BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: VISTA UNIFIED SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT.	OAH Case No. 2014051236

DECISION

Vista Unified School District filed a due process hearing request with the Office of Administrative Hearings, State of California, on May 23, 2014, naming Student. The matter was continued for good cause on June 11, 2014.

Administrative Law Judge Judith L. Pasewark heard this matter in San Diego, California, on October 7, 8, 9, and 10, 2014.

Jonathan P. Reed, Attorney at Law, represented District. Dawn Dully, Director of Special Education, attended the hearing on behalf of District.

Mother and Father attended the hearing each day on behalf of Student. Student did not attend the hearing. Interpreters, Connie Jimenez and Carmen Herr, translated the entire hearing from Spanish into English and English into Spanish for Mother.[1]

The parties completed testimony on October 10, 2014, and a continuance of the hearing was granted for the parties to file written closing briefs on October 24, 2014. The parties further stipulated to extend the record to November 3, 2014, to allow additional time to provide Spanish and English translations of the parties' closing briefs.

On November 3, 2014, the record was closed and the matter was submitted for decision.

ISSUE

[1] Father speaks both English and Spanish and raised no questions regarding the quality of the translations provided by the interpreters.

The sole issue in District's complaint is whether District's May 14, 2014, individualized educational plan offers Student a free appropriate public education in the least restrictive environment.

SUMMARY OF DECISION

On May 14, 2014, District made a formal offer of a free appropriate public education for Student that consisted of 1575 minutes per week of specialized academic instruction, plus extended school year at Stein Learning Center, in San Diego, California. The offer also contained 12 goals designed to address Student's unique needs, and provided 500 minutes per year of consultative speech and language services, 30 minutes per month of consultative occupational therapy services, and 1400 minutes per year of direct adaptive physical education services. Bus transportation was also offered to Student. Parents have not consented to District's offer, and Student has not attended school since February 7, 2014.

Student raised numerous issues and reasons why Student is not in school and why District's offer of a free appropriate public education is unacceptable. Many of Parent's objections arise from collateral issues unrelated to this matter, along with their uncompromising distrust and animosity towards District. While parents have voiced several legitimate concerns, primarily regarding placement, speech and language, and transportation, their arguments in general, fail to discredit District's May 14, 2014, offer of placement and services as a free appropriate public education for Student.

FACTUAL FINDINGS

Background

1. Student is a 14-year-old female who resided with her parents within the District at all relevant times, and is eligible for special education under the primary category of autism, and secondary category of intellectual disability.

2. Mother describes Student as very sweet, and not aggressive, but her behaviors are those expected from her disability. Student likes to ride in the car and play with her siblings. She can fix her own breakfast (cereal with milk), as well as feed herself with supervision so she does not spill or throw food.

3. Student presents with substantial disabilities. There is relatively little disagreement between the parties regarding Student's cognitive and functional disabilities. Student exhibits significantly reduced thinking and reasoning with abilities ranging up to about 18 months. She does not yet demonstrate imitation abilities. Student's adaptive

behavior is also significantly delayed and is commensurate with her thinking and reasoning skills. Student requires significant and intensive supports in her daily living skills. She is not consistent in her toilet training.

4. Student exhibits a considerable range of non-compliant behaviors that vary in intensity, and are often utilized as a means of escape or to avoid activities. Student's tendency to elope, coupled with her cognitive limitations, create significant safety concerns. Student's physical behaviors are also a means of communication, as Student remains non-verbal.

5. Student's communication skills are significantly reduced, and she displays a scatter of skills from the 8-12 month range up to three years. Student remains a pre-symbolic communicator. As a pre-symbolic communicator, Student does not reliably understand that pictures represent actual objects, and she communicates with gestures, such as reaching or pushing away. While Spanish is primarily spoken in the home, and Student is classified as an English language learner, her ability to understand and respond do not increase in the Spanish language.

6. Additionally, Student presents with gross and fine motor skills solidly within the two-year range with scatter up to the four-year level. Notably however, Student's imitations skills are very limited and impact her learning of movement.

7. While Student's sensory behaviors are consistent with her developmental level, at times her responses are intense. Student avoids certain auditory and visual sensations, and requires adult assistance to help her avoid irritating sensory stimuli or appropriately access activities that provide the sensory stimuli she seeks.

The Road to Development of May 15, 2014 IEP[2]

8. On September 28, 2012, the parties entered into a settlement agreement which placed Student at TERI Learning Academy, a nonpublic school, located in Oceanside, California. On January 9, and 29, 2013, District convened Student's annual IEP and again offered TERI Learning Academy as Student's placement. Parents consented to this IEP in its entirety.

9. According to Mother, the current troubles began with the December 19, 2013 IEP meeting at TERI. Parents were concerned that Student's individual speech and language services were not being implemented, and they wanted Student's IEP fully and properly implemented. Mother understood that the IEP meeting was set to review Student's speech and language goals and for the speech and language pathologist to explain Student's progress

[2] Considerable findings have been made regarding the 2013-2014 IEP meetings leading up to District's May 14, 2014, offer of free appropriate public education. Inclusion is necessary to completely address both procedural and substantive objections from Student, and District's response.

on these goals. The interpreter was late, and TERI staff rushed the IEP meeting. Therefore, they did not have time to review Student's goals. Further, Father wanted to be involved in goal development. The review of the goals was rescheduled for the January 15, 2014 IEP meeting.

10. On January 15, 2014, the IEP team reconvened for Student's annual review. The meeting was contentious, and non-productive. The parties agreed to reconvene the last week of January 2014 to complete Student's annual IEP.

11. On January 21, 2014, the Director of TERI notified District that, although Student was doing well in their program, TERI could no longer tolerate Father's belligerence or meet Parent's demands; therefore, Student would be terminated from their program in 20 days, with Student's last day at TERI on February 7, 2014. Parents requested TERI as Student's stay put,[3] but did not fully understand it was TERI, not District, terminating Student's placement. As will be seen later in this Decision, several IEP meetings have been convened since January 21, 2014, yet Parents have not consented to any further educational placements. Student has remained out of school since February 10, 2014.

12. On January 30, 2014, District convened an IEP meeting to discuss an alternate placement for Student in light of her termination at TERI. Mother complained that the entire IEP team was not present. An administrator, special education teacher, general education teacher, both parents, and a Spanish language interpreter attended the IEP meeting. The IEP team members discussed possible nonpublic school placement for Student, and agreed to reconvene the IEP meeting after determining non-public school availability and parental observation of available placements. The IEP team determined that no offer of placement would be made until the parties observed the available nonpublic school placements. Parents inquired about five potential placements for Student. Parents asked about Earl Warren Middle School in Solana Beach, California, because its special education program was highly recommended by one of Student's prior teachers. This teacher is highly respected and trusted by Parents. District refused to consider this placement.[4] Parents also indicated an interest in Washington Middle School; however, Washington had closed in 2013, and reopened as a magnet school, with no special education teacher. Further, the IEP team agreed Student's needs and behaviors required a nonpublic school. The IEP meeting was continued to February 5, 2014.

13. On February 5, 2014, the District reconvened the IEP team meeting to make its offer placement and free appropriate public education. The IEP meeting members included Parents, a Spanish language interpreter, special education coordinator, and

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[3] Stay Put refers to a special education student's right to remain in his or her present educational placement pending consent to a new placement or completion of due process procedures. (20 U.S.C § 1415(j); Ed. Code, § 56505, subd. (d).)

[4] Warren is a public school located in the Solana Beach School District. An inter district transfer of a special education student is not an option available to District.

supervisor of alternate programs. A special education teacher from TERI Learning Center participated by telephone. No general education teacher participated in this IEP meeting. As noted by Steven Davis, District Supervisor for Special Education, Student had been making progress at TERI, and TERI had been a good fit for Student. Further, Student had been safely and successfully transported to TERI.

14. Prior to this IEP meeting, Parents and District staff visited Stein Education Center, and Aces Academy, nonpublic schools in San Diego, California. Parents additionally requested to observe two additional nonpublic schools, Pioneer Day School and The Institute for Effective Education, also both in San Diego. District accommodated Parents and sent referral packets to each of these schools.

15. Jennifer Gruman,[5] District's Supervisor for Alternative Placements, attended Student's IEP meetings and best explained District's logic for selecting Stein as Student's offer of placement. Both District and Parents agreed Aces Academy was inappropriate for Student. The Institute for Effective Education would not have room for another student until March 2014, and subsequently rejected Student, indicating it could not meet her needs. Pioneer Day School did not have an opening for Student, and would not have space for Student for another three weeks. Additionally, District had concerns regarding Student's safety and supervision at Pioneer. Parents had also asked about New Bridge School in Poway, California, however the parties subsequently agreed it would not be an appropriate placement for Student.

16. Stein, on the other hand, is similar to TERI. Stein focuses on functional skills and academics for students with moderate to severe disabilities. The student to adult ratio is 1:1. Stein could provide speech and language therapy, implement Student's behavior plan, and collect data. Stein also offers unique programs, and extracurricular and community based activities. Stein also presented a safe environment. The campus is gated and not located on a busy street. Bus transportation would be provided for Student. Although Stein is located in San Diego rather than Vista, District has other students who are also transported to San Diego. While the bus ride is longer, it was noted Student enjoys riding the bus.

