

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS on Behalf of STUDEN T,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT .

OAH CASE NO. 2008080771

DECISION

Administrative Law Judge (ALJ) Glynda B. Gomez, Office of Administrative Hearings (OAH), heard the above-captioned matter in Van Nuys, California on October 20-23, 2008.

Petitioners were represented by N. Jane DuBovy, Attorney at Law. Student's father (Father) was present on October 20, 2008. Student's Mother (Mother) was present October 21-23, 2008.

Respondent Los Angeles Unified School District (District) was represented by Christopher Fernandes, Attorney at Law. Frederick Church, due process specialist for District, was present on October 20, 21 and 23, 2008. Lisa Kendrick, supervising due process specialist, was present October 22, 2003.

The Due Process Complaint/Due Process Hearing Request was filed on August 22, 2008. At the Prehearing Conference on October 6, 2008, the parties requested that additional days be allotted for the hearing, pursuant to a joint request made by the parties for additional hearing dates, and for good cause, the due process hearing was continued from October 16, 2008 to October 20, 2008. The ALJ opened the record on the matter on October 20, 2008. Testimony and documentary evidence were received on October 20-23, 2008. The record remained open until October 30, 2008, for the submission of closing

briefs. The record was closed on October 30, 2008, upon receipt of briefs from each party.

ISSUES

1. Did District fail to properly assess Student for special education and related services in all areas of suspected disability?
2. Did the District deny Student a free appropriate public education (FAPE) by committing procedural violations of the IDEA, which impeded Parents' rights to meaningful participation in the IEP process and/or caused a loss of educational benefit?
3. Did the District fail to offer Student a FAPE for the 2008-2009 year?

FACTUAL FINDINGS

JURISDICTION

1. At all relevant times, Student resided within the boundaries of the District.
2. Student is a thirteen-year-old boy born on October 19, 1995. Student is currently in the seventh grade at Bridges Academy (Bridges), a private school.

BACKGROUND

3. Student attended kindergarten and first grade at Lanai elementary, a public school within the District. Student attended Laurence School (Laurence) a private school from second through sixth grade. Laurence is located within the boundaries of District. Student struggled at Laurence due to his lack of organizational skills and inattention. He also struggled socially and made few friends.

4. At the suggestion of Marvin Jacobson, the director of Laurence, Parents had Student assessed by Dr. Robert Colegrove (Colegrove), a private psychologist in September of 2005. After conducting a psychoeducational assessment of Student, Colegrove diagnosed Student with Nonverbal Learning Disability (NLD). Although NLD is a recognized diagnosis, it is not listed in the Diagnostic and Statistical Manual, Fourth Edition

(DSM-IV). The equivalent DSM-IV diagnosis is "Learning Disability not otherwise specified". Colegrove determined that Student had deficits in verbal retrieval fluency, visual-motor speed, visual-motor coordination, eye-hand coordination/manual dexterity, attention to visual detail and visual memory. Colegrove also observed some deficits in fine and gross motor skills. Colegrove found Student to be anxious and lacking in self-esteem. He also noted that test results and observations revealed that Student had problems with social interactions and reading facial expressions and social cues. According to Colegrove, these deficits resulted in an academic delay in math reasoning and impacted Student's math and writing fluency and hindered him socially and emotionally.

5. Colegrove recommended that Student receive accommodations in the classroom including elimination of any repetitive visual motor work and extended time to complete tasks. Colegrove recommended that Student be permitted to use a computer or dictate assignments. He also suggested that Student should not be penalized for late or incomplete work. Other recommendations included a therapeutic social skills group, family and individual therapy, an incentive program, an occupational therapy evaluation and intervention, and a visual examination. He recommended that Student's emotional and academic progress should be monitored carefully.

6. Parents implemented all of Colegrove's recommendation except the occupational therapy evaluation and intervention. Parents were concerned that Student would be fatigued if anything more were added to his already full schedule of therapy and activities. Student attended a social skills therapeutic group led by licensed psychologist Jeffrey E. Jessum (Jessum). Student participated in the social skills group facilitated by Jessum once a week and attended family therapy twice a month. The group focused on social skills, tools and interactions. The group addressed reciprocal conversations and reading social cues. The participants practiced engaging each other, initiating contact, conversation, and role-playing. Jessum shared an office suite with Colgrove and had

reviewed Colegrove's reports. The two main things that stood out to Jessum from the reports were the anxiety markers relating to social interactions and the nonverbal learning disability. Jessum opined that Student was overwhelmed by all the social duties inherent in a general education environment. He had difficulty dealing with more than one other peer at a time. Jessum used cognitive behavioral therapy in family therapy with Student.

7. In October 2007, Colegrove conducted a follow-up psychoeducational evaluation of Student. He opined that his earlier diagnosis of NLD remained applicable. Specifically, Colegrove found continued concerns in social relationships and poor visual memory. He also noted that Student's processing deficits were interfering with his academic fluency in math and writing. Colegrove recommended continuing accommodations including extended time, the use of a computer for writing, and a system to reward Student's behavioral efforts and motivation. He recommended that Student work with an educational therapist to develop strategies to recall information and to develop strategies for organization and homework completion. Colegrove noted that Student exhibited some symptoms of NLD-related attention problems. According to Colegrove, the attention issues interfered with Student's timely production of schoolwork. He recommended that Student continue social skills group therapy and that a pediatrician evaluate Student to determine if medication would help his attention issues.

8. In November of 2007, Parents began investigating prospective middle school placements for Student. They soon realized that a typical school would not be appropriate for Student. Parents consulted Laurence staff, Colegrove and Jessen about prospective school placements. According to Mother, all recommended Bridges. Student applied to Bridges in November or December 2007 and was accepted at Bridges in January of 2008. Parents signed a contract for enrollment at Bridges in March of 2008. At that time, Parents paid \$30,400 in tuition and fees for Student's enrollment. Parents paid in full

instead of using a payment plan because they received a \$2000 discount for paying in full. On July 1, 2008 the tuition became non-refundable.

REQUEST FOR ASSESSMENT

9. In March of 2008, a friend with a special needs child suggested that Parents consult a special education attorney and consider having Student assessed by the District. On March 16, 2008, while Student was in sixth grade at Laurence, Parents wrote a letter (Referral letter) to Portola Middle School (Portola), which was Student's home school. In the Referral letter, Parents noted that Student had been assessed and determined to have NLD. Parents asked that Student be assessed for Asperger's Disorder. Portola received the Referral letter on March 18, 2008. Staff member Linda Epstein (Epstein) provided the Referral letter to school psychologist Cynthia Freeman-Thompson (Freeman) and Portola Assistant Principal Rosanna Bates (Bates). After reviewing the referral letter, Freeman provided information to Epstein regarding what should be included on the Assessment Plan for Student. Epstein received the signed assessment plan from Parents on or about April 4, 2008. With Parents' consent, Epstein initially scheduled the IEP team meeting for June 3, 2008. On April 8, 2008, father requested that the date be changed to June 10, 2008.

