

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CASTRO VALLEY UNIFIED SCHOOL
DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NO. 2010050546

DECISION

Charles Marson, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on June 15, 17, 22, and 23, 2010, in Castro Valley, California.

Karen E. Samman and Claudia P. Weaver, Attorneys at Law, represented the Castro Valley Unified School District (District), aided by administrative assistant Dawn Flanery. Ken Wyatt, the District's Director of Special Education, was present throughout the hearing on behalf of the District.

There was no appearance for Student.¹

The District filed its request for due process hearing on May 14, 2010. At hearing, oral and documentary evidence were received. At the close of the hearing, the matter was continued to July 15, 2010, for the submission of closing briefs. On that day, the record was closed and the matter was submitted for decision.

¹ Mother attended the prehearing conference by telephone in order to request an indefinite continuance. That motion was denied. On the morning the hearing began, Mother faxed to OAH another request for an indefinite continuance. That renewed motion was denied on the record. Otherwise, Parents filed no pleadings, did not exchange evidence or witness lists with the District, did not comply with several requirements of the prehearing conference order, and did not participate in the hearing process.

ISSUE

Does the individualized education program (IEP) offered Student on April 30, 2010, provide him a free appropriate public education (FAPE) in the least restrictive environment (LRE), so that the District may implement that IEP without parental consent?

Background and Jurisdiction

1. Student is an 11-year-old male who lives with Parents within the geographical boundaries of the District. He is eligible for, and has been receiving, special education and related services in the category of visual impairment. Student had a traumatic birth, during which he was deprived of oxygen and suffered substantial brain damage. As a result he has multiple disabilities, including blindness, mental retardation, and cerebral palsy, which renders him quadriplegic. He must rely on the assistance of others in all basic activities.

2. Student has been served by the District for seven years. Since at least 2006, the parties have been unable to agree on an IEP for Student and have been involved in several proceedings before OAH. During that time, Student's program has been variously governed by settlement agreements, mediation agreements, and the stay put rule.

3. In the school year (SY) 2009-2010, Student completed the fifth grade at the District's Vannoy Elementary School (Vannoy), where he is attending extended school year (ESY). In the fall, Student will begin the sixth grade at the District's Canyon Middle School (Canyon). The IEP created on April 30, 2010, offers him a program for the portion of SY 2009-2010 after April 30, 2010; for the 2009-2010 ESY; and for SY 2010-2011.

4. There are two parts to the legal analysis of the validity of an IEP. First, the tribunal must determine whether the district has complied with the procedures set forth in the Individuals with Disabilities in Education Act (IDEA). Second, the tribunal must decide whether the IEP was reasonably calculated to enable the child to receive educational benefit.

Procedural Validity of the IEP

Parents' Nonattendance at the April 30, 2010 IEP Meeting

5. A district must afford the parents of a child with a disability the opportunity to participate meaningfully in IEP meetings. It must take steps to ensure that all IEP team members, including parents, attend an IEP meeting, and that parents have an adequate opportunity to participate and to present information to the IEP team.

6. A district must notify parents of an IEP meeting early enough to arrange a mutually convenient date and must ensure that they will have an opportunity to attend. It may not conduct an IEP team meeting in the absence of parents unless the district is unable to convince the parents that they should attend, in which case it must keep a record of its

attempts to arrange a mutually agreed-on time and place for the meeting. Parents did not attend the April 30, 2010 IEP meeting that produced the IEP at issue.

7. The District's decision to hold an IEP meeting without Parents on April 30, 2010, was the product of an extensive history of unsuccessful attempts to persuade them to come to an IEP meeting. In recent years, Mother has cut off most avenues of communication with the District. Since 2006, she has increasingly failed to answer her telephone or respond to voicemail messages. When District staff do reach Mother by telephone, they are usually told that it is not a good time to talk and that they should leave voicemail instead. Mother then normally fails to respond to the voicemail. Mother has declined to give the District an email address or to accept fax transmissions. All registered mail from the District has been returned as refused or undeliverable. At one point, Dr. Wyatt, the District's Director of Special Education, went to Parents' home in an attempt to deliver documents he had been unable to deliver by other means. The family van was in the driveway and there was noise inside the home, but no one answered the door.

8. In April 2008, Mother wrote to the District's former Superintendent, stating that she would accept no telephone calls from the District; the District should destroy its records of her telephone number; she would deal only with the Superintendent's office; contacts from the Special Education Office were a "form of harassment;" and henceforth she would only speak to a named program specialist. Since that time, the District's only reliable method of communicating with Parents has been by regular mail, none of which has been returned as undeliverable.

9. Debbie Laris is Student's fifth grade special day class (SDC) teacher. Ms. Laris received a special education credential for teaching children with moderate-to-severe disabilities in 2001, and has been teaching in a moderate-to-severe (MS) SDC for 10 years. She has taught Student for three years. Early in that time she communicated with Mother and other parents by sending a communications log home with every student. Mother at first would write in Student's log and return it. However, Mother eventually kept the log and refused to return it.

10. In July 2008, the parties executed a settlement agreement that set forth Student's program for SY 2008-2009 and established the program as his stay put placement. That placement included various services (such as off-site physical therapy by a private provider) that Mother wishes to retain. The District conducted 25 hours of IEP meetings in spring 2009 with Mother and her attorney, LaJoyce Porter, and produced an IEP offer for the following school year, but Mother was unwilling to sign it or state her objections to it.

11. On July 21, 2009, Ms. Porter sent to Dr. Wyatt extensive written objections to the spring 2009 offer. Dr. Wyatt then exchanged several emails with Ms. Porter in an unsuccessful effort to convene an IEP meeting to discuss Mother's objections. However, on August 31, Ms. Porter advised Dr. Wyatt by email that Mother did not wish to attend another IEP meeting. In emails to Ms. Porter throughout the fall, Dr. Wyatt repeatedly urged that she

and Mother attend another IEP meeting. In January 2010, Ms. Porter advised the District's attorney that she no longer represented Mother.

12. On January 7, 2010, Dr. Wyatt wrote to Mother enclosing a recent independent analysis of Student's feeding problems, and requesting that she select January 21, 25, or 28 as the date for an IEP meeting to discuss the new information. When Mother did not reply, Dr. Wyatt wrote again on January 21, announcing that the meeting would proceed on January 28 if he did not hear from Mother, and urging Mother to attend. Later on January 21, after learning that the feeding specialist had an emergency and could not attend the January 28 meeting, Dr. Wyatt again wrote to Mother, canceling the January 28 meeting and proposing instead to meet in February "on a day that works for you." He proposed meeting on February 11, 18, or 19, and suggested that Mother respond to Program Specialist Jennie Kordes or Ms. Laris if she were uncomfortable communicating with him. He also stated that if the District did not hear from Mother, the meeting would proceed on February 19. Later he sent a notice of an IEP meeting to be held on February 19 that named those who would attend.

