

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BELLFLOWER UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010101200

**NOTICE: This decision has been
UPHELD by the United States
District Court. Click [here](#) to view
the USDC's decision.**

DECISION

Carla L. Garrett, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), heard this matter on April 13, 14, 19, 20, and 21, 2011, in Bellflower, California.

Bruce Bothwell and Cecilia Chang, Attorneys at Law, represented Student. Student's mother (Mother) attended all five days of hearing. Eric Bathen and Jordan Meyer, Attorneys at Law, represented the Bellflower Unified School District (District). District's representative, Kristy Spear, Administrator of Special Education, attended all five days of hearing.

Student filed his request for due process hearing (complaint) on October 28, 2010. On December 7, 2010 and February 10, 2011, for good cause shown, OAH granted the parties' joint requests to continue the due process hearing.

On April 21, 2011, at the close of the hearing, the parties were granted permission to file written closing arguments by May 5, 2011. Upon receipt of the written closing arguments, the matter was submitted and the record was closed.

ISSUES¹

1. Did District deny Student a free appropriate public education (FAPE) by failing to assess him in all areas of suspected disability prior to an initial Individualized Education Program (IEP) meeting on May 19, 2009 by not:

- (a) assessing Student in the area of autistic-like behaviors;
- (b) adequately observing Student regarding behavior issues; and
- (c) assessing Student's fine and gross motor skills.

2. Did District deny Student a FAPE in his May 19, 2009 IEP by failing to:

- (a) offer Student an appropriate placement in the least restrictive environment with sufficiently trained and supervised staff to address Student's autism-related deficits;
- (b) develop appropriate goals to address Student's "behavioral and social deficits";
- (c) offer adequate and appropriate related services in the areas of speech and language, occupational therapy (OT), and adapted physical education (APE);
- (d) offer an educational program which was scientifically based, and to the extent practicable, based upon peer-reviewed research; and
- (e) find Student eligible for special education services under the category of autistic-like behaviors.

3. Did District deny Student a FAPE in his May 21, 2010 IEP by failing to:

- (a) offer Student an appropriate placement in the least restrictive environment with sufficiently trained and supervised staff to address Student's autism-related deficits;
- (b) develop appropriate goals to address Student's "behavioral and social deficits";
- (c) offer adequate and appropriate related services in the areas of speech and language, occupational therapy (OT), and adapted physical education (APE);

¹ At hearing, Student withdrew his procedural violation claims concerning the May 19, 2009 and May 21, 2010 IEPs, specifically enumerated as Issues Thirteen, Fourteen, and Fifteen in Student's complaint. The ALJ has rephrased and reordered the remaining issues for clarity. The issues are limited then to those that have been alleged in Student's complaint. (20 U.S.C. § 1415(f)(3)(B) ["the party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the [Complaint], unless the other party agrees otherwise"]; Ed. Code, § 56502, subd. (i).)

- (d) offer an educational program which was scientifically based, and to the extent practicable, based upon peer-reviewed research; and
- (e) find Student eligible for special education services under the category of autistic-like behaviors.

FACTUAL FINDINGS

Jurisdiction and Background Information

1. Student is a five-year-old boy, who, at all relevant times, resided in the District, and was eligible for special education under the eligibility category of speech and language impairments.
2. Mother, who provided testimony at hearing, explained Student has suffered from a series of health problems since he was a baby. Specifically, when Student was six months old, he stopped gaining weight, which resulted in a diagnosis of fat malabsorption of unknown etiology. Student's fat malabsorption issues resulted in his failure to thrive, and he often suffered from diarrhea, and frequent vomiting.
3. Mother explained that at the age of three, Student had very little language. In addition, he would play all day all by himself, would not make eye contact, would often stack compact disc (CD) cases or line up objects. Student's doctor became concerned about Student's delayed speech, as well as the behaviors Mother had described to him, and referred Student for an assessment to the Stramski Child Development Center (Stramski) within Miller's Children's Hospital.

Stramski's January 2009 Assessment

4. On January 27, 2009, when Student was three and one-half years old, Mother took Student to Stramski to be evaluated for his speech and language delay and to rule out autism. Mother advised the assessor, Dr. Hyun S. Park, who was a developmental pediatrician, that Student did not speak well, could only say approximately 20 words, ignored his name most of the time, did not interact much with other family members, and preferred to play alone. She also advised Dr. Park that Student walked on his tip toes, liked to line up objects, and would stack blocks and then knock them down. He also liked to look at objects up close, spin the wheels of his toys, and not engage in pretend play. In addition, Student got upset frequently, and frustrated easily. He also flapped his hands when he was excited.
5. Mother also advised Dr. Park of Student's fat malabsorption diagnosis. At the time of the assessment, Student weighed only 24 pounds. Also, Student presented with decreased muscle bulk and mild generalized hypotonia (i.e., low muscle tone).
6. Pursuant to Dr. Park's request, Mother completed a Child Development Inventory based on her observations of Student. Dr. Park, who prepared a report dated

January 27, 2009, scored Mother's responses, and noted that Student's social skills were in the 19 month-old range, self-help skills in the 22 month-old range, gross motor skills in the 22 month-old range, and fine motor skills in the 25 month-old range. Dr. Park also noted that Student's expressive language did not reach the 12 month-old range, and his receptive language was in the 17 month-old range. Dr. Park noted in his report that Student's overall general development was at the 26 month-old level, and that Student had delays in social skills, self-help skills, gross and fine motor skills, expressive and receptive language, and in general development.

7. Dr. Park also included in his report his observations of Student, and noted that Student did not have appropriate eye gaze, made fleeting eye contact, did not look when his name was called, and did not verbalize any words or sounds. Dr. Park also noted that Student perseverated in stacking blocks, without any response to multiple attempts to gain Student's attention, and did not display any reciprocal interactive play.

8. Dr. Park made several recommendations in his report: (1) further evaluation for autism with Autism Diagnostic Observation Scale (ADOS) testing; (2) OT through Stramski's center; (3) a hearing test to rule out hearing deficits, given Student's language delays; and (4) further genetic evaluation given Student's severe developmental delays, hypotonia, failure to thrive, and fat malabsorption issues. Dr. Park provided Mother a copy of his report.

9. On February 8, 2009, Mother sent District a copy of Dr. Park's report, and requested that District conduct an eligibility assessment of Student.

Stramski's ADOS Assessment

10. On March 17, 2009, Mother returned Student to Stramski for ADOS testing. The ADOS assessment is used to evaluate individuals, from toddlers to adults, who are suspected of having autism. It can be used on children with no speech, to adults who are verbally fluent. In the ADOS, which provides the assessor a period of observing a child, there are three areas of testing: (1) communication; (2) social interaction; and (3) play. In order to make a determination of autism, the child must meet or exceed the cut-off score in all three areas. The assessor who prepared a report noted that during her observation of Student, Student's overall level of language showed the use of four words, as well as occasional vocalizations. She also noted that Student did not use appropriate eye contact to initiate and regulate social interactions; however, he used eye contact and vocalizations independently to communicate social intention. In addition, Student looked immediately at the assessor in response to hearing his name, and enjoyed functional and symbolic play. The assessor noted that Student did not display unusual sensory interest, or hand and finger mannerisms during the ADOS, but he did exhibit unusually repetitive interests with lining up and stacking blocks.

11. The assessor concluded that Student met the classification for autism, as Student scored at the cut-off on the communication domain, above the cut-off on the social domain, and at the cutoff on the total score.

12. The assessor provided Mother a copy of her report. Mother forwarded the report to District.

Stramski Physician Evaluation

13. On April 15, 2009, Mother returned Student to Stramski for a follow-up visit with Dr. Park. Dr. Park prepared another report, and noted that she had reviewed the ADOS report, as well as Student's medical history. Dr. Park set forth three impressions in her report: (1) Student had fat malabsorption resulting in a failure to thrive; (2) Student had severe global developmental delay; and (3) Student had mild autism, and atypical social skills, communication impairments, and restricted patterns of interest and activities.

14. Dr. Park recommended that Student be assessed by District for special education services. Dr. Park also recommended that Student be enrolled in an intensive, structured special education classroom in order to provide Student with increased structure to enhance his social, emotional, language, and behavioral functioning. Dr. Park noted in her report that District's curriculum should emphasize attention and compliance, imitation, language, social skills, and all other areas unique to students with autism spectrum disorders. Dr. Park also noted that Student could benefit from receiving Applied Behavior Analysis (ABA) therapy, which is an evidence-based treatment for autism designed to change behavior. She also recommended that Student participate in a socialization skills group designed to develop Student's social-emotional skills. Dr. Park also repeated her previous recommendation that Student receive a hearing test to rule out any hearing deficits, as well as a genetic evaluation.

15. Dr. Park provided Mother a copy of her report. Mother forwarded the report to District.

District's Initial Assessment

16. On May 5, 2009, when Student was three years and ten months old, District school psychologist, Nina Rezvani, speech and language pathologist, Sandra Lex, and APE teacher, Terri Taylor, as a team, conducted an assessment of Student, which lasted approximately one and one-half hours. District generally conducted preschool assessments using a team approach in lieu of individually assessing a preschooler over a multiple day period, in order to minimize potential stress to the preschooler. Student's assessment occurred in a play-based environment in a building next door to the preschool, with toys, games, and other activities designed to appeal to preschool-aged children.

17. Ms. Rezvani, who provided testimony at hearing, has been a credentialed school psychologist for District for seven years. She received her bachelor's degree in

psychology in 2000 from University of California at Los Angeles. In 2002, she earned her master's degree from Loyola Marymount University (Loyola) in school counseling, as well as her pupil personnel services (PPS) credential in school counseling. In 2003, she earned her master's degree in educational psychology from Loyola, as well as her PPS credential in school psychology. In 2008, she earned her state license as an educational psychologist. Ms. Rezvani is a member of the National Association of School Psychologists, as well as the California Association of School Psychologists.

18. In her capacity as a school psychologist for District, Ms. Rezvani conducts psychoeducational assessments for students in preschool through twelfth grade. She has conducted approximately 500 assessments for District, including 150 to 200 of them on students with autism. She also completes functional behavior assessments and functional analysis of students in preschool and elementary school. In addition, Ms. Rezvani participates in IEP meetings and parent conferences, and facilitates a counseling group for students with attention deficit hyperactivity disorder.

19. Ms. Rezvani explained that because young children are often shy and reluctant to perform for strangers, the assessment team typically uses information from a child's parent as an important component of their evaluation. In this regard, Ms. Rezvani reviewed a health and development questionnaire District asked Mother to complete two months prior. Mother stated on the questionnaire that Student, among other things, engaged in head banging. However, at the time of the assessment, Mother reported that Student had discontinued the behavior. Mother also reported that, two to three months prior to District's assessment, Student had stopped flapping his hands and staring at his fingers. Mother advised that Student was extremely shy, and withdrew easily from others. He also had temper tantrums, was irritable, destructive, and had discipline problems. Mother advised Ms. Rezvani that his behaviors at home were very inconsistent in that Student would be happy on some days and would want to leave the house, while other days, he would refuse to leave the house. Also, Mother reported that Student had regressed in some of his behaviors, such as toileting. Ms. Rezvani explained that upon reviewing the health and development questionnaire and interviewing Mother, she believed that Student could possibly have autistic-like behaviors, and prepared to test for it.

20. In addition to the health and development questionnaire, the assessment included: (1) a parent questionnaire; (2) a review of previous evaluations provided by Mother; (3) observation of Student; (4) the Southern California Ordinal Scales of Development (SCOSD); (5) the Vineland Adaptive Behavior Scales-Second Edition (Vineland-II); (6) the Gilliam Autism Rating Scale-Second Edition (GARS-2); and (6) the Rossetti Language Scales (Rossetti).

21. During the assessment, Ms. Rezvani noted that Student was very small for his age, and had missing front teeth. She made some behavioral observations of Student, and noted that Student was cooperative during testing. His eye contact was inconsistent in that he would make eye contact at times, but would look away when she smiled at him, as if he was shy. He also smiled and looked away when she praised him. At other times, Student

looked over and smiled at her when another examiner showed him an interesting toy. Dr. Rezvani also noted that Student followed directions, exhibited adequate attention for a child of his age, and, when demonstrated by her, imitated clapping and looking into a kaleidoscope with one eye. Student was able to match objects with their pictures, and scanned the options before making a choice, which required brief sustained attention. Student participated in appropriate play with Ms. Rezvani with a Mr. Potato Head toy for approximately three minutes, and then helped to put toys away when prompted to. He also exhibited appropriate play with a doll in that he brushed and combed the doll's hair when prompted to do so, but also put the doll in the bed, covered it with a blanket, fed it with a bottle, and rocked the bed without any prompts. At one time, Student engaged in inappropriate play by banging a wind-up toy. Student did not engage in any repetitive or stereotypical behaviors during the assessment.

22. Ms. Rezvani also administered the developmental scale of cognition from the SCOSD, which was designed to provide an indication of Student's cognitive development. According to the results of the SCOSD, Student exhibited skills at the 18 to 24 month-old range in the area of sensorimotor abilities. He used tools to obtain the objects he wanted, placed the objects on a board using foresight, and distinguished one item from the other. He also demonstrated representational play, and recognized the operation of a mechanical toy, but he exhibited delayed imitation at this stage. The SCOSD also showed that Student had emerging skills in preconceptual thought in the two to four-year-old range. Although Student matched objects, colors, and shapes, he could not sort by color, copy a cross, or use three blocks to build a bridge. He also could not recognize part or whole relationships, and could not demonstrate symbolic language attachment such as pointing to basic body parts or naming common objects. Ms. Rezvani concluded that Student exhibited a mild delay in the area of cognitive functioning.

23. Ms. Rezvani gave Mother a rating scale from the Vineland-II to assess Student's adaptive behavior in four domains: (1) communication; (2) daily living skills; (3) socialization; and (4) motor skills. The Vineland-II also yielded a composite score that summarized the individual's performance across all four domains.

24. Student's results on the Vineland-II showed that Student's level of adaptive functioning within the communication domain was within the low range for his age group, particularly in the areas of receptive and expressive language. His standard score of 52 represented a percentile rank of less than one. For receptive language, Mother reported that Student usually understood the meaning of yes and no, and responded to his name, but only sometimes or partially followed one-step directions. Student would not listen to a story for at least five minutes, would not point to at least three major body parts, and would not point to common objects in a book. For expressive language, Mother reported that Student usually said "mama" when calling her. He also communicated nonverbally by pointing to objects he wanted, and by waving good-bye. In addition, he sometimes or partially indicated a choice when offered two choices. Mother reported Student would not try to repeat common words immediately after hearing them, would not name at least three objects, and would not say one-word requests. Mother stated that Student talked more before he was three years old.

25. In the daily living domain, Student scored within the moderately low range. Specifically, his personal skills (i.e., how Student ate, dressed, and practiced personal hygiene) were within the low range, while his domestic skills (i.e., the household tasks Student performed) were in the adequate range. His standard score of 77 was in the sixth percentile. Mother reported that Student would usually feed himself, help with simple chores, demonstrate caution around sharp or hot objects, use sidewalks, and ride appropriately in a car. Student began demonstrating an understanding of money, and was emerging at learning household rules.

26. In the socialization domain, Student scored within the moderately low range. His standard score of 74 was in the fourth percentile. Mother reported that Student usually imitated relatively complex tasks as they were performed, played with others with minimal supervision, protected himself by moving away from someone who wanted to hurt him, cleaned and wiped his face, and changed his behavior depending on how well he knew someone. Student sometimes or partially showed affection, interest in other children, or a desire to please others. He sometimes ended conversations appropriately by saying good-bye or waving. Mother also reported that Student would not: use actions to show happiness or concern for others, demonstrate friend-seeking behaviors, use common household objects for make-believe activities, play simple make-believe activities, transition easily from one activity to the next, or say “thank you” or “please”.

27. Finally, in the motor skills domain, Student scored within the moderately low range. His standard score of 70 was in the second percentile. In the area of gross motor skills, Student could not run smoothly, and could not catch a big ball. In the area of fine motor skills, Student could not turn pages of a book one at a time, and was learning how to hold a pencil in the proper position.

28. Overall, Student’s adaptive behavior composite standard score was 65, representing a percentile score of one, which was within the low range. Student’s lowest scores were in communication.

29. Because Mother had observed and reported autistic-like behaviors in Student, Ms. Rezvani gave Mother a questionnaire from the GARS-2. The GARS-2 was a screening instrument used in medical and educational assessments of individuals who have behavior that indicate the possibility of autism. The GARS-2 is composed of three scales: (1) stereotyped behaviors, which address motility disorders and other unique behaviors; (2) communication, which addresses verbal and nonverbal behaviors that are symptomatic of autism; and (3) social interaction, which addresses and individual’s ability to relate appropriately to people, events, and objects. When scoring the GARS-2, the instructions require the assessor to rate items according to the frequency of occurrence. A score of “0” indicates the rater has “never” seen the child behave in a specified manner. A score of “1” indicates the rater has “seldom observed” the child behave in a specified manner (i.e., one or two times in a six hour period). A score of “2” indicates the rater has “sometimes observed” the child behave in a specified manner (i.e., three or four times in a six hour period). A score of “3” indicates the rater has “frequently observed” the child behave in a specified manner

(i.e., five or six times in a six hour period). The instructions also require that every item receive a score.

30. Mother's ratings on the GARS-2 indicated a possible likelihood of autism. Specifically, on the social interaction scale, Mother reported that Student avoided eye contact, was unaffectionate, used toys inappropriately, and would become very upset when routines were changed. For example, Student wanted to have breakfast at the same place at the table or he would throw a tantrum. He always wanted to have the same toothbrush, requiring Mother to buy him the same one repeatedly. He also wanted to wear one outfit for an entire week and would refuse to wear anything else. Student also played with toys inappropriately, was usually destructive, and would spend an hour a day stacking CDs, even though he had age appropriate toys. On the stereotyped behaviors scale, Mother reported that Student frequently avoided eye contact, disliked certain textures of food, and would eat specific foods. Mother also reported that Student liked to make rapid, lunging movements from place to place, turn in circles, and spin objects and certain toys. On the communication scale, Mother reported that Student would not initiate conversation with adults and would look away when his name was called.

31. When scoring Mother's ratings on the GARS-2, Ms. Rezvani inadvertently failed to score one item. Specifically, Ms. Rezvani failed to score the behavior described as "laughs, giggles, cries inappropriately." Mother advised Ms. Rezvani that Student would cry for no reason, hide under the table, and he would do those things everyday. Had Ms. Rezvani scored this item, she would have given it a score of "1" ("seldom observed") or "2" ("sometimes observed"). Ms. Rezvani persuasively explained at hearing that her failure to score this item did not invalidate the test, because, according to the manual, GARS-2 allows for a several point deviation, as statistically, a true score lies between a range of scores.

32. Although Mother had reported observing autistic-like behaviors in Student, Ms. Rezvani only observed one autistic-like behavior during the assessment. Specifically, although Student mostly demonstrated appropriate play skills, like when he played with the doll and with the Mr. Potato Head, he attempted to bang a wind-up toy one time. Ms. Rezvani explained that children with autism do not typically have appropriate play skills, nor do they typically make eye contact. Student made eye contact. Also, Ms. Rezvani noted that although children with autism do not generally tolerate changes in routine, Student's daily routine was upset by having to come to the test site to be assessed, yet he was calm and cooperative. In addition, Ms. Rezvani did not see Student spinning in circles or spinning objects, or engaged in repetitive or stereotyped behavior, which are generally seen extensively in children with autism. She also explained that children who line up or stack objects are not necessarily autistic, in that many typical children line up or stack objects. Similarly, many of the behaviors Mother reported could be found in typically developing preschool-age children. Ms. Rezvani also noted that Student had good social behavior from what she observed, with the exception of having inadequate speech and language skills. She considered Student's joint attention good for a child who had not been to preschool before. Finally, she explained that she found it very unusual that she did not see many of the behaviors during the assessment that Mother had described. Generally, in cases where a

parent has reported extreme behaviors, she will ordinarily observe the same or most of the behaviors during the assessment.

33. Overall, Ms. Rezvani concluded that Student exhibited delays in the areas of cognitive functioning, adaptive behaviors, and socialization, and had significantly low communication skills.

34. Speech pathologist, Sandra Lex, completed the speech and language portion of the team assessment. Ms. Lex is a credentialed and licensed speech pathologist who received her bachelor's degree in speech pathology in 1964 from the University of Wisconsin, and her master's degree in speech pathology from California State University at Long Beach. In her capacity as speech pathologist for District, she primarily conducts preschool assessments with the preschool assessment team, approximately 50 per year. Since 2004, Ms. Lex has served regional centers, private speech corporations, and school districts, including District, as a private vendor. Prior to 2004, Ms. Lex had 14 years experience teaching communication-handicapped preschool children for District. Ms. Lex also had 33 years experience as speech pathologist for a neighboring school district and the Los Angeles County Office of Education.

35. At the assessment, Ms. Lex noted Student was small in size and had missing front teeth that could affect his speech. He was shy initially, but was cooperative, and eventually warmed up to the team. He interacted and made good eye contact with her. At the time of the assessment, Student had not had his hearing tested, but Mother advised Ms. Lex that she had no concerns about Student's hearing. Mother also reported that English and Spanish were spoken in the home, and although Student's family used both languages with Student, she considered Student Spanish-dominant. Mother advised that Student used approximately 15-20 words and simple gestures to communicate.

36. Ms. Lex used the Rossetti Language Scales (Rossetti) to Student to assess his expressive and receptive language through observation, interaction, and information provided by Mother. Student exhibited the following receptive language behaviors: (1) turning toward speaker or noise source; (2) responding to objects; (3) playing appropriately with a doll and following directions to feed the doll; (4) demonstrating no understanding of giving one versus all, or big versus little; (5) responding to his name; (6) following one-step directions at home, but did not consistently demonstrate this skill during the assessment; (7) responding to commands such as "give me" and "put away toys"; (8) demonstrating no understanding of beginning prepositional directions; (9) demonstrating an inability to identify at least two body parts on himself; (10) demonstrating no understanding of completing two-step directions with one object; (11) enjoying music, songs, and nursery rhymes; (12) performing a routine activity upon a verbal request when he wanted to be cooperative; (13) demonstrating no acquirement of at least 50 words; and (14) responding inconsistently to "no" and "sit down" during the assessment.

37. Student exhibited the following expressive language behaviors: (1) laughing and making random noises; (2) taking parent to desired items or pointing to what he wanted;

(3) saying the words out, stop, up, ball, down, shoes, no, and blue in English, and the words otra, puerta, mas, aqua, aye, esta in Spanish; (4) saying “numnum” when he was hungry; (5) vocalizing “poopoo” or gesturing a need to go to the bathroom by pointing to his bottom; (6) expressing his favorite DVD by saying “bob-bob” for Sponge Bob; (7) participating in interactions with his family; (8) inconsistently imitating words, according to Mother; (9) socializing with same age cousin; (10) producing a few animal sounds, and a car sound; (11) using approximately 15 to 20 words meaningfully, according to Mother; (12) using gestures and then tantrumming when not getting what he wants; (13) often saying “ow” or “oh-oh!”; and (14) producing word approximations.

38. Ms. Lex explained that during the assessment, Student was cooperative when he transitioned from one activity to another. He enjoyed playing “tea party” and played well with a doll. Student exhibited very limited babbling or gibberish throughout the assessment period. He used a few words during the assessment, and they were intelligible, but they were approximations of the words. For example, instead of saying “ball”, Student said “ba”. Ms. Lex also noted that Student was not able to identify or label clothing, food, or favorite toys beyond one or two items.

39. Ms. Lex attempted to conduct an oral-motor examination of Student, but he would not allow it. The purpose of the oral-motor examination was to see how Student’s lips, tongue, and mouth moved, and to see how Student sustained breath. Ms. Lex explained that she never forces an oral-motor examination if a child is reluctant, so she relied on Mother to provide her with information about Student. Mother reported that Student bit, chewed, and swallowed his favorite foods without difficulty. However, he did not like soft textured foods, and would sometimes vomit when he put certain textures in his mouth. Mother also reported that Student did not like having his teeth brushed. Student was able to purse and retract his lips, and attempt to blow bubbles.

40. Ms. Lex concluded that, overall, Student’s communication skills, according to the developmental language scales, were at the 12-month level, with scattered skills to the 18-month level.

41. Ms. Lex prepared a report, which Ms. Rezvani incorporated into the initial assessment report.

42. APE specialist, Terri Taylor, measured Student’s fine and gross motor skills. Ms. Taylor, who provided testimony at hearing, has been an APE teacher for 29 years, 21 of those years with District. She received her bachelor’s degree in physical education from the University of California at Berkeley in 1979. She completed graduate studies in physical education and in APE in the teaching program at California State University at Fullerton in 1982, and received her single subject teaching credential in physical education, and a supplemental authorization to teach APE, health, and biology. In 1999, Ms. Taylor received her master’s degree in kinesiology with an emphasis in APE, motor development, and motor learning. In her capacity as an APE specialist with District, Ms. Taylor provides physical education to children ranging from preschool to high school, that have physical, mental, or

other disabilities that prevent them from safely or physically participating in a typical physical education class. She is also a member of the preschool assessment team. At the time she conducted Student's assessment, she had conducted over 200 assessments.

43. Ms. Taylor administered the fine motor and gross motor portions of the Brigance Diagnostic Inventory of Early Development II (Brigance). Ms. Taylor asked Student to perform tasks to measure his gross motor skills, but Student did not attempt a number of them. Ms. Taylor explained that preschool children could be unpredictable, and felt that Student's shyness played a role in his decision to perform some tasks, but not others. As a result, Ms. Taylor found it difficult to get completely accurate results of his gross motor skills. However, Ms. Taylor noted that Student walked well, and could walk on his tiptoes. Mother reported to Ms. Taylor that Student could jump two feet, but Ms. Taylor did not observe this skill. Ms. Taylor observed Student throw a ball with both hands, kick a stationary ball with force, and walk up and down stairs, one at a time. Student did not attempt to catch a ball. Ms. Taylor noted on the Brigance that Student's gross motor skills appeared to be in the low average to average range, but, as she explained at hearing and in the report she prepared, because she did not have a firm grasp on what Student could or could not do, she declined to make a recommendation that Student receive APE. At hearing, Ms. Taylor explained that when she is unable to obtain sufficient gross motor information during an initial assessment to make a determination of whether a child requires APE, she generally waits to observe the child again in his or her placement.

44. In addition to his gross motor skills, Ms. Taylor measured Student's fine motor skills. Ms. Taylor noted that Student could stack up to 12 blocks, unscrew the lid on a jar, and draw a vertical line, a horizontal line, and a circle. Student used his right hand to scribble, had an adequate pincer grasp, and an emerging tripod grasp. He could not imitate a plus sign or draw a picture of a face. He also did not know how to cut with scissors. Ms. Taylor noted on the Brigance that Student preferred to line blocks in a row. Overall, Ms. Taylor concluded that Student's fine motor skills appeared to be in the average to low average range. After Ms. Taylor prepared her report, she gave it to Ms. Rezvani. At hearing, Ms. Rezvani noted from reviewing Ms. Taylor's report that Student's gross and fine motor scores were commensurate with the other skills Student demonstrated during the assessment. Ms. Rezvani incorporated Ms. Taylor's report into the initial assessment report.

45. No members of the assessment team, nor any other District staff, conducted any assessments in Student's home.

46. After considering the results of the assessments conducted by Ms. Rezvani, Ms. Lex, and Ms. Taylor, the assessment team concluded that Student did not meet the eligibility requirements for autistic-like behaviors, as Student had only exhibited one autistic-like behavior during the assessment, and had not exhibited the behaviors Mother had described. In addition, as Ms. Rezvani explained at hearing, other medical causes had not been ruled out that could explain Student's behaviors, such as potential physical, hearing, or genetic issues, given his global delays, and as recommended in the Stramski assessments. The assessment team indicated that Student's behaviors should be monitored, and following

medical test results, they could make a better determination regarding any further needs. The assessment team concluded that Student's greatest weakness was his communication skills. Specifically, Student had significant delays in his receptive and expressive language that the team concluded required special education services.

May 19, 2009 IEP

47. On May 19, 2009, the IEP team met to develop Student's initial IEP. The team consisted of Mother, Ms. Rezvani, Ms. Lex, Lori Alvarado, who was the preschool special education teacher, and Diane Fagan, who was the administrative designee. Ms. Rezvani and Ms. Lex presented the initial assessment report. The District team members concluded that Student did not appear to have autism, and determined that Student qualified for special education under the category of speech and language impairment. The team noted that Student's communication, adaptive, socialization, and cognitive delays impacted his ability to participate in all age-appropriate activities. At hearing, Ms. Rezvani explained that the team did not add a secondary category of eligibility, despite Student's medical issues, because there were outstanding medical tests Student needed to take.

48. The IEP that was drafted included a statement of Student's present levels of performance based on the results of the initial team assessment report, and then established measurable goals and objectives to address Student's communication, cognitive, self-help, socialization, and fine motor deficits. Specifically, the team developed seven goals: (1) a fine motor goal focusing on Student learning to use scissors appropriately and cut on a straight line; (2) a language and communication goal focusing on Student learning two-step directions in connection with the classroom's routine with no more than one verbal prompt; (3) a pre-vocational goal for transitioning from one activity to the next with no more than one prompt; (4) a pre-academic/academic goal focusing on identifying six out of eight basic colors; (5) a social-emotional skills goal focusing on Student playing with other children, with no more than one physical prompt; (6) an expressive language and communication goal focusing on Student learning 50 new words (10 animals, 10 foods, 5 body parts, 5 pronouns, 5 household items, 5 toys, 5 clothing items, and 5 prepositions); and (7) a receptive language and communication goal focusing on Student learning two-step directions.

49. The District team members determined that the preschool special day class (SDC) for 17.5 hours per week would be an appropriate placement for Student because he needed specialized teaching methods and small group support to address his communication, cognitive, self-help, socialization, and fine motor deficits. Student would spend 84 percent of his week in the preschool SDC, and 16 percent in the general education setting for recess and lunch. The preschool SDC designated in Student's IEP, which included children with different disabilities, was designed for students with varying degrees of speech and language delays. Every aspect of the class focused on language enrichment. All goals developed in Student's IEP, with the exception of the language and communication goals for expressive and receptive language, were to be implemented and tracked by the special education teacher in the SDC and staff. The language and communication goals were to be implemented and tracked by the speech and language pathologist and staff.

50. The team also determined, based on a recommendation by Ms. Lex, that Student receive, twice a week, a 20-minute session of group speech and language therapy. At hearing, Ms. Lex explained that she recommended 20-minute sessions because the attention span of a preschooler is generally limited. She recommended group sessions as opposed to individual sessions, so that the members of the group could identify and interact with each other, without the danger of the child becoming shy or feeling singled out. The group sessions generally consisted of two to three preschool SDC students. The language and communication goals for expressive and receptive language, which Ms. Lex wrote, were designed to be implemented and tracked by the speech and language pathologist and staff.

51. Although Student had fine motor deficits, the team did not offer occupational therapy or recommend that Student be further assessed by an occupational therapist, because District members felt Student's weaknesses could be addressed in the SDC, as OT tasks were incorporated in the preschool SDC class. Also, OT specialists worked with the preschool SDC, as a whole, on a weekly basis. In addition, the team did not offer APE services, as Ms. Taylor did not recommend APE services in the initial assessment report, and because APE specialists worked with the preschool SDC, as a whole, on a weekly basis.

52. Mother consented to the May 19, 2009 IEP.

Regional Center Assessment

53. On July 1, 8, and 20, 2009, when Student was four years old, Dr. Armando de Armas conducted an assessment of Student for the Harbor Regional Center (regional center) to determine if Student qualified for regional center services. Dr. de Armas, who provided testimony at hearing, is a private vendor who has conducted approximately 1,500 assessments for the regional center in a 12-year period. Of the 1,500 assessments, approximately 30 to 40 percent have been for preschool-aged children. Dr. de Armas earned his bachelor's degree in psychology from California State University at Long Beach, and his master's and doctorate in clinical psychology in 1981 and 1984, respectively, from Washington State University. He became a certified psychologist in Texas in 1985, and licensed in Washington and California in 1986 and 1989, respectively. In addition to services he provides to regional centers, he has also maintained a private practice since 1988 in Long Beach, has served on the expert panel for dependency court since 1986, and has served on the expert panel of psychiatrists and psychologists for Los Angeles County and Orange County since 1992. Approximately two months prior to hearing, in February 2011, Dr. de Armas began conducting assessments for District as a private contractor.

54. Dr. de Armas explained that when Student was referred to the regional center, he needed to consider whether Student had an autism spectrum disorder, given the records from Stramski indicating mild autism in Student. Although Student was referred with a diagnosis of mild autism, Mother advised Dr. de Armas that Student had improved in the few weeks prior to the assessment. Specifically, Mother indicated that Student had recently become interactive and social. Also, Student had stopped his hand flapping since Mother had put him on a wheat-free diet.

55. Dr. de Armas reviewed the Stramski reports, including the one completed by Dr. Park, and noted Dr. Park's impression that Student had a severe global developmental delay. Dr. de Armas found this impression significant because the severe global developmental delay could mean that Student had a mental retardation issue, which could possibly be corrected if Student's fat malabsorption and failure to thrive issues were remedied. In addition to the Stramski records, Dr. de Armas reviewed records from District, including the May 19, 2009 initial assessment report. He interviewed Mother, and performed behavioral observations of Student. He also administered the Wechsler Preschool and Primary Scale of Intelligence-Third Edition (WPPSI-III), the Vineland-II, the ADOS, and the GARS-2.

56. Dr. de Armas first observed Student in his office on July 1, 2009, and noted that Student was very small in size, but he was alert and energetic. Student looked Dr. de Armas in the eye and joint referenced pictures as Student pointed to them and also pointed to other objects. Student shared a toy with his mother in an attempt to request assistance with a task. Student was very interested in Dr. de Armas' computer and interacted with Dr. de Armas by looking at him while pointing to photographs. Student asked for help from Mother with a shapes task.

57. To measure Student's general intellectual ability, Dr. de Armas administered the WPPSI-III, and derived a full scale intelligence quotient (FSIQ). Dr. de Armas explained that typically the FSIQ, which is derived from the combination of seven subtest scores, is considered to be the most representative estimate of global intellectual functioning. However, after administering three subtests to measure Student's verbal intelligence quotient (VIQ), which is an estimate of an individual's verbal reasoning and comprehension, Dr. de Armas determined that Student's VIQ failed to represent a valid measure of Student's verbal ability. Specifically, Student obtained raw scores of zero on two of the three verbal subtests. As such, Student's FSIQ did not represent a valid measure of his general cognitive ability.

58. Student's performance intelligence quotient (PIQ) of the WPPSI-III measured Student's performance abilities in connection with his fluid reasoning, spatial reasoning, perceptual organization, and visual-motor integration. Dr. de Armas determined that Student's perceptual-organizational and nonverbal reasoning abilities were in the extremely low range, far below the majority of his peers. As a result, Dr. de Armas opined that Student could have great difficulty with tasks that primarily involve nonverbal reasoning skills.

59. Student's intra-individual strengths and weaknesses measured by the WPPSI-III showed that Student performed much better on tasks requiring him to assemble puzzles depicting common objects than tasks requiring him to reproduce abstract block arrangements. Dr. de Armas explained that these differences may indicate that Student may perform better on tasks involving nonverbal inductive reasoning (i.e., making parts into a whole) than on tasks involving deductive reasoning (i.e., making a whole into parts).

60. In addition to the WPPSI, Dr. de Armas administered the Vineland-II. Dr. de Armas determined that Student's adaptive functioning within the communication domain

was low for his age group. Specifically, Student's results showed a standard score of 49, representing a percentile rank of less than one. He had an adaptive level of low for all three subdomains (receptive, expressive, and written). Student's age-equivalent for the communication subdomains was ten months for the receptive subdomain, one year and four months for the expressive subdomain, and one year and ten months for the written subdomain. Dr. de Armas concluded that Student's written skills represented a strength, while the receptive skills represented a weakness compared to his other communication skills.

61. Dr. de Armas determined that Student's adaptive functioning within the daily living skills domain was low for his age. Specifically, Student's results showed a standard score of 69, representing a percentile rank of two. He had an adaptive level of low for the personal subdomain, moderately low for the domestic subdomain, and moderately low for the community subdomain. Student's age-equivalent for the daily living skills subdomain was one year and nine months for the personal subdomain, one year and ten months for the domestic subdomain, and three years and one month for the community subdomain. Dr. de Armas concluded that Student's community skills represented a strength, while his personal skills represented a weakness compared to his other daily living skills.

62. For the socialization domain, Dr. de Armas determined that Student's adaptive functioning was low for his age. Specifically, Student's results showed a standard score of 57, representing a percentile rank of less than one. He had an adaptive level of low for all three subdomains (i.e., interpersonal relationships, play and leisure time, and coping skills). Student's age-equivalent for the socialization subdomains was seven months for the interpersonal relationships subdomain, nine months for the play and leisure subdomain, and ten months for the coping skills subdomain.

63. For the motor skills domain, Dr. de Armas determined that Student's adaptive functioning was low, representing a percentile rank of one. Specifically, Student's results showed that he had an adaptive level of moderately low for the gross motor skills subdomain and low for the fine motor skills subdomain. Student's age-equivalents for the motor skills subdomains were two years and one month for the gross motor skills subdomain, and one year and eleven months for the fine motors skills subdomain.

64. Overall, Student's adaptive behavior composite score on the Vineland-II was 57, indicating Student's general adaptive functioning was in the low range. Dr. de Armas further reported that Student's standard score for the communication domain was significantly lower than the median score for all of the Vineland-II domains, suggesting that his communication skills were a weakness relative to Student's skills in the other areas. As such, activities that target the development of communication skills could be useful. Dr. de Armas explained that although Student's overall adaptive behavior level was low, attention to increasing his communication skills could raise that level even higher.

65. Dr. de Armas also performed the ADOS to assist in a potential diagnosis of autism or an autism spectrum disorder. At hearing and in his report, Dr. de Armas explained

that for the ADOS, an individual is presented with a series of play opportunities and/or interview questions designed to sample his or her verbal and nonverbal communication strategies and ability to engage in reciprocal social interaction. It also provides opportunities to elicit or observe stereotyped behaviors or restricted interests. To determine a person's social interaction score, the assessor evaluates the individual's eye contact, facial expressions, insight, the quality of his or her social overtures and responses, the amount of reciprocal social communication, and the overall quality of rapport. To determine a person's communication score, the assessor evaluates the use of the individual's use of words and phrases, reporting of events, conversation, and use of gestures. The social interaction and communications scores are then combined to determine whether the individual's performance qualifies for an ADOS classification of autism or autism spectrum disorder. Stereotyped behaviors and restricted interests are not entered in the final score. For this reason, the ADOS classification is not the same as a diagnosis of autism or of autistic spectrum disorder based on Diagnostic and Statistical Manual, Fourth Edition, Text Revision (DSM-IV-TR) criteria. DSM-IV-TR criteria for autism currently include reference to restricted interests, rituals, difficulty with transitions, repetitive behaviors, or stereotyped behaviors.

66. Dr. de Armas observed that Student was very slow to warm up to the ADOS process, but after he warmed up, he was very interactive. He initially played alone for a few minutes by putting objects into the back of a dump truck and turning the handle on the Jack-in-the-Box toy. However, after about five minutes, he climbed onto his mother's lap as if he were done with the whole thing. When she encouraged him to play some more, he said no. When Dr. de Armas turned the handle of the Jack-in-the-Box, he climbed off of his mother's lap and played with another toy. During this initial activity, Student did not ask for help and explored the toys functionality by himself. Dr. de Armas also noted that Student looked at him the second time he called Student's name. He also looked at the object Dr. de Armas held and later followed Dr. de Armas' gaze to another object. During the bubble play task, Student became excited when he saw the bubbles, smiled, and became more animated. Later, Student requested a balloon, and after he received it, he took it to his mother for her to inflate. During the period in which Mother inflated the balloon, Student had a big smile and good focus of attention. After the balloon activity, Student pointed to a bunny and asked Dr. de Armas for help with the bunny. Student slightly smiled back in response to Dr. de Armas' smile. Student became more animated when Dr. de Armas had the bunny chase him. Student smiled in anticipation of the bunny tickling him. Mother advised Dr. de Armas that Student did not generally giggle or laugh out loud.

67. Dr. de Armas' greatest interaction with Student came later during a birthday party task. Student spontaneously blew out the birthday candles at the appropriate time. He did not pretend to sing along, but he did pretend to eat birthday cake without prompting. At the end of the ADOS, when Dr. de Armas was completing some notes and allowing Student to play with the toys, Student became very animated and interactive with his mother with the toys. He imitated his mother when she played with the Play Doh with him, and engaged in a lot of interaction with her.

68. Dr. de Armas concluded that Student's ADOS communication total was below the cut-off for both autism and autism spectrum disorder. Student's reciprocal social interaction total was below the autism cut-off and the autism spectrum cut-off. Student's communication and social interaction total was below those cut-offs, as well. Based on these scores, Dr. de Armas concluded that Student's ADOS classification was not autistic.

69. Dr. de Armas also gave Mother a GARS-2 rating scale. The stereotyped behaviors subscale was in the very likely probability of autism range, and included the following items Mother reported she observed frequently: avoid establishing eye contacts; spins objects not designed for spinning; and makes high-pitched sounds. Mother only reported one item that she did not observe frequently, but rather observed sometimes; specifically slapping, hitting, or biting himself.

70. Dr. de Armas noted that Student's subscale standard score was in the unlikely probability of autism range, and Student's social interaction subscale standard score was in the possibly probability of autism. It included three items in the frequently observed range: (1) resists physical contact from others, (2) becomes upset if routines are changed, and (3) responds negatively or with temper tantrums when given commands, requests, or directions. Dr. de Armas reported that the overall GARS-2 index was in the possibly probability of autism range. At hearing, Dr. de Armas explained that the ADOS is a more precise measure than the GARS-2, because it is based strictly on the assessor's direct observations.

71. On July 20, 2009, Dr. de Armas performed a behavioral observation of Student at school. At the time, Student was attending District's extended school year (ESY). Dr. de Armas interviewed Student's ESY teacher, who advised him that Student was quite social in class with his peers. Her greatest concern was Student's delayed speech, and she reported working with Student to help him make sounds. Dr. de Armas observed Student at a table with an aide. Student independently drew a circle with a crayon using an immature grip. When it was time to transition to another activity, the teacher said, "It's time to stop," and Student, without objection, quickly got up from his seat, and moved to another table with another aide. As soon as he moved to the new table, a speech therapist arrived who took Student and another classmate for speech therapy. Student eagerly took the therapist's hand, and pulled her out of the door, seemingly eager to engage in the activity with her. During speech therapy, the therapist asked Student his name. When Student responded, his verbalization did not sound like his name. The therapist then showed Student drawings of farm animals, and asked Student to name each, and repeat the animal sounds. Student repeated some animal sounds. Student demonstrated no difficulty following instructions or focusing his attention. For example, Student did not hesitate when asked to put each toy animal in a bag. He also made appropriate eye contact with the therapist. He smiled and giggled appropriately when a blue-fish toy, which was spring-activated, jumped up into the air. Student pointed to a book and nodded "yes" when asked if he wanted it. He turned the pages one at a time and pointed to the depicted animals. Student said "meow" when he saw the cat, and "agua" (water) when he saw a dinosaur drinking from a pond. He also repeated some sounds such as a cow's moo, and said "ele" when asked to say elephant. When it was time to leave and return to the classroom, Student repeated "bye-bye" to the therapist. Dr. de

Armas noted that when Student returned to the classroom, he was again very patient and cooperative. At the end of the day, Student had no difficulty transitioning to leave.

72. Dr. de Armas' overall conclusion based on the assessment results was that Student did not have autism. Although answers by Mother on the GARS-2 were indicative of possible autism, his interactions with Student during the ADOS were counterindicative of an autistic spectrum disorder. Dr. de Armas noted that not only did Student's behavior fail to meet the ADOS criteria for a classification of autism, his behavior failed to meet the DSM-IV-TR criteria for a diagnosis of autistic disorder. Specifically, Student had exhibited an increasing use of eye contact, body postures, or gestures to regulate social interaction as noted in his ADOS evaluation of Student, and as reported by Mother. In addition, Student exhibited spontaneous seeking to share enjoyment by participating in play activity with Dr. de Armas and Mother, such as the birthday party activity. Also, Student exhibited reciprocation of social smiling and playfulness during Dr. de Armas' observations, and did not engage in repetitive or stereotyped behaviors such as hand or finger flapping, or complex whole-body movements. Student also engaged in spontaneous make-believe play during the ADOS administration, and was not observed to engage in preoccupation with or an inflexible adherence to specific routines or rituals. The only criterion applicable to Student was his failure to develop peer relationships appropriate to age, due to his low development, as well as his delay in the development of spoken language. In order to receive a DSM-IV-TR diagnosis of autism, Student would have had to meet a number of other criteria as well.

73. Dr. de Armas also concluded that Student's greatest difficulty was clearly with language, given his low verbal scores on all three subtests of the WPPSI-III. Also, based on the scores of the performance intelligence quotient on the WPPSI-III, as well as the adaptive behavior composite on the Vineland, Dr. de Armas thought it was possible that Student was intellectually handicapped rather than autistic.

74. In July 2009, Mother took Student to get a hearing test, but the examiner could not get an adequate reading because Student could not follow instructions. In August 2009, Mother took Student to a facility experienced in working with children who have autism, and asked them to conduct a hearing evaluation of Student. The examiner was able to get an accurate reading. Student's hearing results were normal.

75. In September 2009, Mother received a telephone call from the regional center advising that Student qualified for regional center services under the category of mental retardation, and not autism.

Preschool SDC

76. In September 2009, Student began attending District's preschool SDC, which was taught by special education teacher, Lori Alvarado. Ms. Alvarado has been working for District 14 years, 13 of those years as a preschool special education teacher, where she has taught over 200 students with all kinds of disabilities, including autism, speech and language impairments, mental retardation, cerebral palsy, and Downs' syndrome. For the past six

years, she has taught the preschool SDC comprised of children with severe speech and language delays. She earned her bachelor's degree in psychology from California State University at Long Beach in 1992, her master's degree in early childhood special education in 2000, and earned her clear credential in early childhood special education in 2004.

77. The preschool SDC had approximately 15 Students, all of whom had speech and language deficits. Ms. Alvarado taught the class with the help of two aides. The SDC had a speech and language emphasis, such that every aspect of the three and one-half hour school day was language enriched. At the beginning of the school day, the children would engage in free time in the classroom for approximately 30 minutes while each child had an opportunity to put his or her things away and toilet. Thereafter, Ms. Alvarado would gather the children for circle time where she would lead the class in oral-motor exercises, other speech and language exercises, and in academics, such as counting letters, phonetics, and letter recognition. Next, the children would have snack time, toilet time, and then outdoor play time. Thereafter, Ms. Alvarado would gather the children again for circle time for a story, and then would implement center time, where the children transitioned to a total of seven or eight centers, with two children at each center. Ms. Alvarado and the aides ran their own individual centers in the areas of fine motor skills, pre-academic skills, and speech and language skills. The remaining centers, which included Play Doh, bean bag toss, and other activities, were unmanned by an adult, as Ms. Alvarado wanted to teach the children about independence and staying in designated places.

78. Ms. Alvarado found Student happy, enthusiastic, cooperative, always compliant, and eager to please. She noted that Student had significant speech and language delays. Student could only say 10 to 20 words when he first started her class, and many of these words were approximations. Ms. Alvarado assisted the children in her class in the area of speech and language during the entire school day, and Student's speech pathologist worked with Student twice a week for 20 minutes a session. By the end of the school year, Student could express his needs with words instead of simply gesturing and pointing, and also gained vocabulary words, although he still used some approximations. Student also expressed his accomplishments by smiling and saying, "Good job!" or "I did it!"

79. Student also had delays in his academic and social skills. She noted that Student had good eye contact from the beginning, could maintain attention, was a hard worker, and demonstrated a willingness to learn. He made good academic progress throughout the year. In addition, he could initiate socially with his peers. On one occasion, Student picked a flower and gave it to another student. Also, Student played well on the playground with his peers.

80. Ms. Alvarado noted that Student required no more individualized attention from her than any of the other students in the class, but she noted that he did need individualized help with his fine motor skills in terms of holding writing utensils. An OT specialist worked with the class as a whole one hour per week on fine motor activities, such as ripping paper, cutting paper, working with Play Doh, improving pencil grasp, and writing activities. Ms. Alvarado and her aides also worked on OT tasks with the children throughout

the week. By the end of the school year, Student could write independently, including his name.

81. In addition to an OT specialist working with Ms. Alvarado's class, an APE teacher worked with the class as a whole approximately 50 minutes per week.

School-Based Speech Therapy

82. District speech and language pathologist Judy Meckna began providing group speech and language services to Student in September 2009. Ms. Meckna earned her bachelor's degree in psychology in 2001 from California State University at Long Beach, her communication sciences and disorders certificate in July 2010 from California State University at Dominguez Hills, and is presently enrolled at California State University at Fullerton to earn her master's degree in communicative disorders. Ms. Meckna was issued a variable term waiver in 2008, permitting her to provide speech and language services to preschoolers, elementary, middle, and high school students, under the supervision of a licensed speech and language pathologist. Ms. Meckna expects to become a licensed speech and language pathologist in 2012, after she completes her master's program. In her capacity as a speech and language pathologist, she provided speech and language services to the Rowland Unified School District (Rowland) from November 2008 to June 2009, and to District from September 2009 to June 2010. At Rowland, she had 20 children on her caseload, and at District, she had approximately 60. She worked with students who had language disorders, articulation issues, fluency issues, autistic-like behaviors, mental retardation, and Down's syndrome. She is presently employed part-time with the Los Angeles County of Education as a long-term substitute speech teacher.

83. Ms. Meckna provided speech and language sessions to Student during two, 20-minute group sessions per week, which generally included two to three students in each group. She was supervised by Adair Teller, who has been a credentialed speech and language pathologist for 35 years, as well as a program administrator for the District for ten years. Ms. Meckna was responsible for helping Student with his speech and language goals set forth in his May 19, 2009 IEP. When she began working with Student, she noted that his receptive skills were better than his expressive skills, and that he was having oral-motor and articulation issues. She also noted that Student presented with an open mouth and protruding tongue. Student also had front teeth missing, which impacted his ability to make certain sounds, such as the "t" and "s" sounds. After working with Student for approximately four months, he began to use short phrases such as "open please", "I want ball", and "I did it". Initially, Ms. Meckna found Student difficult to understand approximately 50 percent of the time, and he used a lot of hand gestures. She began to understand him approximately 60 to 70 percent of the time later in the school year. In order to track Student's progress, Ms. Meckna kept speech notes, logs, and performed assessments.

December 10, 2009 IEP Amendment

84. Mother requested an IEP meeting because she did not know what to do for Student, given the three different diagnoses she had received concerning Student: (1) autism by Stramski; (2) speech and language impairment by District; and (3) mild mental retardation by Dr. de Armas. On December 10, 2009, the IEP team met. The team consisted of Mother, Student's aunt, Ms. Rezvani, Ms. Meckna, Adair Teller, who was the program administrator, and Ms. Alvarado. Mother reported that her primary concern was Student's speech and language development, and asked the team whether apraxia (a speech disorder that results in a child's inability to say what he wants to correctly) could be the reason why Student was not talking. The team could not comment whether apraxia was a factor, but after reviewing Student's progress in the area of speech and language skills, added an oral-motor goal to Student's IEP. Ms. Mecka drafted the goal after discussing it with her supervisor, Ms. Teller, which provided that Student would correctly produce consonant-vowel, vowel-consonant, and consonant-vowel-consonant sounds with increased oral opening in response to objects, pictures, and games, as measured by the speech and language pathologist, speech and language pathologist assistant, and through teacher observations and records.

85. Mother consented to the goal, and on December 16, 2009, the May 19, 2009 IEP was amended to include the new goal.

Assessment by Dr. Robin Morris

86. On February 1 and 4, 2010, Student's expert witness, Dr. Robin Morris, conducted a psychoeducational assessment of Student, when Student was four years and seven months old. Dr. Morris is a clinical psychologist who specializes in working with infants and children, particularly in the areas of autism and learning disabilities. She earned her bachelor's degree in 1991 from the University of Southern California, her master's degree in 1992 in clinical psychology from Pepperdine University, and her doctorate in 1997 from the California School of Professional Psychology. Her doctoral project topic was entitled *A Case Study of Autistic Children Using Physical Play as an Adjunct to Treatment*. In 2009, Dr. Morris completed post-doctorate studies at the University of North Texas in the Department of Behavior Analysis. She has been in private practice as a clinical psychologist for ten years, and 60 to 70 percent of her practice deals with children on the autism spectrum. Dr. Morris prepared a report dated February 10, 2010.

87. Prior to administering any tests to Student, Dr. Morris reviewed the Stramski reports, the May 19, 2009 IEP, Dr. de Armas' report, and District's initial assessment report. Dr. Morris explained at hearing that it concerned her that District's report showed that it only conducted the GARS-2 to measure whether Student had autism, given what Mother had stated in the GARS-2 questionnaire. At a minimum, Dr. Morris believes District should have conducted at least one more test to measure whether Student had autism. In addition, Dr. Morris, after reviewing the District's GARS-2 protocol, and Ms. Rezvani's notes written on the protocol, believes that Ms. Rezvani underestimated some of the scores. For example, one question asked whether the child made high-pitched sounds or other vocalizations for self

stimulation, to which Ms. Rezvani scored the item as “0”, even though Mother indicated that Student made high-pitched sounds when he was happy. Dr. Morris believed that Ms. Rezvani should have given this item at least a score of “1”. In addition, another question asked whether the child looked away or avoided looking at a speaker when his name was called, to which Ms. Rezvani scored the item as “2”, indicating that Mother “sometimes observed” Student behaving in this manner three to four times during a six hour period. Dr. Morris felt that this item should have been given the highest rating of “3”. Also, in response to the question asking whether Student responded negatively or with temper tantrums when given commands, requests, or directions, Ms. Rezvani scored the item as “0”, even though Mother indicated that Student would tantrum when he did not get his way, but stopped when his tantrumming was ignored. Dr. Morris believed that Ms. Rezvani should have given this item at least a score of “1”. Finally, Dr. Morris noted the item Ms. Rezvani inadvertently failed to score at all (i.e., “laughs, giggles, cries inappropriately”). Consequently, in addition to the score Student should have received for the item Ms. Rezvani inadvertently failed to score, Dr. Morris believes Ms. Rezvani underscored Student’s GARS-2 by at least an additional three points.

88. Dr. Morris also explained that after reading District’s initial assessment, she would have concluded that Student had met the eligibility requirements for autistic-like behaviors given the behaviors Mother reported on the GARS-2 concerning Student, including his history of rigidity, stacking objects, poor eye contact, spinning objects, using toys inappropriately, and becoming upset when routines were changed. Also, Dr. Morris would have concluded Student had autistic-like behaviors, given the results of the socialization domain of Vineland-II, where Mother reported that Student would not use actions to show happiness or concern for others, demonstrate friend-seeking behaviors, use common household objects for make-believe activities, play simple make-believe activities, transition easily from one activity to the next, or say “thank you” or “please”. In addition, Dr. Morris believes the results of the Vineland-II concerning the communication domain demonstrated autistic-like behaviors.

89. Dr. Morris also conducted an interview of Mother. Mother reported that early in his development, Student showed withdrawn behavior, an inability to separate from her, a failure to thrive, poor eye contact, speech difficulties, and eating problems. Student had very limited verbal ability and could only produce some vowel sounds and label some items. He spoke his first word at ten months old, but his functional speech never emerged. Although Mother cited no recent regression of skills, she advised that Student lost many skills at the age of three, including successful potty training and speech. Student could not use the toilet and could not wipe himself after a bowel movement without help. Also, Mother reported that Student had very few self-help skills. Due to his inability to communicate, Student could not ask for help and would pull family members by the hand when he wanted something. He would exhibit maladaptive behaviors directly related to his inability to communicate, such as hitting, kicking others, crying, and throwing items. In addition, Student was a picky eater, preferring macaroni and cheese, tacos, and beans, and would not feed himself at home and needed to be hand fed, including finger foods. However, at school, Student would eat without help. Mother also reported that Student could not dress himself,

and needed Mother to brush his teeth and put water in his mouth to rinse the toothpaste out of his mouth. He also exhibited sensitivity to certain objects resulting in him vomiting, such as exposure to Play Doh, rubber items, grass, sand, and cake with frosting on top.

90. Dr. Morris interviewed Ms. Alvarado prior to testing Student. Ms. Alvarado advised that, in regard to language, Student would try to imitate others, but had difficulty getting the sounds out of his mouth by moving his lips when he spoke. Consequently, it was very difficult for her to understand some of Student's spontaneous speech. Ms. Alvarado also reported that academics were an area of weakness for Student due to his impaired speech. Also, his performance was inconsistent when asked to identify colors. Ms. Alvarado advised that although Student could not yet write his name, his writing had improved. Student also demonstrated an understanding of the classroom routine, and exhibited a lot of independent skills, such as putting away his jacket and backpack, and throwing trash into the trash can. Student exhibited no verbal self-stimulatory behavior or odd behaviors, and engaged in social interaction. Specifically, Student had one female peer who was in a wheelchair that he would smile at, but did not play with her. Student tended to play by himself, looking at books, and playing with puzzles. Dr. Morris also indicated in her report that Ms. Alvarado advised that Student also stacked boxes, but at hearing, Ms. Alvarado denied making that representation.

91. Dr. Morris also interviewed Student's gastroenterologist, Dr. Matias, who had been treating Student for fat absorption issues. Dr. Matias advised Dr. Morris that fat was a vital element in the brain, and that cognitive ability is affected by a body's inability to take in fat. As such, Dr. Matias advised that it would be premature to find a diagnosis of mental retardation until the fat absorption issues were addressed sufficiently.

92. Dr. Morris assessed Student in her office for two hours, where she had an opportunity to perform behavior observations. Dr. Morris explained that Student smiled at her and easily separated from Mother and his grandfather, who accompanied him to the office. Student sat in his chair for at least 40 minutes at a time and only left his seat when Dr. Morris would give him a break. Dr. Morris noted that Student appeared congested and would tend to breathe out of his mouth. When his nose ran, he appeared to be aware, yet he showed no indication of wanting a tissue. He never pointed or used any other gestures during the testing. Student did not protest when Dr. Morris took a toy away from him, and showed a general level of cheerfulness throughout the evaluation.

93. Dr. Morris noted that Student's verbal expression was minimal and consisted of labeling a few items. Receptively, Student showed difficulty following one and two-step commands without visual cues, with a few exceptions. One exception was where Student would independently put his tissue in the trashcan upon using it, and the other was when he would independently put his toys back. Academically, when she asked Student to identify colors from a list of crayons, he performed slightly better than when he was requested to do so from a two-dimensional presentation. During writing tasks, Student held his pencil with a fist-type grip, and held the pencil near the top.

94. Dr. Morris noted that Student's attention was consistently good and he never showed fatigue. He was enthusiastic and motivated regardless of the task presented. During less structured play, Student preferred cause and effect toys that played music. Despite Dr. Morris' offer of toys that were age appropriate, Student preferred toys for younger children. Dr. Morris did not witness Student engage in pretend or imaginary play, and he did not imitate Dr. Morris when she played with a space ship, fire truck, and small figurines. Instead, Student would turn over the fire truck and spin the wheels. Dr. Morris also witnessed Student clapping his hands and putting them up to his face, which Dr. Morris identified as self-stimulatory behavior, and stacking toys on top of each other. Dr. Morris conducted no observations at Student's home.

95. Dr. Morris used a number of instruments to assess Student: (1) the Stanford-Binet Intelligence Scales, Fifth Edition (Stanford); (2) Mullen Scales of Early Development (Mullen); (3) Bracken School Readiness Assessment-Third Edition (Bracken); (4) Peabody Picture Vocabulary Test-Fourth Edition (PPVT-4); (5) Expressive Vocabulary Test, Second Edition (EVT-2); (6) Clinical Evaluation of Language Fundamentals Preschool Pre-Literacy Rating Scale (CELF); (7) Developmental Neuropsychological Assessment-Second Edition (NEPSY-II); (8) Autism Diagnostic Interview-Revised (ADIR); (9) Childhood Autism Rating Scale (CARS); (10) Scales of Independent Behavior-Revised (SIB-R); (11) Social Skills Rating System (Parent Form); and (12) Social Skills Rating System (Teacher Form).

96. Dr. Morris administered the Stanford to measure Student's intelligence, and concluded that Student's nonverbal intelligence quotient (NVIQ) was 68, representing the second percentile, falling within the mildly delayed range. The NVIQ included five subtests: (1) fluid reasoning, where Student scored in the 16th percentile; (2) knowledge, where Student scored in the 0.1 percentile; (3) quantitative reasoning, where Student scored in the 0.1 percentile; (4) visual spatial, where Student scored in the 50th percentile; and (5) working memory, where Student scored in the 9th percentile. Dr. Morris found Student's nonverbal knowledge to be significantly and practically lower than the average of the five NVIQ subtests, which Dr. Morris opined could show that Student had a relative weakness in providing information about common objects, people, or natural laws depicted in illustrations. In addition, Dr. Morris found Student's nonverbal quantitative reasoning to be significantly and practically lower than the average of the five NVIQ subtests, which Dr. Morris opined could show that Student had a relative weakness in recognizing mathematical concepts and quantitative problem solving. Finally, Dr. Morris found Student's nonverbal visual-spatial processing to be significantly and practically higher than the average of the five NVIQ subtests, which Dr. Morris opined could show that Student had a relative strength in seeing patterns, relationships, and spatial orientations of visual material.

97. Dr. Morris also administered the Mullen, which assessed early intellectual development, and school readiness. Dr. Morris explained that the Mullen is frequently used with autistic children as these children often have inconsistent expressive and receptive language abilities. The Mullen is broken down into five scales: (1) visual reception; (2) fine motor; (3) receptive language; (4) expressive language; and (5) gross motor.

98. The results of the visual reception scale showed that Student performed at the age equivalent of 33 months and in the first percentile, and was able to make an object association, discriminate forms with ease, and was able to match letters. Student could not match words and show memory for three pictures. In the area of fine motor abilities, where Student performed at the age equivalent of 39 months and in the first percentile, Student could string beads, imitate a four-block tower, and draw a path. However, he could not cut with scissors, and would use two hands when trying to fit his fingers in the holes of the scissors. In addition, Student could not draw any figure or line with the exception of a circle, and could not touch his fingers in a sequenced form. In the area of receptive language, where Student performed at the age equivalent of 30 months and in the less than first percentile, Student was able to recognize his eyes, ears, nose, hands, mouth, feet, and hair. He was able to understand simple comprehension questions and could comprehend action words (i.e., eating). Student was able to identify only a few colors, including red, orange, and yellow, and appeared to show substantial deficits in his ability to respond correctly when asked to identify comparative concepts. He was also unable to follow three unrelated commands and could not identify letters. In the area of expressive language, where Student performed at the age equivalent of 14 months and in the less than first percentile, Student was able to say two to seven words, and could name a ball when shown. He could not label other objects including a cup, key, book, car, or a knife. He also did not use two-word phrases, pronouns, or demonstrate an ability to count.

99. Dr. Morris administered the Bracken, which was used to measure Student's academic readiness by evaluating his understanding of 85 foundational concepts in the categories of: (1) colors, where Student scored 30 percent mastery; (2) letters, where Student scored seven percent mastery; (3) numbers/counting, where Student scored zero percent mastery; (4) sizes/comparisons, where Student scored zero percent mastery; and (5) shapes, where Student scored zero percent mastery. Overall, Student scored a school readiness composite of 63, representing a percentile rank of 1, which was within the very delayed range.

100. Dr. Morris administered the PPVT-4 scale, which is a norm-referenced instrument that measures responses to vocabulary by requiring Student to point to one of four pictures. Student showed no ability to differentiate between the four pictures, and would choose all items shown. Consequently, Dr. Morris discontinued the test.

101. Dr. Morris administered the EVT-2 to assess Student's expressive vocabulary skills by requiring him to label or provide a synonym that best described the pictured stimuli. Student was unable to respond to trial items, so Dr. Morris did not administer the subtest.

102. Dr. Morris gave Mother the CELF pre-literacy rating scale, which measures emergent reading and writing skills. Mother reported that Student could often point to a picture when an adult named it. Student could also recognize his own printed names, and would write or draw to imitate writing. He did not have the ability to tell what happened, first, next, and last in a familiar story, and could not write or scribble from the left to the right side of the page. Student could not produce recognizable drawings and could not copy or

write on printed lines, and could not write most letters accurately. Student's criterion score of 46 indicated that he did not meet the criteria score for his age. Dr. Morris' report did not include the criterion score Student should have received to represent his age. As such, Dr. Morris concluded that Student had inadequate pre-literacy skills.

103. Dr. Morris administered the NEPSY-II, which helps assess academic, social, and behavioral difficulties in children and adolescents. Dr. Morris explained that the results obtained from the NEPSY-II can be used to diagnose and aid in intervention planning for a variety of childhood disorders. In particular, a comprehensive understanding of a child's cognitive limitations can facilitate the development of appropriate IEPs and guide placement and intervention decisions. In the area of language, where the test measured how well Student understood and used words and sentences to communicate with others, Student's performance fell at the well below-expected level. In the area of visuospatial processing, where the test measured how well Student saw and arranged visual information, Student performed in the below-expected level for block construction, and scored in the well below expected level for design copying.

104. Dr. Morris requested Mother to complete the ADIR, which is a comprehensive interview designed to identify characteristics common to autistic children. Dr. Morris explained that the 93-item interview focused on behaviors that were rare in non-affected individuals, and focused on three domains: (1) functioning-language/communication; (2) reciprocal social interactions; and (3) restricted, repetitive, and stereotyped behaviors and interests. In the area of language and communication, Mother reported that Student's language presently consisted of 20 to 30 consistent words, but that Student had lost speech previously learned when he was two and one-half to three years old. Student had also lost his ability to urinate in the toilet. Student had engaged in echolalia in the past, and did not use pronouns and omitted sounds when trying to repeat words. Mother reported that she could not have a conversation with Student. Student used common gestures, and would use Mother's hand to communicate, and would grab her face and pull it toward what he wanted.

105. In the area of social communication, Mother reported that Student did not look someone directly in the face when doing things, did not play pretend games, did not play with action figures, and did not engage in imaginative play with others. When approached by another person, Student would hide, and if someone he did not know tried to talk to him, he would get angry, and turn his face so he could not be seen. Mother reported that Student had no friends, was not generally interested in other children, but would play with his cousin.

106. In the area of repetitive, restrictive patterns or interests, Mother reported that Student used to line up all of his toys or videocassettes, and would stack them for long periods of time. He was oversensitive to noise and would get upset if a baby cried. He would also become distressed if he could not drink from the same cup.

107. After scoring the ADIR, Dr. Morris concluded that Student exceeded the cut-off scores on qualitative abnormalities in reciprocal social interaction and communication.

Student did not meet or exceed the cut-off on restricted, repetitive, and stereotyped patterns of behavior.

108. Dr. Morris completed the CARS, which is a 15-item behavioral rating scale developed to identify children with autism, and to distinguish them from developmentally handicapped children without autism. The 15 behaviors the CARS rated included the following: (1) relating to people; (2) imitation; (3) emotional response; (4) body use; (5) object use; (6) adaptation to change; (7) visual response; (8) listening response; (9) taste response; (10) smell response; (11) fear or nervousness; (12) verbal communication; (13) activity level; (14) level and consistency of intellectual response; and (15) general impressions. Student received a score for 32.5, which is in the mild-moderate autistic range.

109. Dr. Morris also used the SIB-R to measure Student's overall adaptive behavior based on an average of four different areas of adaptive functioning: (1) motor skills; (2) social interaction and communication skills; (3) personal living skills; and (4) community living skills. In the area of motor skills, which includes gross and fine motor proficiency tasks involving mobility, fitness, coordination, eye-hand coordination, and precise movements, Student's gross motor skills were age-appropriate, but his fine motor skills were in the limited to very limited range.

110. In the area of social interaction and communication skills, which included Student's interactions with others in various social settings, and Student's understanding and communication of information through signs, oral expression, or written symbols, overall, Student's skills were in the limited to very limited range, comparable to that of an average individual at age one year and five months. Student performed in the limited to very limited range for social interaction skills, prompting Dr. Morris to conclude that age-level tasks involving social interaction with other people would be very difficult to extremely difficult for Student. Also, Student's language comprehension skills were limited, such that age-level tasks involving understanding signals, signs, or speech deriving information from spoken and written language, would be very difficult for him. In addition, his language expression skills were in the very limited to negligible range, such that age-level tasks involving talking and other forms of expression would be extremely difficult to impossible for him.

111. In the area of personal living skills, which included adaptive behaviors related to eating and preparing meals, taking care of personal hygiene and appearance, and maintaining an orderly home environment, Student performed in the limited range, comparable to that of the average individual at age two years and three months. When presented with age-level tasks, Student's eating and meal preparation skills were in the limited to age-appropriate range, his toileting skills were in the very limited range, his dressing skills and self-care skills were in the limited range, and his domestic skills were in the limited to age-appropriate range.

112. In the area of community living skills, which included skills an individual needs to successfully use community resources, perform in an employment setting, and assume other social and economic requirements encountered in community settings, such as

tasks involving time and punctuality, money and value, work skills, and home and community orientation, Student's overall community living skills were in the limited range, comparable to that of an average individual at age two years and seven months. When presented with age-level tasks, Student performed in the very limited range for time and punctuality, the limited range for money and value, the limited to age-appropriate range for work skills and home and community orientation skills.

113. Student's overall adaptive behavior and functional independence was in the limited range, comparable to that of the average individual at two years and two months, which was within the very low range of scores obtained by others at his age level. Dr. Morris reported that Student's greatest strengths included his motor skills, while his lower scores included his social interaction and communication skills.

114. When considering the maladaptive indexes of the SIB-R, Dr. Morris concluded that Student demonstrated marginally serious problems behaviors. Specifically, Student demonstrated marginally serious internalized maladaptive behaviors, including withdrawal or inattentive behavior, unusual or repetitive habits, and hurting himself. He also demonstrated marginally serious asocial maladaptive behaviors, including socially offensive and uncooperative behavior. Dr. Morris concluded that based on Student's levels of functional independence and problem behaviors, Student would need frequent support, much more than others his age.

115. Dr. Morris used the Social Skills Rating System (SSRS) to assess Student's social behaviors that could affect teacher-student relations, peer acceptance, and academic performance. Dr. Morris gave a SSRS form to Mother and to Ms. Alvarado for them to complete. Mother perceived that Student had low social skills and average problem behaviors compared to other similar-aged children. Student would not help with household chores without being asked, and he would not introduce himself to other people without being told. In addition, he could not make friends easily, and would not join in group activities without being told. On the other hand, Ms. Alvarado perceived that Student had average social skills, and below average problem behaviors compared to other similar-aged children. He would not introduce himself to new people without being told, but he would sometimes invite others to join in activities. Ms. Alvarado also reported that Student did not disturb ongoing activities, and did not show aggressions toward people or objects.

116. On February 4, 2010, Dr. Morris observed Student at school for 60 minutes, as he participated in his preschool SDC. District's Special Education Administrator, Kristy Spear, accompanied Dr. Morris during the entirety of her observation of Student. Dr. Morris and Ms. Spear first observed Student outside on the playground, where Student eagerly sought out other children and chased them. Dr. Morris observed a verbal interaction initiated by Student. Student would approach playground equipment that was too high for him, hold his arms up, as if he were signaling for someone to pick him up. No one assisted him. Student ran over to a girl who was tapping on a metal object, and Student began tapping on the object while smiling. Although there were children engaged in interactive games, Student appeared more interested in climbing up objects and chasing others. He appeared

unstable as he ran, as if he were about to trip. Student did not appear to understand the reciprocation of the chase game, and would not run away if a child attempted to chase him. When Ms. Alvarado rang the bell, Student lined up with the other children in his class without any prompts or assistance. Student patiently waited his turn and then looked up at Ms. Alvarado when it was time for her to squirt hand sanitizer in his hands.

117. Dr. Morris then observed Student in the classroom, where Student transitioned to circle time independently. Ms. Alvarado read a story and Student appeared to listen and watch the teacher intently. Ms. Alvarado then asked the children questions about the story. Student did not answer and appeared to have brief periods of staring off. When Ms. Alvarado asked the children to count aloud the items on a page, Student ticked off the numbers on his fingers, but did not say the words. He also pointed to something in the distance and smiled. Next, the children transitioned to centers, and Ms. Alvarado advised Student that he would be at her center, which included three other Students. When Ms. Alvarado asked Student what color he wanted, Student grabbed a pair of green scissors. Ms. Alvarado then told Student to look at her and say, "I want green." Student replied giving Ms. Alvarado an approximation of the phrase. Student initially required hand over hand assistance to cut a folded sheet of construction paper, but was then able to cut independently, though he had difficulty cutting on the line. Student appeared to require more individualized attention than the other children at the center. When Student was independently placing stickers on his cut paper, a few stickers got stuck, and Student needed help. Ms. Alvarado modeled the words, "Do you need help?" to which Student gave an approximated response using poor eye contact. Also while at the center, Student strung foam beads independently. When the children transitioned to the next center, Student transitioned to the one involving a toy playhouse and plastic figurines and furniture. Student repeatedly stacked the figurines in a pile, dumped the pile, watch the items fall, and then rebuilt the pile, approximately seven times. As the items fell, Student would stare at them. Dr. Morris witnessed no interactive play or language on Student's part.

118. After reviewing the assessment results, including her observations of Student, Dr. Morris concluded that Student had autism within the definition set forth in the DSM-IV. She based this diagnosis on the following factors: (1) Student did not communicate using traditional methods (i.e., speech and gesturing), and did not have a dominant method of communicating; (2) Student did not interact with peers in a reciprocal manner; (3) Student's play skills consisted of more independent play; (4) Student engaged in an inappropriate use of toys by spinning the wheels of cars, and stacking items and then watching them fall; and (5) Student exhibited severe deficits in his domestic and community skills by not independently dressing or undressing himself, feeding himself, grooming himself, brushing his teeth, and using the toilet. He also lacked awareness of potentially dangerous situations, picked at his fingers, nose, and bottom, and frequently stared into space.

119. Dr. Morris concluded that Student met the eligibility criteria for special education as a child with autistic-like behaviors. Dr. Morris explained that Student exhibited an inability to use oral language for appropriate communication, as Student was nonverbal, had not been exposed to nonverbal ways of communicating, did not communicate using

gestures consistently, did not ask for help, and did not have a dominant way of communicating. Also, Student had a history of extreme withdrawal or relating to people inappropriately, as Student did not interact in an age-appropriate way with peers, did not play interactively with others, and did not have friends. In addition, Student had an extreme preoccupation with objects or inappropriate use of objects or both, evidenced by Student's history of lining up and stacking items. Moreover, Student exhibited extreme resistance to controls, as Student was aggressive at home, although he behaved well at school. Dr. Morris also advised that Student displayed peculiar motoric mannerisms and motility patterns, although Dr. Morris cited no examples of such behavior. Finally, although Student was not presently exhibiting them, he had a history of self-stimulatory, ritualistic behaviors.

120. Based on these conclusions, Dr. Morris opined that Student would not be able to master the goals listed in his May 19, 2009 IEP, and expressed concern regarding Student's current skill level and pre-kindergarten readiness skills. As such, Dr. Morris recommended that Student remain in the preschool SDC for an additional year. In addition, she noted that Student's school program had focused primarily on academic skills, even though Student continued to exhibit very low adaptive living, communication, feeding, and safety skills. Dr. Morris acknowledged that Student's behaviors presented substantially differently at home with his family, than at school. Specifically, that he tended to show higher levels of maladaptive and aggressive behaviors in the home. As such, Dr. Morris opined that Student required a more intensive program in the home to address his numerous areas of deficit. Dr. Morris advised that there was much documented research suggesting that ABA was an effective strategy in treating children with autism. Dr. Morris explained that an ABA program could address behavior, communication, and social deficits, and would offer structured teaching situations in which Student could be taught information broken down into small, measurable steps.

121. Dr. Morris made nine recommendations: (1) that Student continue to be treated by Dr. Matias in an effort to increase Student's fat absorption and rule out other medical conditions that could influence Student's ability to learn; (2) that Student participate in a 25 hour a week in-home one-on-one ABA program on a year-round basis in order to prevent regression, and to help Student derive educational benefit by improving his functioning across all domains; (3) that Student remain in his current preschool SDC, where Student can receive individual support during the school day, and receive one-on-one ABA support during recess and lunch to increase Student's opportunities to engage with his peers in a social environment; (4) that Student's IEP team have monthly one-hour consultations with Student's behavior supervisor, and that Ms. Alvarado receive behavioral instruction regarding behavior terminology; (5) that ABA service hours be provided over the summer to work on social skills, domestic skills, and functional communication; (6) that Student receive 60-minute individual speech and language therapy two times per week to assist Student with communication, including gestures, signing, pointing, and using the Picture Exchange Communication System (PECS); (7) that Student receive weekly, ongoing occupational therapy to address Student's fine motor deficits; (8) that Student receive a physical therapy evaluation to determine the need for services due to general instability; and (9) that Dr.

Morris observe Student in a three month period to measure Student's progress and to update his treatment plan.

122. Mother provided District with Dr. Morris' report in February 2010. Mother paid Dr. Morris a total of \$2,600 for her assessment of Student.

Criticism of Dr. Morris' Report

123. At hearing, Dr. de Armas, who reviewed Dr. Morris' report after he began contracting with the District in February 2011, offered criticism of Dr. Morris' report. Dr. de Armas noted that Dr. Morris indicated that it would not be appropriate to diagnose mental retardation until the fat absorption issue is resolved, yet she diagnosed autism without any consideration for whether Student's fat absorption issues could affect the measures for autism. Also, Dr. de Armas queried whether any of her recommendations would be effective without resolving the medical issue first. In addition, Dr. Morris reported that during her classroom observation of Student, Student eagerly sought out other children and chased them during unstructured outdoor play, imitated another student by tapping on a metal object, made eye contact when looking up at Ms. Alvarado when she squirted hand sanitizer in his hands, and pointed to something in the distance and smiled, factors which Dr. de Armas explained are not indicative of a child with autism. Dr. Morris reported that on the ADIR, Student scores exceeded the cut-off in the areas of reciprocal social interaction and communication, but did not meet the cut-off in the area of repetitive and stereotyped patterns of behavior. Dr. de Armas indicated that an individual must meet the cut-off in all three areas of the ADIR before a person can be considered autistic. Dr. de Armas disagreed that Student met the eligibility requirements for autistic-like behaviors because he did not witness any of the behaviors Dr. Morris reported, with the exception of Student's speech issues. Finally, Dr. de Armas opined that, contrary to Dr. Morris' recommendation, Student did not require ABA therapy because he follows instructions, pays attention, and seems to be benefitting from his curriculum. Similarly, neither Ms. Rezvani, Ms. Lex, nor Ms. Taylor observed the behaviors during their 90-minute assessment that Dr. Morris reported observing.

Alvarado's March 2010 Assessments

124. In March 2010, in order to determine Student's progress in the preschool SDC, Ms. Alvarado conducted assessments of Student in the following areas: (1) preacademic skills; (2) prevocational skills; (3) communication skills; (4) gross motor skills; (5) fine motor skills; (6) social-emotional skills; and (7) self-help skills.

125. In the area of preacademic skills, Ms. Alvarado noted that Student could: (1) complete a 17-piece puzzle; (2) identify six shapes; (3) expressively identify five colors; (4) sort and match by color; (5) spell his name; (6) count to eight; and (7) identify five letters and five letter sounds.

126. In the area of prevocational skills, Ms. Alvarado noted that Student could: (1) understand and follow school rules; (2) transition from one activity to the next with ease; (3) sit for extended periods of time during circle time activities; (4) sit for extended periods of time (approximately 30 minutes) during circle time activities; (5) recognize his name in print and those of his peers; (6) adapt well to change in routine; (7) participates in songs and finger-plays; (8) cooperative with all tasks and activities; and (9) participate in group activities.

127. In the area of communication skills, Ms. Alvarado noted that Student could: (1) exhibit joint attention; (2) spontaneously ask to have his snack or lunch opened; (3) point to a tissue when he needed one; (4) name peers and call them by their name; (5) remember and share past activities by pointing; (6) understand and follow familiar two-step commands; (7) understand and follow simple novice commands; and (8) say 50 to 60 words. At hearing, Ms. Alvarado explained that when Student spoke some of the 50 to 60 words, they were approximations. Ms. Alvarado attributed some of the approximations to Student's missing front teeth, which she believed interfered with his ability to say words properly.

128. In the area of gross motor skills, Ms. Alvarado noted that Student could: (1) run with ease; (2) climb in, on, and out of large climbing objects; (3) balance on a balance board; (4) walk on a balance beam; (5) climb up and down stairs while holding onto the rail; and (6) pedal a tricycle with minimal assistance.

129. In the area of fine motor skills, Ms. Alvarado noted that Student could: (1) write his name independently; (2) rip and tear paper; (3) use a pincer grasp to pick up small objects; (4) use scissors to cut; (5) draw vertical lines, horizontal lines, and circles; and (6) draw a person after a model with at least six recognizable body parts.

130. In the area of social-emotional skills, Ms. Alvarado noted that Student was generally happy and cheerful at school, and could: (1) show pleasure in completing tasks by saying "I did it!" or "Good job!"; (2) exhibit and maintain eye contact; (3) initiate interactions with familiar peers and adults; (4) show interest in peers; (5) respond appropriately to social contact made by familiar peers or adults; (6) smile at others; (7) participate in group activities; (8) share toys; and (9) use toys appropriately.

131. In the area of self-help skills, Ms. Alvarado noted that Student could: (1) wash and dry his hands with minimal assistance; (2) feed himself with a fork or spoon without spilling; (3) drink from a cup; (4) take off his jacket; (5) demonstrate that he knew where items belonged and could put items away; (6) open and close his backpack and lunch bag; (7) use the bathroom at scheduled bathroom breaks without wetting his pants between scheduled bathroom breaks; (8) unsnap and pull down his pants; and (9) pull up his pants.

132. In Ms. Alvarado's observation, by March 2010, Student had met or exceeded some of his goals set forth in his May 19, 2009 IEP. Specifically, Student met his language and communication class routine goal requiring Student to follow familiar two-step directions with no more than one prompt. In addition, Ms. Alvarado noted that back in

November 2009, Student had met his prevocational goal requiring him to transition from one activity to the next with no more than one prompt.

133. Ms. Alvarado also reported that Student had made either some or substantial progress on his remaining goals she was designated to track. Specifically, Student made substantial progress on his fine motor goal addressing scissor usage. Ms. Alvarado noted that Student still required a physical prompt to hold the scissors with his thumb up, but could make continuous cuts down a line. Student also made substantial progress on his preacademic goal addressing identification of basic colors. Ms. Alvarado noted that Student could expressively identify the colors purple, red, blue, green, and orange. Student made some progress on his social-emotional goal addressing Student's interaction with other children in age appropriate activities. Ms. Alvarado noted that Student showed interest in his peers, played in close proximity to them, and had begun to play with them.

Videotape

134. During the course of the school year, Mother advised Ms. Alvarado that Student had been hitting, pinching, and being defiant at home. As such, Mother was concerned that Student was engaging in the same negative behaviors at school. Ms. Alvarado advised Mother that she has never witnessed Student engaging in any negative behavior at school, and the aides in the class have never reported Student engaging in any negative behaviors. Ms. Alvarado advised Mother that Student was happy, cooperative, and eager to please, and has never engaged in task refusal or any other negative behavior. In order to alleviate Mother's concerns, Ms. Alvarado videotaped Student over several days in February and March 2010, filming approximately 45 minutes of footage.

135. Kristy Spear, who was the Administrator of Special Education for District, reviewed the videotape several times. Ms. Spear, who provided testimony at hearing, has worked for District since 1987. She has served as the Administrator of Special Education since 2009, and had previously served as a program administrator for seven years. Prior to that, Ms. Spear was an assistant principal and a principal with District, after serving seven years as a general education teacher. She received her bachelor's degree in liberal studies in 1987 from the University of the Pacific, as well as her multiple subject teaching credential. She received her master's degree in education from the University of LaVerne in 1994, as well as her preliminary administrative services credential. Ms. Spear also attended the University of LaVerne from 1997-1999 and earned her professional clear administrative services credential. She also attended Azusa Pacific University from 2003-2007 and completed courses in special education for mild to moderate disabilities. In her capacity as Administrator of Special Education, she supervises program administrators, school psychologists, attends IEPs, and ensures that students' programs are implemented properly.

136. At hearing, Ms. Spear explained that the videotape depicted Student doing various activities at school, including during snack time, unstructured outdoor play, and in the classroom. During snack time, Student had a container of peaches. He held up the container and said "open" to one of the teachers. The teacher then said "open please", to

which Student then said “open” and an approximation of the word “please”. On the playground, Student interacted with other children on the slide, and in the wood chips, where the children were kicking wood chips back and forth to each other. In the classroom, Student participated in circle time, where he held a purple card and attempted to say the word “purple”, but did not include the “r” sound in the word. The video also showed him trying to participate by saying the letters and sounds. At one time, the teacher asked Student whether he was a girl or a boy, and Student did not reply. The teacher then said, “I am a boy”, and Student repeated it. Student was asked to choose the song the class would sing. Student picked the song entitled *The Wheels on the Bus*, and repeated “wheels on the bus” when the teacher asked him to do so. Student interacted with the song and performed the hand motions that went with the song. At one time, Student was sitting at a center with a puzzle of a strawberry, and a little girl had taken his puzzle piece. Student got up from his seat, went to the other side of the table, and retrieved his puzzle piece. Student displayed no acts of aggression toward the little girl who had taken his puzzle piece. At one time, he pointed to a rainbow and said “rainbow”. Ms. Spear explained that, overall, Student seemed happy and appeared to enjoy being at school. There was nothing in the video depicting Student hitting, pinching, or being non-compliant.

March 29, 2010 Amendment IEP

137. On March 29, 2010, the IEP team met for the purpose of discussing Mother’s concerns regarding Student’s home behaviors and to present Dr. Morris’ report. The team consisted of Mother, Student’s aunt, Dr. Morris, Ms. Rezvani, Ms. Alvarado, Ms. Meckna, and Ms. Teller. Mother advised the team that Student engaged in a lot of crying and tantrums at home. District members advised that Student did not behave that way at school, that he was happy, cooperative, and compliant at school. The team viewed the video footage of Student that Ms. Alvarado filmed, and then Ms. Alvarado reported Student’s current progress and skill levels, and reported that Student had made significant progress. Also, Mother advised the team that Student had been using the toilet at home during the past week and a half. In addition, Ms. Meckna reported that Student was making good progress on his speech and language goal, in that Student’s vocabulary had increased to 50 words since Student started school. Thereafter, Dr. Morris reviewed her report, including her conclusion that Student had autism. In addition, Dr. Morris shared her recommendations, including retaining Student in the preschool SDC. At hearing, Ms. Rezvani explained that retention was not an intervention for special education children, nor was it recommended for children in the general education, because research has shown that retention increases the drop-out rates. Consequently, children within the District were generally promoted based on chronological age.

138. Dr. Morris also shared her recommendation that Student receive 25 hours of in-home ABA services per week all year round, as well as services during recess and lunch.

139. District members disagreed with Dr. Morris’ diagnosis, maintaining that Student had not demonstrated to District that he had autism, and that he had not engaged in behaviors at school that warranted ABA services. However, District members agreed to

contact the regional center and invite them to Student's next IEP so that they could discuss the possibility of providing Student with home-based services. Mother requested an OT assessment of Student, and District agreed.

Occupational Therapy Assessment

140. On April 20, 2010, when Student was four years and ten months old, Gallagher Pediatric Therapy (GPT) conducted an OT assessment of Student. Mary Kay Gallagher, who is the owner and director of GPT, provided testimony at hearing. Ms. Gallagher has been licensed since 1987, and has owned GPT since 1991. Ms. Gallagher received her bachelor's degree in speech pathology and audiology in 1984 from San Diego State University, and her master's degree in occupational therapy in 1986 from the University of Southern California. In her capacity as the owner and director of GPT, Ms. Gallagher supervises 21 supervisors at GPT, as well as additional occupational therapists. All occupational therapists who work at GPT have graduated from accredited schools and have passed licensing tests. GPT provides OT and PT services to school children, including those attending District's schools, as well as children with private insurance. Ms. Gallagher has conducted approximately 400 assessments, 200 of which were for preschool students.

141. Ms. Gallagher explained that Adrian DeDoes conducted the OT assessment of Student and prepared a report. Mr. DeDoes, who has been an occupational therapist longer than Ms. Gallagher, conducted a minimum of 200 assessments while at GPT. Mr. DeDoes recently left the employ of GPT to pursue another area of OT; however, she observed Student in his school setting two weeks prior to hearing, and reviewed Mr. DeDoes' report, and found it to be sound. The report listed standardized and informal assessments Mr. DeDoes used: (1) the Peabody Developmental Motor Skills, Second Edition (PDMS-2); (2) classroom observations; (3) playground observations; (4) teacher interview; (5) consultation with Student's APE teacher; (6) consultation with the occupational therapist who saw Student as part of a group (i.e., Student's entire class); (7) review of Student's May 19, 2009 initial IEP; and (8) a list of teacher's observations regarding Student's skills inside and outside of the classroom.

142. Mr. DeDoes conducted the assessment in Student's classroom where his class was engaged in regularly scheduled activities. He noted that although children were participating in other activities in the classroom, Student did not become distracted, and easily initiated and followed through on all testing activities. He only showed an inability to focus on tasks when Mr. DeDoes attempted to conduct gross motor testing. Student demonstrated a severe auditory sensitivity to lawn mower and garbage truck noises, causing Student to cover his ear and not use his hands for play. Ms. Gallagher explained that covering the ears in response to loud noises only becomes a concern when it affects a child's ability to access the curriculum in school.

143. Mr. DeDoes administered the PDMS-2 to measure Student's inter-related motor abilities. PDMS-2 is composed of six subtests: (1) reflexes, which measures a child's ability to automatically react to environmental events; (2) stationary, which measures a

child's ability to sustain control of his body within its center of gravity and retain equilibrium; (3) locomotion, which measures a child's ability to transport his body from one base of support to another; (4) object manipulation, which measures a child's ability to throw, catch, and kick balls; (5) grasping, which measures a child's ability to use his hands, including grasping various size objects, isolated finger movements, and manipulative skills; and (6) visual-motor integration, which measures a child's ability to integrate and use his visual perceptual skills to perform complex eye-hand coordination tasks. Student's performance on the stationary, locomotion, object manipulation, and grasping subtests fell into the poor range. On the visual-motor integration subtest, Student performed in the average range.

144. In Mr. DeDoes' clinical observations of Student, particularly in the area of organization of behavior and play skills, Student scored in the adequate range in all component areas, including (1) attending tasks and activities; (2) initiating tasks and activities; (3) engaging in task and activities purposefully; (4) completing tasks and activities; (5) activity transitioning; (6) communicating needs and asking for help; (7) demonstrating an ability to remain still and seated during activities; (8) adapting to changes; (9) demonstrating coping behaviors and strategies; and (10) having a repertoire of preferred activities. Mr. DeDoes noted that Student showed good observational skills and freely attempted to imitate any requested task or activity. He followed verbal instructions, transitioned between activities, and maintained sitting position appropriately. Student performed independently when required, but requested assistance when he struggled to open a zip lock bag.

145. In the area of neuromuscular status, Mr. DeDoes noted that Student's joint range, muscle tone, strength, trunk control, and endurance fell within functional limits. Mr. DeDoes commented that Student was quite small for his age, appearing to be closer to the age of three than the age of five. His overall strength and endurance appeared closer to that of a child of twelve months. Despite these characteristics, Mr. DeDoes concluded that they would not keep Student from participating fully in his educational program.

146. In the area of vestibular processing skills, which addresses how individuals process information about movement and head position, Student appeared to have a well-established and functional vestibular system that allowed him to use gravity and motion sensation in his overall play repertoire. In the area of somatosensory processing, which referred to Student's tactile and proprioceptive functions, Student showed proprioceptive skill with regard to body awareness and position in space that appeared to be commensurate with his cognitive status and smaller stature. Student also showed that he had functional discrimination and localization of touch.

147. In the area of motor planning skills, Student scored in the adequate/appropriate range in the areas of ideation, planning, execution, praxis (i.e., motor planning) on verbal command, imitation of body positions, and timing and sequence. Student scored in the inconsistent range in the area of projected action sequences. Mr. DeDoes noted that Student was able to come up with and execute motor plans during the testing and during free play at

recess. He propelled a Little Tot car with reciprocal leg movement, keeping it under good control, avoiding peers, and staying on the paved areas. Student did not participate actively in catching a ball tossed to him, but was not fearful of the ball's approach.

148. In the area of gross motor skills, Mr. DeDoes noted that Student could walk and run in a coordinated manner. He climbed up and down stairs, one foot per step, without the use of the hand rail. Student also demonstrated good balance on a raised curb, but was not successful at single leg standing more than momentarily. He also walked in a gallop pattern when attempting to imitate Mr. DeDoes' sidestepping.

149. In the area of fine motor skills, Student demonstrated functional skills in hand strength, bilateral coordination, pointing, and opposing fingers to thumb. He demonstrated emerging or inconsistent skills in hand dominance, crossing midline, finger isolation, and motoric separation of the hand. Mr. DeDoes noted that Student used either hand with markers and pencils, but seemed to be establishing more proficiency with the right hand. He tended to reach with the nearer hand for items presented to him rather than a specified stronger limb. While Student was unable to accurately touch each finger to his thumb tip, Student showed a neat pincher grasp of small items and control of grasp and release. He initially used both hands to manipulate a pair of scissors, but after it was placed in his right hand, Student dropped and picked it up several times in a functional manner. Student tended to prefer an immature palmer grasp of writing tools, but appeared to have sufficient hand control to develop a more mature writing pattern when increased accuracy became important to Student in that task.

150. In the area of visual-motor skills, Student demonstrated functional skills in the following areas: (1) regard and focus; (2) visual tracking; (3) convergence; (4) divergence; (5) snips with scissors; (6) cuts with scissors; (7) cuts lines and shapes with scissors; and (8) scribbling. He demonstrated emerging or inconsistent skills in the areas of rotating paper, tracing, and imitations. Mr. DeDoes noted that Student easily copied drawing circles, vertical lines, and horizontal lines. He also completed a cross, and his attempt at a square had two nearly ninety-degree corners, with the other two rounded significantly. Student drew accurately from dot to dot, and colored within spaces of less than one inch wide. These skills appeared to be commensurate with his overall problem-solving and cognitive ability. Student enjoyed cutting with the scissors, although he only made straight successive cuts, and was unable to cut a curved or cornered shape. He nested eight successive sized cups if they were presented in sequence, but could not when the cups were presented to him in a random order.

151. In the area of self-help skills, Ms. Alvarado reported to Mr. DeDoes that Student could wash and dry his hands with minimal assistance, feed himself with a utensil, and drink from a cup. Also, Student could access his backpack independently to retrieve his snack, and then ask for assistance to open a zip lock bag. In addition, Student was toilet trained, and could unsnap and pull his pants up or down.

152. Mr. De Does noted that although Student's overall development was behind his chronological age, he appeared to have the ability to benefit from his special education program without difficulty. Accordingly, Mr. DeDoes did not recommend OT services at the time of the assessment.

Alvarado's May 13, 2010 Assessments

153. In order to get a better idea of Student's present levels of performance, Ms. Alvarado conducted some assessments of Student. Specifically, on May 13, 2010, when Student was four years and eleven months, she administered the Brigance, which is a norm-referenced test designed to assess a child's performance in the following domains: (1) language; (2) motor; (3) academic/cognitive; (4) daily living; and (5) adaptive living. In the language domain, for total receptive language, Student scored 64 out of 115, representing an age equivalent of three years and four months, and an instructional age of three years and four months to three years and five months. For total expressive language, Student scored 45 out of 100, representing an age equivalent of three years and two months, and an instructional range of three years and two months to three years and three months. Student's total language score was 109 out of 215, representing an age equivalent of two years and eight months, and an instructional range of two years and eight months. Ms. Alvarado noted that 25 percent of Student's speech was intelligible.

154. In the motor domain, Student scored 46 out of 98 in total fine motor skills, representing an age equivalent of three years and eleven months, and an instructional age of three years and ten months to four years. For gross motor skills, Student scored 32 out of 51, representing an age equivalent of two years and five months, and an instructional range of two years and five months to two years and six months. Student's total motor score was 78 out of 149, representing an age equivalent of three years and four months, and an instructional age of three years and three months to three years and six months.

155. In the academic/cognitive domain, Student scored 30 out of 86 in quantitative/general concepts, representing an age equivalent of three years and two months, and an instructional range of three years and two months to three years and three months. Student scored 38 out of 174 in pre-reading/reading skills, representing an age equivalent of four years and four months, and an instructional age of four years and three months to four years and nine months. Student's total academic/cognitive score was 68 out of 260, representing an age equivalent of three years and nine months, and an instructional range of three years and nine months to four years.

156. In the daily living domain, Student scored 27 out of 38 in self-help skills, representing an age equivalent of three years and four months, and an instructional range of three years and two months to three years and five months. In prevocational skills, Student scored 21 out of 26, representing an age equivalent of three years and eleven months, and an instructional range of three years and eleven months to four years and four months. Student's total living score was 48 out of 64, representing an age equivalent of three years

and six months, and an instructional range of three years and five months to three years and seven months.

157. In the adaptive behavior domain, Student's total adaptive behavior was in the third percentile, representing an age equivalent of three years and five months, and an instructional range of three years and four months to three years and seven months.

May 21, 2010 IEP

158. An IEP team meeting was held on May 21, 2010, to discuss Student's program for the 2010-2011 school year. The attendees included Mother, Student's uncle, Ms. Alvarado, Ms. Meckna, Ms. Taylor, Ms. Teller, Mr. DeDoes, and Valerie Hernandez, who was a counselor. Mr. DeDoes presented his OT report, and then the team discussed Student's present levels of performance, and noted that Student met all of his goals. Thereafter, the team developed five new classroom goals for Student: (1) a math goal requiring Student to match quantities to the numbers one through five, with 80 percent accuracy, to be implemented by the special education teacher and staff; (2) a reading goal requiring Student to expressively identify 18 out of 26 lowercase letters and their sounds, to be implemented by the special education teacher and staff; (3) a writing goal requiring Student to write 10 out of 26 lowercase letters in sequence, to be implemented by the special education teacher and staff; (4) a social-emotional goal requiring Student to engage in age appropriate games with his peers such as tag, hide and seek, duck-duck-goose, ring around the rosies, with no more than one verbal prompt, to be implemented by the special education teacher and staff; and (5) a vocational skills goal requiring Student to state his first and last name, the city in which he lives, and his birthday month, to be implemented by the special education teacher and staff.

159. The team also developed some language and communication goals. After Ms. Meckna reported to the team Student's baseline for expressive language was in the delayed range, and that he had difficulty with oral opening and movements when producing words, the team developed a goal that Student correctly produce consonant-vowel, vowel-consonant, and consonant-vowel-consonant words with increased oral opening in response to objects, pictures, and games. Ms. Meckna also reported that Student could produce one to three word sentences and had started using the carrier phrase, "I want," with prompting. Based on this, the team developed a goal requiring Student to use three to four word sentences using a carrier phrase such as "I want" or "I see". Finally, after Ms. Meckna reported Student's baseline that he could follow two-step related directions, but had difficulty following prepositional directions, the team developed a goal requiring Student to demonstrate knowledge of basic prepositions by placing an object in, on, under, in front, and in back.

160. The District offered Student placement in the kindergarten SDC, which generally included no more than 15 students, a special education teacher, and at least two special education aides, to begin in fall 2010, for 390 minutes per day, with 84 percent of his day to be in the SDC, and 16 percent of his day mainstreaming during recess and lunch. The IEP noted that Student still had communication, cognitive, socialization, and self-help

deficits that required small group support and specialized teaching methods to address Student's delays. District also offered, based on the recommendation of Ms. Meckna and her supervisor, Ms. Teller, an immediate increase of speech and language services from two, 20-minute sessions per week, to three 20-minute sessions per week, with one of those sessions designated for individual services.

161. At hearing, Mother expressed that she did not believe Student had made any progress from the previous year, that Student could say 20 words when he started the year, and probably gained another 20 words during the course of the year, but did not have 50 words in his vocabulary as Ms. Alvarado had reported. In addition, Student's cutting had not improved, as Student still held scissors incorrectly. Moreover, Mother felt that Student required ABA services due to his behavioral problems at home, and requested an ABA assessment. Ms. Alvarado advised that Student's behaviors in school were appropriate and did not warrant assessment. Consequently, Mother's request was denied.

162. Mother consented to the implementation of the IEP, but disagreed that District's offer of placement and services constituted a FAPE.

May 26 & 28, 2010 APE Assessment Report

163. On May 26 and 28, 2010, Ms. Taylor conducted an APE assessment of Student using the Motor Coordination Kindergarten Screening of the Brigance, as well as her observations. At hearing, Ms. Taylor explained that she conducted the assessment, because she had been out on medical leave since September 2009, and after returning to work in February 2010, she noticed that Student lacked certain skills that he should have had, such as hopping, galloping, catching, throwing, and kicking a ball. She was not able to assess for these skills during her initial assessment of Student in May 2009, because Student was reluctant to do some of the tasks she asked him to do.

164. Ms. Taylor tested Student's balance, locomotion, and object-control skills. In the area of balance, Student was able to stand on his right foot for five seconds, and on his left for two to three seconds, with minimal body movement. He was able to walk a wide balance beam unassisted, using his arms to help with stability. He was able to walk on a straight line, but not with a heel-toe pattern. Student's balance skills were at a three year to three year and six month level.

165. In the area of locomotion, Student walked well, was able to walk backwards, sideways, and on tip-toes. He ran without difficulty, though he did not really expand his stride. He was able to walk up steps, alternating his steps, with one hand held, and was beginning to alternate on his own. He was able to walk down stairs one step at a time. He was able to jump on two feet in good form, but was not able to hop on one foot, gallop, or skip. Student's locomotion skills were at the two years and six months to three years and six months level.

166. In the area of object-control, Student was able to catch a bounced eight-inch ball from three to five feet, with a trap motion. He was not able to catch a firmly tossed or bounced eight-inch ball or a tennis ball. Student was not able to bounce a ball with one hand. He was able to throw an eight-inch ball with both hands, and was learning how to throw a tennis ball. He was able to walk up and kick a stationery ball with force, and was learning how to make contact with a slowly rolled ball. Student's object-control skills were at a three years and six month level.

167. Ms. Taylor concluded that because of Student's small stature, many age appropriate gross motor skills were difficult for Student to perform, though he was cooperative during the testing procedure and attempted all tasks. For example, Student was not able to alternate his steps while walking downstairs, even with one hand held. Test results indicated that Student was functioning significantly below age-expectancy in all areas of gross motor development. Overall, Student's gross motor skills were delayed by one year and five months to two years and five months. Consequently, Ms. Taylor recommended that Student receive APE services to help him improve his movement skills. Specifically, Ms. Taylor recommended two days per week, 25 minutes per session, of small group APE services.

168. On June 9, 2010, the May 21, 2010 IEP was amended to add APE services as recommended by Ms. Taylor. In addition, Ms. Taylor drafted two motor skills goals. One goal required Student to hop on his preferred foot three times in a row, forwards, or in place. The second goal required Student to catch a bounced or tossed eight-inch ball from eight to ten feet away, controlling the ball mostly with his hands. Mother consented to the amendment.

Winkelman's Speech and Language Assessment

169. On May 27, 2010, Student's expert witness and licensed speech pathologist, Dawn Winkelman, prepared a report of a private speech and language assessment she conducted on Student on April 27, 2010. Ms. Winkelman, who provided testimony at hearing, has been a speech pathologist for over 15 years. She received her bachelor's and master's degrees in speech pathology in 1993 and 1995, respectively. Since 1995, she has worked in a hospital setting in the pediatric ward addressing children's speech, feeding, and swallowing issues. Since 2002, Ms. Winkelman has had her own practice, mainly serving children on the autism spectrum.

170. Ms. Winkelman explained that it took about three hours to assess Student. He hid under the table, and did not want to interact with her and he had poor eye contact, and then as he warmed up, his eye contact improved. He sat in a slouched position. Student had missing front teeth. At hearing, Ms. Winkelman explained that missing front teeth do not affect certain sounds, such as the "b", "p", "m", "w", "h", "k", "g", "n", and "ing" sounds. Also, an individual can make the "t" and "d" sounds, but they are not as clear they would sound with teeth. Sounds affected by missing teeth are the "f", "v", and "th" sounds.

Student also presented with his mouth open, his tongue protruding from his mouth, and low jaw muscles.

171. Ms. Winkelmann's assessment included the following: (1) Rossetti; (2) Receptive One-Word Picture Vocabulary Test (ROWPVT); (3) Expressive One-Word Picture Vocabulary Test (EOWPVT); (4) the Goldman Fristoe Test of Articulation-2 (GFTA-2); (5) the MacArthur-Bates Communication Development Inventories (MacArthur-Bates); (6) Hawaii Early Language Profile (HELP) (cognitive portion only); (7) the Apraxia Profile-Preschool Profile (Apraxia Profile); (8) Oral-Motor Peripheral Exam; (9) Parental Report; (10) Direct Child Observation; and (11) Review of Medical and School Records.

172. Ms. Winkelmann reviewed medical and school records for Student's social, birth, past medical, developmental, school, and past speech and language histories, including the speech assessment administered by Ms. Lex on May 19, 2009. Given the profound gap between Student's chronological age and his expressive and receptive skills, Ms. Winkelmann expected District to have provided more speech therapy to Student, as she considered 40 minutes of group speech therapy per week insufficient. Ms. Winkelmann believed Student should have received a minimum of two hours per week of individual therapy. In addition, services should have been delivered by a credential speech and language pathologist, due to Student's medically fragile state, pursuant to recommendations established by the board governing licensed speech pathologists. According to Ms. Winkelmann, the board recommends that medically compromised children who require speech and language services should receive such services from a credentialed speech and language pathologist.

173. Ms. Winkelmann administered the Rossetti, which is designed to assess Student's preverbal and verbal areas of communication and interaction. In the area of pragmatics, Student scored in the 18 to 21 month range. In the areas of gesture and play, Student scored in the 24 to 27 month range, with scattered skills ranging from 27 to 30 months in the area of play. In the areas of comprehension and expression, Student scored in the 18 to 21 month range, with scattered skills ranging from 33 to 36 months, and 30 to 33 months, respectively. Ms. Winkelmann concluded that the results of this test showed that Student had only improved three months in skills, despite his eleven months of speech therapy provided by District.

174. Ms. Winkelmann administered the ROWPVT, which measured Student's ability to understand the meaning of single words. Student received a standard score of 60, representing the first percentile rank, and the age equivalent of one year and eleven months. On the EOWPVT, which measured Student's ability to name objects, actions, and concepts pictured in illustrations, Student received a standard score of 58, representing the first percentile rank, and the age equivalent of two years.

175. Ms. Winkelmann administered the MacArthur-Bates, which measured how Student communicated receptively and expressively with words and gestures, where Student understood 18 out of 28 phrases, 155 out of 396 words, and produced 66 out of 396 words.

He used 8 out of 18 early gestures, 16 out of 45 later gestures, and 24 out of 63 total gestures. From these results, Ms. Winkelmann concluded that Student continued to have difficulties communicating at the word and gesture level. Ms. Winkelmann also noted that although it had been reported to her that Student liked to play alone, she experienced the opposite. Student tried to get her to play with him by the use of gestures, some vocalizations, and a lot of sign language, which Ms. Winkelmann considered an emerging developmental milestone.

176. Ms. Winkelmann administered the HELP, which identified developmental levels Student could perform and levels that could be added to the treatment plan for goal setting. However, at hearing, Student produced no credible evidence demonstrating that Ms. Winkelmann, as a speech and language pathologist, was competent and qualified to administer cognitive tests. In the area of cognition, Ms. Winkelmann found that Student performed at the 24 month old level with scattered skills up to 36 months of age. In the area of matching and sorting, Student was able to match primary colors, sort colors, and point to several colors when named. In the area of size, Student was able to assemble four nesting blocks and stack rings in correct order. In the area of associative, Student was able to demonstrate the use of objects and identify objects with their use.

177. In the area of spatial relationships, Student was able to find detail in a favorite picture book and complete a seven-piece puzzle with no assistance. In the area of pictures, Student could point to 10 pictures of familiar objects and people and recognize a familiar face in a photo. In the area of numbers, Student was not able to perform any tasks in that section.

178. In the area of object permanence, Student was able to find a series of hidden displacements under all screens provided, open a door by turning a knob, and activating a mechanical toy with no assistance. In the area of symbolic play, Student was able to perform symbolic play with realistic props. In the area of gestural of limitations, Student was able to imitate 10 invisible gestures. In the area of sound awareness and location, Student was able to localize sounds in all directions.

179. Ms. Winklemann administered the GFTA-2, which assessed Student's ability to produce target sounds in one-word utterances through picture naming. Results indicated that Student was performing in the less than one percentile range, and an age equivalent of less than two years of age. Student had multiple errors in all positions, and his articulation compared to children of comparable age was profoundly impaired.

180. After conducting an oral-motor examination, Ms. Winklemann noted that Student was congested and breathing through his mouth. Mother advised her that he had a history of having a runny nose. Student exhibited low muscle tone in his face and lips, and his mouth's resting position was open, with his tongue hanging out. His jaw appeared to be unstable as evidenced by his decreased jaw and tongue dissociation. He was unable to blow bubbles because he could not coordinate his tongue in his mouth, pucker his lips, keep adequate jaw stability, and blow at the same time. Ms. Winkelmann advised that these type of behaviors are indicative of jaw instability, as well as poor coordination of the articulators.

Student's overall oral function was considered to be severely impaired and significantly affecting speech production and feeding skills.

181. Ms. Winkelmann noted that Student presented with moderate deficits in the area of breath support. His voice and breath support were weak and he was unable to sustain exhalation or phonation for more than five seconds in length. He was also unable to blow a bubble.

182. Ms. Winkelmann also administered the Apraxia Profile and noted that Student successfully imitated one out of five automatic oral movements, indicating that Student was exhibiting a significant oral dysarthria. He successfully imitated four out of seven volitional nonverbal oral movements, and he had trouble imitating tongue and lip movements, which was consistent with the presence of developmental verbal apraxia. Also, Student successfully imitated volitional verbal oral movements, indicative of a compromised ability to plan oral motor movements. Student's diadochokinesis results were poor for single-syllable repetition of "pa", "at", and "ka", even after maximum verbal and visual cuing on how to perform this task. He repeated four out of 50 words accurately, indicating that only eight percent of his utterances were without error at the word level. Significantly, many of Student's errors in both English and Spanish were omissions and many of his substitutions involved combinations of place, manner, and voice errors. Student's phrase and sentence results revealed how significantly Student's intelligibility was compromised when oral-motor demands were greater than one-to-two syllable level. In order to maintain any level of intelligibility, Student reduced many of his imitations to two syllables by omitting words and/or syllables. But even with reducing the utterances and syllables, Student could not maintain rhythm, stress, and intonation of the speech sample presented to him.

183. Student's connected speech sample revealed an intelligibility level of 52 percent, which meant that under ideal circumstances, an experienced listener would only understand 52 percent of what Student said at the one-word level. Student's articulation skills revealed a child with a severe reduction in phoneme sequencing and production skills. His most common phoneme error involved omission, which caused his speech to sound "vowel-like" and nasal, often consisting of an initial consonant, but not medial or final consonants. On the apraxia checklist, Student exhibited 70 percent of the characteristics most indicative of children with developmental verbal apraxia. Student's developmental verbal apraxia had a severe communicative impact on his life, as he was unable to have his needs met through verbalizations.

184. Ms. Winkelmann concluded that Student had a severe apraxia component to his unintelligible speech (i.e., developmental verbal apraxia). Student also had significant oral dysarthria, and a suspected feeding and swallowing disorder that she suggested should be evaluated. Student also had an articulation disorder, an expressive and receptive language disorder, and poor pragmatic skills. He also had difficulties communicating at the early word level, struggled at the early gesture level, and appeared, overall, uncomfortable using speech solely to communicate. Ms. Winkelmann concluded that Student's developmental verbal apraxia should be addressed in therapy.

185. Ms. Winkelmann recommended a number of evaluations. First, she recommended that Student undergo another OT assessment, as she disagreed with Mr. DeDoes' April 20, 2010 OT assessment that concluded that Student required no OT. Ms. Winkelmann believed that with Student's inability to feed himself, wipe himself, write his name, or letters, and most importantly, his inability to formulate his fingers to form basic sign language hand signs, warranted a re-evaluation. However, at hearing, Student presented no evidence suggesting Ms. Winkelmann was competent and qualified to critique OT assessments. Second, she recommended that Student, because of his long history of eating problems and his failure to gain weight early in his development, undergo a feeding and swallowing evaluation to rule out aspiration, dysphagia, and a feeding disorder. Ms. Winkelmann explained that since feeding milestones precede speech milestones, evaluating and treating his feeding issues could possibly improve his overall speech production. Third, she recommended a physical therapy evaluation given his very slouched posture, and his poor postural stability for speech. Finally, she recommended a pediatric pulmonologist evaluation to assess Student's breath support issues.

186. In addition to her other recommendations, Ms. Winkelmann recommended that Student receive increased speech therapy at his school to two hours per week since Student's lowest scores were consistently in the areas of social interaction and communication skills.

187. Ms. Winkelmann also included in her report 12 cognition goals, which Student was required to perform 80 percent of the time at home and in the clinic, addressing Student's ability to (1) initiate turn-taking routines; (2) request assistance from an adult; (3) pretend to play a musical instrument; (4) imitate housework activities; (5) fly a toy airplane; (6) talk on the telephone; (7) talk and verbalize more in play around other children; (8) Student to match similar pictures of objects; (9) sort shapes into piles according to shape; (10) use size words (e.g., big, little, etc.); (11) identify clothing items for different occasions; and (12) use symbolic play with similar, but not real props (e.g., stick as a toothbrush, etc.). However, at hearing, Student produced no credible evidence demonstrating that Ms. Winkelmann was qualified, as a speech and language pathologist, to draft developmental goals designed to address cognition.

188. Ms. Winkelmann also included 10 expressive language goals in her report, requiring Student to perform 80 to 100 percent of the time at home and in the clinic, the ability to (1) sing independently; (2) take turns vocalizing with other children; (3) ask, "What's that?" and other "what" questions; (4) use two-word phrases frequently; (5) use early pronouns (e.g., I, me, mine, my) occasionally; (6) understand and say the following 10 action words: bite, blow, break, bring, dance, drink, eat, hug, jump, and kiss; (7) understand and say the following six sound effects and animal sounds: baa baa, choo choo, cockadoodledoo, grr, ouch, and vroom; (8) understand and say the following 10 animals: bear, animal, bee, bug, bunny, butterfly, chicken, cow, deer, donkey; elephant, frog, giraffe, goose, horse, kitty, lamb, lion, monkey, and mouse; and (9) understand and say the following

10 vehicle and toy words: airplane, fire truck, motorcycle, stroller, train, balloon, block, doll, pen, and toy.

189. Ms. Winkelmann drafted five receptive language goals, requiring Student to perform 80 percent of the time at home and in the clinic, the ability to (1) understand two prepositions (in and on); (2) to point to four action words in pictures; (3) understand the concept of one; (4) identify four objects by function; and (5) answer “what” questions at home and in the clinic.

190. Ms. Winkelmann prepared seven motor goals, requiring Student to perform 80 to 100 percent of the time at home and in the clinic, the ability to (1) follow the direction “open your mouth”; (2) follow the direction “spit it out”; (3) brush his teeth using the “1, 2, 3 tooth brushing” technique; (4) complete the Sara Rosenfeld-Johnson bubble blowing program which focuses on lip rounding and airflow patterns; (5) improve jaw stability and strength to improve speech production by completing the Sara Rosenfeld-Johnson jaw grading bite block program in its entirety; (6) improve tongue retraction and promote jaw-lip-tongue dissociation through 12 stages of development by completing the Sara Rosenfeld-Johnson straw-kit program in its entirety; and (7) improve lip closure by completing the Sara Rosenfeld-Johnson lip closure horn program in its entirety.

191. Finally, Ms. Winkelmann drafted four speech goals, requiring Student to perform 80 percent of the time at home and in the clinic, the ability to (1) produce the phoneme “p” in the initial, medial, and final positions at the word level with visual cues; (2) produce the phoneme “m” in the initial, medial, and final positions at the word level with visual cues; (3) produce the phoneme “b” in the initial, medial, and final positions at the word level with visual cues; and (4) learn the oral motor sequences necessary for the co-articulation of the phonemes in five targeted words and/or phrases to “program for intelligibility” that are chosen from his teacher and family to have the most meaning to Student and occur the most frequent in his day.

192. Neither Ms. Winkelmann nor Mother provided a copy of Ms. Winkelmann’s report to the District.

193. Student began receiving therapy from Ms. Winkelmann in May 2010. Specifically, Student receives one hour per week of individualized therapy from her where they work on the goals set forth in her report. Currently, Student has accomplished approximately 70 percent of the goals. Mother pays Ms. Winkelmann \$100 per session. From May 2010 through November 2010, Mother paid Ms. Winkelmann \$2,700 for speech and language services.

194. At hearing, Ms. Winkelmann discussed the appropriateness of the goals presented in Student’s May 19, 2009 IEP, and found them to be insufficient, as they did not address Student’s articulation, oral-motor, apraxia, and expressive communication needs. In addition, the oral-motor goal subsequently added to Student’s IEP on December 16, 2009, which required Student to produce consonant-vowel, vowel-consonant, and consonant-

vowel-consonant sounds with increased oral opening, was an inappropriate goal, because it encouraged Student to have more time with his mouth open, when, given the constant state of his slack mouth, should have received a goal requiring him to keep his mouth closed more.

195. Ms. Winkelmann also discussed Student's May 21, 2010 IEP, and disagreed with the baselines set forth in Student's three speech and communication goals. For example, in the first goal, it stated that Student's baseline was delayed expressive language, and that he had difficulty with oral opening and movements when producing words. Ms. Winkelmann disagreed, and explained that Student did not have a problem opening his mouth, but rather had a problem closing it; therefore, the goal that the team developed that Student correctly produce consonant-vowel, vowel-consonant, and consonant-vowel-consonant words with increased oral opening in response to objects, pictures, and games, was inappropriate. In the second language and communication goal, it stated that Student's baseline was that he could produce one to three word sentences and had started using the carrier phrase, "I want," with prompting, but Ms. Winkelmann explained that Student did not have the ability to do this, based on her experience with Student. Also, she believed Student did not have the ability to follow two-step related directions, as set forth as a baseline in the third goal. As such, she believed the goals developed from these inaccurate baselines were inappropriate.

196. Ms. Winkelmann was unfamiliar with the services provided in the preschool or kindergarten SDCs.

Further School Observations by Dr. Morris

197. On October 12, 2010, Dr. Morris conducted a school observation of Student in his kindergarten SDC. Dr. Morris observed 7 out of 15 students in the class, and there were five aides present, in addition to the teacher, providing nearly a one-on-one ratio. She noted that Student completed some skills independently like throwing away his tissue or trash and taking his seat. Student was not able to voice when he needed to use the bathroom, and Student did not verbally participate in the centers without significant prompting from aides. Student showed limited expressive language skills without repetitive guidance from the aide, and demonstrated an inability to respond in a choral chain in response to a question posed to the class. Student also appeared to become confused when directives were posed to others that he mistook were for him. Despite multiple attempts, Dr. Morris was not able to interview Student's kindergarten SDC teacher.

198. Dr. Morris modified her previous recommendation, and recommended that Student receive one-on-one ABA services during his entire school day, as opposed to just receiving it during recess and lunch, as well as an in-home ABA program to further address his needs.

Private OT Assessment

199. On February 8, 2011, when Student was five years and seven months old, and attending the kindergarten SDC, Student's expert witness, Dr. Michelle Kuwabara of Kids in Motion, a non-public agency (NPA), conducted a private OT assessment of Student. Dr. Kuwabara, who provided testimony at hearing, received her bachelor's degree, her master's degree, and her doctorate in occupational therapy in 2003, 2004, and 2007, respectively, from the University of Southern California. She has been a registered and licensed occupational therapist since 2003, and has worked as an occupational therapist for Kids in Motion since 2009. Prior, she worked as an occupational therapist at Harbor Regional Center, Dynamic Therapies, California Children's Services, Rehabilitation Hospital of the Pacific, and at St. Mary Medical Center. In her capacity as an occupational therapist at Kids in Motion, Dr. Kuwabara, she has provided OT services to children as young as six months old, and as old as six years old. She has conducted approximately 100 assessments in her career.

200. Prior to administering any tests to Student, Dr. Kuwabara reviewed Student's school records, including the Stramski reports, District's initial assessment report of Student dated May 19, 2009, Student's May 19, 2009 IEP, Dr. Morris' report, and Mr. DeDoes' OT assessment. At hearing, Dr. Kuwabara opined that Student should have been offered an OT assessment and a PT assessment after District's initial assessment of May 19, 2009, based on her review of the report where Ms. Taylor found that Student scored in the second percentile in the area of fine motor skills. In addition, Dr. Kuwabara believed that the fine motor goal developed at Student's May 19, 2009 IEP, which addressed the appropriate use of scissors, was inadequate because it did not address distal strength, postural strength, copying, tracing, holding a writing utensil appropriately, and other tasks more practical than cutting with scissors in an educational environment. Also, after reading Mr. DeDoes' report, Dr. Kuwabara opined that Student should have been offered OT services given Student's very low Peabody scores, and his immature pencil grasp. She further opined that fine motor goals should have been incorporated into Student's May 21, 2010 IEP to address his immature pencil grasp and poor writing skills.

201. Dr. Kuwabara assessed Student in her office for one and one-half to two hours after Student completed a six and one-half hour school day. She used the Bruininks-Oseretsky Test of Motor Proficiency, Second Edition (BOT-2), which was a standardized test used to gather information about Student's fine motor development. She also had Mother complete a Sensory Processing Measure, which was a checklist subjective to a caregiver's opinion. Mother was mostly concerned with Student's delayed ability to open containers, pick up objects, and correctly use a writing utensil. Mother also reported that Student tired easily with a lot of activity, including fine motor activities. Mother also reported that Student did not dress himself independently, and was unable to fasten and unfasten buttons, tie his shoes, or connect a zipper. He could eat and drink independently, although he did so very slowly, and needed a lot of assistance to bathe thoroughly.

202. Dr. Kuwabara observed that Student was very small in stature, and tended to hold himself with his scapulas adducted and elevated, which indicated decreased strength in distal movements and proximal stability. He appeared weak throughout his body, including posturally and in his upper extremities. She also noted that Student appeared to lack balance and coordination, and had a difficult time imitating movements.

203. Dr. Kuwabara administered five subsets of the BOT-2: (1) fine motor precision; (2) fine motor integration; (3) manual dexterity; (4) upper limb coordination; and (5) bilateral coordination. In the areas of fine motor precision and fine motor integration, Student obtained a scaled score of six and five, respectively, which was between one and two standard deviations below the average when compared to other children his age (i.e., below the age equivalent of four years). Student was unable to color within the lines of a circle and a star, and was unable to draw a line within a curved or crooked path. He could not fold paper on a line, and was unable to cut out a circle within a certain margin, draw a square, overlapping circles, a wavy line, a triangle, a diamond, a star, and overlapping pencils. Dr. Kuwabara explained at hearing that at his age, Student should have been able to draw a square, overlapping circles, a wavy line, and a triangle. .

204. In the areas of manual dexterity and upper limb coordination, Student obtained a scaled score of 11 in each, which was within the average range compared to other children his age (i.e., the age equivalent of four years and six months, and four years and two months, respectively). He was able to transfer pennies from one hand to another, place pegs in a pegboard, sort cards, and string blocks, although he did so in a very slow manner. He could not catch a tossed ball with one hand, and dribble a ball, but he was able to throw a ball at a target seven feet away.

205. In the area of bilateral coordination, Student obtained a scaled score of seven, which was one standard deviation below the average when compared to other children his age (i.e., below the age equivalent of four years). This subtest required mostly imitation. He was able to touch his nose with both fingers, but was unable to do jumping jacks, jump in place moving laterally and alternating sides, pivot his thumbs and index fingers like the “itsy bitsy spider”, or tap his feet and fingers in a synchronized manner.

206. In the Sensory Processing Measure, where Dr. Kuwabara assessed information reported mainly by Mother, Student scored in the definite dysfunction range in the areas of social participation, hearing, touch, body awareness, balance and coordination, and in planning and ideas. Dr. Kuwabara explained that Student’s scores indicated that he could have sensory processing, auditory processing, and tactile processing difficulties. In addition, these scores could mean that Student had inordinate sensory-seeking behavior, disordered perception, and difficulties in registering or perceiving vestibular stimuli or postural control, as well as difficulties in praxis, or the ability to conceptualize, plan, and organize movements.

207. Dr. Kuwabara recommended that Student receive OT in a clinic-based setting one time per week for 45 to 60 minutes per session, and OT in a school-based setting one

time per week for 45 to 60 minutes per session, in order to address Student's deficits in the areas of sensory processing, social skills, motor planning, ideation, visual motor skills, and fine motor development in adaptive skills and school related tasks. She also recommended continued speech and language therapy to further facilitate Student's speech and language development and communication skills.

Further Assessments by Dr. Morris

208. On April 11, 2011, when Student was five years and nine months old, Dr. Morris conducted another assessment of Student. At hearing, Dr. Morris explained that she wanted to re-evaluate Student to determine whether Student had made any improvement in his current placement. Specifically, she re-administered the Bracken and administered the Wechsler Individual Achievement Test-Third Edition (WIAT-3). On the Bracken, which measured Student's academic readiness, Student scored in the very delayed range, performing similar to a child under the age of three years old, but his score had improved since she assessed him in February 2010. Specifically, his overall school readiness composite score was 58 in February 2010, and was 63 on the present test.

209. Dr. Morris administered the WIAT-3, which consisted of 16 subtests used to evaluate listening, speaking, reading, writing, and mathematical skills. In the area of alphabet writing fluency, Student was able to write three letters in 30 seconds, and his legibility was poor. He scored in the 21st percentile, representing an age equivalent of four years and eight months. In the area of spelling, Student scored in the first percentile, representing an age equivalent of less than five years. He was unable to successfully identify upper and lowercase letters. In the area of early reading skills, where Dr. Morris looked at Student's ability to name various letters and letter sounds, Student scored in the second percentile, representing an age equivalent of less than four years. In the area of math problem-solving, Student scored in the point-two percentile, representing an age equivalent of less than four years. Student was unable to answer questions coupled with pictorial representations.

210. Dr. Morris concluded that Student continued to display academic weakness per the results of his current assessment, and that his impairments were global in nature, affecting several areas, including his comprehension, fine motor skills, and his ability to follow instructions. Student did not hold his pencil correctly, but rather used a fist-type grip. He also showed deficits in the verbal responses he gave, often offering approximations for the majority of his responses. Dr. Morris opined that without intensive behavioral intervention, Student would not benefit from participating in a classroom setting. She further explained that ABA services would address Student's deficits in communication, language as it pertains to academics, comparative concepts, beginning reading skills, writing and penmanship, adaptive skills, play skills, social abilities, as well as behavior with the larger goal of focusing on increasing independence.

Further School Observations by Dr. de Armas

211. On April 14, 2011, pursuant to District's request, Dr. de Armas conducted a classroom observation of Student for approximately one hour. Student sat in the front of the class and talked to other children as he pointed to something in the front of the class. During a reading of *Curious George*, Student was very attentive. He tracked the teacher's movements as she retrieved a tissue box for another child, and became easily distracted when his shoe fell off. When he was told to get his lunch, Student loudly exclaimed "thank you" as he ran, jumped, and grabbed his lunch box. He quickly joined his classmates in line and waited to walk to the cafeteria. In the cafeteria, he asked an aide for assistance in opening a package containing a straw, and he briefly communicated with the aide about another child playing with him. During that brief exchange, Student maintained eye contact with the aide and used facial gestures. While at the lunch table, Student responded several times to an aide with words, such as "I do", head nods, facial expressions, and pointing. After lunch, Student ran and accidentally bumped into an aide. Student immediately looked back, made eye contact, and said "sorry". While other children played physically on the yard, Student appeared limited by his physical underdevelopment, and was unable to keep up with his peers physically. While out on the yard, he sat on the field, and then played on the swings when called over by a classmate. He then engaged in a game of hot potato with his peers that was initiated by an aide. He looked up when he heard a classmate crying and walked over to him. Thereafter, he joined some classmates on the monkey bars. Dr. de Armas waved at Student and Student waved back. Dr. de Armas concluded that Student's speech and language skills were still delayed, however, his social skills were commensurate with his developmental level.

LEGAL CONCLUSIONS

1. As the petitioning party, Student has the burden of persuasion on all issues. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].)

Issue One: Assessment in All Areas of Disability

2. Student contends that he was denied a FAPE because District failed to assess him in all areas of suspected disability prior to developing the May 19, 2009 IEP. Specifically, Student contends District should have used assessment instruments to determine whether he qualified for special education on the basis of autistic-like behaviors, despite District's prior knowledge of Student's medical impression of autism (Issue 1(a)). In addition, Student claims that District also failed to conduct adequate observations to identify his behavioral issues (Issue 1(b)). Finally, Student contends District failed to assess his fine and gross motor skills to determine whether he needed occupational therapy (Issue 1(c)). Student argues that District's failure to assess him in all areas of suspected disability resulted in its decision to make him eligible for special education services under the category of speech and language impairment, as opposed to autistic-like behaviors, which ultimately

resulted in the development of an educational program that was inadequate to address his unique needs.

3. District disagrees and contends that it properly assessed Student in all areas of suspected disability. Specifically, the assessment team, consisting of three seasoned individuals in their respective fields, assessed Student in the area of autistic-like behaviors, performed adequate and appropriate behavioral observations of Student, and assessed Student's fine and gross motor skills.

Applicable Law

4. A state or local educational agency must conduct a full and individual initial assessment before the initial provision of special education and related services to a child with a disability. (20 U.S.C. § 1414 (a); 34 C.F.R. § 300.301 (2006)²; Ed. Code, § 56320).

5. A local educational agency must assess a special education student in all areas of suspected disability, including if appropriate, health and development, vision, hearing, motor abilities, language function, general intelligence, academic performance, communicative status, self-help, orientation and mobility skills, career and vocational abilities and interests, and social and emotional status. (20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304 (c)(4); Ed. Code, § 56320, subd. (f).) A local educational agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information. (20 U.S.C. § 1414(b)(2)(A)). No single measure or assessment shall be the sole criterion for determining whether a child is a child with a disability. (20 U.S.C. § 1414(b)(2)(B); 34 C.F.R. § 300.304(b)(2); Ed. Code, § 56320, subd. (e)). Assessments must be sufficiently comprehensive to identify all of the child's special education and related service needs, whether or not commonly linked to the disability category of the child. (34 C.F.R. § 300.304 (c)(6).) The local educational agency must use technically sound testing instruments that demonstrate the effect that cognitive, behavioral, physical and developmental factors have on the functioning of the student. (20 U.S.C. § 1414(b)(2)(C); 34 C.F.R. § 300.304 (b)(3); Ed. Code, § 56320, subds. (e), (f).) Assessments must be conducted by individuals who are both "knowledgeable of [the student's] disability" and "competent to perform the assessment, as determined by the school district, county office, or special education local plan area." (20 U.S.C. § 1414(b)(3)(A)(iv); Ed. Code, §§ 56320, subd. (g), 56322.)

6. Assessment materials and procedures must be selected and administered so as not to be racially, culturally or sexually discriminatory, and must be given in the student's native language or mode of communication unless it is not feasible to do so. (Ed. Code, § 56320, subd. (a).) Assessments must also meet the following requirements: 1) are provided and administered in the language and form most likely to yield accurate information on what the pupil knows and can do academically, developmentally, and functionally, unless it is not

² All subsequent references to the Code of Federal Regulations are to the 2006 edition.

feasible; 2) are used for purposes for which the assessments or measures are valid and reliable; and 3) are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the assessments. (Ed. Code, § 56320, subd. (b).) Assessments must also be selected and administered to best ensure that the test results accurately reflect the pupil's aptitude, achievement level, or any other factors the test purports to measure and not the pupil's impaired sensory, manual, or speaking skills unless those skills are the factors the test purports to measure. (Ed. Code, § 56320, subd. (d).) No single measure, such as a single intelligence quotient, shall be used to determine eligibility or services. (Ed. Code, § 56320, subs. (c) & (e).)

7. The personnel who assess the student shall prepare a written report that shall include, without limitation, the following: 1) whether the student may need special education and related services; 2) the basis for making that determination; 3) the relevant behavior noted during observation of the student in an appropriate setting; 4) the relationship of that behavior to the student's academic and social functioning; 5) the educationally relevant health, development and medical findings, if any; 6) if appropriate, a determination of the effects of environmental, cultural, or economic disadvantage; and 7) consistent with superintendent guidelines for low incidence disabilities (those effecting less than one percent of the total statewide enrollment in grades K through 12), the need for specialized services, materials, and equipment. (Ed. Code, § 56327.) The report must be provided to the parent at the IEP team meeting regarding the assessment. (Ed. Code, § 56329, subd. (a)(3).)

8. After a child has been deemed eligible for special education, reassessments may be performed if warranted by the child's educational needs or related services needs. (34 C.F.R. § 300.303(a)(1); 34 C.F.R § 300.536(b) (1999); Ed. Code, § 56381, subd. (a)(1).) The determination of what tests are required is made based on information known at the time. (See *Vasheresse v. Laguna Salada Union School District* (N.D. Cal. 2001) 211 F.Supp.2d 1150, 1157-1158 [assessment adequate despite not including speech/language testing where concern prompting assessment was deficit in reading skills].)

9. A school district's failure to conduct appropriate assessments or to assess in all areas of suspected disability may constitute a procedural denial of a FAPE. (*Park v. Anaheim Union High School District, et al.* (9th Cir. 2006) 464 F.3d 1025, 1031-1033.)

10. In matters alleging procedural violations, a denial of FAPE may only be shown if the procedural violations impeded the child's right to FAPE, significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of FAPE, or caused a deprivation of educational benefits. (Ed. Code, § 56505, subd. (f)(2); see also *W.G. v. Board of Trustees of Target Range School District No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.)

11. FAPE consists of special education and related services that are available to the child at no charge to the parent or guardian, meet the standards of the State educational agency, and conform to the student's individual education program. (20 U.S.C. § 1401(9).) "Special education" is defined as "specially designed instruction at no cost to the parents, to

meet the unique needs of a child with a disability....” (20 U.S.C. § 1401(29).) California law also defines special education as instruction designed to meet the unique needs of individuals with exceptional needs coupled with related services as needed to enable the student to benefit fully from instruction. (Ed. Code, § 56031.) “Related services” are transportation and other developmental, corrective and supportive services as may be required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26).) In California, related services are called designated instruction and services (DIS), which must be provided if they may be required to assist the child in benefiting from special education. (Ed. Code, § 56363, subd. (a).)

12. In *Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 200 [102 S.Ct. 3034] (“*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.)

Analysis of Issue One

13. Here, the evidence showed that District assessed Student in all areas of suspected disability, and therefore committed no procedural violation. According to the credible testimony of District’s school psychologist, Ms. Rezvani, she reviewed information provided by Mother prior to Ms. Rezvani’s testing of Student that alerted Ms. Rezvani that Student could possibly have autism. Specifically, Mother provided the Stramski reports which included an impression of mild autism, as well as a health and development questionnaire that described possible autistic-like behaviors, such as head banging, hand flapping, withdrawing from others, tantrumming, irritability, and regression. She also provided information to Ms. Rezvani, and the other members of the team, during assessment interviews. Consequently, Ms. Rezvani used the GARS-2, which is a screening instrument used for the assessment of individuals who have behavior that indicate the possibility of autism, and requested Mother to complete a GARS-2 questionnaire. Thereafter, Ms. Rezvani scored Mother’s questionnaire, which showed a possible likelihood of autism.

14. At hearing, Student argued that District should have used a more structured observational assessment than the GARS-2, such as the ADOS, to determine whether Student had autism. Student also argued that the results of the GARS-2 were flawed given Ms. Rezvani’s inadvertent failure to score one item. However, Student offered no credible evidence demonstrating that the GARS-2 was an inferior, inappropriate, or an invalid measure to determine the probability of autism. In addition, according to Ms. Rezvani’s uncontroverted testimony, the GARS-2 is an appropriate and acceptable test in both the educational and medical communities. Moreover, Student failed to show that Ms. Rezvani’s

inadvertent failure to score one item invalidated the GARS-2. Ms. Rezvani's undisputed testimony showed that the GARS-2 allows for a several point deviation in the scoring, which would have covered a one or two point difference in the results had she scored the missing item.

15. In addition to the GARS-2, Ms. Rezvani, Ms. Lex, who conducted a speech and language assessment, and Ms. Taylor, who assessed Student's gross and fine motor skills, performed comprehensive behavioral observations of Student during the 90 minutes in which they collectively assessed Student. At hearing, Student argued that District's observations were inadequate to identify Student's behavioral issues because District did not observe Student in the home setting to verify Mother's reports of autistic-like behaviors at home. However, the purpose of the assessments was to determine the contents of Student's IEP, i.e., an appropriate educational placement and recommended services and goals to support the placement. Student offered no credible evidence or any legal authority to support his position that school districts are obligated to conduct home observations, in addition to observations performed in the educational setting in order for an assessment to be complete. Here, the evidence showed that the observations of Student's behavior in an educational setting were adequate to determine his needs and develop an IEP. Given these factors, despite Student's contentions, District assessed Student for autistic-like behaviors (Issue 1(a)) and performed adequate behavioral observations of Student (Issue 1(b)).

16. Finally, Student contends that District failed to assess Student's gross and fine motor skills. However, Student failed to meet his burden on this issue as well. The evidence showed that Ms. Taylor, who was qualified to assess Student as an APE teacher with nearly 30 years experience, and who had conducted nearly 200 assessments, administered the Brigance. Although Student did not perform all of the tasks Ms. Taylor requested, he performed enough to show that he walked well, could walk on his tiptoes, throw a ball with both hands, kick a stationery ball with force, and walk up and down stairs one at a time. Student could also stack up to 12 blocks, unscrew the lid on a jar, and draw a vertical line, a horizontal line, and a circle. Overall, she concluded that Student's gross motor skills appeared to be in the low average to average range, and his fine motor skills appeared to be in the average to low average range. Given these factors, District assessed Student's fine and gross motor skills. (Issue 1(c)).

17. Even if Student had shown District committed a procedural violation by failing to assess for autistic-like behaviors, make adequate behavioral observations, or assess Student's fine and gross motor skills, in order to prevail on a claim that a FAPE was denied due to the procedural violation, Student had to have shown that the violation significantly impeded Parents' opportunity to participate in the decision-making process regarding the provision of a FAPE, or caused a deprivation of educational benefits. Here, Student has shown neither. The evidence showed that the purpose of the assessments was to provide the IEP team, which included Mother, with information to make educational decisions. The assessments provided information about Student's unique needs, his present levels, and recommendations for related services, and afforded Mother an opportunity to discuss the assessment information at the May 19, 2009 IEP meeting. Also, Ms. Rezvani and Ms. Lex

were present at the IEP meeting to discuss the assessments, and to answer any questions relating to the assessments, and assist the team, including Mother, to develop measurable goals for Student. As such, Mother meaningfully participated in the IEP process. The evidence also showed that the educational program developed at the IEP meeting provided Student an educational program designed to provide him with educational benefits. Specifically, the IEP team, after learning from the assessment report that Student had needs in the areas of communication, cognition, socialization, self-help, and fine motor skills, offered placement in a preschool SDC designed to address his needs. In particular, the evidence established that the preschool SDC was designed for students with speech and language deficits, and implemented a language-based curriculum to address those deficits. Moreover, the preschool SDC, due to its small group and specialized teaching methods, could address Student's cognitive deficits, as well as his socialization, self-help, and fine motor skills. The preschool SDC also had the additional support of an OT specialist, as well as an APE specialist, who provided weekly services to the class as a whole to address motor skills. The IEP also offered group speech and language therapy as additional support to address Student's communication and socialization needs. In sum, Student failed to show that any procedural violation interfered with Mother's opportunity to participate in the IEP process, or deprived Student of any educational benefits. As such, and given the above factors, Student failed to meet his burden of demonstrating that he was denied a FAPE because District neglected to assess him in all areas of suspected disability (Issues 1(a), 1(b), and 1(c)). (Factual Findings 1 - 52; Legal Conclusions 1 - 17.)

Issue Two: May 19, 2009 IEP

18. Student contends that District's placement offer was inappropriate in that the preschool SDC was not the least restrictive environment, as Student could have had more mainstreaming opportunities with a one-on-one aide (Issue 2(a)). In addition, Student contends that instead of a placement in a non-categorical preschool SDC for 17.5 hours per week, District should have offered 35 hours a week of one-on-one behavioral instruction on a year-round basis, inclusive of home instruction, from a non-public agency experienced in working with autistic children, in order to address Student's unique social, behavioral, cognitive, communication, and self-help deficits (Issue 2(a)). Also, Student contends that District staff lacked sufficient training and supervision to address his deficits related to autism (Issue 2(a)). Moreover, Student contends that his IEP did not include appropriate goals to address his "behavior and social deficits" (Issue 2(b)). In addition, Student contends that his IEP did not offer him sufficient related services in that he did not receive an appropriate amount of speech and language therapy. Given the severity of his communication deficits, Student argues he should have received a minimum of two hours per week of individual speech and language therapy provided by an NPA experienced in working with autistic children, as opposed to 40 minutes per week of school-based group therapy offered by District (Issue 2(c)). Also, Student contends District failed to offer him occupational therapy to address his motor and sensory processing deficits, and failed to offer adapted physical education to address his gross motor deficits (Issue 2(c)). He also argues that the educational program offered by District was not scientifically based and, to the extent practicable, based on peer-reviewed research (Issue 2(d)). Finally, Student contends

that the District IEP members' decision to make Student eligible for special education services under the category of speech and language impairment, as opposed to autistic-like behaviors, resulted in the development of the May 19, 2009 IEP that was inadequate to address Student's unique needs (Issue 2(e)).

19. District disagrees and contends that Student's May 19, 2009 IEP considered Student's unique needs, and developed an educational program that provided a FAPE in compliance with the IDEA

Applicable Law

20. As discussed above, California special education law and the IDEA provide that children with disabilities have the right to a FAPE that emphasizes special education and related services designed to meet their unique needs and to prepare them for employment and independent living. (20 U.S.C. § 1400(d); Ed. Code § 56000.) FAPE consists of special education and related services that are available to the child at no charge to the parent or guardian, meet the standards of the State educational agency, and conform to the student's individual education program. (20 U.S.C. § 1401(9).) (*See* Legal Conclusion 11, incorporated by reference.)

21. As discussed above, *Rowley* 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, and reasonably calculated to "confer some educational benefit" upon the child. (*Rowley*, *supra*, 458 U.S. at pp. 200, 203-204.) (*See* Legal Conclusion 12, incorporated by reference.)

22. A child between the ages of three and five years is eligible for early childhood special education services if the child meets several criteria. First, the child must have one of the following disabling conditions: autism; deaf-blindness; deafness; hearing impairment; mental retardation; multiple disabilities; orthopedic impairment; other health impairment; serious emotional disturbance; specific learning disability; speech or language impairment in voice, fluency, language, or articulation; traumatic brain injury; visual impairment; or an established medical disability. Second, the child must need specially-designed instruction or services. Third, the child must have needs that cannot be met with modification of a regular environment in the home or school, without ongoing monitoring or support as determined by the IEP team. Fourth, the child must meet the eligibility criteria for the disabling condition established by state regulations. (Ed. Code, § 56441.11, subd. (b).)

23. A child with autism who needs special education and related services is eligible for special education. (20 U.S.C. § 1401(3)(A); 34 C.F.R. § 300.8(a).) Under federal law, autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to

environmental change or change in daily routines, and unusual responses to sensory experiences. (34 C.F.R. § 300.8(c)(1)(i).)

24. Consistent with federal law, California law provides that a child who exhibits any combination of the following autistic-like behaviors is eligible for special education services: an inability to use oral language for appropriate communication; a history of extreme withdrawal or relating to people inappropriately and continued impairment in social interaction from infancy through early childhood; an obsession to maintain sameness; extreme preoccupation with objects or inappropriate use of objects, or both; extreme resistance to controls; displays peculiar motor mannerisms and motility patterns; and self-stimulating, ritualistic behavior. (Cal. Code Regs., tit. 5, § 3030, subd. (g).)

25. A child who demonstrates difficulty understanding or using spoken language to such an extent that it adversely affects his or her educational performance, that cannot be corrected without special education services, has a language or speech disorder that is eligible for special education services. (Ed. Code, § 56333.) The difficulty in understanding or using spoken language shall be assessed by a language, speech, and hearing specialist who determines that the difficulty results from any of the following disorders: articulation disorders, such that the child's production of speech significantly interferes with communication and attracts adverse attention; abnormal voice, characterized by persistent, defective voice quality, pitch, or loudness; fluency difficulties which result in an abnormal flow of verbal expression to such a degree that these difficulties adversely affect communication between the pupil and listener; inappropriate or inadequate acquisition, comprehension, or expression of spoken language such that the child's language performance level is found to be significantly below the language performance level of his or her peers; and hearing loss which results in a language or speech disorder and significantly affects educational performance. (*Ibid.*)

26. A child who has a language or speech disorder meeting one or more of the following criteria is eligible for special education services: (1) Articulation disorder: the child displays reduced intelligibility or an inability to use the speech mechanism which significantly interferes with communication and attracts adverse attention; (2) Abnormal voice: a child has an abnormal voice which is characterized by persistent, defective voice quality, pitch, or loudness; (3) Fluency Disorders: a child has a fluency disorder when the flow of verbal expression including rate and rhythm adversely affects communication between the pupil and listener; (4) Language Disorder: the pupil has an expressive or receptive language disorder, in pertinent part, when he or she scores at least 1.5 standard deviations below the mean, or below the seventh percentile, for his or her chronological age or developmental level, on two or more standardized tests in one or more of the following areas of language development: morphology, syntax, semantics, or pragmatics. (Cal. Code Regs., tit. 5, § 3030, subd. (c).)

27. In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (See *Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1307, 1314.) A school district is not

required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Ibid.*) For a school district's offer of special education services to a disabled pupil to constitute a FAPE under the IDEA, a school district's offer of educational services and/or placement must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the pupil with some educational benefit in the least restrictive environment. (*Ibid.*)

28. School districts are also required to provide each special education student with a program in the least restrictive environment. In order to provide the least restrictive environment, school districts must ensure, to the maximum extent appropriate, that children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature and the severity of the disability of the child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); Ed. Code, § 56031; 34 C.F.R. § 300.114(a) (2006).)

29. To determine whether a special education student could be satisfactorily educated in a regular education environment, the Ninth Circuit Court of Appeals has balanced the following factors: (1) "the educational benefits of placement full-time in a regular class," (2) "the non-academic benefits of such placement," (3) "the effect [the student] had on the teacher and children in the regular class," and (4) "the costs of mainstreaming [the student]." (*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*) [adopting factors identified in *Daniel R.R. v. State Board of Ed.* (5th Cir. 1989) 874 F.2d 1036, 1948-1050]; see also *Clyde K. v. Puyallup School Dist. No. 3* (9th Cir. 1994) 35 F.3d 1396, 1401-1402 [applying *Rachel H.* factors to determine that self-contained placement outside of a general education environment was the least restrictive environment for an aggressive and disruptive student with attention deficit hyperactivity disorder and Tourette's Syndrome.]) If it is determined that a child cannot be educated in a general education environment, then the least restrictive environment analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (*Daniel R.R. v. State Board of Ed., supra.*, 874 F.2d at p. 1050.)

30. The continuum of program options includes, but is not limited to: regular education; resource specialist programs; designated instruction and services; special classes; nonpublic, nonsectarian schools; state special schools; specially designed instruction in settings other than classrooms; itinerant instruction in settings other than classrooms; and instruction using telecommunication instruction in the home or instructions in hospitals or institutions. (Ed. Code, § 56361.)

31. An IEP is a written document for each child with a disability that includes: a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the

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

32. In developing the IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the child's education, the result of the most recent evaluation of the child, and the academic, developmental, and functional needs of the child. (20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. §§ 300.324 (a).)

33. An IEP providing for over 50 percent of the child's day to be spent outside of general education for academic instruction was held not to violate the child's right to be educated in the LRE where the evidence showed that the benefits of separate academic instruction outweighed the benefit of full inclusion. (See *Friedman v. Board of Educ. West Bloomfield* (E.D. Mich. 2006) 427 F.Supp.2d 768, 782-783 [cognitively impaired student contended that program should have been in general education 100 percent of the time].)

34. The methodology to be used to implement an IEP, even IEPs for children with autism, is left up to the 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 v. State of Oregon*, 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.)

35. An IEP is evaluated in light of the information available to the IEP team at the time it was developed; it is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) "An IEP is a snapshot, not a retrospective." (*Id.* at p.1149, citing *Fuhrman v. East Hanover Bd. of Education* (3d Cir. 1993) 93 F.2d 1031, 1041.)

Whether a student was denied a FAPE must be evaluated in terms of what was objectively reasonable at the time the IEP was developed. (*Ibid.*)

Analysis of Issue Two

36. Here, based on the information available to the IEP team at the time of the development of the May 19, 2009 IEP,³ the evidence showed that the determination of eligibility, the development of goals, and the District's offer of placement and services were appropriate and offered Student a FAPE.

Placement (Issue 2(a))

37. Student asserts that the preschool SDC was not the least restrictive environment because Student could have had more mainstreaming opportunities had he been assigned a one-on-one aide. However, the evidence does not support this position, and Student presented no credible evidence demonstrating that a one-on-one aide would have increased Student's mainstreaming opportunities. Overall, a determination of whether a district has placed a pupil in the least restrictive environment involves the analysis of four factors: (1) the educational benefits to the child of placement full time in a regular class; (2) the non-academic benefits to the child of such placement; (3) the effect the disabled child will have on the teacher and children in the regular class; and (4) the costs of mainstreaming the child. (See *Rachel H.*, *supra*, 14 F.3d at p. 1404.) Regarding the first factor, although the parties presented no evidence concerning the dynamics of a general education preschool class, the evidence clearly established through the credible testimony of Ms. Rezvani, as well as notes included in the IEP, that Student required specialized teaching methods and small group instruction to address his delays. Given the extent of Student's needs, particularly in the areas of communication and cognition, it is reasonable to conclude that Student's receipt of educational benefit in a general education setting would have been limited, at best.

38. Regarding the second *Rachel H.* factor, Student could receive a non-academic benefit of interacting with his peers, giving Student more opportunity to practice his socialization skills. However, the third factor, specifically the effect Student's full time presence would have on the teacher and children in the regular class, poses several problems. The evidence showed that Student's communication delays were quite significant, as well as his cognitive delays. Such factors would have required the general education teacher to focus a significant amount of time and resources on Student to interpret his communication efforts, and to ensure he understood concepts and instruction. Consequently, Student's

³ Both parties referenced facts that occurred after the development of the May 19, 2009 to support their respective positions concerning the appropriateness of the May 19, 2009 IEP. However, given the snapshot rule set forth in *Adams*, requiring IEPs to be developed based on information available to the IEP team at the time, and not in hindsight, facts developed after the May 19, 2009 cannot be considered as part of this analysis. (See *Adams*, *supra*, 195 F.3d at p. 1149; *Fuhrman*, *supra*, 93 F.2d at p. 1041.)

presence could result in him taking significant attention away from the other students in the class.

39. Finally, regarding the fourth *Rachel H.* factor, neither party introduced any evidence demonstrating the costs associated with educating Student in a general education setting versus a special education setting. Weighing the above factors, which shows that the only benefit to Student of a general education placement is social, a general education placement for academic classes would not be appropriate.

40. The evidence further showed that District offered Student an appropriate placement with mainstreaming to the maximum extent appropriate in light of the continuum of options. Specifically, District offered Student placement in a preschool SDC. Despite Student's contention that the SDC was a non-categorical SDC, the evidence showed that the preschool SDC was designed for children with significant speech and language deficits. The IEP indicated Student would remain in the preschool SDC for approximately 84 percent of his school week, as Student's needs were too great to be addressed in the general education setting. Specifically, at the time of the IEP offer, the initial assessment report, as well as the credible opinion of Ms. Rezvani, showed that Student had communication, cognitive, socialization, and self-help deficits that required a setting with a smaller environment in order to address those deficits, such as that offered in the preschool SDC. In addition, the evidence showed that the preschool SDC would address Student's fine motor needs, as OT tasks were incorporated into the preschool SDC, and OT specialists worked with the class on a weekly basis. In addition, the preschool SDC, which generally included no more than 15 students, a special education teacher, and two special education assistants, had a high teacher-to-student ratio, creating more opportunities to provide individualized attention to Student should he require it, and to work on Student's goals. In addition, the IEP appropriately allowed for mainstreaming into the general education setting for recess and lunch, approximately 16 percent of his school week.

41. Student's contention that District should have offered 35 hours a week of one-on-one behavioral instruction on a year-round basis, inclusive of home instruction, in order to address Student's social, behavioral, cognitive, communication, and self-help deficits, in lieu of a SDC, was not persuasive. Student based his contention on the recommendations of his expert, Dr. Morris, who assessed Student in February 2010, nine months after the development of the May 19, 2009 IEP, and determined that Student had autism. However, case authority requires that an IEP, including its offer of placement, be evaluated in terms of what was objectively reasonable at the time the IEP was developed. (See *Adams, supra*, 195 F.3d at p. 1149; *Fuhrman, supra*, 93 F.2d at p. 1041.) In other words, the placement offer must not be judged in hindsight. (*Ibid.*) Because Dr. Morris' assessment and recommendations occurred well after the snapshot of time the IEP team developed Student's IEP, and it involved assessment results and a diagnosis to which the May 19, 2009 IEP team was not privy, Dr. Morris' recommendations are afforded minimal weight. Instead, the evidence showed that at the time of the assessment Student was not exhibiting behaviors that would have required him to receive a 35-hour per week behavior program in order to receive a FAPE.

42. Finally, Student contends District failed to assign sufficiently trained and supervised District staff to address his deficits. It is unclear what District staff to which Student is referring concerning the development of the May 19, 2009 IEP. However, the evidence showed that Ms. Rezvani, Ms. Lex, and Ms. Taylor were highly educated and highly trained professionals, with approximately 70 years of experience between them. Student offered absolutely no evidence demonstrating that these individuals were not sufficiently trained. In addition, all District personnel who worked with Student, including SDC teacher Ms. Alvarado, and speech therapist Ms. Meckna, were shown at hearing to have all necessary qualifications to teach Student in light of his unique needs. Consequently, Student's argument regarding sufficiently trained staff also fails. In sum, Student failed to demonstrate by a preponderance of the evidence that he was denied a FAPE by the District's offer of placement. (Factual Findings 1 - 52; Legal Conclusions 1 - 42.)

Goals (Issue 2(b))

43. Student contends in Issue 2(b) that District failed to develop appropriate goals in the May 19, 2009 IEP to address his "behavioral and social deficits." No other deficiency in Student's goals was alleged.⁴ The evidence shows that the IEP team developed seven measurable goals based on Student's present levels of performance, as set forth in the initial assessment report, including a social-emotional goal. All of the goals addressed the unique needs identified by the District's assessments. As to "behavioral and social deficits," the social-emotional goal focused on Student's interaction with other children during the course of play, which was an area of need given Student's communication and cognitive deficits. Similarly, the assessments had not shown any other behavioral needs other than generally learning a classroom routine, which was addressed by a goal focusing on Student learning two-step directions in connection with the classroom's routine with no more than one verbal prompt, and a goal for transitioning from one activity to the next with no more than one prompt. Student has failed to establish that District developed inappropriate goals to address his behavioral and social needs at the May 19, 2009 IEP. (Factual Findings 1 - 52; Legal Conclusions 1 - 43.)

Related Services (Issue 2(c))

44. In regard to speech and language therapy, the evidence demonstrated that the IEP team, after Ms. Lex' presentation of her assessment report, adopted her recommendation that Student receive two, 20-minute sessions of group speech therapy per week. Ms. Lex, who has served as a speech pathologist since 1964, and who has conducted a minimum of 50

⁴ In his closing brief, Student contends that District did not propose adequate speech and language goals, as there were no speech goals to address Student's verbal apraxia or severe articulation disorder, according to the assessment and opinion of Ms. Winkelmann. However, Student did not allege in his complaint that District failed to propose adequate speech and language goals. As such, the allegation falls outside of the scope of the hearing, and will not be considered. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i))

assessments per year for the preschool assessment team, credibly testified that she recommended 20-minute sessions of group speech therapy per week because the attention span of preschoolers was generally limited, and the group sessions gave the children an opportunity to interact and identify with each other, without the danger of either one of them becoming shy or feeling singled out. District offered these services, in conjunction with Student's placement in a preschool SDC designed for children with severe language deficits. The preschool SDC was established at hearing as having a focus on assisting students to improve their speech language skills outside of speech therapy. Given these factors, Student failed to establish that the amount of speech and language therapy services offered by District was inappropriate, insufficient, or unreasonable.

45. Student argues, however, that District did not offer him a sufficient amount of speech and language therapy, given the opinion of his expert, Ms. Winkelmann, who assessed Student in April 2010, eleven months after the May 19, 2009 IEP, and prepared a report on May 27, 2010. Ms. Winkelmann, who reviewed the initial assessment report, opined that given the profound gap between Student's chronological age and his expressive and receptive skills, District should have offered more than 40 minutes per week of group speech and language therapy. However, as established above, Student's IEP must not be judged in hindsight, but rather by what was objectively reasonable at the time. (*Ibid.*) Given the significant passage of time between the May 19, 2009 IEP, and Ms. Winkelmann's April 2010 assessment, Ms. Winkelmann's opinions relative to Student and the extent of services she believed he should have received back in May 2009, are afforded little weight for the purpose of this analysis.

46. In regard to OT services, the evidence showed that the IEP team elected not to offer Student OT services, because Student's fine motor deficits could be addressed in the preschool SDC, as OT tasks were incorporated into the SDC, and OT specialists worked with the preschool SDC, as a whole, on a weekly basis. Similarly, APE specialists worked with the preschool SDC, as a whole, on a weekly basis, to address gross motor needs. Given the results of Student's assessment, where Student, although he did not complete all of the tasks Ms. Taylor asked of him, completed enough to demonstrate that Student appeared to be in the low average to average range in both fine motor and gross motor abilities, it was objectively reasonable for the team to conclude that Student's OT and APE needs could be addressed within the preschool SDC.

47. Student argues, however, based on the belief of his expert, Dr. Kuwabara, who assessed Student in February 2011, 21 months after Student's May 19, 2009 IEP, that he Student should have been offered an OT and PT assessment based on the scores set forth in the initial assessment report, and received therapy as recommended in the OT and PT reports. However, Student's argument is not persuasive. As established above, Student's IEP cannot be judged in hindsight. (*Ibid.*) Nearly two years had elapsed since the May 19, 2009 IEP and the time of Dr. Kuwabara's assessment in February 2011, long after the relevant snapshot period. As such, Dr. Kuwabara's opinion cannot be considered for the purpose of this analysis. In sum, Student failed to meet his burden of demonstrating he was denied a

FAPE because an inappropriate amount of related services were offered in the areas of speech therapy, OT, and APE. (Factual Findings 1 - 52; Legal Conclusions 1 - 47.)

Scientifically-Based Program (Issue 2(d))

48. Finally, Student contends in his complaint that District failed to develop an educational program for him that was scientifically based, and to the extent practicable, based on peer-review research. However, he presented absolutely no evidence to support this contention. As discussed above, although Student presented expert opinions about what Student's privately paid assessors would have recommended, those experts did not demonstrate that the District's program was not scientifically based, and to the extent practicable based on peer-reviewed research. As such, Student's claim fails on this ground as well. (Factual Findings 1 - 52; Legal Conclusions 1 - 48.)

Eligibility Determination (Issue 2(e))

49. When determining eligibility, the IEP team properly considered the initial assessment report prepared by Ms. Rezvani, which included her psychoeducational assessment, Ms. Lex' speech and language assessment, as well as Ms. Taylor's gross and fine motor assessment. According to the credible testimony of Ms. Rezvani, although the assessment results showed that Student exhibited delays in the areas of cognitive functioning, adaptive behaviors, socialization, and fine motor skills, the assessment team concluded that Student's most significant delays were in the areas of receptive and expressive language. Specifically, according to the results of the Rossetti, Ms. Lex found Student's overall communication skills to be at the 12 month level, with scattered skills to the 18 month level. In addition, Ms. Rezvani found, pursuant to Student's performance on the Vineland-II, that Student was within the low range in the communication domain. According to California law, a child who demonstrates difficulty understanding or using spoken language to such an extent that it would adversely affect his educational performance, which cannot be corrected without special education services, has a language or speech disorder that is eligible for special education services. In that regard, based on Student's significant speech and language delays reported by the assessment team, the IEP team reasonably concluded that Student's communication needs required special education services in order for Student to receive an educational benefit, and found Student eligible for services on that basis.

50. Student contends, on the other hand, that the IEP team should have found Student eligible for special education services under the category of autistic-like behaviors, given the medical impression of mild autism included in the Stramksi reports. The reports noted behaviors observed during Stramski's ADOS testing, such as inappropriate eye contact, and the use of only a few words and vocalizations during the ADOS observation. In addition, Student references his unusually repetitive interests with lining up and stacking blocks, as well as behaviors reported to the assessment team by Mother. Specifically, Mother reported that Student avoided eye contact, used toys inappropriately, would become upset by changes in routine, stacked and lined up CDs, turned in circles, spun objects, withdrew easily from others, would not initiate conversation, had temper tantrums, was

irritable and destructive, had regressed in toilet training and speech, and had only recently discontinued his banging his head, flapping his hands, and staring at his fingers.

51. However, the evidence showed that during the 90-minute assessment, Student did not exhibit these behaviors, with the exception of one instance of inappropriate play (i.e., Student hitting a wind-up toy with a clapper), and a note written by Ms. Taylor indicating that Student liked to line up blocks.⁵ Rather, Ms. Rezvani, who was competent to perform the assessment given her extensive experience in conducting approximately 500 assessments, more than a third of them on children with autism, credibly testified that Student exhibited numerous behaviors during the 90-minute assessment period that children with autism do not generally display. For example, Student made eye contact with her, although he looked away when she smiled at him. In addition, according to the credible testimony of Ms. Lex and Ms. Taylor, Student demonstrated good eye contact with them as well. Also, Student was calm and cooperative, even though his daily routine had been changed by having to come to the test site to be assessed. He also mostly demonstrated appropriate play skills that children with autism do not generally display, such as combing and brushing a doll's hair, putting the doll on the bed, covering the doll with a blanket, feeding the doll a bottle, and rocking the bed without a prompt. He also played well with a Mr. Potato Head, and put away toys when asked to do so. Also, Ms. Rezvani noted Student followed directions, imitated clapping, imitated looking into a kaleidoscope with one eye, matched objects with their pictures, had good attention, and demonstrated good social skills, even with the lack of adequate speech and language skills.

52. In regard to the autistic-like behaviors Student actually displayed during the assessment, such as banging a wind-up toy with a clapper, or lining up objects as Ms. Taylor noted, according to the uncontroverted testimony of Ms. Rezvani, these behaviors are readily seen in typical and atypical children, with and without autism. Given Student's infrequent exhibition of these behaviors, as well as the lack of many other typical behaviors generally exhibited in children with autism, the assessment team was reasonable in not affording the behaviors significant weight when determining whether Student met the eligibility requirements for autistic-like behaviors.

53. According to California law, a child who exhibits any combination of the following autistic-like behaviors is eligible for special education services: (1) an inability to use oral language for appropriate communication; (2) a history of extreme withdrawal or relating to people inappropriately and continued impairment in social interaction from infancy through early childhood; (3) an obsession to maintain sameness; (4) extreme preoccupation with objects or inappropriate use of objects, or both; (5) extreme resistance to controls; (6) displays peculiar motor mannerisms and motility patterns; and (7) self-stimulating, ritualistic behavior. The evidence is clear that Student exhibited the first

⁵ The evidence is not clear whether Ms. Taylor witnessed Student lining up objects, or whether she simply noted what Mother had reported to her. However, for the purpose of this analysis, the ALJ will address it as behavior Ms. Taylor witnessed during the assessment.

behavior (i.e., an inability to use oral language for appropriate communication), however, despite Student's claims, Student did not adequately exhibit any of the other behaviors.

54. For example, despite Mother's description of behaviors suggesting extreme withdrawal (i.e., the second behavior), the evidence showed that, while initially shy during the assessment, Student warmed up and was cooperative overall. In addition, Student exhibited no obsession to maintain sameness (i.e., the third behavior) at the assessment. Indeed, as Ms. Rezvani explained at hearing, Student's daily routine was interrupted by having to come to the testing site to be assessed, yet he did not become upset, and remained cooperative, even when transitioning from one activity to another. Student also did not sufficiently exhibit the fourth behavior (i.e., a preoccupation or inappropriate use of objects). Although Mother reported that Student liked to stack and line up CDs, and Ms. Taylor noted that he lined up blocks, there is no evidence that Student exhibited a preoccupation with these activities at the assessment over the other activities. In addition, the one instance of inappropriate play witnessed by Ms. Rezvani (i.e., banging a wind-up toy with a clapper) did not occur with sufficient frequency at the assessment that children with autism generally exhibit, according to Ms. Rezvani. Also, there is no evidence that Student exhibited behavior five (i.e., extreme resistance to controls) as he was cooperative overall and followed directions during the assessment. There is no evidence that Student exhibited behavior six (i.e., peculiar motor mannerisms and motility patterns), or behavior seven (i.e., self-stimulating, ritualistic behavior), either. Although both Dr. Morris and Ms. Rezvani testified that children with autism can present differently in different settings, it is compelling that Student engaged in relatively few of these behaviors during the 90-minute assessment, which was a significant period of time in which to exhibit a number of autistic-like behaviors. As Ms. Rezvani testified, she found it very unusual that she did not witness many of the behaviors Mother had described, as it was her experience that when a parent has reported extreme behaviors, she will ordinarily observe the same or most of the behaviors during the assessment. Given Student's failure to demonstrate a solid presence of behaviors two through seven, it was reasonable for District to determine that Student did not meet the eligibility requirements for autistic-like behaviors and instead should be made eligible under the category of speech language impairment.

55. Even assuming Student should have been made eligible under a different category, Student failed to demonstrate by a preponderance of the evidence that he was denied a FAPE. As established above, District offered Student an appropriate placement in the least restrictive environment to address Student's unique needs. Specifically, after the IEP team determined Student's needs pursuant to District's assessment results, the team offered Student a placement in the preschool SDC. The evidence established that the preschool SDC, due to its language-based emphasis, as well as its small group instruction and specialized teaching methods, was appropriate to address Student's communication, cognition, socialization, self-help, and fine motor skills needs. In addition, the preschool SDC, with the additional support of the OT and APE specialists who provided weekly services to the preschool SDC, could address Student's motor skills deficits. Moreover, as established above, the IEP provided appropriate speech and language services to address Student's communication and socialization deficits, as well as developed appropriate

measurable goals in all areas of need identified by the initial assessment report. Even if Student should have been made eligible under a different category as Student has alleged, the evidence demonstrated that District offered Student a program that met his needs, regardless of the eligibility category. As such, and because Student's behaviors, as discussed in the initial assessment report, did not indicate a need for a 35-hour ABA program as Student has alleged, Student's claim fails here, as well. (Factual Findings 1 - 52; Legal Conclusions 1 - 55.)

56. In sum, Student failed to prove by a preponderance of the evidence that District failed to provide Student with a FAPE in his May 19, 2009 IEP. (Factual Findings 1 - 52; Legal Conclusions 1 - 56.)

Issue Three: May 21, 2010 IEP

57. Student contends in his complaint that District failed to offer him a FAPE in his May 21, 2010 IEP on five grounds. Specifically, Student contends that District's placement offer was inappropriate in that the kindergarten SDC was not the least restrictive environment, as Student could have had more mainstreaming opportunities with a one-on-one aide (Issue 3(a)). In addition, Student contends that instead of a placement in a non-categorical kindergarten SDC, District should have offered 35 hours a week of one-on-one behavioral instruction on a year-round basis, inclusive of home instruction, from a non-public agency experienced in working with autistic children, in order to address Student's unique social, behavioral, cognitive, communication, and self-help deficits (Issue 3(a)). Also, Student contends that District staff lacked sufficient training and supervision to address his deficits related to autism (Issue 3(a)). Moreover, Student contends that his IEP did not include appropriate goals to address his "behavior and social deficits" (Issue 3(b)). In addition, Student contends that his IEP did not offer him sufficient related services in that he did not receive an appropriate amount of speech and language therapy. Given the severity of his communication deficits, Student argues he should have received a minimum of two hours per week of individual speech and language therapy provided by an NPA experienced in working with autistic children, as opposed to 40 minutes per week of school-based group therapy, and 20 minutes per week of individual therapy offered by District (Issue 3(c)). Also, Student contends District failed to offer him occupational therapy to address his motor and sensory processing deficits (Issue 3(c)). He also argues that the educational program offered by District was not scientifically based and, to the extent practicable, based on peer-reviewed research (Issue 3(d)). Finally, Student contends he was denied a FAPE because the IEP did not change his eligibility category to autistic-like behaviors, which resulted in an educational program that did not address Student's area of deficits (Issue 3(e)).

58. District disagrees and contends that Student's May 21, 2010 IEP considered Student's unique needs, and developed an educational program designed to address those needs in a manner intended to confer meaningful educational benefit.

Applicable Law

59. Because Issues Two and Three involve similar issues, Legal Conclusions 20 through 35 are incorporated by reference.

Analysis of Issue Three

60. Here, based on the information available to the IEP team at the time of the development of the May 21, 2009 IEP,⁶ the evidence showed that Student's eligibility category, the development of goals, and the District's offer of placement and services in Student's May 21, 2010 IEP were appropriate and offered Student a FAPE.

Placement (Issue 3(a))

61. Student asserts in his complaint that the kindergarten SDC was not the least restrictive environment because Student could have had more mainstreaming opportunities had he been assigned a one-on-one aide. However, the evidence does not support this position, and Student presented no credible evidence demonstrating that a one-on-one aide would have increased Student's mainstreaming opportunities. As set forth above, a determination of whether a district has placed a pupil in the least restrictive environment involves the analysis of the four *Rachel H.* factors. (See *Rachel H.*, *supra*, 14 F.3d at p. 1404.) Regarding the first factor (i.e., the educational benefits to the child of placement full time in a regular class), although the parties presented no evidence concerning the dynamics of a general education kindergarten class, the evidence clearly established through the credible testimony of Ms. Alvarado and Ms. Meckna, as well as notes included in the IEP, that Student required specialized teaching methods and small group instruction to address his delays. Given the extent of Student's needs, particularly in the areas of communication and cognition, it is reasonable to conclude that Student's receipt of educational benefit in a general education setting would have been limited.

62. Regarding the second *Rachel H.* factor (i.e., the non-academic benefits to the child of such placement), Student could receive a non-academic benefit of interacting with his peers, giving Student more opportunity to practice his socialization skills. However, the third factor, specifically the effect Student's full time presence would have on the teacher and children in the regular class, poses several problems. The evidence showed that Student's communication delays were quite significant, as well as his cognitive delays. Such factors would have required the general education teacher to focus a significant amount of

⁶ At hearing and in their closing briefs, both parties referenced facts that occurred after the development of the May 21, 2010 to support their respective positions concerning the appropriateness of the May 21, 2010 IEP. However, given the snapshot rule set forth in *Adams*, requiring IEPs to be developed based on information available to the IEP team at the time, and not in hindsight, facts developed after the May 21, 2010 cannot be considered as part of this analysis. (See *Adams*, *supra*, 195 F.3d at p. 1149; *Fuhrman*, *supra*, 93 F.2d at p. 1041.)

time and resources on Student to interpret his communication efforts, and to ensure he understood concepts and instruction. Consequently, Student's presence could result in him taking significant attention away from the other students in the class.

63. Finally, regarding the fourth *Rachel H.* factor, neither party introduced any evidence demonstrating the costs associated with educating Student in a general education setting versus a special education setting. Weighing the above factors, which shows that the only benefit to Student of a general education placement is social, a general education placement would not be appropriate.

64. The evidence further showed that District offered Student an appropriate placement with mainstreaming to the maximum extent appropriate in light of the continuum of options. Specifically, District offered Student placement in a kindergarten SDC for 390 minutes per day. The IEP indicated Student would remain in the kindergarten SDC for approximately 84 percent of his school week, as Student's needs were too great to be addressed in the general education setting. Specifically, at the time of the IEP offer, Student's results on the Brigance, as well as the credible testimony of Ms. Alvarado, showed that although Student made progress, he still had communication, cognitive, socialization, and self-help deficits that, according to the IEP notes, required small group support and specialized teaching methods to address Student's delays, such as that offered in the kindergarten SDC. In addition, the kindergarten SDC, which generally included no more than 15 students, a special education teacher, and at least two special education assistants, had a high teacher to student ratio, creating more opportunities to provide individualized attention to Student should he require it, and work to on Student's goals. In addition, the IEP appropriately allowed for mainstreaming into the general education setting for recess and lunch, approximately 16 percent of his school week.

65. Student's contention that District should have offered 35 hours a week of one-on-one behavioral instruction on a year-round basis, inclusive of home instruction, in order to address Student's social, behavioral, cognitive, communication, and self-help deficits, in lieu of a SDC, was not persuasive. Student based this contention on the recommendations of his expert, Dr. Morris, who assessed Student in February 2010. The evidence showed that Dr. Morris based her recommendation on her conclusion that Student had autism. However, her report was persuasively discredited by Dr. de Armas, who had determined seven months prior, that Student did not have autism. On the contrary, behaviors exhibited by Student to Dr. de Armas, to Ms. Rezvani, to Ms. Alvarado, to Ms. Meckna, to Ms. Lex, to Ms. Taylor, on the videotape, and even to Dr. Morris, were indicative of children who do not have autism. Specifically, Student demonstrated good eye contact, imitation, appropriate play, interaction with his peers on the playground, and in the classroom, such as when Student picked a song and performed the hand motions that went with the song. Also, Student engaged in no repetitive or stereotyped behaviors, nor in any aggressive or non-compliant behaviors.

66. Although Student contends District failed to assign sufficiently trained and supervised District staff to address his deficits, it is unclear what District staff to which

Student is referring concerning the development of the May 21, 2010 IEP, with the exception of Ms. Meckna, who Student claims was unqualified due to her variable waiver status. However, the evidence showed that with the variable waiver, Ms. Meckna could provide speech and language therapy as long as she was supervised, which she was, by Ms. Teller, who had been a licensed speech and language pathologist for 35 years. Also, the evidence shows that Student had met his speech and language goals while Ms. Meckna served as Student's speech and language therapist. Given these factors, Student's contentions that he was denied a FAPE by District's placement offer fails. (Factual Findings 1 – 196,199 - 207 Legal Conclusions 1, 59 - 66.)

Goals (Issue 3(b))

67. Student contends in his complaint that District failed to develop appropriate goals in the May 21, 2010 IEP to address his "behavioral and social deficits." No other problem related to goals was alleged.⁷ The evidence showed that the IEP team developed five classroom goals, including a social-emotional goal requiring Student to engage in age appropriate games with his peers, and three language and communication goals, after noting that Student met all of his goals set forth in the May 19, 2009 IEP. All of Student's goals were measurable, and were addressed to his areas of deficits based on his present levels of performance. Student has failed to establish that District developed inappropriate goals at the May 21, 2010 IEP. (Factual Findings 1 - 196, 199 - 207; Legal Conclusions 1, 59 - 67.)

Related Services (Issue 3(c))

68. In regard to speech and language therapy, the evidence demonstrated that at the IEP team meeting, the team offered an increase of speech and language services from two, 20-minute sessions per week, to three 20-minute sessions per week, with one of those sessions designated for individual services. However, Student argues that District did not offer him a sufficient amount of speech and language therapy, given the opinion of his expert, Ms. Winkelmann, who prepared an independent report about Student after the IEP team meeting, which was never even provided to District. In particular, Student relies on Ms. Winkelmann's conclusion that Student had developmental verbal apraxia, which she testified caused Student's unintelligible speech, and her recommendation that Student required a minimum of two hours per week of individual speech and language therapy. Ms. Winkelmann also disagreed with the baselines set forth in the speech and language goals. However, Ms. Winkelmann did not attend the May 21, 2010 IEP meeting to discuss her findings or to refute the baselines, and there is no evidence that either Ms. Winkelmann or Student provided the team with information concerning her assessment. Consequently, at the

⁷ In his closing brief, Student contends that District did not propose adequate speech and language goals, as there were no speech goals to address Student's verbal apraxia or severe articulation disorder, according to the assessment and opinion of Ms. Winkelmann. However, Student did not allege in his complaint that District failed to propose adequate speech and language goals. As such, the allegation falls outside of the scope of the hearing, and will not be considered. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i))

time of the development of the May 21, 2010 IEP, the team only had assessment information from members of the IEP team, which appeared valid and reasonable, given Student's past progress and present levels of performance. Given the information available to the team, the team was objectively reasonable in the offer of speech and language services it made to Student.

69. In regard to OT services, the evidence showed that IEP team elected not to offer Student OT services, based on the recommendations of Mr. DeDoes, who, according to the credible testimony of Ms. Gallagher, had been a licensed OT for over 24 years, and had conducted a minimum of 200 assessments while at GPT, determined that although Student's overall development was behind his chronological age, he appeared to have the ability to benefit from his special education program without the need for OT as a related service. Student argues, however, based on the belief of his expert, Dr. Kuwabara, who has been a licensed OT for eight years and who has conducted approximately 100 assessments in her career, that Student required OT in a clinic-based setting one time per week for 45 to 60 minutes per session, and one time per week for 45 to 60 minutes in a school-based setting. However, Student's position is not persuasive. Dr. Kuwabara, who has significantly less experience than Mr. DeDoes, assessed Student in February 2011, eight months after Student's May 21, 2010 IEP, long after the snapshot period, when Student was presumably different developmentally than when Dr. Kuwabara assessed him. As such, Dr. Kuwabara's opinion is afforded little weight. It was objectively reasonable for the IEP team to rely on the credible recommendations of Mr. DeDoes at the time of the IEP team meeting. In sum, Student did not meet his burden of demonstrating that the IEP team's offer of related services as of the date of the IEP failed to address Student's unique needs and was not reasonably calculated to provide some educational benefit. (Factual Findings 1 – 196, 199 - 207; Legal Conclusions 1, 59 - 69.)

Scientifically-Based Program (Issue 3(d))

70. Student contends in his complaint that District failed to develop an educational program for him that was scientifically based, and to the extent practicable, based on peer-reviewed research. Although Student presented expert recommendations that contradicted the recommendations of District's assessors, and/or were developed after the IEP team meeting at issue, those expert opinions did not demonstrate that the District's program was not scientifically based on based on peer-reviewed research to the extent practicable. Student offered no other evidence to support this contention, and accordingly failed to meet his burden of proving that he was denied a FAPE on this ground. (Factual Findings 1 - 196, 199 - 207; Legal Conclusions 1, 59 - 70.)

Eligibility Determination (Issue 3(e))

71. Finally, Student contends that the IEP team should have changed Student's eligibility category from speech and language impairment to autistic-like behaviors, given the February 2010 diagnosis of autism by Dr. Morris, who has been a clinical psychologist for 14 years, and in private practice for ten years, where the bulk of her practice concerns

children on the autistic spectrum. However, Dr. Morris' assessment report and testimony were not persuasive, given various inconsistencies contained within her report. First, Dr. de Armas, who had ruled out autism and had diagnosed Student with mild mental retardation in July 2009, has been a licensed clinical psychologist for nearly 30 years, has served on court expert panels for 25 years, and who has assessed over 1,500 individuals during the last 12 years for the regional center, credibly testified that Dr. Morris reported that it would not be appropriate to diagnose mental retardation until the fat absorption issue was resolved, yet she diagnosed Student with autism without any consideration for whether Student's fat absorption issue could affect the measures for autism. Second, Dr. Morris reported that during her classroom observation of Student, Student eagerly sought out other children and chased them during unstructured outdoor play, imitated another student by tapping on a metal object, made eye contact when looking up at Ms. Alvarado when she squirted hand sanitizer in his hands, and pointed to something in the distance and smiled, factors which Dr. de Armas explained are not indicative of a child with autism. Third, Dr. Morris reported that on the ADIR, Student scores exceeded the cut-off in the areas of reciprocal social interaction and communication, but did not meet the cut-off in the area of repetitive and stereotyped patterns of behavior. Dr. de Armas persuasively testified that an individual must meet the cut-off in all three areas of the ADIR before a person can be considered autistic. Finally, Dr. de Armas disagreed that Student met the eligibility requirements for autistic-like behaviors because, during his July 2009 observation of Student, he did not witness any of the behaviors Dr. Morris reported, with the exception of Student's speech issues. Similarly, neither Ms. Rezvani, Ms. Lex, nor Ms. Taylor observed the behaviors during their 90-minute assessment that Dr. Morris reported observing.

72. The evidence showed that the eligibility category of speech and language impairment continued to be appropriate, as Student still demonstrated difficulty using spoken language to such an extent that it adversely affected his educational performance. As such, it was objectively reasonable for Student's eligibility category to remain as speech and language impairment.

73. Most importantly, regardless of the eligibility category label, the evidence demonstrated that Student was provided a FAPE, i.e., specialized instruction that met his unique needs and allowed him to get some educational benefit in the least restrictive environment. As established above, District offered Student placement in the kindergarten SDC, as Student required a small group setting and specialized teaching methods in order to access the curriculum, and to address Student's cognition, communication, socialization, self-help, and motor skills deficits. In addition, the SDC had already proven beneficial to Student, as he had made progress in all of his areas of need, and met all of his goals set forth in the May 19, 2009 IEP. Moreover, as established above, the IEP team developed appropriate new measurable goals for Student that were designed to address his cognition, communication, socialization, and self-help deficits. Also, the District offered Student speech and language services individually and in a group to address his communication deficits, as well as his socialization needs. In addition, the IEP included APE services to address Student's motor skills issues. Given these factors, the program District offered Student was sufficient to meet his unique needs, regardless of the eligibility category. In

addition, despite Student's claims, Student did not exhibit behaviors warranting a 35-hour ABA program, evidenced by Student's cooperative, compliant, nonaggressive, engaged, and other non-autistic-like behaviors depicted in the videotape, as well as by the credible testimony of Ms. Alvarado and Ms. Meckna. Given these factors, Student's claim fails here.

74. In sum, Student failed to meet his burden of showing that he was denied a FAPE because his eligibility category should have been different. (Factual Findings 1 - 196, 199 - 207; Legal Conclusions 1, 59 - 74.)

ORDER

All of Student's requests for relief are denied.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, District prevailed on all issues.

RIGHT TO APPEAL THIS DECISION

The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within ninety days of receipt of this decision. (Ed Code, § 56505, subd. (k).)

DATED: June 6, 2011

/s/
CARLA L. GARRETT
Administrative Law Judge
Office of Administrative Hearings