17. Since Student's placement at TERI was terminated as of February 7, 2014, and District was obligated to offer Student an alternate placement effective February 10, 2014, District offered Stein as replacement for TERI. The IEP team also offered related services consisting of 30 minutes per month of occupational therapy, and 75 minutes per month of speech and language therapy in 15 minute sessions. The proposed IEP was identical to

[5] Ms. Gruman is a licensed educational psychologist and school neuropsychologist. She is also a certified Behavior Intervention Case Manager. Father contends Ms. Gruman is biased, as she is listed on the list of independent educational evaluators used by the local SELPA. Ms. Gruman, however, only accepts appointment as an independent assessor for Riverside Unified School District.

Student's existing IEP, except for the change in placement to Stein. District also agreed to reconvene 30 days following Student's enrollment at Stein to review the placement, supports and services needed to complete Student's 2014 annual IEP. Parents did not consent to the IEP.

18. Parents placed all responsibility for Student's non-attendance in school on District. According to Mother, Student was accustomed to a structured routine, and it was sad to watch her wait for the bus, which would not come.

19. Another IEP meeting took place on February 13, 2014. Both parents, an interpreter, special education teacher, general education teacher, special education supervisor of alternate programs, and special education coordinator attended this IEP meeting. Dr. Brown, the Director of Stein, participated by telephone. District's offer of free appropriate public education continued to be placement at Stein, with the same services as offered on February 5, 2014.

20. As reported by Ms. Gruman, the February 13, 2014 IEP meeting was a disaster. Parents brought Student to the IEP meeting; her behaviors were challenging and disruptive which strained Parents ability to focus fully on the IEP team discussions. Matters were made worse by Father's apparent bellicose and disrespectful treatment of District interpreter and staff. Further, Parents continued to vehemently distrust most proposals presented by District.[6]

21. Mother describes the February 13, 2013 IEP meeting as both humiliating and comical. Parents complained that the special education teacher and administrators in attendance did not know Student. Student was in attendance at this meeting, and Mother felt District disrespected them and made them feel as "laughing stocks". Mother claims District's interpreter refused to translate because of Student's presence.

22. The heart of the disagreement at the February 13, 2014 IEP meeting revolved around Dr. Brown's telephonic attendance. Parents were already skeptical of Dr. Brown from their visit to Stein, when they first met him. While at Stein, Parents became concerned when they learned Dr. Brown had not seen Student's IEP. Parents became even more concerned when Dr. Brown asked if Student's individual speech and language services could be reduced, to allow more naturalistic services. Further, there had been no teachers or service providers available to speak with or observe during their visit to Stein. As a result, when the IEP meeting occurred, and no one from Stein appeared in person, Parents refused to consent to any modifications, emphasizing they wanted Student's IEP implemented as written. Parents repeated their objection to changing Student's individual speech and language services, and further dug-in by now requesting written guarantees and additional safeguards to insure the individual services would be provided.

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[6] The relationship between the parties has been exceedingly contentious for many years and involves more than one child with special education eligibility.

23. Mother requested additional safeguards, such as a daily log of speech therapy, and a guarantee from Dr. Brown that Student's services would be implemented pursuant to the directives of the IEP document. It was noted that an exchange of information had already been completed, so Student's previous speech and language pathologist could communicate with the speech and language pathologist at Stein. Parents requested to observe speech therapy services at Stein. Dr. Brown agreed. Dr. Brown assured Parents it was his obligation to implement the IEP, and his signature on the IEP document would be evidence of that. Parents also requested that the soon to be completed assessment from California Department of Education Diagnostic Center, Southern California [7] be considered by Stein, and that a representative of Stein attend the February 21, 2014, meeting at the Diagnostic Center to review the assessments with Parents. Dr. Brown agreed, *if* Student was enrolled in Stein. Further, Dr. Brown invited Parents to contact him at Stein, should they have further questions. In spite of these assurances, Parents did not consent to the IEP, and continued to request to observe Pioneer Day School and The Institute for Effective Education.

24. A translated note from Mother indicates she disagreed with the IEP notes because "District has not documented and was not prepared to offer this school (Stein) due to the fact that the Director (Brown) did not have the capacity to insure the therapies (would be implemented) the way they were established in the IEP." Mother further noted that the interpreter left the meeting early, so Mother was unable to ask questions regarding extended school year and services provided during that period. Also, Mother was unable to translate the IEP notes at the IEP meeting "to refute what was not true." The record, however, reflects that District has provided Parents with copies of all relevant IEP documents and notes in a timely fashion. Given the extent of the documents and reports, however, they have not been provided in Spanish on a "same day" basis.

25. Pursuant to the 2012 Settlement Agreement, the parties agreed to an independent educational evaluation to be completed by the Diagnostic Center. On February 21, 2014, Parents and District staff met at the Diagnostic Center in Los Angeles, California to review Student's evaluation reports with the assessors. A Spanish language interpreter was provided to Mother at the meeting. While Parents did not dispute the evaluation itself, Mother questioned the speech and language/communication portions of the evaluation and wanted to speak with the speech and language assessor. This assessor was not available during the parties' meeting. Mother believes that, at the meeting, the Diagnostic Center representative was prejudgmental of Father, did not like him, and would not let him speak during the meeting.

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[7] The Diagnostic Center is operated by the California Department of Education and provides assessment and educational planning services to assist school districts in determining the needs of special education students, and technical assistance and consultative services.

26. After the February 21, 2014, meeting at the Diagnostic Center, Mother reports Parents requested an urgent IEP meeting to take place as Student was still out of school. Mother also requested that the draft goals and Diagnostic Center report be provided to her in advance of this urgent IEP meeting. Although District contends Mother can read in English, Mother legitimately requests documents in Spanish to more completely understand the content, and to prepare herself to participate in Student's IEP meetings. As a lay-person, Mother strives to educate herself about special education prior to the IEP meetings.

27. District attempted to convene another IEP meeting for March 23, 2014, to discuss the Diagnostic Center findings and complete Student's annual IEP. Parents refused to attend this IEP meeting, indicating they had not yet received a copy of the Diagnostic Center report in Spanish, (although they had earlier discussed the evaluations at the Diagnostic Center). Parents also objected to the failure to classify Student as an English language learner in the IEP drafts.[8] IEP notes indicate, in preparation for the March 23, 2014 IEP meeting, draft goals were provided to Parents, in English on March 19, and in Spanish on March 20, 2014. Student's proposed present levels of performance were also provided to Parents in Spanish. The Spanish translation of the Diagnostic Center report was sent to Parents via certified mail on March 28, 2014, and a second copy, with additional tables translated, was sent via certified mail on April 4, 2014.

28. Prior to the next IEP meeting, District notified Parents it intended to have its attorneys present at the meeting. While District's attorneys conducted themselves professionally and courteously at hearing, it is clearly apparent that Parents have a deep-seeded abhorrence of District's counsel. Citing an advisory letter to Senator Hillary Clinton, which suggested that district attorneys at IEP meetings can be adversarial, and therefore not in the student's best interests, Parents demanded that District's counsel not attend the IEP meeting.

29. Student's IEP meeting was set to reconvene on April 23, 2014, at 9:30 a.m. Shortly after 9:00 a.m. Parents sent an email indicating they would not attend. Parents refused to attend this IEP meeting because (1) Parents' believed District had not provided them with requested documents; (2) Parents' did not want District's attorney to attend the IEP meeting;[9] (3) Student was not included on the IEP meeting notice; (4) District had not replaced Parents recording device as requested; (5) District did not translate the entire Diagnostic Center report; and (6) District did not provide the proposed IEP in Spanish.

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[8] Although Father speaks fluent English, Mother does not, and Spanish is spoken in the home. Student's prior IEP's indicate Student is classified as an English language learner, and all District testimony supported this misclassification as an oversight in the box not being checked on this IEP. The IEP document has been corrected, the issue moot, and Student continues to be classified as an English language learner.

[9] District's counsel attended Student's IEP meetings for several reasons, among which were over 100 compliance complaints filed by Parents.

30. District responded on April 29, 2014, with a letter of explanation and prior written notice. Of note, District indicated (1) all requested documents available to District had been provided to Parents; (2) District's attorney would attend the next IEP meeting; (3) while the draft goals had been presented to Parents in Spanish, the IEP document could not be presented, as it could not be completed until the IEP meeting; and (4) District declined to replace Parents' recording device.

31. To obtain parental attendance, District rescheduled the IEP meeting for May 14, 2014. District would attempt to work with Parents to elicit their participation. In the meantime, placement at Stein continued to be available to Student.

32. On May 8, 2014, Parents again wrote District in Spanish that they: (1) did not agree to the IEP attendance of District's attorney, and they intended to bring an attorney, which they requested District fund; (2) requested a copy of IDEA policy that indicates Student, at age 14, could not be present at her IEP meeting; (3) again requested District replace or repair their recording device; and (4) again requested a complete copy of Student's educational records.

33. On May 12, 2014, District provided a response to Parents' email, in both English and Spanish. District welcomed the attendance of an attorney for Student, but would not pay for the attorney's attendance at the May 14, 2014 IEP meeting. District reiterated that District's attorney would attend the IEP meeting to assist the IEP team in making sure that the meeting proceeded in a civil and courteous manner, and to ensure that all of Student's and Parents' substantive and procedural legal requirements were met. In response to the OSEP letter to Senator Clinton, District cited a United States Department of Education determination that either the parents or a public agency may invite an attorney to an IEP meeting. (*Letter to Anonymous (2008)* 50 IDELR 259.) District also stated parents are allowed to bring students to IEP meeting. District accurately pointed out, however, that Student was not a required member of the IEP team, and therefore, it was not required that she be formally invited. District indicated that it was confident the IEP team members would be able to discuss and develop a program that would address all of Student's unique needs. District also agreed to provide Parents with a complete copy of Student's records within five days.[10] Lastly, District had determined Parents' recording device was not damaged during the previous IEP meeting, and therefore, District continued to deny this request.