10. According to the assessment plan, Student was to be assessed in the areas of: (1) health and development; including vision and hearing (2) general ability; (3) academic performance; (4) language function; (5) social emotional status; and (6) career and vocational abilities/interests.

ASSESSMENT

11. On April 4, 2008, Don Stephen Lopez Rinos (Rinos), the Portola special education teacher, conducted academic testing of Student. Rinos has been a special education teacher for more than twelve years. Rinos received a bachelor's degree in

Philosophy from Saint John's Seminary College and a master's degree in Special Education from National University. Rinos has a Multi-subject teaching credential and a special education credential for mild to moderate disabilities. He administered the Kaufman Test of Educational Achievement II (KTEAII) to Student. Student performed in the above average range in reading and math and in the average range in writing.

12. Student tested at the 12.6 grade level in reading decoding with a standard score of 131. He tested at the 10.6 grade level in reading comprehension with a standard score of 119. Student's reading decoding was in the upper extreme range of reading decoding ability. His reading comprehension was in the above average range for reading comprehension ability. Student tested at 12.2 grade level in spelling with a standard score of 135. Student's spelling ability is in the upper extreme range of spelling ability. In writing, Student demonstrated the ability to write appropriate sentences and expand his support of a thesis by providing details. His composition writing ability was in the average range of writing ability. His writing mechanics were below standard. Student tested at the 12.0 grade level in mathematical applications with a standard score of 122. He tested at a 10.6 grade level in mathematical computations with a standard score of 116. Both mathematical applications and computations were in the above average range of mathematical ability. Rinos did not see any indications that a speech and language assessment or occupational therapy assessment were needed for Student.

13. Freeman conducted a comprehensive psychoeducational assessment of Student on May 21, 2008. Freeman had nine years of experience as a District school psychologist and twelve years of experience as a school psychologist. She received a bachelor's degree in Psychology and a master's degree in Counseling and School Psychology from National University. Freeman holds a Pupil Personnel Services Credential in School Psychology and is registered in California as a marriage and family therapist intern. Freeman worked for the HELP group, a non-profit agency, from approximately

1995 through 2007, where she gained experience and training working with students with Autism and Asperger's Disorder.

14. Freeman incorporated the results of Rinos' administration of the KTEAII into her psychoeducational report dated June 1, 2008. Freeman administered the Adolescent Test of Problem Solving, Test of Auditory Processing Skills (TAPS-3), Motor Free Visual Perception Test, Third Edition (MFVP-3), Learning Efficiency Test (LET II), The Beery-Buktenica Developmental Test of Visual-Motor Integration (VMI), Sentence Completion measure, the Connors' Parent, Teacher and Self-Report scales (Connors), Matrix Analogies Test-Expanded Form (Matrix), the Gilliam Asperger's Disorder Scale (GADS) and the Gilliam Autism Rating Scale (GARS). She also conducted a review of records including the health assessment conducted by the District nurse, and a review of the 2005 and 2007 assessments by Colegrove. Freeman interviewed teachers, Parents and Student. Freeman observed Student in the classroom at Laurence and during testing in a clinical setting.

15. The Matrix is an assessment of nonverbal reasoning abilities. Student received a standard score of 122 within the Superior range. The test is comprised of abstract visual patterns that require analysis and completion and includes tasks involving serial reasoning, spatial visualization and analogous reasoning. The LET II is a test of immediate, short term and long term memory. It examines how effectively a person processes and retains information presented visually and auditorially. Student was required to repeat a series of orally and visually presented letters verbatim. Student received a standard score of 101 within the average range for auditory memory. He received a standard score of 115, within the high average range, for visual memory. Freeman opined that Student had relative strengths in his ability to retain information in an unordered sequence both auditorially and visually. The TAPS-3 is a measure of auditory processing skill in the areas of phonological processing, memory, and cohesion (auditory comprehension and verbal reasoning). Skills in these areas are associated with the ability

to process sounds and recall and understand verbal information. Student scored in the high average range on his overall auditory processing abilities.

16. The MVPT-3 is a measure of visual perceptual and memory skills measuring interpretation and recall of visual information. Student received a standard score of 103 within the average range in overall visual perceptual skills and did not demonstrate a processing deficit. The VMI-IV is a drawing task, which measures the integration of visual perception and fine motor skills. The task requires the student to copy shapes and symbols presented visually. Student received a standard score of 100 within the average range. The Adolescent Test of Problem Solving is designed to assess a Student's language based critical thinking skills. It addresses critical thinking abilities based on the student's language strategies using logic and experience. Student received a standard score of 122 within the superior range.

17. Freeman administered a sentence completion measure, which is a twenty-item fill-in test that requires the student to supply his own ending to beginning sentences. It is designed to elicit feeling about family, likes, dislikes, fears and needs. She also administered the Children's Depression Inventory. The Inventory contains five factor scales: negative mood, interpersonal problems, ineffectiveness, Anhedonia and Negative self-esteem. Student's responses indicated that he had sad feelings, felt like crying and worried about "bad things", was bothered or upset by things and unable to make up his mind. His response also indicted that he had problems in interactions with people, trouble getting along with others, social avoidance and isolation. Based upon the responses, Freeman opined that Student also had an impaired ability to experience pleasure, low self-esteem and self-dislike. Teachers and Parents noted Student's social problems as "very much above average" on the Conners' Rating Scale. On the GADS, the parents rated Student in the low/not probable range for Asperger's while the teacher rated Student as "high/probable" for Asperger's. Freeman noted that classroom behaviors may be different

than home behaviors. During her interview with Student, he expressed that he did not have many friends and would like to have more friends. Student reported being teased at school.

