

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OAH Case No. 2015020482

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT.

DECISION

Parent filed a due process hearing request on Student's behalf with the Office of Administrative Hearings, State of California, on February 2, 2015, naming Los Angeles Unified School District (District). OAH continued the matter for good cause on March 18, 2015. Administrative Law Judge Laurie Gorsline heard this matter in Van Nuys, California, on May 19 and 20, 2015.

Mother represented Student. Student attended the first day of hearing and Father attended both days of hearing. Attorney Christine Wood represented District. Renee Dolberry, District Administrator, attended both days of hearing and Phillip Okonma, an intern for District's General Counsel, attended part of the first day of hearing and the second day of hearing.

At the close of hearing on May 20, 2015, the ALJ granted a continuance to June 3, 2015, for the parties to file written closing arguments. Upon receipt of the written closing arguments, the record was closed and the matter was submitted for decision.

ISSUE¹

Did District deny Student a free appropriate public education by failing to make an appropriate offer of placement in the December 2014 IEP?

SUMMARY OF DECISION

The preponderance of evidence established that District's December 2014 IEP offer of placement in a general education classroom at Barton Hill Elementary School was designed to meet Student's unique needs and was reasonably calculated to provide Student with some educational benefit. Student's request for relief is denied.

FACTUAL FINDINGS

JURISDICTION

1. Student was a seven-year-old male at the time of the due process hearing. Student resided within District with his Mother since August 2014. As of December 11, 2014, Student became eligible for special education services under the category of Emotional Disturbance.

DETERMINATION OF ELIGIBILITY AND THE DECEMBER 2014 IEP

2. During the 2013-2014 school year, Student attended kindergarten at Woodruff Elementary School in the Bellflower Unified School District. Student demonstrated strong academic skills at Woodruff, but struggled with physically aggressive behaviors which negatively impacted his ability to participate in class.

¹ The issue has been rephrased for clarity. 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.)

Student was defiant and his behaviors escalated to tantrums and aggression when he did not get his way. He refused to follow directions or rules, engaged in excessive talking, bothered others and engaged in other inappropriate behavior. By May 2014, Student had been suspended seven days. Mother was unsuccessful in her multiple attempts to receive help from Woodruff in addressing Student's behaviors.

3. In July 2014, Student was taken to the hospital to be evaluated by a psychiatrist and was subsequently diagnosed with a behavior disorder.

4. In August 2014, Student moved with his Mother to a residence within District. Mother enrolled Student in the first grade at his home school, District's Bandini Elementary School (Bandini).

5. Student began attending Bandini in a general education classroom. Karina Hanna was Student's general education teacher. She has been a general education teacher for 23 years. Ms. Hanna's classroom was composed of both kindergarten and first grade children. Student engaged in aggressive and dangerous behavior at school, and when he became angry, he often remained angry for days. He engaged in self-injurious behavior, hit other students, yelled, and threw things. Student's mood fluctuated which was reflected in some of his drawings.

6. Robert Fenton has been the principal at Bandini for 16 years. He has been employed by District since 1981, and was a first grade teacher and an assistant principal. Mr. Fenton held a bachelor's degree, a master's degree and credentials in teaching and administration. He had daily interaction with Student at Bandini during the 2014-2015 school year. In the fall of 2014, Student was involved in several altercations with other students and engaged in noncompliant behavior. Mr. Fenton attempted to utilize interventions to manage Student's behaviors, including increased adult supervision, redirection and counseling. He convened a Student Success Team meeting in September 2014 to discuss Student.

7. Student's behaviors at Bandini did not result in his suspension from school because Mr. Fenton determined that Student's prior history demonstrated that suspension was not a deterrent. In addition, Bandini had implemented District's written policy entitled Discipline Foundation Policy: School-Wide Positive Behavior Interventions and Support. This policy promoted positive behavior support and interventions, such that counseling or other services might be the consequence of misbehavior, rather than traditional punishment such as suspension.

8. In the fall of 2014, Student received counseling from District's psychiatric social worker, Carla Huerta-McCauley. Ms. Huerta-McCauley provided counseling to general education students. She did not oversee special education services or provide counseling to students eligible for special education. Ms. Huerta-McCauley was on the Bandini campus once a week and also worked at two other campuses, including Barton Hill Elementary School (Barton Hill). She also supported Student when he had a difficult time on the playground. Ms. Huerta-McCauley observed that Student was very aggressive, had symptoms of anxiety and had difficulty transitioning to the classroom after recess. She estimated she saw Student a total of five occasions.

9. In October 2014, Ms. Huerta-McCauley referred Student to the Guidance Center where he began receiving private counseling once per week from therapist Christine Toledo and receiving treatment once per month from psychiatrist Dr. Debra Kalen.

10. After the Student Success Team meeting in September 2014, Mother referred Student for an initial assessment for special education due to non-compliant behaviors, poor peer relations, aggression toward peers and adults, and self-injurious behaviors such as banging his head on the floor or wall.

11. In November 2014, Student moved with his Mother to another residence within District. Student's District school of residence became Barton Hill. Bandini was

approximately one mile from Student's new home and Barton Hill was approximately one-half mile from Student's new home. Although Barton Hill was the closet school to Student's new home, Student continued to attend Bandini.

12. Bernardette Wilson was the District school psychologist at Bandini during the 2014-2015 school year. Ms. Wilson held a credential and a master's degree in educational psychology and counseling. She has worked for District for eight years and has conducted approximately 400 assessments.

13. In the fall 2014, Ms. Wilson conducted Student's psychoeducational assessment, which included an evaluation for educationally related intensive counseling services. As part of the assessment, Ms. Wilson administered formal tests, reviewed Student's educational file, and interviewed Ms. Hanna, the classroom teaching assistant, and Mother. Ms. Hanna and Parents also completed rating scales regarding Student's social-emotional functioning and behaviors.

14. Ms. Wilson prepared an assessment report dated November 21, 2014. Student scored in the average to high average range on formal academic testing. Student performed at grade level in reading, writing and math. The report discussed Student's significant history of behavioral issues which dated back to preschool, including his prior suspensions during kindergarten. The assessment results indicated Student had deficits in the area of attention, and had demonstrated significant depression, self-injurious behavior, and significant aggression toward people and animals. He was impulsive, had difficulty sustaining attention to tasks, was easily distracted, and had difficulty following through on instructions. He demonstrated aggressive and non-complaint behaviors at school and at home. Mother reported that Student's behaviors became worse after she separated from Father in May 2014 and somewhat improved when Father moved back into the home in August 2014, but that Student continued to tantrum and engage in noncompliant behavior. The report also

noted allegations of abuse and domestic violence in the home, including the involvement of the Department of Children and Family Services. Mother reported Student had been diagnosed with a behavior disorder and that Student made statements about hurting himself. Mother reported that Student was very controlling, and had tantrums by stomping his feet, yelling and making a fist when she told him "no." Mother reported that Student often bullied, threatened, or intimidated others, often initiated physical fights, was cruel to people and animals and deliberately destroyed property. At school, Student was often defiant and violent toward peers and adults when they did not do what he wanted. His teacher reported he required constant supervision due to his disruptive and off-task behaviors and had difficulty transitioning between activities. On a self-report questionnaire designed to assess the self-concept of children, Student's overall evaluation of himself fell in the low range.

15. Ms. Wilson concluded that Student demonstrated average cognitive ability and that he had behaviors which impacted him in the classroom. She found that the antecedents of Student's behaviors were: asking him to do a task he did not want to do, ignoring his disruptive behaviors, playing with classmates during recess, and working on a class assignment with his class. Other than Student running away from Ms. Wilson when she walked with him to the office for the assessment, she did not observe Student having difficulty with transitions. Ms. Wilson recommended educationally related intensive counseling services and eligibility for special education under the category of Emotional Disturbance.

16. During the assessment process, District learned Student moved his residence, making Barton Hill his home school. Mr. Fenton nevertheless decided to have Bandini finish the assessment process.

17. Student's initial IEP team meeting began on December 4, 2014, with Mother in attendance, and was reconvened on December 11, 2014. Those in attendance

on December 11, 2014, included Mother, Assistant Principal Fabiola Garcia de Alba, Ms. Hanna, Ms. Wilson, Mr. Fenton, Ms. Toledo, Ms. Huerta-McCauley, and a special education teacher and an intervention coordinator. The team discussed the assessment results, services and placement options. Student continued to have outbursts in class, in the yard and during transition periods. Student's behavior had shown improvement from the beginning of the 2014-2015 school year with accommodations, close adult supervision and constant adult redirection. His present levels of performance indicated he had trouble transitioning from one activity to another. Ms. Toledo agreed Student had issues with transitions. Mother explained Student's history and her concerns about Student's behavior at school. The IEP team discussed placement options other than a general education classroom, including a special day class. Mother believed Student belonged in a general education classroom. The IEP team determined that a general education classroom was appropriate because of Student's intellectual functioning.

18. At the December 11, 2014 IEP team meeting, District's offer of FAPE was placement at Barton Hill in a general education classroom with a general education curriculum, weekly resource specialist program support in the areas of reading and math, one hour per week of educationally related intensive counseling services, and instructional accommodations. District also offered full-time behavior intervention implementation support in the form of a one-to-one aide for 1800 minutes per week and a behavior support plan. The placement and related services offered in the IEP could be implemented at Barton Hill.

19. Mother agreed to District's offer except for placement at the Barton Hill campus. Parents believed Barton Hill was a bad school. Mother told the IEP team that Student was not emotionally ready to change schools, Student had difficulties transitioning, and she was afraid that changing schools would negatively impact Student. Mother requested that Student be permitted to remain at Bandini. Ms. Toledo

agreed that Student should remain at Bandini. District staff explained to Mother that Student's school of residence was Barton Hill and that the law required Student to attend his school of residence. District also explained to Mother that the supports and services District offered would assist Student in transitioning to a new school, and that even if Student remained at Bandini, he would transition to new classrooms and teachers and he needed to learn to make transitions.

To alleviate some of Mother's concerns, Mr. Fenton told Mother that Student could begin at Barton Hill in January 2015 after the winter break to coincide with the natural break in the school year.

20. As of December 11, 2014, Barton Hill was the school Student would have attended if he was not disabled.

21. Mother discussed her concerns with Ms. Toledo after the IEP team meeting. According to Mother, Ms. Toledo told her that Bandini was a better school than Barton Hill and she did not think Student was emotionally ready to change schools. Mother asked Ms. Toledo to write a note to support Mother's position.

22. Mother also spoke to Ms. Huerta-McCauley after the IEP team meeting. At hearing, Mother claimed Ms. Huerta-McCauley told her that Mother should not let District move Student to Barton Hill and that Bandini was a better school than Barton Hill. Ms. Huerta-McCauley denied making these statements and claimed Mother misunderstood her comments.

23. With the exception of placement at Barton Hill, District implemented the IEP at Bandini after the December 11, 2014 IEP team meeting.

24. After the December 2014 IEP was implemented at Bandini, Student continued to engage in many of the same behaviors but demonstrated improvement. Student had outbursts, but his one-on-one behavior aide helped control his inappropriate behavior. Student continued to become angry and aggressive with other

students, but he did not remain angry for long periods of time, and his behavior did not routinely escalate, as was the case prior to having a one-on-one aide. Student also did well transitioning to new behavior aides.

25. At hearing, Mother claimed that Ms. Toledo and Dr. Kalen wrote a letter to District in January 2015 which stated that Student had made academic progress, that his behaviors had decreased while at Bandini, that he was anxious due to frequent moves and trauma history, and that they felt a change in school placement would negatively impact Student's mental status and academic progress.

OPINIONS OF DISTRICT'S WITNESSES

26. Ms. Wilson opined that Student's unique needs did not require him to remain at Bandini, and that with the supports and services provided by District in the December 11, 2014 IEP, Student could have made a smooth transition to Barton Hill and made progress. She did not believe Student's transitional issues would have been exacerbated by the move to Barton Hill.

27. Ms. Hanna stated that she believed Student could accomplish the transition to Barton Hill so long as he had one-on-one support and the support of his parents. She did not believe Student's transitional issues would have been exacerbated by the move to Barton Hill.

28. Mr. Fenton explained that transitions are difficult for many children. He did not believe there was anything about Student's unique needs which required Student to remain at Bandini in order to receive FAPE. No matter what school Student attended, he would have continued to have challenges with transitions between activities. Student's transitional challenges would not have been exacerbated by the move to Barton Hill and the services offered by District would have assisted Student with transitioning to a new school.

29. Elsa Messano has been a District assistant principal elementary

instructional specialist for ten years. She held multiple credentials, a bachelor's degree in liberal studies and a master's degree in administration. She oversaw the special education programs for Barton Hill during the 2014-2015 school year. Prior to working at Barton Hill, Ms. Messano worked for five years at Bandini as assistant principal and was an elementary school teacher.

30. Ms. Messano reviewed Student's December 2014 IEP. Barton Hill could have supported Student's needs and implemented District's December 2014 IEP. She did not believe there was anything unique about Student's needs which required him to remain at Bandini. District's Discipline Foundation Policy was implemented at Barton Hill.

STUDENT'S WITNESSES

31. Student stated that he liked going to Bandini and that he did not want to have to change schools because he did not want to have to start over making friends and having to get used to a new school.

32. At hearing, Mother explained that with the exception of placement at Barton Hill, she did not dispute that the December IEP offered Student a FAPE. She stated that Student's behavior improved and he made progress at Bandini. She did not want Student moved from Bandini until his behaviors ceased. Mother believed Student was happier and less depressed since he began attending Bandini. He liked the staff and had friends, and Mother believed Bandini personnel cared about her son. Mother claimed that Barton Hill was a bad school. As a child, Mother attended Barton Hill, as did her husband and his brothers, her sister and her brothers. She also had friends with children who attended Barton Hill who complained about the school. Mother and Father grew up in "housing authority" which Mother described as "the projects." Mother believed most of the students who attended Barton Hill were also from "housing authority" and that many of its students were aggressive. Mother explained that Student suffered significant trauma during his life, witnessed domestic violence, custody battles,

saw his Father arrested, and moved frequently, which she believed resulted in Student's emotional disturbance. She claimed Mother and Father were working to mend the damage to Student. Mother believed Student would withdraw emotionally and his negative behaviors would increase if he attended Barton Hill. She did not believe Student was emotionally ready to change schools. Mother claimed Student began demonstrating behaviors manifesting anxiety after he learned he might have to change schools, including talking about hurting himself.

33. Mother had not been to Barton Hill in several years and had never observed the special education services provided at Barton Hill.

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA²

1. This hearing was held under the Individuals with Disabilities Education Act (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) 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 free appropriate public education (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

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.

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 general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, §§ 56032, 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 enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.]) Although sometimes described in Ninth Circuit cases as “educational benefit,” “some educational benefit” or “meaningful educational benefit,” all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 951, fn. 10.)

4. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6), (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, § 56505, 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]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) Student, as the complaining party, bears the burden of proof.

ISSUE: THE FAILURE TO OFFER APPROPRIATE PLACEMENT IN THE DECEMBER 2014 IEP

5. Student contends District failed to provide him with a FAPE in the

December 11, 2014 IEP by offering placement at the Barton Hill campus. Student contends he made significant progress at Bandini and requiring him to move to his home school might have adversely impacted him because of his trauma history, transition and anxiety issues. Student also contends Barton Hill was a bad school because of the type of students who attended that school.

6. District contends the December 2014 IEP offered Student a FAPE. Barton Hill was Student's home school, the closest school to his residence, and Student's unique needs did not require him to remain at Bandini. District claims that Mother did not want Student to attend Barton Hill because she did not like that school and that Mother's concerns were not related to Student's unique needs.

7. 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.)

8. 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.) Section 300.116(c) of Title 34 of the Code of Federal Regulations states: "Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled." (See also Ed. Code § 56342, subd. (b).)

9. The parties do not dispute that the IEP offered Student a FAPE. The only issue is whether District's offer to implement Student's IEP at Barton Hill denied him a FAPE. The uncontroverted evidence demonstrated that the services and supports implemented at Bandini could have been implemented at Barton Hill.

10. At the time of the December 2014 IEP team meeting, Barton Hill was the closest school to Student's home and was the school he would have attended if non-disabled. The evidence established that the IEP team consisted of persons knowledgeable about Student, including Mother, Ms. Hanna, Ms. Wilson, Mr. Fenton, Ms. Toledo, and Ms. Huerta-McCauley, and that the IEP team considered the assessment results and placement options, taking into account the requirement that Student be educated in the school that he would attend if nondisabled.

11. Student failed to establish that Student's unique needs at the time of the December 11, 2014 IEP required him to attend school at a location other than Barton Hill in order to receive a FAPE. Mother agreed that a general education classroom, and

the supports and services in the December 11, 2014 IEP were appropriate, and the evidence established that District's offer of FAPE could have been implemented at Barton Hill. Likewise, the same written discipline policy which promoted positive behavior support and interventions instead of suspension as a consequence to Student's behaviors had also been implemented at Barton Hill. While Mother claimed that Student's progress was attributable to particular Bandini staff, Mother offered no evidence that the Barton Hill staff were unable, unwilling or otherwise unqualified to provide the support necessary to address Student's unique needs. In fact, Mother had not been to Barton Hill in years and never observed its special education services. The evidence established that Barton Hill was able to support Student's needs and his needs did not require him to remain at Bandini. Ms. Messano's testimony was particularly persuasive on this issue because she oversaw the 2014-2015 special education program at Barton Hill and worked at Bandini for five years, and thus, was familiar with the programs at both schools.

12. Student did not establish that his transition issues required him to remain at Bandini in order to receive a FAPE. District witnesses credibly testified that with the offered services and supports in place, particularly the one-to-one aide, Student could transition from Bandini to Barton Hill. Mr. Fenton, Ms. Hanna, both of whom had daily interaction with Student and considerable experience in the field of education, and Ms. Wilson, the school psychologist who conducted Student's assessment, all credibly testified that Student's transitional issues would not have been exacerbated at Barton Hill. Mr. Fenton persuasively explained that many children have trouble with transitions, that learning to cope with transitions is part of the educational process, and that Student's unique needs did not require him to remain at Bandini. In fact, at the time of the December 2014 IEP, the evidence demonstrated that with increased adult support, redirection and counseling, Student demonstrated improvement in his behaviors. After

Student's December 2014 IEP was implemented, Student's behavior improved and Ms. Hanna observed Student did well in transitioning to new behavior aides.

13. Although there was some evidence that Ms. Toledo told the December 2014 IEP team that she believed Student should remain at Bandini, very little weight was given to this evidence. Ms. Toledo did not testify at the hearing so the basis of her statement was not established. Likewise, very little weight was given to Mother's testimony about a January 2015 letter written by Dr. Kalen and Ms. Toledo because the IEP team did not have this letter when they made their December 2014 offer of FAPE and neither Dr. Kalen nor Ms. Toledo testified at hearing. As such, they could not be questioned about the basis of their opinions.

14. At hearing, Mother claimed Student became more anxious after the December 11, 2014 IEP when he learned that he might have to change schools. Mother also believed that at Barton Hill, Student would have withdrawn emotionally. Although Student had issues with anxiety and depression, Student did not establish that his anxiety and depression prevented him from attending school at Barton Hill in order to receive a FAPE. The evidence established that Student's mood fluctuated throughout the school year and that Student had demonstrated symptoms of anxiety and depression, including but not limited to, talking about hurting himself both before and after December 11, 2014. District's offer of FAPE, including the educationally related intensive counseling services, was meant to address Student's emotional issues, as well as assist Student with transitioning. Student failed to establish that he would have regressed emotionally at Barton Hill.

15. Mother admitted she did not want Student attending Barton Hill because she believed the children who attended that school were from the "housing authority" and more aggressive. Mother's concerns, while appearing genuine, are not concerns remedied by the IDEA. Student failed to present convincing evidence establishing that

attending school at Barton Hill would have any potential harmful effect on him or the quality of services he needed. Even if Ms. Toledo and Ms. Huerta-McCauley made the comments Mother attributed to them about the quality of Barton Hill, Student offered no persuasive evidence at hearing establishing a credible basis for either Ms. Toledo's or Ms. Huerta-McCauley's alleged comments. Student offered no evidence that either Ms. Toledo or Ms. Huerta-McCauley were familiar with the special education services at Bandini or Barton Hill. Thus, Mother's testimony about their comments was not given much weight.

16. Since preschool, Student has demonstrated aggressive and noncompliant behavior. Before moving to District, Mother tried, albeit unsuccessfully, to obtain help in addressing Student's behaviors. At Bandini, by the time of the December 11, 2014 IEP, Student had finally started making progress. It is understandable that Mother wanted Student to remain at the Bandini campus because of that progress. It is also understandable why Student wanted to remain at Bandini. However, Student did not establish by the preponderance of the evidence that Student's unique needs required District to offer him placement at a school other than his school of residence in order to receive a FAPE.

17. Student did not meet his burden of proof of demonstrating that District denied Student a FAPE by failing to offer Student an appropriate placement in the December 2014 IEP.

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.

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: June 30, 2015

_____/s/_____
LAURIE GORSLINE
Administrative Law Judge
Office of Administrative Hearings