BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. RINCON VALLEY UNION SCHOOL DISTRICT AND REDWOOD CONSORTIUM FOR STUDENT SERVICES.	OAH Case No. 2015030342

DECISION

Student filed a due process hearing request (complaint) with the Office of Administrative Hearings, State of California, on March 4, 2015, naming the Rincon Valley Union School District and the Redwood Consortium for Student Services.

Administrative Law Judge Charles Marson heard this matter in Santa Rosa, California, on April 28, 29, and 30, 2015.

Advocate Myra Galt represented Student. Student's Parents attended throughout the hearing. Student did not attend.

Monica D. Batanero and Jennifer E. Nix, Attorneys at Law, represented both Rincon Valley and the Redwood Consortium. Cathy Myhers, Rincon Valley's Director of Special Education, attended the hearing on behalf of Rincon Valley and the Redwood Consortium.

A continuance was granted for the parties to file written closing arguments, and the record remained open until May 21, 2015. On that date Rincon Valley and the

Redwood Consortium moved to reopen the hearing for the submission of additional evidence, and that motion was granted on May 22, 2015. On that day the matter was continued to May 29, 2015, for a status conference, at which the matter was continued to July 6, 2015, for the submission of declarations and additional argument. Upon timely receipt of declarations and additional closing arguments, the record was closed and the matter was submitted for decision.

ISSUE[1]

Did Rincon Valley and/or the Redwood Consortium deny Student a free appropriate public education during the 2014-2015 school year by failing to offer Student placement in a special day class or other classroom and appropriate related services?

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[1] Throughout the proceeding there was some confusion about the precise issue to be resolved. The Order Following Prehearing Conference left open the exact phrasing of the issue until hearing. In granting the post-hearing motion of Rincon Valley and the Redwood Consortium to reopen the record for the taking of additional evidence, the ALJ refined the definition of the issue so that it included possible placement in a general education classroom. (See Order Continuing Hearing for Further Evidence, May 22, 2015; 20 U.S.C. § 1415(c)(2)(E)(II).) The addition here of the words "or other classroom" to the formulation of the issue in the Order Following Prehearing Conference reflects that refinement. The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

SUMMARY OF DECISION

This decision holds that Rincon Valley's decision that Student did not need a preschool classroom placement to obtain a FAPE did not comply with the procedural requirements of the Individuals with Disabilities Education Act. It holds that Rincon Valley failed to adequately consider and discuss with Parents at any individualized education program team meeting whether Student required placement in a general education preschool to provide him a FAPE in the least restrictive environment, and instead made that decision unilaterally. In doing so, Rincon Valley substantially impeded Parents' participatory rights and thus denied Student a FAPE. The decision awards reimbursement to Parents for expenditures for a unilateral private placement.

FACTUAL FINDINGS

JURISDICTION

1. Student is a four-year-old male who resided in the District at all relevant times, and was eligible for, and receiving, special education under the category of speech and language impairment.

2. Student was born in December 2010, having been exposed to alcohol and marijuana in utero. Child Protective Services removed him and his sister from the home of their biological parents in February 2013 because of extensive physical, emotional, sexual and psychological abuse. Student was diagnosed as suffering from post-traumatic stress disorder and reactive attachment disorder. The siblings were placed with Parents, who at first were their foster parents and are now in the process of adopting them. Parents now hold Student's educational rights. Various agencies provided Student physical therapy, occupational therapy, and behavioral and mental health interventions.

3. At a series of IEP team meetings, beginning in December 2013, Rincon

Valley[2] offered Student speech and language therapy in a group twice a week and individually once a week, with occupational therapy and psychological support in those sessions. Parents accepted those services. Rincon Valley declined Parents' requests to place Student in a classroom of some kind for any sustained part of the school day.

4. In January 2015, Parents unilaterally placed Student in the Kiwi Preschool, a general education preschool not certified by the State. Student now attends Kiwi where he receives extensive psychological and speech support. Student is expected to enter Rincon Valley's kindergarten in fall 2016.

STUDENT'S PROSPECTS IN GENERAL EDUCATION

5. Rincon Valley held an initial IEP team meeting for Student on December 6, 2013, a few days before his third birthday. The resulting IEP governed his program from December 11, 2013, to December 11, 2014, well into the 2014-2015 school year at issue here.

6. Parents attended the initial meeting as foster parents, along with a court-appointed surrogate parent (who held Student's educational rights at the time), a representative of the North Bay Regional Center, and several private providers who were working with Student in the home. From these team members, Rincon Valley learned of Student's history of abuse and his removal from his biological parents' home. Rincon Valley also learned that Student displayed severe tantrums at home along with instances of aggression, self-injurious behaviors, and a variety of other difficulties, including flashbacks, sleep disruption and fine motor deficits. Parents have three biological children at home, and Student's relationship to them was turbulent, although it had

[2] The term Rincon Valley is used herein to refer to both responding parties unless otherwise noted or apparent from the context.

improved somewhat since he arrived. However, Rincon Valley was also informed that Student had a basically sweet temperament and responded well to a calm, predictable and structured environment.

7. Since Student had never been in an educational environment, none of the participants at the initial meeting could be sure how he would fare in one. After considering the information they heard, the Rincon Valley members of the IEP team decided that Student did not require a restrictive placement in a special day class, and thought instead that Student could be satisfactorily educated in the general education environment as long as he received adequate supports and services there. That decision had important placement consequences for Student because Rincon Valley operates SDC's for preschoolers who need them, but does not operate general education preschool classes, and does not place disabled children between three and five years old in general education preschools at its own expense. Ms. Myhers, the Director of Special Education, testified that in her three years of experience there Rincon Valley has not itself placed any preschool student in a general education preschool.[3] So when the Rincon Valley members of the IEP team considered general education for Student at the initial meeting, they were considering a possible general education placement that Parents might privately obtain.

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[3] Ms. Myhers has been Rincon Valley's Director of Special Education since July 2012. From 2000 to 2012, she was variously a program specialist, a coordinator, a Director of Special Education, and a Director of Pupil Services in the Bonsall Union School District. She has a clear administrative services credential, a clinical and rehabilitative services credential, a certificate of competence from the American Speech-Language-Hearing Association, and is licensed by the State as a speech and language pathologist.