18. Teachers commented that Student was very bright, but had trouble focusing, organizing and completing homework and class work. Teachers also commented that Student had trouble generating ideas, often took a long time to start writing projects and had problems interacting with other students. Student most often chose to read a book and avoid others. During testing, Freeman observed that Student made little eye contact and spoke little. He responded to her questions and was polite and cooperative. She found his attention span and concentration to be impaired, but that he was easily redirected to the task. He picked his skin, played with his fingers and cracked his knuckles during testing. He added unnecessary comments during the testing (i.e. "4, 3, 2, 1 blastoff") when told that he had four more questions to complete. At Laurence, she observed Student sitting by himself despite prompting from staff to engage with other students. Student was seated in the front of the classroom with his head down on his desk during classroom discussion and did not participate until called upon by his teacher. The teacher gave a five-minute warning to transition to science class. Nevertheless, Student was the last to gather his supplies and had to be reminded to bring a pencil. In Science class, he was off task, looking around the room and not sitting properly in his chair. The teacher engaged Student and redirected him. At lunch, he did not engage with any of his peers. Instead, he sat alone and read a book.

19. Freeman reported that Student had generally average cognitive skills with strengths in language-based critical thinking skills, visual perception, visual memory, auditory memory, nonverbal reasoning, auditory processing and visual motor integration. She noted weakness in the area of attention and significant impairment in peer relations. He was reported to be unengaged and isolated from peers in the school setting. Student

exhibited several characteristics of Asperger's Disorder. In the school setting, Student demonstrated a failure to developed age-appropriate peer relationships. Student lacked spontaneous interest in sharing experiences with others and lacked a social or emotional reciprocity. Student demonstrated a fascination with and exaggerations of interest in Legos and verbalized a lack of friends. Teachers reported that he had been deeply frustrated and disappointed by social challenges and that he was the subject of teasing. Freeman did not see any indications that an occupational therapy assessment, assistive technology assessment or speech and language assessment were needed for Student.

20. Freeman opined that Student was eligible for special education services under the category of Autism as a child with Asperger's syndrome. Colegrove and Jessum agreed with the eligibility of Autism as a child with Asperger's Disorder.¹ Colegrove

¹ In July of 2008, Parents engaged Abbe Barron (Barron), a licensed psychologist to administer the Autism Diagnostic Observation Schedule (ADOS) to Student. Barron would not diagnosis a child with Asperger's Disorder based upon one measure. However, based on her administration of the ADOS, observations and history, Barron opined that the data suggested that Student met the criteria for Asperger's Disorder. Barron noted that Student demonstrated qualitative impairments in social interaction including impairment in eye to eye gaze, facial expressions, body postures, gestures that regulate social interaction, difficulty in development of peer relationships appropriate to his developmental level, lack of spontaneous seeking to share enjoyment, interests, or achievement in others and a lack of social reciprocity. Although Parents did not report any restrictive repetitive or stereotypical patterns of behavior of interests, Barron noted that prior reports indicated a fascination with Legos, various "tic-like" behaviors including picking at his skin, twisting his neck, and behaviors that caused Student clinically significant impairments in his social and academic functioning. She also noted

opined that students with Asperger's syndrome often overlap with NLD. He also admitted that NLD and Asperger's may be two names for the same condition and that he diagnosed NLD rather than autism, because he believed the Parents would be more accepting of the NLD diagnosis.

JUNE 10, 2008 IEP MEETING

21. On June 10, 2008, District convened Student's initial IEP meeting. Parents, Parents attorney N. Jane DuBovy, Administrator Rosa Bates (Bates), General Education teacher Ms. Gutierrez (Gutierrez), School Nurse Ms. Parisinia (Parsinia), Freeman and Rinos were all present at the IEP meeting.

22. The IEP team determined that Student was eligible for special education under the category of Autism. Parents participated in the meeting, but most of their comments were made through their attorney. Parents, Freeman and Rinos all testified that the meeting seemed less tense once the eligibility determination was made. Parents' questions were all directed to their attorney and she spoke for them. The IEP team determined that a comprehensive middle school such as Portola was not an appropriate educational environment for Student. The IEP team determined that a smaller educational environment at a non-public school (NPS) would be an appropriate environment. The IEP team discussed the admission and selection process for NPS placement. Specifically, Parents and their attorney were advised that Student and Parent must apply and interview with prospective NPSs. Bates asked Parents if they wanted an interim placement for Student in the event that he was not accepted by any NPS before school started. Parents

that although Student's s language acquisition was late, his ability to use phrases was within the cut-off for Asperger's disorder.

and their attorney indicated that they did not want an interim placement and preferred to reconvene to make an offer of FAPE at the IEP meeting in September if Student had not been admitted to an NPS by the beginning of the 2008-2009 school year. Bates abided by Parents wishes and on their instruction, and that of their attorney, did not explore any interim placement options. The interim placement would not have been at Portola since the IEP team had already determined that Portola was inappropriate. Bates would have consulted a program specialist to determine what interim placement to offer. Once Student was accepted to an NPS, Parents were to contact District so the June 10, 2008 IEP could be finalized and signed.

23. According to Bates, Parents were active listeners in the IEP meeting, but not active participants. She noted that their attorney spoke for them in the IEP meeting. Bates was the facilitator for the IEP. According to Bates, Parents never expressed a preference for a specific placement and did not mention Bridges at any time. There were not any requests from Parents or their attorney for additional assessment of Student or explanation of the process. From Bates' perspective, the only thing left was for Parents to advise her of which NPS they had selected so she could fill the name in on the IEP and prepare a final copy for Parents' signature. Eligibility, goals, placement and related services had already been determined. Parents did not express any concerns about eligibility, goals or related services and seemed pleased with the determination of NPS placement.

24. At the June 10, 2008 IEP, goals were established for Student in the areas of reading, mathematics, written language, vocational education, behavioral support, social skills/ social emotional support. The mathematics and reading goals focused on Student's participation in the classroom setting. The written language goal focused on organization and punctuation in creation of a three-paragraph essay. The vocational goal focused on improvement of Student's organizational skills and ability to focus on and complete the

task at hand. The behavioral support goal focused on Student's social interactions, social skills, group participation and oral participation.

25. The IEP team also defined Student's present levels of performance (PLOPS) using the KTEAII results, psychoeducational testing results, observations, and discussion amongst the IEP team members. PLOPS were prepared in the area of reading, mathematics, written language, vocational education, behavior, cognitive processing and social emotional functioning. According to the PLOPS, Student's disability did not impact his reading or mathematical abilities. Student had relative strengths and weaknesses in each, but was functioning at or above grade level. The team did not note any deficits in reading or mathematics.

26. The team noted that Student's disability impacted his written language ability, but not his spelling ability. Specifically, Student's penmanship was a weakness. Student wrote quickly and sloppily. Student also had difficulty with writing structure and mechanics. The IEP team noted that Student took a long time to generate thoughts to put on paper, his focus wandered, his notes were messy, he turned assignments in late, had erratic class participation, was inattentive, lacked organizational skills, was missing books and assignments and was not prepared for class.

27. The team noted that Student's disability impacted his ability to demonstrate appropriate social skills with peers. The IEP noted that Student removed himself from peers, was alienated from his classmates, was alone most of the time, was disconnected from class and read independently as a way to avoid peer interactions. The IEP team also noted that Student's disability impacted his ability to interact with peers and caused feelings of low self-esteem and poor frustration tolerance. According to the team, these feelings affected his performance at school. The IEP team noted that social stress resulted in his shyness and attempts to isolate himself. The IEP team noted that Student needed to feel accepted to profit from interventions. He had a severe lack of attention and

concentration that contributed to his daily frustrations. The IEP team noted that his inconsistent focus and difficulty concentrating produced erratic performance and a lack of comprehension.

28. The IEP team identified the following accommodations to assist Student: reclarification of directions, reinforcement of instruction, visual, auditory and kinesthetic strategies as needed, teacher prompting when needed, proximity to the teacher, positive reinforcement, shortening of assignments, breaking assignments into parts, and extra time when needed. As supports, the IEP team identified that Student needed help developing consistent performance through breaking down of larger risks into smaller parts, giving him extended time to complete tasks and reinforcement of his progress. The IEP team also noted that Student would benefit from using an organization system, schedule book or daily planner for assignments. The IEP team noted that he would benefit from a small class setting. Student needed frequent breaks and a safe place when he felt overwhelmed. Counseling was recommended to develop coping strategies, help with peer interactions and attention issues. The IEP team also recommended a system of positive reinforcement as an incentive for Student to maintain focus and motivation.

29. The IEP team offered Student a Non-Public School (NPS) placement, goals, supports, accommodations, extended school year (ESY), a behavior support plan and related services consisting of transportation and counseling once a week for 30 minutes per session. Student was to use District general education curriculum with modifications as noted in the IEP. Mother testified that Village Glen was not specifically offered to Student at the IEP meeting, but it was discussed. At the IEP meeting, Freeman opined that the NPS would likely hold an amendment IEP meeting within thirty days of enrollment to refine the goals and services. Parents did not advise the IEP team that they were interested in Bridges, had signed a contract with Bridges or that they had paid the full tuition for the 2008-2009 school year.

AFTER THE IEP MEETING

30. District staff created an SE-25 form for Student. The SE-25 form is an internal District form used to make a recommendation for nonpublic school placement. It requires the preparer to enter information justifying the need for NPS placement, listing special factors to be considered, transition plan to return to school of residence and other placements considered. According to Freeman, it usually takes approximately two weeks after the SE-25 is generated for the NPS office to provide a student with names of three appropriate NPS placements for review.

31. On August 6, 2008 Bridgett Arce (Arce) of the District NPS office sent Parents a letter identifying three NPS schools that contracted with the District and had been identified by District as being appropriate for Student's needs. Those three NPS schools were North Hills Preparatory School (North Hills), Park Hill School (Park Hill) and Village Glen School (Village Glen). North Hills was chosen as an option because the program is built around the interests of the students, is college preparatory and offers both social skills and honors classes. The social skills program is for children with eligibility as high functioning autistic children, emotionally disturbed or having specific learning disability. North Hills has seventy to eighty students and utilizes a 6 to 1 student/teacher ratio. Park Hill was selected as an option because it has a strong counseling component and a social skills program incorporated into the curriculum. Honors classes and a sports program were also offered at Park Hill. Village Glen was offered as an option because they have extensive programs for children on the autism spectrum. The entire Village Glen School has 200 students. The PACE program within Village Glen has sixty to seventy students. In elementary and junior high school, Village Glen students are in a self-contained class. Village Glen offers a social skills program with an emphasis on the issues faced by students on the autism spectrum. The PACE program has a challenging differentiated curriculum that meets and follows state standards.

32. Student's mother reviewed North Hills and Park Hill information on line on the computer. After reviewing the on-line information, she determined that Park Hill and North Hills were not acceptable. Mother was concerned that North Hills had only one seventh grader at the time and the school focus was on behavior. She had concerns about Park Hill because 53 percent of the student population had been designated as emotionally disturbed. Neither of the schools were open for her to visit in mid-August. However, they were accepting applications and making admissions decisions at that time. Mother visited Village Glen and attended an open house informational session. Student did not apply to any of the schools and did not contact District to discuss the schools, the NPS placement or reconvening the IEP meeting in September as previously agreed upon. Instead, on August 11, 2008, Parents notified District that they had enrolled Student in Bridges Academy for the 2008-2009 school year. In their letter, Parents stated:

"We are enrolling [Student] at Bridges because we disagree with the district's offer in the most recent IEP. [Student] requires a unique and specialized educational environment in which he can receive challenging academic curriculum, differentiated instruction, and facilitation of appropriate social skills. Furthermore, although the IEP was held in June, we did not receive any further information concerning non Public Schools until August 6th. No finalized IEP is in place for the start of the school year, and it is unacceptable to continue to delay an appropriate placement for [Student]. This letter constitutes notice, as required under 300.148, that we will be seeking reimbursement for costs related to this placement."

33. Bridges is not an NPS and does not contract with District. The August 11, 2008 letter was the first time District staff had any indication that Parents were considering Bridges. It was also the first indication that District had that Parents were dissatisfied with the IEP or the IEP process. On August 22, 2008, Parents filed their Due Process Complaint against District. On August 29, 2008, District provided its response to the Complaint and prior written notice of its actions. On September 6, 2008, Parents were given a "single offer letter" identifying the PACE program at Village Glen as the District's offer of FAPE for placement of Student for the 2008-2009 school year.

34. Village Glen School is operated by The HELP Group, a Non-Profit. It is one of many schools that are operated under the auspices of The Help Group. Village Glen has two campuses in Culver City, California and Valley Glen, California. The Valley Glen campus was offered as a placement for Student due to its proximity to his home. Village Glen's Director Pamela Clark (Clark) and Village Glen brochures described the program as having small classes with a 6 to 1 student to adult ratio with an emphasis on special needs associated with Asperger's Disorder, high functioning autism, anxiety related disorders and non-verbal learning disorders. All of the Village Glen teachers have special education credentials. Within Village Glen, a separate program denominated as the Pace Program, has been created. The Pace Program was created specifically to deal with the paradigm presented by academically gifted students with Asperger's Disorder and other related social communication issues. The Village Glen PACE program offers differentiated instruction and keyboarding skills to students. Village Glen offers a full array of extra-curricular activities including sports, music and art. Many of the students go on to college or transition back to a comprehensive general education campus.

