

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN LORENZO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013040589

DECISION

Administrative Law Judge (ALJ) Adeniyi A. Ayoade, Office of Administrative Hearings (OAH), State of California, heard this matter in San Lorenzo, California, on June 25-26 and July 24, 2013.

Student's maternal grandmother and holder of Student's educational rights (hereinafter "Parent") represented Student. Student's mother was present throughout the hearing.

Shawn Olson Brown, Attorney at Law, represented the San Lorenzo Unified School District (District). Ms. Alejandra Leon, an attorney from Ms. Brown's law firm, was also present during the hearing. Edward Diolazo, District's representative and Director of Special Services was present and attended all days of the hearing.

PROCEDURAL HISTORY

Student originally filed this due process request (complaint) on April 15, 2013, but the OAH granted Student's motion to amend the complaint on April 23, 2013, which restarted the timeline for the case. (20 U.S.C. § 1415(c)(2)(E)(ii).) On May 9, 2013, OAH granted a request to continue the hearing date until June 25, 2013. At the hearing, oral

and documentary evidence was received. At the close of the hearing, and pursuant to the parties' request, the record was left open until August 9, 2013, so the parties could submit their respective written closing arguments.¹ Both parties timely submitted their closing briefs, and on August 9, 2013, the record was closed and the matter was submitted for decision.

ISSUE²

During the 2012-2013 and the 2013-2014 school years (SY's), did Student require placement in a general education (GE) science and social studies class in order to receive a free appropriate public education (FAPE) in the least restrictive environment (LRE)?

PROPOSED REMEDIES

Student requests an order requiring District to enroll him in either or both the GE science and social studies classes for the 2013-2014 SY.

CONTENTIONS OF THE PARTIES

Student contends that he requires GE science and social studies classes in order to receive a FAPE in the LRE. He argues that his placement in District's special day class (SDC) for science and social studies is not the LRE for him as the two SDC classes are too

¹ To maintain a clear record, Student's closing brief was marked as Exhibit S-25, and District's closing brief has been marked as Exhibit D-36

² Although several other issues were raised in both the original complaint and the amended complaint, these were resolved in mediation, and dismissed by Student on May 30, 2013. Accordingly, the only issue that is pending resolution in this due process hearing is the one issue stated in this section.

restrictive. Finally, Student contends that he received educational benefit from GE science and social studies classes in the sixth grade, and with adequate supplementary aids and services, he would have continued to receive educational benefit from the GE science and social studies classes.

District contends its offer of placement and services, particularly, Student's placement in the SDC science and social studies classes, was reasonably calculated to provide Student with an educational benefit and addresses his unique needs in the areas of academics, behavior, peer relations and social skills. According to the District, Student's placement in the SDC science and social studies classes, rather than GE science and social studies classes, was appropriate. In defending its placement decision, District pointed to various factors including Student's levels of academic and behavioral performance, the results of standardized and non-standardized assessments of Student, his significant language delays, social skills needs and his inability to engage with his peers, among others. District argues that Student cannot receive meaningful educational benefit from the GE science or social studies class due to his cognitive and other deficits. Finally, District contends that its placement of Student in the SDC science and social studies classes in seventh and eighth grades is FAPE in the LRE. According to District, Student requires the placement offered in order for his goals and objectives to be implemented, thus providing him with an opportunity to make meaningful progress towards those goals. In the SDC placement, Student was able to work on Student's functional academic needs, social skills, behavioral and adaptive skills needs, among others.

FACTUAL FINDINGS

JURISDICTION

1. Student is a 13-year-old male student who has received special education and related services since 2003. He qualifies for special education and related services as a child with autism (primary disability category) and intellectual disability (ID) (secondary disability category). He resides within the geographical boundaries of the District.

2. Student entered District during his fifth grade school year and enrolled in District in October 2010. Since entering District, Student has received and continues to receive special education and related services. During his sixth grade (2011-2012 SY), Student attended Bohannon Middle school (Bohannon), and attended Washington Manor Middle School (Washington Manor) during the 2012-2013 SY (seventh grade). Student is currently in the eighth grade at Washington Manor.

STUDENT'S PRESENT LEVELS OF PERFORMANCE (PLOPs) AND UNIQUE NEEDS DURING THE 2012-2013 SY³

3. District conducted its triennial assessments of Student in November and December 2012 in order to obtain or update Student's levels of performance data. As part of this process, District conducted a speech and language (SL) assessment in November 2012, a psychoeducational assessment in November 2012, an academic assessment in November 2012, as well as an AT assessment in December 2012.

4. The SL assessment's results show that Student has severe language delays in the expressive and receptive domains, and social language deficits. He has severe deficits in auditory comprehension, significant delay in social communication skills, and

³ Student's PLOPs remained essentially the same at the time District developed its IEP offer for the 2013-2014 SY.

a high indication of a language disorder. His vocabulary is limited when compared with typical peers of the same age. Student has severe language delays, especially in the areas of social language (pragmatics) and communication, including expressive and receptive skills domains. While Student's primary mode of communication is verbal, his use of verbal language is limited. As a result, Student is unable to use verbal and nonverbal language to communicate effectively with others, and has used assistive technology (AT) and alternative augmentative communication (AAC) devices and computer programs to assist him to communicate. He has relative strength in the area of nonverbal communication as he tends to use body language and verbal tone to communicate with others as compensation for his limited verbal skills.

5. Student has significant academic deficits. His pre-academic, academic, and functional academic skills assessments showed that he has significant academic deficits based on his age. His knowledge of basic concepts such as shape, size, position, quantity, and time, and his ability to compare different things are far below those of his peers. While he could identify about 10 of 34 grocery/food sight words, and read some banking and community words, Student could only write his first and last name without a model, and could copy his phone number using a model. He could only tell analog times quarterly (00, 15, 30, and 45). As for his math/counting skills, Student could match nickels, dimes and quarters, and could count coins by 5, 10, and 25 but could not count groups of coins of different denominations or count combinations of bills and coins.

6. Regarding Student's social emotional and behavioral functioning, Student's behavior impedes his learning and those of other students. Student has behavioral issues including off-task behavior, elopement, and instances of uncontrolled erections (visible through his clothes) in the classroom setting which resulted in disruptions in the classroom. Student has a need for specific routines and directions. He has trouble transitioning from a preferred task (for example computer work) to the less-

preferred class work. He would protest loudly, at times causing disruption due to the protest and other reported behaviors in the classroom environment. He also has a need for his instructional aide (IA) during his entire school day. His IA provides both instructional and behavioral assistance to him. Student requires assistance from his aide throughout his school day in order to access instruction and receive educational benefit, and to participate in group activities and follow the rules relating to an activity. He seldom initiates conversation or any other form of interaction with his peers independently. As a result of Student's behavioral issues, Student's individualized education program (IEPs) for the 2012-2013 and the 2013-2014 SY's included a positive behavior support plan (BSP). Student has received behavioral supports and interventions through his BSP.

