

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH Case No. 2016031000

v.

DOWNEY UNIFIED SCHOOL DISTRICT.

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DOWNEY UNIFIED SCHOOL DISTRICT,

OAH Case No. 2016031344

v.

PARENT ON BEHALF OF STUDENT.

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**DECISION**

Student filed a due process complaint with the Office of Administrative Hearings, State of California, on March 18, 2016, naming Downey Unified School District. District filed a due process complaint on March 23, 2016, naming Student. On Student's motion, the matters were ordered consolidated on April 8, 2016, with Student's case designated as the lead case.

Administrative Law Judge Cole Dalton, Office of Administrative Hearings, State of California, heard this consolidated matter in Downey, California, on May 24, 25, and 26, 2016.

Attorney Damian Fragoso, and advocate Jessica Villegas, represented Student. Student's mother attended all days of hearing. Student was not present during the hearing. Attorney Karen Gilyard represented District. Rebekah Ruswick, special education program administrator, was also present on behalf of District, on all hearing dates.

At the conclusion of the hearing, OAH granted the parties' request for a continuance to June 13, 2016, to submit written closing briefs. Briefs were timely filed and the matter was submitted on June 13, 2016.

## ISSUES

### *Student's Issue*

1. Did District deny Student a free appropriate public education by failing to include (a) motor goals, and (b) physical therapy services in Student's individualized education program dated March 14, 2016?

### *District's Issue*

2. Did the IEP of October 14, 2015, as amended on March 14, 2016, offer Student a FAPE?

## SUMMARY OF DECISION

Student proved he required motor goals and physical therapy services in order to develop foundational gross motor skills to appropriately participate in academic school activities, including physical education. Student's needs in the areas of balance, strength, motor coordination, bilateral coordination, and running speed and agility were several standard deviations below the mean compared to same age peers. Further, Student exhibited difficulties with his gait and postural stability. District failed to offer services to address those needs at the March 14, 2016 IEP team meeting that reviewed the District funded physical therapy independent educational evaluation.

District made a clear, written, specific formal offer of placement and services designed to meet Student's unique needs in the areas of speech and language, behavior, and academics in its IEP's of October 14, 2015 and March 14, 2016. However, District, nonetheless, denied Student a FAPE as it failed to offer Student supports and services to address Student's needs in foundational gross motor skills in physical therapy and sensory processing in occupational therapy, in either IEP.

## FACTUAL FINDINGS

1. Student was an 11-year-old boy who attended sixth grade at Doty Middle School, at the time of hearing. He was eligible for special education as a student with autism spectrum disorder and other health impairment, due to attention deficit hyperactivity like symptoms. Student lived with his parent within District's jurisdictional boundaries at all relevant times.

*2015 – 2016 School Year Services*

2. Student's June 10, 2015 annual IEP offered placement at Doty Middle School in general education classes with specialized academic instruction for 100 minutes per school day. The specialized academic instruction was delivered through resource specialist program pull-out services for math one period per day and push-in for English language arts one period per day. Related services were offered in occupational therapy, one-on-one, for 30 minutes per week, and consultation for 15 minutes per week; speech and language for 50 minutes per week, small group setting; and additional adult assistance (instructional aide) for 330 minutes per school day. Student was also offered extended school year programming.

3. Dr. Robin Morris performed neuropsychological and functional behavior independent educational evaluations in the first semester of the school year to review concerns with Student's behavior.<sup>1</sup>

*October 14, 2015 IEP Team Meeting*

4. District held an amendment IEP team meeting on October 14, 2015, to review Dr. Morris's evaluations. All required IEP team members were present. Dr. Morris attended the meeting. Ms. Villegas and advocate Jim Campbell represented Student. Attorney Carlos Gonzalez represented District. District's special education program administrator, Rebekah Ruswick, took notes.

5. The team discussed present levels of performance, progress on goals from the annual IEP, and accommodations. The undisputed evidence showed that goals in reading comprehension, writing production and distribution, math reasoning and calculation, speech and language, and visual motor skills were appropriate for Student at that time. Student had made progress toward each of his goals.

6. Accommodations included modifying and chunking assignments, use of a word processing device for written assignments, use of a listening device, breaks as needed, access to a key log and support from an aide for notes, outlines, and assignment binder. District incorporated accommodations recommended by Dr. Morris into Student's IEP. Parent asked whether the speech language pathologist implemented video modeling during speech sessions. The speech pathologist agreed to incorporate the video modeling strategy. The appropriateness of accommodations was also undisputed.

STUDENT'S NEED FOR A BEHAVIOR AIDE

7. Dr. Morris reviewed her assessments and made several recommendations to the team. The disputed recommendations involved Student's need for a behavior trained aide

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<sup>1</sup> Dr. Morris did not testify at hearing and her report was not made part of the hearing record.

to address noncompliance, leaving seat without permission, physical aggression, arguing and ignoring, talking without permission, off task behavior, staring off, shutting down, and the need to increase social interactions with peers. Dr. Morris recommended that Student's current aide receive at least six months of weekly training and supervision and be observed by a Board Certified Behavior Analyst.

8. Dr. Morris's assessment data included the instructional aide's report of Student demonstrating social skills in the average range. However, during her observations, Dr. Morris noted that Student did not respond to peers, was not receptive to gestures, and was off-topic in conversations. Student ate lunch, generally, with his aide and a sibling. Parent agreed that Student struggled with social interactions and understanding social cues. Parent's report was consistent with reports from other District staff.

9. District team members reported there were no incidents of physical aggression since the start of the 2015 – 2016 school year. However, the instructional aide reported to Dr. Morris one incident of being pushed by Student. Parent reported being called three times by school staff due to Student behaviors.

10. Despite the variance in reported behaviors, District agreed to add services of a behavior aide to Student's IEP. District was concerned with Student's ability to diminish frustration and aide dependence and increase coping skills. District offered a Senior Instructional Assistant – Behavioral Challenges for 1,782 minutes per week, and Board Certified Behavior Analyst supervision for 240 minutes per month. Both the behavior assistant and behavior analyst, because of their education and background, would have extensive training in applied behavior analysis strategies including reinforcement systems, data collection, use of systematic prompts, and prompt fading to encourage independence.