35. The Village Glen admission process typically involves a parent introduction session where an overall introduction to the HELP Group and its programs is given. The general session is then followed by a small group break out with parents and staff from

particular schools (i.e. Village Glen). Generally, a tour is given and questions can be posed to staff about the program at that time. Mother attended a session in August of 2008. The next step in the admissions process is typically submission of an application and a follow up interview of the applicant and the applicant's parents. The interview is seen as an important aspect of determining whether or not the applicant will be a good fit for the school and whether or not the applicant's parents are comfortable with Village Glen's approach.

36. Parents did not apply to Village Glen. In mid-August, Mother met with the Village Glen principal for elementary and middle school for one hour. She wanted to get a sense of the school. The principal had not heard of Student and did not know that District had been given a guarantee of Student's admission to the program. Mother discussed Village Glen's academic program, the test books, the seventh grade program, the art and music program and the social skills curriculum. Mother felt that the principal discouraged the use of computers at Village Glen. She observed classrooms and lunchtime. She saw five of the eight seventh grade students using hand-held video games during lunch. It appeared to Mother that most of the students have severe social problems. She visited the school a second time the week before the hearing and again concluded that Student was too high functioning for placement there.

37. Arce had reviewed the June 10, 2008 IEP and the SE 25 form and discussed them with her colleague Barbara Gottesman who oversaw and coordinated District's contract with Village Glen and the students placed there. She also consulted with Martin Myers, a colleague who oversaw the North Hills and Park Hill programs. Arce is a credential special education teacher with years of experience in the special education field. After consultation and discussion, Arce contacted Village Glen and ascertained that of the three schools provided to Parents, Village Glen was the only school that Mother had visited.

38. Arce contacted Village Glen on Student's behalf and asked that his IEP be reviewed to determine whether or not he would be an appropriate candidate for the Village Glen PACE program. Arce advised Village Glen that she was contemplating making a "single offer of FAPE" with Village Glen's PACE program being the offered placement. After review of Student's IEP in the District's computerized Welligent system by the HELP Group Director of Admissions, Arce received confirmation from Clark that Student would be accepted into the program and that she was authorized to offer the PACE program at Village Glen to Student. On September 5, 2008, District provided Parents with what Arce called a "single offer letter" indicating that Village Glen PACE program had been selected as the placement single offer of FAPE. Clark testified that the Village Glen PACE program had space for Student. She also opined that if for some reason Parents later determined that the program was not appropriate for Student, that the HELP Group had a number of other schools and would commit to finding a placement that was appropriate for Student within the HELP Group schools.

39. Although Freeman did not know how the District came to offer the Village Glen PACE program as a placement for Student, but she believed it was an appropriate placement. Freeman was familiar with Village Glen. According to Freeman, Student did not need an environment with typical peers because his interactions with typical peers were not working. He needed an intense social skills program and environment in which to work on those skills and could then transition to an environment with typical peers. Freeman opined that the PACE program at Village Glen was a more appropriate placement for Student because it would prepare him for the real world. She offered that it was a more structured program with a social skills curriculum. She also believed that he could benefit from the extra-curricular activities such as the music program. She had observed him give a solo musical performance at Laurence and thought it was important for him to have creative outlets.

40. On September 24, 2008, Freeman contacted Parents and asked that the IEP team meeting be reconvened to finalize the IEP. Mother wrote to Epstein advising her that on September 26 and 29, 2008, she had agreed with Freeman that the IEP could be finalized by facsimile and asked that it be faxed to Parents and their attorney, Jane DuBovy.

BRIDGES ACADEMY

41. Student started Bridges on August 25, 2008 at the beginning of the 2008-2009 school. Father testified that he has seen a difference in Student since attending Bridges. Father has observed that Student has friends and is spending time with friends. Father testified that Student was his "shining boy" again and that he was now a "happy little boy" attending Bridges. Father testified that Student was excited about going to school at Bridges and that Student would be devastated if he had to leave Bridges. Jessum opined that Student seemed much happier and engaged since attending Bridges and seemed to have found a group of friends.

42. Jessum, Barron and Colegrove all believed that Bridges was an appropriate educational placement for Student. Jessum and Colegrove had only a limited knowledge of Village Glen based upon the knowledge gleaned for a few patients that had attended Village Glen. Barron was more familiar with the Help Group and the Village Glen core program in Culver City, but her knowledge was dated. Jessum, Barron and Colegrove were all concerned that Student might be too high functioning for the student population at Village Glen. Freeman, on the other hand, was familiar with both schools. She had toured Bridges and observed several students as part of assessments and had extensive experience with Village Glen and the HELP Group. Freeman opined that the Village Glen Pace Program was an appropriate placement for Student and that Bridges was not an appropriate placement because Student needed more structure and a specialized social skills curriculum.

43. Michael Ellis (Ellis) is Student's Humanities, Language Arts and Social Studies teacher at Bridges. Ellis has a single subject social studies preliminary clear credential. Student is in a combination sixth and seventh grade class. Ellis is the primary teacher for social studies and the co-teacher for language arts. Each class has 8 to 9 students with two credentialed teachers. Ellis is also the mock trial team advisor and supervises many of the field trips. According to Ellis, Student is conscientious and compliant. He was not afraid to ask questions and was easily one of the top one or two students in the classroom. Socially, Student is at ease in the classroom and gets along with his peers. He has seen Student engage in positive peer interactions. Often, the students gather around laptops to watch videos or play tag during recess. According to Ellis, Student has not been isolated at Bridges. Although Student does not have good handwriting, he is able to use a computer in class for his work. All Bridges students are required to have laptop computers. Audiotapes and internet wireless access are also available. Teachers utilize multimodal teaching strategies. The seventh grade-writing program incorporates a grammar workshop and focuses on the ability to write a five-paragraph essay. Students may generate their own ideas for writing assignments or may receive assistance from staff. At Bridges, Student is participating in the mock trial program as a witness.

44. Bridges offers a drama program, which incorporates the social skill curriculum. The drama program utilizes skits and themes involving personal relationships and problem solving. Bridges also offers an after school percussion and rock band program. The band participates in a multischool "Jam fest" in Hollywood, California at the end of each year. Ellis described Bridges as a school for students that are both gifted and learning disabled. According to Ellis, Bridges offers differentiated instruction and allows students to work on areas of interest. Student generally is on the higher functioning end of the Bridges students. Parents are happy with Student's progress at Bridges and want him to remain there.