7. According to Ms. Nicole Saleta,⁴ District's School Psychologist, Student's attention span is short and Student requires constant promptings. When performing a

⁴ Ms. Saleta has worked for District as a School Psychologist for eight years. She received her bachelor's of science degree from University of California, Davis in human development (major) and psychology as minor. She received a master's degree in psychology from San Francisco State University. She holds a Pupil Personnel Services credential and a Behavior Intervention Case Manager (BICM) certification. She is qualified to work as a School Psychologist and authorized to provide school-based counseling. She has attended many disability seminars and continuing education trainings, including those relating to autism. Since beginning her career as a School Psychologist, Ms. Saleta has conducted between 800 and 1000 psychoeducational assessments, about 180 of which involved autistic students and students with ID. She is aware of Student's PLOPs and unique needs through her assessment of Student, interview of others about Student, review of Student's records and multiple observations of Student (at least eight times). She has worked with Student since his seventh grade

preferred activity (for example, drawing), Student may stay on task for about 10-15 minutes, but requires prompting and refocusing about “every minute or more” when performing a non-preferred activity like writing. Student requires about one prompt for one word when writing within the scope of his vocabulary. Ms. Saleta explained that Student IA works to keep him on tasks, helps him to organize with reminders and rewards, helps him to break complex tasks down into steps, and facilitate and prompt Student as needed to engage and participate in class social activities.

8. As part of the triennial assessment, District administered the Adaptive Behavioral Assessment System, Second Edition (ABAS-II) in order to evaluate Student’s adaptive skills/daily and independent living skills. Student’s adaptive skills are significantly below those of his same-age peers and are in the range of a five-year old. He scored below the first percentile rank in all domains, including conceptual, social and practical skills domains. Student can follow simple directions and is able to ask for his needs to be met. He has difficulty following complex directions (two to three step directions) independently. Also, Student ranked below the first percentile in the verbal intelligence/reasoning domain, and in the fourth percentile in the non-verbal reasoning domain. In both domains, Student’s scores were in the very low and low average ranges, respectively. His auditory processing skills are low and are significantly below those of his peers. He scored in the below average range in the social cognition (social facilitation) domain.

year as a Student at Washington Manor where Ms. Saleta works as a School Psychologist. She conducted Student’s triennial psychoeducational assessment in November 2012, and interviewed Student’s IA and teachers, as part of her assessment of Student. She observed Student in various settings, including the SDC classroom and in the SDC social studies and science classes during Student’s 7th grade.

9. Further, based on the Differential Abilities Scales, Second Edition (DAS 2) test,⁵ administered by District as part of the triennial assessment of Student, Student has significant cognitive delays. He achieved a verbal intelligence/reasoning standard score of 31 (less than first percentile) and a nonverbal reasoning standard score of 73, which placed him in the fourth percentile. According to Ms. Saleta, Student meets the eligibility criteria for ID. Ms. Saleta explained that Student's intelligence quotient (IQ) score is below 70, and that the score was not included in her report due to the significant gap between Student's verbal and nonverbal intelligence/reasoning scores.

10. Student demonstrates academic deficits, cognitive delays, and behavioral needs that require substantial adjustment and modification to the GE curriculum. He functions at between the first and second grade levels in math, English language arts (ELA) and reading. Due to the significant cognitive and language delays, and academic deficits, since at least the 2010-2011 SY, Student's IEP's have provided that Student would participate in the California Alternate Performance Assessment (CAPA curriculum) for his core academic classes, rather than in the California Standards test/curriculum. Student has received academic instruction based on the CAPA curriculum since at least the 2010-2011 SY. His CAPA academic program is based on functional academic curriculum and community based instruction in order to support his current IEP goals.

⁵ The DAS-II is an individually administered battery of cognitive and achievement tests that are important to learning. The test may be administered to children ages two years six months (2:6) through 17 years 11 months (17:11) across a broad range of developmental levels. The test has several subtests and could be used to measure cognitive abilities including verbal and visual working memory, immediate and delayed recall, visual recognition and matching, processing and naming speed, phonological processing, and understanding of basic number concepts.

The record showed that he participated in the CAPA curriculum for his ELA, math, science and social studies during the 2012-2013 SY. He would continue to participate in the CAPA curriculum for his 2013-2014 SY.

11. Due to his disability, Student has received specialized academic instruction, accommodations and modifications, and services such as behavioral services, AT/AAC services, speech and language (SL) and occupational therapy (OT). His SL therapy focuses on receptive, expressive and social language skills development. Despite the ongoing speech and language program, Student's language delays continue to significantly impact him and reduce his ability to access GE curriculum.

12. At the December 6, 2012 IEP team meeting, Student's assessments results were presented and discussed including Student's present levels in all areas. His unique and individualized education programs and services, accommodations and modifications, and supports were discussed and District made its IEP offer for Student. The results of the assessments have not been challenged by Student, and no issues have been raised, substantively or procedurally, regarding the timing, appropriateness, adequacy, form or substance of the assessments.

REQUIREMENTS FOR DISTRICT TO PROVIDE FAPE IN THE LRE

Fape

13. A child with a disability has the right to a FAPE, that is, special education and related services that are provided to the child with a disability at public expense and under public supervision and direction. The program (special education and related services) must be at no cost to parents, meet the unique needs of the child with a disability and be reasonably calculated to provide some educational benefit to the student. The term unique educational needs must be broadly construed to include Student's academic, social, emotional, communicative, physical and vocational needs.

Lre

14. A substantively appropriate IEP must be provided in the LRE. That is, Student must be educated with his non-disabled peers to the maximum extent appropriate. Any analysis of the LRE must consider four factors: (1) the educational benefit to the child of placement full-time in a regular class, (2) the non-academic benefits to the child of such placement, (3) the effect the disabled child will have on the teacher and children in the regular class, and (4) the costs of educating the child in a regular classroom with appropriate services, as compared to the cost of educating the child in the district's proposed setting.

Iep

15. Every special education student has an IEP, which is developed at least annually. An IEP is evaluated in light of the information available at the time it was developed, it is not judged in hindsight. For a school district offer of placement to be FAPE, the IEP must address the student's unique needs and be based on accurate baselines data and accurate PLOPs as identified through assessments or other sources at the time the challenged IEPs were developed. In this case, the results of District's triennial assessments of Student provides relevant information regarding Student's PLOPs and unique needs at the time the triennial IEP offer was made in December 2012, and for the remainder of the 2012-2013 SY and the 2013-2014 SY.

STUDENT'S GE SCIENCE AND SOCIAL STUDIES PLACEMENT IN SIXTH GRADE

16. Student participated in GE science and social studies classes during sixth grade. Based on his modified curriculum, Student received passing grades (P), (A-), (B+) and (A-) in social studies during the first, second, third and fourth quarters, respectively. For science, he received (B-), (B-), (P) and (P) grades during the first, second, third and fourth quarters, respectively. During the year, Student received either "outstanding" or

“satisfactory” citizenship marks and was identified as an Honor Roll Student during the period between August 23, 2011 and October 21, 2011 for his academic performance. Based on Student’s grades in science and social science in sixth grade, Student argues that he received educational benefit from the two classes and that GE science and social studies classes continued to be appropriate for him for both his seventh and eighth grade years in order to receive a FAPE in the LRE.