11. Student disagreed with the use of a behavior aide and preferred that District provide behavior training to his instructional aide, consistent with Dr. Morris's recommendations. Ruth Valdez, special education director, reported that District's behavior aides were in a different classification than instructional aides. Student's instructional aide did not qualify to obtain the classification to become a behavior aide, at that time.

12. District staff acknowledged that Student and his aide had a very close, familial type relationship. However, they also acknowledged concern over Student arguing with his aide, rather than following directions.

13. Student's speech language pathologist observed Student being given a high level of verbal prompting from his instructional aide, in class. As a result, Student was not given the opportunity to ask for help from the teacher or aide, himself. She saw this as a function of social behavior, which was an area of concern agreed upon by Student's teachers.

14. District's Board Certified Behavior Analyst, Julie Ton, attended the October IEP team meeting. Dr. Ton credibly demonstrated Student's need for a behavior aide rather than the services of an instructional aide. Dr. Ton held a doctorate in special education with

an emphasis on early childhood and applied behavior analysis. She held a master of arts in early childhood special education and a bachelor of arts in psychology. Dr. Ton was a nationally certified Board Certified Behavior Analyst – at the Doctoral level. She was an adjunct professor at various universities. She taught positive behavioral support and teaching students with autism. She earned several fellowships, honors and awards throughout her education and work.

15. Dr. Ton had worked as District’s autism and behavior program specialist for five years. Her duties involved staff training and consultation for autism spectrum disorder strategies, evidence-based practices, inclusive approaches, strategies for challenging behaviors, applied behavior analysis, functional behavior assessments and non-violent crisis intervention training.

16. Dr. Ton credibly described reports from teachers and the instructional aide of Student’s difficulty coping throughout the school day, an incident where he pushed his instructional aide, and instances of shut down and withdrawal. She opined that a behavior-trained assistant could track Student’s levels of compliance and disruption and implement behavior strategies in a more efficient way than his instructional assistant. Behavior aides were specifically trained to provide systematic prompts and prompt fading to build independent skills. Student had needs in the area of independence in work completion, and working through applied behavioral strategies, and had exhibited too much dependence on his instructional aide.

17. Dr. Ton explained how Student’s coping behaviors had improved in October 2015 but became more frequent as the school year progressed. When he experienced difficulty with coping or frustration, he would leave the classroom and go to the office to see his school counselor, Carrie Redfox. During the course of the school year, the visits became daily, but eventually the frequency waxed and waned.

18. As a result, Dr. Ton drafted a goal to address frustration and tolerance. The baseline for the goal accurately reflected what staff reported. Student showed frustration and non-compliance when presented with writing activities. He would attempt avoidance and sometimes demand that his aide do the work for him. Staff reported that Student relied heavily on the aide to finish tasks, which allowed him to bypass opportunities to work through a difficult activity and apply coping skills. The goal was designed to teach Student positive coping skills and would be implemented by school staff, the behavior aide and the Board Certified Behavior Analyst.

#### SENSORY ISSUES

19. Parent agreed with Dr. Morris’s finding that Student had sensory needs. Parent reported that Student complained of noises in his head being too loud and that he did not like writing. District disagreed with Dr. Morris’ finding that sensory issues impeded Student’s access to his education. Parent requested an occupational therapy assessment.

District sent an assessment plan for occupational therapy to Student's counsel on October 30, 2015.

#### SPEECH AND LANGUAGE

20. Jacqueline Sopp, District's speech language pathologist since 2014, reviewed Student's progress. Ms. Sopp held a master of science in speech language pathology and a bachelor of science in communication disorders. She held national and state board certifications in speech language pathology. Ms. Sopp opined that, because speech was a preferred activity for Student, there were few instances of non-compliance in the speech room. Ms. Sopp worked with Student in a small group setting to address difficulties picking up on social cues, turn taking in conversations, and rate of speech. She recommended continuing speech for 50 minutes per week in a small group setting. Ms. Sopp credibly demonstrated that Student made progress in speech with the frequency and duration of services specified in the June 2015 IEP.

#### *Parent Consent/District Response*

21. Parent consented to portions of the October IEP in correspondence dated November 11, 2015, and November 16, 2015. Parent agreed to the goals, accommodations, modifications, and statewide assessments. Parent agreed to placement in general education with specialized academic instruction and related services in occupational therapy and speech and language.

22. Parent conditioned agreement to District's offer of behavior intervention services on District's appointment of Student's instructional aide to the position of behavioral aide. Once the instructional aide was properly trained, Parent would agree to the addition of behavior supervision services. Parent disagreed with District's failure to include extended school year services in the October IEP. Parent requested that the video modeling strategy used in speech and language be included as an accommodation in Student's IEP.

23. District sent prior written notice on December 7, 2015. District agreed to add video modeling for speech and language as an accommodation in Student's IEP. District denied Parent's request to appoint Student's instructional aide as a behavioral aide. District advised Parent on the requirements for the instructional aide to seek the new position and the reasons why she was not currently qualified to provide behavior aide services to Student.

#### *Independent Educational Evaluation in Physical Therapy*

24. Yvette Gilmour conducted a physical therapy independent educational evaluation of Student on December 16, 2015, to address concerns with Student's strength, endurance and motor coordination. Ms. Gilmour was licensed to practice physical therapy in California for 32 years. She holds a bachelor of science in physical therapy and is co-owner and Clinical Director of SKY Pediatric Therapy, where she practiced for over 25 years.

25. As part of her assessment, Ms. Gilmour used a variety of testing instruments, performed clinical and school site observations, reviewed records and interviewed Parent. Ms. Gilmour took measurements of Student's muscle tone, strength, balance, endurance, posture, motor control, developmental skills, and general sensory processing.

26. Based upon her assessment, Ms. Gilmour determined Student had educationally related physical therapy needs in the areas of balance, strength, motor coordination, bilateral coordination, and running speed and agility. He had mild hypotonia in his trunk, upper and lower extremities, and an issue with his gait.