LEGAL CONCLUSIONS

1. As the petitioning party, Student has the burden of proof on all issues. (Schaffer v. Weast (2005) 546 U.S. 49 [126 S.Ct. 528, 534-537, 163 L.Ed.2d 387].)

ISSUE 1: DID DISTRICT FAIL TO PROPERLY ASSESS STUDENT FOR SPECIAL EDUCATION AND RELATED SERVICES IN ALL AREAS OF SUSPECTED DISABILITY?

2. Student contends that District failed to appropriately assess Student in the areas of social skills, peer relationships, motor abilities, cognitive abilities, processing, speech and language and assistive technology. Student also contends that District failed to assess Student in the area of occupational therapy, including motor and sensory needs, and failed to assess to what extent Student would benefit from interaction with typical peers. District contends that Student was appropriately assessed in all areas of suspected disability. District further contends that evaluation by either an occupational therapist or speech and language pathologist was not indicated by their assessments and observations. District also contends that an assistive technology assessment was not warranted based upon the assessment data and that Parents never raised any concerns about the assessment in the June 10, 2008 IEP meeting.

3. A student's parent or the responsible public educational agency may request an initial evaluation to determine whether a child is eligible for special education and related services on the basis of a qualifying disability. (20 U.S.C. §1414(a)(1)(A), (a)(1)(B).) The initial evaluation must consist of procedures to determine whether a child is a child with a qualifying disability and to determine the educational needs of the child. (20 U.S.C. § 1414(a)(1)(c).) In conducting the evaluation, a district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent that may assist in determining whether the child is a child with a disability and the contents of an individualized education program. (20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304(c)(6) (2006); Ed. Code, § 56320.)

The district may not use any single assessment as the sole criteria for determining eligibility and must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. (20 U.S.C. § 1414(b)(2); Ed. Code, § 56320.)

4. The district shall ensure that (1) assessments materials used to assess a child under this section are selected and administered so as not to be discriminatory on a racial or cultural basis, (2) are provided and administered in a language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally unless it is not feasible to do so, (3) are used for purposes for which the assessments or measures are valid and reliable, (4) are administered by trained and knowledgeable personnel, and (5) are administered in accordance with an instructions provided by the producer of such assessments. (20 U.S.C. §1414(b)(2)(C)(3).)

5. For purposes of evaluating a child for special education eligibility, the district must ensure that the child is assessed in all areas of suspected disability. (20 U.S.C. § 1414(b)(3)(B); Ed. Code, § 56320, subd. (f).) The determination of what tests are required is made based on information known at the time. (See *Vasherresse v. Laguna Salada Union School District* (N.D. Cal. 2001) 211 F.Supp.2d 1150, 1157-1158 [assessment adequate despite not including speech/language testing where concern prompting assessment was deficit in reading skills].)

6. Here, the evidence showed that District conducted a comprehensive assessment of Student using multiple measures, observation and interviews. Both Rinos and Freeman had the requisite experience, credentials and qualifications to conduct the assessments. There was no evidence to support a finding that either Rinos or Freeman deviated from the instruction manuals for the measures used in the assessment or that the assessments tools were invalid or unreliable in any way. Student's experts testified that

other measures such as the ADOS could be used, but not that the assessment was invalid or deficient for the lack of such tools.

7. Rinos conducted the academic portion of the assessment utilizing the KTEAII to measure academic achievement. Freeman utilized multiple assessment tools to assess social skills, peer relationships, motor abilities, cognitive abilities, processing areas, speech, language and motor skills. According to the assessment, Student had average to above average cognitive abilities and academic achievement. Freeman noted that Student had sloppy handwriting, but neither Rinos nor Freeman believed that an occupational therapy assessment was necessary. There was no evidence to support an occupational therapy assessment for sensory needs. Freeman observed that Student had sufficient gross motor ability to participate in physical education and did not see any deficiencies in fine motor skills warranting further assessment. Both Rinos and Freeman observed that Student had average to above average language skills and showed no indications of speech impediment.

Freeman considered Student's interaction with peers and determined that he needed a smaller environment and intense social skills training. She opined based on assessment results and records review, that he was not benefiting from interaction with typical peers and needed a more specialized environment to work on his social skills.

8. Neither Freeman nor Rinos recommended an assistive technology assessment nor was it specifically requested by Parents. Student contends that he should have had an assistive technology assessment based upon his messy handwriting and his slowness to draft written work. Freeman did not see the handwriting as an impediment to his access to the general education curriculum. Freeman saw no indications that an assistive technology assessment was warranted. According to Freeman, Student's main deficit was in social skills and peer relations. Freeman and Rinos were both knowledgeable and candid in their responses to questions. Their experience and candidness made them

both credible witnesses.

9. The District's assessment of Student was appropriate and comprehensive. District assessed Student in all areas of suspected disability. Special assessments in occupational therapy, speech and language and assistive technology were not warranted, as there was no indication of deficits affecting Student's ability to access the curriculum in those areas. (Findings of Fact 1-20 and Legal Conclusions 1-8.)

ISSUE 2: DID THE DISTRICT DENY STUDENT A FAPE BY COMMITTING PROCEDURAL VIOLATIONS OF THE IDEA, WHICH IMPEDED PARENTS' RIGHTS TO MEANINGFUL PARTICIPATION IN THE IEP PROCESS AND/OR CAUSED A LOSS OF EDUCATIONAL BENEFIT?

10. Student contends that District denied him a FAPE by failing to provide prior written notice of its significant decisions regarding Student's placement and services and failing to make a written offer of placement and services with sufficient detail to enable Parents to consider the appropriateness of the offer. District contends that Parents and their attorney were part of the June 10, 2008 IEP team and the discussion about placement and services for Student. According to the District, it was at that IEP team meeting that the team determined that Student should be placed at an NPS that could provide smaller classes, a social skills program and appropriate academic curriculum, and the team, including Parents, decided that the District NPS office would provide Parents with the names of three NPSs that District deemed appropriate, which Parents would visit. Accordingly, District contends that it provided appropriate prior written notice as required by law at all times. District also contends that the IEP had not been finalized because District was awaiting Parent's input on NPS selection.

11. Under the Individuals with Disabilities Education Act (IDEA) and companion state law, students with disabilities have the right to FAPE. (20 U.S.C. § 1400; Ed. Code, § 56000.) FAPE means special education and related services, under public supervision and

direction, that are available to the student at no cost to the parents, that meet the state educational standards, and that conform to the student's IEP. (20 U.S.C. § 1401(a)(9); Cal. Code Regs., tit. 5, § 3001, subd. (o).) "Related Services" are transportation and other developmental, corrective and supportive services as may be required to assist the child in benefiting from special education. (20 U.S.C. § 1401 (26).) When developing an IEP, the IEP team must consider the child's strengths, the parent's concerns, the results of recent assessments, and the academic, developmental and functional needs of the child. (Ed. Code, § 56341.1, subd. (a).)

12. In order to provide a student with a FAPE, the district must determine his unique needs and design a program to meet those needs. Districts are not required to maximize a child's potential. They are merely required to provide a "basic floor of opportunity." (Rowley v. Bd. of Education of Hendrick Hudson (1982) 485 U.S. 176, 208, 102 S.Ct. 3034, 3051, 73 L.Ed.2d 680.) De minimus benefit, or only trivial advancement, however, is insufficient to satisfy the Rowley standard of "some" benefit. (Walczak v. Florida Union Free School District (2d Cir.) 142 F.3d 119, 130.) A child's academic progress must be viewed in light of the limitations imposed by his or her disability and must be gauged in relation to the child's potential. (Mrs. B. v. Milford Board of Education (2d Cir. 1997) 103 F.3d 1114, 1121.) The IDEA and state law require that, in order to provide FAPE, a school district must develop an IEP that is reasonably calculated to provide the child with an educational benefit. (Rowley, *Supra*, at p. 203.)

13. In 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 “sufficient to confer some educational benefit” upon the child. (Id. at pp. 200, 203-204.) In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district’s proposed program. (See Gregory K. v. Longview School District (9th Cir. 1987) 811 F.2d 1307, 1314.) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (Ibid.)

14. In matters alleging procedural violations, a denial of FAPE may only be shown if the procedural violations impeded the child’s right to FAPE, significantly impeded the parents’ opportunity to participate in the decision-making process regarding the provision of FAPE, or caused a deprivation of educational benefits. (Ed. Code, § 56505, subd. (f)(2); see also W.G. v. Board of Trustees of Target Range School District No. 23 (9th Cir. 1992) 960 F.2d 1479, 1484; M. L., et. al., v. Federal Way (9th Cir. 2004) 394. F.3d 634, 653.)

15. A district must provide prior written notice whenever it proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. (20 U.S.C. §1415(b)(3); 34 C.F.R. §300.503(a); Ed. Code, § 56500.4.) Prior written notice must include (1) a description of the action proposed or refused by the agency; (2) an explanation of why the agency proposes or refuses to take the action and a description of each procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (3) a statement that the parents of a child with a disability have protection under the procedural safeguards of the IDEA and, if the notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguard can be obtained; (4) sources for parents to contact to obtain assistance in understanding their rights; (5) a description of other options considered by the IEP team and the reason why those options were rejected; and (6) a

description of the factors that are relevant to the agency's proposal or refusal. (20 U.S.C. §1415(c)(1); 34 C.F.R. §300.503 (b).)

16. An educational placement means that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs, as specified in the IEP in any one or a combination of public, private, home and hospital, or residential settings. The IEP team shall document its rationale for placement in other than the school and classroom in which the pupil would otherwise attend if the pupil were not handicapped. The documentation shall indicate why the pupil's handicap prevents his or her needs from being met in a less restrictive environment even with the use of supplementary aids and services. (Cal. Code Regs., tit. 5, § 3042.)

17. The IDEA requires that school districts provide students with a specific offer of placement. (Union School District. v. Smith (9th Cir. 1994) 15 F.3d 1519, 1526.) In Union, the school district did not make an offer of a particular school (MacKinnon) which the IEP team members believed would offer FAPE. The school district did not reference MacKinnon in the IEP because they anticipated that the child's parents would not accept the placement offer based upon prior comments from the parents. The district later argued that MacKinnon offered Student a FAPE. The Ninth Circuit, finding that the district never offered MacKinnon, held that "We find that a school district cannot escape its obligation under the IDEA to offer formally an appropriate educational placement by arguing that a disabled child's parents expressed an unwillingness to accept that placement."

18. As an initial matter, Student's contention regarding prior written notice fails. Here, Parents were part of the IEP team that recommended eligibility under the category of autism. The decision was not made by the District alone. Parents were advised of the decision, in which they participated, at the time it occurred. Similarly, Parents were part of

the decision to place Student at an NPS as it occurred. In such situations, it is not possible to give prior written notice. At most, District is able to give notice that such decisions are part of the agenda for the IEP meeting. Student did not introduce any evidence to show that Parents were unaware that eligibility and placement decisions would be made at the IEP meeting or that District failed to give appropriate prior written notice of the IEP team meeting. On the contrary, Parents' testimony confirmed their expectation that eligibility and placement decisions would be made at the June 10, 2008 IEP meeting. District provided appropriate prior notice of its proposed actions to Parents at all relevant times. To the extent that Student contends that District failed to give prior written notice of a proposal or refusal to initiate or change the identification, evaluation, or educational placement of Student or the provision of FAPE, the argument fails.

19. Student's contention that his procedural rights under the IDEA were denied because no specific placement was offered also fails. Here, District offered Student a placement at an NPS, with goals, related services and a behavior plan. As understood and agreed at the IEP meeting, Parents were to visit and apply to prospective NPS to be identified by District. Freeman testified that some discussion occurred at the IEP about Village Glen, an NPS that was ultimately identified by the District as one appropriate for Student. On August 6, 2008, District provided Parents with the names of three NPS schools that contracted with the District and that a specialist in the NPS office had identified as meeting the characteristics described in the IEP and SE-25 form. Parents were then given the opportunity to visit the campuses, conduct their own research and provide input as members of the IEP team about their preferences. Parents never expressed concern, dissatisfaction or confusion about this process. All parties were aware and understood that the IEP was in process and had not been finalized pending further input from Parents. In reality, and unbeknownst to District, Parents had already decided to send Student to Bridges and had advanced the tuition funds for Bridges. Parents were simply

not motivated to follow through on the process and select an appropriate NPS. Had they been motivated to do so, an NPS could have been selected prior to the start of the school year and the IEP could have been finalized. Instead, Parents were merely seeking funding for a placement choice that they had made prior to the IEP meeting. In its efforts to encourage full parent participation, allow the most flexibility to the family and accommodate Parents' choice of NPS, District held the IEP open pending Parents' input. At any time, District could have made a single offer of one NPS. Instead, District attempted to work with the Parents to achieve an agreed NPS placement. To the extent that Student contends that District failed to make a specific offer of placement, the argument fails because all parties were aware that the IEP process was ongoing and that a final IEP would not occur until after Parents selected an NPS or the IEP team reconvened in September of 2008.

20. In sum, Student has not established by a preponderance of the evidence that District failed to give appropriate prior written notice at any time or that District committed any procedural violations of IDEA. (Factual Findings 1-10 and 23-43 and Legal Conclusions 1, 10-19.)

ISSUE 3: DID THE DISTRICT FAIL TO OFFER STUDENT A FAPE FOR THE 2008-2009 YEAR?

21. Student contends that District failed to offer Student a FAPE for the 2008-2009 year by not providing sufficient and appropriate goals. Student contends that goals in language and speech, occupational therapy and assistive technology should have been included in the IEP. Student also contends that the IEP was deficient because it did not offer a specific NPS placement designed to fit Student's needs as a gifted Student on the autism spectrum. District contends that it offered Student a FAPE and that Parents declined to apply to any of the three recommended NPSs or to advise District of their dissatisfaction with the NPS recommendation. District contends that Parents had decided

that Student would attend Bridges for the 2008-2009 year before the June 10, 2008 IEP meeting and were merely seeking public funding for that placement.

22. As set forth in Legal Conclusions 11, 12, and 13, above, to provide a child with FAPE, an IEP must set forth the special education and related services that meet the child's unique needs and allow the child to receive some educational benefit.

23. The IEP team shall consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluations of the child and the academic, developmental and functional needs of the child. (34 C.F.R. § 300.324 (a).) The IEP team shall consider whether or not the child needs assistive technology services and devices (34 C. F. R §200.324 (a)(v).)

24. The IEP must include a written statement of present levels of academic achievement and functional performance, a statement of the manner in which the disability affects involvement and progress in the general education curriculum and a statement of measurable annual goals, related services, supplementary aids and services, program modifications or supports that will be provided to enable the pupil to advance appropriately toward attaining the annual goals. The IEP shall also provide an explanation of the extent to which the pupil will not participate with nondisabled pupils in the regular class and extracurricular activities and appropriate accommodations for state and district wide assessments. (20 U.S.C. §1414(d); Ed. Code, § 56345.)

25. Here, the IEP accurately identified Student's unique needs and set forth appropriate goals in those areas of need. The IEP contained an identification of Student's unique needs in the areas of reading, mathematics, written language, vocational education, behavioral support, social skills/social emotional support. The IEP contained a description of Student's present levels of performance in each of those areas based upon assessment, observation and IEP team discussion. The IEP team, of which Parents were a part, set goals in each of those identified areas of need. Specifically, mathematics and reading goals

focused on Student's participation in the classroom setting. The written language goal focused on organization and punctuation in creation of a three paragraph essay. The vocational goal focused on improvement of Student's organizational skills and ability to focus on and complete the task at hand. The behavioral support goal focused on Student's social interactions, social skills, group participation and oral participation. District IEP team members did not see any identified need for language and speech goals, occupational therapy goals or assistive technology goals. Parents and their attorney participated in the June 10, 2008 IEP and did not raise any issues regarding the need for such goals or express any reservation or disagreement with the goals. The evidence presented at hearing did not establish that goals in the areas of speech and language, occupational therapy or assistive technology were necessary. To the extent that Student contends that the goals contained in the IEP were inadequate and/or insufficient, the argument fails.

26. The evidence at hearing showed that Student did not have unique needs requiring speech and language therapy, occupational therapy or assistive technology. Both Rinos and Freeman testified that they saw no indication of need for speech and language therapy. Not a single one of Student's witnesses established a need for speech and language therapy. There were some suggestions from Colegrove that Student be assessed for occupational therapy concerns and receive intervention for unspecified occupational therapy issues. While counsel argued that Student might have some sensory issues and bad handwriting requiring occupational therapy, the evidence simply did not support the assertion that occupational therapy services were needed for Student to access his educational program. Student asserts that he needs a laptop computer as a form of assistive technology due to his poor handwriting and lack of organizational skills. Colegrove asserted that Student would benefit from using a computer and he has been successful using a computer at Bridges. Student did not establish that he needed assistive

technology in the form of a laptop computer or otherwise to benefit from his educational program. Student's argument that the IEP's lack of speech and language services, occupational therapy services and assistive technology services deprives him of a FAPE fails.

27. Finally, contrary to Student's argument, the IEP offered Student an appropriate placement. District offered Student an NPS placement in a small school setting with a social skills curriculum and a grade level or above academic curriculum. Parents were asked to visit and apply to three NPS schools that contracted with the District and met the criteria set forth in the June 10, 2008 IEP. Parents refused to consider an interim placement pending determination of which NPS Student would attend and instead, requested that an IEP meeting be scheduled in September of 2008 if an NPS had not been finalized by the beginning of the school year. Parents never applied to any of the NPSs offered and did not advise the District of their dissatisfaction with the NPS choices offered. Instead, they unilaterally placed Student at Bridges, as they had intended to do all along. District did all that it was required to do and offered Student a FAPE. However, Parents had already determined that Student would attend Bridges, a private school that is not NPS certified or contracted with the District before District had the opportunity to convene an IEP meeting. Although District did delay a few weeks during the summer break in notifying Parents of the NPS choices, it was irrelevant, because Parents had no intention of accepting a placement other than Bridges. Parents prevented District from finalizing the IEP and now complain that District denied them a FAPE by not offering a specific placement at a specific NPS. When Parents did notify District of their unilateral placement of Student and claim for reimbursement of tuition, District provided Student with an offer of a specific placement at the Village Glen Pace Program and made arrangements for Student to be admitted to the program without application or interview. Parents expressed at hearing that they wanted Student to remain at Bridges. Mother expressed

that Village Glen Pace program was not acceptable to her.

28. Parents honestly believe that Student is best placed at Bridges and that he is maximizing his potential at Bridges. There is no doubt that Parents want the best education and program available for Student and that they believe Bridges offers that program to Student. Although the three NPS schools offered by the District and the Village Glen Pace program offered in the District's "single offer" may not be Parents preferred option for Student's education, the evidence supports a finding that either of the three options would have provided an appropriate placement and could have implemented Student's IEP. District is not required to maximize Student's potential, merely to provide a FAPE that allows Student to access an educational benefit. Accordingly, District offered Student a FAPE. (Findings of Fact 1-44 and Legal Conclusions1, 11-13 and 21-28.)

29. Having found no violation of Student's right to a FAPE, this decision need not address Student's reimbursement requests.

ORDER

All of Student's requests for relief are denied.

PREVAILING PARTY

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

November 17, 2008

_____/s/_____

GLYNDA B. GOMEZ

Administrative Law Judge

Office of Administrative Hearings