13. At 5:44 a.m. on January 27, 2010, without acknowledging that the meeting previously scheduled for the 28th had already been canceled, Mother left a voicemail for Ms. Kordes saying that the January 28th meeting was not "doable." Ms. Kordes called back and left a message containing the same three alternative dates in February for the meeting that Dr. Wyatt had proposed. She also informed Mother of the agenda topics for the meeting and the names of the people who would attend.

14. On February 18, 2010, after business hours, Mother sent a fax to Ms. Kordes stating that she would not attend the meeting the next day because she had not been consulted on a meeting date, and had not been given an agenda, any new information, or a list of attendees. All these claims were untrue. Mother had been given the feeding specialist's report with Mr. Wyatt's January 7 letter; the agenda in his January 21 letter and Ms. Kordes' telephone message; and the names of the attendees in Ms. Kordes' message and the meeting notice. Mother stated in her fax that she wanted to attend an IEP meeting to finalize Student's IEP, but not without being consulted on the date, the agenda, and the attendees. The District correctly interpreted that statement as part of her refusal to attend, not as a sincere attempt to schedule a meeting. Mother's subsequent conduct proved that interpretation correct.

15. On February 19, 2010, just before the scheduled IEP meeting, a District employee reached Mother by telephone and encouraged her to come to the meeting, but Mother reiterated her refusal for the reasons stated in her February 18, 2010 fax. The District then proceeded with the February 19, 2010 IEP meeting in Mother's absence. The IEP team heard and discussed the feeding specialist's report, and revised its spring 2009 IEP offer in light of her report and also in response to some of the criticisms raised in Ms. Porter's July 21, 2009 letter. Mr. Wyatt sent the revised proposal and all the documents considered at the meeting, along with an audio recording of the meeting, to Mother on February 23, 2010. In his cover letter, Dr. Wyatt offered to arrange another IEP meeting to discuss Mother's

reaction to the new proposal, and requested dates and times she would be available for such a meeting. He reminded Mother that the time for Student's annual IEP meeting was approaching, and suggested the dates of April 13, 22, or 30 for that meeting. He advised Mother that if she did not respond to those proposed dates, the annual meeting would be held on April 30. He also advised Mother that if she did not respond, the District would seek approval to implement the revised IEP for the rest of the school year by filing a request for a due process hearing.

16. Mother did not respond to the letter of February 23, 2010. Dr. Wyatt sent another letter on March 9, 2010, which again asked for a response to the three proposed April dates for the annual meeting, "and if not three dates that would work for you." Again Mother did not respond. On March 22, 2010, the District filed its request for due process hearing.

17. On April 15, 2010, the District sent Mother a notice of an annual IEP meeting to be held on April 30. On April 29, Mother sent a fax to Ms. Kordes stating that Parents would not attend an IEP meeting "until the due process hearing is over and settled." The District then proceeded with the April 30 annual meeting without a parent in attendance and produced the IEP at issue, which was sent to Mother along with an audio recording of the meeting and related documents. Even after the April 30, 2010 meeting, the District offered to arrange another meeting to discuss the proposal and requested possible dates, but Mother did not respond. This action followed.²

18. The evidence established that the District made, and properly documented, extensive efforts from August 2009 to May 2010 to convince Mother to attend an IEP meeting to develop a current IEP for Student. Mother consistently refused to provide dates on which the meeting might be held, refused to attend meetings that were properly noticed and announced, and refused to cooperate in any way with scheduling or holding such a meeting. Accordingly, the District properly proceeded with the April 30, 2010 IEP meeting without a parent in attendance.

Attendance at the April 30, 2010 IEP Meeting

19. In addition to parents (whose absence is addressed above), an IEP team must include at least one regular education teacher of the student, one special education teacher of the student (or, where appropriate, a special education provider), a representative of the local educational agency, an individual who can interpret the instructional implications of assessment results, and other individuals invited at the discretion of the parent or the district who have knowledge or special expertise regarding the student. The April 30, 2010 IEP meeting was attended by Darlene Metcalfe, Student's general education teacher; Debbie Laris, Student's current special education teacher; Cheryl Rosales, Student's proposed special education teacher for the 6th grade; Dr. Wyatt as the administrator; and an occupational therapist, a physical therapist, a speech therapist, the school nurse, a vision

² The District later withdrew its March request for a due process hearing in favor of this action.

specialist, a developmental specialist, and an adapted physical education (APE) teacher. Margaret Bourne, the feeding specialist, was present by telephone to interpret her report. Although there were no new assessments to discuss, one or more of the District members of the IEP team could knowledgeably have interpreted any assessment, evaluation or report Parents might have desired to discuss. The meeting was attended by every person the law required.

Other Procedural Requirements

20. In requesting a continuance of this matter, Mother stated that the District had ignored her request for an assessment in the area of Alternative Augmentative Communication (AAC), an aspect of assistive technology (AT). The evidence showed that this claim was untrue. Ms. Kordes testified that she had sent AAC assessment plans to Mother on three separate occasions, but had never received a signed AAC assessment plan.

21. The April 30, 2010 IEP is the product of an IEP meeting that was properly noticed, held, and staffed. Federal and State law require that a valid IEP contain numerous specific statements and findings. The IEP contains all the specifics the law requires. The District therefore complied with all the procedural requirements of federal and State law in developing and presenting the April 30, 2010 IEP.

22. In the alternative, any procedural error the District might have made in the formulation or presentation of the April IEP was harmless. A procedural violation of the IDEA and related laws results in a denial of a FAPE only if it impedes the child's right to a FAPE, significantly impedes the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to their child, or causes a deprivation of educational benefits. Nothing in the record shows that the procedures by which the IEP was developed or presented caused any loss to Student's education or Parents' participatory rights.

Substantive Validity of the IEP

Eligibility

23. At present, Student is eligible for special education and related services only in the category of visual impairment. The April 30, 2010 IEP proposes to make mental retardation his primary category of eligibility, and visual impairment his secondary category. Parents oppose this change.

24. Nothing in the IDEA regulates a district's choice of primary and secondary categories of eligibility. As long as the District provides a disabled student a FAPE, the label under which it does so lacks legal significance. However, California law discourages unnecessary labeling of a special education student.

