

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CORONA-NORCO UNIFIED SCHOOL
DISTRICT,

v.

Parents, on behalf of STUDENT,

OAH CASE NO. 2009020286

DECISION

Carla L. Garrett, Administrative Law Judge, Office of Administrative Hearings (OAH), heard this matter on September 22, 23, 29, 30, 2009 and October 6, 2009, in Norco, California.

Rachel Disario, Attorney at Law, represented the Corona-Norco Unified School District (District). District representatives, Linda White, SELPA Administrative Director, and Jason Ramirez, Supervisor in Special Education, attended all five days of hearing.

Advocate Jim Peters represented Student (Student). Student's mother (Mother) attended all five days of hearing. Mr. Peters' assistant, Donna Kohatsu, attended the first four days of hearing.

District filed a Request for Due Process Hearing on February 9, 2009. Student's multiple requests for continuance were granted for good cause on March 9, May 1, June 3, June 29, and July 26, 2009. On October 6, 2009, at the close of hearing, the parties were granted permission to file written closing arguments by October 27, 2009. Upon receipt of the written closing arguments, the matter was submitted and the record was closed.

ISSUES

1. Did District offer Student a free and appropriate public education (FAPE) in an individualized education program (IEP) dated October 30, 2008, and, if so, may it implement the IEP without parental consent?

2. Can District conduct assessments of Student in accordance with its October 30, 2008 assessment plan without parental consent?

FACTUAL FINDINGS

Jurisdiction and Background Information

1. Student is a seventeen-year-old boy, who, at all relevant times, resided in the District, and was eligible for special education due to multiple disabilities related to Student's orthopedic impairment and limited cognitive ability. Student has been receiving special education services from this District.
2. Student was born with bilateral clubbed feet, and was also diagnosed with cerebral palsy, and right hemiparesis (i.e., weakness in sensation or motor movement on the right side of the body). Student has a history of dislocated knees and underwent surgery on his right knee in July 2005. Student also has seizure disorder and visual deficits.
3. On or about May 15, 2006, Dr. Michael T. Saito (Dr. Saito), a neurologist, prepared a one-page memorandum describing an urgent care visit concerning Student. The memorandum did not specify the purpose of the urgent care visit, but did indicate that Student had problems retaining information, sensitivity to loud noises, a high level of anxiety, difficulty with transitioning, difficulty with communication, and suffered from partial seizures. Dr. Saito stated that Student fit the DSM-IV criteria for autistic spectrum disorder, obsessive-compulsive disorder, and anxiety disorder. Dr. Saito stated that he had made a diagnosis of autism in Student, but the memorandum did not list any tests he conducted that provided the basis for his diagnosis, nor did he include any test results. Approximately one week after Dr. Saito drafted his memorandum, Mother provided District with copy of Dr. Saito's memorandum.
4. Dr. Saito prepared another one-page memorandum on or about May 17, 2006 describing a family consult visit with Mother. Dr. Saito indicated that he had given Mother a childhood autism rating scale to rate Student, but Dr. Saito neither indicated the name of the autism rating scale, nor the behaviors that Mother was required to rate. Dr. Saito indicated that Mother scored Student at 40, Father scored Student at 37.5, and that "another caregiver" had scored Student at 45, all of which, Dr. Saito concluded, fell within the severely autistic range. Dr. Saito indicated that Student fit the diagnostic criteria for autism in the DSM IV-R manual, as well as the criteria for obsessive-compulsive disorder and anxiety disorder. Within two weeks, Mother provided District with a copy of Dr. Saito's memorandum.
5. In September 2007, Student began attending the District's Eleanor Roosevelt High School (ER High School) as a tenth grader. Student attended classes in the general education setting, with the assistance of a one-on-one aide, a modified curriculum, and a grading scale.
6. On December 27, 2007, at the request of Mother, Dr. David Paltin (Dr. Paltin), a state licensed psychologist with specialty interests in the areas of child and adolescent therapy, attention disorders, developmental disorders, autism, psychological testing, and

individual and group violence prediction, conducted a psychological assessment of Student. Dr. Paltin received his bachelor's degree in psychology in 1984, his master's degree in 1988, and his doctorate in 1990. Dr. Paltin was in private practice in Hawaii from 1992 to 1997, was a psychologist and clinical training coordinator at Aspen Health Services from 1997 to 1998, was the executive director of outpatient services at Aspen Community Services from 1998 to 1999, and has been a contract psychologist at Providence Community Services from 1999 to the present. Dr. Paltin has also been in private practice from 1999 to the present. Dr. Paltin conducts approximately 10 assessments per month.

7. Dr. Paltin prepared a psychological evaluation report concerning Student in January 2008. The report noted that, prior to his assessment, Dr. Paltin reviewed Student's educational history, multidisciplinary reports from 2000 to 2002, and 2005, and observed Student in a clinic setting. Dr. Paltin spent less than two hours with Student, did not speak to any of Student's teachers, did not observe Student in his school setting, and had no contact with Student from the date of his assessment to the date of Student's next IEP meeting, October 30, 2008. Dr. Paltin observed that Student had difficulty sustaining communication with him, and demonstrated lower interpersonal perceptual sensitivity evidenced by Student's delays in responses to verbal questions and reduced responsiveness to verbal cues and gestures. Dr. Paltin also noted that there did not appear to be an association between increased eye contact during verbal communication, and Student's repetitive statements about activities.

8. Dr. Paltin administered the Test of Auditory Perceptual Skills: Upper Level (TAPS), which is a test useful in estimating an individual's auditory perceptual sensitivity and ability to cope with auditory information present in his environment. At hearing, Dr. Paltin testified that he administered the TAPS test because Student's left hemisphere of his brain was abnormal, impacting Student's communication skills and how Student interprets what and how he hears. Dr. Paltin explained that the TAPS results indicated that Student was hearing things in the way that they were said; however, Student had a hard time retaining them in his working memory. Dr. Paltin also noted that Student's scores on the TAPS indicated a mixed profile of strengths and weaknesses in auditory processing. Specifically, Student had more difficulty on tasks that involved cognitive processing prior to giving an answer, but tasks such as word discrimination and word memory resulted in higher performance. This profile suggested to Dr. Paltin that Student may not perform well on tasks that involve problems read to him or requiring logical analysis prior to finding an answer. Dr. Paltin explained that it took approximately 50 minutes for Student to complete the TAPS test, that ordinarily takes others about 30 minutes to complete.

9. Dr. Paltin also administered the Childhood Autism Rating Scale (CARS) based on his direct observations of Student. Dr. Paltin also reviewed data collected from Mother, including Dr. Saito's memorandum, and also interviewed Mother. Dr. Paltin never communicated with Dr. Saito about Dr. Saito's memorandum and diagnosis. The CARS subscales rated Student in the following areas: relating to people, imitation, emotional response, body use, object use, adaptation to change, visual response, listening response, taste, smell, and touch, fear or nervousness, verbal communication, activity level, level and

consistency of intellectual response, and general impressions. Dr. Paltin indicated that Student's scores placed him in the mildly to moderately autistic range. He noted that in comparison to behavioral reports of Student's responses to his environment, the CARS ratings were fairly consistent, suggesting that Student may be accurately described as having autistic disorder as initially diagnosed by Student's neurologist. Dr. Paltin explained that there were three primary criteria that must be met for a diagnosis of autistic disorder: (1) observation; (2) rating; and (3) historical data. Dr. Paltin indicated that these three criteria supported this diagnosis based on the following: impairment in the use and interpretation of non-verbal behavior; a lack of emotional reciprocity; delay in the development of spoken language; apparent inflexible adherence to specific nonfunctional routines; preoccupation with one or more restricted patterns of interest; and lack of varied, spontaneous play and sharing interests with others; delays in normal functioning prior to the age three years in social interaction and language as used in social communication; and ruling out alternative conditions. Based on his positive findings in the three primary criteria required for this diagnosis, Dr. Paltin concluded that his assessment supported the classification of Student as autistic, and that Student met the eligibility criteria for a student with autism.

10. In his January 2008 report, Dr. Paltin recommended the following: (1) that Student's scope of disability be broadened to include an additional diagnostic finding (i.e., autism) from Student's neurologist and Dr. Paltin's assessment; (2) that Student be provided an aide to provide multiple, supportive roles of helping him with physical barriers, as well as assisting Student with transitions between activities, emotional support, and redirection and attention support; (3) that Student's IEP include enhanced socializations and communication goals, such as listening and responding with sustained, meaningful communication; (4) that accommodations continue to be made for deficits related to cerebral palsy and auditory processing problems, such as modifications in testing time limits, activities requiring motor coordination and writing, and time required to respond to questions; (5) that Student receive a positive-oriented behavior modification plan that focused on reducing transition stress, frustration management and coping, and inclusion among regular education peers; (6) that Student continue to receive supportive devices such as an Alphasmart keyboard, or other assistive writing device; (7) and that Student receive further testing of intellectual capacity and achievement with only tests commonly used with orthopedically challenged individuals. Mother provided District with a copy of Dr. Paltin's report prior to October 2008.

11. Dr. James W. Koeppel (Dr. Koeppel), school psychologist with the District for ten years, and assigned to Student's school in July 2009, offered testimony at hearing regarding the assessment report prepared by Dr. Paltin.¹ Dr. Koeppel has a bachelor's degree in psychology, a master's degree in counseling, a doctorate in psychology, and has a school psychology credential. Dr. Koeppel has worked as a behavior specialist, a psychologist for the Orange County Department of Mental Health, an intern at a community psychiatric clinic, a clinical psychology intern with family services, a psychologist assistant, and has

¹ Dr. Koeppel also offered testimony regarding the assessments completed by school psychologist, Marla Kennedy, which will be discussed in more detail below.

been a licensed clinical psychologist since 2003. Dr. Koepfel has assessed approximately 800 students with disabilities, including approximately 100 students with cerebral palsy.