The May 15, 2014 IEP

34. The May 15, 2014 IEP meeting was scheduled for 9:30 a.m. Required District participants and a Spanish language interpreter were present. Parents did not arrive. At 9:45 a.m. the interpreter telephoned and emailed Parents with no response. District convened the IEP meeting at 10:05 a.m. At 10:07 a.m. District received an email from Parents

[10] It is noted that District did prepare Student's records, placed them on USB disc for Parents, and made the disc available for Mother to pick up from District.

indicating they would not attend this IEP meeting. Parent's provided no specific reason for not attending the IEP meeting. They did not indicate an emergency, or even a small inconvenience that would prevent them from attending on May 14, 2014. They did not request District set another IEP meeting, nor did they suggest dates they would be available for another IEP meeting. District, having attempted on multiple occasions to complete Student's annual IEP with parental participation, determined it was in Student's best interest, if not crucial, to complete Student's IEP. Student had not attended school in over three months. Therefore, the IEP team proceeded to finish Student's annual IEP without Parents being present.

35. In determining Student's present levels of performance, District relied on the assessment results from the Diagnostic Center. Neither party questioned the qualifications of the assessors, the validity of the assessments tools or the clinical findings of the Diagnostic Center. At hearing, each party placed great weight on the accuracy of these assessments, and their corresponding recommendations.[11] Additionally, District determined Student learns best in a quiet environment, through repetition, and when the skill is very meaningful to her. When completing academic tasks, Student works well at her desk with minimal support. While Father disagrees that Student can work well at her desk, Parents did not contest the majority of District's descriptions of Student's abilities.

36. Using its determination of Student's present levels and Diagnostic Center recommendations, the IEP team crafted Student's goals and services. The twelve proposed goals, which were adopted by the IEP team on May 15, 2014, were previously provided to Parents in draft form, and in Spanish, for review prior to the IEP meeting.

ACADEMICS

37. Given her limited cognitive level, Student's academic curriculum emphasizes functional academic skills that have "real world" applications. A functional reading program for Student involves interpreting and using printed symbols that are encountered in everyday life to increase her ability to function more independently across environments.

38. Goal Two is a reading and language arts goal which involves the use of printed daily functional words and picture symbols, i.e., eat, drink, toilet, for Student to accurately identify and match. Goals Four and Five are reading and language arts goals in which, with a verbal and gestural prompt, to initiate the task, Student will use a printed sight word paired with a picture symbol schedule to complete a four-step vocational task of watering plants and vacuuming. Goal Seven is a reading and language arts goal requiring Student to follow a sequence of daily events by using a picture symbol schedule to accurately transition in daily activities.

[11] The previously reported Factual Findings Three through Seven reflect the assessment conclusions from the Diagnostic Center, which neither party contested.

39. Student displays emerging skills for matching numerals. A functional math program was designed to enable Student to develop knowledge of numbers and quantity concepts to find solutions to everyday problems. Student currently lacks the basic awareness of number sense. Therefore, expanding her knowledge of math concepts sought through teaching skills, such as reinforcing increasingly higher forms of communication to require "more" of an item or activity, or following a sequence of daily events. Goal Six is a math goal requiring Student to match and sort pennies, nickels, dimes and quarters. Goal Seven requires Student to follow a sequence of daily events.

40. Functional writing focuses on translating thoughts and language into a written message, to allow Student to participate in information sharing. Student currently lacks the necessary foundational skills to use writing to communicate information with others. Therefore, while no specific writing goal was crafted, Student's other goals support this objective by using graphic symbols, such as pictures, icons, printed letters, and words to convey language.

COMMUNICATION AND SPEECH

41. Expanding Student's functional communication abilities are a crucial part of Student's functional curriculum. In following the Diagnostic Center recommendation, District determined Student's communication interventions would be most effective when woven into her day in the context of meaningful educational and social activities that are engaging to her. Student's communication is comprised of pre-symbolic forms, including conventional and nonconventional gestures and behaviors which serve a variety of functions. Student's communication program needs to support and expand her independent and reliable use of communication forms currently in her repertoire. This entails: (1) accepting and honoring all communicative forms Student self-selects; (2) expanding Student's opportunities for functional communication using these forms throughout her day in motivating activities; (3) not solely relying on pictures for communication; and (4) providing Student with multiple opportunities per day (at least 20) to initiate and make requests, done in conduction with structured naturalistic strategies to support language learning and generalization.

42. It is imperative for Student's communication program to expand her use of more conventional and comprehensive forms of communication. The Diagnostic Center suggested beginning with the use of pictures Student already understands on her GoTalk. Each new form of communication should be carefully taught and practiced throughout the day, requiring a lot of repetition and immediate reinforcement. In doing so, Student's primary communication partners at school are her teacher and instructional assistants. These people will also act as Student's primary communication interventionists, with support, guidance, and coaching from the speech and language pathologist.

43. The focus of Student's speech and language services include identifying and reinforcing communicative behaviors, creating communication opportunities throughout the day, and facilitating engagement and socialization. The Diagnostic Center noted that

communication interventions are most effective with students with severe disabilities when they (1) take place within natural environments; (2) utilize key care providers, including teachers and aides; and (3) use meaningful materials. As a result, the role of the clinician is that of a coach or facilitator who assists student's teacher in recognizing learning opportunities and increasing a student's participation in them. The more knowledgeable the staff is about communication/social interaction strategies, the greater the impact of the intervention.

44. Goal Ten is designed for social communication in which, using any modality, Student will initiate an appropriate greeting. Goal Eleven is an expressive language goal in which Student will independently make a choice from a field of five objects or pictures using any modality to indicate a variety of communication functions, i.e. request, protest, or comment. Goal 12 is a receptive language goal in which Student will identify pictures of common objects.

45. While Student's understanding and use of pictures is limited to simple requests for preferred items, assistive technology is only a tool to support a student's current abilities. Even with the use of augmentative/alternate communication, Student will not be a fluent communicator. Therefore, the focus of intervention and the role of augmentative/alternate communication should be to increase social interaction and participation, as well as increase her intentional communication and device activations. Goal Three, while earmarked a reading and language arts goal, asks Student to access simple cause and effect software by using a computer with a touch screen. Goals Eight, Ten and Eleven also call for Student's utilization of any communication modality, including an augmentative/alternate communication device.

46. Teri Hastings[12], District speech and language pathologist, provided Student's individual speech and language services at TERI, since August 2013 through February 2014. Student's services, consisting of four, 15-minute sessions per week, address Student's expressive and receptive language goals of using pictures and gestures to communicate. Ms. Hastings confirmed Student's communication skills are low, in the range of an 18-20 month old. Student is non-verbal and more visual, resulting in the use of gestures. It is her opinion that Student's cognitive abilities are too low to allow Student to benefit from individual speech and language sessions. In the past, Student made superficial progress with individual therapy. Most of her progress resulted from memorization. She still does not understand many words in either English or Spanish. She still does not understand the concept that pictures represent things or ideas, which is necessary in order to learn.

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[12] Ms. Hasting has a M.S. in speech and language pathology and audiology. She is a licensed speech and language pathologist and possesses a Certificate of Clinical Competency. She possesses a teaching credential and has worked with severely handicapped children. She also has experience with alternative communication. Ms. Hastings is Hanen Certified, which is a well-known and well researched early language intervention program that develops a naturalistic therapy approach.

47. Ms. Hastings reviewed the Diagnostic Center's report regarding speech and communication, and finds that the evaluation conclusions were consistent with her experience with Student, and Student's present level of performance. She also concurs with the recommendation to utilize speech and language pathology consultation to create a naturalistic speech environment for Student. Ms. Hastings opined that Student is severely impacted. Her communication needs to be meaningful to her, and needs to be utilized throughout the day, done in a daily context. The speech and language consultation is intended to help Student's teacher and aide to identify and use daily events to increase Student's communication. It is imperative that Student be in school, as she needs a daily routine and structure to facilitate her learning. In this environment, Ms. Hastings, opined that Student's ability to communicate will grow.

48. In addressing parental concerns that this naturalistic approach will be implemented by untrained aides, Ms. Hastings explained that Student's IEP contained sufficient consultation time for her to train and teach Student's teacher and aides on an ongoing basis. Simply put, the speech pathologist will create communication opportunities, and will instruct the staff on how to implement them. As example, an appropriate naturalistic, everyday opportunity to increase communication might be to have Student greeting people when she meets them at the beginning of the school day. It is believed Student will be more motivated and more receptive to these types of opportunities because the communication is designed to be meaningful to her.