25. Marilyn Rabello is a credentialed school psychologist. She has a master's degree in counseling psychology and a doctorate in education. She has worked as a school psychologist since 1971 and has administered an average of 60 to 80 psychoeducational assessments (including cognitive testing) every year since then. During 10 of those years, Dr. Rabello was the only psychologist assigned to the Oakland Unified School District's Center for Severely Impaired Students, where most of the students were mentally retarded and had secondary disabilities as well. Dr. Rabello has worked for the District since 2006.

26. In September 2008, Dr. Rabello conducted a psychoeducational examination of Student. She used three different test instruments, observed Student in class, reviewed his records, and received evaluations from Mother and from Student's teachers. Although Student's scores on various measures ranged from the age equivalent of one month to the age equivalent of two years, Dr. Rabello concluded that Student's overall cognitive capacity resembles that of a child nine-to-18 months of age. This conclusion was consistent with Dr. Rabello's own observations, the information from Mother, the data from Student's teachers, and previous evaluations of Student.

27. Dr. Rabello and other District witnesses who have worked with Student credibly testified that his cognitive challenges affect his educational needs even more than his visual impairment does. For example, a blind person can engage in many important life activities with proper training and support. He or she may read by Braille or take rapid transit with a guide dog and a cane. Student cannot do these things because of his cognitive deficits. He does not understand the concept of print, or what letters are. His language skills are pre-symbolic; he does not grasp that something can stand for something else. He cannot learn Braille because he cannot associate what he touches with words, objects, or concepts. He does not understand that a cane is an extension of his arm, or that what he might perceive by using a cane could be helpful to his mobility.

28. Student is nonverbal, and communicates only by gestures, body movements and vocalization. He has been taught to tap his right hand on the table to indicate "yes," and to touch his right hand to his left to indicate "no," but his use of these communications is inconsistent and unreliable. He has no concept of numbers, shapes, colors, time, calendars or money. Although his hand can be guided over sandpaper letters that spell his name, it is not clear that he knows his name.

29. The evidence showed that an understanding of Student's cognitive deficits is essential to the development and execution of an appropriate educational program for him. Student is eligible for special education and related services both as mentally retarded and visually impaired, and his additional designation as mentally retarded facilitates the understanding of his educational needs.

Gross Motor and Mobility Needs

Technology

30. Student travels in a wheelchair. Under the proposed IEP, the District will continue to transport Student to and from school.

31. Student can only walk a step or two unassisted. To aid Student's mobility, the District recently obtained a Meywalk trainer. It has a seat and wheels, and keeps the occupant upright. With the support of his one-to-one aide and his APE teacher, Student uses the Meywalk to move about campus and has made some modest progress in his movement. The IEP continues the provision of a Meywalk for Student's mobility needs.

32. Student cannot sit in an ordinary chair. He has been using an Ablegaitor, a gait-training frame with wheels, for sitting, standing and walking at school, but he has outgrown it. Mother wants the District to purchase a larger Ablegaitor, but a representative of the vendor visited the school and advised that the device would be inappropriate for Student because of its bulk and mass. District witnesses also testified that Student lacks the cognitive ability to shift his weight back and forth purposefully, which is how the device is moved. For a week, the District experimented with a Lucky stander, which is similar to an Ablegaitor. Student's SDC teacher and aide decided that because Student rocks a lot, the Lucky stander allowed too much movement. They also found it too difficult to lift Student up into the stander's chair. So the District tested an E-Z Stander, which has a hydraulic seat that lifts Student up. That was successful, so the IEP substitutes the E-Z Stander for the Ablegaitor.

33. It is hard for Student to maintain an upright posture while eating. The IEP provides an X-panda chair for Student to use while eating, because the chair has lateral support for his trunk, and has lap and seat belts to keep Student from falling. The X-panda also has a headrest and a lap tray that moves up and down to accommodate tables of varying height.

34. Catherine Fontaine, a well-qualified and experienced physical therapist in private practice, has worked with Student for two years and wrote an evaluation of his needs in February 2009. She established that the Meywalk, the E-Z Stander, and the X-panda chair are appropriate and helpful for Student.

Goals

Physical Therapy

35. An annual IEP must contain a statement of measurable annual goals designed to meet the student's needs that result from his disability to enable him to be involved in and make progress in the general curriculum, and must meet each of his other educational needs that result from his disability. It must also contain a statement of the student's present levels

of performance (PLOPs). These levels establish baselines for measuring the child's progress throughout the year so that adequate new goals can be written.

36. Ms. Fontaine's February 2009 physical therapy evaluation of Student was based on her experience in providing direct services to Student, a review of his records, and consultation with Student's parents and teachers. The spring 2009 IEP offer contained several goals Ms. Fontaine recommended, but it was not signed or implemented. Ms. Fontaine testified that, because Student had made minimal progress under his old program since then, it is still appropriate that the goals she proposed last year be used. The April 2010 IEP therefore proposes four gross motor goals for Student that involve transitioning from the floor to a standing position, transitioning from his chair to a standing position, standing still and erect for 10 seconds, and moving in his walker up to 400 feet across the campus. The baselines in those goals are derived directly from Ms. Fontaine's February 2009 evaluation and her experience before and since. They are specific: for example, one baseline states that Student now transitions from the floor to a standing position by pulling up with the assistance of one person. The goals are also specific: one requires him to reach a standing position from his chair by placing his right arm on the armrest at the verbal cue "stand up," with 90 percent accuracy in four out of five opportunities in a five-week period, with only standby assistance. The other gross motor goals are similarly precise. Each is accompanied by three equally specific short-term objectives that seek to gradually escalate Student's performance from the baseline to the desired annual goal.

37. Student has recently regressed in his ability to stand. He uses bilateral ankle/foot orthoses (AFOs) that brace his ankles. Until approximately January 2010, he wore the hinged variety of AFOs, which allowed for lateral movement. Then he arrived at school with fixed AFOs, which frequently cause him to drop to the floor. District staff unsuccessfully sought an explanation of the change from Mother, then called Children's Protective Services (CPS), which was known to supply Student his AFOs. However, CPS could not discuss the reasons for the new AFOs because Mother would not furnish a waiver of confidentiality. Since District staff could neither determine why the AFOs had been changed, nor change the AFOs themselves, they enhanced Student's safety by returning responsibility for Student's gross motor goals to the physical therapist, and changed the baselines in the gross motor goals to reflect Student's new difficulties in standing.

38. Ms. Fontaine credibly testified that the gross motor goals were appropriate for Student. The evidence showed that the gross motor goals are specific and measurable from adequate and current baselines, and that they meet Student's mobility needs and would allow him to make meaningful progress.

39. The IEP also provides for 60 minutes a week of direct physical therapy. In spring 2009, Mother gave the District a report from a physical therapist at Starfish Therapies in San Francisco that recommended Student receive physical therapy three times a week for 60 minutes each. Ms. Fontaine persuasively testified that two of those sessions would not be appropriate for Student because they would take place in a clinic. Many studies show that, for the purposes of repetition and consistency, educationally based physical therapy should

be done only in the educational setting. Ms. Fontaine also established that, under the 2008 settlement agreement, Student has been receiving physical therapy in a clinic four times a week and it has not done him any apparent good, and that physical therapy sessions that frequent are appropriate only for infants who are severely delayed or people who are recovering from surgery. Ms. Fontaine credibly testified that the continuation of her individual work with Student for 60 minutes a week is sufficient. She also established that since Student is moving to middle school and will be cared for by new staff, the 15 hours of consultation services she will provide to the Canyon Middle School staff under the IEP are sufficient as well.

APE

40. The IEP contains a gross motor goal related to Student's APE program. Justin Bone is a credentialed APE teacher who has worked with Student since 2007. He testified that Student comes to class in his Meywalk trainer and practices mobility by participating in activities and games. The class meets for 50 minutes twice a week. Mr. Bone's central purpose is to strengthen Student's lower body so his standing and walking can improve. Student has been working on a "line-running" goal, which involves being able to walk in a straight line for 25 feet in his trainer. He has made some progress, and is now able to remain standing on two feet inside the trainer for a majority of the class. His line-running has improved in distance and speed.

41. To reflect Student's progress and challenge him further, Mr. Bone wrote a goal for the IEP that continues strengthening Student's lower body by line-running, but increases the number of repetitions of the 25-foot course and reduces the assistance needed to the level of moderate. The goal's baseline is specific; it reports that Student can now complete eight repetitions with maximum assistance. The goal is to complete 14 repetitions a year from now, with moderate assistance, to be measured by Mr. Bone and Student's aide. The goal is ambitious, but Mr. Bone wrote it knowing that, when Student begins middle school in August, the curriculum is so structured that he will be attending a 50-minute APE class five days a week instead of the current two. That will give Student considerably more opportunity to strengthen his lower body. The goal is directly grounded in Student's current performance, and is precise and measurable. Mr. Bone credibly testified that it is suitable for Student's needs.

Orientation and Mobility

42. Lori Cassels has been the District's credentialed orientation and mobility (O & M) specialist since 2006. An O & M specialist works primarily to improve traveling for the visually impaired. Ms. Cassels has worked with visually impaired students since 1978. She has taught at the School for the Blind in the Bronx, and for several years in various school districts. Her caseload has included at least 100 students who had multiple impairments. She has been working with Student for 60 minutes a week since 2006.

43. In previous years, Ms. Cassels has worked with Student on cane travel using his walker. Student's success has been mixed. Because of his cognitive limitations, he does not appreciate the function of a cane or his orientation in space, and he tends to drop the cane or swing it around. Ms. Cassels established that, since the cane travel goal has not been sufficiently successful, a new approach is needed: she proposes to teach Student to "trail" walls (by touching them with his fingers) while in his wheelchair, with the eventual goal of having him extend this skill by returning to a cane. She has chosen the wheelchair because Student is comfortable in it and will not have to concentrate on anything else while learning to trail.

44. Ms. Cassels has written, and the IEP proposes, a trailing goal for Student. The baseline, which derives from her current observations of Student and experience with him, is that he can tap a wall for one to three seconds with the assistance of his aide. The goal projects that, in a year, in response to a verbal prompt, Student will trail a wall with his right hand, in the classroom or on the campus, for 15 feet on four consecutive days with the assistance of the O & M specialist or his aide. Short-term objectives gradually increase the expectations for Student's trailing from his present skills toward the annual goal. The baseline of the goal is precise, and the projected progress is measurable.

45. Ms. Cassels described how she would implement the trailing goal. She and Student's aide have measured the distance from his classroom to his other destinations, and marked the walls with tick marks so that Student's progress can be tracked. Ms. Cassels has studied and prepared his routes to and from the bus. She would do these same things at Student's middle school starting in August. Ms. Cassels also established that her emphasis under the IEP will be on consultation with staff so that the entire SDC staff can implement the trailing goal. Ms. Cassels credibly testified that the trailing goal and related training meet Student's needs.

Language and Communication

46. Sandra Nevin has worked for the District for 30 years, and is now its Coordinator of Special Education. She has had an elementary teaching credential with a specialization in teaching the visually impaired since 1975, and has taught the visually impaired throughout her career. Ms. Nevin has many years of experience in teaching Braille. She is the District's program specialist for the visually impaired, and first met Student when he was in the District's infant-toddler program. She assessed his vision in 2004. She consulted with District staff on Student's vision needs during SY 2009-2010, and visited his classroom many times. Because Student's recent vision specialist Laura Chauca is on medical leave, Ms. Nevin has served since March 2010 as the vision specialist at Student's elementary school. To serve Student there and to prepare to participate in the April 30, 2010 IEP, Ms. Nevin interviewed Ms. Chauca in the hospital, reviewed Student's records, and spoke to his teachers and providers.

47. Ms. Nevin explained why Student cannot be expected to learn Braille. Students are usually at least three years old, and more often four or five, when they start to

learn Braille. Student's cognitive ability is closer to that of an infant. He lacks the necessary cognitive ability to identify objects, and also lacks the word base required for reading. His cerebral palsy renders him incapable of purposefully touching the physical symbols used in Braille.

48. Ms. Nevin established that Student's vision needs have not changed much in recent years. Student's vision cannot be corrected with lenses. His blindness is cortical, or cerebral; it does not originate in his eyes. Student has just enough residual vision to recognize light, but not objects. Ms. Nevin explained that the IEP therefore proposes to continue Student's use of a light box, which lights objects, pictures, and shapes from behind. The box maximizes what residual vision Student has, and he looks at objects more if they are lighted this way. Student cannot benefit from a vision goal, and is best served by the development of all his other senses to compensate for his lack of vision. To facilitate that development, the IEP offers 60 minutes weekly of consultation to staff by a vision specialist.

