

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT.

OAH Case No. 2014070488

DECISION

Parent filed a due process hearing request (complaint) on Student's behalf with the Office of Administrative Hearings, State of California, on July 3, 2014, naming Los Angeles Unified School District (District). OAH continued the matter for good cause on August 18, 2014.

Administrative Law Judge Laurie Gorsline heard this matter in Van Nuys, California, on November 17, 18, 19, and 20, and December 2, 2014.

Parent represented Student. Student attended the hearing on November 17, 18, 19 and December 2, 2014. Attorney Donald Erwin and Attorney Christine Wood represented District. Martin Myers, District Administrator/Specialist, attended the hearing on behalf of District on November 17, 19, 20 and December 2, 2014. Debra Martin, District Specialist, attended the hearing on behalf of the District on November 18, 2014. Spanish interpreters Victor Ramos and Sonia Hernandez translated the proceedings for Parent.

At the close of hearing on December 2, 2014, the ALJ granted a continuance to December 15, 2014, for the parties to file written closing arguments. Upon timely receipt

of the written closing arguments, the record was closed and the matter was submitted for decision.

ISSUES

1. Did District deny Student a free appropriate public education by conducting assessments between July 3, 2012, and July 3, 2014, which were inaccurate, incomplete and conducted by unqualified staff?
2. Did District deny Student a free appropriate public education at the IEP team meetings held between July 3, 2012, and July 3, 2014, by:
 - A. Failing to offer an appropriate placement in the least restrictive environment;
 - B. Failing to provide a tutor for academics;
 - C. Failing to provide a behavior aide;
 - D. Failing to provide appropriate social skills services and self-help training;
 - E. Failing to provide appropriate English language development services to assist Student in learning English as a second language.

SUMMARY OF DECISION

Student's claims regarding District's 2010 psycho-educational assessment were time-barred. Student did not establish at hearing that any exception to the two-year statute of limitations applied. Student failed to prove District denied him a FAPE by offering Student placement in a special day program at Edward R. Roybal Learning Center, and by failing to provide him with a designated one-to-one behavior aide. Student also failed to establish by a preponderance of the evidence that District denied him a FAPE by failing to provide him with additional academic tutoring, additional social skills services, self-help training, and additional English language development services. The preponderance of evidence established that Student made academic progress

without the additional supports and services requested by Parent, and that he earned sufficient credits to receive a diploma. All of Student's requests for relief are denied.

FACTUAL FINDINGS

1. Student is an 18-year-old young man who resided in the District with Parent at all relevant times. When Student became an adult all educational decision-making authority vested in him, but Student transferred his educational rights to Parent so she could participate in his educational decision-making, including the matters raised in the complaint.

2. At all relevant times prior to his graduation from high school in June 2014, Student was eligible for special education and related services as a child with autistic-like behaviors.

3. The primary language spoken in Student's home was Spanish, although Student was able to speak English with his siblings and peers. District designates a student as an English language learner when a student's second language is English or when the language spoken in the home is a language other than English. District designated Student as an English Language Learner. District uses three criteria in determining whether an English Language Learner can be reclassified. One of the criteria is passing the California English Language Development Test, which is given annually and scores students in the areas of speaking, listening, reading and writing. A score of intermediate is passing. In addition, District looks for basic proficiency on the most current California Standardized Tests results and a grade of C or better in English. Reclassification is very difficult and most students are never reclassified.

4. Student began attending District's Edward R. Roybal Learning Center, a general education campus, in the fall of 2010 when Student was in the ninth grade. He was placed in a special day program and he received speech and language and counseling services.

5. District conducted a Psycho-Educational Assessment and a Functional Behavior Assessment in December 2010 at Parent's request and prepared written reports. Parent was interviewed as part of the assessments. Student continued to meet eligibility for special education as a student with autistic-like behaviors. The assessment stated Student functioned within the average range of cognitive ability.

6. Student's annual IEP team meeting was held on December 1, 2011. Student met or made progress on all of his annual goals developed at Student's December 10, 2010 Triennial IEP team meeting. Based on Student's present levels of performance, five goals with two incremental benchmarks for each goal were developed in the areas of reading, writing, pragmatic language, math and counseling. District's offer of placement was a diploma-track general education curriculum in a special day program at Roybal for all of his core subjects, with physical education and two of his electives provided in a general education setting.

7. The special day program at Roybal was for special education students who needed more support than that provided in a general education classroom. The program consisted of special education teachers teaching the general education curriculum in smaller special day classes, with approximately 10 to 15 students and 2 adults, as compared to the regular general education classes which were much larger. The special day program was also referred to as a specific learning disability program and the students in the program were generally eligible for special education as children with a specific learning disability or autism. Like the general education program, students in the special day program usually had six class periods during a typical day, with a different teacher for each period.

8. District also offered 60 minutes per month of counseling and guidance to address his counseling goal, and 60 minutes per month, one to five times per month, of speech and language services to address his pragmatic language goal. Student was also

offered accommodations to be implemented in the classroom, including but not limited to, one-on-one assistance, additional time to complete tests and assignments, checks for comprehension, daily agendas, asking Student to paraphrase directions, graphic organizers, daily agendas, step-by-step instructions, mind maps, incremental projects, structured notes, and modeling.

9. Student took the California Standardized Tests in the spring of 2012 and scored Below Basic with a score of 298 in English Language Arts. In 2012, Student took the California English Language Development Test. He scored Early Intermediate in reading, writing and listening. He scored Early Advanced in speaking.

THE 2012-2013 SCHOOL YEAR

10. In October 2012, Student took but did not pass the California High School Exit Exam. Pupils have several opportunities to take the California High School Exit Exam, beginning in the 10th grade. Student received a score of 312 on the English portion and a 336 on the math portion; a passing score was 350 in each portion.

11. Carlos Gordillo was Student's special day class English and U.S. History teacher for the 2012-2013 school year. Mr. Gordillo has one of the highest student fail rates of all teachers at Roybal. About 80 percent to 85 percent of his special education students fail his classes. Mr. Gordillo has been a special day class teacher for 14 years, the last seven of which he worked at Roybal. He has a bachelor's degree in liberal studies, a California Educational Specialist Level Two credential, and a mild to moderate authorization for autism.