49. Based upon the Diagnostic Center recommendations and input from Ms. Hastings, District modified Student's speech and language services from those which had been offered at the January 15, 2014 and February 13, 2014 IEP meetings that Parents had attended. Rather than provide 75 minutes per month of direct speech services contained in Student's previous IEP's, District determined Student would receive more generalized benefit from receiving her communication support through 500 minutes per year of consultation services. Student remains non-verbal, utilizing only pre-communicative gestures; therefore, District determined Student would better develop communication skills within the context of meaningful educational and social activities that engage her, rather than through direct support. Ms. Hastings finds the speech and communication goals to be appropriate for Student, and believes Student can be appropriately supported through the District's offer of consultative speech and language services, and Student did not prove otherwise.

50. Parents remain unmoved by District's desire to initiate naturalistic speech and language consults in lieu of individual speech and language therapy for Student. Student understands quite a few directives in Spanish i.e. "put on your seatbelt" and "leave the cat alone." Although the IEP has a receptive and expressive language goal, Parents believe these are not true *speech* and language goals. To Father, it is not a matter of semantics. Speech is different from communication, and District has not adequately explained to him how Student can learn verbalization without direct speech and language services. Further, Father worries the delivery of all "naturalistic" communication forms will be in English only.

51. Parents are also concerned that District deleted specific reference to use of an iPad and the GoTalk picture program software that Student had been previously using to communicate. Father believes that without individual speech and language goals and without the GoTalk program, Student will not be able to learn to express her needs, as all of her tools will have been taken away. Father opines that District fails to identify GoTalk software because it feels Student does not needs it, and does not believe Student understands it. Parents completely disagree, and point to Student's pre-TERI IEP's which indicate Student made progress on speech and language goals. Although Father acknowledges the IEP references a "touch screen device," it fails to identify an iPad or specific software. Father remains suspicious of District motives in doing so, because he believes District did not previously require TERI to implement Student's IEP regarding use of the iPad.

BEHAVIOR

52. Student is usually in a good mood when she comes to school, and seems to enjoy school. She can follow simple requests if they are meaningful to her. Nevertheless, Student's behavior continues to be an area of need, as she demonstrates various behaviors in the classroom setting that impede her access to the curriculum. Student requires close supervision to ensure her safety, as she has a proclivity for eloping and wandering. Student has a behavioral intervention plan with proactive strategies in place to address escape-based behaviors and non-compliance. It is uncontested that Student requires the continuing support of qualified staff in the area of behavior analysis, which can assist the instructional staff with daily data collection, analyze data to identify functions of her maladaptive behaviors, and collaborate with instructional staff and related service providers to develop, implement and maintain the behavior intervention plan. In addition to her behavior intervention plan, IEP Goal Eight is designed to support interpersonal relationships by having Student request or take a break using any communication modality, without exhibiting target behaviors.

53. Although Student's behavior intervention plan was provided to Parents with the May 14, 2014 IEP, Parents insist the plan was modified without their permission and without any input from them. Even assuming such, Parents voiced no objections or concerns regarding Student's behaviors or the plan itself.

ADAPTIVE SKILLS

54. Adaptive skills are integral to Student's life. They reflect what she does at home and in the community, how she applies learned skills, being safe, what she does for leisure, how she engages socially, and how she takes care of personal needs. The more she exhibits these skills, especially independently, the better quality of life she will have. Student's adaptive skills are emerging, but limited. Student can void in the toilet and usually remain dry when she is on a toileting schedule. She requires assistance to clean herself after using the toilet. Student can drink from a cup and feed herself with a spoon. She can undress completely, including removing her shoes. Further, she is exhibiting emerging skills

for cooking and preparing food. To address Student's adaptive skills needs the Diagnostic Center recommended, among other things, that (1) Student learn basic health and safety skills; and (2) when appropriate, Student learn to use pictures of common food items to make requests at home, school and in the community. To support these needs, the IEP team crafted Goal Nine, in which Student will prepare three healthy snacks, involving spreading and pouring, in addition to the vocation skills contained in Goals Four and Five.

55. Parents also disagree with the IEP team's decision to remove toilet training from Student's goals, and replace it simply with an accommodation for toileting. Student had made progress on her prior toileting goals, but remained inconsistent with the skill. When Student soils herself, she places her hands in her pants and gets feces on them. Further, as a teenage girl, Student has additional hygiene concerns which need to be addressed with a toileting goal. Father opines that, by making toileting an accommodation or support, District has freed itself of measuring Student's progress on attaining this much needed independent living skill.

OCCUPATIONAL THERAPY AND ADAPTIVE PHYSICAL EDUCATION

56. Student can run, jump, walk up and down stairs, and throw objects. Her fine motor skills include using a bilateral pincer grasp to hold implements for making marks on paper, and use scissors with support. As Student's imitation skills are poor, motor skills instruction for Student needs to involve physical guidance along with chaining and fading strategies within predictable sequences and routines. The Diagnostic Center reported that occupational therapy for Student should focus on assisting with participation in school activities with an emphasis on any needed adaptations or modifications. Targeting fine motor skills that are part of daily routines will facilitate opportunities for practice and are most likely to lead to skill retention. Ideas for functional fine motor tasks could be provided by an occupational therapist. While no specific occupational therapy goals were presented, Goals Four and Five require Student to perform physical manipulation tasks, as does Goal Nine, which requires Student to spread and pour. District modified Student's prior offer of 30 minutes per month of direct occupational therapy to 30 minutes per month of consultation to support Student's activities of daily living and sensory strategies.

57. Student would benefit from adapted physical education services to monitor her progress on motor goals and to provide consultation to her teachers, as needed, especially regarding accommodations and modifications. Goal One provides Student with an adaptive tricycle which will be utilized with gradually decreasing adult assistance. District offered 1400 minutes per year of direct adaptive physical education services. The amount of adaptive physical education to be provided Student per week or per month was not specified, but as reflected in the IEP notes District intended to provide these services "evenly distributed throughout the year." Later in the IEP notes tricycle time was defined as ten minutes per day.

TRANSPORTATION AND PLACEMENT

58. District adopted most of the Diagnostic Center recommendations regarding teaching strategies. These included direct instruction, work systems, task analysis, and chaining, and prompting. These strategies, along with data collection, allow classroom staff to identify Student's progress, even in small steps. Reinforcement is also an essential component when working with Student. Stein's education program is designed to implement these types of strategies for Student.

59. District IEP team members discussed placement options, and continued to believe a nonpublic school was appropriate with previous offer of 1575 minutes per week of specialized academic instruction at Stein. Additionally, District offered bus transportation to and from school, although there appears to be little discussion of the travel distance to Stein, or the amount of "bus time" Student would be required to endure daily, referenced in the IEP notes.

50. Father expressed much outrage regarding District's plan for transporting Student to Stein. Stein is 42 miles from the family residence, which District contends is a 45-minute bus ride to school. Parents point out the unlikelihood of this time estimation. As a professional truck driver, Father legitimately pointed out that the 42 mile drive, both to and from school, will occur during rush hour traffic, and a school bus not only makes stops, but travels at a much lower speed than regular cars. It is much more likely that a one-way bus trip will take in excess of 90 minutes. As evidence of the amount of time necessary to transport Student, Father pointed out that Student's pick up time for Stein was 6:22 a.m. when Student's class starts after 8:30 a.m.

51. Father also raised concerns about Student's safety during bus transportation. In prior IEP meetings and communications with District regarding Student's busing to TERI, Father had adamantly insisted on specific safety harnessing approved by the Department of Transportation. District complied, and Student was safely transported by bus to school. In considering the 42 mile trip to Stein, Parents now consider the safety harness to be counterproductive, as it will limit Student's physical freedom over a lengthy bus ride. Father referred to the use of the safety harness to transport Student to Stein as cruel. Father reported Student uses a seat belt in the family car, and could do the same on the bus with the assistance of a 1:1 aide rather than use the harness. An aide could redirect Student from unlocking the seat belt, the same as her siblings do in the family car. Since Parents now do not approve of the bus transportation with safety harness, they will not consider sending Student to Stein until they know specifically (to Father's satisfaction) how Student will be safely transported. District has responded that any transportation vehicle and safety equipment, such as a harness or seat belt, will comply with all state and federal safety laws and requirements.

52. Given that Student had been out of school since February 10, 2014, the IEP team offered a transition plan to allow Student to attend school for half days for the first two weeks before transitioning to full school days the third week, depending upon how Student responded. Parents raised no objection to his component of the IEP.

53. Supplementary aids, accommodations, and supports were offered as follows: (1) computer, touch screen, and developmentally appropriate software available on a daily basis throughout the school day; (2) visual supports, choice boards, daily schedules and visual directions provided on a daily basis throughout the day; (3) scheduled toileting program daily; (4) staff training on communication one hour, twice a year; (5) sensory strategies and movement breaks throughout the day; (6) reward system and positive reinforcers throughout the day; and (7) adaptive tricycle 10 minutes per day.

54. Changes were made to the IEP to reflect the current date. Student's behavior intervention plan was reviewed and incorporated information from the Diagnostic Center report.

55. On May 16, 2014, District sent Parents a letter indicating its concern over Parents' election not to attend the IEP meeting, and its determination that holding the IEP meeting in their absence was in Student's best interests, as she had not attended school since February 7, 2014. The letter further requested Parents' consent to the May 14, 2014 IEP, and offered to answer any parental questions either informally or through another IEP meeting. District also provided Parents a copy of the letter in Spanish, along with a copy of the May 14, 2014 IEP and Student's behavior intervention plan, both in English and Spanish.