8. The IEP team at the initial meeting agreed that Student was eligible for special education because of a significant speech-language impairment that made him very hard to understand. The parties discussed Student's possible eligibility as a student with an emotional disturbance but agreed not to classify him that way in the IEP crafted at the meeting. Parents agreed to decline that classification because Ms. Myhers said such a classification would be "long-term labeling" which would be on his record, would follow him in the future, and would be an issue for him with the military and other institutions. For that reason the parties drafted goals for Student only in the area of speech.

9. At the initial IEP team meeting, the parties discussed a variety of possible programs for Student. Although the IEP document observes that Student "has had very limited experiences with same age peers at this point," Rincon Valley did not offer Student a placement with typically developing peers. Instead, it offered, and Parents accepted, small group speech therapy for Student, twice a week for 30 minutes each session, along with support from a school psychologist and an occupational therapist during the delivery of speech support, and toileting supervision because Student has a prolapsed rectum as the result of abuse. The team agreed on speech goals to increase Student's articulation and mean length of utterance. Parents and the surrogate, expecting a higher level of services and some kind of classroom placement, accepted the offered speech services but otherwise noted their disagreement with "placement and services"; they thought the offer was inadequate in light of Student's troubling social and emotional history.

10. The parties held additional IEP team meetings on January 30, April 15, June 4, and September 19, 2014. Student's IEP was revised in minor ways in these meetings, but his underlying placement – speech therapy only – was not. During and between most of these meetings, Parents requested that Rincon Valley place Student in some

sort of classroom during the school day. Parents were unfamiliar with special education terminology, and at times would specifically request placement in an SDC (a term they did not fully understand) out of concern that Student's behavior might preclude him from attending a regular preschool. At other times they would simply request placement in a "preschool setting," by which they meant some classroom in which Student could have an educational experience and receive related services. Just before the January 30, 2015 IEP team meeting, for example, Mother submitted a written request "that the IEP team discuss preschool placement options for [Student]." The meeting notes show that Parents requested a "preschool setting with speech, OT and behavior services." Neither version of the request mentions an SDC.

11. Student began the 2014-2015 school year – the year at issue here – under the terms of the December 6, 2013 IEP, as modified at later meetings. Student's annual IEP team meeting was held on December 1 and 19, 2014, and an IEP crafted for him for the coming year, until the end of November 2015. Parents did not attend these meetings, but sent their advocate instead. The advocate requested that Student be placed in an SDC. Student's progress was discussed and his speech goals revised. Rincon Valley proposed to continue Student's speech therapy with related supports, but did not place him in a classroom. Parents agreed to the IEP except for placement and the absence of certain services.

STUDENT'S SPEECH THERAPY

12. Shortly after the initial IEP team meeting, Student began to attend Rincon Valley's speech therapy group, which was his first experience in any educational environment. Student did well in the program; he made meaningful progress and behaved appropriately. He worked hard, related well to the other child present, took turns, shared objects, and followed routines.

13. Under the original (December 6, 2013) IEP, Rincon Valley provided Student

small group speech therapy twice a week for 30 minutes each session. Starting in late January 2014, his small group sessions were increased to 45 minutes each, twice a week, and 30 minutes a week of individual speech therapy was added in April 2014. Occupational therapy and behavioral support were provided during those sessions. With minor variations, this was the basic structure of Student's placement and services from Rincon Valley throughout the 2014-2015 academic year at issue, until Student was privately placed.

14. Megan Smith, a Consortium speech and language pathologist, provided both individual and small group speech therapy to Student.[4] In addition to Student, the group sessions included at various times one or two other special education students needing speech therapy. Ms. Smith confirmed in her reports to Student's IEP team and her testimony that Student made progress on his goals for improving articulation and mean sentence length during their sessions, and Parents do not disagree that he made some progress there.

15. Rincon Valley has been somewhat inconsistent in describing the relationship of Student's speech therapy to general education. At hearing, some Rincon Valley witnesses referred to Student's speech and language therapy group as "the general education environment." The therapy was provided in a large general education classroom, and Rincon Valley witnesses routinely referred to this arrangement as Student's speech "class." Ms. Myhers testified that Student's speech therapy was "the least restrictive environment for him." The IEP's dated December 6, 2013, and April 15

[4] Ms. Smith is licensed by the State as a speech pathologist. She has a clear clinical rehabilitative services credential and a certificate of competence from the American Speech-Language-Hearing Association. She has worked for the Redwood Consortium since 2005 and before that for school districts since 1985.

and December 1, 2014, describe Student's small group speech therapy as a placement in the general education environment. In the required space for stating the time Student would spend in that environment, those IEP's state:

> 2% of time Student is OUTSIDE the regular class & extracurricular & non-academic activities
>
> 98% of the time Student is IN the regular class and extracurricular & non-academic activities.

However, just below those statements in all three IEP's is a contradictory assertion:

> Student will not participate in the regular class & extracurricular & non-academic activities because *his speech and language needs warrant direct intervention.* [Italics in originals.][5]

A different rationale appeared in a letter dated February 7, 2014, from Ms. Myhers to Parents, which states: "[A] preschool program is not required for [Student] to receive a Free and Appropriate Public Education."

THE HEAD START OPTION

16. According to the notes of an IEP team meeting in April 2014, Student's surrogate parent asked about "Head Start and other programs," and in response Rincon Valley team members "shared information about Head Start and the collaboration

[5] Rincon Valley did not provide Student any extracurricular or nonacademic activities.

between Head Start and the Redwood Consortium. Family is pursuing the Head Start option." Parents applied to Head Start, which accepted Student and scheduled him to begin classes in August 2014.

17. Before August arrived, Child Protective Services hosted a meeting concerning Student. No representative of Rincon Valley attended; Ms. Myhers had been invited but was on vacation at the time. Parents recall that at this meeting a Head Start representative listened to a presentation concerning Student's needs, and during or after the meeting told Parents that he was not suitable for Head Start. However, in a post-hearing declaration, Christine Slaymaker, the Family Services Manager at the local Head Start, declares that she was Head Start's representative at that meeting. She further declares: "At no time did I say during the July 2014 meeting that Head Start was not appropriate for [Student] as the nature of Head Start is that we accept all children." Ms. Slaymaker established that Head Start kept a place open for Student and it remained available, but at or shortly after the meeting, Parents declined to place Student there.

PARENTS' UNILATERAL PLACEMENT OF STUDENT AT A SPECIAL PLACE

18. In fall 2014, Parents, seeking a classroom experience for Student, placed him unilaterally at A Special Place, a preschool operated by the YWCA for a population of students considered "at risk" because of relatively mild behavioral and emotional challenges in a school environment.[6] Many are foster children and have experienced abuse. Student's experience at A Special Place was mixed. Rincon Valley observers reported that he behaved well, made friends, and was able to communicate with peers

[6] The District continued to provide speech support for Student while he was at A Special Place.

and teachers. Father believed that Student was not making progress in his speech, partly because of the presence of many classmates who spoke Spanish, making it even more difficult for Student to be understood. September 19 and December 1, 2014 IEP documents note that Student's speech and language deficits "make it difficult for [him] to access curriculum." Mother believed that he had behavioral difficulties, as some were reported to her by teachers.

19. At some point in fall 2014, Parents withdrew Student from A Special Place shortly after Teri Porter, its Director, informed Mother that Student was not a "good fit" for reasons she did not explain at the time. Mother assumed that Ms. Porter's conclusion related to Student's behavioral difficulties, but the evidence did not make clear what the real reasons were, as Ms. Porter did not testify. Ms. Porter did tell Student's IEP team, at a meeting on December 19, 2014, that Student sometimes became overwhelmed at A Special Place. According to Ms. Myhers, she told the team that Student would do better in a private preschool with typically developing children.

PARENTS' UNILATERAL PLACEMENT OF STUDENT AT THE KIWI PRESCHOOL WITH REFLECTIVE NETWORK THERAPY

20. On January 12, 2015, still seeking a classroom placement for Student, Parents unilaterally placed him in the Kiwi Preschool and Childcare Center, a general education preschool at which Student attended morning classes populated primarily with nondisabled students. They notified Rincon Valley of the placement by email on the same day, and at an IEP team meeting on February 6, 2015, asked Rincon Valley to fund Student's placement at Kiwi. Rincon Valley declined, but offered to continue speech support and occupational therapy consultation while Student was at Kiwi.

21. At Kiwi, Student received extensive individual psychological and speech support during most of the afternoons from a team lead by Dr. Gilbert Kliman, a psychoanalyst with more than 50 years of experience providing therapy to traumatized

children. Dr. Kliman is the founder and Medical Director of the Children's Psychological Treatment Center in San Francisco, which has a nonprofit therapeutic service in Santa Rosa, operated in conjunction with Kiwi, which provides psychotherapy to special needs children in a typical school setting.[7] Kiwi has an average of about 35 preschoolers, of whom three to six receive therapy from Dr. Kliman and his team.

22. Dr. Kliman has designed a method of therapy called Reflective Network Therapy, and is its primary advocate. By arrangement with Kiwi, Dr. Kliman and his team deliver that therapy to a few disabled students at Kiwi (including Student) by spending approximately three hours with each child on two, three, or four afternoons a week, sometimes in groups and sometimes individually. Typically, a morning preschool teacher brings a student to a therapist and provides a briefing on a student's progress and behavior that day in preschool class, which is then used as a basis for therapy. After therapy, including discussion of behavioral norms, the therapist returns with the student to the preschool environment, where the student reports back to the general education staff on his reflections about the day's events. Sometimes this process takes place over two or three days.

[7] Dr. Kliman received his M.D. from the Harvard Medical School, was a resident at the Albert Einstein College of Medicine, and studied child and adolescent psychoanalysis at the New York Psychoanalytic Institute. He is certified as a psychotherapist by the American Psychiatric Association, and is a diplomate of that association and of the American Academy of Child and Adolescent Psychiatry. He has led a project on foster children for the National Institute of Mental Health, held numerous teaching positions, published more than 100 articles, and authored several books. His career-long concentration has been on the pathology of foster children and the treatment of early childhood trauma.

23. Dr. Kliman opined at hearing that Student is one of the most severely traumatized of the hundreds of traumatized children he has treated, scoring "off the scale" on one standardized measure of psychopathology, primarily because of the lengthy and extreme abuse underlying his post-traumatic stress disorder. Because Student's speech deficits have psychiatric as well as organic causes, especially due to his high level of anxiety, Dr. Kliman's method with Student has been to combine psychiatry with speech instruction. In his opinion, Student's therapy has been quite successful so far. Student arrived in January 2015 with about 30 to 40 percent ability to articulate age-appropriate words and sounds on a comprehensibility index, and now has about 60 to 70 percent ability on that index. He displays less hesitancy, more fluency, greater sentence length and a larger vocabulary. Dr. Kliman agreed that Student's speech is best measured by a speech and language pathologist, but established that a clinical child psychiatrist is able to measure sentence length, the capacity to use certain sounds, and intelligibility over time. Dr. Kliman also opined that Student has had some inappropriate interactions with the other students at Kiwi, but overall his social improvement has been "remarkable." There was no evidence to the contrary.[8]

24. Student has made considerable progress in speech in Dr. Kliman's care. Father testified that there has been a "huge improvement"; for the first time Student enjoys going to school, is happy there, and is making friends. He can now relate his daily experiences to Parents in understandable speech, which he could not previously do. In

[8] During summer 2014, Parents also obtained speech support for Student from the Scottish Rite Center, where he also made some progress. It is not possible to attribute relative portions of Student's progress among Rincon Valley's program, the Scottish Rite program, and Student's later placement at the Kiwi Preschool. He made some progress with all of them.

addition, both Parents and Rincon Valley witnesses have observed Student in the morning classes in his general education preschool, and all of them testified that Student was paying attention, behaving appropriately, and interacting well with other students there.

25. By the time of hearing, Parents had paid approximately $2000 to Kiwi and Dr. Kliman. About $600 of that amount was for Kiwi, and the balance was for Dr. Kliman's work. Parents additionally owe Kiwi and Dr. Kliman approximately $6000 for their services up to the time of hearing, but have not yet paid that amount. Dr. Kliman testified at hearing that he had sent Parents invoices for his share of the debt, but also spoke vaguely to some Rincon Valley staff members and at hearing that all of his Kiwi students were "on scholarship." His project has some support through philanthropy. It is not clear whether Dr. Kliman intends to collect the money Parents owe him, or may at some point excuse their debt. Father testified that it was "up in the air."

26. At hearing, Ms. Myhers testified that the Kiwi Preschool, aside from Dr. Kliman's component, is an appropriate placement for Student; he is among typically developing students, and is doing well there. Speech pathologist Megan Smith observed him at Kiwi and testified he was participating "wonderfully." However, Rincon Valley witnesses testified that they disagreed with Dr. Kliman's methodology, were skeptical of Reflective Network Therapy, and doubted the claims he and Kiwi make for its success.

27. School psychologist Vanessa Riggs and Ms. Myhers observed Student at Kiwi for about an hour and discussed Reflective Network Therapy with Dr. Kliman for an additional 30 minutes.[9] Ms. Riggs was unfamiliar with Student, his needs, or his

[9] Ms. Riggs is a Program Specialist for the Sonoma Special Education Local Plan Area and a county advisor for autism and mental health. She provides technical assistance to the SELPA's districts and has worked as a licensed and credentialed

progress, but was critical of Dr. Kliman's methods. She pointed out at hearing that because the therapy occurred about three times a week, sometimes it would necessarily involve events a day or two old, which might not be optimal because preschoolers live "very much in the present" and may not remember previous events well enough to benefit from discussing them a day or two later. In her view, behaviors should be targeted when they happen. She opined that Dr. Kliman's therapy technique was not evidence-based and that she would not recommend it. Ms. Myhers, who is also a qualified speech and language pathologist, agreed with that view.

28. Dr. Kliman testified that he has studies showing that the proper application of Reflective Network Therapy can raise the IQ of children in Student's age group by several points. During this controversy, Kiwi placed an advertisement in the *Santa Rosa Press Democrat* describing Reflective Network Therapy and making the claim that: "95% of testable special needs children have a significant IQ rise after one school year." Ms. Riggs and Ms. Myhers opined that Kiwi's advertisement was either overstated or misleading, in part because the IQs of students that young vary on tests and are not yet fixed. On cross-examination, they admitted that Rincon Valley administers IQ tests to students in that age group for various purposes.

29. Ms. Riggs and Ms. Myhers also faulted Dr. Kliman for graphically describing to them, during their visit to Kiwi, the abuse Student had suffered. They suggested that he violated confidentiality in doing so. Dr. Kliman established, however, that he had a release of confidentiality from Mother concerning that information.

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school psychologist for the Sonoma County Office of Education and the Morgan Hill Unified School District. Ms. Riggs has administrative services and pupil personnel services credentials.

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA [10]

1. This hearing was held under the IDEA, 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)[11] et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; Cal. Code Regs., tit. 5, § 3001, subd. (p).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and

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

[11] All subsequent references to the Code of Federal Regulations are to the 2006 version.

school personnel; that describes the child's needs, academic and functional goals related to those needs; and that contains 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 nondisabled peers. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a).)

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 re-enacting the IDEA in 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.].) Although sometimes described in Ninth Circuit cases as "educational benefit," "some educational benefit" or "meaningful educational benefit," all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 951, fn. 10.)

4. The IDEA affords parents and local educational agencies the procedural

protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3)(C), (D); Ed. Code, § 56502, subd. (l).) 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.)

CONSEQUENCES OF PROCEDURAL ERROR

5. A procedural error does not automatically require a finding that a FAPE was denied. A procedural violation results in a denial of a FAPE only if the violation: (1) impeded the child's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parents' child; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); see Ed. Code, § 56505, subd. (f)(2); *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484 [*Target Range*].)

ROLE OF THE IEP TEAM IN DECISION-MAKING

6. Basic decisions about a disabled student's special education and services must be made by a properly constituted IEP team that includes parents. (20 U.S.C. § 1414(d)(1), (e); 34 C.F.R. §§ 300.321-322, 300.324; Ed. Code, §§ 56340, 56342, 56342.5.)

DUTY TO EDUCATE IN THE LEAST RESTRICTIVE ENVIRONMENT

7. Both federal and state law require a school district to provide special education in the least restrictive environment appropriate to meet the child's needs. (20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.114(a); Ed. Code, § 56040.1.) This means that a school district must educate a special needs student with nondisabled peers "to the maximum extent appropriate," and the student may be removed from the general education environment only when the nature or severity of the student's disabilities is such that education in general classes with the use of supplementary aids and services "cannot be achieved satisfactorily." (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2)(ii); Ed. Code, § 56040.1.)

8. In light of this preference for the LRE, and to determine whether a child can be placed in a general education setting, the Ninth Circuit, in *Sacramento City Unified Sch. Dist. v. Rachel H.* (1994) 14 F.3d 1398, 1403, adopted a balancing test that requires the consideration of four factors: (1) the educational benefits of placement full time in a regular class; (2) the non-academic benefits of such placement; (3) the effect the student would have on the teacher and children in the regular class; and (4) the costs of mainstreaming the student. An alleged violation of LRE is analyzed as a substantive part of a FAPE. (*Ms. S. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1136-1137.

DUTY TO EDUCATE DISABLED CHILDREN AGES THREE THROUGH FIVE

9. Under the IDEA and California special education law, school districts must offer an IEP to a pupil who turns three years of age. (20 U.S.C. §1412(A)(1); 34 C.F.R. § 300.101(a); Ed. Code, §§ 56001, subd. (b); 56026, subd. (c)(2).) For the period between three and six years of age, California does not mandate compulsory education for typically developing preschool children. (Ed. Code, § 48200.) However, if a preschool

child requires special education and related services in order to receive a FAPE, school districts must offer the child an appropriate program. (20 U.S.C. § 1414(d)(1)(A)((I)(bb); Ed. Code, § 56345, subd. (a)(1)(B).) A private, nonsectarian, preschool program can be an appropriate setting for a district to provide such a student. (Ed. Code, § 56441.4, subd. (a).) If a public agency determines that placement in a private preschool program is necessary for a child to receive a FAPE, the public agency must make that program available at no cost to the parent. (See U.S. Dept. of Education, Off. of Special Education and Rehabilitation Services, final Regs., Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, Analysis of Comments and Changes, com. to §300.116, 71 Fed.Reg. 46540, 46589 (August 14, 2006); *Letter to Anonymous* (OSEP 2008) 108 LRP 33626.)

10. When a school district does not operate regular preschool programs, the United States Department of Education's Office of Special Education Programs (OSEP) has long taken the position that the obligation to provide placement with typical children can be satisfied by considering alternative methods for meeting the preschool child's needs in the least restrictive environment, including:

a. providing opportunities for the participation (even part-time) of preschool children with disabilities in other preschool programs operated by public agencies, such as Head Start;
b. placing children with disabilities in private school programs for nondisabled preschool children or private preschool programs that integrate children with disabilities and nondisabled children; and
c. locating classes for preschool children with disabilities in regular elementary schools.

(*Letter to Neveldine* (OSEP 1993*)* 20 IDELR 181.) In 2012, OSEP reiterated this position in *Dear Colleague Letter* (OSEP 2012) 58 IDELR 290:

> The LRE requirements in section 612(a)(5) of the IDEA apply to all children with disabilities who are served under Part B of the IDEA, including preschool children with disabilities aged three through five . . . The statutory provision on LRE does not distinguish between school-aged and preschool-aged children and therefore, applies equally to all preschool children with disabilities.

ISSUE: DID RINCON VALLEY AND/OR THE REDWOOD CONSORTIUM DENY STUDENT A FAPE DURING THE 2014-2015 SCHOOL YEAR BY FAILING TO OFFER STUDENT PLACEMENT IN AN SDC OR OTHER CLASSROOM AND APPROPRIATE RELATED SERVICES?

THE ROLE OF THE REDWOOD CONSORTIUM

11. The Redwood Consortium argues that it is not a proper party to this action and should be dismissed because it did not have "final decision-making control over Student's IEP's," and is unable to provide the remedy requested by Student. Neither argument is persuasive. A public agency is a proper party to a special education due process complaint if it is "involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) Final decision-making control is not required. The evidence showed that the Consortium was involved in decisions regarding Student and is therefore a proper party. An employee of Consortium assessed Student, and Rincon Valley staff relied on that assessment. The Consortium's Director participated in the IEP team meeting on September 19, 2014. The Consortium operates the small group speech and language program in which Student was placed. Megan Smith, his speech pathologist there, is a Consortium employee. She regularly reported her opinion of Student's needs and progress to the IEP team, which relied on her reports. Moreover, while the Consortium may be unable to provide the remedy requested by Student, the remedy

ordered here is financial and not beyond the Consortium's ability.

RINCON VALLEY'S DUTIES TO PRESCHOOLERS

12. Rincon Valley argues generally that it is not required to provide a general education preschool setting for "every" preschool-aged special education student whose needs do not require an SDC, and that the general education setting is not "necessarily" or "presumptively" the LRE for a preschooler. These general propositions are not at issue here. They do not resolve the question whether *this* preschooler should have been placed in general education. Rincon Valley concedes that "there are cases when an IEP team will determine that a general education preschool program is necessary for the student to receive FAPE . . ." The question here is simply whether Student's IEP team made, or should have made, that determination about Student.

FAILURE TO CONSIDER THE APPROPRIATENESS OF HEAD START FOR STUDENT

13. Rincon Valley argues that it satisfied the first alternative method for placing a preschool student in the LRE suggested in *Letter to Neveldine, supra,* which is "providing opportunities for the participation (even part-time) of preschool children with disabilities in other preschool programs operated by public agencies, such as Head Start." The suggestion that Parents investigate Head Start was made at the April 15, 2014 IEP team meeting, while Student's program was governed by an IEP that extended to December 11, 2015, so it affected the school year at issue. Rincon Valley did not do anything else about Head Start; it simply suggested that Parents should investigate it as a possible placement when the parent surrogate asked about it.

14. There is not enough evidence in the record to decide whether Head Start was an appropriate placement for Student in spring 2014 or later. What the evidence did show was that the IEP team never considered that question, which it could have done at any of the IEP team meetings described here. Just such a failure was held to deny FAPE

in *Board of Educ. of LaGrange School Dist. No. 5 v. Illinois State Bd. of Educ.* (7th Cir. 1999) 184 F.3d 912, 916 (*LaGrange*). There the school district offered a preschooler a placement in a program called IDEAL/At-Risk, which it argued was similar to Head Start. The District relied on the same first suggestion of the Office of Education – providing opportunities at programs such as Head Start – as Rincon Valley does here.

15. *LaGrange, supra,* 184 F.3d 912, has many similarities to this matter. There a school district that did not operate general education preschools offered to place a preschool child first in a program limited to disabled students, and then in a program for at-risk students that it analogized to Head Start. It argued that these programs constituted the student's least restrictive environment. (*LaGrange, supra,* 184 F.3d at pp. 916-917.) The Seventh Circuit disagreed and affirmed an award of reimbursement for a private school. It held that the first placement was too restrictive since the student could be satisfactorily educated in a general education environment with proper services and supports. (*Id*. at pp. 916-917.) It rejected the second because there was no evidence that the district ever evaluated the program in light of the student's IEP and individual needs. (*Id*. at p. 917.)

16. The district in *LaGrange, supra,* 184 F.3d 912, argued that since it offered the student placement at IDEAL/At-Risk, it satisfied its LRE obligation. However, the hearing officer, the District Court, and the Seventh Circuit all rejected the argument because the district had not made an individualized determination that the program was appropriate for the student. The hearing officer found that there was no evidence introduced at the hearing that the School District ever evaluated this program with reference to the Student's IEP. The district court agreed with the hearing officer, noting that the record below was bereft of any testimony suggesting that the At–Risk program was ever evaluated in light of the student's unique needs as IDEA and the regulations mandate. The Seventh Circuit upheld this determination. (*LaGrange, supra,* 184 F.3d at pp. 916-917.)

17. In suggesting that districts consider "providing opportunities for participation" in programs such as Head Start (*Letter to Nevaldine, supra*), and in advising districts to "explore" such placements (*Dear Colleague Letter, supra*), it is highly unlikely that the United States Department of Education meant that all a district had to do was to tell parents that they should investigate Head Start, whether Head Start was a suitable placement for their child or not. If that were sufficient it would absolve a district of further LRE responsibility in every case in which Head Start was mentioned at a preschooler's IEP team meeting. There would be no need to determine whether the program was appropriate for the student referred. In the context of the IDEA's pervasive insistence on individualized determinations, that is not a reasonable interpretation of OSEP's advice. So, Rincon Valley's suggestion that Parents investigate Head Start, without more, did not constitute compliance with the first of OSEP's suggested alternatives.

FAILURE TO FULLY TO CONSIDER WHETHER STUDENT REQUIRED A GENERAL EDUCATION PLACEMENT TO RECEIVE A FAPE

18. The Seventh Circuit in *LaGrange, supra,* 184 F.3d 912, emphasized that compliance with the Department's suggested alternatives did not automatically satisfy the LRE requirement:

> The School District would have us focus only on the three alternatives . . . and ignore the language following, which states, "the public agency must ensure that each child's placement is in the [least restrictive environment] in which the unique needs of that child can be met, based upon the child's IEP...." See 34 C.F.R. § 300.552, Commentary. However,

> we agree with [the Student] that the alternatives provided in the regulation do not absolve the School District of its duty to comply with the least restrictive environment requirement. Here, the Level II hearing officer concluded that the Brook Park placement was not the least restrictive environment for Ryan, in part because the evidence presented at the hearing indicated that his disability and IEP did not prevent him from benefitting from a more inclusive setting. The district court affirmed that conclusion, finding that the private pre-school in which Ryan was able to interact with nondisabled children provided the least restrictive environment.

(*Id.*, 184 F.3d at pp. 916-917.)

19. As in *LaGrange*, *supra,* 184 F.3d 912, there was no evidence in this matter that Rincon Valley's IEP team ever considered whether Head Start was an appropriate placement for Student as an individual. And there was no evidence that Rincon Valley explored any of the other alternative methods suggested by OSEP for meeting a preschool child's unique needs in the least restrictive environment.

20. At all relevant times, Rincon Valley was correct in perceiving that Student could satisfactorily be educated in a general education setting as long as he had proper services and supports. At the original IEP team meeting on December 6, 2013, Rincon Valley had substantial information that Student posed serious behavioral difficulties at home among his new siblings and sometimes in public. But it had no information that his behavioral difficulties would extend to a classroom; instead it was told that Student did well in a calm, predictable and structured environment. In light of the IDEA's strong preference for the education of nondisabled children with their nondisabled peers, Rincon Valley reasonably determined in December 2013 that Student belonged in a

general education environment with services and supports.

21. Although Rincon Valley correctly decided that Student could be satisfactorily educated in a general education environment with adequate services and supports, it did not provide him one. The small group speech therapy delivered to Student before and during the 2014-2015 school year was not general education; it was a special education service, and for Student it was unattached to any general education experience except during Parents' unilateral placements. It was delivered by a speech and language pathologist who was not licensed to teach general education students and was limited to no more than two or three students at a time, all of whom had IEP's.[12] It did not expose Student to any nondisabled students. It met only briefly three times a week; twice for small group instruction and once for individual instruction. On the other two days Rincon Valley provided Student no education at all. The service concentrated on speech and language rather than on any general education curriculum. Federal courts have repeatedly rejected such restrictive placements when a preschooler can be educated among typically developing peers. (*L.B. v. Nebo School Dis.* (10th Cir. 2004) 379 F.3d 966, 972-973, 978; *G.B. v. Tuxedo Union Free School Dist.* (S.D.N.Y. 2010) 751 F.Supp.2d 552, *aff'd,* (2d Cir. 2012) 486 Fed.Appx. 954 [nonpub. opn.], at pp. 559-561; *Board of Educ. of Paxton-Buckley-Loda Unit School District No. 10 v. Jeff S.* (C.D.Ill. 2002) 184 F.Supp.2d 790, 799-800.)

22. The real reason for this dispute is the decision announced by Ms. Myhers in her letter to Parents on February 7, 2014, that "[A] preschool program is not required for [Student] to receive a Free and Appropriate Public Education." That decision, which is

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[12] OSEP defines a regular preschool as composed of at least a majority (50 percent or more) of nondisabled children who do not have IEP's. (*Dear Colleague Letter, supra*.)

consistent with all of Rincon Valley's conduct in this matter, did not comply with the procedural requirements of the IDEA. First, nothing in the record indicates that the decision was reached through any individual examination of Student's unique needs. (See *LaGrange, supra,* 184 F.3d at p. 917.) In light of Ms. Myhers's testimony that Rincon Valley has not placed a special education student in a general education preschool in her three years there, it is more likely that the decision was made as part of Rincon Valley's standard practice rather than as an individual decision about Student.

23. Second, the decision that Student did not need a general education preschool to receive a FAPE was Ms. Myhers's decision alone; it was not made by the IEP team. Ms. Myhers did describe a general discussion of private preschool options at an IEP team meeting on December 19, 2014, but she testified that the discussion concerned the benefit of private preschool for any child and was "not related to [Student's] IEP needs or his IEP goals."

24. Rincon Valley does not forthrightly argue that it openly discussed at any of Student's IEP team meetings whether Student needed a general education environment to receive a FAPE. Instead, it stresses that Parents never asked for such a discussion. In a post-hearing declaration, Ms. Myhers declares that Parents never asked for placement anywhere other than in an SDC until they asked for reimbursement for Kiwi at the February 6, 2015 meeting. Parents, on the other hand, declare that they consistently asked for "any services to help [Student] in addition to the speech that was offered, over several IEP meetings," and that they had "zero knowledge" about what services were available. As far as this record shows, Parents were at their first IEP team meeting on December 19, 2013. They did not know the terminology of special education or what kind of placement to request.

25. More importantly, it does not matter what Parents requested; the duty to provide a FAPE was Rincon Valley's alone. Ms. Myhers further declares that "If [Parents

or their advocate] had requested from the District a general education placement for [Student] at an IEP meeting, the IEP team would have discussed whether [Student] needed a general education placement . . ." However, it is not the burden of parents at an IEP team meeting to ensure the consideration of the full continuum of placement options, including general education. It is the school district that must make those options available. (34 C.F.R. § 300.115(a) ["Each public agency must ensure that a continuum of alternative placements is available . . ."]; see also Ed. Code, § 56361.) Rincon Valley cites no authority for the proposition that discussion of a general education placement is waived by parents who do not specifically ask for it. Ms. Myhers's claim that the IEP team would have discussed a general education placement, had Parents asked for it, virtually admits that the subject was not discussed.

26. The documents of the IEP team meetings show almost no sign that Student's possible need to be in general education as his LRE was considered. Inadequate documentation of consideration of an LRE decision at IEP team meetings can support the conclusion that FAPE was denied. In *H.L. v. Downingtown Area School Dist*. (3d Cir., June 11, 2015) --- Fed.Appx. ---, 2015 WL 3621853, a school district argued it had adequately considered whether it was proposing to place a student in the LRE when it offered pull-out language arts instruction for 90 minutes a day. But the Third Circuit, affirming the District Court, held that parents had carried their burden of proving that the district had not adequately considered the LRE by showing that the district's documentation did not reveal adequate consideration of the issue:

> Here, the IEP and NOREP [Notice of Recommended Educational Placement] provide no insight into the options the District considered before it determined that H.L. needed pull-out language arts instruction for 90 minutes a day. Indeed, there is no indication in the record of how the

> District actually approached the LRE issue . . . Under these circumstances, it is impossible to assess whether H.L. could have been educated satisfactorily in a regular classroom with assistance, or what steps, if any, the District took to accommodate H.L. in a classroom.

(*Id.* at p. 4.)

27. The only mention in Student's original December 6, 2013 IEP of any reason to keep him out of the general education environment is that "Student will not participate in the regular class & extracurricular & non academic *(sic)* activities because *his speech and language needs warrant direct intervention*." (Italics in original.) There are nearly identical statements in his April l5 and December 19, 2014 IEP's. The record does not reveal how this non sequitur was inserted in the IEP's; neither the meeting notes nor the extensive testimony about the meetings at hearing indicates any discussion of such a notion. The proposition is utterly illogical, since many special education students receive direct intervention for speech and language needs while in general education – as Student does now at Kiwi Preschool. Placement in general education and receipt of direct speech services are entirely compatible. The statement that direct speech and language intervention precluded Student from the general education environment forms no part of any reasonable calculation of educational benefit under *Rowley, supra.*

28. In sum, Rincon Valley violated the procedural protections of the IDEA in the 2014-2015 school year because it did not adequately consider, at any of its IEP team meetings affecting Student's school year 2014-2015 placement, whether he needed a general education preschool environment to receive a FAPE. Instead, it made a decision outside the IEP process that he did not need such an environment to receive a FAPE. Its reference of Parents to Head Start did not satisfy the requirement that Student be

placed in the LRE.

PREJUDICE FROM PROCEDURAL ERRORS

29. Deciding outside the IEP process that a preschooler does not need a general education experience to receive a FAPE is a serious substantive failure. (*H.L. v. Downingtown Area School Dist.*, *supra,* 2015 WL 3621853, at p. 4.) However, even if both the errors made by Rincon Valley are regarded as procedural, they were prejudicial because they substantially impeded Parents' right to participate in the decision-making process regarding the provision of a FAPE to Student. It was clear from Parents' testimony at hearing that they did not fully understand the options available to Rincon Valley in placing Student. If Parents had been given a full opportunity to discuss whether Student needed to be at a program like Head Start or in a general education environment, they could have made a substantial case that his speech and social needs required exposure to typically developing peers. They could also have made a good case that Student's behavioral needs, with or without a formal classification as emotionally disturbed, could only be adequately addressed when he was in the company of numerous nondisabled peers. Student had come directly from an extremely abusive home environment to the care of Parents. He was having serious trouble socializing with Parents' biological children. The December 19, 2013 IEP correctly notes that Student "has had very limited experiences with same age peers at this point." Practicing speech inherently requires the presence of others. As Dr. Kliman established, once Student was able to model his speech on the nondisabled children with whom he mixed at Kiwi, he made remarkable progress.

30. In addition, a full discussion of Student's possible need for exposure to general education may have led the Rincon Valley team members to consider that he may have needed goals to address his social, behavioral and occupational therapy needs, rather than the provision of those supports as related services but only in his

speech therapy group for two 45-minute sessions a week. Parents could have learned what supports were available in a general education environment, which they did not understand on their own. They could have learned that behavioral support in a full classroom is much more robust than behavioral support in two speech therapy sessions a week.

SCOPE OF DECISION

31. This decision does not address the substantive question whether Student needed a general education environment to receive a FAPE. It holds that Rincon Valley procedurally denied Student a FAPE because 1) it failed adequately to comply with the alternatives set forth by OSEP for determining the LRE for preschoolers by simply referring Student to Head Start rather than determining whether the program was appropriate for him; 2) that it failed to ensure that the IEP team fully considered whether Student needed exposure to general education to receive a FAPE, and instead made that determination unilaterally; and 3) that these procedural errors substantially impeded Parents' participatory rights. Since the decision resolves this dispute on procedural grounds, it need go no further. (*Anchorage Sch. Dist. v. M.P.* (9th Cir. 2012) 689 F.3d 1047, 1054-1055; *Amanda J. v. Clark Cnty. Sch. Dist.* (9th Cir. 2001) 267 F.3d 877, 895; *Target Range, supra,* 960 F.2d at p. 1485.)

REMEDIES

32. Student seeks an order requiring Rincon Valley to place Student prospectively in Kiwi with continued Reflective Network Therapy. However, this relief will not be ordered at present. Kiwi is not certified as a non-public school by the California Department of Education, nor is Dr. Kliman's agency certified by the Department as a

non-public agency.[13] Education Code section 56505.2, subdivision (a), provides that "[a] hearing officer may not render a decision that results in the placement of an individual with exceptional needs in a nonpublic, nonsectarian school, or that results in a service for an individual with exceptional needs provided by a nonpublic, nonsectarian agency," if the school or agency has not been certified pursuant to the Department's statutory process.[14]

33. A parent may be entitled to reimbursement for placing a student in a private placement without the agreement of the district if the parents prove at a due process hearing that the district had not made a FAPE available to the student in a timely manner prior to the placement, and that the private placement was appropriate. (20 U.S.C. § 1412(a)(10)(C)(ii); 34 C.F.R. § 300.148(c); *School Committee of Town of Burlington, Mass. v. Department of Educ.* (1985) 471 U.S. 359, 369-370 [105 S.Ct. 1996, 85 L.Ed. 2d 385]) The private school placement need not meet the state standards that apply to public agencies in order to be appropriate. (34 C.F.R. § 300.148(c); *Florence County School Dist. Four v. Carter* (1993) 510 U.S. 7, 11, 14 [114 S.Ct. 361, 126 L.Ed.2d 284].) Reimbursement may be appropriate even though a student does not seek it in his complaint. (See *Foster v. Board of Educ. of the City of Chicago* (7th Cir., May 11, 2015) --- Fed.Appx. ---, 2015 WL 2214152, at p. 4 [absence of prayer for reimbursement does not preclude reimbursement award by district court]; *Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 243-244, fn. 11 [129 S.Ct. 2484; 174 L.Ed.2d 168][authority of

[13] Dr. Kliman testified that both Kiwi and his agency have applied for CDE certification and expect results soon.

[14] Student does not seek compensatory education, and did not make an evidentiary case for it.

hearing officer to grant relief is coextensive with that of district court].) Here the parties fully litigated the appropriateness of Parents' placement of Student in Kiwi, the merits of Dr. Kliman's program, and the expenses Parents incurred in making the placement.

34. Reimbursement is the usual remedy when a district denies FAPE by failing to place a preschooler in the LRE and parents make an appropriate unilateral placement. (*L.B. v. Nebo School Dist., supra,* 379 F.3d at pp. 978-979; *LaGrange, supra,* 184 F.3d at pp. 978-979; *G.B. v. Tuxedo Union Free School Dist., supra,* 751 F.Supp.2d at pp. 587-590; *Board of Educ. of Paxton-Buckley-Loda Unit School District No. 10 v. Jeff S., supra*, 184 F.Supp.2d at pp. 803-804.)

35. Reimbursement may be reduced or denied if, at the most recent IEP team meeting prior to removing the child, the parents did not inform the IEP team they were rejecting the proposed placement, and state their concerns and intent to enroll their child in a private school at public expense; or at least ten business days prior to the removal of the child, the parents did not give written notice to the public agency of this information. (20 U.S.C. § 1412(a)(10)(C)(iii)(I); 34 C.F.R. § 300.148(d)(1).) Such a reduction or denial is discretionary, and here it would not be equitable. Parents did not provide formal notice of their placement of Student in Kiwi in advance. However, they notified Rincon Valley of the placement by email on January 12, 2015, the same day Student was enrolled, and requested funding for the program at a February 6, 2015 IEP team meeting where Dr. Kliman explained Kiwi's program and Reflective Network Therapy. These actions served the purpose of the required statutory notice by giving Rincon Valley a timely opportunity to offer to alter Student's IEP in light of the new placement. (See *Anchorage School Dist. v. M.P., supra,* 689 F.3d at pp. 1059-1060 [full reimbursement ordered notwithstanding lack of notice].)

36. Rincon Valley's criticisms of Dr. Kliman and his program do not relate to the standard for reimbursement. In *C.B. v. Garden Grove Unified Sch. Dist.* (9th Cir. 2011)

635 F.3d 1155, 1159-1160, an ALJ had reduced reimbursement for a private placement because it provided some, but not all, of the services the student needed. The Ninth Circuit rejected the reduction, holding that full reimbursement was available to the District Court even though the private placement did not meet all the student's needs. In affirming reimbursement, it adopted the standard set forth by the Second Circuit: "'To qualify for reimbursement under the IDEA, parents ... need only demonstrate that the placement provides educational instruction specially designed to meet the unique needs of a handicapped child, supported by such services as are necessary to permit the child to benefit from instruction." (*C.B. v. Garden Grove Unified Sch. Dist.*, *supra,* 635 F.3d at pp. 1159-1160 [quoting *Frank G. v. Board of Educ.* (2d Cir. 2006) 459 F.3d 356, 365]; see also *S.L. v. Upland Unified School Dist*. (9th Cir. 2014) 747 F.3d 1155, 1159-1160; *Doug C. v. Hawaii Dept. of Educ*. (9th Cir. 2013) 720 F.3d 1038, 1047; *Anchorage School Dist. v. M.P, supra,* 689 F.3d at p. 1059.)

37. Parents' placement of Student at Kiwi, including in its Reflective Network Therapy component, met this standard. Rincon Valley agrees that Kiwi itself was an appropriate placement. The evidence showed that Student benefited both from instruction in Kiwi's preschool and from Dr. Kliman's therapy program. There is nothing in the standard for reimbursement that requires parents to prove that a private placement is methodologically correct, is not accompanied by allegedly exaggerated advertisement claims, or does not result in the allegedly indiscreet revealing of confidential information. Rincon Valley's reservations about Dr. Kliman's program, whatever their merits, do not furnish adequate grounds for reducing or denying reimbursement.

38. OAH has no authority to order reimbursement for attorneys' or advocates' fees, so Student's request for reimbursement of $5,000 paid to Parents' advocate must be denied.

ORDER

1. Within 45 days of receiving reasonable proof of payment, Rincon Valley and the Redwood Consortium, jointly and severally, shall reimburse Parents up to the amount of $2,000 for expenditures made prior to hearing for Student's placement at Kiwi and in Dr. Kliman's therapy component.

2. In addition, within 45 days of receiving reasonable proof of payment, Rincon Valley and the Redwood Consortium, jointly and severally, shall reimburse Parents up to the amount of $6,000 for payments to Kiwi and Dr. Kliman's agency that were not made by the date of hearing, but were subsequently made, for services rendered up to the date of hearing.

3. All of Student's other requests for relief are denied.

PREVAILING PARTY

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

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: July 22, 2015

/s/

CHARLES MARSON

Administrative Law Judge

Office of Administrative Hearings