17. Student did not call any witnesses but provided documentary evidence and a DVD. The DVD showed about 26 clips of Student performing various activities. Among the activities, the clips showed Student copying from a book, someone assisting Student with his reading, Student engaging in some activities involving a volcano experiment at home - it appeared that Student was building a paper volcano base, plastering the volcano base with papers and painting the base with two other unidentified children seen in the video. As part of the project, Student was seen pouring what appeared to be baking soda and vinegar into the volcano base to produce an eruption. He was seen sitting in a room, carrying a shoe box, and appeared to be arranging some pens and pencils in some of the clips. He was also seen talking, answering some question and appeared to be singing in other clips. One clip showed Student “singing” and another showed Student interacting with one other child.

18. All of the clips are a few seconds long, and all are less than a minute. The longest of the clips is about 53 seconds long. Because of the brevity of the various clips, the lack of context or other relevant backgrounds regarding the activities Student was seen engaging in, it is difficult to determine Student’s functional skills and abilities, or PLOPs from the DVD clips. Therefore, the DVD is not determinative regarding the issue pending resolution in this matter. The DVD provided no information regarding the sole issue in this matter, and as such the DVD is not found to be persuasive.

19. Although the record established that Student attended the GE science and social studies classes, and received passing grades in both subjects in sixth grade, the report cards also showed that Student received modifications and accommodations in the two classes. No evidence was offered to show the scope, extent or the manner of the accommodations and modifications received by Student in the two classes during his sixth grade year. Student presented no evidence to show that accommodations and modifications would have been available, practicable and implementable in the seventh and eighth grade GE science and social studies classes. Further, the evidence failed to show the criteria for receiving either outstanding or satisfactory citizenship mark, or whether Student's CAPA curriculum was factored in in the evaluation of Student's academic performance and his receipt of the Honor Roll certificate. The evidence failed to establish that Student received educational benefit from the two classes during his sixth grade year.

20. On its part, District called five witnesses: Ms. Nicole Saleta, District's School Psychologist; Mr. Bill Paul Tee,⁶ Student's special education science and math teacher; Ms. Kathleen Flores, District Behavior Specialist; Mr. Jeremy Nathan Mirken, District's SL Pathologist (SLP), and Mr. Diolazo⁷. Each and all of the witnesses testified about

⁶ Relevant information regarding Mr. Tee's education, qualifications, credential and experience are discussed below.

⁷ Mr. Diolazo has a bachelor's degree in psychology from University of California, Santa Barbara, and a master's degree in clinical and child psychology, with emphasis in school psychology from California State University, Hayward. He received his bachelor's degree in 1991 and his master's degree in 1995. He holds a Pupil Personnel Services credential, a School Psychology credential, a School Counseling credential, and a Clear Administrative credential. He has held the position of District's Director of Special

Student's disability and unique needs, his PLOPs and District's FAPE offers to Student. Each and all of the witnesses essentially testified that District offers of placement and services during the 2012-2013 and the 2013-2014 SY's were FAPE, as the offers were based on the assessment data on Student, his baselines and PLOPs, and his abilities and unique needs.

21. Through its witnesses, District challenged Student's contentions that Student requires GE science and social studies classes during his seventh and eighth grade years. They disputed Student's contention that GE science and social studies classes were or are appropriate for him during either the seventh or eighth grade, or that the classes could or would have provided Student with meaningful educational benefit. The witnesses, including Mr. Mirken, Ms. Flores and Ms. Saleta, also raised the question of whether Student received meaningful educational benefit from his placement in the GE science and social studies classes during his sixth grade.

22. Mr. Tee is Student's SDC science teacher. He taught Student in the SDC during his seventh grade year. Mr. Tee has been a special education teacher for 23 years, and has worked for District for about 18 years. Mr. Tee received his bachelor and master's degrees in history. He has a California single subject credential with major in social studies and supplementary authorization in Basic English or Introductory English and Introductory science, which permits him to teach science and English in kindergarten through ninth grades. He also holds learning handicapped teaching credential permitting him to teach students with mild-moderate disabilities including

Services in the last nine years and has worked for District for 13 years. As District's Director of Special Services, he administers all of District special education programs and supervises several staff in District special education department. Mr. Diolazo testified at the hearing.

those with autism and ID. Mr. Tee also holds a Resource Specialist certificate and a specially designed academic instruction in English (SDAIE) certificate, authorizing him to teach students whose primary language is not English. He has experience teaching students with autism and ID. The evidence established that Mr. Tee is qualified to teach Student in the SDC science class.

23. Also, Mr. Tee is Student's case manager and has observed Student in his other classes including the SDC ELA class taught by Ms. Franklin. He prepared Student's draft IEP during the 2012-2013 SY, as Student's case manager. Mr. Tee is familiar with Student and his disabilities, PLOPs and his unique needs. He had a total of three students with autism in his SDC class during the 2012-2013 SY, and has experience teaching students with autism.

24. Ms. Flores completed her undergraduate education receiving dual degrees in deaf education and elementary education from McMurray College in Jacksonville, IL. She received her master's in Education degree from the University of Massachusetts, Amherst. She has a specialist certification in drop-out prevention, and holds credentials and teaching licenses in many states. She also holds a Clear Multiple Subjects California credential and a specialist credential in teaching students with communication disorder. As District's Behaviorist, Ms. Flores holds a BICM certification and acts a District Behavior Intervention Specialist. She has worked for District for 13 years and as a Behavior Intervention Specialist for 11 years. In District, she was a SDC teacher for two years before becoming District's Behavior Intervention Specialist. Prior to joining District, she worked for 22 years as a teacher, teaching various classes including GE subjects, mild-to-moderate SDC class, moderate-to-severe SDC class, and special education resource program, among others.

25. Ms. Flores has experience working with students with disability and has worked with many autistic students over her career. She has received several trainings

about autism and how to work with autistic students. She has attended specialized autism trainings provided by the Mind Institute, University of California, Davis, for the past seven years. Ms. Flores has worked with over 100 autistic students, either as a teacher, consultant or behaviorist. About two-thirds of such students also have ID.

26. Ms. Flores knows Student and understands his disability and impact of Student's disability, and has known Student since his fifth grade year when Student first entered District. She conducted a Functional Behavior Assessment of Student and developed his BSP. Ms. Flores attended many of Student's IEP's team meetings held in the 2011 and 2012 SY's. She has observed Student in various classes at least 12 times and collected data on Student's behaviors in various settings, in order to understand Student's behavioral triggers, antecedents and give feedback to Student's IA and teachers, among others.

27. Mr. Mirken has worked as a SLP since 2005, and has worked for the District for about five years. He received his bachelor's degree from University of California, Santa Barbara, in interdisciplinary studies including Linguistic, Psychology and Speech and Hearing studies. He has a master's degree from University of Arizona in speech, language and hearing science. He holds a California state license as a SLP. Mr. Mirken is employed by a non-public agency (NPA) and provides SL services to District's students under contract between District and the NPA. As a SLP, he provides groups and individual speech therapy, assists in the development of IEP's goals, implements and tracks progress on goals, and consults with teachers and other members of the IEP teams, among others. He has experience working with students on the autism spectrum and those with ID.