56. Father contends that District's computer version of the May 14, 2014 IEP contains notations that the IEP was modified two additional times after May 14. District responded that the computer program notes any access to the IEP, including those made after the IEP meeting. No changes were made to the IEP. Regardless of Father's suspicions, the IEP at issue in this hearing is the May 14, 2014 IEP as presented by District, and provided to Parents in both English and Spanish.

57. Parents have not consented to the May 15, 2014 IEP.

Parents' Additional Testimony

58. Mother is a bright woman, deeply committed to her children, seeking to do the right thing for them. Father describes Mother as naive and not street-wise; one who struggles with the language barrier. Nevertheless he believes Mother has made extraordinary attempts to communicate and obtain information from District. This is evidenced by the "hundreds" of emails the family has sent to District, many of which Father describes as rudely ignored. While Mother did not express the same animosity towards District as Father did, she nevertheless hampered her testimony by expressing continuing themes of distrust of District staff and conspiracy against her family. Much of her testimony involved non-related

issues.[13] While this information may explain her reasons for distrust, it bore no relevance to the issue of the validity of the May 14, 2014 IEP.

59. Both parents expressed their concern that the May 14, 2014 IEP is inadequate for Student in several ways; (1) individual speech and language services have been deleted and replaced with consultative services utilizing a "naturalistic" methodology; (2) the IEP does not contain a toileting goal, and references toileting only as an accommodation; and (3) the distance and travel time to Stein is too much for Student, compounded with the physical restriction of a safety harness necessary during transportation.

60. A great deal of Father's testimony involved a narration on District conspiracy, bad faith, and retaliation. In Father's opinion, all of this explains, if not justifies, Parents' steadfast refusal to consent to the May 14, 2014 IEP, or even attend another IEP meeting.

61. Father accurately reported that "there is a lot of hurt in this matter." In his view, something happened after 2009 that made things go downhill between the family and District. He sincerely believes District is being punitive and not acting in good faith. He cites several examples, i.e., District's filing and dismissing of a prior due process case, canceling mediation, and ignoring requests for timely translations.[14] Father acknowledges he has filed approximately 100 compliance complaints with the California Department of Education regarding his children, and further acknowledges these compliance complaints have not been productive or lessened his hurt.

62. Father also believes District is punishing the family for being Spanish speaking. Father speaks fluent American English, however he holds a great love and respect for the Spanish language. Spanish is spoken in his home, and is "very dear to his family." He opines that District does not like Spanish, has taken little care to ensure accurate translations, and has instructed District interpreters to intentionally misstate translations. Furthermore, Father opines that, for an English language learner such as Student, District is creating a "sink or swim" environment by teaching Student only in English.

63. Parents have continually and adamantly requested individual speech and language services for Student. Student has received direct speech and language therapy in each of prior IEP's. In the past, Student's speech and language services had not been consistently implemented, pursuant to the literal descriptions contained in Student's IEP's. This factor raised several areas of parental distrust, resulting in demands for explicit

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[13] Mother also reported on her attempts to enroll Student at Vista High School, her school of residence, in August 2014. This information, however, is irrelevant to the issue, and clearly beyond the scope of this due process hearing.

[14] In the 2013-14 school year, District filed three due process complaints against Parents. OAH Case No. 2013070169, OAH Case No 2014030240, and the current case OAH Case No. 2014051236.

guarantees regarding implementation of services and parental notifications. Termination of individual speech and language services is totally and completely unacceptable to Parents. It is viewed as retaliation by the District, punitive in nature, in response to Parents' non-stop efforts to enforce their children's legal rights to special education.

64. Parents have always wanted to be intimately involved in their children's education, and participate fully in their IEP's. Father feels a great responsibility for Student's safety and well-being. He wanted to personally check out each non-public school suggested by District. Parents questioned why they had a month to consider TERI before Student's placement there, and had less than 20 days to accept Stein. When all is said and done, Father steadfastly maintains District selected Stein, against his wishes, to place Student as far away as possible from her family, where Parents could no longer "meddle" or oversee Student's education. Further, he believes that the deletion of individual speech and language services would not only cut District's expenses and obligations to provide such services, it would deter further compliance complaints filed for District non-compliance.

LEGAL CONCLUSIONS

Introduction – Legal Framework under the IDEA[15]

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

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's individualized education program. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.)[16] "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).) In general, an IEP is a

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

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

written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] ("*Rowley*"), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to "maximize the potential" of each special needs child "commensurate with the opportunity provided" to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to "confer some educational benefit" upon the child. (*Id.* at pp. 200, 203-204.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.].) Although sometimes described in Ninth Circuit cases as "educational benefit," "some educational benefit" or "meaningful educational benefit," all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 950, fn. 10.)

4. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56505, subd. (i).) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3)(C), (D).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].)

5. To assist courts and administrative tribunals, the Supreme Court established a two-part test to determine whether an educational agency has provided a FAPE for a disabled child. (*Mercer Island*, *supra*, 592 F.3d at p. 947.) "First, has the State complied with the procedures set forth in the Act? And, second, is the individualized education program

developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?" (*Rowley, supra*, 458 U.S. at pp. 206-207.) "If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more." (*Id.* at p. 207.)

6. In considering the substance of an educational plan, "(T)he test is whether the IEP, *taken in its entirety*, is reasonably calculated to enable the particular child to garner educational benefits." (*Lessard v. Wilton-Lyndeborough Cooperative School Dist.* (1st Cir. 2008) 518 F.3d 18, 30 (italics added) (*Lessard*); see also *T.Y. v. New York City Dept. of Educ.* (2nd Cir. 2009) 584 F.3d 412, 419 [judging the "IEP as a whole"].) Further, a court or tribunal must judge an IEP at the time of its development, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (*Adams*), citing *Fuhrmann v. East Hanover Bd. of Education* (3d Cir. 1993) 993 F.2d 1031, 1041 (*Fuhrmann*); *JG v. Douglas County School Dist.* (9th Cir. 2008) 552 F.3d 786, 801 (*Douglas County*); *Tracy N. v. Department of Educ., Hawaii* (D.Hawaii 2010) 715 F.Supp.2d 1093, 1112.) Here, under this "snapshot rule," evidence of events that occurred after the May 14, 2014 IEP meeting are irrelevant in evaluating the appropriateness of the IEP which is the subject of this case.

Legal Adequacy of May 14, 2014 IEP[17]

PROCEDURAL CONTENTIONS

7. Parents allege District denied them the opportunity to meaningfully participate in the IEP process because it (1) failed to include appropriate IEP team members at the IEP meetings; (2) failed to provide Spanish translations of the Diagnostic Center reports, goals and draft IEP sufficiently in advance of IEP meetings; (2) did not allow Parents to review Student's records; (3) included District attorneys in the IEP meetings over parental objections; and (4) held the May 14, 2014 IEP meeting in their absence. District contends Student's allegations are without merit, and District did not deny Student a free appropriate public education based upon procedural violations.

8. An IEP must be both procedurally and substantively valid. A procedural violation constitutes a denial of FAPE only if it impeded the child's right to a FAPE, significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a FAPE to their child, or caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E); 34 C.F.R. § 300.513(a)(2); Ed. Code, § 56505, subd. (f)(2); see also, *W.G. v. Board of Trustees of Target Range School Dist.* (9th Cir. 1992) 960 F.2d 1479, 1483-1484 (*Target Range*).)

[17] Student's Closing Brief contains several procedural contentions that Student did not raise at hearing, nor did Parents present any testimony on the subject matter. Only those contentions raised and litigated at hearing will be discussed further in this decision.

9. The Ninth Circuit Court of Appeals has confirmed that not all procedural violations deny the child a FAPE. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1033, fn. 3; *Ford v. Long Beach Unified School Dist.* (9th Cir. 2002) 291 F.3d 1086, 1089.) The Ninth Circuit has also found that IDEA procedural errors may be held harmless. (*M.L.* v. *Fed. Way School Dist.* (9th Cir. 2005) 394 F.3d 634, 652.)

MANDATORY IEP TEAM MEMBERS

10. Parents maintain that District committed a procedural violation by failing to have a speech and language pathologist, occupational therapist, and behaviorist at the January 30, and February 5, 2014 IEP meetings and by failing to have the English Language Development Coordinator at the February 13, 2014 IEP meeting, as requested by Parents. District contends that these persons are not legally required members of the IEP, so there was no error based on the failure to invite them.

11. An IEP team must be composed of: (1) the parents of a child with a disability; (2) not less than one regular education teacher of the child; (3) not less than one special education teacher of the child; (4) a representative of the educational agency who is qualified to provide or supervise the provision of specially designed instruction for the child, who is knowledgeable about the general education curriculum, and who is knowledgeable about the availability of resources of the agency; (5) an individual who can interpret the instructional implications of evaluation results; and (6) at the discretion of the parents or educational agency, other individuals who have knowledge or special expertise regarding the child. The determination of the knowledge or special expertise of any individual described in the last section must be made by the party (parents or public agency) who invited the individual to be a member of the IEP team. (20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. § 300.321(a); Ed. Code, § 56341, subd. (b).)

12. The speech pathologist, occupational therapist and behaviorist did not attend the January 30, and February 5, 2014 IEP meetings. The law did not require them to attend. These IEP meeting were solely convened to address Student's termination from TERI and need for immediate alternate placement. No changes in services were being made in Student's program at that time, and no changes were suggested which required input from any of these individuals.