49. Student has been using AAC devices such as a Take and Talk, a device that helps him transition from activity to activity. For example, when he removes a spoon from the device, it says "lunch." He listens to it, and it seems to prepare him mentally for lunch, although it is impossible to know how much language he understands. He also uses a Step-by-Step speech-generating device that allows a sequence of messages to be recorded. Its purpose is to allow him to participate in activities with others. For example, it is programmed to make comments or choices in morning circle time in the SDC; with hand-over-hand assistance, Student can press the machine's key so he is "saying" and doing what the others are doing. He also uses a similar machine called a two-key message device, with which two keys are used to record a simple message. It develops the ability to take turns by saying "your turn" or "my turn."

50. Since 1997, Agnes Franzwa has been the AT and AAC specialist for the Mid-Alameda County Special Education Local Planning Area, to which the District belongs. She has a master's degree in communicative disorders and a national clinical certificate of competence in speech-language pathology. She started work as a speech-language pathologist for school districts in 1980 through California Children's Services, which serves students with physical and developmental disabilities. Ms. Franzwa has worked for 17 years providing services to students with unusual speech and language disorders, including those caused by cerebral palsy. She has completed more than 200 AT assessments. She assessed Student for AT needs when he was in preschool, and has provided direct services to him since that time.

51. Ms. Franzwa explained that Student's language is at the pre-symbolic level, which means that he does not understand that a word or picture represents something. In order to move past that stage, Student must understand cause and effect: he must know that if he says or does something, something else will occur. At present, Student lacks the cognitive capacity for that understanding, and language develops in parallel with cognitive capacity. The benefit he can obtain from the further use of the AAC devices is therefore limited, because he cannot associate his actions with the words generated by the machines.

Student's speech and language assessments show that his receptive and expressive language skills are in the age range of nine-to-11 months, and he cannot be expected to display language skills beyond the one-year age level. Ms. Franzwa has concluded that Student would be better served by enhancing the ways in which he does communicate, with gestures, body movements, and vocalizations. The District staff who currently serve him have come to understand these communications, but when Student moves to middle school, he will encounter new teachers and providers. It is therefore especially important, for the coming school year, that those new teachers and providers can understand Student. To that end, the IEP proposes 45 minutes, five times a year of AAC consultative services, and the creation of a gesture dictionary, which will set forth the meanings of his communications.

52. Student is highly motivated by food, and in order to develop self-help skills, Student needs to be able to indicate when he needs to eat. Ms. Franzwa wrote the IEP's goal for communication and self-help, which involves a single speech output device that is much simpler than the AAC devices he has been using. The baseline of the goal states that Student has not yet learned to use a voice output device. Through a series of short-term objectives that begin to develop that skill, Ms. Franzwa hopes that Student will reach the specific annual goal of asking for more food by touching a pre-programmed switch that means "more," independently on four of five occasions over eight to 10 trial days. If successful, the goal will begin to teach Student the relationship between cause and effect. Ms. Franzwa credibly testified that the goal adequately addresses Student's needs.

53. Jody Hamon is a speech language pathologist with a national certificate of clinical competence. She is a private contractor with extensive experience helping children with articulation needs. Student is on her caseload and she has worked with him in SY 2009-2010 for 30 minutes twice a week. Ms. Hamon wrote the PLOPs for speech and language in the proposed IEP, and agreed with Ms. Franzwa's descriptions of Student's deficits and present performance. She supports the creation of a gesture dictionary, and believes that the proposed communications goal is appropriate for Student. Ms. Hamon noted that the IEP proposes 30 minutes a week of consultative speech-language services to classroom staff. She explained that consultation, in Student's case, will be more effective than direct services because it will train all the staff to work on Student's communication goal throughout his time in the classroom. Ms. Hamon credibly testified that the level and kind of speech-language therapy and consultation offered in the IEP are sufficient for Student's needs.

Functional Skills

Feeding

54. Student's food is prepared for him, and to eat it he needs continuous assistance from a developmental specialist. He can use a spoon or fork to stab food, but only with hand-over-hand help. His mouth does not entirely close, and some food falls out. He cannot chew in a circular fashion, as adults do, so he swallows unchewed food, loses much of its nutritional value, and risks choking on it. He can use a straw, but cannot form a proper lip seal so that he can suck up the contents of a cup or glass.

55. To meet Student's feeding needs, the District employed Margaret Bourne, a State-licensed speech-language pathologist in private practice who specializes in oral-motor and feeding therapy. She is the founder of the Oral-Motor Speech and Feeding Clinic in San Rafael, which provides evaluation and treatment for children with communication disorders and oral-motor and sensory-based feeding disorders. Ms. Bourne has substantial experience with disabled children who have both oral-motor and feeding disorders and other disabilities such as cerebral palsy, autism, mental retardation, Down syndrome, and traumatic brain injury.

56. In November 2009, Ms. Bourne interviewed Ms. Kordes, Ms. Laris, Student's aide, and other District staff familiar with Student. Ms. Bourne then fed him, and watched others feed him, foods of various kinds and textures. In December, she provided extensive written findings on his eating patterns and oral-motor deficits, and recommendations on the kinds and textures of food he should be given, food to be avoided, and how he should be fed. Ms. Bourne advised that Student was at some risk of choking and aspiration when swallowing food whole, and suggested methods of feeding him and monitoring his eating that would be safer. She also recommended that all staff involved in his feeding be trained in these techniques. She developed detailed recommendations for goals.

57. Based on Ms. Bourne's report, the April 2010 IEP team developed and proposed seven feeding goals. They range from increasing oral sensitivity by using three electrical devices that produce different kinds of vibration to the use of chewy tubes and the development of a lip seal. The baselines of the feeding goals derive directly from Ms. Bourne's observations and report. The baselines and related goals are specific and measurable. For example, the baseline of one of the goals states that when cubed food is now placed on Student's molars, he will chew it only once before moving it to the middle of his mouth to suckle or swallow it. The related goal is that Student will chew 40 specified cubed foods to completion on his molars, with assistance to return food to his molars if it migrates to the middle of his mouth. Equally specific short-term objectives build toward that goal throughout the year. The IEP also provides that Student will be given adaptive utensils, such as a weighted knife and fork, so that he can better sense what is in his hand.

58. The IEP also proposes a pyramid structure of training in which Ms. Bourne will provide 15 hours of training, concentrated in the beginning of SY 2010-2011, to the occupational therapist, the nurse, and the AAC and feeding specialists in how to implement the new feeding goals and record the results. Then they can train all the other staff members involved in feeding Student. Ms. Bourne credibly testified that the seven new feeding goals and related consultation for Student correctly addressed his needs.