12. Dr. Koepfel explained that Dr. Paltin was premature in concluding that Student had met the eligibility requirements for autism. First, Dr. Paltin had spent only a limited amount of time with Student in a clinical setting. Second, with the exception of Student's mother, Dr. Paltin conducted no interviews of any individuals who interacted with Student, including Student's teachers. Third, Dr. Paltin conducted no observations of Student at school, or in any other setting. Fourth, Dr. Paltin only administered the CARS, which is a screening test, not a formal assessment. Dr. Koepfel explained that it is irresponsible to base an autism diagnosis on the simple administration of a screening test. When a screening test indicates autism, it is important for the examiner to conduct additional tests to help support or rule out autism. In addition, it is imperative that an examiner receive input from multiple sources of individuals who frequently interact with Student. Here, Dr. Paltin relied solely on the reports from Mother, his own limited observations in the clinical setting, and on a memorandum from a neurologist, Dr. Saito, with whom Dr. Paltin never communicated. Dr. Koepfel's testimony was persuasive in light of his extensive experience in conducting assessments on children with disabilities, his knowledge of the test protocols involved, his expertise analyzing assessment data, and his significant experience as a school psychologist.

13. On January 14, 2008, Mother received a call from Student's school indicating that Student was in nurse's office because he was upset and anxious because his one-on-one aide was not there, and because there was no substitute aide there for him. Mother concluded that Student's "illness" was a reaction to his difficulty in handling transitions well, namely adjusting to the absence of his one-on-one aide. Mother encouraged Student to stay in school and go to class.

14. On January 31, 2008, Mother received a call from the assistant principal, Tom Moskowitz (Mr. Moskowitz), advising that Student was swinging at and kicking his one-on-one aide because Student did not want to go to class. Later on in the afternoon, Mother went to the school to see if Student had calmed down, and to talk to Mr. Moskowitz about Student's behavior. Mother told Mr. Moskowitz that Student's behavior was a result of his autism, and that Student needed ABA behavioral therapy.

15. On February 1, 2008, Jason Ramirez (Mr. Ramirez), Program Specialist for the Department of Special Education, sent Student's parents (Parents) a letter. He advised that Student's triennial review was approaching, and that District wished to conduct assessments on Student to determine Student's current levels of functioning. Mr. Ramirez enclosed an assessment plan with his letter. Specifically, District wished to conduct assessments to measure Student's academic and pre-academic achievement, cognitive development and learning ability, motor development, speech and language development, social, emotional, and behavioral development, self-help and adaptive skills, health and medical development, and career and vocational development. The assessment plan also indicated that the school's psychologist would conduct a records review, and that the

psychologist, general education teacher, and special education teacher would conduct interviews, and observations of Student. In addition, the assessment plan indicated that the assessments would be conducted in Student's native language or mode of communication, and that the assessments would be selected and administered so as not to be racially, culturally, or sexually discriminatory.

16. On the morning of March 10, 2008, Student had a tantrum at home that involved pounding and kicking his chair. Student continued his tantrum when Mother took him to school. Mother took Student back home, returning him to school later on that morning after Student had calmed down.

17. On April 14, 2008, Student telephoned Mother three times from school indicating he was feeling dizzy. Mother picked Student up from school and learned that Student's one-on-one aide was not there, and there was no substitute aide for Student. Mother again concluded that Student's "illness" was a reaction to his difficulty in handling transitions well, namely adjusting to the absence of his one-on-one aide.

18. On May 1, 2008, Mother signed the assessment plan.

19. On May 14, 2008, Mother received a call from the secretary of the assistant principal. She reported that Student was highly frustrated and aggressive toward his one-on-one aide. Specifically, Student had gotten angry with a student in his physical education class who Student believed was on a machine for too long, and directed his anger on his one-on-one aide. The secretary told Mother that Student should spend the rest of the day at home.

20. On May 16, 2008, Mother and Student went to see the assistant principal, Mr. Moskowitz, to advise that Student no longer wanted to be in the physical education class. When Mr. Moskowitz did not want to remove Student from the class, Student had a "meltdown" in his office, yelling, kicking, and pounding his wheelchair. Mother again advised Mr. Moskowitz that Student needed ABA behavioral therapy.

21. On May 23, 2008, Mr. Ramirez sent Student's parents (Parents) a letter with an enclosed amended assessment plan. Specifically, the amended assessment plan, which consisted of a copy of the assessment plan previously signed by Mother on May 1, 2008, with handwritten notations indicating that an assistive technology assessment would be conducted by the District's assistive technology specialist. At hearing, Mr. Ramirez explained that he had inadvertently failed to include an assistive technology assessment in the initial assessment plan dated February 1, 2008. Mr. Ramirez highlighted the handwritten notations, and asked Parents to initial the highlighted areas, and return the newly initialed amended assessment plan to him. Parents did not initial or return the amended assessment plan.

22. On June 4, 2008, the District's adaptive physical education specialist, Gregory M. Bellinder (Mr. Bellinder), conducted an adapted physical education assessment and prepared a report on June 6, 2008. Mr. Bellinder conducted a Kounas Assessment of Limited Mobility Students (KALMS (R)), which was designed to measure the functional motor skills of students with orthopedic disabilities in order to determine an appropriate instructional program for such students. Mr. Bellinder measured Student's electric wheelchair mobility, body awareness, unilateral and bilateral motor skills, upper-limb coordination, and lower-limb coordination. The assessment revealed that Student's orthopedic impairment limited his mobility, which affected Student's participation in general physical education, especially in the area of cardiorespiratory fitness. Mr. Bellinder found that Student continued to qualify for adapted physical education services, and reported that Student could benefit from upper body aerobic work, such as using a tabletop hand cycle or ergometer.

23. On June 6, 2008, District's school psychologist, Marla Kennady (Ms. Kennady), prepared a multi-disciplinary report setting forth her assessments results. The report indicated that Ms. Kennady made multiple attempts to contact Parents to gather input for the purposes of the assessment, but did not receive a response. Consequently, Parents did not complete any standardized surveys in the assessment process. Ms. Kennady reviewed previous records concerning Student in order to learn the history of Student's medical issues. Ms. Kennady also reviewed previous assessment results dating back to 1995. She noted that the previous assessments revealed that Student had a history of deficits in adaptive behavior skills, as well as decreased cognitive functioning after 2000. In addition to reviewing Student's records, Ms. Kennady: (1) performed the Wechsler Intelligence Scale for Children Fourth Edition (WISC-IV); (2) performed the Kauffman Assessment Battery for Children Second Edition (KABC-II); (3) performed the Wechsler Individual Achievement Test Second Edition (WIAT-II); (4) performed the Gilliam Autism Rating Scale-Second Edition (GARS-2); (5) performed the Vineland Adaptive Behavior Scales Second Edition-Teacher Survey (Vineland-II); (6) performed the Behavioral Assessment System for Children Second Edition (BASC-2); (7) received input from Student's teachers; (8) observed Student; and (9) interviewed Student.

24. Ms. Kennady administered the standardized WISC-IV to assess Student's intellectual functioning in the areas of verbal comprehension, perceptual reasoning, working memory, processing speed, and overall intellectual functioning. Ms. Kennady found that Student's verbal reasoning abilities, nonverbal reasoning abilities, ability to sustain attention, concentrate, exert mental control, and ability in processing simple or routine visual material without making errors were in the well below average range.

25. Ms. Kennady administered the KABC-II to measure Student's processing and cognitive abilities, and found that Student's mental processing, sequential processing, simultaneous processing, planning ability, and knowledge were in the well below average range. His performance in the area of learning ability was in the below average range. Ms. Kennady found that the overall results from the KABC-II, as well as from the WISC-IV, indicated that Student's estimated cognitive abilities fell within the mental retardation range.

26. In order to measure Student's academic performance, Ms. Kennady administered the WIAT-II. In the area of reading, Student scored in the well below average range, as determined by the WIAT-II subtests of pseudoword decoding, word reading, and reading comprehension, which measured Student's skills in phonemic awareness, decoding, blending sounds, sight word recognition, and his ability to identify key ideas in reading passages and from answering questions. Student was able to read monosyllabic sight words, and a few multi-syllabic sight words. Student was also able to read short sentences with pictorials, but was unable to apply decoding skills to sound out unfamiliar words, and was unable to comprehend reading material that was beyond one or two short sentences, or that did not include pictures. Student also scored in the well below average range in spelling. Ms. Kennady could not assess Student's written expression, as Student produced illegible sentences, and did not follow the directions provided by her, indicating, in Ms. Kennady's opinion, a lack of understanding of the exercise. In the area of mathematics, Student performed in the well below average range. Student was able to add, subtract, add with regrouping, and read simple pictorial graphs. Student was not able to solve word problems or problems involving subtracting with regrouping, multiplication, division, measurement, telling, or bar graphs.

27. Ms. Kennady assessed Student's adaptive behavior functioning by administering the GARS-2, which was a survey completed by Student's teachers to provide data to help answer the question, "How likely is it that student is autistic?" Ms. Kennady administered the GARS-2 to Student's science and language arts teachers to assess Student's observable behaviors at school. The science teacher rated Student as unlikely of having autism, and the language arts teacher rated Student as possibly having autism. The language arts teacher rated Student highest in demonstrating autistic-like behaviors in the area of communication. Ms. Kennady explained that it should be noted that one of the responses of the language arts teacher was that Student frequently whirls and turns in circles. Ms. Kennady observed that Student did this in his wheelchair, and concluded that this behavior was not a repetitive motor action. Ms. Kennady also indicated that the language arts teacher reported that Student frequently laughed, cried, or giggled inappropriately, but did not report that Student engaged in any other behaviors on a frequent basis. The language arts teacher rated Student highest in demonstrating autistic-like behaviors in the area of communication, but Ms. Kennady noted that Student currently received speech and language services because of his language deficits.

28. Ms. Kennady also assessed Student's adaptive behavior functioning by administering the Vineland-II to Student's math teacher, Mr. Cabal. The Vineland-II determined an estimate of Student's present levels of performance in adaptive behavior skills in the areas of communication, daily living skills, and socialization. Mr. Cabal rated Student's communication and daily living skills in the low range, and rated Student's socialization in the adequate range. Mr. Cabal indicated that Student's efforts to socialize with his peers was one of his strengths, however, Mr. Cabal rated Student's overall adaptive behavior in the moderately low range, indicating that Student demonstrated significant adaptive behavior skills deficits.

29. Ms. Kennady assessed Student's social-emotional functioning by administering the BASC-2 to Student's world history teacher. The world history teacher rated Student within the at-risk range in attention problems, learning problems, leadership skills, study skills, and functional communication. Ms. Kennady's report indicated that Mr. Singleton's ratings supported other teacher observations that Student demonstrated difficulties in his ability to communicate and struggled academically within the general education setting.

30. Ms. Kennady gathered information from two of Student's teachers regarding his performance in the classroom. Student's career transitions teacher indicated that he adjusted Student's curriculum, and with the help of Student's one-on-one aide, Student has done well in his class. At the time of Ms. Kennady's report, Student's current grade in the career transitions class was a B. Student's natural science teacher indicated that Student struggled with the modified curriculum, that Student's writing was illegible, and that Student did not retain much of the material from the natural science class.

31. Ms. Kennady stated in her report that the overall assessment results indicated that Student's estimated cognitive abilities fell well below average, that Student demonstrated difficulties with his communication skills, with his ability to function independently within the school environment, and with his academic skills. Ms. Kennady also indicated that Student demonstrated a relative strength in his efforts to socialize and interact with peers within the school environment. Ms. Kennady concluded that Student met the eligibility criteria for orthopedic impairment and mental retardation, and Student continued to qualify for special education services. Ms. Kennady indicated that Student's cognitive deficits had the most impact on his ability to access the general education setting. Ms. Kennady recommended that Student's placement be changed to a setting where Student could learn more basic, practical skills, an alternative curriculum, increased independence navigating on campus, and life skills for functioning within the community. At the time of the assessment, Ms. Kennady had approximately three years experience as a school psychologist. Ms. Kennady left the employ of the District prior to the 2008-2009 school year.

32. Dr. Koeppel offered testimony at hearing regarding the assessment report prepared by Ms. Kennady. Dr. Koeppel consulted with Ms. Kennady about her report, and noted that Ms. Kennady reviewed Student's records dating back to 1995, conducted her own assessments, conducted her own observations, conducted interviews of Student, and teachers, and administered standardized assessments. In reference to the two cognitive assessments administered by Ms. Kennady, namely the WISC-IV and the KABC-II, the results indicated that Student scored within the range of mental retardation. In reference to Student's academic achievement, Dr. Koeppel noted that Ms. Kennady administered the WIAT-II, reviewed prior assessments and teacher reports, conducted her own observation, and found that Student performed well below average. Dr. Koeppel also noted that Ms. Kennady administered two assessments that looked at autism, namely the GARS-2 and the Vineland-II. The scores on the GARS-2 indicated that autism was not probable. On the Vineland-II, Dr. Koeppel explained that a child with autism would have scored lowest in the areas of

social skills and language skills. Student scored in the low average range for social skills, and his language skills were Student's second highest scores. Dr. Koeppel concluded that Student's scores in these areas were too high for someone with autism. Dr. Koeppel agreed with Ms. Kennady's recommendation that the assessment results indicated that Student met the eligibility criteria for orthopedic impairment and mental retardation, and agreed that Student's mental retardation had the most impact on Student's ability to access the general education setting. Dr. Koeppel was a knowledgeable, credible witness with extensive expertise in assessment data, particularly those related to academic achievement, cognitive development, learning ability, social and emotional behavioral development, and adaptive behavior functioning.

33. During the first session of summer school following Student's tenth grade year (summer 2008), Student had a tantrum in the office of the acting principal. Student was crying, sticking out his tongue, and pounding his wheelchair, because he was upset about changing classes. Student's tantrum lasted approximately 45 minutes.

34. On September 3, 2008, Dr. Tim Mackey (Dr. Mackey) of the Pediatric Medical Group of Riverside prepared a half-page letter indicating that he had been Student's pediatrician since Student was 18 months old. Dr. Mackey also stated that Student had undergone psychological assessments in 2006 and 2007 by two independent psychologists, and that both had concluded that Student had atypical autism in the mild to moderate range. Dr. Mackey did not mention the names of the two independent psychologists, the tests they performed, or the results from the tests. Dr. Mackey also stated that the diagnosis of autism was also supported by a neurology evaluation in 2006, but did not mention the name of the neurologist, the tests the neurologist performed, or the results from the tests. Dr. Mackey concurred with the diagnosis of autism, but did not set forth the basis of his diagnosis, the tests he performed, or the results of the tests he performed. Dr. Mackey recommended that all available educational and other services be enlisted at both home and at school. Dr. Mackey completed an undated prescription form for Student recommending that Student receive ABA behavioral services at home and at school for autistic behavior. Mother could not recall whether she provided District with a copy of Dr. Mackey's September 3, 2008 letter, and a copy of the undated prescription form.

35. On September 4, 2008 and September 18, 2008, Mr. Ramirez sent letters to Parents in an effort to schedule an IEP meeting to discuss Student's assessment results. However, Parents did not respond.

36. On September 8 and 19, 2008, District's occupational therapist, Tracey Bonafede (Ms. Bonafede), conducted a school-based occupational therapy assessment of Student, and prepared a report on September 22, 2008. Ms. Bonafede observed Student's school related self-care tasks, and noted that Student's one-on-one aide assisted Student with his self-care needs. Ms. Bonafede learned that Student did not toilet at school, because he could not bear weight on his right knee without a brace. Ms. Bonafede also noted that Student utilized the desks in the classroom, but was not able to pull his wheelchair close, resulting in Student leaning forward to reach the desktop during writing tasks. In regard to

play and social interactions, Ms. Bonafede noted that Student was sociable and polite to peers, his aide, and to the teaching staff. Ms. Bonafede assessed Student's gross motor skills and noted that Student presented with fair strength and normal range of motion in his left upper extremity, but exhibited hemiparesis and contractures in his right upper extremity and in his right knee. In regard to fine motor skills, Ms. Bonafede noted that Student was able to manipulate a small pegboard and clothespins with his left hand, but exhibited decreased function and sensation in his right upper extremity. In regard to visual-motor skills, Ms. Bonafede tested Student using the VMI, and noted that Student scored below average, and very low, in the areas of visual perception and motor coordination, respectively. Ms. Bonafede also administered the Wide Range Assessment of Visual Motor Abilities (VRAVMA), which is an assessment of three aspects of visual motor functioning, including drawing for motor ability, matching for visual spatial ability, and pegboard for fine motor ability. Ms. Bonafede found that Student could complete the test with his left hand, but could not do so with his right hand. In regard to sensory processing skills, Ms. Bonafede indicated that she did not witness any severe sensory issues during her evaluation. Ms. Bonafede recommended that Student receive occupational therapy to address Student's seating posture, toileting, and right hand function.

37. At the time of hearing, Ms. Bonafede was no longer employed with District. Licensed occupational therapist, Nicole Nickolai (Ms. Nickolai), offered expert testimony at hearing regarding the occupational therapy assessment report prepared by Ms. Bonafede. Ms. Nickolai spoke with Ms. Bonafede about her report to make sure she understood everything in Ms. Bonafede's report. Ms. Nickolai, who had been working for District on a contract basis since February 2009, after receiving her master's degree in December 2008, is a licensed occupational therapist. She has provided services to individuals with cerebral palsy, both children and adults. As a District contractor, Ms. Nickolai observes, assesses, treats, writes goals, and attends IEP meetings for students. Ms. Nickolai never met Student, but reviewed Ms. Bonafede's assessment report, and understood that Student was an individual with cerebral palsy, right arm hemiparesis, was mobile in his wheelchair, and could move his upper body. Ms. Nickolai also explained that Ms. Bonafede had appropriately assessed Student's gross motor skills, finding that Student had full range of motion and good strength on his left side, but had difficulty with his right side. Ms. Nickolai noted that Student was only able to bend his right arm 110 degrees, as opposed to the normal bend of 150 degrees. Ms. Nickolai also explained that Ms. Bonafede appropriately assessed Student's school-related self-care tasks, play and social interactions, fine motor skills, visual motor skills, sensory processing skills, and agreed with Ms. Bonafede's recommendation that Student should receive occupational therapy. Ms. Nickolai's testimony was persuasive in light of her knowledge about the testing procedures involved in testing individuals with suspected occupational therapy needs, and the implications of assessment results.

38. On September 19, 2008, District, with the assistance of its school nurse and Student's father, prepared a health action plan outlining Student's medical history and current medications. The health action plan noted that Student had impaired physical mobility related to a neuromuscular condition, a potential for physical injury related to impaired physical mobility, an alteration in visual perception requiring Student to wear

glasses, and a potential for seizure activity requiring anti-seizure medication. The report indicated that Student's glasses were at his home.

39. On September 21, 2008, Kenneth Mitchell (Mr. Mitchell), school psychologist, prepared a supplemental psycho-educational assessment. Because Ms. Kennady had left the employ of the District, Mr. Mitchell wanted to become familiar with Student, his current functioning, and educational needs. Mr. Mitchell reviewed Student's records and recent test data, observed Student, and interviewed Student and his one-on-one aide. During Mr. Mitchell's interview of Student, Mr. Mitchell noted that Student showed the ability to retain some information, but that the responses Student gave to posed questions indicated that Student was either not able to comprehend the question, or did not have the ability to retrieve the correct response. Mr. Mitchell's interview of Student's one-on-one aide revealed that Student's strength was that he was very social and liked to greet and shake hands with students as they walked by. However, Student struggled in class, even with assistance and modifications.

40. Mr. Mitchell observed Student twice during science class. During the first observation, Student attended lecture and was then tested on the information. Mr. Mitchell noted that Student was on task approximately 50 percent of the time, and that most of his on-task behavior occurred during testing. Most of Student's off-task behavior occurred during lecture. For example, during lecture, Student was turned around in his wheelchair saying hello to a student who had walked by, and shaking hands with his aide and laughing. During the second observation, Mr. Mitchell noted that Student was on task for more than 65 percent of the observation.

41. Mr. Mitchell agreed with Ms. Kennady's assessments, and concluded that even with accommodations and modifications, Student's cognitive skills negatively affected his ability to read modified material, to remember relevant information long enough to be tested on it, and to perform well on tests even with a note taker and an open book. Mr. Mitchell concluded that Student met formal eligibility criteria for the identification of a student with multiple disabilities.