13. Additionally, Parent's demand to have present the English Language Development Coordinator was unfounded. This staff position is not a required member of the IEP team, nor do Student's unique needs require input for English language learners. Student is non-verbal, and connects very few spoken words with objects or concepts, regardless of whether communicated in English or Spanish. Further, Parents' demand was founded in a typographical omission of checking the English language learner box on the IEP draft that was easily corrected by District.

14. Parents contend District committed a procedural error by failing to include Student in the April 23 and May 14, 2014 IEP meeting invitations. District contends that it

met all mandatory requirements when it determined who would be present from the District at all of the IEP meetings in question in this case.

15. A school district's failure to provide appropriate notice of an IEP meeting is not a denial of FAPE if the parents are able to participate meaningfully in the IEP process despite the violation. (*See, e.g., Bruno v. Greenwich Bd. of Educ.* (D. Conn. 2006) 45 IDELR 14 [holding that a district did not deny FAPE to a student who had reached the age of majority by failing to provide him notice of IEP meetings, as the student received the notices sent to his parent and attended all IEP meetings].)

16. State and federal law require the child with a disability to be included in the IEP team, whenever appropriate. (20 U.S.C. § 1414(d)(1)(B)(vii).) Student is severely disabled and non-verbal. She cannot provide any meaningful contribution to the IEP team discussions. Prior to the February 13, 2014 IEP meeting, Parents did not bring Student to the IEP meetings. At the February 13, 2014 IEP meeting, which Student did attend, her presence was disruptive and counterproductive. Regardless, District has not prevented Student's attendance at her IEP meetings, even though Student's attendance serves no valid purpose. There was no violation by District based on the failure to name Student on the IEP meeting invitations.

ATTENDANCE OF DISTRICT'S ATTORNEY AT IEP MEETINGS

17. Parents have tenaciously opposed inclusion of District's legal representatives at the April 23, and May 14, 2014 IEP meetings. Parents contend the attorney has no knowledge of Student, nor is he an expert on Student's disability. He is not the one providing educational services, nor teaching Student anything. As District's attorney is not a statutorily required party, Parents contend they are not obligated to attend any IEP meeting in which District counsel is present.

18. Attorneys are not required parties for IEP team meetings. (Ed. Code, § 56341, subd. (b).) However, nothing in the IDEA or Education Code prohibits a school district from including its attorney at an IEP meeting, any more than it prohibits parents from having an attorney attend the IEP meeting on a student's behalf. Given the historically contentious relation between Parents and District, the overabundance of emails from Parents, and the over 100 compliance complaints filed by them, it is understandable and within reason that District would insist on its legal counsel presence at any meeting with Parents. There was no procedural violation in District's determination it would have its attorney present at the IEP meeting.

PARENTAL PARTICIPATION IN IEP MEETINGS

19. Parents contend District prevented them from meaningfully participating in the IEP process. District contends Parents actively participated in the IEP process, until such time as they voluntarily refused to attend further IEP meetings.

20. Special education law places a premium on parental participation in the IEP process. School districts must guarantee that parents have the opportunity "to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(1).) The United States Supreme Court has recognized that parental participation in the development of an IEP is the cornerstone of the IDEA. (*Winkleman v. Parma City School Dist.* (2007) 550 U.S. 516, 524 [127 S.Ct. 1994, 167 L.Ed.2d 904].) Parental participation in the IEP process is also considered "(A)mong the most important procedural safeguards." (*Amanda J. v. Clark County School* (9th Cir. 2001) 267 F.3d 877, 882.)

21. An educational agency must therefore permit a child's parents "meaningful participation" in the IEP process. (*Ms. S. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131-1132 (*Vashon Island*).) The standard for "meaningful participation" is an adequate opportunity to participate in the development of the IEP. Although a student's parents have a right to meaningful participation in the development of an IEP, a district "has no obligation to grant [a parent] a veto power over any individual IEP provision." (*Ibid.*)

22. Parents have an adequate opportunity to participate in the IEP process when they are "present" at the IEP meeting. (34 C.F.R. § 300.322(a); Ed. Code, § 56341.5, subd. (a).) An adequate opportunity to participate can include a visit by the parent to the proposed placement. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 461.) An adequate opportunity to participate can include participation at the IEP meeting by outside experts retained by the parents, and the incorporation of suggestions made by such experts into the IEP offer. (*D.S. v. Bayonne Board of Educ.* (3rd Cir. 2010) 602 F.3d 553, 565; see also *W.T. v. Board of Educ. of the School Dist. of New York City* (S.D.N.Y. 2010) 716 F.Supp.2d 270, 288 [reports from child's private school].) An adequate opportunity to participate can occur when parents engage in a discussion of the goals contained in the IEP. (*J.G. v. Briarcliff Manor Union Free School Dist.* (S.D.N.Y 2010) 682 F.Supp.2d 387, 394.) A parent has meaningfully participated in the development of an IEP when she is informed of her child's problems, attends the IEP meeting, expresses her disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools.* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann, supra,* 993 F.2d at p. 1036.)

23. Merely because the IEP team does not adopt the placement, services, or goals advanced by parents, does not mean that the parents have not had an adequate opportunity to participate in the IEP process. (*B.B. v. Hawaii Dept. of Educ.* (D.Hawaii 2006) 483 F.Supp.2d 1042, 1051.)

24. District provided many opportunities for Parents to provide their input regarding Students 2014 IEP. District scheduled six IEP meetings, three of which were attended by Parents. Additionally, at Parents' request, District funded an independent educational evaluation which reassessed Student in all areas of suspected disability. District also met with Parents and the assessors for a lengthy review and discussion of the evaluation report, in conjunction with crafting Student's 2014 annual IEP, and made several changes to the draft IEP which were supported by the Diagnostic Center recommendations. Parents

reference over 100 emails to District personnel regarding parental concerns and requests. As evidenced at the February 13, 2014 IEP team meeting, Parents made several demands of Dr. Brown regarding implementation of the proposed IEP at Stein. The IEP team, including Dr. Brown, agreed to all of Parents' requests. District provided referral packets to multiple non-public schools as requested by Parents, and arranged for school observations. In the end, there simply was a limited selection and availability for Student's placement in an appropriate setting.

25. District provided Parents with proposed IEP goals prior to the IEP meetings. Parents made it abundantly clear they wanted Student to continue receiving direct speech and language services, occupational therapy and adaptive physical education. The IEP team also discussed the use of assistive and augmentative technology with Student. The IEP team, however, did not agree with all of Parents' requests.

26. Although Parents did not agree to the District's IEP offer, their disagreement by itself does not equate to a denial of their rights to participate in the IEP process. Parents were not significantly prevented from participating in the process to develop an IEP for Student.

SPANISH TRANSLATIONS OF DOCUMENTS

27. Parents contend District failed to timely provide Mother with Spanish translations of the Diagnostic Center evaluation report, the proposed goals, and draft of the IEP document. As a result, Parents allege Mother's right to participate in the IEP process was significantly impeded. District contends it provided Spanish translations of these documents, even though it was not legally required to translate documents from English into Spanish. Further, Mother's ability to participate in the process was not significantly impeded because Father is fluent in written and spoken English and able to translate the documents for Mother.

28. Local educational agencies "shall take any action necessary to ensure that the parent or guardian understands the proceedings at a meeting, including arranging for an interpreter for parents or guardians . . . whose native language is other than English." (Ed. Code, § 56341.5, subd. (i); see also 34 C.F.R. § 300.322(e) [same].) The local educational agency shall also "give the parent or guardian a copy of the individualized education program, at no cost." (Ed. Code, § 56341.5, subd. (j); see also 34 C.F.R. § 300.322(f) [same].) California has clarified that the obligation to ensure that a parent or guardian understands the proceedings extends to the IEP documents themselves, which must be provided to the parent in his or her primary language upon request. (Cal. Code Regs., tit. 5, § 3040.) The Office of Special Education Programs of the United States Department of Education has stated that the IDEA and corresponding regulations do not require translations of IEP documents, although providing such translations may help demonstrate in

some circumstances that non-English speaking parents have been fully informed of the services the IEP offers. (*Letter to Boswell* (OSEP 2007) 49 IDELR 196; *City of Chicago School District 299* (Ill State Educational Agency 2010) 110 LRP 36565; *In re: Student with a Disability* (NM State Educational Agency 2011) 111 LRP 39015.)

29. In this case, Mother does not speak or understand spoken English, and does not write in English. District provided a Spanish language interpreter at each of Student's IEP meetings to translate all discussions and documents orally into Spanish for Mother. District also provided Spanish translation of the Diagnostic Center evaluation report and proposed IEP goals. Further, all communications, including the proposed May 15, 2014 IEP and behavior intervention plan, were forwarded to Parents in Spanish. Mother complained that the documents were not provided to her sufficiently in advance of the IEP meetings to allow her to digest the contents and fully prepare for the IEP meetings However, as stated above, neither federal nor state statutes require that assessments or IEP documents be translated.

30. Even assuming that the requirement existed, the District's failure to translate the documents did not amount to a procedural violation. As required under federal and state law, the District provided a Spanish interpreter at the IEP meetings for Mother and Mother fully participated in the process. If there had been a procedural violation, such a violation only constitutes a substantive denial of FAPE if it *seriously impeded* a parent's ability to participate in the IEP process. Here, Mother actively participated in the IEP meetings, sent an extensive number of emails to the District discussing Student's education and IEP process, and very ably represented Student at this hearing. There was no procedural violation and no denial of FAPE..

PARENTAL ATTENDANCE AT IEP MEETINGS

31. District contends that Parents' participation in the IEP process was hampered only by Parents' voluntary refusal to attend the March 23, April 23, and May 14, 2014 IEP meetings. District contends that it held the May 14, 2014 IEP meeting without Parents due to necessity because the need for Student to return to school outweighed the parental decision not to further participate in the IEP process. Parents contend that District significantly impeded their rights to participate in the process to develop Student's IEP by holding the IEP meeting on May 14, 2014, without Parents' consent or attendance.

32. The IDEA and state law explicitly require that parents be part of the IEP team which is charged with developing and implementing a student's IEP. (20 U.S.C. §§ 1401(14), 1414(d)(1)(B)(i); Ed. Code, § 56342.5.) As stated above, the United States Supreme Court in *Rowley* made it clear that participation by parents was of paramount importance. (*Rowley, supra,* 458 U.S. at pp. 205-206.)

33. The Ninth Circuit has found that school districts must make every attempt to secure the presence of a student's parents at IEP meetings. In *Shapiro v. Paradise Valley Unified School Dist.* (9th Cir. 2003) 317 F.3d 1072, 1077, *superseded on other grounds by* 20 U.S.C. § 1414(d)(1)(B) (*Shapiro*), the Ninth Circuit noted that "[t]he importance of parental participation in the IEP process is evident." In *Shapiro*, the school district refused to reschedule the child's IEP meeting to a date requested by the parent who was not available on the date convenient to the district. The court in *Shapiro* held that the failure to reschedule the meeting constituted a procedural violation that amounted to a denial of FAPE. (*Id.* at p. 1075.) The court held that the fact that the district subsequently sent the IEP to the parent for approval did not cure the violation. (*Id.* at p. 1078.)

34. The Ninth Circuit recently reiterated its ruling in *Shapiro* in the case of *Doug C.* v. *Hawaii Dept. of Educ.* (9th Cir. 2013) 720 F.3d 1038 (*Doug C.*). There, the school district was faced with either missing the statutory deadline to hold the child's IEP meeting or holding the meeting without the child's father who had cancelled a few meetings and then had informed the district that he was ill and could not attend the latest scheduled meeting. The Ninth Circuit found that it was more important to ensure the parent's presence at the IEP meeting than it was to meet the deadline to hold the meeting, because the former was the procedural requirement that most benefitted the Student. (*Id.* at pp. 1043-1047.)

35. A school district must take steps to ensure that one or both parents of a disabled child are present at the IEP meeting by "(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) Scheduling the meeting at a mutually agreed on time and place." (34 C.F.R. § 300.322(a).) "If neither parent can attend an IEP Team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls . . . ." (34 C.F.R. § 300.322(c).) "A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place . . . ." (34 C.F.R. § 300.322(d).)

36. In instances when parents fail or refuse to cooperate, the school district is not relieved of its obligation to provide a FAPE to publically enrolled IDEA-eligible students. Therefore, the IDEA permits school districts to conduct IEP meetings without parental participation when the school district is unable to convince the parents to attend. (34 C.F.R. 300.322(d); *Board of Educ. Of the Toledo City Sch. Dist. v. Horen,* 55 IDELR 102 (N.D. Ohio 2010; *J.N. v. District of Columbia,* 53 IDELR 326 (D.D.C 2010).

37. This case differs from *Doug C.* In *Doug C.*, parent had expressed his desire to attend the IEP meeting, and had worked with the school district to obtain a convenient date for the IEP meeting. When parent was unable to attend the meeting due to illness, he objected to the school district holding the IEP meeting without him, and attempted to work

with the school district to reschedule the meeting, which he subsequently attended. The school district held the IEP meeting in parent's absence only because it wanted to hold the IEP meeting in a timely fashion and not disrupt its personnel's schedules. The *Doug C.* court determined that the school district's priorities were misplaced.

38. In the case at hand, Student had been out of school for over three months. While Parents attended the first three IEP meetings, their reasons for not attending the following three scheduled IEP meetings, became increasingly obstructive. Parents had no conflicts in their schedule and were available to attend the IEP meetings if they had chosen to do so. District IEP team members appeared on April 23 and May 14, 2014, as scheduled, because they had received no advance notice of cancelation from Parents. Parents did not request to reschedule the May 14, 2014 IEP meeting to allow them to participate. District contacted Parents on the day of the meeting and, in an attempt to obtain parental attendance, offered to rescheduled the May 14, 2014 IEP meeting to no avail. As Parents pointed out in their arguments, they are not obligated to appear at an IEP meeting.

39. Given that Student had not attended school since February 7, 2014, it was imperative for District to make a final offer of a FAPE for Student, even if doing so required District to convene the May 14, 2014 IEP meeting without Parents in attendance. District had set three IEP meetings which Parents refused to attend. The best interests of the child, in this case, her attendance in school, created an exigent circumstance which outweighed Parents' arbitrary decision not to attend or participate in the April 23 and May 14, 2014 IEP meetings, and to further delay Student's access to an appropriate educational program.

ASSISTIVE TECHNOLOGY DEVICE, SPECIFIC SOFTWARE OR CHOICE OF METHODOLOGY

40. Parents contends the May 14, 2014 IEP fails to provide Student with assistive technology, specifically an iPad, and related software, specifically the GoTo program, which Student has previously utilized for communication. Further, Parents object to District's proposed utilization of naturalistic strategies for Student's speech and language goals.

41. The *Rowley* opinion established that as long as a school district provides an appropriate education, methodology is left up to the district's discretion. (*Rowley, supra,* 458 U.S. at pp. 207-208.) The *Rowley* standard recognizes that courts are ill equipped to second-guess reasonable choices that school districts have made among appropriate instructional methods. (*Ibid.*) "Beyond the broad questions of a student's general capabilities and whether an educational plan identifies and addresses his or her basic needs, courts should be loath to intrude very far into interstitial details or to become embroiled in captious disputes as to the precise efficacy of different instructional programs." (*Roland M. v. Concord School Committee* (1st Cir. 1990) 910 F.2d 983, 992 (citing *Rowley, supra*, 458 U.S. at pp. 207-208).)

42. The reauthorized IDEA does not mandate that a district use a particular methodology. The methodology to be used to implement an IEP is left up to the school district's discretion so long as it meets a student's needs and is reasonably calculated to provide some educational benefit to the child. (See *Rowley*, 458 U.S. at p. 208; *Adams*, supra, 195 F.3d at p. 1149; *Pitchford v. Salem-Keizer Sch. Dist.* (D. Or. 2001) 155 F.Supp.2d 1213, 1230-32; *T.B. v. Warwick Sch. Comm.* (1st Cir. 2004) 361 F.3d 80, 84.)

43. Additionally, the Ninth Circuit, in *Mercer Island*, *supra*, 592 F.3d at p. 952, reiterated its position that a school district is not necessarily required to disclose its methodologies. The Court found that it is not necessary for a school district to specify a methodology for each student with an IEP if specificity is not necessary to enable the student to receive an appropriate education. In finding that the district had not committed a procedural violation of the Act by failing to specify the teaching methodologies it intended to use, the court stated, "We accord deference to the District's determination and the ALJ's finding that K.L's teachers needed flexibility in teaching methodologies because there was not a single methodology that would always be effective." (*Ibid.*)

44. Parents are suspicious that if the IEP does not specifically name the devices and programs District intends to implement in Student's IEP, District will not implement Student's IEP, and Parents will not be able to monitor District's compliance with said IEP. Nonetheless, District is not required to include specific programs or materials in an IEP. The May 14, 2014 IEP acknowledges Student's pre-symbolic communication forms of gestures and behaviors. It additionally acknowledges Student's use of the iPad and GoTo software for her emerging communication. These are examples of modalities of communication. By definition *all modalities* include those forms of communication Student currently possesses, as well as those forms seeking to expand her use of more conventional and comprehensive communication. Student's communication goals specify utilization of any communication modality to accomplish the designated task. Further, while the IEP does not specifically identify the iPad, it does contain goals which seek utilization of simple software (like GoTo) by using a computer with a touch screen (like an iPad). Such information is sufficient for Student's IEP.

45. Parents disagree with District's plan for naturalistic communication methodology. Ms. Hastings, District's speech and language pathologist, concurred with the Diagnostic Center's recommendations regarding Student's need for more naturalistic speech environment, in which Student's communication will be more meaningful to her, and utilized throughout the day. The offer of 500 minutes of consultative speech and language services supports the District's decision seeking to increase Student's communication by creating communication opportunities throughout the day. While Parents would prefer individual speech and language therapy for Student as she previously had received, they provided no persuasive argument demonstrating District's chosen methodology to be inappropriate.

Substantive issues

IEP DESIGNED TO MEET STUDENT'S APPROPRIATE NEEDS

46. District contends that the May 14, 2014 IEP was designed to meet Student's unique needs, developed appropriate goals to meet those needs, and offered appropriate special education supports in the least restrictive environment. As such, District contends it has offered Student a substantively appropriate IEP which constitutes a FAPE for Student. Parents contend the May 14, 2014 IEP fails to provide appropriate goals, specifically regarding toileting, speech and language, occupational therapy, and adaptive physical education. They also claim that District's offer of bus transportation is not appropriate for Student, and that District's offer of placement at Stein is not an appropriate, and does not constitute, the least restrictive environment for Student.

47. To determine whether a district offered a student a FAPE, the analysis must focus on the adequacy of the district's proposed program and not on the family's preferred alternative. (*Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1307, 1314.) An IEP need not conform to a parent's wishes in order to be sufficient or appropriate. (*Shaw v. District of Columbia* (D.D.C. 2002) 238 F. Supp.2d 127, 139 [IDEA does not provide for an "education…designed according to the parent's desires"], citing *Rowley, supra*, 458 U.S. at p. 207.) Nor does the IDEA require school districts to provide special education students with the best education available or to provide instruction or services that maximize a student's abilities. (*Rowley, supra*, 458 U.S. at pp. 198-200.) Hence, if the school district's program meets the substantive Rowley factors, then that district provided a FAPE, even if the child's parents preferred another program and even if the parents' preferred program would have resulted in greater educational benefit. (*Gregory K., supra*, 811 F.2d at p.1314.)

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

49. There is little disagreement regarding Student's disabilities and unique needs. Student's needs and present levels of performance were determined by input from the staff at TERI, Parents, District providers, and the independent educational evaluation conducted by

the Diagnostic Center. Not only had Parents requested the independent educational assessment, they generally relied on its findings and recommendations at hearing. Additionally, the Diagnostic Center evaluation presented the most recent information regarding Student's abilities and present levels of performance across academic and functional domains. For the most part, the IEP team adopted the Diagnostic Center's findings and recommendations in crafting Student's IEP. District witnesses, Mr. Davis, Ms. Gruman, and Ms. Hastings, each of whom are seasoned special education professionals, testified that the May 14, 2014 IEP was designed to meet Student's unique needs. Parents offered no persuasive evidence to suggest the contrary.

IEP GOALS AND SERVICES DESIGNED TO MEET STUDENT'S EDUCATIONAL NEEDS

50. School districts must develop IEP goals that are designed to (1) meet the child's needs that result from the child's disability to enable the child to be involved in and progress in the general education curriculum; and (2) meet each of the child's other educational needs that result from the disability. (20 U.S.C § 1414(d)(1)(A)(i)(II); Ed. Code, § 56345, subd. (a)(2).)

51. District contends the IEP team developed appropriate goals to meet Student's needs. Parents do not disagree with the goals created, but rather contend that additional goals and related services are required to appropriately meet Student's needs.

52. Of great concern to Parents is District's termination of individual speech and language therapy in favor of consultation by the speech and language pathologist. Parents' first argument is based upon Student receiving direct speech and language services in all of her prior IEP's, in which Parents believe Student made progress. In essence, Parents' argument consists of "if it isn't broken, don't fix it." District, however, has provided evidence, that Student's progress with direct speech and language services has been marginal at best, and Student now needs to experience speech and communication in a naturalistic setting, which is more meaningful to her. Additionally, Parents make a distinction between speech and communication. Parents want Student to develop oral use of words, and therefore insist on maintaining individual *speech* therapy. Student, however, remains non-verbal, and currently cannot connect words with objects or idea. Until this connection is made, verbalization will remain elusive. Therefore, Student's IEP goals for speech and communication, which emphasize all forms of communication modalities are appropriate as written.

53. Parents also requested direct occupational therapy services as they had previously been provided under past IEP's. However, Parents provided no evidence to substantiate the need for direct services or specific goals in lieu of consultation by an occupational therapist. District acknowledges Student's sensory needs, and has provided Student with additional supports in the form of sensory strategies and movement breaks

throughout the day. Similarly, Parents do not accept Student's adaptive physical education goal because it is labeled merely a physical education goal. The goal however, involves Student's daily use of an adaptive tricycle, in a school setting where all physical education is essentially adaptive physical education, so it is, in fact, an adaptive physical education goal.

54. Parents, however, present a valid contention regarding District's failure to include a toileting goal. Student remains in diapers. Her prior IEP's have included a toileting goal, and Student has made some progress towards remaining dry, though inconsistently. The IEP team's determination that toileting was not an area of need is misguided. Toileting is a basic adaptive and independent living skill, which affects every aspect of Student's life. The inclusion of a mere toileting schedule does not require Student to learn anything. A goal to continue scaffolding Student's ability to independently handle bodily functions, should have been included in the IEP.

55. The lack of one goal in one area, where the area was already being addressed by District, however, is not sufficient to invalidate District's proposed IEP. As indicated in Legal Conclusion Six, the question is whether District's proposed education plan, in its entirety, is reasonably calculated to enable Student to garner educational benefit. District has demonstrated by a preponderance of the evidence that the May 14, 2014 IEP was so calculated.

OFFER OF PLACEMENT AND LEAST RESTRICTIVE ENVIRONMENT

56. District contends its offer of placement at Stein is an appropriate placement in Student's least restrictive environment. Parents contend that Stein is an inappropriate placement as the distance and travel time to Stein is too great, and District cannot appropriately and safely transport Student.

57. Stein is a non-pubic school very similar to Student's prior agreed upon placement at TERI. The IEP team, in following the Diagnostic Center's recommendations, continued to offer Student a non-public school placement based upon her cognitive level, developmental functioning, and behaviors. Stein can provide a positive behavior program, implementing Student's behavior intervention plan. Stein provides a functional curriculum for moderate/severely disabled students, such as Student. Student also requires direct instruction in a small setting, and Stein provides a 1:1 student to staff ratio. Stein can also provide speech, language and occupational therapy supports. Parents' objections to Stein have more to do with their distrust of District, and their suspicions regarding Dr. Brown, than an actual dispute with the services offered. Parents presented no relevant evidence to suggest that Stein was an inappropriate placement for Student, or that Stein could not implement her IEP.

58. Parents, have raised significant concerns regarding Student's ability to withstand the 42-mile bus ride to Stein. While District indicates the bus ride to San Diego will take approximately 45 minutes, Father's calculation of 90 plus minutes is more believable for rush hour traffic. Beyond that distinction however, Parents' transportation

concerns are merely hypothetical and without factual basis. Parents argue that Student will soil herself on the bus, and will place her hands in her pants and remove feces. Student will be restrained in a safety harness on the bus, which will inhumanely limit her movement for extended periods of time. She will attempt to free herself from the harness thereby creating a safety hazard. Student may display other maladaptive behaviors or will simply not tolerate the distance. In reality, Student has been successfully transported to school by bus for several years. She enjoys riding on the bus. As Mother indicated, Student enjoyed riding in the car. Further, District transports other special education students the same distance to San Diego with no difficulties. Parents also insist District specify exactly how it will safely transport Student. However, District established that it can meet Student's safety, and Parents provided no evidence to the contrary.

59. Lastly, Parents claim Stein is not the least restrictive environment for Student, and Student should be placed on a public school high school campus, until a more appropriate placement can be located. This, however, is not the standard for determining Student's least restrictive environment.

60. In addition to providing a FAPE, a child with a disability must be educated with children who are not disabled to the maximum extent appropriate. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2); Ed. Code, § 56342.) In determining the program placement of the student, a school district must ensure that the placement decisions and the placement are made in accordance with federal requirements regarding placing the child in the least restrictive environment. (Ed. Code, § 56342, subd (b).)

61. When determining whether a placement is the least restrictive environment for a child with a disability, four factors must be evaluated and balanced: (1) the educational benefits of full-time placement in a regular classroom; (2) the non-academic benefits of full-time placement in a regular classroom; (3) the effects the presence of the child with a disability has on the teacher and children in a regular classroom; and (4) the cost of placing the child with a disability full-time in a regular classroom. (*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404.)

62. There is no actual dispute that Student cannot be educated in a general education setting even with 1:1 support. Student is non-verbal and has no understanding of the connection of words to objects and ideas. Further, Student requires 1:1 instruction, which is not available in the regular classroom. Additionally, Student's behaviors are disruptive and would interfere with the education of other students. Student does not yet imitate others and has not developed sufficient social skills to benefit from non-academic exposure to typical peers. Given the extent and nature of Student's disabilities, and her need for a small structured environment with direct instruction and 1:1 support, placement in a non-public school remains most appropriate for Student. While Father suspects District has a financial motive for placing Student at Stein, he has presented no evidence to support his suspicion.

63. District has demonstrated by a preponderance of the evidence that it procedurally and substantively offered Student a FAPE in the least restrictive environment at its May 14, 2014 IEP. Although District should have developed a toileting goal for Student, the failure to create such a goal was the only legally inadequate area in the District's proposed IEP. To reiterate, the decision on whether a district's proposed IEP offers a free appropriate public education must be made only after looking at the IEP in its entirety. The lack of one goal in one area is not sufficient to invalidate the District's proposed IEP. The query is whether the District's proposed educational program in its entirety was reasonably calculated to enable Student to garner educational benefits. In this case, the District has demonstrated by a preponderance of the evidence that its proposed IEP was so calculated. The May 14, 2014 IEP offered Student a FAPE in the least restrictive environment.

ORDER

District's May 14, 2014 IEP sufficiently met the standard of offering Student a special education program that was reasonably calculated to provide educational benefit. District's requested relief is granted, and District may implement its IEP offer over the objections of Student's 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, District was the prevailing party on the only issue presented.

RIGHT TO APPEAL

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

DATED: November 25, 2014

/s/

JUDITH L. PASEWARK
Administrative Law Judge
Office of Administrative Hearings