27. According to Ms. Gilmour, Student's deficits impeded his ability to access his physical education curriculum in that he lacked foundational skills necessary to keep pace with his peers. Using the Bruininks-Oseretsky Test of Motor Proficiency, Second Edition, Ms. Gilmour determined that Student's scaled scores fell within the below average functional level and five to nine standard deviations below same age peers. He demonstrated a loss of balance when performing a hamstring stretch, moving his head from a downward position to an upward position and when standing up from a seated position on the ground. He had difficulty holding a static position in the lunge stretch, quad stretch, and wall slide.

28. Student frequently complained of getting tired during testing, in physical education class, and took several rest breaks. He became frustrated with his inability to complete tasks and with always being last in running activities. According to Ms. Gilmour, Student's deficits impacted his social-emotional status because of reduced self-confidence and self-esteem.

29. Ms. Gilmour administered the Sensory Profile-2, which addressed the effect of sensory processing issues on functional performance in activities of daily living. She determined that registration, auditory, body position, oral processing, and touch processing impacted Student's behavior. Ms. Gilmour opined that these deficits impacted Student educationally in that he was accident prone, rushed through writing activities, could be stubborn and uncooperative, resisted eye contact, was distracted by background noises, and did things in ways that were harder in that he moved more slowly than same age peers. She recommended an occupational therapy evaluation to develop strategies to address Student's sensory processing needs.

30. Based on Student's identified needs, Ms. Gilmour recommended physical therapy goals in the areas of endurance, cardiovascular fitness, balance and motor coordination, vestibular, proprioception, visual motor, strength and core stability.

31. Ms. Gilmour determined that school-based physical therapy was necessary, as the standard physical education curriculum alone would not address Student's deficits. Further, Student's program would need to be established by a physical therapist in order to create a program plan that would be safe and effective training with heart rate and respiratory monitoring rate, because Student had asthma. Once Student achieved treatment goals

established in physical therapy, he would be transitioned to work with an adaptive physical education teacher through direct collaboration sessions.

32. Ms. Gilmour recommended direct physical therapy services through a District provider, three times per week for 60-minute sessions, for three months. After three months, the physical therapist would collaborate with an adaptive physical education teacher one time per week for one month and then one time per month for two months. Adaptive physical education services were recommended three times per week for three months after direct physical therapy services ended.

33. District witnesses opined that the amount of time Student would spend in physical therapy would take away from his work in the core curriculum. District did not provide any reason why the physical therapy could not be provided during physical education or elective classes.

#### *District's Occupational Therapy Assessment*

34. Shiksha Hingorani conducted District's occupational therapy assessment of Student in January and February of 2016. Ms. Hingorani was a nationally and state board certified occupational therapist since 2004. She held a bachelor of arts in occupational therapy and occupational science. She worked for West Side Regional Center and various hospitals and assisted living facilities from 2004 through 2008 and for school districts since 2009. She was the lead occupational therapist for District at the time of hearing.

35. Ms. Hingorani worked with Student during the 2015 – 2016 school year. As part of her assessment, she administered subtests of the Bruininks and the Sensory Profile 2-School Companion. Ms. Hingorani interviewed teachers; reviewed work samples and records; and made clinical and classroom observations. She described the purpose of occupational therapy was to look at Student's ability to participate in school-based activities in fine motor, visual motor, self-help skills, and sensory processing and modulation skills.

36. Ms. Hingorani administered fine motor precision, fine motor integration, manual dexterity, and upper limb coordination sub-tests of the Bruininks. Student scored in the average range on each of the subtests. Student showed functional use of his hands to manipulate and grasp. He showed bilateral coordination in activities such as cutting, copying and typing. Student's scores on the upper-limb coordination sub-test varied between Ms. Hingorani and Ms. Gilmour's assessments. Ms. Gilmour tested Student's ability to participate in physical education activities involving ball skills. Ms. Hingorani tested Student's ability to use his hands and wrists in fine motor activities such as grasping, cutting, copying, and typing. The discrepancy in results on this sub-test did not negate Student's need for physical therapy.

37. Ms. Hingorani also administered the visual-motor integration, visual perception, and motor coordination subtests of the Beery Buktenica Developmental Test. The visual-motor integration sub-test required Student to reproduce drawings of geometric

shapes as accurately as possible. Student performed in the average range relative to same age peers. He correctly reproduced straight lines at various angles, circles, triangles, squares, and three lines crossing at a midpoint.

38. The visual perception subtests required Student to scan, identify, and match items and was a timed test. Student scored in the average range, showing good visual discrimination of small details.

39. The motor coordination subtest required Student to trace stimulus forms with a pencil, without going outside of double lined paths. Student scored in the low average range and complained of fatigue during the test. Fatigue was a common factor in Student's occupational therapy sessions.

40. Cindy Montenegro, Student's resource specialist teacher, filled out the sensory profile questionnaire as part of Ms. Hangorani's assessment. Based on Ms. Montenegro's questionnaire response, Ms. Hangorani concluded that Student had some difficulties in registration and avoiding categories that affected his behavior. Registration referred to Student's ability to follow teacher direction and modulate auditory and visual input during classroom activities. Examples of this difficulty included Student struggling to (1) complete tasks in a noisy environment, (2) follow written or demonstrated directions, and (3) organize materials required for classroom use. School Psychologist Kathy Thompson confirmed these difficulties in her observation of Student in his English language arts class. Student was instructed to work on a biography of Sally Ride, review notes on the assignment, annotate his book with sticky notes and draft the biography. He became frustrated and did not know what to do with all the information.

41. Student also demonstrated needs in sensory processing deficits related to movement processing. Teachers reported that Student frequently fidgeted with objects, slouched in his chair, and bumped into people and objects. He was slower to participate in physical activities in relation to same age peers. Sensory processing deficits in behavior were reflected in Student getting easily and frequently frustrated and demonstrating stubbornness when directed to participate in non-preferred activities.

42. Student demonstrated functional praxis by forming an obstacle course, navigating the course, and demonstrating different ways of completing it appropriately. However, Ms. Hangorani provided no description of what the course involved or specific movements required of Student in order to successfully complete the course. As a result, Student's ability to complete the obstacle course did not negate the findings of Ms. Gilmour.