Occupational Therapy

59. Student's seven new feeding goals are also sufficient according to occupational therapist Margaret Maceda, whose work relates closely to that of Ms. Bourne. Ms. Maceda has held a teaching credential from New York since 1987 and received her California occupational therapy (OT) license in 1995. She has worked as a traveling

employee of a company that placed her in hospitals and nursing homes throughout the country. She worked for three years at the California Pacific Medical Center. In 2001 she began to work for school districts, usually through non-public agencies, providing direct and consultative services for school-age children. She now owns and operates Therapy Works, which provides direct and consultative OT services to school districts, including assessments and IEP goals. She has extensive experience in implementing oral-motor feeding goals and in treating students who are nonverbal and have severe cognitive impairments, cerebral palsy, or visual impairments.

60. Ms. Maceda provided a contract occupational therapist, Trisha Danciu, to the District to work with Student in SY 2008-2009, and supervised her. In SY 2009-2010, Ms. Maceda provided those direct and consultative OT services herself. She presented an OT report to the April 2010 IEP team recommending three OT goals, two of which supplement Ms. Bourne's feeding goals. The team adopted and proposed them. One of those goals is designed to improve the pincer movement of Student's right hand, which would enable him, among other things, to hold a fork or spoon better than he does now.³ Its baseline states that Student uses a lateral pinch with a raking action to retrieve objects about an inch long on two of 10 opportunities, and the goal seeks to train him to do that, with minimal prompting, on six of 10 opportunities on four of five sessions over two weeks. Short-term objectives build toward that goal. The goal derives from Ms. Maceda's current observations of his performance, and is easily measurable. The IEP team also adopted Ms. Maceda's proposed goal to improve Student's skill in scooping food onto a spoon, which is similarly structured and precise.

61. Ms. Maceda reported to the IEP team that Student can lift both arms at the shoulders only to about 90 degrees of flexion, and can do so only about half the time on verbal cue. As Student grows, it becomes more difficult to help him dress, and for him to use trays. So Ms. Maceda wrote, and the team adopted, a proposed goal that will increase Student's ability to manipulate trays, and to help his providers when they put his clothes on. Starting from the current baseline and progressing through short-term objectives, the goal seeks to train Student to raise both arms to 90 degrees of flexion on request on nine of 10 opportunities. Both the baseline and the goal are precise and measurable. Ms. Maceda credibly testified that all three of the OT goals she proposed, as well as the 15 hours of OT consultative services she will provide early in SY 2010-2011 to train new staff at Canyon, properly address Student's needs.

Social and Emotional Needs

62. Ms. Laris, Student's fifth grade SDC teacher, and Darlene Metcalfe, Student's well-qualified and experienced fifth grade general education teacher, both testified that Student is a delightful and cooperative boy who gets along with adults and students alike. He interacts with nondisabled students when mainstreaming, and is popular among them.

³ Student's left extremities are nearly paralyzed and capable of only gross movement.

Other students approach him and speak to him briefly. However, his responses are so limited they soon move on.

63. The IEP proposes a social goal to facilitate longer peer interaction through reciprocal play, in which Student cannot now engage. The speech language pathologist and AAC specialist would develop a verbal script to represent Student's side of basic conversations during play, and from the script SDC staff would facilitate Student's interactions by speaking Student's words. Staff would, in essence, be Student's voice during the interchange. Ms. Laris credibly testified that this goal correctly addressed Student's needs, and could be implemented in her classroom and in Ms. Rosales' classroom at Canyon.

One-to-One Aide

64. Student has always needed a one-to-one aide at school to assist him in all basic life activities. The evidence showed that the aide is involved in the provision of most of Student's services, because most of the interactions described by Student's providers at hearing take place in the SDC, and depend on the aide to some degree.

65. Ms. Metcalfe established that Student also needs an aide while mainstreaming. His emotional stability has improved greatly in recent years, but he still needs an aide to monitor him in a classroom and sometimes control his movements, wipe his mouth, or furnish prompting. The services of a one-to-one aide are essential to the proper delivery of Student's program, and the April 2010 IEP proposes to continue those services whenever Student is at school.

Setting

66. Student needs a classroom that can accommodate his equipment and facilitate extensive individual support from several providers, such as his aide, a nurse, an O & M specialist, an OT, a feeding specialist, and a physical therapist. He has a highly individualized program that must be delivered to him alone. An MS-SDC is designed to deliver such a program.

67. The IEP places Student in Ms. Laris' MS-SDC for the rest of SY 2009-2010 and the ESY, and in Ms. Rosales' MS-SDC when Student transfers to Canyon. Both teachers credibly testified that their SDCs are suitable placements for Student.

68. Ms. Laris established that her MS-SDC is geared to meet the needs of children like Student. Given the high ratio of staff to students, Student can be individually assisted in working on his specific goals and his complex motor-sensory program. This could not be done in a general education classroom. Student needs a lot of sensory input that can be provided in the SDC, such as being touched, talked or sung to, moved around, and placed in the swing in the classroom. In Ms. Laris' SDC, Student can participate to some extent in activities at or near his level. He is exposed daily to the things he most needs to understand

in order to develop living skills, such as numbers and money. Ms. Laris credibly testified that her SDC is a suitable placement for Student for the rest of SY 2009-2010 and the ESY.

69. Cheryll Rosales would be Student's MS-SDC teacher in middle school under the IEP. Ms. Rosales obtained her moderate-to-severe special education credential in 2006, and has taught her current SDC for four years. Ms. Rosales' SDC has about 17 students and six aides, resulting in a student-to-adult ratio of about two-and-a-half to one. Ms. Laris' SDC is a "feeder" class for Ms. Rosales' SDC, so Ms. Rosales frequently visits Ms. Laris' class to become familiar with students she is likely to have in the following year. While visiting Ms. Laris' class, Ms. Rosales has met Student two or three times. She attended Student's April 30, 2010 IEP meeting and explained to the team why placement of Student in her class would be suitable and how his goals could be met there. At hearing, Ms. Rosales reviewed each of Student's goals and persuasively described how she and her staff would implement them. For reasons quite similar to those stated by Ms. Laris, Ms. Rosales credibly testified that her SDC would be a well-chosen placement for Student.

ESY

70. ESY is required for disabled students to prevent serious regression. The IEP proposes that Student attend ESY for 960 minutes a week in approximately the same program offered him for the spring of 2010, including placement in Ms. Laris' SDC, the services of his one-to-one aide, physical therapy and other support, and all the equipment, accommodations, and modifications offered by the IEP for regular school terms. Ms. Laris established that Student would regress in basic skills during the summer without ESY, as the IEP team had decided. She and other District witnesses credibly testified that the program offered Student for the ESY is sufficient for his needs.