42. On September 30, 2008, District's speech and language pathologist, Eileen Flint (Ms. Flint), prepared a report regarding her assessment of Student. Ms. Flint, who testified at hearing, has been a speech and language pathologist since 2007, and, prior to that, had been a special education teacher with the District since 1991. She received her bachelor's degree in speech pathology, her master's degree in communicative disorders, and is a credentialed teacher. At the time of hearing, Ms. Flint had been working with Student for approximately 18 months, individually and in a group, for speech and language therapy services.

43. In her report, Ms. Flint indicated that Student had been receiving speech therapy services since March 2000 for delays in language and articulation, and that, at the time of the assessment, Student continued to manifest severe delays in receptive and expressive language. In preparation for the assessment, Ms. Flint reviewed prior

assessments, testing data dating back to 2005, and reviewed prior speech evaluations. Ms. Flint observed Student in his language arts and science classes, and noted that the tasks presented to Student were very difficult for Student to complete, even with a one-on-one aide. Ms. Flint conducted assessments in the following areas: (1) language; (2) social communication and functional language; (3) voice; (4) fluency; and (5) articulation.

44. In regard to language, Ms. Flint performed the Receptive One Word Picture Vocabulary Test – 2000 (ROWPVT-2000), the ROWPVT-2000 (Spanish Bilingual Edition), the Expressive One Word Picture Vocabulary Test – 2000 (EOWPVT-2000), and the EOWPVT (Spanish Bilingual Edition). On the ROWPVT-2000 and the ROWPVT (Spanish Bilingual Edition), Student's receptive vocabulary skills were at the age equivalent of eight years and five months. On the EOWPVT-2000 and the EOWPVT-2000 (Spanish Bilingual Edition), Student's expressive vocabulary skills were at the age equivalent of seven years and eight months. These results indicated that Student's vocabulary skills were severely delayed, and that Student had word retrieval difficulties that affected his speaking vocabulary.

45. Ms. Flint also administered the Test of Language Development (Third Edition) (TOLD-1:3) to measure language skills in the areas of overall spoken language, semantics, syntax, listening, and speaking. Student scored in the poor to very poor range, the age equivalent of a seven-year-old. However, Student's grammatical comprehension scores placed him in the average range, the age equivalent of nine years, three months. Ms. Flint also administered the Comprehensive Assessment of Spoken Language (CASL) to assess Student's oral language skills, and noted that Student scored poorly in all subtests administered (i.e., antonyms, synonyms, sentence completion, syntax construction, grammatical morphemes, nonliteral language, grammatical judgment, meaning from context, and pragmatic judgment). Ms. Flint also noted that Student displayed noticeable difficulties with the language areas of syntax, morphology, semantics, and figurative language.

46. In the area of social communication and functional language, Ms. Flint noted that Student was a social individual, who could participate in a limited way in conversations among other students. In the area of voice, Ms. Flint noted that Student's vocal pitch, quality, and loudness were appropriate for his age and gender. In the area of fluency, Ms. Flint noted no errors. Finally, in the area of articulation, Ms. Flint indicated that Student's articulation skills during conversational speech revealed no errors.

47. Ms. Flint concluded that based on her assessments and observations of Student, Student met specific eligibility criteria for speech and language impairment in the area of vocabulary, syntax, and morphology. Ms. Flint also concluded that, overall, Student's comprehension of spoken language and verbal expressive skills were severely delayed, and that Student's processing difficulties interfered with Student's progress in the core subjects of his general education curriculum. Ms. Flint recommended to the IEP team the need for continued speech and language intervention to improve Student's receptive and expressive learning skills in the areas of syntax, morphology, semantics, and vocabulary.

48. On September 30, 2008, District notified Parents that an IEP team meeting was scheduled for October 30, 2008 to discuss: Student's annual review of progress, individual transition planning, three year review, and a possible change in placement. Mother confirmed her attendance on October 2, 2008.

49. On October 27, 2008, Sara Jones (Ms. Jones), a licensed speech-language pathologist with the Speech and Language Development Center (SLDC) in Buena Park, California, prepared an annual pupil progress report of speech language pathology services regarding Student. Ms. Jones, who provided testimony at hearing, has been a licensed speech pathologist for 30 years. Ms. Jones noted that Student had been receiving speech and language services at SLDC since June 5, 2008, where he had been seen one hour per week in a small group setting to address Student's social communication skills. In regard to language comprehension, Ms. Jones indicated that Student had difficulties in comprehension that impacted his interaction and overall functional communication skills. Ms. Jones indicated that Student exhibited delays in response time particularly when auditory input was presented in complex sentences, had difficulty integrating auditory stimuli, and applied literal interpretations to figurative language. In regard to expressive language, Ms. Jones noted that Student was verbal and used concrete sentence structures and morphological markers. However, Student was only able to verbalize one to two aspects of an event when retelling a personal experience. Student's communication lacked sequential continuity, and he required question prompts and visual cues to provide the listener with additional information. In regard to pragmatics, Student responded to greetings, leave takings, and made brief comments, however his success was hindered by difficulties in sustaining an interaction. Student would respond to questions, but, unless prompted and cued, typically would not ask questions to gain new information. Additionally, Student could not recognize when communication would break down, and lacked the strategies to repair and restore the communication. Finally, Ms. Jones noted that Student was able to identify basic emotions reflected in facial expressions, but had difficulty determining the cause of the emotion. Student demonstrated difficulty determining another person's perspective and how his own demeanor, behaviors, and communication style affected others. Ms. Jones recommended that Student continue to receive weekly speech and language services, both individually and in group sessions, not only to address specific receptive and expressive language deficits, but to also address Student's significant social communication needs, and his need for repetition.

50. On October 27, 2008, Student was given the Wide Range Achievement Test 3 (WRAT-3) to assess word recognition, math skills, and language arts. The WRAT-3 was given by case carrier, Paul Falsone (Mr. Falsone), and special day class teacher, Scott Morgan. Mr. Falsone had 21 years experience as a special education teacher in the District. In the areas of reading and spelling, Student performed on a second grade level. In the area of math, Student performed on a third grade level. On the math section, Student could add and subtract one digit numbers, but encountered difficulty when the numbers were larger, when there were more math columns, or when dealing with problems requiring multiplication or division. Student also encountered difficulty working with fractions, mixed numbers, and conversions. Also, Student had problems using a calculator, as he did not know what information to input into the calculator to arrive at an answer to a math problem.

51. Mr. Falsone also administered some informal assessments. Specifically, Mr. Falsone dictated seven sentences, consisting, on average, of five words per sentence, and asked Student to write down each sentence dictated by Mr. Falsone. Student got four of the sentences correct. In addition, Mr. Falsone asked Student to make change with coins, and found that Student encountered difficulty when attempting to determine the value of nickels, dimes, and quarters. Also, Mr. Falsone asked Student to recite sight vocabulary words from a Dolch First Grade Sight Vocabulary list, and scored 90 percent, scored 74 percent when administered the Dolch Second Grade Sight Vocabulary list, scored 78 percent when administered the Dolch Third Grade Sight Vocabulary list, and scored 69 percent when administered Dolch words for fourth grade. Finally, Mr. Falsone tested Student's performance on a laptop computer by measuring how long it would take Student to type 24 words. Student typed the 24 words in 211 seconds.

52. District provided copies of all assessments to Parents in mid-October 2008.

October 30, 2008 IEP Meeting

53. The IEP team consisted of the following members: (1) program specialist, Mr. Ramirez; (2) school psychologist, Mr. Mitchell; (3) speech and language pathologist, Ms. Flint; (4) Darren Kelly, workability/transition instructor; (5) adaptive physical education specialist, Mr. Bellinder; (6) Trevor Painton, assistant principal; (7) occupational therapist, Ms. Bonafede; (8) Debra Welch, registered school nurse; (9) John Smith, math teacher (general education); (10) Scott Morgan, special day class teacher; (11) Ms. Jones from the Speech and Language Development Center (via telephone); (12) Trish Pfeiffer from the Speech and Language Development Center (via telephone); (13) Melissa Hatch, attorney for District; (14) Jim Peters, Student's Advocate²; (15) Donna Kohatsu, assistant to Mr. Peters and to Mother; and (16) Mother. Mother declined to have Student present at the IEP meeting, except when the IEP team developed Student's Individual Transition Plan.

54. The IEP team reviewed and discussed all of the assessments recently conducted on Student. Mr. Mitchell presented the multi-disciplinary report completed by Ms. Kennady on June 6, 2008, as Ms. Kennady no longer worked for the District. Mr. Mitchell also presented his supplemental psycho-educational assessment. Ms. Flint presented the speech and language assessment report she completed on September 30, 2008. District registered nurse, Debra Welch, presented the health action plan dated September 19, 2008. Ms. Bonafede presented the occupational therapy assessment dated September 22, 2008. Mr. Bellinger presented the adaptive physical education report dated June 6, 2008, and the workability-vocational resource specialist presented results from a "Careers for Me – SN" assessment dated October 28, 2008. Special day class teacher, Mr. Morgan, presented the assessment results from the WRAT-3 and Mr. Falsone's informal assessments. The IEP team asked Mother if she had any questions, comments, or concerns about the assessments performed or the results of the assessments, to which Mother stated that she did not.

² Mr. Peters participated by telephone for approximately 10 minutes.

55. The Speech and Language Development Center (SLDC) presented, via telephone, the October 27, 2008 annual pupil progress report and recommended that Student receive from SLDC 60 minutes per week of group therapy, and 30 minutes per week of individual therapy at SLDC. The IEP team asked Mother if she had any questions, comments, or concerns about the assessment performed by SLDC, to which Mother stated that she did not.

56. As reflected in the IEP document, the IEP team discussed Student's present levels of performance. Mr. Falsone set forth Student's present levels of performance in the following areas: (1) reading, where he summarized the psycho-educational supplemental assessment completed by Mr. Mitchell, as well as Student's results on the WRAT-3; (2) math, summarizing the multi-disciplinary report completed by Ms. Kennady, as well as Student's WRAT-3 assessment results; (3) written expression, summarizing the assessment he conducted on October 27, 2008, indicating that Student's grammatical accuracy was approximately 25 percent; (4) language, communication, and speech, indicating that Student was able to express basic wants and needs with about 85 percent accuracy; (5) social behavior, summarizing the multi-disciplinary report dated June 6, 2008, noting that Student's socialization skills were an area of strength; (6) physical skills, indicating that Student had sufficient strength to perform educational tasks, but that he had impaired physical mobility related to his neuro-muscular condition and surgery; (7) self-help, functional, and independent skills, and activities of daily living, indicating that Student could dress himself, and could perform and maintain hygiene; (8) prevocational, vocational, career, exploratory information, and work experience, indicating that Student visited the school library, that Student's homeroom class provided a plethora of prevocational and vocational topics, and that Student created daily, weekly, and monthly goals in his school planner; (9) vision and hearing, indicating that Student required glasses, and that his hearing was normal; (10) attendance, indicating that Student had attended school on a consistent basis; and (11) Student's strengths, indicating that Student appeared to be a happy young man who enjoyed coming to school and interacting with his peers and staff.

57. Speech and language pathologist, Ms. Flint, presented Student's present levels of performance in the area of language, communication, and speech, indicating that Student manifested severe delays in the areas of language. Adaptive physical education specialist, Mr. Bellinger, presented Student's present levels of learning in the area of physical skills, indicating that Student's increased dependency on his electric wheelchair and consequent decrease in his level of physical activity were areas of concern as it related to Student's cardiorespiratory fitness. Occupational therapist, Ms. Bonafede, who also authored Student's present levels of performance in the area of physical skills, noted that Student had fair strength and normal range of motion in his left hand, but exhibited right hemiparesis and contractures which affected his bilateral hand skills. Student was not on track to graduate with his class, and had not passed the exit exam. District believed Student would need to attend school within the District until the age of 22, and even then, was not optimistic that Student would be able to meet the requirements to earn a diploma. The IEP team asked

Mother if she had any questions, comments, or concerns about the present levels of performance set forth in the IEP, to which Mother stated that she did not.

58. The IEP team developed nineteen annual goals that were consistent with Student's present level of performance. Specifically, the IEP contained measurable goals in the following areas: (1) reading; (2) writing; (3) math; (4) money counting; (5) occupational therapy; (6) adaptive physical education; and (7) speech and language. All nineteen goals included measurable benchmarks.

59. At the meeting, Mother requested a behavior support plan for Student, because she felt that Student had an anger problem stemming from what she believed to be his autism. At hearing, Mother indicated that Student would often have angry outbursts at home, which would result in Student pounding and kicking his chair, sticking out his tongue, yelling, and crying uncontrollably. In fact, Mother indicated that she had not permitted Student to wear his glasses, despite his documented need for them, because she considered them a safety concern. Apparently, when Student had outbursts at home, he would throw his glasses. Consequently, Student had rarely worn his glasses during his tenth grade year, and had not worn his glasses up to the time of the October 30, 2008 IEP meeting. District team members shared that Student had not thrown his glasses at school, had not been having behavior outbursts, and needed his glasses to see the materials in the classroom. District team members offered to keep Student's glasses at school so that they could be available for Student's use at school. Mother indicated that she would "follow up" on Student's need for glasses while at school. Mother also indicated that she had a lot of data concerning Student's behavior problems, and would provide that data to Mr. Mitchell, the school psychologist. District team members advised Mother that Student had not been demonstrating any behaviors that interfered with his learning, or with the learning of his peers, and had not been disciplined for negative behavior. District members further stated that Student was a happy and compliant student who was easily redirected by his aide or a teacher, and, therefore, declined to develop a behavior support plan. Mother never provided any data to Mr. Mitchell.

60. After discussing Student's assessment results, present levels of performance, and goals, the IEP team concluded that Student's disabilities made Student unable to access the general education curriculum without special education services, noting that even with a modified curriculum, grading scale, and class work and homework assignments modified to Student's ability level, Student often needed directions repeated and checked by the staff. The IEP team indicated on the IEP document that Student was eligible for special education services as an individual with multiple disabilities, and orthopedic impairment. The IEP team considered, but ruled out, autism as an eligibility category because the District's assessments did not indicate that Student demonstrated autistic-like behaviors.

61. The IEP team then discussed placement options, and concluded that, in order to access the curriculum, Student required placement in a special day class (SDC) for mathematics and language arts. The SDC was a small class with two teachers and approximately 12 students, which could provide Student with more individualized

instruction. The IEP team also concluded that Student required placement in a SDC for functional life skills training. In the functional life skills class, six adults would be in the classroom to offer Student ample individualized support. As such, a one-on-one aide would not be necessary in the functional life skills class. The IEP team also concluded that Student could benefit from occupational therapy, speech and language, and adaptive physical education services.

62. District then made the following offer of FAPE at the IEP meeting, all services to commence on October 30, 2008 and end on October 30, 2009: (1) one elective class in the general education setting for 120 minutes per period, 10 days per month (block scheduling); (2) two academic classes in the special day class (SDC) setting for math and language arts, each class lasting 120 minutes per period, 10 days a month (block scheduling); (3) three classes in a functional life skills SDC to teach Student functional math, reading, writing, money, and time telling skills, each functional life skills SDC class lasting for 120 minutes per period, 10 days per month (block scheduling), including community-based instruction; (4) individual (pull-out) occupational therapy services for two 30 minute sessions per month by a District-contracted provider at the location of the service provider; (5) occupational therapy consultation services to Student's teachers and aide for one 15 minute session per month in the regular class; (6) small group (pull-out) speech and language services for one 45 minute session per week by a District provider at the location of the service provider; (7) individual speech and language services for one 30 minute session per week by a District-contracted provider at the location of the service provider; (8) individual adaptive physical education services for two 20 minute sessions per week at the location of the service provider; (9) individual aide support for one-half of Student's school day during Student's participation in general education, the SDC, and during unstructured times such as lunch and recess; (10) program accommodations and modifications including extended time, preferred seating, access to the classroom computer and computer lab, modified curriculum to Student's educational level, repeated directions, enlarged handouts, use of calculator and dictionary, and Student's work typed on the computer or type-written. Student would be included with his non-disabled peers for lunch, breaks, extracurricular activities, field trips, and his elective class.

63. District also offered an extended school year (ESY) in the functional life skills classroom, with individual occupational therapy (pull-out) for one 30 minute session per week. The ESY also included individual speech and language services (pull-out) for one 30 minute session per week, and small group speech and language services (pull-out) for one 45 minute session per week. In addition, the ESY included individual adaptive physical education services (pull-out) for two 20 minutes sessions, two times per week, and transportation services.

64. The IEP team also developed an Individual Transition Plan (ITP) for Student's post-secondary transition that focused on improving Student's independence and functional skills. Student, who was present and participated in the discussion regarding his transition plan, stated that his post-school goal was to work in a sports cards collectibles shop. The ITP listed Student's exposure to potential careers during library visits and during homeroom

instruction as Student's present level of performance in this area. It also indicated that Student needed transition services in the areas of community-based instruction, career interest inventory, and functional skills development. Transition services, as set forth in the ITP, noted that Student would take the Job Search Knowledge Scale assessment, receive training from the District's workability curriculum through Student's language arts class, visit the career center to take vocational interest inventories and other vocational assessments, receive assistance in completing all transition assessments, and would receive community based instruction. The ITP listed measurable post-secondary transition goals in training, education, employment, and independent living based on Student's present levels of learning.

65. At hearing, Lisa Murray, District's SDC life skills teacher for the severely handicapped, offered testimony regarding the October 30, 2008 IEP. Ms. Murray, who teaches functional life skills, functional reading (e.g., survival signs, basic words, etc.), functional math (e.g., basic coins, adding, making change, etc.), and functional community (e.g., street safety, ordering and paying for food, riding the bus, acting appropriately in public, grooming, health, cooking, etc.), is a credentialed teacher who has been teaching for nine years, and is currently working on her master's degree in special education. Ms. Murray explained that the life skills program is designed to teach students to be as independent as possible as they enter adulthood. In her class, Ms. Murray has students with cerebral palsy, mental retardation, orthopedic issues, autism, etc., all of whom have IEPs. Ms. Murray tailors her class around the goals set forth in her students' IEPs.

66. Ms. Murray reviewed Student's October 30, 2008 IEP, particularly the goals set forth in the IEP document. Ms. Murray explained that she could implement the following seven annual goals in her life skills class: (1) Goal Ten (i.e., Student to count money up to \$1 using four denominations of coins [pennies, nickels, dimes, and quarters] with 80 percent accuracy in seven of ten trials); (2) Goal Eleven (i.e., Student to identify the name and value of coins [penny, nickel, dime, quarter] and bills [\$1 through \$100] with 100 percent accuracy); (3) Goal Twelve (i.e., One time per week, Student to plan, practice, and verbalize a conversational script with a greeting, "small talk," topic, and closing using social vocabulary [hi, good-bye, thank you, my name is ...] to staff [using modeling and role-play situations], and to peers [independently]); (4) Goal Thirteen (i.e., Student to read aloud target words instinctively with 100 percent accuracy); (5) Goal Sixteen (i.e., Student to verbalize a personal narrative of at least seven related, sequential sentences which provides the listener with pertinent information regarding location, persons involved, time frame and activity, three of five trials given no more than one verbal prompt or cue); (6) Goal Seventeen (i.e., Student to formulate at least two questions and/or related comments gain additional information and/or to perpetuate a conversation in the speech room, three of five trials given no more than one verbal prompt or cue); and (7) Goal Nineteen (i.e., Student to identify his need for repetition/clarification following verbally presented mixed directions by verbalizing an appropriate statement, such as, "I don't know what that means. Could you please repeat that?"). Other students in Ms. Murray's class are working on similar goals. Ms. Murray also expressed that Student got along well with the students in her life skills class, as Student

routinely socialized with her students during lunch breaks. Ms. Murray believed Student would fit in well with the students in her class.

67. Louis Cardoza, Student's general education English teacher from the 2008-2009 school year, testified at hearing. At the time Student was in Mr. Cardoza's class, Student was in 11th grade, and attended Mr. Cardoza's class two to three times per week, two hours each session. Academically, Student had many weaknesses in Mr. Cardoza's class, as Student was unable to perform at the 11th grade California English standards level. Mr. Cardoza modified Student's assignments at a level that Student could complete them, or would give Student alternative assignments. Student was unable to complete modified assignments without assistance. Student would express frustration when Mr. Cardoza introduced new concepts, or when he introduced concepts that were not concrete. As a result, Student would stop trying to learn and would begin to fidget or socialize. Student needed constant reminders to stay focused.

68. Mr. Cardoza's testimony was corroborated by Student's current one-on-one aide, Jonathan Sanchez. Mr. Sanchez had been Student's aide for three years. In class, he generally sat next to Student. Student would get distracted quite often in class, because Student generally had trouble understanding his assignments. Student often had difficulty understanding the definition of concepts, and struggled in science, language arts, and in math. Student had significant difficulty using a calculator, because Student could not discern what information to put into the calculator to come up with an answer. Student generally performed better in his elective classes. Mr. Sanchez also explained that, in the past, especially during Student's first year of high school, when Student got angry, Student would try to kick Mr. Sanchez, run into him with his wheelchair, or yell, "I hate you," or "You're stupid." During a tantrum, Mr. Sanchez would direct Student outside of the classroom and calm him down, which would generally take approximately 10 to 15 minutes. However, these tantrum incidents had decreased significantly over the years. During the 2008-2009 school year, Mr. Sanchez remembered that Student had approximately three tantrum incidents, but could not recall if any of those tantrums occurred prior to the October 30, 2008 IEP meeting.

69. Mother declined to consent to the October 30, 2008 IEP. At hearing, Mother explained she felt that Student wanted to be like every other student, and not be in a special day class. Mother also felt that Student did not belong in the special day class, because Student had previously advised her that the students in the special day class were "babyish." Also, Mother envisioned Student participating in graduation ceremonies and receiving his diploma, and because students in a general education setting were more geared towards receiving their diploma, Mother wanted Student to remain in the general education setting. In addition, Mother felt that the goals set forth in the IEP were too broad, although she did not specify how. Mother also believed Student should have been found eligible under the category of autism, which, in her belief, would have resulted in Student receiving more services, particularly in the area of behavior modification.

70. Before the conclusion of the IEP meeting, the IEP team recommended an assistive technology assessment to determine whether Student required an assistive technology device for writing tasks. In addition, occupational therapist, Ms. Bonafede, recommended that Student receive a physical therapy assessment, because Student was beginning to demonstrate some weaknesses due to his cerebral palsy. District prepared an assessment plan for assistive technology and physical therapy assessments, presented it to Mother at the IEP meeting, as well as a copy of her procedural safeguards and rights. The assessment plan, presented in English, explained the assessments that District proposed to conduct, namely assessments in the area of motor development to be performed by District's physical therapist, as well as observation and interviews by the physical therapist. Also, the assessment plan explained that District's assistive technology specialist would perform an assistive technology assessment. The assessment plan indicated that English was Student's primary language, and that District would not implement an IEP resulting from the assessment, without parental consent. The assessment plan did not include language indicating that an IEP team meeting would be scheduled to discuss the assessment, the educational recommendations, and the reasons for the recommendations. Mother declined to provide her consent to the assessment plan. However, at hearing, Mother stated that she believes Student could, in fact, benefit from assistive technology services, as well as physical therapy services, and could not recall why she did not provide her consent to the assessment plan at or following the October 30, 2008 IEP.

71. On November 15, 2008 and again on December 5, 2008, District sent Parents a letter discussing the October 30, 2008 IEP meeting, outlining District's offer of FAPE, and seeking Parents' consent. The December 5, 2008 letter also discussed the assessment plan given to Mother at the meeting seeking to conduct physical therapy and assistive technology assessments. Parents declined to consent to any portion of the October 30, 2008 IEP, or to the October 30, 2008 assessment plan.

LEGAL CONCLUSIONS

Burden of Proof

1. The petitioner in a special education due process hearing has the burden to prove his or her contentions at the hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528].) As the petitioning party, District has the burden of proof on all issues.

Did District offer Student a FAPE in the October 30, 2008 IEP, and, if so, may it implement the IEP without parental consent?

2. District contends that the October 30, 2008 IEP offered Student a FAPE, as it offered a placement, related services, and an individualized transition plan based on the results of Student's triennial assessments, Student's present levels of performance, as well as on the developed annual measurable goals designed to meet Student's unique needs resulting from Student's disability. As such, District contends that it should be able to implement the

IEP without parental consent. Student disagrees, contending that the amount of speech therapy, occupational therapy, and one-on-one aide support were inadequate to meet his unique needs. Also, Student contends that District should have offered behavior services to address Student's autism. Finally, Student contends District should have provided Student with assistive technology, specifically, a laptop computer. As discussed below, the District met its burden of demonstrating by a preponderance of the evidence that it offered Student a FAPE. As such, District may implement the October 30, 2008 IEP without parental consent.

3. California special education law and the IDEA provide that children with disabilities have the right to a FAPE that emphasizes special education and related services designed to meet their unique needs and to prepare them for employment and independent living. (20 U.S.C. §1400(d); Ed. Code, §56000.) FAPE consists of special education and related services that are available to the child at no charge to the parent or guardian, meet the standards of the State educational agency, and conform to the student's individual education program. (20 U.S.C. § 1401(9).) "Special education" is defined as "specially designed instruction at no cost to the parents, to meet the unique needs of a child with a disability...." (20 U.S.C. § 1401(29).) California law also defines special education as instruction designed to meet the unique needs of individuals with exceptional needs coupled with related services as needed to enable the student to benefit fully from instruction. (Ed. Code, § 56031.) "Related services" are 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(26).) In California, related services are called designated instruction and services (DIS), which must be provided if they may be required to assist the child in benefiting from special education. (Ed. Code, § 56363, subd. (a).)

4. In *Board of Education of the Hendrick Hudson Central School District, et al. 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 200, 203-204.)

5. In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (See *Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1307, 1314.) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Ibid.*) For a school district's offer of special education services to a disabled pupil to constitute a FAPE under the IDEA, a school district's offer of educational services and/or placement must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the pupil with some educational benefit in the least restrictive environment. (*Ibid.*)

Whether a student was denied a FAPE is evaluated in light of the information available to the IEP team at the time it was developed; it is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) “An IEP is a snapshot, not a retrospective.” (*Id.* at p.1149, citing *Fuhrman v. East Hanover Bd. of Education* (3rd Cir. 1993) 93 F.2d 1031, 1041.) In other words, whether a student was denied a FAPE must be evaluated in terms of what was objectively reasonable at the time the IEP was developed. (*Ibid.*)

6. In determining the educational placement of a child with a disability, a school district must ensure the following: (1) the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and consider the requirement that children be educated in the least restrictive environment (LRE); (2) placement is determined annually, is based on the child’s IEP and is as close as possible to the child’s home; (3) unless the IEP specifies otherwise, the child attends the school that he or she would if non-disabled; (4) in selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and (5) the child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. (34 C.F.R. § 300.116 (2006).)³

7. In order to provide the LRE, school districts must ensure, to the maximum extent appropriate, that children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature and the severity of the disability of the child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); Ed. Code, § 56031; 34 C.F.R. § 300.114(a).) To determine whether a special education student could be satisfactorily educated in a regular education environment, the Ninth Circuit Court of Appeals has balanced the following factors: (1) “the educational benefits of placement full-time in a regular class”; (2) “the non-academic benefits of such placement”; (3) “the effect [the student] had on the teacher and children in the regular class”; and (4) “the costs of mainstreaming [the student].” (*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*) [adopting factors identified in *Daniel R.R. v. State Board of Ed.* (5th Cir. 1989) 874 F.2d 1036, 1048-1050]; see also *Clyde K. v. Puyallup School Dist. No. 3* (9th Cir. 1994) 35 F.3d 1396, 1401-1402 [applying *Rachel H.* factors to determine that self-contained placement outside of a general education environment was the LRE for an aggressive and disruptive student with attention deficit hyperactivity disorder and Tourette’s Syndrome.].) If it is determined that a child cannot be educated in a general education environment, then the LRE analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (*Daniel R.R. v. State Board of Ed.*, *supra.*, 874 F.2d at p. 1050.) The continuum of the program options includes, but is not limited to, regular education, resource specialist programs, designated instruction and services, special classes, nonpublic,

³ All subsequent citations to the Code of Federal Regulations are to the 2006 edition.

nonsectarian schools, state special schools, specially designed instruction in settings other than classrooms, itinerant instruction in settings other than classrooms, and instruction using telecommunication instruction in the home or instructions in hospitals or institutions. (Ed. Code, § 56361.)

8. When a school district seeks to prove that it provided a FAPE to a particular student, it must also show that it complied with the procedural requirements under the IDEA. (*Rowley, supra*, 458 U.S. at pp. 200, 203-204, 206-207.)

9. The IEP team is required to include one or both of the student's parents or their representative, a regular education teacher if a student is, or may be, participating in the regular education environment, a special education teacher, a representative of the school district who is qualified to provide or supervise specially designed instruction to meet the unique needs of children with disabilities, is knowledgeable about the general education curriculum and is knowledgeable about available resources. (34 C.F.R. § 300.321(a).) The IEP team is also required to include an individual who can interpret the instructional implications of assessment results, and, at the discretion of the parent or school district, include other individuals who have knowledge or special expertise regarding the child. (34 C.F.R. § 300.321(a).) Finally, whenever appropriate, the child with the disability should be present. (34 C.F.R. § 300.321(a).)

10. 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 FAPE to the child. (34 C.F.R. § 300.501(a); Ed. Code, § 56500.4.) A parent has meaningfully participated in the IEP process when he or she has an opportunity to discuss a proposed IEP and when parental concerns are considered by the IEP team. (*Fuhrmann v. East Hanover Bd. Of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1036.)

11. 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; and 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); 34 C.F.R. § 300.320.) When appropriate, the IEP should include short-term objectives that are based on the child's present levels of academic achievement and functional performance, a description of how the child's progress toward meeting the annual goals will be measured, when periodic reports of the child's progress will be issued to the parent, and a statement of the special education and related services to be provided to the child. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320.) The IEP must also contain a statement of how the child's goals will be measured. (20 U.S.C. § 1414(d)(1)(A)(iii); Ed. Code, § 56345, subd. (a)(3).) An IEP must include a statement of 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)(IV); 34 C.F.R. § 300.320(a)(4); Ed. Code, § 56345, subd. (a)(4).) The IEP must include a projected start date for services and modifications, as well as the anticipated frequency, location, and duration of services and modifications. (20 U.S.C. § 1414(d)(1)(A)(i)(VII); 34 C.F.R. § 300.320(a)(7); Ed. Code § 56345, subd. (a)(7).) The IEP need only include the information set forth in title 20 United States Code section 1414(d)(1)(A)(i), and the required information need only be set forth once. (20 U.S.C. § 1414(d)(1)(A)(ii); 34 C.F.R. § 300.320(d); Ed. Code § 56345, subds. (h) and (i).)

12. An IEP must include a post-secondary transition plan during the school year in which the child turns 16 years old. (Ed. Code, § 56043, subd. (g)(1).) “Transition services” means “a coordinated set of activities for an individual with exceptional needs” that: (1) “Is designed within a results-oriented process, that is focused on improving the academic and functional achievement of the individual with exceptional needs to facilitate the movement of the pupil from school to postschool activities, including postsecondary education, vocational education, integrated employment, including supported employment, continuing and adult education, adult services, independent living, or community participation”; (2) “Is based upon the individual needs of the pupil, taking into account the strengths, preferences, and interests of the pupil”; and (3) “Includes instruction, related services, community experiences, the development of employment and other postschool adult living objectives, and, if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.” (20 U.S.C. § 1401(34); Ed. Code, § 56345.1, subd. (a).)

13. 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).)

14. If the parent or guardian of a child who is an individual with exceptional needs refuses all services in the IEP after having consented to those services in the past, the local educational agency shall file a request for due process pursuant to Chapter 5 (commencing with Section 56500). (Ed. Code, § 56346, subd. (d).)

15. Education Code section 56320, subdivisions (a) through (e), provides that assessments must be conducted in accordance with the following pertinent requirements: that testing and assessment materials and procedures be selected and administered so as not to be racially, culturally, or sexually discriminatory; that the materials and procedures be provided and administered in the student’s primary language or other mode of communication, unless unfeasible to do so; that the assessment materials be validated for the purpose for which they are used; that the tests be administered by trained personnel in conformance with test instructions; that the tests and other assessment materials be tailored to assess specific areas of educational need, and not merely those that are designed to provide a single general intelligence quotient; that the tests be selected and administered to best ensure that, when administered to a student with impaired sensory, manual, or speaking skills, the test produces results that accurately reflect the student’s aptitude, achievement

level, or any other factors the test purports to measure; and that no single measure be used as the sole criterion for determining eligibility or an appropriate educational program for the student.

16. Assessments must be conducted by qualified persons who are knowledgeable of the student's disability, who are competent to perform the assessments, as determined by the local educational agency, and who give special attention to the student's unique educational needs, including, but not limited to, the need for specialized services, materials, and equipment. (Ed. Code, §§ 56320, subd. (g), 56322.) The personnel who assess the student must prepare a written report of the results of each assessment, and provide a copy of the report to the parent. (Ed. Code, §§ 56327, 56329.) The report shall include, but not be limited to, the following: (1) whether the student may need special education and related services; (2) the basis for making the determination; (3) the relevant behavior noted during the observation of the student in an appropriate setting; (4) the relationship of that behavior to the student's academic and social functioning; (5) the educationally relevant health and development, and medical findings, if any; (6) a determination concerning the effects of environmental, cultural, or economic disadvantage, where appropriate; and (7) the need for specialized services, materials, and equipment for students with low incidence disabilities. (Ed. Code, § 56327.)

17. Here, the evidence showed that Student was properly assessed prior to the October 30, 2008 IEP team meeting. In order to provide the most appropriate program for Student, District assessed Student in all areas of suspected disability by conducting a series of assessments designed to measure Student's academic achievement, cognitive development and learning ability, motor development, speech and language development, social, emotional, and behavioral development, self-help and adaptive development, health and medical development, and career and vocational development. The assessments included the administration of standardized tests, rating scales, records review, interviews, teacher input, and observations of Student. All of the assessments were appropriate in that they were not racially, culturally, or sexually discriminatory, were not designed to provide a single general intelligence quotient, were administered in Student's primary language, and were selected and administered to produce results that accurately reflected the Student's aptitude, achievement level, and other factors the tests were purported to measure.

18. In addition, each assessment was administered by very qualified individuals. Specifically, school psychologist, Ms. Kennady, who prepared the multi-disciplinary report, had been a school psychologist for three years with the District at the time she conducted the assessments. Dr. Koepfel, who had conducted nearly 800 assessments during the course of his career, and had provided credible testimony at hearing, ratified Ms. Kennady's report. Ms. Kennady's report was comprehensive, and demonstrated that the assessments were conducted properly. In particular, Dr. Koepfel noted Ms. Kennady's review of Student's background information and prior assessments, as well as her observations, interviews, and receipt of teacher input. In addition, Dr. Koepfel noted Ms. Kennady's administration of multiple tests to measure Student's intellectual functioning, academic performance, adaptive behavior functioning, and social and emotional functioning. School psychologist, Mr.

Mitchell, also reviewed and adopted Ms. Kennady's report, as well as prepared a report setting forth the findings of Ms. Kennady's testing, and the results of his own observations of Student, and interviews he conducted of Student and Student's aide. Similarly, adaptive physical education specialist, Mr. Bellinder, prepared a comprehensive report setting forth his observations and assessments conducted to measure Student's wheelchair mobility, body awareness, unilateral and bilateral motor skills, upper limb coordination, and lower limb coordination. Also, occupational therapist, Ms. Bonafede, prepared a comprehensive report setting forth her observations and assessments conducted to measure Student's school-related self-care tasks, play and social interactions, gross motor skills, fine motor skills, visual motor skills, and sensory processing skills. Ms. Bonafede's report was ratified by the credible testimony of Ms. Nickolai. Additionally, speech and language pathologist, Ms. Flint, who had been a speech and language pathologist since 2007, and, prior to that, a special education teacher for approximately 16 years, prepared a comprehensive report setting forth her observations and assessments administered to measure Student's language, social communication, functional language, fluency, and articulation. These assessment results were consistent with those set forth in the annual pupil progress report prepared by speech and language pathologist, Sara Jones, from the Speech and Language Development Center of Buena Park. Finally, Mr. Falsone, who had been a special education teacher with the District for 21 years, reviewed all of the assessments reports, conducted his own assessments of Student, and set forth the substance of the assessment findings in the IEP document. All the reports described above included the assessor's conclusions and recommendations for the IEP team to consider concerning Student's unique needs, all of them confirming that Student still required special education and related services, and none of them revealing results that conflicted with the other.

19. Student argues that the assessments conducted by Ms. Kennady were flawed because her assessments did not result in a finding of autism, given Student's previous diagnosis by Dr. Paltin, Dr. Saito, and Dr. Mackey. However, Student did not produce any credible assessments or witnesses to demonstrate that Student had autism. Dr. Paltin's assessment report was sufficiently discredited by Dr. Koeppe, who credibly testified how Dr. Paltin conducted insufficient testing to truly determine whether Student had autism. In addition, Dr. Paltin based his diagnosis on his limited clinical observation, no teacher input, and no school-based observations. Also, Dr. Paltin relied on a memorandum from Dr. Saito with whom Dr. Paltin never communicated. Moreover, the memorandum included no information regarding the assessments, if any, Dr. Saito administered to Student, or the results of any such assessments. Similarly, Dr. Mackey's half-page letter included no information regarding any assessments, if any, he conducted on Student. Given the above, District was objectively reasonable in not accepting, at face value, the diagnosis of Dr. Paltin, Dr. Saito, or Dr. Mackey. District acted appropriately in conducting its own assessments to determine whether Student had autism, and was reasonable in relying on the assessment report of Ms. Kennady, who concluded that Student had no autism.

20. Student also argues that District's assessment results were faulty because Student did not wear his glasses during the course of the assessments. However, Student offered no evidence indicating that his failure to wear glasses during assessments

automatically rendered the findings invalid. Student had not worn his glasses for nearly two school years, resulting in the District assessing Student's present levels of performance under the same conditions as Student generally attended school. Student failed in his attempt to demonstrate that District's assessments were inappropriate. District was objectively reasonable in relying on the assessment results when meeting and developing the October 30, 2008 IEP concerning Student, and preparing Student's present levels of academic achievement and functional performance based on the results of the assessments.

21. The evidence also showed that the October 30, 2008 IEP was procedurally proper. Mother had adequate notice of the meeting, and participated with the support of her advocate and her advocate's assistant. The correct district personnel attended the meeting and all assessments were explained by IEP team members who were qualified to do so. In addition, Student attended a portion of the IEP meeting, pursuant to Mother's consent. Moreover, the IEP met the requirement of including a statement of the special education and related services to be provided to Student, as well as specifying the start and end dates, frequency, duration, and location of services, and contained an adequate post-secondary transition plan that was consistent with Student's needs. Also, the IEP included Student's present levels of academic achievement and functional performance, including how Student's disability affected his involvement and progress in the general education curriculum.

22. District also met the requirement of including in the IEP document a statement of measurable annual goals for Student, including academic and functional goals, designed to meet the Student's needs that result from Student's disability, including short-term objectives based on Student's present levels of academic achievement and functional performance. Specifically, the IEP included nineteen goals, and the evidence demonstrated that all of goals were appropriate, given the results of the District's assessments. The evidence showed that the reading, writing, math, and money counting goals were based on the assessment results of the academic achievement tests administered to Student, which showed that Student's overall reading, writing, math, and money counting skills were far below average. In addition, the occupational therapy goals were based on the assessment results of the occupational therapy assessment indicating that Student required help addressing his toileting and right hand function. Also, the speech and language goals were based on the results of District's speech and language assessment, as well as on the annual pupil pathology report prepared by the Speech and Language Development Center of Buena Park, both indicating that Student required speech and language intervention to improve Student's receptive and expressive language. Lastly, the adaptive physical education goal was based on the results of the adaptive physical education assessment indicating that Student required cardiorespiratory fitness. All of the goals were also based on the input of IEP team members that have worked with Student.

23. Finally, the evidenced showed that the October 30, 2008 offer of placement and services was appropriate to meet Student's unique needs. District offered Student a placement in a SDC for mathematics and language arts, so that Student could benefit from more individualized instruction. This conclusion was supported by the reports of Ms.

Kennady and Mr. Mitchell. These reports demonstrated that Student's cognitive skills negatively affected Student's ability to read and remember relevant information, which interfered with his ability to perform required academic tasks, despite the accommodations and modifications made to Student's general education coursework. In addition, Mr. Falsone's assessment of Student demonstrated that Student performed on a second grade level in the areas of reading and spelling, on a third grade level in the area of math, and found that Student could add and subtract one digit numbers, but encountered difficulty when the numbers were larger, when there were more math columns, or when dealing with problems requiring multiplication or division. Mr. Falsone's credible testimony proved that because of Student's unique needs, he required individualized instruction for his core classes. Moreover, Student's English teacher, Mr. Cardoza, and Student's one-on-one aide, Mr. Sanchez, gave credible testimony explaining that Student had many weaknesses in class. Student encountered much difficulty in grasping new concepts, understanding the meaning of concepts, and difficulty completing modified assignments. District's offer of placing Student in a SDC for functional life skills training was equally appropriate. The evidence showed that Student could benefit from the functional life skills curriculum, as Mr. Falsone's assessment of Student demonstrated that Student encountered difficulty counting money, and could only identify sight words at a lower elementary school level. Ms. Murray, the functional life skills teacher, provided credible testimony that she could help Student develop his functional math, functional reading, and functional community skills, such that Student could learn to become more independent as he entered adulthood. District's offer of placing Student in one general education class for an elective was also appropriate. The evidence demonstrated that Student was a very social child, who enjoyed interacting with his general education peers. In addition, Mr. Falsone's credible testimony indicated that through his review of all of the District's assessments, including his own, and given Student's strong socialization skills, the best placement for Student included one involving a combination of a special education setting, as well as general education activities, such as general education electives. Finally, District offered Student an ESY in the functional life skills classroom, with the same related services, with the exception of a one-on-one aide. The placement offered by District gave Student sufficient opportunity to interact with his non-disabled peers in a general education setting.

24. The District also met its burden of demonstrating that the placement offer was in the LRE. Overall, a determination of whether a district has placed a pupil in the least restrictive environment involves the analysis of four factors: (1) the educational benefits to the child of placement full time in a regular class; (2) the non-academic benefits to the child of such placement; (3) the effect the disabled child will have on the teacher and children in the regular class; and (4) the costs of mainstreaming the child. Regarding the first element, the evidence clearly established that Student had not been successful academically in the general education setting, even with modifications to Student's curriculum. Assessment results demonstrated that Student performed academically at a lower elementary level, and that Student's cognitive skills negatively affected Student's ability to access the general education curriculum. Also, Student's English teacher, Mr. Cardoza, and Student's one-on-one aide, Mr. Sanchez, credibly testified that Student encountered significant difficulty understanding the meaning of concepts, and difficulty completing assignments, despite the

fact that Student's assignments were modified to Student's instructional level. Consequently, Student's receipt of educational benefits in a general education setting was limited, at best. Regarding the second element, Student could receive a non-academic benefit of interacting with his peers, giving Student more opportunity to practice his socialization skills. Regarding the third element, teachers would be required to repeatedly modify Student's assignments, constantly repeat directions to him, and to make other accommodations for him. Previous modifications and accommodations have proven to be ineffective in helping Student access the general education curriculum. Consequently, teachers would be required to focus significant time and resources on ineffective modifications and accommodations, taking attention away from the other students in the class. Finally, regarding the fourth element, neither party introduced any evidence demonstrating the costs associated with educating Student in a general education setting versus a special education setting. Weighing the above factors, which shows that the only benefit to Student of a general education placement is social, demonstrates that a general education placement for academic classes would not be appropriate.

25. District's offer of related services was also appropriate. The IEP provided for occupational therapy services, occupational therapy consultation services, individual and group speech and language therapy, adaptive physical education, and one-on-one aide services for Student. District's occupational therapy assessment showed that Student required therapy to address Student's seating posture, toileting, and right hand function. In addition, District's speech and language therapy assessment showed that Student required therapy to improve Student's receptive and expressive language skills in the areas of syntax, morphology, semantics, and vocabulary. Also, District's adaptive physical education assessment showed that Student required therapy to address Student's cardiorespiratory fitness. Finally, District sought to provide Student with continued one-on-one aide services to help Student address his physical and cognitive deficits.

26. Student argues that the services offered were inadequate, in that Student required more occupational therapy time, more speech and language therapy time, and more one-on-one aide service time than that offered by the District. In addition, Student argues that District failed to offer services designed to address Student's behavioral issues. Finally, Student argues that District failed to offer assistive technology services. In spite of Student's assertions, Student provided no evidence indicating how or why Student required more therapy time or aide services than that set forth in the IEP. In addition, as of the October 30, 2008 IEP meeting, the evidence showed that Student's intermittent behavior problems did not require behavior intervention services. Student had four tantrums during his tenth grade year, only one tantrum during the summer following his tenth grade year, and no tantrums from the beginning of his eleventh grade year to the time of the October 30, 2008 IEP meeting. Finally, Student failed to demonstrate that District had a basis upon which to provide assistive technology services, given Parents' failure to consent to the amended assessment plan seeking to conduct an assistive technology assessment, prior to the October 30, 2008 IEP meeting. Student failed to demonstrate that District failed to offer Student an appropriate placement and services designed to meet his unique needs. District has met its burden of demonstrating by a preponderance of the evidence that it offered Student a FAPE,

as set forth in the October 30, 2008 IEP, in that it was reasonably calculated to provide some educational benefit to Student in light of Student's unique needs. (Factual Findings 1, 15 - 71; Legal Conclusions 1 - 26.)

27. In compliance with California law, District appropriately filed a request for due process hearing on February 9, 2009 after Parents declined to consent to the October 30, 2008 IEP. Having found that the October 30, 2008 IEP offered Student a FAPE, District may implement the October 30, 2008 IEP without Parents' consent. (Factual Findings 1, 15 - 71; Legal Conclusions 1 - 27.)

Can District conduct assessments of Student in accordance with its October 30, 2008 assessment plan without parental consent?

28. District contends that as of October 30, 2008, it needed to assess Student in the areas of physical therapy and assistive technology. To date, Mother has not provided her consent, despite stating at hearing that she believes Student could benefit from such services. As discussed below, the District can conduct assessments of Student in accordance with its October 30, 2008 assessment plan without parental consent.

29. In order to assess a student, a school district must provide proper notice to the student's parents. (20 U.S.C. § 1414(b)(1); Ed. Code, § 56321, subd. (a).) The notice consists of the proposed assessment plan and a copy of parental and procedural rights under IDEA and state law. (20 U.S.C. § 1414(b)(1); Ed. Code, § 56321, subd. (a).) The assessment plan must be in language understandable to the general public, explain the assessments that the district proposes to conduct, and provide that the district will not implement an individualized education program (IEP) without the consent of the parent. (Ed. Code, § 56321, subds. (b)(1)-(4).) The proposed assessment plan must also give the parent notice that an IEP team meeting will be scheduled to discuss the assessment, the educational recommendations, and the reasons for the recommendations. (Ed. Code, § 56329, subd. (a)(1).) The assessment plan must include a description of any recent assessments conducted, including independent assessments, and any information parents want considered, along with information regarding the student's primary language and language proficiency. (Cal. Code Regs., tit. 5, § 3022.) A school district must give the parents 15 days to review, sign and return their written consent or objection to the proposed assessment plan. (Ed. Code, § 56321.)

30. Parental consent for an assessment is generally required before a school district can assess a student. (20 U.S.C. § 1414(a)(1)(D)(i)(I); Ed. Code, § 56321, subd. (c)(1).) A school district can overcome a lack of parental consent for an assessment if it prevails at a due process hearing regarding the need to conduct the assessment. (20 U.S.C. §§ 1414(a)(1)(D)(ii)(I) & 1415(b)(6)(A); *Schaffer, supra*, 546 U.S. at pp. 52 - 53 [school districts may seek a due process hearing "if parents refuse to allow their child to be evaluated."]; Ed. Code, §§ 56501, subds. (a)(1)-(a)(3), 56506, subd. (e), 56321, subd. (c).)

31. Here, District gave proper written notice to Mother by giving her, at the October 30, 2008 IEP meeting, a copy of the October 30, 2008 assessment plan, as well as a copy of her procedural safeguards and rights. The written assessment plan identified the proposed areas of assessment, and informed Mother that the assessment process could include observations and interviews. The assessment plan identified the personnel assigned to perform the assessments, and indicated that the assessments would be presented in Student's primary language, English. In addition, the assessment plan advised Mother that District would not implement an IEP without parental consent. Although the assessment plan failed to include language stating that following the assessment, an IEP team meeting would take place to review the assessment results and educational recommendations, the chief components of Student's educational plan had already been discussed and addressed at the very IEP meeting in which the District delivered its assessment plan. Despite not consenting to the plan, Mother conceded that physical therapy and assistive technology could be helpful to Student. Mother's testimony can only be interpreted as supporting District's conclusion that assessments in these areas were necessary to understanding and meeting Student's unique needs. District developed an appropriate, written assessment plan to determine Student's present levels of performance related to Student's cerebral palsy and Student's functioning in the school setting, in the form of proposed physical therapy and assistive technology assessments. Mother did not provide her consent within the fifteen days she was allowed by law, or at any other time. Accordingly, District may assess Student pursuant to its October 30, 2008 assessment plan without Parents' consent. (Factual Findings 1, 15, 21, 70 - 71; Legal Conclusions 28 - 31.)

ORDER

1. District offered Student a FAPE as set forth in Student's October 30, 2008 IEP, and may implement the IEP without parental consent.
2. District may assess Student pursuant to the October 30, 2008 assessment plan without the consent of Parents.

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, the District was the prevailing party on all issues presented.