43. Ms. Hangorani determined that Student demonstrated adequate range of motor and strength abilities, and functional fine motor/visual motor and perceptual skills, for classroom tasks. She made no findings regarding Student's ability to access his physical education curriculum. Ms. Hangorani conceded that her assessment addressed only occupational therapy and did not address Student's physical therapy needs.

44. Ms. Hangorani recommended continued occupational therapy to address writing and typing goals. She recommended sensory processing and modulating strategies in the classroom and to help modulate Student's behaviors throughout the day. Ms. Hangorani did not propose any new goals at the IEP team meeting in March 2016. Parent requested goals to address sensory strategies and posture. At the meeting, Ms. Hangorani opined that Student did not require a posture goal as he was accessing the educational environment and posture was not impeding his learning. This input contradicted her assessment, which reported that Student needed external support to be prepared for learning, to address fidgeting, slouching and slumping in his chair, and bumping into objects and people.

45. District did not provide evidence to explain the failure to propose goals to address each area of Student's need in occupational therapy.

#### *March 14, 2016 IEP Team Meeting*

46. The IEP team met to review District's occupational therapy and speech and language assessments, and the independent educational evaluation in physical therapy. All required team members were present. Stacy Cobbs and Ms. Gilmour attended the meeting and discussed their opinions on physical therapy services.

#### DISTRICT'S PHYSICAL THERAPIST

47. Ms. Cobbs was a licensed physical therapist in the State of California for 14 years. She held a master of physical therapy and a bachelor of science in physiological sciences. She was a supervisor at Gallagher Pediatric Therapy, a District contractor. She provided direct treatment and assessments, consulted with staff and parents, made recommendations for adaptive equipment, took part in IEP development, and attended IEP's on a regular basis. She did not conduct her own assessment of Student, but was asked by District to review Ms. Gilmour's assessment and provide her professional opinion.

48. Ms. Cobbs did not know Student and never observed him on campus. Her opinions were based solely on the information contained in Ms. Gilmour's report, which gave her "an idea of Student's functioning."

49. According to Ms. Cobbs, no one at the March IEP team meeting disagreed with Student's need in the area of motor skills. She did not recall whether any team members disagreed with Student's need for physical therapy. She did not recall whether the need for physical therapy was even specifically addressed at the meeting.

50. Ms. Cobbs agreed that Student had issues with coordination, strength, and endurance, but because he was able to navigate the campus, she believed that Student could access his educational setting. Based on Ms. Gilmour's report, she would have, as Ms. Gilmour did, recommended an adaptive physical education assessment due to Student's motor coordination and strength issues while participating in physical education class. The distinction is that physical therapy looks at functional skills a student needs to access the

educational setting, while an adaptive physical education teacher looks at gross motor development and a student's performance in relation to his or her peers. While Ms. Cobbs acknowledged that physical therapy also looks at gross motor development, it is more for general access of the campus. Because Student was able to participate in physical education and was not limited in his participation, in Ms. Cobb's opinion, adaptive physical education would be appropriate for Student, but she did not believe he required separate physical therapy.

51. Ms. Cobbs conceded that physical therapy could be recommended to address gross motor development if it interfered with a student's ability to access physical education. Gross motor abilities would include range of motion, muscle strength, and motor coordination. Based on Ms. Gilmour's report, Ms. Cobbs would not have recommended school-based physical therapy, as Student was able to attempt all activities presented in physical education class. Ms. Cobb's testimony was not given much weight due to her lack of knowledge of Student and failure to appropriately identify needs.

52. At the IEP team meeting, Student's physical education teacher agreed that Student had needs in the areas of coordination, balance and strength. She reported that Student often did not participate in the running program and sometimes did not dress for physical education. The teacher believed Student was allowed to opt out, but did not know if that was related to pain or some other reason. There was no accommodation in the IEP allowing opt out. Parent advised the IEP team that Student had a doctor's note on file that allowed him to participate in physical education "as tolerated." According to Parent, Student would sometimes complain of pain or soreness in his legs. Neither party offered a medical explanation for Student's difficulties.

#### ADAPTIVE PHYSICAL EDUCATION TEACHER

53. Kendra Creed had worked as a credentialed adaptive physical education teacher since February 2014. She earned a bachelor of science in kinesiology in 2010 and held a single subject teaching credential in physical education. She had worked for District for approximately one year. Her duties included direct service to students, collaboration and consultation, and drafting goals for IEP's.

54. As an adaptive physical education teacher, Ms. Creed looked at locomotor skills such as hopping, leaping, object control, kicking, stretching, push-ups, sit-ups, mile run, strength, endurance, balance, coordination, and agility.

55. Ms. Creed had not assessed Student at the time of the March 2016 IEP team meeting. She had not observed Student in physical education and held neither a physical therapy nor occupational therapy license. Her opinion that Ms. Gilmour did not have the requisite background to recommend physical therapy for Student carried no weight.

56. Ms. Creed conceded there was no reason why Student could not have received physical therapy pending the outcome of the adaptive physical education assessment, which was finally done sometime after the March 2016 IEP.

#### PROGRESS TOWARDS GOALS

57. Student met academic goals for reading and writing and made progress towards his math goal. He partially met his occupational therapy goal for typing independently. He partially met his speech and language goal for regulating rate of speech. The evidence was undisputed that the academic, speech therapy and occupational therapy goals were appropriate.

#### DISTRICT'S OFFER

58. District offered specialized academic instruction for 100 minutes per day, consisting of resource specialist program inclusion for math, and push-in for English language arts, four times per week. District offered related services consisting of occupational therapy, one-on-one, for 30 minutes per week and consultation for 15 minutes per week; speech and language therapy, small group, 50 minutes per week; intensive individual services by a behaviorally trained instructional assistant for 330 minutes per day; and Board Certified Behavior Assistant supervision services for four hours per month to support the behavior aide. District also offered a two-week period of aide overlap to transition Student from his current instructional aide to the behavior aide. Student was offered extended school year services and a new occupational therapy goal was developed to address sensory processing and modulation through working on postural stability while seated, at his desk. An assessment plan for adaptive physical therapy was offered.

59. Parent agreed to implementation of the amendments to the IEP, except for the change in aide services. Student continued to request motor goals and physical therapy services.

#### *Behavioral Services*

60. Nicolas Raridon was a credentialed Board Certified Behavior Analyst and District's Autism and Behavior Program Specialist since 2012. Her duties included supporting all schools in behavior intervention for specific students, consultation with staff, training, and researching new ideas for use in consultation and intervention. Ms. Raridon held a master of arts in teaching with a specialization in applied behavior analysis. She was a program specialist for Autism Partnership for five years. Her duties as program specialist included providing one-on-one applied behavior analysis to students, creating and modeling applied behavior analysis classroom strategies, development of behavior programs, implementation of data collection systems, and providing behavior support and training to staff. She had extensive training and experience in working with students with autism in behavior management techniques.

61. Ms. Raridon described the difference in training between Student's instructional aide and a behavior aide. Like other District witnesses, she could not explain why District chose to provide behavior training to one type of aide and not the other. Nonetheless, she credibly demonstrated Student's needs, which would warrant a behavior aide, such as non-compliance, task refusal, protest behavior, arguing with his instructional assistant, and frustration tolerance. Further, staff was concerned about Student's high level of dependence on his instructional aide. A behavior aide would teach Student coping strategies, such as requesting help verbally, taking a deep breath, and using sensory input. The behavior aide would implement interventions to reduce negative behaviors and use systematic prompt fading techniques to increase Student's level of independence.

62. Ms. Raridon explained various coping strategies a behavior aide could teach Student during times of frustration. She described Student's inconsistent frustration levels throughout the day, coupled with the need to generalize positive behaviors to all settings, which supported District's recommendation for an all-day behavior aide.

63. Ms. Raridon observed Student's class one day in December 2015. She observed Student's reliance on aide support for verbal directions. Student had had the instructional aide for several years. Over time, the aide should have enabled Student to seek input from the teacher, directly. Ms. Raridon explained that Student should be given gestural or physical prompts to encourage Student to ask the teacher for help. Instead, Student simply turned to his aide for instructional assistance. According to Ms. Raridon, verbal prompts are more difficult to fade than physical or gestural prompts.

64. Ms. Raridon obtained input from IEP team meeting members, including classroom teacher, speech language pathologist, program administrator, and occupational therapist. The staff reports were consistent with Ms. Raridon's observations.

65. District offered a two-week period where the instructional aide and behavior aide would overlap services, to help Student adapt to the change in service providers. Student had worked with his instructional aide for the past five years and developed a close relationship with her. The weight of the evidence showed that the transition period would lessen Student's frustration and anxiety.

66. Ms. Raridon explained the need for four hours per month of behavior aide supervision by a Board Certified Behavior Analyst. Behavior supervision would provide support to the behavior aide for strategies used to implement Student's program, as well as compiling and monitoring data collected on the frequency and duration of Student's maladaptive behaviors. Data would be reviewed monthly to determine whether the interventions were effective in reducing disruptive behaviors. Four hours would be sufficient to accomplish these tasks.

## LEGAL CONCLUSIONS

### *Introduction: Legal Framework under the IDEA*<sup>2</sup>

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et seq.; 34 C.F.R. § 300.1 (2006)<sup>3</sup> et seq.; Ed. Code, § 56000, et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic, and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. § § 1401(14), 1414(d); Ed. Code, § 56032.)

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to "maximize the potential" of each special needs child "commensurate with the opportunity provided" to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated

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<sup>2</sup> Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

<sup>3</sup> All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

to “confer some educational benefit” upon the child. (*Id.* at pp. 200, 203-204.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.]) Although sometimes described in Ninth Circuit cases as “educational benefit,” “some educational benefit,” or “meaningful educational benefit,” all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 951, fn. 10.)

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

*Student’s Issues 1(a) & (b): District’s Failure to Offer Motor Goals & Physical Therapy Services in the March 14, 2016 IEP*

5. Student contends District denied him a FAPE because it failed to offer Student motor goals to address Student’s needs in the areas of balance, strength, motor coordination, bilateral coordination, and running speed and agility. Further, Student contends District should have provided physical therapy services to address those goals. District contends that Student did not require motor goals or physical therapy because he was able to functionally access and participate in the school environment.

APPLICABLE LAW

6. A child’s IEP must contain 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)(ii); 34 C.F.R. § 300.320(a)(2)(i); Ed. Code, § 56345, subd. (a)(2).) For each area of identified need, the IEP team must develop measurable goals that are based upon the child’s present levels of academic achievement and functional performance, and which the child has a reasonable chance of attaining within a year. (Ed.

Code, § 56344.) The IEP shall show a direct relationship between the present levels of performance, the goals and objectives, and the specific educational services to be provided. Cal. Code. Regs., tit. 5, § 3040(b).

7. Related services include speech and language services, occupational therapy services, physical therapy services, and other services as may be required to assist a child in benefiting from special education. (20 U.S.C. § 1401(26)(A); Ed. Code, § 56363, subd. (a); *Irving Independent School Dist. v. Tatro* (1984) 468 U.S. 883, 891 [104 S.Ct. 3371, 82 L.Ed.2d. 664]; *Union School Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1527.) Related services shall be provided “when the instruction and services are necessary for the pupil to benefit educationally from his or her instructional program.” (Ed. Code, § 56363, subd. (a).)

8. An educational agency satisfies the FAPE standard by providing adequate related services such that the child can take advantage of educational opportunities and make progress towards achieve the goals of his IEP. (*Park v. Anaheim Union High School* (9th Cir. 2006) 464 F.3d 1025, 1033.)

9. Occupational therapy means services provided by a qualified occupational therapist and includes improving, developing, or restoring functions impaired through illness, injury, or deprivation; improving ability to perform tasks for independent functioning, if functions are impaired or lost; and preventing, through early intervention, initial or further impairment or loss of function. (34 C.F.R. § 300.49(c)(6).)

10. Physical therapy means services provided by a qualified physical therapist. (34 C.F.R. 300.34(c)(9).) Physical therapy involves physical or corrective rehabilitation or treatment. (Bus. & Prof. Code, § 2620, subd. (a).) The practice of physical therapy includes the promotion and maintenance of physical fitness to enhance the bodily movement related health and wellness of individuals through the use of physical therapy interventions. (*Ibid.*)

11. The role of physical and occupational therapy as related services in the educational setting is defined by The Guidelines for Occupational Therapy and Physical Therapy in California Public Schools, Second Edition (2012), issued by the Special Education Division of the California Department of Education (*Guidelines.*). Physical therapists “are health professionals whose purpose is to correct, facilitate, or adapt the child’s functional performance in motor control and coordination, posture and balance, functional mobility, accessibility, and use of assistive devices (*citation omitted.*)” (*Guidelines*, p. 6.) Examples of physical therapy include aerobic capacity/endurance, gait, locomotion and balance, motor function (motor control and motor learning), movement frequency, pattern, and controlled muscle performance (including strength, power, and endurance), neuro-motor development and sensory integration, posture, self-care (including activities of daily living), sensory integrity (including proprioception and kinesthesia). As the state educational agency, CDE’s *Guidelines* for therapists in the school setting are entitled to deference. (See *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.* (1984) 467 U.S. 837, 843-844.)

12. Curriculum includes recess time, lunchtime, and a wealth of other activities that occur at school that are not specific to pure academic learning. Using the restroom and eating with one's peers are aspects of a child's school curriculum. For example, training a student to toilet properly has been determined to be part of her education at school. (*Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877 (*Amanda J.*))

13. Although adaptive physical education may be employed to augment occupational therapy or physical therapy, the skills of an adaptive physical education specialist differ from those of an occupational or physical therapist. "By focusing on the underlying neurological basis for movements, a physical therapist works on building the underlying skills that allow a child to perform the gross motor skills taught by adaptive physical education." (*Gulbrandsen v. Conejo Valley Unified School Dist.* (C.D.Cal. 2001) 36 IDELR 126.)

#### ANALYSIS

##### GOALS

14. Ms. Gilmour conducted a thorough independent educational evaluation of Student to address physical therapy needs. Ms. Gilmour had extensive experience and expertise in the field of physical therapy. At hearing, she answered questions candidly and thoughtfully. Ms. Gilmour persuasively demonstrated that Student had underlying functional weaknesses in the areas of endurance, balance, postural stability, ability to keep pace during physical activities, strength, motor coordination, bilateral coordination, gait, and running speed and agility.

15. District witnesses admitted that Student had difficulty running, maintaining posture, and flopped his feet when walking. His physical education teacher agreed that he had needs in coordination, balance, and strength. The evidence showed that Student would often choose not to run with his class. Though Student tried very hard to participate, he was concerned that he was always the slowest one in class.

16. Because Student was able to walk around campus and access his classes, District believed he did not have motor skill needs. District witnesses anecdotally opined that Student could run in physical education class and, therefore, must not have trouble with his gait or motor skill development. However, District never conducted its own physical therapy evaluation of Student.

17. Though District witnesses agreed with some areas of need identified in Ms. Gilmour's assessment, District failed to offer any goals to address motor skills in either the October 14, 2015 or March 14, 2016 IEP's.

18. Student persuasively demonstrated that he had motoric needs in the areas of balance, strength, motor coordination, bilateral coordination, and running speed and agility,

and needs regarding his gait and posture. District refused to address these needs in the March 14, 2016 IEP and, in doing so, denied Student a FAPE.

*PHYSICAL THERAPY SERVICES*

19. District took the position that students require physical therapy only when needed to move around in their educational environment. Since Student was able to walk through campus, sit at his desk and attend classes, District believed he did not require physical therapy.

20. District witnesses alluded to the ability of an occupational therapist or adaptive physical education teacher to address needs similar to those of Student. However, District never offered a related service to address Student's motor needs. According to Ms. Creed, an adapted physical education teacher's focus is on adapted or specialized instruction to participate in physical education programs. No evidence was presented to show that an adaptive physical education teacher would have the requisite training to address each of Student's underlying functional needs, identified in paragraph 14, above, in the event District offered adaptive physical education.

21. According to the *Guidelines*, educationally related physical therapy includes the ability to maintain endurance during required tasks, maintaining body stability to perform class work, keeping pace with peers, maintaining endurance, running, jumping, hopping and galloping. While Student could run, jump, hop, and gallop, his endurance and pace were areas of deficit. Under the *Guidelines*, a student's motor needs in the areas of gait, aerobic capacity/endurance, motor control and coordination, balance, strength, sensory-integration, and posture, could be appropriately addressed by a licensed physical therapist.

22. District's own physical therapist, Ms. Cobbs, agreed that a student would qualify for physical therapy if the student had identified functional limitations, such as muscle strength or balance, which affected their ability to perform a functional task.

23. Ms. Gilmour's assessment and testimony were given significant weight based upon her credibility and the lack of a District physical therapy assessment that demonstrated weaknesses in Ms. Gilmour's opinions and conclusions. Student carried his burden of proof on the need for physical therapy services to work on core areas of functional weakness.

24. Student persuasively demonstrated that he had needs in several areas that could be addressed through physical therapy. Ms. Gilmour established that Student required three hours per week of physical therapy at school, in order to address these needs. District failed to prove that Ms. Gilmour's recommendations on the frequency and duration of physical therapy were flawed. For these reasons, District denied Student a FAPE by failing to offer physical therapy services to address Student's needs in the area of motor skills identified in paragraph 14.

*District's Issue 2: October 14, 2015 IEP, as Amended March 14, 2016*

25. District contends the IEP of October 14, 2015, as amended March 14, 2016, offered Student a FAPE as it addressed his unique needs and offered placement and services in the least restrictive environment. Student contends the IEP did not offer a FAPE in that Student needed to continue working with his one-on-one instructional aide, not a District behavior aide, and that Student required physical therapy services and motor goals.

APPLICABLE LAW

26. When a school district seeks to demonstrate that it offered a FAPE, the legal analysis consists of two parts. First, the tribunal must determine whether the district has complied with the procedures set forth in the IDEA. (*Rowley, supra*, 458 U.S. at pp. 206-207.) Second, the tribunal must decide whether the IEP developed through those procedures was designed to meet the child's unique needs, and reasonably calculated to enable the child to receive educational benefit. (*Ibid.*) Whether a student was denied a FAPE is determined by looking to what was reasonable at the time, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrman v. East Hanover Board of Education* (3d Cir. 1993) 993 F.2d 1031, 1041.)

27. An IEP is a written document for each child with a disability that includes: 1) 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 2) 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.) The IEP must also contain a statement of how the child's goals will be measured. (20 U.S.C. § 1414(d)(1)(A)(i)(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) & (i).)

28. An IEP is developed by an IEP team. The IEP team must include: 1) one or both of the student's parents or their representative, 2) a regular education teacher if a student is, or may be, participating in the regular education environment, 3) a special education teacher, and 4) a representative of the school district who is qualified to provide or supervise specially designed instruction to meet the unique needs of children with disabilities, is knowledgeable

about the general education curriculum and is knowledgeable about available resources. (34 C.F.R. § 300.321(a).) The IEP team is also required to include an individual who can interpret the instructional implications of assessment results, and, at the discretion of the parent or school district, include other individuals who have knowledge or special expertise regarding the child. (34 C.F.R. § 300.321(a).) 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).)

29. A school district is required to use those assessment tools necessary to gather relevant functional and developmental information about the child to assist in determining the content of the child's IEP. (34 C.F.R. § 300.304(b)(1)(ii).) The failure to obtain critical assessment information about a student "renders[s] the accomplishment of the IDEA's goals - - and the achievement of a FAPE -- impossible." (*N.B. v. Hellgate Elementary School Dist.* (9<sup>th</sup> Cir. 2008) 541 F.3d 1202, 1210 quoting *Amanda J.*, *supra*, 267 F.3d at p. 894.)

30. The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child; and the provision of FAPE to the child. (34 C.F.R. § 300.501(a) Ed. Code, § 56500.4.) Parents cannot meaningfully collaborate with the IEP team without valid reliable information about their child's disability.

31. 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 Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) For a school district's offer of special education services to a disabled pupil to constitute a FAPE under the IDEA, the 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 student with some educational benefit in the least restrictive environment. (*Ibid.*)

32. If a parent refuses services in an IEP that was consented to in the past, or the school district determines that the refused services are required to provide a FAPE, the school district shall file a request for a due process hearing. (Ed. Code, § 56346, subs. (d) & (f).) When a school district seeks to prove that it provided a FAPE to a particular student, it must also show that it complied with the procedural requirements under the IDEA. (*Rowley*, *supra*, 458 U.S. at pp. 200, 203-204, 206-207.)

33. A school district has the right to select a program and services for a special education student, as long as the program and the service providers meet the student's needs; the IDEA does not empower parents to make unilateral decisions about programs or services funded by the public. (See, *N.R. v. San Ramon Valley Unified Sch. Dist.* (N.D.Cal. 2007) 2007 U.S. Dist. Lexis 9135; *Slama ex rel. Slama v. Indep. Sch. Dist. No. 2580* (D. Minn. 2003) 259 F. Supp.2d 880, 885; *O'Dell v. Special Sch. Dist.* (E.D. Mo. 2007) 47 IDELR 216.)

## ANALYSIS

34. The October 14, 2015, and March 14, 2016 IEP's met the procedural requirements of the IDEA. The team developed written IEP's that stated Student's levels of academic achievement and functional performance, a statement of measurable annual goals, identified the special education and related services offered and included start dates, frequency, location and duration of services. The IEP's accurately stated the Student's academic and functional performance for services being offered.

35. All necessary team members attended the IEP meetings. Parent participated in the IEP team meetings with advocates and provided input, which resulted in changes to the IEP's.

36. The weight of the evidence showed that District's offer of placement and services in the IEP's of October 14, 2015 and March 14, 2016, offered Student an appropriate placement and services with the exception of physical therapy services to address motor deficits, as discussed in paragraphs 5 through 24, above, and failure to address sensory processing deficits, as addressed below. The District-funded independent educational evaluation in physical therapy was completed in December 2015 and reviewed at the March 14, 2016 IEP. Because the March IEP failed to offer related services and goals in physical therapy, District failed to offer Student a FAPE in the March IEP.

37. The October 14, 2015 IEP offered appropriate goals and services to meet Student's unique needs in the areas of academics, speech and language, and behavior, but failed to address unique needs in the areas of physical therapy and occupational therapy – sensory needs.

## *BEHAVIOR*

38. Student disagreed with the change in aide service from an instructional aide, who Student worked with for several years, to a behavior aide. Student argued that his behavior was not significant enough to warrant the change to a behavior aide. Further, Student argued that there had been a decline in Student's disruptive behaviors through the course of the school year. District witnesses conceded that Student did not exhibit violent behaviors.

39. The weight of the evidence demonstrated that Student had consistent, ongoing needs in the area of frustration tolerance and coping skills. He had meltdowns, which resulted in him going to his counselor's office to de-escalate. Each time he went to the counselor's office, he lost instructional time. His instructional aide had not been able to extinguish the meltdowns despite having worked with Student since first grade. The evidence showed that their relationship had become more argumentative over time.

40. Unlike an instructional aide, District's behavior aides had significant training in working with students with autism, using applied behavior analysis, token rewards, and

other strategies that District showed would benefit Student. Further, the behavior aides had been trained to reduce aide dependence and foster Student's independence in interacting with teachers and peers and implementing coping strategies. Finally, District was not required to train or promote Student's instructional aide. District was allowed to utilize personnel of its choosing to implement the IEP.

41. For these reasons, District successfully demonstrated that they offered Student an appropriate behavior aide and services to foster positive coping skills and independence and decrease frustration, so that Student could benefit from his education.

#### *PHYSICAL THERAPY*

42. Ms. Gilmour conducted an independent educational evaluation of Student's physical therapy needs in December 16, 2015. Ms. Gilmour credibly demonstrated Student's needs in the areas of strength, motor coordination, balance, endurance/cardiovascular fitness, postural core stability, and gait. She described Student's mild hypotonia in his trunk, upper and lower extremities. Student performed at a level five to nine standard deviations below the mean in all areas of motor development tested using the Bruinicks. Ms. Gilmour's findings were consistent with teacher reports.

43. District proffered no evidence that showed Student's physical therapy related needs developed between October and December, 2015. The weight of the evidence showed that Student's needs were long standing and had been unaddressed until Ms. Gilmour's assessment.

44. District had the burden of proof that its IEP's offered Student a FAPE. District failed to produce any evidence that showed Student did not require physical therapy services in his October IEP. Because District failed to include physical therapy related services and draft appropriate goals to implement the service, District's October 14, 2015 IEP denied Student a FAPE.

#### *SENSORY PROCESSING*

45. The evidence from District and Student showed that Student required external support to be prepared for learning, to address fidgeting, slouching and slumping in his chair, and bumping into objects and people. Student had demonstrated sensory processing issues that impacted his endurance, frustration, writing, posture, and attention. Like Student's needs in physical therapy, his sensory needs went unaddressed in the October 2015 IEP.

46. District disagreed with Dr. Morris's findings of sensory needs at the October 14, 2015 IEP. District disagreed with Ms. Gilmour's findings of sensory needs in her December 2015 assessment and in the review of the assessment at the March 14, 2016 IEP. Ms. Hangorani recognized sensory needs consistent with those identified by Ms. Gilmour, in her assessment of January and February of 2015. Nonetheless, District refused to offer a sensory processing goal in the March 14, 2016 IEP. Because District failed to address

Student's sensory needs in the IEP's of October 14, 2015 and March 14, 2016, it denied Student a FAPE.

## REMEDIES

1. School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Parents of Student W. v. Puyallup School Dist.* (9th Cir. 1994) 31 F.3d 1489, 1496.) The authority to order such relief extends to hearing officers. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 243-244, fn. 11 [129 S.Ct. 2484].) The award must be "reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." (*Reid v. District of Columbia*, (D.C. Cir. 2005) 401 F.3d 516, 524.)

2. The IDEA does not require compensatory education services to be awarded directly to a student, such that staff training is an appropriate remedy. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1034 [student, who was denied a FAPE due to failure to properly implement his IEP, could most benefit by having his teacher appropriately trained to do so].) Appropriate relief in light of the purposes of the IDEA may include an award that school staff be trained concerning areas in which violations were found, to benefit the specific pupil involved, or to remedy procedural violations that may benefit other pupils. (*Ibid.* Also, e.g., *Student v. Reed Union School Dist.* (Cal. SEA 2008) 52 IDELR 240 [109 LRP 22923; Cal.Ofc.Admin.Hrngs. Case No. 2008080580] [requiring training on predetermination and parental participation in IEP's]; *Student v. San Diego Unified School Dist.* (Cal. SEA 2005) 42 IDELR 249 [105 LRP 5069] [requiring training regarding pupil's medical condition and unique needs].)

3. Student requests implementation of Ms. Gilmour's recommendations for physical therapy in the amount of three-60 minute sessions per week of direct services, for three months, followed by physical therapy collaboration with an adapted physical education teacher for 60 minutes, one time per week for one month and adaptive physical education services three times per week for 60 minutes each, for another three months. Student seeks creation of goals to address needs in the areas of endurance, cardiovascular fitness, balance, motor coordination, strength, and core stability. After six months of such implementation, Student seeks a re-evaluation of progress towards goals.

4. Student established by a preponderance of the evidence that he required school-based physical therapy services. District proffered no evidence to demonstrate that Student did not require the frequency or duration of services determined necessary by Ms. Gilmour. District shall provide Student with the therapies recommended in Ms. Gilmour's December 2015 assessment, during the course of the 2016 – 2017 regular school year. Services shall be provided by either a District or non-public agency physical therapist and adaptive physical education teacher, at District's discretion.

5. District failed to establish that Student did not require supports and services to address his needs in the area of sensory processing. District shall hold an IEP team meeting within 45 days of the date of issuance of this decision in order to establish accommodations, modifications, goals, supports, and services to address Student's sensory processing needs in the areas of movement, registration, and behavior as identified in Ms. Hangorani's February 12, 2016 report and Ms. Gilmour's report.

## ORDER

1. Within 45 days of the date of this Order, District shall:
  - a. Hold an IEP team meeting to (i) draft goals consistent with Ms. Gilmour's December 2015 assessment, in the areas of endurance, cardiovascular fitness, balance, strength, motor coordination, bilateral coordination, running speed and agility, gait and core stability; and (ii) offer physical therapy related services for three-60 minute sessions per week of direct services, for three months; followed by physical therapy collaboration with an adapted physical education teacher for 60 minutes, one time per week for one month; and reducing to one hour per month for the following two months (months five and six); (iii) offer adaptive physical education services three times per week for 60 minutes each, for three months after the completion of the three months of direct physical therapy specified in (1)(a)(ii); and (iv) hold an IEP team meeting after six months of services to determine Student's progress and the continuation of either physical therapy of adaptive physical education to address Student's needs. The adaptive physical education goals and services should be consistent with California state content standards for seventh grade physical education and all goals should be consistent with the California Department of Education's Guidelines for Occupational Therapy and Physical Therapy in California Public Schools, Second Edition (2012).
  - b. Hold an IEP team meeting to draft accommodations, modifications, goals, and occupational therapy services to address Student's sensory processing and modulation needs consistent with Ms. Hangorani's February 12, 2016 report and Ms. Gilmour's report.
  - c. District shall invite Ms. Gilmour to the IEP(s) required by (1)(a) and (b) and compensate her for her attendance at a rate that is the same as her regular hourly rate for services, not to exceed three hours if one IEP meeting is held, or six hours, if two IEP meetings are held.
  - d. Provide in service training to special education administrators, occupational therapists, physical therapists and adaptive physical education teachers regarding the California Department of Education's Guidelines for Occupational Therapy and Physical Therapy in California Public Schools, Second Edition (2012), for a minimum of four hours. District shall maintain a sign-in sheet reflecting all staff in attendance for the training.

2. All other 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. Student prevailed on both issues.

#### RIGHT TO APPEAL

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

DATED: July 22, 2016

\_\_\_\_\_  
/s/  
COLE DALTON  
Administrative Law Judge  
Office of Administrative Hearings