LRE

71. The IDEA requires that a student with a disability be placed in the least restrictive environment in which he can be educated satisfactorily. The environment is least restrictive when it maximizes a student's opportunity to mix with typical peers. Determining whether a student is placed in the LRE involves the balancing of four 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 would have on the teacher and children in the regular class; and (4) the costs of mainstreaming the student.

73. For the same reasons that Student is correctly placed in an SDC for individual instruction, Student cannot be appropriately educated entirely in a general education class. However, he need not be separated from his typical peers at all times. He has succeeded in significant mainstreaming in recent years, which the IEP proposes to continue. At present, Student attends Ms. Metcalfe's fifth grade general education class Monday through Thursday for a silent reading period after lunch, during which general education students read to him. Student attends choir with general education students. He does not sing words, but he loves music and rocks rhythmically to the music of the choir. Student attends class parties. He has

also participated successfully in fifth grade field trips such as a trip to Sacramento to see the State Capitol and the Railroad Museum, and a trip to the Chabot Space and Science Center for a Mars exploration.

74. Ms. Metcalf testified that her general education students interact with Student in a variety of ways, such as talking to him, reaching out and touching him, high-fiving him and the like. Sometimes they guide his hand so that he can touch tactile books. Ms. Metcalfe testified that both Student and her general education students enjoy these interactions.

75. Based on Student's successful history of mainstreaming, the April 2010 IEP proposes to mainstream Student in the same classes and activities for the rest of the SY 2009-2010 and the ESY, and for SY 2010-2011. The evidence showed that those are the classes and activities in which Student can satisfactorily participate with nondisabled peers. While he will gain no more in academics than he would in an SDC, he will derive substantial benefit from the exercise of his social skills by joining his typically developing peers. There was no evidence that he would disturb or disrupt the teacher or other students while mainstreaming; the evidence showed, to the contrary, that all involved enjoy the process. No issue of cost appears in the record. On balance, the April 2010 IEP mainstreams Student in the classes and situations in which he can benefit, and appropriately places him in the SDC for the individual instruction and services he requires. The IEP offers Student placement in the LRE.

76. In sum, the District has addressed all of Student's complex and unique needs in the proposed IEP through a combination of goals, assistive technology, training, and consultation. The goals are all rooted in accurate present levels of performance, determined recently and thoroughly by teachers and providers who have known and worked with Student for years, as well as by competent outside experts. The goals therefore have accurate baselines. They have short-term objectives that clarify the progress Student would be expected to make; are precise and measurable; and are well-chosen and sufficient in the credible opinions of Student's teachers, providers, and assessors. The proposed IEP is reasonably calculated to allow Student to obtain meaningful educational benefit. It would place Student appropriately and in the LRE. The District will be allowed to implement it in full.

LEGAL CONCLUSIONS

Burden of Proof

1. Because the District filed the request for due process hearing, it has the burden of proving the essential elements of its claim. (*Schaffer v. West* (2005) 546 U.S. 49, 62 [163 L.Ed.2d 387].)

Consequences of Procedural Error

2. The Supreme Court has recognized the importance of adherence to the procedural requirements of the IDEA. (*Board of Educ. v. Rowley* (1982) 458 U.S. 176, 205-206 [73 L.Ed.2d 690] (*Rowley*)). However, a procedural error does not automatically require a finding that a FAPE was denied. A procedural violation results in a denial of a FAPE only if it impedes the child's right to a FAPE, significantly impedes the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to their child, or causes a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (j); *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.)

Parental Participation in the Decision-Making Process

Meaningful Participation in IEP Meetings

3. A parent has meaningfully participated in the development of an IEP when she is informed of her child's problems, attends the IEP meeting, expresses her disagreement with the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schs.* (6th Cir. 2003) 315 F.3d 688, 693.) A parent who has an opportunity to discuss a proposed IEP, and whose concerns are considered by the IEP team, has participated in the IEP process in a meaningful way. (*Fuhrmann v. East Hanover Bd. of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1036.)

Presence of Parents at IEP Meetings

4. Federal and State law require that parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, assessment, educational placement, and provision of a FAPE to their child. (20 U.S.C. § 1414(d)(1)(B)(i); Ed. Code, §§ 56304, 56342.5.) A district must ensure that the parent of a student who is eligible for special education and related services is a member of any group that makes decisions on the educational placement of the student. (Ed. Code, § 56342.5.) Among the most important procedural safeguards are those that protect the parents' right to be involved in the development of their child's educational plan. (*Amanda J. v. Clark County Sch. Dist.* (9th Cir. 2001) 267 F.3d 877, 882.) Accordingly, at the meeting parents have the right to present information in person or through a representative. (Ed. Code, § 56341.1.)

5. A district must notify parents of an IEP meeting "early enough to ensure that they will have an opportunity to attend," and it must schedule the meeting at a mutually agreed on time and place. (34 C.F.R. § 300.322(a)(2) (2006); Ed. Code, §§ 56043, subd. (e); 56341.5, subds. (b),(c).) A district may not conduct an IEP team meeting in the absence of parents unless it is "unable to convince" the parents that they should attend, in which case it must keep a record of its attempts to arrange a mutually agreed on time and place. Those records should include detailed records of telephone calls, correspondence, and visits to the parents' home or place of employment. (34 C.F.R. § 300.322(d) (2006); Ed. Code, §

56341.5, subd. (h); see *Shapiro v. Paradise Valley Unified School Dist.*, No. 69 (9th Cir. 2003) 317 F.3d 1072, 1077-1078.)

Required Members of an IEP Team

6. An IEP team must include at least one parent; a representative of the local educational agency; a regular education teacher of the child if the child is, or may be, participating in the regular education environment; a special education teacher or provider of the child; an individual who can interpret the instructional implications of assessment results, and other individuals who have knowledge or special expertise regarding the pupil, as invited at the discretion of the district, the parent, and when appropriate, the student. (20 U.S.C. § 1414(d)(1)(B)(i), (iv-vi); Ed. Code, § 56341, subds. (b)(1), (5-6).)

Eligibility Categories

7. Nothing in the IDEA regulates a district's choice of primary and secondary categories of eligibility. As long as the District provides a student a FAPE, the label under which it does so is "beside the point." (*Heather S. v. Wisconsin* (7th Cir. 1997) 125 F.3d 1045, 1055; see also *Corning Union Elementary School Dist. v. Student* (2009) Cal.Offc.Admin.Hrngs. Case No. 2008100547.) State law discourages the unnecessary labeling of a disabled child. (Ed. Code, § 56001, subd. (i).)