12. Mr. Gordillo's 2012-2013 special day English class was comprised of eight to 12 special education students and one adult aide. It was a general education curriculum class, utilizing the same literature used in the regular general education English class. Mr. Gordillo modeled his classes on honor's classes and he tried to provide a college-like experience. Students were required to type their work, print it out, and

turn it in on time. Homework was given to students in packets in the form of unit assignments, including grammatical exercises and comprehension assignments, with prewritten questions and graphic organizers, and students usually had three weeks to complete each unit. Late assignments could receive no higher than a grade of D.

13. Mr. Gordillo explained that there are several different techniques and strategies for teaching students with autism at the secondary setting, including visual support, and scaffolding or sequencing information through the cognitive levels of knowledge, e.g., comprehension, comparing and contrasting analysis, evaluation and synthesizing information. Without scaffolding steps, students with autism have difficulty engaging in higher level thinking. Mr. Gordillo utilized these techniques to teach Student. Like Student's other classmates, Mr. Gordillo provided Student accommodations to access the curriculum, including but not limited to, extended time, cooperative groupings, visual supports, accounting for Student's moods, and counseling. He created assignments to scaffold each particular skill and increased the difficulty level until Student could meet and master it, and graded students on their mastery of the particular skill, ranging from a partially met goal to exceedingly met goal.

14. When Student first entered Mr. Gordillo's class in the fall of 2012, the classroom level of difficulty and pace was new to him and it was difficult for him. He attempted the work, but would not type it or turn it in. However, once he got used to the pace and level of difficulty of the class, and with the implementation of visual supports, he began turning in his homework, completing his assignments, and his performance improved. Student completed written work including argumentative essays, research papers, and narrative essays. He read classic literature, including *The Crucible*, *The Great Gatsby*, *The Jungle*, and *The Grapes of Wrath*. He did oral presentations and grammatical exercises to build style, diction, and syntax. He was shy, withdrawn and feared being ridiculed, but participated in class upon request. Over time,

he began to volunteer, express his point of view and make presentations to the class, which became his strong point. Mr. Gordillo occasionally redirected Student when he was moody, but Student was not a behavior problem in class and addressed conflicts with his peers appropriately. He had a few friends in class and he demonstrated no problems with peers, other than the usual petty bickering typical of any classroom. In Mr. Gordillo's opinion, Student did not demonstrate the need for an aide for academic or behavior interventions during the 2012-2013 school year.

15. Valerie Angello was a special education resource specialist teacher at Roybal. She has a bachelor's degree in art history, a multiple subject credential and a special education credential. She began working as a special education teacher at Roybal in 2008. She holds the autism certification required by the state of California. She is familiar with the methods necessary to teach students with autism.

16. Student was in Ms. Angello's Tutor Senior High class in the 2012-2013 school year. Her class was composed of over 20 general and special education students in the ninth through 12th grades. She had the assistance of one adult aide in the classroom. The elective support class met for one period, 5 days per week and provided tutoring to students based on the students' individual needs and grade level. The class emphasized English language skills, e.g., reading and writing, and offered assistance with other academic classes, state testing, and preparation for achieving a diploma.

17. Ms. Angello worked with Student to assist him in passing the California High School Exit Exam and supported him in doing his work in his other classes, including his English and math skills. She also assisted him in improving his job skills, including but not limited to, supporting him in developing power points on jobs, preparing a resume and doing mock job interviews. Each day Ms. Angello worked with Student in determining what he needed to work on during the class period. Ms. Angello measured Student's performance by evaluating Student's ability to complete and

produce work and cooperation. He conducted himself appropriately during class and was in control of his emotions, seeking input from Ms. Angello when he felt the need to do so. She saw no physical or verbal confrontations involving Student. In Ms. Angello's opinion, Student did not demonstrate a need for a behavioral aide during the 2012-2013 school year.

18. During the 2012-2013 school year, Student attended an Advisory class (later referred to as a College and Career class). The class met twice a week for 40 minutes on Mondays and Fridays. Students focused on study skills, school skills, life skills, and worked on college applications, financial aid applications, and resumes.

19. Student received support in his English language development through his English class, his Tutor class, and speech and language services. The English class was required of all students in order to graduate and the skills taught in English, including reading, writing and speaking, all supported the English language learner. At hearing, Student credited Mr. Gordillo as being the key to "opening the door" to English for him.

20. At hearing, Student claimed that other students were sometimes rude to him or would stare at him and he occasionally had disagreements with other students. On one occasion, a classmate hit Student on the back of the head, but Student did not react by fighting with the other student because he did not want to get in trouble. Student's ability to cope with students who bothered him improved over time.

21. Student passed all of his classes at the end of the first semester of the 2012-2013 school year. He got an A in Physical Education, Advisory and Tutor Senior High; a B in American Image and Geometry; and a D in English and U.S. History classes.

22. Student's annual IEP meeting was held on January 30, 2013. Student met or made progress on his annual goals. Student met his pragmatic language goal, made substantial progress on the incremental benchmarks of his counseling goal, and met both objectives of his reading, math and writing goals. In reading, Student could

determine themes of a passage with accommodations, sequence events from a text and was able to describe a character's motives. He knew the elements of a story, enjoyed independent reading of graphic novels and was able to read a few pages in a textbook without accommodations. In writing, he could write a multiple paragraph essay with accommodations, write long complex sentences and understand verb-tense agreement. He had also improved with referencing text in his writing. In math, he had relative strength in single step equations, arithmetic and single variable equations, but was relatively weak in solving inequalities and linear equations. His pragmatic language skills continued to be delayed. In the area of social-emotional functioning, he was a very verbal participant in counseling. He was generally on task and completed his work in class, but still struggled in raising his hand, initiating conversation, and expressing himself with peers.

23. Based on Student's present levels of performance, the IEP team developed six new annual goals with two incremental benchmarks for each goal in the areas of reading, writing, math, English language development, pragmatics, and social-emotional functioning.

24. The IEP team offered Student continued placement at Roybal in the special day program utilizing a diploma-track general education curriculum, and physical education and his electives provided in a general education setting. District also offered 60 minutes per month of counseling and guidance, and 60 minutes two times per month of speech and language services. The IEP team included classroom accommodations similar to those offered at his December 2011 IEP. The IEP team also determined Student did not need formal assessments in preparation for Student's triennial IEP because eligibility was not at issue and Student's placement was not being changed. On February 25, 2013, Mother signed the IEP, but disagreed with District's

2010 psycho-educational assessment and claimed Student needed a one-on-one adult assistant during the entire school day.

25. Brian Keaney was Student's case manager and his teacher in the ninth, 10th and 12th grades. He wrote and attended all of Student's high school IEPs. He has a bachelor's degree in social science and a master's degree in education with an emphasis in urban teaching, and holds a mild/moderate special education multi-subject teaching credential and an autism authorization. He has been teaching since 2006 and has worked at Roybal as a teacher for seven years. Based upon his experience in general and with Student, in his opinion the special day program at Roybal was the best fit for Student based on his needs. It offered a smaller setting in which Student could feel safer socially and emotionally, but it also offered Student a good balance to help him grow academically while giving him some academic supports. In Mr. Keaney's opinion, students with autism benefit academically and socially from the type of classroom accommodations offered to Student. Mr. Keaney believed Parent's request for a one-on-one aide for Student was not appropriate because an aide would inhibit his ability to be as independent as possible and because he saw nothing in Student's academic performance or behaviorally that required a one-to-one aide being next to him during his entire school day. While Student obtained some one-on-one assistance in academics in his special day classes, he did not need a designated one-on-one assistant. In Mr. Keaney's opinion, a full-time aide would have hindered Student's social development because peers are less likely to interact naturally with students who have a designated one-to-one assistant. At hearing, Student also claimed he got more of the support he needed in his special education classes than in his regular education classes.

26. Student took the California Standardized Tests in the spring of 2013 and scored at the Basic proficiency level in English-Language Arts.

27. In April 2013, Student became upset with another student. He sought assistance from an adult at the school to give him advice and help him deal with his feelings.

28. Student passed all of his classes at the end of the second semester of the 2012-2013 school year and his grades improved. He got an A in Advisory and Tutor Senior High. He got a B in American Image, Geometry, Geometry Tutor Lab, and U.S. History. He received a C in English from Mr. Gordillo. Mr. Gordillo attributed Student's improvement in his grades in U.S. History and English to, among other things, Student's acclimation to the level of difficulty, pacing and the types of assignments required, turning in his work, doing more presentations, and the fact that Student was more quickly picking up and improving his skills and handing in more work.

THE 2013-2014 SCHOOL YEAR

29. In October 2013, Student took the California High School Exit Exam. Student passed the math portion of the exam with a score of 359. He received a score of 344 on the English portion. Student took the exit exam again in November 2013. He received a non-passing score of 346 on both the math and English portions of the exam.

30. In the fall of 2013, Student also took the California English Language Development Test. He got a passing score of intermediate in both reading and speaking.

31. Mr. Keaney was Student's World History and Geography, and Economics teacher during the fall semester of the 2013-2014 school year. Mr. Keaney measured the progress of his students by their work product and performance on quizzes and tests. Mr. Keaney observed that Student had made tremendous progress since the 10th grade. This progress was more evident to Mr. Keaney in the 2013-2014 school year because, even though he was Student's case manager, Student had not been in one of his classes since the 10th grade when he interacted with him on a daily basis. Mr. Keaney observed

that Student had improved in following directions and could talk about interests with other peers in the class. He was more comfortable speaking in class and interacting with peers, adding to discussion and asking good questions. Student had no behavior issues in Mr. Keaney's class.

32. Michelle Peraza was Student's Spanish teacher during the 2013-2014 school year. Ms. Peraza has been a teacher with District for the last 8 years. She has Bachelor of Arts degrees in Liberal Studies and English Literature. She also holds a double credential with a specialty in foreign language and a bilingual credential which enables her to teach English and Spanish. Spanish class was a general education class with approximately 36 students, and one of Student's electives. The class was primarily taught in English. Ms. Peraza implemented the accommodations in Student's IEP. Student's grade was determined by combining all of the credits he earned, including his scores on the tests and quizzes, accurate completion of his classwork and homework, his participation in class, and informal assessments done through observations by the teacher. Student was quiet and took a little more time to express himself, but demonstrated no behavioral issues and appeared motivated to do well in school. He was on task, participated in class, including raising his hand and answering questions, followed directions, was respectful, and had no difficulty working cooperatively with his classmates. In Ms. Peraza's opinion, Student did not demonstrate the need for an academic tutor or behavior aide for class work.

33. Student was in Mr. Gordillo's English class during 2013-2014 school year. The class consisted of 13 students and one classroom aide. Mr. Gordillo measured Student's progress in the same way he did in the 11th grade, and used 12th grade curriculum material for instruction, including Shakespeare and feminist literature. At the beginning of the school year, Student did not timely submit his completed assignments, and could receive no higher than a D on those assignments because of Mr. Gordillo's

late policy. Student fully participated in class. In Mr. Gordillo's opinion, Student did not need a behavior aide and exhibited no behavioral problems. Student used conflict resolution skills in class when he was bothered by something.

34. Student took Ms. Angello's elective Tutor Senior High/Developing English Learner Senior High class during the 2013-2014 school year. The class consisted of 12 general and special education students. The class met for one period, five times per week. Ms. Angelo worked with Student to help him pass his other classes and obtain his diploma. She also tutored Student on English and collaborated with Student's English teacher, Mr. Gordillo. Although he preferred working by himself, he conducted himself appropriately in class and with his classmates, seeking input from Ms. Angello when he felt the need to do so. She nominated Student for the California Youth Leadership Forum, which allowed select students to visit Sacramento and learn about state government.

35. Theresa Edwards was a District school psychologist and during the 2013-2014 school year, she provided counseling services to Student. She has a bachelor's degree in psychology, a master's degree in counseling, a doctorate in educational psychology and is licensed by the state of California. She began working for the District in 1988 and was a special day class teacher for almost two years. She has been working as a school psychologist since 1999. Her duties included assessing students, providing counseling and attending IEPs. She reviewed Student's IEP, his assessments, and his school records. She also spoke to Student's teachers periodically and observed him in class.

36. In providing counseling to Student, Ms. Edwards was available to Student at any time if he needed her, and she worked on Student's social-emotional goals. In Student's counseling sessions, she addressed the concerns related to Student's ability to interact with his peers in a socially appropriate way. Student was open to her

recommendations and she observed that Student's social-emotional functioning improved. He was independent in self-care and able to participate in his classes. He was not a danger to himself or others. In her opinion, Student did not require a one-to-one assistant to interact with others, and a full-time aide would have inhibited Student's progress. She credibly explained that social skills are developmental and that part of that development is accomplished through time and making mistakes.

37. At hearing, Student explained how his ability to cope with other students' behaviors toward him improved in the 12th grade and he was in control of his emotions.

38. Student passed all of his classes in the fall semester of the 2013-2014 school year. Student received an A in Tutor Senior High and College and Career, a B in World History and Geography, Economics and Spanish and Ds in English and in Long Term Language Learner, which was an additional English language support class provided for all English Language Learners.

39. District held Student's Triennial IEP team meeting on February 6, 2014. Student made progress on all of his annual goals. He met his math, reading, and social-emotional goals, and met both incremental benchmarks in pragmatics, English language development and writing. In the area of writing, Student made progress from the last IEP. With the aid of graphic organizers, he could produce multiple paragraph essays with a thesis statement. He was able to write complex sentences and was able to express his ideas clearly when writing about a familiar topic that he was interested in. In math, he met the requirements for high school graduation, including passing the exit exam. He improved his pragmatic language skills by following conversation rules, slowing his rate of speech, and using more precise articulation. In the area of social-emotional functioning, he generally complied with class/school standards, took responsibility for his behavior and was independent in self-care.

40. Based on Student's present levels of performance, the February 6, 2014 IEP team developed five goals with two incremental benchmarks set for June 2014 and December 2014 in the areas of reading, writing, language-pragmatics, English language development and social-emotional functioning. It also determined that Student's autism impeded his ability to reach grade level accuracy and efficiency in reading and writing in a large group setting. The IEP team concluded that Student's supports, services and accommodations would be more effectively available to Student on a general education school site in a special day program. None of Student's academic skills were such that he needed to be placed on an alternative curriculum in a more restrictive setting, and the IEP team believed Student was capable of obtaining a diploma. The District offered continued placement at Roybal in a special day class with a general education curriculum on a diploma-track with his electives and foreign language in a general education setting. District also offered 30 minutes per month of counseling and guidance, and 60 minutes per month of speech and language services. The IEP included classroom accommodations. Parent disagreed with the IEP because she did not believe Student's skills were at a 12th grade level and she felt Student should remain in high school until he had skills sufficient to meet college standards.

41. Ms. Edwards attended the February 6, 2014 IEP team meeting. She provided input into the document for Student's present levels of performance and his social-emotional goal. In her opinion, based on what she learned from Student's teachers and her own counseling sessions with Student, the 30 minutes of counseling once per month offered to Student was sufficient to meet his social-emotional needs. Student's social-emotional functioning had improved; he was successfully participating in class and able to access his class curriculum. After the February 6, 2014 IEP team meeting and through the end of the school year, Ms. Edwards continued to provide

counseling services to Student. She observed that Student made progress achieving his social-emotional goal.

42. District held an Exit IEP team meeting on May 9, 2014 because Student was scheduled to graduate on June 5, 2014, and would no longer be eligible for special education.¹ As a special education pupil, Student was not required by law to pass the California High School Exit Exam, the prerequisite for general education students to receive a general education diploma. Parent disagreed with the Exit IEP because she did not believe Student was academically functioning at the level of a 12th grader and she did not believe he was college-ready. At hearing, Parent expressed her belief that District merely passed Student from grade-to-grade without regard to his performance levels.

43. Student passed all of his classes at the end of the second semester of the 2013-2014 school year, including receiving a B in English and in Long Term Language Learner. Student's performance in English the second semester of his senior year improved after Student became interested in attending college to study art. Mr. Gordillo gave the literature award to Student as most improved.

44. Student met all requirements to graduate and receive a regular diploma. He had 277 credits, obtaining the necessary 230 credits required to graduate. He also completed his computer literacy requirement and the service-learning requirement. Student graduated from District with a high school diploma on June 5, 2014.

¹ When a child's eligibility is scheduled to end because of graduation with a regular diploma, IDEA requires that the child be provided with a "summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals." (20 U.S.C. § 1414(c)(5)(B)(ii).) This is sometimes referred to as an "exit IEP."

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA²

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

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, which meet state educational standards, and conform to the child's individualized education program (IEP). (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a) [In California, related services are also called designated instruction and services].) In general, an IEP is a written statement for each child with a disability that is

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

³ All references to the Code of Federal Regulations are to the 2006 version.

developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] ("*Rowley*"), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to "maximize the potential" of each special needs child "commensurate with the opportunity provided" to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to "confer some educational benefit" upon the child. (*Id.* at pp. 200, 203-204.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.]) Although sometimes described in Ninth Circuit cases as "educational benefit," "some educational benefit" or "meaningful educational benefit," all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 950, fn. 10.)

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

ISSUE 1: THE FAILURE TO PROPERLY CONDUCT DISTRICT'S PSYCHO-EDUCATIONAL ASSESSMENT

5. Student alleged District's December 2010 psycho-educational assessment of Student was inaccurate, incomplete and conducted by unqualified staff. Specifically, at hearing Student contended the assessment was improper because it was not performed by a neurologist with a doctorate degree and more than 4 years of experience working with students with autism and the assessment report was too short. District contended Student's claim was untimely because it was made more than two years after District's psycho-educational assessment was completed. District also contended Student presented no evidence that the District school psychologist who performed the assessment was unqualified or that the assessment report was incomplete or inaccurate.

6. A request for a due process hearing "shall be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request." The two-year limitations period does not apply to

a parent if the parent was prevented from requesting the due process hearing due to either: 1) Specific misrepresentations by the local educational agency that it had solved the problem forming the basis of the due process hearing request; or 2) The withholding of information by the local educational agency from the parent that was required to be provided to the parent under special education law. (20 U.S.C. § 1415(f)(3)(C)(D); Ed. Code, § 56505, subd. (l).) Congress intended to obtain timely and appropriate education for special needs children. Congress did not intend to authorize the filing of claims under the IDEA many years after the alleged wrongdoing occurred. (*Vacaville Unified Sch. Dist.* (SEA Calif. 2004) 43 IDELR 210, p. 4, 105 LRP 2671, quoting *Alexopolous v. San Francisco Unified Sch. Dist.* (9th Cir. 1987) 817 F.2d 551, 555.) “[A] cause of action accrues, and the statute of limitations begins to run, when a plaintiff knows or has reason to know of the injury which is the basis of his action.” (*Miller v. San Mateo-Foster City Unified School Dist.* (N.D. Cal. 2004) 318 F.Supp.2d 851, 860 (quoting *Alexopolous, supra*, 817 F.2d at p. 554).)

7. District completed its psycho-educational assessment report in December 2010. Student did not file his due process complaint, which specifically referenced Mother’s disagreement with the psycho-educational assessment, until July 2014, almost four years after completion of the assessment. Student presented no evidence Parent was unaware that the assessment had been conducted and completed in December 2010. The evidence established that Parent requested the 2010 assessment and was interviewed as part of that assessment. Student did not allege in the complaint or present any evidence at hearing that District made any misrepresentation to Parent that it had resolved the problem giving rise to this claim; or that it withheld any information from Parent that it was required to provide which prevented her from timely filing her claim. In sum, the evidence showed that Parent knew or should have known of any flaws or disagreements with the psycho-educational assessment at the time it was conducted,

and Parent presented no evidence that any exception to the statute of limitations applied.

8. Student's claim regarding the December 2010 psycho-educational assessment is barred by the statute of limitations and therefore the merits of the claim will not be addressed in this Decision.

ISSUE 2A: PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT

9. Student asserted that District denied him a FAPE by failing to provide him with an appropriate placement; that District should have provided him with more direct support; and that he failed to make sufficient progress because he was not performing at grade level and therefore should not have been qualified to graduate. As a remedy, Student sought placement at a non-public school at District expense, and an adult assistant. At hearing, Student contended that the placement was not appropriate because Student's teachers did not give Student accommodations in class. District contends it provided Student with a FAPE in the least restrictive environment by providing its special day program which had smaller classes and a smaller ratio of adults-to-students than the regular general education classrooms on a general education campus, with some mainstreaming; that Student made academic progress and attained sufficient credits to graduate; and that Student's IEP accommodations were implemented in the classroom.

10. 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. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Ibid.*) For a school district's offer of special education services to a disabled pupil to constitute a FAPE under the IDEA, a school district's offer must be designed to meet the student's unique needs, comport

with the student's IEP, and be reasonably calculated to provide the student with some educational benefit in the least restrictive environment. (*Ibid.*) Whether a student was offered or denied a FAPE is determined by looking to what was reasonable at the time the IEP was developed, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrman v. East Hanover Bd. of Education* (3rd Cir. 1993) 993 F.2d 1031, 1041.)

11. School districts are required to provide each special education student with a program in the least restrictive environment. To provide the least restrictive environment, school districts must ensure, to the maximum extent appropriate: 1) that children with disabilities are educated with non-disabled peers; and 2) that special classes or separate schooling occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a).)

12. In determining the educational placement of a child with a disability, a school district must ensure that: 1) the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and takes into account the requirement that children be educated in the least restrictive environment; 2) placement is determined annually, is based on the child's IEP and is as close as possible to the child's home; 3) unless the IEP specifies otherwise, the child attends the school that he or she would if non-disabled; 4) in selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and 5) a child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. (34 C.F.R. § 300.116.)

13. To determine whether a special education student could be satisfactorily educated in a regular education environment, the Ninth Circuit has balanced the following factors: 1) "the educational benefits of placement full-time in a regular class"; 2) "the nonacademic benefits of such placement"; 3) "the effect [the student] had on the teacher and children in the regular class"; and 4) "the costs of mainstreaming [the student]." (*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 ("*Rachel H.*") [adopting factors identified in *Daniel R.R. v. State Board of Education* (5th Cir. 1989) 874 F.2d 1036, 1048-1050].)

14. If a school district determines that a child cannot be educated in a general education environment, then the least restrictive environment analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (*Daniel R.R., supra*, 874 F.2d at p. 1050.) The continuum of program options includes, but is not limited to: regular education; resource specialist programs; designated instruction and services; special classes; nonpublic, nonsectarian schools; state special schools; specially designed instruction in settings other than classrooms; itinerant instruction in settings other than classrooms; and instruction using telecommunication instruction or instruction in the home, in hospitals, or other institutions. (Ed. Code, § 56361.)

15. Notwithstanding any other provision of law, commencing with the 2009-2010 school year, an eligible pupil with a disability is not required to pass the California High School Exit Exam as a condition of graduation from high school. (Ed. Code, § 60852.3.)

16. As discussed below, based on the evidence at hearing, Student did not meet his burden of proving that offers of placement in Student's 2013 and 2014 IEP's were inappropriate or denied him a FAPE.

17. Under *Rachel H.*, *supra*, the analysis of whether an offer of placement is appropriate begins with evaluating whether or not a general education setting is appropriate for Student. Here, Parent did not contend Student should have been in regular general education classes full-time or a larger percentage of his day. Specifically, during the hearing, Parent denied Student should have been in a different environment. District similarly agreed that a full time general education setting was not appropriate for Student. The evidence established that placing Student full time in a general education setting was inappropriate because the educational benefits would have been very low due to Student's autistic-like behaviors and the type of support and accommodations Student required in the classroom in order for Student to learn. Accordingly, a detailed analysis of each of the *Rachel H.* factors is not necessary to determine that full time general education was not an appropriate placement.

18. Under *Daniel R.R.*, *supra*, Student must be placed in the least restrictive environment, which includes mainstreaming to the maximum extent possible. Here, the preponderance of the evidence established that District's placement offer of a special day program in the special day class at Roybal, with some mainstreaming opportunities for the 2012-2013 and 2013-2014 school years was designed to meet Student's unique needs and was reasonably calculated to provide Student with some educational benefit under *Rowley*, *supra* at pp. 200, 203-204, in the least restrictive environment.

19. Student failed to establish that the January 30, 2013 IEP offer of placement in the Roybal special day program was inappropriate. At the time of Student's January 2013 IEP meeting, Student was in the 11th grade and had already been at Roybal for the 9th and 10th grades. District's triennial assessment indicated that Student was within the average range of cognitive ability. The evidence established that Student had made progress on his annual IEP goals by either meeting or making progress on each of them. He also passed all of his classes at the end of the first semester of the 2012-2013 school

year, receiving grades of A and B in some of his classes. He socialized with his peers and learned to manage conflicts when they arose. The IEP team, consisting of some teachers who were familiar with Student's prior performance, determined that continuation in Roybal's special day program allowed Student to receive general education curriculum instruction by experienced special education teachers in smaller classes with two adults present. The program also allowed him to remain on a high-school diploma track because it utilized a general education curriculum while providing the accommodations necessary for him to access that curriculum.

20. Great weight was given to Mr. Keaney's testimony because he was very familiar with Student, was Student's case manager during all four years of high school, was his teacher for three of those four years, and attended all of Student's high school IEP team meetings. He persuasively explained that the special day program was the best fit for Student based on his needs and that Student's supports, services and accommodations would be more effectively delivered on a general education site in a special day program. The special day program at Roybal offered a smaller setting which made Student feel safer socially and emotionally, while offering Student a good balance to help him grow academically while giving him some academic supports, including extended time to complete assignments and other accommodations he needed to access the curriculum.

21. Similarly, Student presented no credible evidence that the IEP team had any information indicating that District's February 6, 2014 offer of continued placement in Roybal's special day class program was inappropriate at the time it was made. The evidence established that at the time of the February 6, 2014 IEP, Student had made progress on all of his annual goals. He met his math, reading, and social-emotional goals, and met both incremental benchmarks in pragmatics, English language development and writing. Furthermore, Student took the California Standardized Tests

and scored at the Basic proficiency level in English-Language Arts, an area he had previously failed. In addition, Student took and passed the math portion of the California High School Exit Exam and missed passing the English portion of the exam by only 4 points, an improvement of 34 points from his 2012 score. Student also passed the reading and speaking portion of the California English Language Development Test, whereas he had previously failed the reading portion. Student also passed all of his 2012-2013 spring semester classes and all of his 2013-2014 fall semester classes. These factors made it reasonably likely that Student would continue to achieve educational benefit in the Roybal special day program.

22. Student also did not meet his burden of establishing that because of an inappropriate placement he did not make sufficient progress to earn credits for graduation. The preponderance evidence established that Student met all of the requirements necessary to graduate and receive a high school diploma in June 2014. Student passed all of his classes at the end of the second semester of the 2013-2014 school year and obtained the required 230 credits he needed to graduate. He also completed his computer literacy requirement and the service learning requirement, additional prerequisites for graduation. As an eligible pupil with a disability, District waived the requirement of Student passing the California High School Exit Exam as a condition to graduating. Student's contention that District merely passed Student from grade-to-grade or that his grades were inflated was unsupported by any credible evidence. District witnesses persuasively explained that Student's grades were measured based on his class performance and other requirements and that Student made progress in his classes. For example, Mr. Gordillo, one of Student's most demanding teachers, credibly explained that although Student had some difficulty in his classes, he was able to meet the academic requirements necessary to pass those classes. In fact, by the end of his senior year, Student had earned a B in English. Student claimed Mr.

Gordillo “opened the door” to English for him, helping him to make progress in that class. Mr. Gordillo was so impressed with Student’s growth, that he gave him the literature award for most improvement. Likewise, Ms. Angello nominated Student to participate in the California Youth Leadership Forum.

23. Student failed to meet his burden of proof that District denied Student a FAPE in the least restrictive environment in its offers of placement during the 2012-2013 and 2013-2014 school years. The District’s offer of placement in Roybal’s special day program was designed to meet Student’s unique needs and provide him with access to his education. At all times, the placement was reasonably calculated to provide Student some educational benefit under *Rowley, supra* at pp. 200, 203-204, in the least restrictive environment. District’s offers of placement at Roybal therefore provided him a FAPE.

ISSUE 2B: ACADEMIC TUTOR

24. Student contends District denied him a FAPE by failing to provide him with a tutor for academics. District contends Student received tutoring sufficient for him to make academic progress as evidenced by his progress in the 11th and 12th grades, including his class grades and performance on the California High School Exit Exam.

25. Legal conclusions 10 and 19 through 22 are incorporated by reference.

26. Student failed to meet his burden of proof that District denied him a FAPE by failing to provide Student academic tutoring at the January 2013 and February 2014 IEPs. The evidence established that District provided Student with academic tutoring every school day in the two years prior to the filing of the complaint. Ms. Angello provided tutoring to Student for one period a day, five days a week the entirety of his 11th and 12th grades. The tutoring was provided in a special academic support class that was offered to Student as an elective. The class provided Student with extra time to complete assignments in his other classes with the assistance of a tutor. The evidence

established Ms. Angello collaborated with Student's teachers, and that on a daily basis Ms. Angello worked with Student in determining what work Student needed to focus on during this tutoring class. Among other things, Student received tutoring in passing the California High School Exit Exam and tutoring in his other classes, including Math, English and Spanish. In addition to the daily tutoring, Student also received additional support on his school and study skills in his Advisory class.

27. At the time of the January 30, 2013 IEP team meeting, Student was taking Ms. Angello's tutoring class and receiving tutoring for the exit exam and his other classes, and he was receiving the additional support of his Advisory class. He had already demonstrated measurable progress on his annual goals and passed all of his classes at the end of the first semester of the 2012-2013 school year.

28. At the time of the February 6, 2014 IEP team meeting, Student was taking Ms. Angello's tutoring class, receiving the additional support of his Advisory class and making academic progress. Student made progress on all of his annual goals, had scored at the Basic proficiency level on the California Standardized Tests in English-Language Arts, passed the reading and speaking portion of the California English Language Development Test, and had taken and passed the Math portion of the California High School Exit Exam and had made notable improvement in his score on the English portion of the exam. Student had also passed all of his 2012-2013 spring semester classes, including making substantial improvement in Mr. Gordillo's more rigorous English and U.S. History classes. Student had also passed all of his 2013-2014 fall semester classes.

29. At the time of the Exit IEP, Student was still taking Ms. Angello's tutoring class and was making academic progress. He was scheduled to graduate and receive a high school diploma on June 5, 2014. He was on track to pass all of his classes, and had

made significant progress in Mr. Gordillo's English class and in his Long Term Language Learner class, ultimately receiving a B in both classes.

30. Student failed to establish by the preponderance of evidence that District failed to provide academic tutoring or that additional academic tutoring was required in order to provide the Student with some educational benefit within the meaning of *Rowley, supra* at pp. 200, 203-204.

ISSUE 2C: BEHAVIOR AIDE

31. Student contends District denied him a FAPE by failing to offer him a one-to-one behavioral aide for the entire school day at the IEPs held during his 11th and 12th grades. District contends Student did not require a one-to-one aide and Student's socialization skills improved following implementation of the school-based counseling offered at the January 30, 2013 IEP.

32. Legal Conclusions 10, 19 through 22, and 26 through 29 are incorporated by reference.

33. In the case of a child whose behavior impedes his or her learning or that of others, the IEP team must consider, when appropriate, "the use of positive behavioral interventions and supports, and other strategies, to address that behavior." (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324; Ed. Code, § 56341.1, subd. (b)(1).) An IEP that does not appropriately address behavior that impedes a child's learning denies a student a FAPE. (*Neosho R-V School Dist. v. Clark* (8th Cir. 2003) 315 F.3d 1022, 1028-1030.)

34. Student failed to establish by a preponderance of the evidence that District denied him a FAPE by failing to provide him with a one-to-one behavioral aide during the 2012-2013 and 2013-2014 school years. At the time of Student's January 30, 2013 IEP, none of his teachers reported any notable behavioral issues in any of Student's classes and he was able to be redirected to be on task when he encountered behavioral challenges. Although he continued to display some autistic-like behaviors, Student

demonstrated improvement, including being able to express himself in classes. Student was receiving 60 minutes of counseling and had made substantial progress on his counseling goal. Mr. Gordillo, Ms. Angello, and Mr. Keaney, all credibly testified that Student did not require a one-to-one behavioral aide. All three teachers were not only candid in their testimony, but had spent a significant amount of time in class with Student, and all of them had training and experience in teaching children with autism. The evidence demonstrated that Student made behavioral progress and was in control of his emotions. Student offered no persuasive evidence that the behavior of his classmates or the lack of a behavioral aide resulted in the loss of an educational benefit or interfered with his education. Furthermore, as part of the special day program, Student was in classes with lower teacher-student ratios and additional adult support, and he received one-to-one assistance when needed as part of his IEP accommodations. The evidence established that a designated one-on-one behavior aide was not appropriate because it would have inhibited Student's ability to interact with his peers and foster his independence. In sum, Student failed to establish that any of Student's academic or behavioral challenges at the time of the January 30, 2013 IEP required District to offer him a full-time adult assistant or behavioral aide.

35. For similar reasons, Student failed to establish that he was denied a FAPE because District did not provide him with a full-time designated adult assistant or behavioral aide at the February 6, 2014 IEP team meeting. By the time of the IEP team meeting, Student had met his social-emotional goal. He had also improved in his ability to follow directions and in his interactions with peers. He was respectful and using his conflict resolution skills in class. Student admitted that in April 2013, when he got upset at a classmate, he sought out adult assistance to get advice and help him deal with his feelings. He was also successfully participating in class and able to access his class curriculum. Student was not a behavior problem in class. Furthermore, Mr. Gordillo, Mr.

Keaney, Ms. Peraza, and Ms. Angello were persuasive in their testimony that Student did not require a one-to-one aide for the 2013-2014 school year. Ms. Edwards, who had been working with Student on his social-emotional goal since August 2013 and attended the February 6, 2014 IEP team meeting, explained that Student's social-emotional functioning had improved. She persuasively explained that Student did not need a one-to-one aide to interact with others and that a designated one-to-one aide would have actually inhibited Student's progress.

36. Ms. Edwards continued to provide counseling services to Student through the end of the 2013-2014 school year and Student continued to make progress on achieving his social-emotional annual goal.

37. Student offered no persuasive evidence that Student's overall social-emotional functioning had decreased, or that he had behavior problems, during either the 2012-2013 or 2013-2014 school years, or that otherwise established he required a one-on-one behavior aide to receive a FAPE. District did not deny Student a FAPE by not offering a behavioral aide for those school years.

ISSUE 2D: SOCIAL SKILLS SERVICES AND SELF-HELP TRAINING

38. Student contends District denied him a FAPE by failing to provide him with additional social skills services and self-help training at the IEPs held during the 11th and 12th grades. Student contends that Student needed additional social skills services to teach him to behave and that he needed self-help training in the form of tutoring for his academics and help doing his homework. District contends Student did not need self-help training and that the social skills services provided by District were appropriate.

39. Legal conclusions 10, 19 through 22, 26 through 29, and 33 through 36 are incorporated by reference.

40. Social skills services are a related service that is "required to assist a child with a disability to benefit from special education..." (34 C.F.R. § 300.34(a).)

41. Student failed to establish by a preponderance of the evidence that District denied him a FAPE by failing to provide him with appropriate social skills and self-help training during his 11th and 12th grade school years.

42. For the 2012-2013 school year, Student failed to establish that he required social skills services beyond the 60 minutes per month of counseling offered by District at the January 2013 IEP. At the time of Student's January 30, 2013 IEP, Student was receiving 60 minutes per month of guidance and counseling services to address his social-emotional annual goal. Although he did not meet his annual social-emotional goal, he had made substantial progress toward meeting it. He was shy and reluctant to speak up in class. However, he began to volunteer in class and express his views. Eventually, making oral presentations became one of Student's strengths. Student had friends and conducted himself appropriately in class.

43. For the 2013-2014 school year, Student failed to establish that he required social skills services beyond the 30 minutes per month of counseling offered by District at the February 6, 2014 IEP. At the time of Student's February 6, 2014 IEP, Student had met his social-emotional annual goal. The 60 minutes per month of counseling he had been receiving from Ms. Edwards addressed the concerns related to Student's ability to interact with his peers in a socially appropriate way. Student was socially interacting with peers and was able to articulate his frustrations and concerns with peers who annoyed him. Student's teachers credibly testified Student had improved in following directions and could talk about interests with other peers in the class. He was more comfortable speaking in class and interacting with peers, contributing to the class discussion and asking good questions. Although still quiet, he was raising his hand and answering questions, and working cooperatively with his classmates. He was open to Ms. Edwards' recommendations, took responsibility for his behavior and was implementing the conflict resolution skills he had learned. Mr. Keaney was particularly convincing in his

testimony that Student had made tremendous progress in his classroom social skills between the 10th and 12th grades. Student's testimony further established that Student was able to control of his emotions in the 12th grade. Ms. Edwards, who had been working with Student on his social-emotional goal since August 2013 and attended the February 6, 2014 IEP team meeting, explained that Student's social-emotional functioning had improved such that she believed that Student's counseling services could be reduced to 30 minutes per month.

44. Student offered no persuasive evidence that Student's overall social-emotional functioning had decreased or that he had social-emotional problems which supported an offer of counseling services greater than the 30 minutes per month offered by the District. Ms. Edwards credibly explained that social skills are developmental and that part of that development is accomplished through time and practice, and that Student continued to make progress on achieving his social-emotional goals through the end of the school year.

45. Student also failed to establish that he was denied a FAPE because District did not provide him with training in self-help at the January 2013 or February 2014 IEP team meetings. Student presented no evidence that he needed training in self-help. District witnesses testified that Student was independent in self-care. Furthermore, during the hearing Student did not demonstrate he lacked self-help skills. To the extent that Student contends that self-help meant additional academic tutoring, as set forth above in section 2B, Student failed to establish by a preponderance of the evidence that he required additional academic tutoring in order to receive a FAPE.

46. In sum, Student failed to establish by a preponderance of the evidence that he required additional social skills services or self-help training to receive a FAPE during the time periods at issue.

ISSUE 2E: APPROPRIATE ENGLISH LANGUAGE DEVELOPMENT SERVICES

47. Student contends District denied him a FAPE by failing to provide him with additional English language development services during the 11th and 12th grades. Student contended the failure to reclassify him from his English Language Learner status is evidence that he did not benefit from his educational program and should have received additional services. District contends Student was provided with English language development services and that his failure to reclassify does not mean he was denied a FAPE.

48. Legal conclusions 10, 19 through 22, and 26 through 29 are incorporated by reference.

49. Student failed to establish by a preponderance of the evidence that District denied him a FAPE by failing to provide him with additional English language development services.

50. At the time of the January 30, 2013 IEP, Student received support in his English language development through his English and Tutor classes, and speech and language services. In the spring of 2012, he had already passed the speaking portion of the California English Language Development Test. Although District had not reclassified Student, the evidence established through District witnesses that he was making progress in his other English skills. For example, Student had met his annual goal in pragmatics and met both objectives of his reading and writing goals. In reading, Student could determine themes of a passage with accommodations. He could sequence events from a text and was able to describe a character's motives. He knew the elements of a story, enjoyed independent reading of graphic novels and was able to read a few pages in a textbook without accommodations. In writing, he could write a multiple paragraph essay with accommodations. He could write long complex sentences and understand verb-tense agreement. He had also improved with referencing text in his writing. His

English teacher credibly testified about Student's progress. Student did not meet his burden of persuasion that District denied him a FAPE by failing to offer additional English language support at the January 30, 2013 IEP.

51. By the time of the February 6, 2014 IEP team meeting, Student showed progress by passing the reading and speaking portion of the California English Language Development Test. Student also scored at the necessary Basic proficiency level in English-Language Arts on the California Standardized Tests, an area he had previously failed. Student demonstrated continued progress in his English language development, reading, writing and pragmatic language skills, having met his reading goal and both incremental benchmarks in pragmatics, English language development and writing. Furthermore, although Student had not passed the English portion of the California High School Exit Exam, he raised his score 34 points from his previous 2012 score and was only four points short of passing. He also received the required C in English during the spring 2013 semester and passed his Long Term English Language Learner class.

52. By the end of the 2013-2014 school year, Student had achieved a B in Mr. Gordillo's English class and B in his Long Term English Language Learner class, evidencing Student's further progress. In fact, Student received the literature award for most improved. Student failed to establish by a preponderance of the evidence that by not qualifying for reclassification, he did not make some progress under *Rowley, supra*, at pp. 200, 203-204, or that the lack of reclassification or additional English language development services denied him a FAPE.

53. Student did not meet his burden of persuasion on this issue. District did not deny Student a FAPE on this ground.

ORDER

All relief sought by Student is denied.

PREVAILING PARTY

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

RIGHT TO APPEAL

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

DATED: January 8, 2015

_____/s/

LAURIE GORSLINE

Administrative Law Judge

Office of Administrative Hearings