28. Mr. Mirken is familiar with Student and has worked with him regarding his speech and language needs for the past two years. He provided SL services to Student. He conducted SL assessment of Student in sixth grade and produced the SL assessment

report dated November 18, 2011. He also assessed Student in 2012 and produced the SL assessment report dated November 9, 2012, in order to update Student PLOPs data. As presented above, Student has significant language delays and had received SL services over the years. Mr. Mirken described Student as having deficits and weaknesses in many of the assessed areas, as was often "inward focused and often doing his own thing." He attended every one of Student's IEP team meeting for the past two years and had proposed speech goals for Student.

29. During Student's sixth grade year, Student had goals in the areas of pragmatic language, receptive language, expressive language, writing (including the ability to write Student's own personal information), reading comprehension, typing, mathematics (counting), time-telling, development of community based vocabulary and development of reading vocabulary. The goals supported Student's functional academic programs. A functional academics program focuses upon teaching academic skills necessary to develop and support Student's functional, independent living skills and adaptive skills.

30. Student may only be removed from the regular education environment when the nature or severity of his disabilities is such that education in regular classes, with the use of supplementary aids and services cannot be achieved satisfactorily. Based on the evidence in this hearing, District demonstrated that GE science and social studies classes were not appropriate for Student during his seventh grade, and that the classes would not be appropriate for Student during his eighth grade. The evidence showed that due to the nature and severity of the Student's disabilities and deficits in the areas of language, cognition, behavioral, as well as academic, education in GE science and social studies classes could not have been, and would not be achieved satisfactorily even with supplementary aids, support and services during either the seventh or the eighth

grade. Student would not have received a FAPE from either the seventh or eighth grade GE science or social studies classes.

31. District's witnesses all testified that Student could not, and would not have received meaningful access to the instructional contents of either the seventh or eighth grade GE science or social studies class, even with his current or new accommodations, supports, modifications and adjustments to the curriculum. Mr. Mirken, Ms. Flores and Ms. Saleta, among others, all testified that Student did not meaningfully engage with his peers in the two classes when he took the classes in sixth grade. All questioned whether Student received meaningful academic or nonacademic benefit from his participation in these two classes during his sixth grade year. According to the witnesses, Student essentially worked on his alterative curriculum with his one-to-one aide in the two classes during his sixth grade year. This evidence was not challenged by Student.

32. Thus overall, the evidence established that when Student participated in sixth grade GE science and social studies classes, he mostly worked alone with his IA. Student utilized different materials from the ones used by the classes. His instruction was not based on the classes' syllabuses, but based on his IEP goals. He was working mostly on his functional academic goals during the classes. Student relied on his IA for most of his instructions, was unable to engage with the class, unable to participate in most of the class activities, and unable to follow the teacher's instruction.

33. District's witnesses' testimonies were was not challenged or rebutted by Student. The witnesses, collective and individually, are found persuasive and their testimony is accepted as credible and determinative regarding the sole dispute in this case. The testimony of each witness corroborated that of the other witnesses, and supported District's position that its placement of Student in SDC science and social studies classes during his seventh and eighth grade years provided him, or will provide him with a FAPE in the LRE. Based on the testimonies, Student needed the SDC science

and social studies classes during his seventh and eighth grades in order to make progress on his goals and objectives. This is due to Student's cognitive delays, and challenges in the areas of academic, language and behavioral, among others.

STUDENT'S PLACEMENT AND SERVICES DURING THE 2012-2013 (SEVENTH GRADE)

34. The development of Student's seventh grade IEP started at an IEP team meeting held on May 21, 2012 and continued at a May 31, 2012 IEP team meeting. According to the IEP notes from both dates, the IEP team met to discuss Student's "transition" to Washington Manor from Bohannon for his seventh grade. No procedural issues have been raised regarding either IEP team meeting, and therefore are not addressed herein.

35. At the May 2012 IEP team meetings, the team discussed and determined Student's educational program for the 2012-2013 SY. District offered Student placement in its mild-to-moderate SDC program, with 57 percent of his day in special education and 43 percent of his day in GE. Student would participate in four SDC classes based on CAPA alternative functional education curriculum, and in three GE classes. The GE classes were PE and two elective classes. Student would continue to receive behavioral and instructional assistance from his one-to-one aide, and continued to have a BSP.

36. The May 31, 2012 IEP team meeting notes indicate that Parent expressed concerns regarding IEP offer comprising of a mix of 57 percent instructional time in the SDC special education program and 43 percent instructional time in GE. Nonetheless, Parent signed the IEP on May 31, 2012, indicating that she was consenting to it. Parent selected and Student participated in World Dance and Art as his two electives. In this hearing, Parent has challenged Student's placement in the SDC science and social studies classes as not being LRE.

STUDENT'S PLACEMENT AND SERVICES FOR THE 2013-2014 (EIGHTH GRADE)

37. Student's annual/triennial IEP took place on December 6, 2012. The IEP was later amended on May 29, 2013 when Parent provided their partial consent to the IEP offer for the 2013-2014 SY. The IEP provides that Student would continue to be placed in the mild-to-moderate SDC program for the 2013-2014 SY. He would continue to use the CAPA functional academic curriculum for his core academic classes, ELA, math, and science as Student continued to demonstrate academic, cognitive, and adaptive behavioral deficits that made placement in GE curriculum for these classes, as well as history/social science inappropriate.

38. Several goals are included in the IEP for the 2013-2014 SY. The goals are in the areas of word processing, time-telling, reading vocabulary, written expression, math calculation, vocabulary development, money skills (counting and grouping), reading comprehension, computer skills, appropriate verbal expression skill, expressive language, receptive language, and social pragmatic language, among others.

39. The IEP provides that Student would receive needed accommodations, modifications, supports and supplementary aids and services. Among others, Student would use assignment notebook planner, and District would implement home-school communication system to provide feedback to Parents. Further, Student would have reduced/shortened assessments, use of visual place holders, and books on tape. He would have use of "manipulatives" and a calculator for math and science and access to computer on campus with individualized software. Student would receive modified assignments, seating preference, breaks between assignments, and cues, prompts, and reminders. Student would continue to receive behavioral and instructional assistance from his one-to-one aide. Sensory and other instructional/grading strategies would be implemented and Student would be supervised during unstructured time.

40. The IEP includes a BSP. The BSP targets Student's off-task behavior, elopement (leaving the classroom without notice/permission), and "icky" behaviors described as "picking his nose, coughing and sneezing without covering his mouth."

41. Finally, pursuant to the IEP, Student would receive specialized academic instruction, one-to-one assistance throughout the school day, behavioral intervention services, AT, and SL services. Similar to his seventh grade placement, Student would spend 56 percent of his school day in the special education environment and 44 percent of his day in GE during the eighth grade. Student's SDC classes would be math, ELA, social studies, and science. His GE classes would be PE and two electives selected by Parent. At the time of the hearing, Parent had not identified Student's electives for the eighth grade. Student's graduation goal is to receive a certificate of completion rather than a diploma.

42. Parent initially signed her partial consent to the IEP offer on January 24, 2013, and in the May 29, 2013 addendum Parent consented to the implementation of the IEP except that she disagreed with the GE offer in the IEP. Specifically, Parent disagreed with Student's placement in the SDC science and social studies classes rather than GE science and social studies classes.

SDC SCIENCE AND SOCIAL STUDIES CLASSES DURING STUDENT'S SEVENTH AND EIGHTH GRADES

43. Student's SDC science curriculum in the seventh grade was based on his CAPA and functional academic curriculum. The class was taught by Mr. Tee. In the SDC science class, Student learns about basic things such as the seasons, the weather and how to dress appropriately for it, floatation (what floats), size, position, and quantity, in a class of about 10 students. The class is highly structured and Student receives behavioral and academic assistance from the teacher and his IA.

44. Because of Student's language and cognitive delays, as well as Student's significant academic deficits, Mr. Tee and other witnesses believe that Student requires the CAPA curriculum and functional academics. Student's CAPA curriculum focuses on community knowledge, but Mr. Tee believes that Student "still struggles" with the CAPA curriculum.

45. He described Student as being able to write simple sentences with help and prompting. Student is able to do basic addition and subtraction using visual model (like counting dots on a page). Without a visual model, Student is unable to count. Student can use a calculator to add or subtract. Student has difficulties with who, what and when questions. Student's academic functioning in math, English and writing is at the first grade level. Mr. Tee described Student as having the ability to read brief stories of between four to five sentences. He has a small vocabulary of sight words for his age, as he is learning community words, including words like "stop," "entrance," "restroom."

46. In his SDC math and science classes, Student was lower in functional academic skills than most of the students in his class, as most of the other Students' functional academic skills fall between second and third grades, in reading, math and science. For most of the 2012-2013 SY, Student was the only Student with a one-to-one IA in Mr. Tee's seventh grade SDC science class. Mr. Tee described Student as unwilling to initiate conversation, unresponsive to social cues and "has to be prompted to respond" in most conversation. Student does not like his routine disrupted. Behaviorally, Student is content most of the time in his SDC class, but gets agitated from time to time. At the beginning of the 2012-2013 SY, Student was running out of the classroom. Student has issues with transition as he usually gets agitated at the beginning of a new period. Student performs between first and second grade levels in reading, writing and math based on the California Standards.

47. According to Ms. Saleta, due to Student's verbal and nonverbal cognition (ability to use the information), and his auditory processing deficits, Student's ability to access instruction and information in the classroom is limited. Thus, Ms. Saleta believes that Student would struggle in any learning environment or classroom. She explained that the combined effects of Student's disability, the reported functional skills and cognitive delays, and significant academic deficits support District's decision to place Student in the functional academic curriculum in order to receive educational benefit.

48. According to Ms. Flores, Mr. Tee and Ms. Saleta, among others, Student needs functional academic skills, life and adaptive skills, social skills, vocational skills, emotional development and coping skills. According to Ms. Flores, Student's functional curriculum is both needed and appropriate "in order to prepare him for the demands and responsibilities of real life." Ms. Flores believes that Student does well when working within his "zone on comfort" with visual aids and supports, familiar people and curriculum based on his abilities. According to Ms. Saleta, Student has made, and is making progress in his CAPA functional academic curriculum. He is proficient in math (able to add and subtract, use the calculator and do some counting) and ELA (able to identify certain words, and so some reading with assistance). He is able to write his name and is learning to copy his address and phone number using a model or with assistance. Student's participation in the CAPA curriculum is based on his IEP goals and his PLOPs based on assessment data. Student is benefiting from his alternative curriculum, social skills training, and the small class size offered in the SDC program.

49. During the 2012-2013 SY, Student's IEP and addendums, provided that Student would be educated with his typically developing peers for 43 percent of his school day in the GE PE, World Dance and Art classes, and would have additional mainstreaming opportunities during lunches and recesses. District's offer for the 2013-2014 SY provided that Student would be educated with his typically developing peers

for 44 percent of each school day in GE PE, two GE elective classes. Student would also have mainstreaming opportunities during lunches and recesses. The IEP's offered Student a one-to-one IA while participating in all classes for academic help and social skills facilitations with his peers in the SDC program, as well as in the GE classes. Ms. Saleta testified that Student's social skills and mainstreaming needs are better met in the three GE non-academic classes that Student was placed in. Student's GE electives (PE, World Dance and Art during the seventh grade) were built around peer interactions and participation rather than the teachers. In those classes, as well as during lunches and recesses, there were more opportunities for peers and social interactions, and Student was able to practice his social skills taught in his CAPA and SDC programs. During his seventh grade, Student's GE World Dance, Art and PE classes provided him with real and effective opportunities to interact with peers, participate in group activities and engage in his preferred task (drawing). According to the witnesses, social interactions in these classes were easier to facilitate as the classes were designed around students' participatory activities rather than teachers' instructions.

50. Based on the testimonies of District's witnesses, including Ms. Flores and Mr. Tee, Student received meaningful academic and nonacademic benefits in his SDC program during his seventh grade. Most of the instructional contents in the SDC program were built around Student's functional level, individual needs and IEP goals. In the SDC classes, Student's stress level was low, and his avoidance/refusal behaviors were abated. Student had meaningful access to his functional education curriculum and was able to feel successful. According to Mr. Tee, Student was able to work and make progress on his functional academic goals in his SDC class. In the seventh grade SDC social studies class, Student learned relevant functional skills such as using a calendar and time concepts such as today, yesterday and tomorrow. He learned about maps, direction, location and identifying community signs and words. Student learned about

hygiene, how to bathe and other daily living skills. He learned how to find pricing information in a catalogue, and how to use phone books. Student learned these skills through the use of visual cues and repetition due to his difficulties with auditory comprehension.

51. Thus, while Student asserts that Student's placements in the seventh and eighth grades SDC science and social studies classes are not FAPE in the LRE, the evidence does not support the contention. To the contrary, the evidence established that Student needed the SDC science and social studies classes during his seventh and eighth grades in order to make progress on his goals and objectives. Student demonstrates academic deficits, cognitive delays, and behavioral needs that require substantial adjustment and modification to the GE curriculum. The evidence showed that due to the nature and severity of the Student's disabilities, and his particular deficits in the areas of language, cognition, behavioral, as well as academic, education in GE science and social studies classes could not have been, and would not be achieved satisfactorily even with supplementary aids, support and services during either the seventh or the eighth grade. The evidence showed that Student could not and would not have made progress or received any meaningful educational benefit from his placement in either the seventh or eighth grade GE science or social studies class.

52. The evidence established that District's offer of SDC science and social studies classes during Student's seventh and eighth grades is appropriate. His placement in the seventh grade SDC science and social studies classes provided Student with a FAPE in the LRE. Placing him in the SDC science and social studies classes for his eighth grade would equally provide him with a FAPE in the LRE based on the evidence offered in this hearing.

GE SCIENCE CLASSES IN THE SEVENTH AND EIGHTH GRADES

53. District's seventh and eighth grade GE science classes are based on the California State Standards. The contents of the seventh and eighth grade science classes are quite different from that of the sixth grade. According to the syllabus for the seventh grade GE science class, the course contents include introductory physics, density, astronomy, chemistry, and lab practices and procedures. The class would have been too advanced for Student giving his academic deficits, functional performance and functional academic goals. While the seventh and eighth grades GE science class curriculum and academic contents are similar, the eighth grade science class is more advanced and more academically challenging than those of the seventh grade.

54. The eighth grade GE science class curriculum covers subjects such as physics and chemistry, and various advanced topics such as motion. Students need to know, or would learn in this class, measurement and conversion, ratios, proportions, advanced math and algebra. The class requires the ability to engage in abstract thinking and to come to conclusions, the ability to make inferences and ability to connect various pieces of information in a fast-paced environment. The class makes extensive use of textbooks, and testing is administered regularly. Based on the testimonies of each of District's witnesses, the instructional materials taught in the GE science class could not be meaningfully modified to the level required by Student. Student would not receive and would not have received any meaningful educational benefit from either of the seventh or eighth grade science class, even with modifications and accommodations and the support of Student's IA.

55. In addition, Student could not and would not have received any meaningful nonacademic benefits from his participation in either class during either his seventh or the eighth grade. First, the evidence established that limited opportunities exist in the class for peers' interaction or other mainstreaming activities due to the pace

of instruction and the academic demands of the class. Further, because of Student's reduced cognitive ability, language issues, as well as behavioral issues, his ability to meaningfully participate in the classes academically and non-academically would have been severely impeded. The evidence showed that he has been on occasions, and could be disruptive in the classes due to his behavioral issues.

GE SOCIAL STUDIES CLASSES IN THE SEVENTH AND EIGHTH GRADES

56. District's eighth grade GE social studies class curriculum covers United States History and United States growth and conflict from 1776 to 1914. The syllabus for the class listed the topics for the class as including, The First Americans, European Exploration and Colonization, the American Revolution, Declaration of Independence, the Early Republics, the Constitution and the Bill of Rights, as well as other historical movements and policies. Students in the class are required to use individual planners to plan their studies, assignments, reading and homework. A textbook is assigned to each student and independent study is required. During the year, a research paper is required. The focus of both classes is, partly, to prepare students for the yearly California Standard Tests.

57. According to the witnesses, the eighth grade GE social studies class is similar to that of the seventh grade, and Student would have been expected to have similar or the same struggles in the classes during both the 2012-2013 and the 2013-2014 SY's. The contents of seventh and eighth grade social studies classes are also different from that of Student's sixth grade social studies class. The two classes are run in a fast-paced class environment, and are too advanced for Student. Due to his disability and performance level, Student would not be able to access the instructions in the classes and would not receive educational benefit. Further, the testimony of District's witnesses established that the curriculum of both classes could not be modified to meet Student's unique needs.

58. Further, all of the District's witnesses testified that, as in the GE science class, meaningful opportunity for social interaction in the GE social science classes is minimal, if it exists at all, due to the pace of the class, the scope of the contents covered in the class and the impact of Student's disability. Student could not and would not have received any meaningful nonacademic benefits from his participation in the classes during his seventh or the eighth grade. Because of Student's reduced cognitive ability, language issues, as well as behavioral issues, his ability to meaningful participate in the classes academically and non-academically would have been impeded. Based on the evidence he could also be disruptive in the classes due to his behavioral issues. The evidence established that Student would not receive any meaningful academic or nonacademic benefit from either class. This evidence was not challenged or rebutted by Student.

59. The evidence failed to establish that Student requires placement in GE science and social studies classes in order to receive a FAPE in the LRE. According to Mr. Diolazo, Ms. Flores, Mr. Mirken, Ms. Saleta and Mr. Tee, Student requires the CAPA curriculum due to his disability and various delays and deficits. Based on the syllabus for each class and the contents of the curriculum, Student would not have meaningful access to the instructional materials in either of the seventh or eighth grade GE science or social studies classes. He would not have, and could not receive any meaningful educational benefit, academic or otherwise from either of the classes. The classes were too advanced and were too rigorous for Student and his abilities.

60. The witnesses testified corroboratively and persuasively that they do not believe any meaningful modifications of the curriculum are possible to the level required by Student due to his academic deficits, cognitive and language delays, as well as his behavioral issues. They do not see a way in which the seventh or eighth grade GE social studies or science classes' curriculum could be modified to the level needed by Student,

and still make the instructional materials meaningful for Student. All the witnesses concluded that, due to the amount of language, pace of the instruction, the topic and concepts being taught, the abstract nature of the topics, and Student's cognitive, language, and academic delays, the seventh and eighth grade GE social studies and science classes would not provide Student with meaningful access to instruction, and educational benefit.

61. All of District's witnesses are familiar with Student and his unique needs. Most, including Mr. Diolazo, had observed Student in multiple settings. Mr. Diolazo, observed Student about six times in various settings since Student transferred into District during the 2009-2010 SY and has attended several of Student's IEP's team meetings, including those held on May 21, 2012 and May 31, 2012. Based on his knowledge of Student, Mr. Diolazo described Student as moderately-to-severely impacted by autism, and as functioning academically at between first and second grades levels. Student relies on his IA throughout his school day, requiring constant redirections and promptings to stay on tasks.

62. The testimony of Mr. Diolazo, Ms. Flores and other District's witnesses established that Student would not have received any meaningful educational benefit from seventh grade GE science or social studies classes in the seventh grade. He would not receive any benefit if placed in these classes for his eighth grade year. Ms. Saleta testified that Student would be overwhelmed and not be able to access the instruction in either the seventh or eighth grade GE science or social studies class. Student would have been disruptive in the seventh grade GE science or social studies class due his behavioral issues. He would have shouted and tried to elope when overwhelmed. She does not believe that either the seventh or eighth grade GE science or social studies class could be successfully modified in order to provide meaningful access and educational benefit to Student.

63. Ms. Flores has observed Student in both GE and special education instructional settings. She observed Student in both the sixth grade GE social studies and science classes. Based on her observation, she reported that Student was often distressed with noise and ambient activities, movement of people around him, activities/tasks beyond his ability, change of routine or personnel. He would try to escape in such environments. If told to do tasks beyond his abilities, Student would yell "no" and try to crawl under a desk or leave the room. Student's BSP supported Student in both his GE and his SDC special education program.

64. According to Ms. Flores, in the sixth grade GE social studies and science classes, Student was "doing his own thing." He was drawing while other students were working on the class curriculum. Student's materials were heavily modified, and were not meaningful or relevant to the class' material. Based on Ms. Flores' observation, a lot of activities and movement were going on in the classes and Student was distressed because of his issues with noise and ambiance. Student was trying to leave the rooms or crawl under desks. Student was calmer when left to do his drawing. He was not engaged in the classes, as he was often working with his IA one-to-one.

65. Ms. Flores' testimony was corroborated by Mr. Mirken's testimony, who also observed Student in the sixth grade GE science class over four sessions. He observed Student sitting in a small group of about three to four students, and was interacting with his IA who was helping him with directions and focusing, among others. Student was observed doing simple tasks like drawing or coloring. The tasks were unrelated, or minimally related to the science class curriculum. Despite Student's IA's assistance trying to help Student engage and follow the instructions in the sixth grade GE science class, Student was not engaged with the class, his peers or the teacher. According to Mr. Mirken, Student as "100 percent prompt dependent" in the science class, except when he was drawing. He was constantly directed by his IA. He observed

some disruptions when Student would yell or talk in a loud voice, and on occasions when Student would make a dash for the door, trying to escape. Neither Ms. Flores nor Mr. Mirken believes that Student received any academic or other nonacademic benefits from his participation in the sixth grade GE social studies or science class. According to Mr. Mirken, Student appeared confused in the sixth grade GE science class classes, was not listening to or comprehending the instructions. He was simply listening to his IA and working with the IA one-to-one. Student hardly spoke or interacted with his peers, and was not engaged or participating in the classes' activities. His presence was disruptive at times.

66. According to the testimony of Mr. Mirken, Student's speech goals are better implement in his SDC classroom, and in his individual SL therapy sessions, and that it would be difficult to implement any of Student's current goals in the seventh or eighth grade GE science or social studies classes because of the pace of the class, nature and structure of the instructions in the classes. The instructions in the seventh or eighth grade GE science or social studies classes are delivered at a five to seven grade level, which is above Student's academic level. Student does not have the language skills to successfully participate in the classes and does not have the ability to understand the abstract concepts being taught in the classes in seventh and eighth grades. Mr. Mirken believes that Student would have greater difficulty in the seventh and eighth grade social studies classes as the instruction is more abstract and not easy to break down with visual aids and pictures. Mr. Mirken believes that placing Student in either the seventh or eighth grade science or social studies classes would have taken too much time away from Student, which is needed by Student to work on his functional academic goals.

67. Further, none of the witnesses believes that meaningful opportunities exist in either the seventh or eighth grade social studies or science classes for social

interaction, social skills development or other mainstreaming benefits for Student. According to District's witnesses, Student's ability to benefit from the mainstreaming environment is limited due to his low levels of cognitive, social-communication and behavioral functioning. He would not be able to engage with his typical peers and social facilitations would have been difficult in the classes. According to Ms. Flores, the seventh and eighth grades GE social studies and science classes are not designed for socializing. Typically, the teachers have about 45 minutes of instructional time and lots of content to cover. Further, the witnesses agreed that, in these two classes, active socializing by any student could be seen as misbehavior, as the classes are designed around intensive instructions and dissemination of materials and information. The witnesses do not believe that Student would be able to take advantage of whatever minimal opportunity exists in the classes for social interaction or other mainstreaming activities, due to Student's disability and social skills deficits. Thus, all concluded that, Student would not receive any meaningful nonacademic benefits from the classes.

68. To the contrary, the evidence established that Student received FAPE in the LRE when Student took science and social studies in the SDC class. Student's behavior is controlled in the SDC environment and Student is not overwhelmed or anxious. Student made progress towards his goals and received educational benefit from his functional academic curriculum in the SDC, as well as his GE elective classes and PE. Student was adequately mainstreamed given his disability and needs, as his three GE classes in the seventh grade (PE, World dance and Art) with GE lunches and recesses provided Student with adequate mainstreaming opportunities. Student received educational benefit, and made academic, behavioral, and social/emotional gains in his SDC program during his seventh grade. These testimonies were not challenged or rebutted by Student, and District's witnesses are found persuasive.

69. Based on the foregoing, Student failed to meet his burden of proving that his placement in the SDC science or social studies classes, during the 2013-2013 and the 2013-2014 SY's, is not FAPE in the LRE, or that he requires SDC science or social studies classes during his seventh and eighth grade years in order to receive a FAPE in the LRE. The evidence showed that Student needed the SDC science and social studies classes during his seventh and eighth grades in order to make progress on his goals and objectives. He benefited and would continue to benefit both academically and non-academically from the District's SDC program and from his placement in the SDC science or social studies classes during his seventh and eighth grades. There was no evidence to suggest that his placement in GE science or social studies classes, during the 2013-2013 and the 2013-2014 SYs, is FAPE or that such placements would have provided any, or more than *de minimus* or trivial educational benefit. Thus, District's placement of Student in SDC science or social studies classes during the 2013-2013 and the 2013-2014 SYs is FAPE in the LRE for Student.

LEGAL CONCLUSIONS

APPLICABLE LAW

1. The Student has the burden of proof as to the issue designated in this Decision. (*Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528, 163 L.Ed.2d 387].)
2. A child with a disability has the right to a FAPE. (20 U.S.C. § 1412(a)(1)(A); Ed. Code, § 56000.) A FAPE is defined in pertinent part as special education and related services that are provided at public expense and under public supervision and direction, that meet the State's educational standards, and that conform to the student's IEP. (20 U.S.C. § 1401(9); Cal. Code Regs., tit. 5, § 3001, subd. (o).) "Special education" is defined in pertinent part as specially designed instruction and related services, at no cost to parents, to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); Ed.

Code, § 56031.) “Related services” or DIS means transportation and other developmental, corrective and supportive services as may be required to assist the child to benefit from special education. (20 U.S.C. § 1401(22); Ed. Code, § 56363, subd. (a).)

3. The public educational benefit must be more than *de minimus* or trivial. (*Doe v. Smith* (6th Cir. 1989) 879 F.2d 1340, 1341.) The Third Circuit has held that an IEP should confer a meaningful educational benefit. (*T.R. ex rel. N.R. v. Kingwood Twp. Bd. of Educ.* (3rd Cir. 2000) 205 F.3d 572, 577.) If a parent disagrees with the IEP and proposed placement, he or she may file a request or notice for a due process hearing. (20 U.S.C. § 1415(b)(7)(A).)

4. The Supreme Court’s decision in *Board of Education of the Hendrick Hudson School District v. Rowley* (1982) 458 U.S. 176 (*Rowley*), established a two-prong analysis to determine whether a FAPE was provided to a student. (*Id.* at p. 200 [*Rowley*].) First, the court must determine whether the school system has complied with the procedures set forth in the IDEA. The second prong of the *Rowley* test requires the court to assess whether the IEP was designed to meet the child’s unique needs, reasonably calculated to enable the child to receive some educational benefit, and comported with the child’s IEP. (*Capistrano Unified Sch. Dist. v. Wartenburg* (9th Cir. 1995) 59 F.4d 884, 893, citing *Rowley, supra*, 458 U.S. at pp. 188-189, 200-201.)

5. To determine whether the District offered Student a FAPE, the analysis must focus on the adequacy of the District’s proposed program. (*Gregory K. v. Longview Sch. Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) An IEP need not conform to a parent’s wishes in order to be sufficient or appropriate. (*Shaw v. Dist. of Columbia* (D.D.C. 2002) 238 F.Supp.2d 127, 139 [IDEA does not provide for an “education . . . designed according to the parent’s desires”], citing *Rowley, supra*, 458 U.S. at p. 207.) Nor does the IDEA require school districts to provide special education students with the best education available or to provide instruction or services that maximize a student’s

potential. (*Rowley, supra*, 458 U.S. at pp. 198-200.) Rather, the *Rowley* Court held that school districts must provide only a “basic floor of opportunity” that consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the student. (*Id.* at p. 200.) Hence, if the school district’s program met the substantive *Rowley* factors, then that district provided a FAPE, even if the student’s parents preferred another program and even if his parents’ preferred program would have resulted in greater educational benefit. (*Gregory K., supra*, 811 F.2d at p. 1314.)