Elements of a FAPE

8. Under the IDEA and State law, children with disabilities have the right to a FAPE. (20 U.S.C. § 1400(d); Ed. Code, § 56000.) The term "free appropriate public education" means special education and related services that (A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the state educational agency; (C) include an appropriate preschool, elementary school, or secondary school education in the state involved; and (D) are provided in conformity with the individualized education program required under section 1414(d) of title 20 of the United States Code. (20 U.S.C. § 1401(9)). "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(a)(29).)

9. In *Rowley*, the Supreme Court held that the IDEA does not require school districts to provide special education students the best education available, or to provide instruction or services that maximize a student's abilities. (*Rowley, supra*, 458 U.S. at p. 198.) School districts are required to provide a "basic floor of opportunity" that consists of access to specialized instruction and related services individually designed to provide educational benefit to the student. (*Id.* at p. 201; *J.L. v. Mercer Island School Dist.* (9th Cir. 2009) 575 F.2d 1025, 1035-1038.)

10. There are two parts to the legal analysis of a school district's compliance with the IDEA. First, the tribunal must determine whether the district has complied with the

procedures set forth in the IDEA. Second, the tribunal must decide whether the IEP developed through those procedures was designed to meet the child's unique needs, and was reasonably calculated to enable the child to receive educational benefit. (*Rowley, supra*, 458 U.S. at pp. 206-207.)

Requirements for IEPs

PLOPs, Goals, and Objectives

11. Federal and State law specify in detail what an IEP must contain. (20 U.S.C. § 1414(d)(1)(A)(i); 34 C.F.R. § 300.320 (2006); Ed. Code, § 56345.) An annual IEP must contain, inter alia, a statement of the individual's present levels of academic achievement and functional performance, including the manner in which the disability of the individual affects his involvement and progress in the regular education curriculum. (20 U.S.C. § 1414(d)(1)(A)(i)(I); 34 C.F.R. § 300.320 (a)(1) (2006); Ed. Code, § 56345, subd. (a)(1).) The statement of PLOPs creates a baseline for designing educational programming and measuring a student's future progress toward annual goals.

12. An annual IEP must also contain a statement of measurable annual goals designed to: (1) meet the individual's needs that result from the individual's disability to enable the pupil to be involved in and make progress in the general curriculum; and (2) meet each of the pupil's other educational needs that result from the individual's disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); Ed. Code, § 56345, subd. (a)(2).) Annual goals are statements that describe what a child with a disability can reasonably be expected to accomplish within a 12-month period in the child's special education program. (Letter to Butler, 213 IDELR 118 (OSERS 1988); Notice of Interpretation, Appendix A to 34 C.F.R., part 300, Question 4 (1999 regulations).)

13. For a student assessed using alternative assessments aligned to alternative achievement standards (like Student), the goals must be broken down into objectives. (20 USC § 1414 (d)(1)(A)(i)(I)(cc).) Short-term instructional objectives are measurable, intermediate steps between the present levels of educational performance and the annual goals that are established for the child. The objectives are developed based on a logical breakdown of the major components of the annual goals, and can serve as milestones for measuring progress toward meeting the goals. (Notice of Interpretation, Appendix A to 34 CFR part 300 (1999 regulations).)

14. In addition, the IEP must include "appropriate objective criteria, evaluation procedures, and schedules for determining, on at least an annual basis, whether the annual goals are being achieved," and a statement of how the student's progress toward the goals will be measured. (Ed. Code, § 56345, subd. (7), (9); 20 U.S.C. § 1414(d)(1)(A)(i)(III).) An examination of an IEP's goals is central to the determination of whether a student has received a FAPE. In *Adams, etc. v. Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, the court stated: "[W]e look to the [IEP] goals and goal achieving methods at the time the plan was

implemented and ask whether these methods were reasonably calculated to confer ... a meaningful benefit.”

15. An IEP must also contain a statement of the program modifications or supports that will be provided for the student to advance appropriately toward attaining his annual goals, and to be involved in and make progress in the regular education curriculum; and a statement of any individual accommodations that are necessary to measure the student's academic achievement and functional performance. (20 U.S.C. § 1414(d)(1)(A)(i)(IV), (VI)(aa); Ed. Code, § 56345, subds. (a)(4), (6)(A).)

LRE

16. Federal and State law require a school district to provide special education in the LRE. A special education student must be educated with nondisabled peers “to the maximum extent appropriate,” and may be removed from the general education environment only when the nature or severity of the student’s disabilities is such that education in general classes with the use of supplementary aids and services “cannot be achieved satisfactorily.” (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2)(ii) (2006).) In light of this preference, and in order to determine whether a child can be placed in a general education setting, the Ninth Circuit, in *Sacramento City Unified Sch. Dist. v. Rachel H.* (1994) 14 F.3d 1398, 1403, adopted a balancing test that requires the consideration of four 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 would have on the teacher and children in the regular class; and (4) the costs of mainstreaming the student.

Issue: Does the IEP offered Student on April 30, 2010, provide him a FAPE in the LRE, so that the District may implement that IEP without parental consent?

17. Based on Factual Findings 1, 3, and 5-22, and Legal Conclusions 1-6, the District made extensive efforts to convince Parents to attend the April 30, 2010 IEP meeting and duly documented those efforts. Parents were unwilling to attend, so the District properly proceeded with the April 30 IEP meeting without them. Otherwise, the meeting was attended by all participants the law requires. The IEP contains all the contents required for an IEP. The IEP was produced in compliance with the procedural requirements of the IDEA.

18. Based on Factual Findings 1, 3, and 23-76, and Legal Conclusions 1 and 7-16, the District’s April 30, 2010 IEP offer, including its placements for the remainder of SY 2009-2010, the 2009-2010 ESY, and SY 2010-2011, complies with the substantive requirements of the IDEA. It addresses all of Student’s unique needs and is reasonably calculated to allow him to obtain meaningful educational benefit.

19. Based on Factual Findings 1, 3, and 23-76, and Legal Conclusions 1 and 7-16, the District’s April 30, 2010 IEP offer would place Student in the LRE. It would place Student with typically developing peers in all the situations in which Student’s education can be satisfactorily pursued there, and in the more restrictive setting of an SDC for the

individualized instruction and services that can be appropriately delivered only in such a setting.

ORDER

The District's IEP offer of April 30, 2010, constituted an offer of a FAPE for Student for the remainder of SY 2009-2010, the 2009-2010 ESY, and SY 2010-2011, and may be implemented by the District.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, the District 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 90 days of receipt of this decision. (Ed. Code, § 56505, subd. (k).)

Dated: July 26, 2010

/s/
CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings