County School Dist.* (2017) 580 U.S. ____ [137 S.Ct. 988, 1000] (*Endrew F.*), the Supreme Court held that a child’s “educational program must be appropriately ambitious in light of his circumstance.” “[E]very child should have a chance to meet challenging objectives.” (*Ibid.*) *Endrew F.* explained that “[t]his standard is markedly more demanding than the ‘merely more than de minimis’ test [¶]...The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” (*Id.* at pp. 1000-1001.) However, the Supreme Court did not define a new FAPE standard in *Endrew F.*, as the Court was “[m]indful that Congress (despite several intervening amendments to the IDEA) has not materially changed the statutory definition of a FAPE

since *Rowley* was decided, we decline to interpret the FAPE provision in a manner so plainly at odds with the Court's analysis in that case." (*Id.* at p. 1001.) The Court noted that "[a]ny review of an IEP must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal." (*Id.* at p. 999 [italics in original].) The Ninth Circuit affirmed that its FAPE standard comports with *Endrew F. (E.F. v. Newport Mesa Unified School Dist.* (9th Cir. Feb. 14, 2018, No. 15-56452) __ Fed.Appx. __, 2018 WL 847744.)

6. 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).) 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 requested the hearing in this matter, and therefore Student has the burden of proof related to the issues for hearing.

ISSUES 1(A) AND 1(B): DID THE NOVEMBER 9, 2017 IEP FAIL TO PROVIDE APPROPRIATE GOALS IN THE AREAS OF ACADEMICS AND COMMUNICATION?

7. Student contends the academic and communication goals as written in the November 9, 2017 IEP were unmeasurable and unclear. In addition, Student argues the IEP's present levels of performance in the areas of academic and communication were inaccurate, unclear, and misleading. Student further contends that the term "facilitated support" and the phrase "developing the ability" to describe Student's baselines were

ambiguous, rendering the goals unmeasurable. Furthermore, Student claims that the November 9, 2017 IEP failed to offer a goal in the area of phonics. San Diego Unified contends academic and communication goals proposed in the November 9, 2017 IEP were appropriate to address Student's academic and communication needs stemming from his disability and enabled him to be involved in, and progress in, the general education curriculum.

Legal Authority

8. An IEP is a written document for each child with a disability that includes a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum. (20 U.S.C. § 1414(d)(1)(A)(i)(I); 34 C.F.R. § 300.320(a)(1); Ed. Code, § 56345, subd. (a)(1).) In developing the IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the child's education, the result of the most recent evaluation of the child, and the academic, developmental, and functional needs of the child. (20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. §§ 300.324 (a).) 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 Educ. Hearing Office* (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 School Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500.)

9. The IEP must include a statement of measurable annual goals, including academic and functional goals, designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum, and meet each of the child's other educational needs that result

from the child's disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2); Ed. Code, § 56345, subd. (a)(2).) Annual goals operate as a mechanism for determining whether the totality of the services provided pursuant to the child's IEP is appropriate to the child's unique needs. (*Letter to Hayden*, OSEP October 3, 1994.) The development of measurable annual goals is a procedural requirement under the IDEA.

10. Additionally, the IEP must contain statements of how the child's goals will be measured and the special education and related services, based on peer-reviewed research to the extent practicable, that will be provided to the student. (20 U.S.C. §1414(d)(1)(A)(i)(III), (IV); 34 C.F.R. § 300.320(a)(3), (4); Ed. Code, § 56345, subd. (a)(3), (4).) The IEP shall show a direct relationship between the present levels of performance, the goals and objectives, and the specific educational services to be provided. (Cal. Code Regs., tit. 5, § 3040.)

11. In *Rowley*, the Supreme Court recognized the importance of adherence to the procedural requirements of the IDEA. (458 U.S. at pp. 205-206.) However, a procedural error does not automatically require a finding that a FAPE was denied. A procedural violation results in a denial of FAPE only if it impedes the child's right to a FAPE, significantly impedes the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child, or causes a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).); see *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484 (*Target Range*).)

12. In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314. (*Gregory K.*)) It must be assessed in terms of what was objectively reasonable when the IEP was developed. (*Fuhrmann v. East Hanover Bd. Of Educ.*, (3rd Cir. 1993) 993 F.2d 1031 (*Fuhrmann*).) An

IEP is evaluated in light of information available at the time it was developed, and is not to be evaluated in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)

Analysis

ACADEMICS

13. The November 9, 2017 IEP's proposed academic goals in the areas of reading and mathematics were sufficiently clear, measurable, and appropriate. The goals built on the progress Student made the prior year and were designed to address Student's weaknesses in those areas. He made significant progress on the October 2016 IEP goals. He was able to use his communication device or picture choice cards to answer basic yes/no questions and "what" questions. Student could also count a group of objects up to 10. However, he needed to improve his ability to communicate his knowledge of a variety of basic consonant-vowel-consonant words using his communication device as well as to count, identify, represent, and compare numbers using more/less/equal for numbers up to 30.

14. A reading of the entire November 9, 2017 IEP clearly indicated that Student occasionally required light physical support to use his communication device. Though Mr. Shkedy testified that Student could independently access an iPad without physical support, that information was not shared with San Diego Unified for consideration prior to or during the November 9, 2017 IEP team meeting. Furthermore, neither Parents nor Mr. Shkedy observed Student perform in the classroom at Hage Elementary. Ms. Satter shared that Student still required light physical support to make selections on the iPad as of November 9, 2017, which the IEP described as "facilitated support." Ms. Satter had the greatest knowledge of Student, having worked directly with him throughout the school day for over a year. Her assessment of Student's strengths and weaknesses were reliable and accordingly, given substantial weight. Furthermore,

Ms. Satter explained to Mother at the November 9, 2017 IEP team meeting what the term “facilitated support” meant. Nonetheless, Parents made no requests before, during, or after the IEP team meeting to change the language in the IEP goals to clarify the term “facilitated support.”

15. The phrase “developing the ability” was not ambiguous. Student was “developing the ability” to use his communication device to express his knowledge and count two different quantities and describe more or less using his communication device and the “yes or no” button. The present levels of performance as described in the IEP plainly indicate Student’s skills in those areas were emerging but he had not yet acquired or mastered those skills. The term “developing the ability” was sufficiently clear.

16. The IEP noted that Student needed to continue improving his knowledge of letters and sounds. However, Student offered no evidence at hearing that alphabets and sounds were not indirectly addressed in his curriculum or why a separate, distinct goal in the area of phonics was necessary. Accordingly, Student did not establish that the absence of a separate goal in the area of phonics deprived Student of an educational benefit.

17. The annual academic goals were measurable and appropriate. The November 9, 2017 IEP indicated that Student could complete the proposed academic goals with 15 percent accuracy. The annual goals sought to improve Student’s accuracy to 80 percent in four out of five trials. Teacher observations and data were to be used to measure accuracy. Furthermore, Student did not challenge the absence of an identified writing goal or the appropriateness of the motor skills/sensory motor development goal to address Student’s need to improve his ability to trace letters of the alphabet, his name, words, and basic shapes.

18. The weight of the evidence demonstrated the academic goals as written

were sufficiently clear. Contrary to Dr. Haytasingh's conclusion, Mr. Montes, Student's other expert witness, opined the reading and math goals to be workable. He opined the goals provided an understanding of Student's academic abilities and adequately described what Student was expected to achieve academically within a year's time. Ms. Satter shared the same opinion. Mr. Montes and Ms. Satter had considerable knowledge and experience in developing, interpreting and implementing IEP goals. Accordingly, their testimony taken together was persuasive. Even assuming the baselines and goals were unclear in some aspects, the lack of clarity did not render the reading and math goals wholly flawed. The goals as written were workable, providing adequate guidance to determine the services to meet appropriate reading and math objectives.

COMMUNICATION

19 Similar to the reading and math goals, the November 9, 2017 IEP's proposed communication goals were designed to address Student's weaknesses and build on his progress over the previous year. Student needed to continue improving his ability to initiate and use language for a variety of purposes, to improve his play skills with peers, and strengthen his ability to communicate reciprocally. The communication goals as written were sufficiently clear and reflected of Student's abilities.

20. Additionally, the goals were measureable through teacher observations and data collection. At the time the annual goals were developed, Student was able to perform the goals with 15 percent accuracy. The annual goals called for Student to reach 80 percent accuracy in four out of five opportunities.

21. The November 9, 2017 IEP contained accurate present levels of academic and functional performance based on the information that was available at the time the goals were developed. San Diego Unified relied on the data Ms. Satter collected through observations and Student's classroom performance, as well as the most recent triennial evaluations. Parents did not share with San Diego Unified prior to or during the IEP team

meeting, or through the assessment process, information as to how Student was performing at home or at Alternative Teaching Strategies. Parents did not share with San Diego Unified Student's ability to count, the words he could speak, his level of parallel play, or his disinterest in stories. Ms. Satter worked with Student regularly in her classroom and her observations and interactions with Student weighed heavily in the determining the baselines and developing the annual goals. Neither Parents, Dr. Haytasingh, nor staff from Alternative Teaching Strategies observed Student perform in Ms. Satter's classroom.

22. Even assuming the November 9, 2017 IEP's present levels of performance and the annual goals were unclear or confusing and amounted to a procedural error, Student offered no evidence as to how those flaws affected Student's or Parents' substantive rights. Student offered no evidence to establish a deprivation of an educational benefit or how any ambiguity in the baselines and goals deprived Parents the ability to meaningfully participate in the development of Student's IEP.

23. The November 9, 2017 IEP's academic and communication goals were appropriately developed, and provided a mechanism to determine whether the intended outcomes for Student were being met and the totality of the services offered in the IEP were appropriate to Student's unique needs. Therefore, Student failed to meet his burden of proving that San Diego Unified denied him a FAPE by failing to offer appropriate academic and communication goals in the November 9, 2017 IEP.

ISSUES 2(A) AND 2(B): DID STUDENT REQUIRE TYPING AND THE KEEP IT SIMPLE PROGRAM AS RELATED SERVICES TO RECEIVE A FAPE?

24. Student contends that he required typing and the Keep It Simple program as related services in his IEP to benefit educationally from his instructional program. San Diego Unified contends that it offered Student placement and services reasonably calculated to allow Student to make appropriate progress in light of his unique needs.

San Diego Unified argues that Student did not require typing and the Keep It Simple program as related services to benefit from special education.

Legal Authority

25. California law defines special education as instruction designed to meet the unique needs of the pupil coupled with related services as needed to enable the pupil to benefit from instruction. (Ed. Code, § 56031.) "Related Services" include transportation and other developmental, corrective and supportive services as may be required to assist the child in benefiting from special education. (20 U.S.C. § 1401.) In California, related services are called designated instruction and services, and must be provided "as may be required to assist an individual with exceptional needs to benefit from special education" (Ed. Code, § 56363, subd. (a).)

26. An IEP need not conform to a parent's wishes to be sufficient or appropriate. (*Shaw v. Dist. of Colombia* (D.D.C. 2002) 238 F. Supp.2d 127, 139 [The IDEA does not provide for an "education ... designed according to the parent's desires," citing *Rowley, supra*, 458 U.S. at p. 207]; See *Gregory K., supra*, 811 F.2d at p. 1314.). "An 'appropriate' public education does not mean the absolutely best or 'potential-maximizing' education for the individual child." (*Gregory K., supra*, 811 F.2d at p. 1314, citing *Rowley, supra*, 458 U.S. at p. 197 n. 21, 200.) A parent's preferred placement, though better for the child, does not necessarily mean the placement proposed by a school district is inappropriate. (See *Gregory K., supra*, 811 F.2d at p. 1314.)

Analysis

27. A significant portion of Student's case at hearing focused on the benefits of the Keep It Simple program and the strategies used by Alternative Teaching Strategies. Parents wholeheartedly believed Student required the Keep It Simple program to receive an appropriate education. Student did benefit from the program. By

the time of hearing, he was independently accessing the iPad device provided by Alternative Teaching Strategies, with the ability to type whole sentences. However, the question here is not whether San Diego Unified should have offered Student a better program, but rather, whether San Diego Unified's offer of FAPE was designed to address Student's unique needs and provide him with a meaningful educational benefit.

28. The services offered in the October 6, 2016 IEP were reasonably calculated to provide Student with a meaningful educational benefit. Parents made no request to modify the October 6, 2017 IEP to include the Keep It Simple program or typing as related services. Furthermore, Parents made no requests at the start of the 2017-2018 school year and leading up to the November 9, 2017 IEP team meeting to either add the Keep It Simple program or typing as a related service. No such requests were made during the November 9, 2017 IEP team meeting, nor did Parents make any requests to change the November 9, 2017 IEP's proposed goals, services, or placement prior to Student's disenrollment from Hage Elementary in January 2018. Even if Parents were clear in their request to include typing as a related service, the weight of the evidence did not demonstrate that typing was a related service necessary for Student to benefit from special education.

29. The Keep It Simple program and typing were not related services required by Student to receive a FAPE. Student was meeting expectations set forth in his October 19, 2016 IEP in the areas of academics and communication and making reasonable progress without the need for the Keep It Simple program or typing as related services. Moreover, San Diego Unified received no additional information which demonstrated the need to change course to add those additional services in the November 9, 2017 IEP. Accordingly, Student did not meet his burden of proving that San Diego Unified denied him a FAPE by not providing him with the Keep It Simple program or typing as related services in his IEP.

ISSUES 3(A) AND (B): DID SAN DIEGO UNIFIED SIGNIFICANTLY IMPEDE PARENTS' ABILITY TO MEANINGFULLY PARTICIPATE IN THE DECISION-MAKING PROCESS REGARDING STUDENT'S IEP?

30. Student contends San Diego Unified ignored Parents' requests for San Diego Unified to visit and reach out to Alternative Teaching Strategies and to integrate typing into Student's IEP. Student argues the failure to consider these requests denied Parents the ability to meaningfully participate in the development of Student's IEP. San Diego Unified contends that Parents meaningfully participated in the development of Student's IEP. San Diego Unified claims that no specific assessments or services were requested by Parents to be added to Student's IEP. In addition, San Diego Unified argues that it involved Parents in the decision-making process at all times and offered Parents an opportunity to voice their concerns and to provide input into Student's IEP.

Legal Authority

31. Among the most important procedural safeguards are those that protect the parent's right to be involved in the development of their child's educational plan. (*Doug C. v. Hawaii Dept. of Educ.* (9th Cir. 2013) 720 F.3d 1038, 1043-1044.) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child; and the provision of a free appropriate public education to the child. (34 C.F.R. § 300.501(b); Ed. Code, § 56304, subd. (a).)

32. A school district is required to conduct, not just an IEP team meeting, but also a meaningful IEP team meeting. (*Target Range, supra*, 960 F.2d 1479, 1485; *Fuhrmann, supra*, 993 F.2d 1031, 1036.) The IEP team shall consider the concerns of the parent for enhancing the student's education and information on the student's needs provided to or by the parent. (20 U.S.C. § 1414(d)(3)(A) & (d)(4)(A)(ii); 34 C.F.R. § 300.324(a)(1)(ii) & (b)(1)(ii)(C); Ed. Code, § 56341.1, subds. (a)(2), (d)(3) & (f).) A parent

has meaningfully participated in the development of an IEP when he or she is informed of the child's problems, attends the IEP meeting, expresses disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann, supra*, 993 F.2d at p. 1036 [parent who has an opportunity to discuss an IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way].)

Analysis

33. Parents were afforded an opportunity to meaningfully participate in the decision-making process in developing Student's IEP. At no time from May 2017 to March 16, 2018, did Parents request to modify Student's IEP to add the Keep It Simple program or typing as a related service. Parents requested Ms. Satter to visit Alternative Teaching Strategies, but made no request for San Diego Unified to evaluate the Keep It Simple program or to incorporate it into Student's curriculum at Hage Elementary. In addition, though Parents inquired as to what typing opportunities were available for Student at Hage Elementary, they made no requests for Student to receive instruction in typing. Even assuming Mother's comments during the November 9, 2017 IEP team meeting could be construed as a request to include typing as a related service, San Diego Unified considered her input and determined the services as proposed in the November 9, 2017 IEP were appropriate.

34. San Diego Unified welcomed input from Parents in the development of the November 9, 2017 IEP. San Diego Unified provided Parents copies of triennial assessment reports and a draft of the November 9, 2017 IEP with proposed goals, services, and placement for their review prior to November 9, 2017 IEP team meeting. Parents were informed of Student's progress and his areas of need. Mother attended the November 9, 2017 IEP team meeting and was afforded an opportunity to express her disagreements regarding the IEP team's conclusions, and an opportunity to request

changes to the IEP. Following the November 9, 2017 IEP team meeting, San Diego Unified held two additional IEP team meetings to discuss Parents' concerns. Parents chose not to attend. At all relevant times, San Diego Unified afforded Parents an opportunity to participate in the decision-making process regarding the provision of a FAPE to Student. Therefore, Student did not prove that San Diego Unified denied him a FAPE by not assessing the Keep It Simple Program or considering Parents' request to allow Student to type.

35. In summary, Student failed to prove that the academic and communication goals offered in the November 9, 2017 IEP were inappropriate in light of the information available at the time. In addition, the evidence did not demonstrate that Student was denied a FAPE by not receiving the Keep It Simple Program and typing as related services at Hage Elementary. Furthermore, Student did not establish that Parents were denied an opportunity to meaningfully participate in the development of Student's IEP.

ORDER

All relief sought by Student is denied.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, San Diego Unified prevailed on all of the 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: July 23, 2018

/s/

ROMMEL P. CRUZ

Administrative Law Judge

Office of Administrative Hearings