6. An IEP is evaluated in light of information available at the time it was developed; it is not judged in hindsight. (*Adams by & Through Adams v. Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)⁸ An IEP is “a snapshot, not a retrospective.” (*Id.* at p. 1149, citing *Fuhrmann v. East Hanover Bd. of Education* (3rd Cir. 1993) 993 F.2d 1031, 1041.) It must be evaluated in terms of what was objectively reasonable when the IEP was developed. (*Id.*)

7. In addition, federal and state law requires school districts to provide a program in the LRE to each special education student. (See 34 C.F.R. §§ 300.114, et. seq.) A special education student must be educated with non-disabled peers “[t]o the maximum extent appropriate,” and may be removed from the regular education environment only when the nature or severity of the student’s disabilities is such that

⁸ Although *Adams* involved an Individual Family Service Plan and not an IEP, the Ninth Circuit Court of Appeals applied the analysis in *Adams* to other issues concerning an IEP (*Christopher S. v. Stanislaus County Office of Educ.* (9th Cir. 2004) 384 F.3d 1205, 1212), and District Courts within the Ninth Circuit have adopted its analysis of this issue for an IEP (*Pitchford v. Salem-Keizer Sch. Dist. No. 24J* (D. Or. 2001) 155 F.Supp.2d 1213, 1236).

education in regular classes with the use of supplementary aids and services "cannot be achieved satisfactorily." (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2)(i) & (ii); Ed. Code, § 56364.2.) A placement must foster maximum interaction between disabled students and their nondisabled peers "in a manner that is appropriate to the needs of both." (Ed. Code, § 56031.) The law demonstrates "a strong preference for 'mainstreaming' which rises to the level of a rebuttable presumption." (*Daniel R.R. v. State Bd. of Ed.* (9th Cir. 1989) 874 F.2d 1036, 1044-1045; see also 20 U.S.C. § 1412 (a)(5)(A); *Rowley, supra*, 458 U.S. at p. 181 n.4; *Poolaw v. Bishop* (9th Cir. 1995) 67 F.3d 830, 834.)

8. A student must be placed in the least restrictive environment. In *Sacramento City Unified School District v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1400-1402, the Ninth Circuit held that the determination of whether a particular placement is the "least restrictive environment" for a particular child involves an analysis of four factors, including (1) the educational benefit to the child of placement full-time in a regular class, (2) the non-academic benefits to the child of such placement, (3) the effect the disabled child will have on the teacher and children in the regular class, and (4) the costs of educating the child in a regular classroom with appropriate services, as compared to the cost of educating the child in the district's proposed setting. However, the Supreme Court has noted that IDEA's use of the word "appropriate" reflects congressional recognition "that some settings simply are not suitable environments for the participation of some handicapped children." (*Rowley, supra*, 458 U.S. at p. 197.)

ISSUE: DURING THE 2012-2013 AND THE 2013-2014 SY'S, DID/DOES STUDENT REQUIRE PLACEMENT IN A GE SCIENCE AND SOCIAL STUDIES CLASSES IN ORDER TO RECEIVE A FAPE IN THE LRE?

9. Student has the burden of proof in this case and Student failed to meet that burden. While the law requires that Student must be placed in the LRE as a

component of District's FAPE offer, the evidence failed to show that Student could or would have received meaningful academic or nonacademic benefits from the GE science and social studies classes during the 2012-2013 and the 2013-2014 SY's. To the contrary, the evidence established that the GE science and social studies classes weren't and would not have been appropriate for Student during either the 2012-2013 or the 2013-2014 SY. Neither of the classes was a FAPE placement for Student during the 2012-2013 SY, and neither would have been a FAPE placement for Student during the 2013-2014 SY. Student would have received no meaningful educational benefit from either of the classes during either SY. Further, during the 2012-2013 and the 2013-2014 SY's, the evidence established that Student would not and could not have received meaningful nonacademic benefits from his participation in either of the classes.

10. Due to the academic rigors and demands of the classes in the seventh and eighth grades, limited opportunities exist in the classroom for peers or social interactions, or other mainstreaming activities, and due to the impacts of Student's deficits and delays, Student would not have been able to take advantage of whatever minimal opportunities exist in the classroom for such interactions or activities. The evidence showed that Student's presence in either the GE science or social studies classes during the 2012-2013 or the 2013-2014 SY could and would be disruptive due to his behavioral issues. No evidence was offered by either party regarding the costs of educating Student in the GE science and social studies classes during the 2012-2013 and the 2013-2014 SY's, as such, this factor is not discussed further.

11. Thus, because the evidence showed that GE science and social studies classes are not appropriate placements for Student during the 2012-2013 and the 2013-2014 SY's, Student's participation in either of the classes during either SY would have been improper. Accordingly, the GE science or social studies classes are not LRE for Student during either the 2012-2013 or the 2013-2014 SY as he would not have

received a FAPE from such placement. To the contrary, the evidence showed that Student needed the GE science and social studies classes during the 2012-2013 and the 2013-2014 SY's in order to receive a FAPE or educational benefit.

12. Based on the totality of the evidence, Student failed to meet his burden on the issue pending resolution in the matter. District met the threshold legal requirements for the provision of a FAPE to Student through its IEP's offers during the 2012-2013 and the 2013-2014 SY's, and particularly as they relate to Student's placement in SDC science and social studies classes during both years. The classes are FAPE in the LRE for Student during both SY's. The evidence established that the IEP's offers for both years were designed to provide meaningful educational benefit to Student, based on his unique needs and functional academic goals and curriculum. Student received meaningful educational benefit from his placement in SDC science and social studies classes during his seventh grade, and the evidence support a conclusion that he would continue to received meaningful educational benefit from the SDC science and social studies classes during his eighth grade year.

13. Therefore, based on Factual Findings 53 through 69 and Legal Conclusions 1 through 12, Student did not, and does not require GE science or social studies class during either the 2012-2013 or the 2013-2014 SY, in order to receive a FAPE in the LRE. Student would not have received meaningful educational benefit from the classes during either of the 2012-2013 or the 2013-2014 SY, and such placement would have been inappropriate for Student.

14. Based on Factual Findings 3 through 15 and 34 through 52, and Legal Conclusions 1 through 12, District's placement of Student in the SDC science and social studies classes during the 2012-2013 and the 2013-2014 SY's provides Student with a FAPE in the LRE. Student needed the SDC science and social studies classes during his seventh and eighth grades in order to make progress on his goals and objectives.

During the 2012-2013 and the 2013-2014 SY's, Student needed the SDC science and social studies classes in order to receive a FAPE and educational benefit. During the 2012-2013 and the 2013-2014 SY's, placing Student in either seventh or eighth grade GE science or social studies would have been inappropriate as Student would not have received any meaningful education benefit.

ORDER

All of the reliefs sought by Student 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. District prevailed on the sole issue.

RIGHT TO APPEAL THIS DECISION

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

Dated: September 18, 2013

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings