

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OAH Case No. 2016031039

PARENTS ON BEHALF OF STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT.

DECISION

Student filed a due process hearing request (complaint) with the Office of Administrative Hearings State of California, on March 23, 2016, naming Irvine Unified School District. On April 4, 2016, District filed a response to the complaint.

Administrative Law Judge Christine Arden heard this matter in Irvine, California, on May 17, 18 and 19, 2016.

Bruce Bothwell, Attorney at Law, represented Student. Student's father and mother attended all hearing days. Student did not attend the hearing.

Courtney Brady, Attorney at Law, represented District. Jennifer O'Malley, Director of Due Process, attended the hearing on behalf of District throughout the entire hearing. Allison Robbins, Director of Special Education, attended the hearing on behalf of the District on May 19, 2016. Erin Ferguson, Program Specialist, attended the hearing on behalf of District on May 17 and 19, 2016.

At the hearing, the ALJ received sworn testimony and documentary evidence.

On May 19, 2016, the last day of hearing, a continuance was granted to allow the parties time to file written closing arguments. The record remained open until 5:00 p.m.

on June 13, 2016. Upon timely receipt of the written closing arguments, the record was closed and the matter was submitted for decision.

ISSUE¹

1. Did District deny Student a free appropriate public education by failing to find him eligible for special education and related services under the category of autism from October 19, 2015, through the date of hearing²

SUMMARY OF DECISION

District denied Student a FAPE by failing to find him eligible for special education and related services under the category of autism. The District's assessment of Student was flawed. The information primarily used to determine Student's eligibility was

¹ The issue has been rephrased and reorganized 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.)

² During the due process hearing Student narrowed his first issue (labeled 2 A in the Order Following Prehearing Conference) by adding the words "under the category of autism" after the word "eligible." Student also withdrew his second and third issues (labeled 2 B and C in the Order Following Prehearing Conference) and withdrew his second, third, fourth and fifth requested remedies (labeled 2 B, C, D and E in the Order Following Prehearing Conference). Student additionally narrowed his first requested remedy (labeled 2 A in the Order Following Prehearing Conference) to: "An order finding Student eligible for special education and related services under the primary eligibility of autism." District had no objection to Student narrowing and withdrawing his originally stated issues and requested remedies.

District's observations of Student and standardized test results. The assessment failed to give appropriate weight to the observations and opinions of Mother and Student's therapists, who were more familiar with Student than the District's assessors were. The District's reliance on test scores was flawed because Student's scores on subtests were inconsistent. This inconsistency indicated Student had learned certain skills but was not able to apply those skills in his environments, a common problem for autistic children.

District also failed to take into appropriate account all the relevant material available when assessing Student, including the independent psychological assessment by Dr. B.J. Freeman, whose independent evaluation pointed out critical errors in District's assessment of Student. The independent evaluation also accurately recognized Student's autism is a developmental disability significantly affecting his verbal and nonverbal communication and social interaction, adversely affecting Student's educational performance. Student is granted his requested remedy, an order finding Student eligible for special education and related services under the primary eligibility of autism.

FACTUAL FINDINGS

JURISDICTION AND BACKGROUND

1. Student is a three-year-old boy who resided with his Parents within District's boundaries at all relevant times.

STUDENT'S DIAGNOSIS OF AUTISM SPECTRUM DISORDER

2. Student was medically evaluated at Kaiser Permanente when he was 16 months old on March 4, 2014. At that time Student had inconsistencies in social communication and social interactions. He was diagnosed with a significant speech-language delay and referred for speech therapy.

3. Mother has been a pediatrician for twelve years. She was professionally

trained in medical school to take accurate histories from patients. She was also trained to recognize developmental milestones children typically reach at certain ages, and to refer children for assessment if they fail to timely meet those milestones.

4. Student's brother, who is two years older than Student, is autistic. By the time Student was born Parents had experience with detecting signs of autism, were acquainted with early intervention services available to autistic children and aware of the significant advantages of providing early intervention services to autistic children.

5. When Student was about 18 months old Mother first noticed Student was not timely reaching typical developmental milestones. He had deficits in social development. He did not make eye contact with others. His speech was delayed and he engaged in self-stimulating and repetitious behaviors.

6. Student was assessed by the Regional Center of Orange County and was deemed eligible for early intervention services on April 23, 2014, due to his developmental delays. The Regional Center of Orange County created an Individualized Family Service Plan for Student, which provided him with a therapeutic program and services, including applied behavioral analysis therapy (23 hours a week of individual therapy), speech and language therapy (two weekly one hour individual sessions), and occupational therapy (one weekly one hour individual session).

7. Student was referred by his primary care physician at Kaiser Permanente for a comprehensive pediatric multi-disciplinary evaluation at 19 months old due to concerns regarding his developmental delays and challenging behavior. Student was diagnosed by Dr. Lisa Andrea Snider, a physician at Kaiser Permanente, with autism spectrum disorder in June, 2014, when he was 19 months old. At that time Student had very limited spoken language. He said 10 to 15 words to label things in his environment. He was not yet spontaneously pointing or using an open handed reach to request things he wanted. Student communicated very simple non-verbal concepts only after

prompting (i.e., pointing to a preference among two offered choices; waving good-bye). Student persistently held items in his hands without purpose. He inconsistently responded to social overtures and used limited facial expression. He minimally responded to other children. He exhibited deficits in social and emotional reciprocity and nonverbal communicative behaviors used for social interaction. He also made repetitive, self-stimulatory movements.

EVIDENCE OF STUDENT'S AUTISM PRIOR TO OCTOBER, 2015

Therapeutic Pre-school Programs

8. Shortly after Student was diagnosed with autism spectrum disorder he started receiving significant intensive early intervention services, including speech therapy, behavioral therapy and occupational therapy.

9. When Student was about two years old the Regional Center of Orange County placed Student in an early intervention program two days a week at the Intervention Center for Early Childhood in Irvine, California. This program consisted of a small group educational program with speech and occupational therapies for preschool children with disabilities.

10. After that, starting in April 2015, until Student was about three years old, Student attended TOPS ("Teaching Our Preschoolers"), a small group therapeutic pre-school program at the Intervention Center for Early Childhood for children with special needs and typically developing children. The TOPS class met one day a week for three to four hours and was taught by Julie Waterman and Tiffany Paredes. For at least a year during that same approximate time period Student also attended the 2:1 program at the Intervention Center for Early Childhood one day a week for one hour. The 2:1 program was a multi-disciplinary early intervention preschool class in which two students received therapies in a small group from one speech therapist, one occupational

therapist and one behavior therapist.

11. Ms. Paredes and Ms. Waterman, and the aide in the TOPS class, saw Student frequently engage in subtle self-stimulatory behavior. He held objects up to his center and peripheral eye level, while he slowly moved the held objects in increasingly larger circles. He stared upwards or sideways at objects. While in the TOPS class Student mainly played alone and had to be prompted to engage with other children.

Behavioral Therapy

12. In about June, 2014, Student started receiving applied behavioral analysis therapy in his home for 23 hours a week from Autism Spectrum Therapies. Applied behavioral analysis therapy teaches skills by breaking them down into small discrete tasks, which are taught in a highly structured manner using a systemic reward or reinforcement to teach desired behaviors. In May, 2015, the behavior therapy provider changed to Patterns Behavioral Services.

13. In October, 2015, Student threw tantrums in behavior therapy sessions when he was frustrated with a task, such as eating, going to the bathroom, dressing and other gross and fine motor tasks. He had trouble holding a fork and spoon. He became frustrated easily, refused help and sometimes engaged in power struggles with his therapist. He had trouble with tasks requiring him to coordinate his hands and feet. Student's behavior was generally compliant and cooperative, but rigid.

14. Blake Henderson, Student's behavior technician from Patterns Behavioral Services, testified very competently, candidly and enthusiastically about Student. Mr. Henderson was very knowledgeable about Student's behaviors and developmental deficits. He noted Student had socialization problems, exhibited self-stimulating and repetitive behaviors, used scripted language and often became transfixed. Student became "lost in himself or distracted by his environment." Student had attention problems and required many verbal prompts to get back on task. Student progressed

significantly during his tenure with Patterns Behavioral, but he still sometimes regressed on previously learned tasks. Student would occasionally be extremely rigid in therapy sessions. He had significant difficulty with even minor changes in his routine.

15. Brian Cooper, clinical manager from Patterns Behavioral Services, was familiar with Student's behaviors and testified confidently, candidly and knowledgably at the hearing. Mr. Cooper noted Student lacked attentiveness, did not consistently respond to his name, had perseverating behaviors, had limited eye contact, used scripted language and often "zoned out." Student required frequent prompting.

16. Amber Raemer, clinical director of Patterns Behavioral Services, testified extremely competently, confidently and candidly at the hearing. She has a master's degree in applied behavioral analysis and has worked with autistic children for 20 years. She has broad experience working with children in varied classroom settings. Ms. Raemer trained and supervised the agency's staff members and oversees the treatment of all agency clients, including Student. She has extensive experience working with autistic children and has designed many applied behavioral analysis programs. She observed Student at home three or four times in his behavior therapy sessions and once in his Sunday school class, which was like a typical unstructured preschool class. She noted Student had trouble in an unstructured setting. He struggled with "who, what and where" questions. She observed Student engaging in self-stimulating behaviors. He had difficulty with conditional instructions. He could not generalize his skills to new situations. Ms. Raemer believed Student needed a structured setting in order to learn. Student had made progress but he had a long way to go. If he stopped getting behavior therapy the gap between Student and typically developing children will increase.

Speech Therapy

17. Since about July, 2014, Student received two weekly one-hour individual speech and language therapy sessions. One session was with Diane Newton and the

other session was with Kendall Scott. Ms. Newton and Ms. Scott are both speech-language pathologists with the Intervention Center for Early Childhood. Ms. Newton and Ms. Scott knew Student well and both testified very candidly, knowledgeably and competently about Student at the hearing.

18. Student required significant prompting in speech therapy sessions. He became upset when his routine was changed, but he was generally compliant. He did not use functional language (expression of one's thoughts and emotions through speech sounds and gestures) and he repeated phrases. He needed to be kept on task through prompting. His movements were repetitive. He engaged in subtle self-stimulatory actions. He did not usually ask for help. Student did not consistently respond to his name. During one speech therapy session Ms. Scott had to repeat Student's name six times before he responded. Student could not generalize his skills to settings outside of the speech therapy sessions. Student sometimes regressed on skills he had learned.

19. According to a speech-language pathology report by Ms. Newton dated July 13, 2015, Student was not yet consistently using language functionally without prompting. He exhibited echolalia, or inappropriately repeating words spoken to him. He was not able to follow one and two-step commands consistently. He did not consistently pay attention to directions. He had very limited and fleeting eye contact and required moderate to maximum prompting to engage in and sustain eye contact with others. He had limited play skills and could only engage in turn-taking with hand-over-hand prompting. He required prompting to initiate and maintain joint attention and he used jargon speech. He would not play with other children unless prompted to do so. He also needed prompting to initiate taking turns with other children. Even though Student had progressed, he needed further speech therapy to address his speech and language deficits. All of Student's speech-language goals for his programs

at the Intervention Center for Early Childhood speech therapy sessions were also social goals.

20. In about September, 2015, Ms. Scott wrote a report about her continued areas of concern regarding Student. This report noted Student had scattered attention, required redirection with multiple verbal and visual cues, demonstrated self-stimulatory behaviors, had difficulty with answering simple “wh” and “yes/no” questions and had difficulty with emotional self-regulation when engaged in non-preferred activities. The report further mentioned Student engaged in isolated play and did not engage or initiate interactions with peers independently. Student had difficulty learning and participating in a group setting. He demonstrated skills in receptive and expressive language, cognition and pragmatics in individual activities. However, Student had difficulty generalizing his skills independently in order to functionally and socially communicate in different environments.

MOTHER’S OBSERVATIONS OF STUDENT

21. Mother testified very knowledgably, candidly, competently, thoroughly and credibly regarding Student’s behaviors. He frequently engaged in self-stimulatory behaviors, particularly with his eyes. He stared at objects from different angles and repetitively moved his eyes upwards and sideways. He often stared upwards and at his hands. He frequently grasped objects in both hands without purpose. He repeated scripted phrases and did not use functional language. He exhibited echolalia. He did not consistently respond to his name. He did not make eye contact with others. He did not direct his attention when given a nonverbal pointing instruction. He lacked joint attention to both a person and an object or task. He was inattentive. He was disinterested in other children in group settings. He had delayed social skills and poor pragmatic speech. His fine motor skills were also poor. For example, he immaturely grasped and used utensils. He was constantly moving to seek sensory input. He was

sensitive to certain textures and messy hands. He had very picky eating habits. He was rigid and resisted small changes in his routine. He made repetitive movements. Student was frequently “lost in own his world.” He did not interact with other children and sometimes did not even notice other children around him.

22. Mother’s observations of Student’s behaviors were consistent with the observations of Student’s speech and behavior therapists.

DISTRICT’S INITIAL ASSESSMENT

23. In mid-2015, when Student was approaching his third birthday, the Orange County Regional Center referred Student to the District to be assessed for special education services. District school psychologist Angela Timmons, District speech and language pathologist Nancy White, and District education specialist Martha Kelly, were all involved in District’s assessment of Student. Ms. Timmons, Ms. White and Ms. Kelly all testified at the hearing.

24. District’s Diagnostic Classroom provided a venue for District staff to observe and assess pre-school age children with suspected disabilities for eligibility for special education. The student to teacher ratio was approximately one adult for every two children. Children referred for assessment attended the Diagnostic Classroom for 12, half day sessions over a three-week period. District staff members observed children in the class. Occasionally, staff pulled individual children out of class for assessments.

25. Student attended the Diagnostic Classroom from August 17, 2015, to September 4, 2015, when he was two years, 10 months old, for the purpose of being assessed for special education eligibility. When Student was in the Diagnostic Classroom there were eight students and five adults (three special education teachers and two aides) in the classroom. Due to the low child to adult ratio, the Diagnostic Classroom provided significantly more adult supervision and opportunity for adult prompting of

students than would be available in a typical general education classroom. Ms. Kelly was responsible for observing three children, including Student, during the time Student attended the District Diagnostic Classroom. District staff recorded their observations of Student's behaviors in the Diagnostic Classroom on post-it notes and adhesive labels. These staff notes were given to Ms. Kelly, who used this data to summarize Student's behaviors in the Diagnostic Classroom in the District assessment report.

26. Student presented favorably in the Diagnostic Classroom. He was well behaved and easily redirected by adults. He appeared to the District staff observing him to be generally functioning typically for his age. However, the District's assessors noted Student required adult prompting to do certain tasks, rarely interacted with other children, had limited coordination, did not initiate many tasks, required adult assistance to communicate and resolve conflicts, and required a great deal of supervision. District staff did not observe Student engaging in self-stimulatory behaviors while he was in the Diagnostic Classroom.

27. Ms. Timmons was not concerned Student did not play with other children in the Diagnostic Classroom. Ms. Timmons acknowledged Student showed elevated characteristics of autism in his home. Student used only single word responses most of the time when Ms. Timmons observed him in the Diagnostic Classroom. Ms. Timmons was not concerned about Student repeating scripted phrases (i.e., counting followed by "blast off," and "here we go") when she observed him in class. Ms. Timmons did not record data when she observed Student in the Diagnostic Classroom. She did not observe Student in a classroom with typically developing children. Ms. Timmons concluded Student's play skills were quite good and she was not concerned that Student needed redirection often.

28. The District assessors found Student to be cooperative in the Diagnostic Classroom. He needed adult prompting for certain tasks and did not play with other

children. He was easily redirected. They did not see Student exhibiting repetitive behaviors in the classroom. The District assessors saw Student as having emerging social skills.

DISTRICT'S MULTI-DISCIPLINARY EVALUATION INITIAL ASSESSMENT REPORT

29. Following Student's attendance at the Diagnostic Classroom (from August 7, 2015, through September 4, 2015), Ms. Timmons, Ms. White, school nurse Janet Penny-Cook and Ms. Kelly contributed to and jointly drafted District's Multi-Disciplinary Initial Assessment report. This report was based on the District's observations of Student in the Diagnostic Classroom and the results of the following assessment instruments: Desired Results Developmental Profile 2015; Westby Play Scale; Clinical Evaluation of Language Fundamentals-Preschool 2-Descriptive Pragmatic Profile; Developmental Assessment of Young Children, subtests in communication, cognitive, adaptive and social/emotional; Preschool Language Scale 5; Autism Spectrum Rating Scale; Conners Early Childhood; and Receptive-Expressive Emergent Language Test-3.

30. District assessors asked Mother to complete rating scales for some of the assessment instruments used. Mother's responses on these rating scales revealed she viewed Student's verbal communication as significantly impaired. Mother reported Student regularly used jargon and scripted speech and engaged in echolalia. She also perceived Student as having poor pragmatic and expressive speech and poor receptive language.

31. Mother's questionnaire responses to the rating scales she completed revealed she viewed Student's nonverbal communication as significantly impaired. Mother reported Student had poor joint attention, poor eye contact, and gave inappropriate non-verbal responses to others. She also reported Student failed to consistently respond to his name and had very poor social/communication/pragmatic skills. Mother's responses also noted Student's frequent self-stimulatory behaviors,

particularly with his eyes and hands.

32. Mother's questionnaire responses to rating scales she completed revealed she viewed Student's social interaction as significantly impaired. Mother reported Student's social skills were severely delayed and he lacked age appropriate reciprocity skills in social situations. She also reported Student engaged in nonfunctional play. Student was usually disinterested in peers and rarely played with other children.

33. Ms. Timmons, Ms. White and Ms. Kelly all testified Mother was an accurate historian of Student's behaviors.

34. Ms. Timmons did not ask Student's teachers from his class at the Intervention Center for Early Childhood to complete a rating scale for Student's behaviors because Student was in that class for only a short amount of time each week. Ms. Timmons believed Mother's observations of Student were reliable.

RESULTS OF THE STANDARDIZED ASSESSMENT INSTRUMENTS

35. Following is a summary of Student's scores on the standardized assessment instruments administered to Student by District assessors:

- A. Desired Results Developmental Profile 2015 - District concluded Student was within his expected developmental range in the following areas: approaches to learning and self-regulation; social and emotional development; language and literacy development; cognition, including math and science; physical developmental-health; history-social science; and visual and performing arts.
- B. Westby Play Scale - District concluded Student's play skills appeared to be strongly emerging through the 36-month age level.
- C. Clinical Evaluation of Language Fundamentals-Preschool 2-Descriptive Pragmatic Profile - The criterion score for a 3 year old is 61. Student received a score of 51 on Descriptive Pragmatics as rated by Parents, indicating inadequate pragmatic/social communication abilities. Student received a

score of 69 on Descriptive Pragmatics as rated by Ms. Kelly, indicating adequate pragmatic/social communication abilities.

D. Developmental Assessment of Young Children -

- (i.) Subtests in communication - Student performed in the poor range for receptive language (8th), the average range for expressive language (23rd) and an overall below average range in total communication (14th). However, the District concluded communication was not a significant area of concern.
- (ii.) Subtest in cognitive - Student scored in the average range (66th).
- (iii.) Subtest in adaptive behavior - Student scored in the poor range (5th).
- (iv.) Subtest in social/emotional behavior - Student scored in the below average range (23rd.).

E. Preschool Language Scale 5 - Student's scores were in the average range for auditory comprehension (73rd), expressive communication (58th) and total language (66th).

F. Autism Spectrum Rating Scale - Student's total score was elevated, indicating there are more concerns for Student than are typically reported. "Very elevated" indicates significant concern for the child in an area, and "average" indicates a typical concern for the child in an area. Student's scores indicated the following levels of concern for Student in the respective specific areas assessed:

- (i.) Social/communication was very elevated.
- (ii.) Unusual behavior was average.
- (iii.) Peer socialization was very elevated.
- (iv.) Adult socialization was very elevated.
- (v.) Social/emotional reciprocity was very elevated.

(vi.) Stereotypy was average.

(vii.) Behavioral rigidity was slightly elevated.

(viii.) Sensory sensitivity was average.

G. Conners Early Childhood – Student’s scores were in the following ranges for the respective behaviors:

(i.) Very elevated for inattention/hyperactivity

(ii.) Average for defiant/aggressive behaviors

(iii.) Very elevated for social functioning and atypical behaviors

(iv.) Average for anxiety

(v.) High average for mood and affect

(vi.) Average for physical symptoms

(vii.) Very elevated for the total index, indicating there are many more concerns for Student in all the measured areas than are typically reported.

H. Receptive-Expressive Emergent Language Test-3 - Student scored below average in receptive language, expressive language and language ability. However, District concluded communication was not a significant area of concern.

36. Overall, District assessors concluded Student’s activity level was appropriate for his age and environment. They found Student to be shy, but in an average range for his age.

37. None of the District’s assessors reviewed Ms. Scott’s report about her continued areas of concern regarding Student before drafting the Multi-Disciplinary Initial Assessment report.

38. District assessors saw Student differently than Mother did, based upon District’s observation of Student in the Diagnostic Classroom, and his scores on assessment instruments. The District assessors concluded Student’s verbal

communication was not significantly impacted. The District assessors concluded Student's nonverbal communication was not significantly impacted. The District assessors concluded Student's social interaction skills were strongly emerging and did not appear to be significantly impacted.

39. The Multi-Disciplinary Initial Assessment report concluded Student's " . . . classroom performance/activities are not being adversely affected at this time" and Student did not meet the special education eligibility criteria for autism.

40. The testimony of Ms. Newton, Ms. Scott, Mr. Henderson, Mr. Cooper and Ms. Raemer, Student's speech and behavior therapists, regarding Student's verbal communication, nonverbal communication and social interactions was more persuasive than the testimony of the District's assessors (Ms. Timmons, Ms. White and Ms. Kelly) on those subjects. Ms. Newton, Ms. Scott, Mr. Henderson, Mr. Cooper and Ms. Raemer each worked with Student over a period of time and knew him much better than Ms. Timmons, Ms. White and Ms. Kelly did. The District's assessors interacted with Student only during the 12, half-day session he was in the Diagnostic classroom.

41. Ms. Kelly threw away the collected data regarding staff observations of Student in the Diagnostic Classroom after she wrote her portion of the Multi-Disciplinary Initial Assessment report. This data supported the summary of Student's behaviors in the Diagnostic Classroom included in the Multi-Disciplinary Initial Assessment report. At the hearing Ms. Kelly was unable to remember specifics of the substance of the data collected. The absence of the data underlying Ms. Kelly's summary of the observations of Student in the Diagnostic Classroom undermines the credibility of her testimony and the accuracy of her written summary of Student's behaviors in the Diagnostic Classroom. The ultimate conclusions reached in the Multi-Disciplinary Initial Assessment Report are partially based on such missing data.

INDIVIDUALIZED EDUCATION PROGRAM TEAM MEETING OF OCTOBER 19, 2015

42. District provided Parents with the District's Multi-Disciplinary Initial Assessment report before the October 19, 2015 IEP meeting.

43. The following IEP team members attended the October 19, 2015 IEP meeting: Parents, Ms. Kelly, Ms. Timmons, Ms. White, and school principal Robin Hunter.

44. At this IEP meeting the team discussed Student's assessment and the Multi-Disciplinary Initial Assessment report. District members of the IEP team reported to Parents the assessment indicated Student demonstrated skills in the average range and he was not eligible for special education pursuant to the California Education code under the category of autism because he did not demonstrate significant delays in verbal communication, non-verbal communication and social interaction.

45. Parents disagreed with the District's assessment of Student's social pragmatic skills. Mother's perceptions of Student were extremely different than the District staff members' perceptions of Student expressed at this IEP team meeting. Parents were concerned about Student's social skill deficits and believed he required individual attention. Parents asked the team to collect more information about Student from his speech therapists, present and past behavior therapists and pre-school teachers. They also requested that District observe Student in class at the Intervention Center for Early Childhood.

46. Ms. Kelly and Ms. Timmons observed Student in class at the Intervention Center for Early Childhood on October 22, 2015.

IEP TEAM MEETING OF NOVEMBER 4, 2015

47. Parents, Ms. Kelly, Ms. White and Ms. Timmons attended the IEP team meeting on November 4, 2015. Ms. Timmons and Ms. Kelly reported they observed Student functioning age appropriately in his class at the Intervention Center for Early

Childhood.

48. Ms. Timmons had, since the October 2015 IEP team meeting, interviewed Student's previous behavior therapists, Robbie El Fattal and Crystal Johnson. Mr. El Fattal and Ms. Johnson were concerned about Student's tantrumming and low frustration tolerance. Ms. Johnson was also concerned that Student refused help and has difficulty with gross motor tasks.

49. Ms. White had, since the October 2015 IEP team meeting, interviewed Student's speech therapists, Ms. Newton and Ms. Scott. Ms. Newton told Ms. White Student had problems with joint attention and initiating. Both Ms. Scott and Ms. Newton were concerned Student would not do well in a general education program. They both mentioned Student's slight visual stimming. Ms. Scott was also concerned Student did not consistently respond to his name.

50. After sharing and considering the new information about Student gathered while observing Student in his class at the Intervention Center for Early Childhood, and from his therapists, the District team members did not revise their initial conclusion that Student did not meet the criteria for eligibility for special education.

51. Shortly after the November, 2015 IEP meeting Parents requested an independent psycho-educational evaluation and an independent speech and language evaluation. On November 12, 2015, District agreed to fund an independent psycho-educational assessment of Student to be conducted by Dr. B. J. Freeman, Ph.D., a licensed psychologist, and an independent speech and language assessment of Student to be conducted by Abby Rozenberg, M.S., a licensed speech and language pathologist.

MS. ROENBERG 'S INDEPENDENT SPEECH AND LANGUAGE EVALUATION

52. On January 4, 2016, Ms. Rozenberg conducted a speech and language evaluation of Student.

53. Ms. Rozenberg is a California licensed speech-language pathologist. She

has both a bachelor of science degree and a master of science degree from California State University Northridge in speech-language pathology. Ms. Rozenberg has practiced speech and language pathology for the last 16 years. She has assessed between 800 and 1,000 children. The majority of the children she has assessed were autistic. Ms. Rozenberg is trained in diagnosing autism. She has operated a private speech-language pathology practice for the last 14 years, through which she diagnoses and treats patients.

54. Ms. Rozenberg reviewed reports on Student, including the District's Multi-Disciplinary Initial Assessment report.

55. Ms. Rozenberg assessed Student in her office and observed him for two hours in his Sunday school class, which is similar to a general education preschool class. She administered the following tests to Student: Montgomery Assessment of Vocabulary; Clinical Evaluation of Language Fundamentals-Preschool; and informal language tests.

56. Ms. Rozenberg found Student scored on tests in the average range, but he did not use his speech and he did not initiate. Student could answer a question directed to him, but he could not use language spontaneously and he did not use words he knew in conversation. Student tested well on language assessments and he knew words, but he did not use them, which is typical of high functioning autistic children. Test results suggest Student's language skills were within average range, other than his morphological skills, which fell in the mildly low range.

57. Ms. Rozenberg summarized her findings. Student's scores, in her opinion, failed to reveal his deficits in using language skills in functional and social situations. There is a wide discrepancy between his knowledge of language and his spontaneous use of novel language when communicating in unstructured social settings. Student was significantly impaired in pragmatic skills, play skills and use of language for social

exchanges. He had difficulty responding to large group instructions and required direct verbal cues personally presented to him. He had difficulty interacting with peers, both verbally and nonverbally. His pretend play skills were not adequately developed. His schemes were simple and without imagination or elaboration.

58. Ms. Rozenberg recommended Student participate in weekly small group speech and language therapy sessions.

59. Ms. Rozenberg testified competently and candidly at the hearing.

DR. FREEMAN'S INDEPENDENT PSYCHOLOGICAL EVALUATION AND TESTIMONY

60. On November 22, 2015, Dr. Freeman conducted a psycho-educational evaluation of Student.

61. Dr. Freeman is a California licensed clinical psychologist. She has been involved in assessing autistic children for the past 40 years. She received her bachelor of arts degree from Mercer University in Macon, Georgia in 1966. She received a master of arts degree in psychology in 1968, and a doctorate in psychology in 1969 from Southern Illinois University. From September 1973 until June 2003, she was a professor at University of California Los Angeles, School of Medicine, Department of Psychiatry & Biobehavioral Sciences. Thereafter, Dr. Freeman served as Professor Emeritus at UCLA. She was professionally affiliated with UCLA for over 30 years. She has done extensive research on the diagnosis and treatment of autistic children and long term outcomes of services provided to autistic children. In 1976 she was involved in drafting the original DSM (Diagnostic and Statistical Manual of Mental Disorders) definition of autism. Her course on assessing children for autism was required for UCLA graduate students in Special Education. She supervised graduate students assessing children for autism in a community clinic. Dr. Freeman retired from UCLA about four months before the hearing. She continued to operate her private practice, through which she consulted with school districts and private clients, predominantly regarding childhood autism. She has

assessed over 10,000 people for potential autism. She has observed thousands of preschool classes. Dr. Freeman delivered more than 200 lectures and authored more than 100 articles on childhood autism. She served as consultant to many school districts. Dr. Freeman has vast experience and training in childhood autism and has been responsible for many advances in diagnosing and treating autistic children. At the time of the hearing she was on the Board of Directors of the Special Needs Network and the Autism Partnership Foundation.

62. Dr. Freeman testified extremely knowledgably, enthusiastically and confidently at the hearing about autism, assessing and treating autistic children, the District's Multi-Disciplinary Initial Assessment report and her independent psychological evaluation of Student. Based upon her extensive educational background and work involving the diagnosis and treatment of autistic children, Dr. Freeman's testimony was given significant weight.

63. It is Dr. Freeman's regular practice when assessing a child for eligibility for special education under the category of autism, to look for very specific behaviors significantly affecting the child's verbal communication, nonverbal communication and social interaction. This tracks the criteria for autism in the California Education Code.

64. Dr. Freeman found the District's Multi-Disciplinary Initial Assessment report to be analytically flawed. She disagreed with its conclusion that Student did not meet the criteria for eligibility for special education under the category of autism. She found the District's findings about Student to be inconsistent with the information about Student provided in the District's own report. She opined the District's report demonstrated a lack of understanding of how children with autism spectrum disorder develop. The District's report ignored red flags in Parents' responses to questionnaires about Student's behaviors. Much of the collateral information gathered about Student from various sources was ignored and the only information used to determine Student's

eligibility for special education was what District personnel observed, the District's test results and opinions of the test administrators.

65. Dr. Freeman explained convincingly that standardized test scores are often misleading with autistic children because such children frequently perform well on skill tests, but do not consistently use those skills across environments. Autistic children can often learn skills but are not able to apply those skills. The District's assessors erred by missing this crucial nuance when assessing Student. The District ignored collected information indicating Student was not using skills in his various environments. Also, inconsistent scores on subtests are material. A child may do well in one tested area, but have a deficit in another area, causing his overall score to erroneously indicate he is in the average range. The District's assessment of Student made this mistake and inaccurately concluded he was in the average range and not significantly impacted by his deficits, even though he tested poorly on certain subtests.

66. Dr. Freeman also found the conclusions District's assessors made from their own observations of Student in the Diagnostic Classroom to be faulty. The District's assessment report noted Student required adult prompting, he did not initiate tasks and he required a great deal of supervision. Dr. Freeman opined that, based on those observations, District should have recognized Student was clearly not initiating at a level appropriate for a three-year-old child.

67. Dr. Freeman further noted the District report mistakenly labeled Student as shy, but in an average range for his age. This conclusion discounted the reports and conversations with Student's Parents, behavior therapists, speech therapists and preschool teachers, which all consistently indicated Student exhibited significant delays in pragmatic language. As a result of the above described errors, Dr. Freeman opined that the District incorrectly concluded Student was not eligible for special education under the category of autism.

68. Student had benefited from his early interventions services. Dr. Freeman opined very persuasively that Student will continue to develop only with continued interventions. Without ongoing interventions Student will likely regress.

69. Dr. Freeman administered the following tests in her evaluation of Student: Vineland II Adaptive Behavior Scales; Autism Diagnostic Observation Schedule, 2nd Edition; and the Social Responsiveness Scale, 2nd Edition. She reviewed multiple historical reports on Student from a wide variety of sources. She also reviewed observation notes of Student's speech and behavior therapists and teachers from the Intervention Center for Early Childhood. She interviewed Mother, observed Student in his Sunday school class, which was similar to a typical preschool class, and interviewed the teacher of that class.

70. In Student's Sunday school class Dr. Freeman observed him engaging in self-stimulatory behaviors. She noted he had poor body boundaries, required prompts to complete tasks and did not interact with other children. He demonstrated repetitive stereotypical behaviors commonly associated with autism. He did not engage in spontaneous, creative or imaginative play. He perseverated on toy trucks. He showed no interest in his classmates and ignored the teacher's encouragement to interact with them. He was cooperative but needed multiple prompts to complete a craft activity. He knew the routine of the class and what he was supposed to do. The teacher reported to Dr. Freeman that Student answered questions directed to him approximately 50 per cent of the time. Dr. Freeman credibly opined that these behaviors were not typical of a three-year-old child.

71. Before testifying at hearing Dr. Freeman read Ms. Rozenberg's independent speech and language evaluation of Student dated January 4, 2016. Dr. Freeman's observations of Student were consistent with Ms. Rozenberg's observations of Student.

72. Dr. Freeman's standardized testing of Student indicated Student rarely spoke to anyone; he said things out of context and produced very little speech. He exhibited echolalia and did not use nonverbal communication (eye contact, facial expressions or gestures). He inconsistently responded to his name. He did not request anything or use joint attention. His social overtures lacked integration into context and he had limited social responses. He had limited imaginative play and was unable to remain seated in a chair.

73. Student scored inconsistently on the tasks tested (communication, daily living skills, socialization and motor skills). His communication and daily living skills were inconsistent and required adult prompting before he responded or acted. Student's social skills were his primary problem area. He did not have skills to make and maintain social contact. He needed prompts to respond appropriately to others.

74. Dr. Freeman's testing also showed Student avoided social interaction, was impulsive and very active. He had difficulty paying attention and ignored others around him. He would become obsessed with certain objects and displayed unusual mannerisms. He preferred objects to people. He used jargon and was unaware of what was happening around him. He had particular difficulty communicating with peers and he did not recognize or interpret social cues. Dr. Freeman found no evidence that Student was learning from his environment, which was indicative of autism spectrum disorder.

75. Dr. Freeman concluded that, based upon the results of comprehensive assessments and her observations, Student's autism clearly adversely impacted his educational performance. She, therefore, found Student met the eligibility criteria for special education in the California Education code under the category of "autism." Dr. Freeman recommended Student's IEP goals should address his specific areas of deficit, including social skills.

76. Dr. Freeman opined that early intervention services provided to children diagnosed with autism spectrum disorder at a young age very effectively address and remedy autistic behaviors and help autistic children with their developmental delays. Autistic children do not learn certain skills, including language and social skills, in the manner their typically developing peers learn these skills naturally in their environments. These skills must be specifically taught to autistic children.

77. Dr. Freeman's testimony and written Psychological Assessment report were extremely persuasive. Her expertise in assessing children for autism was evident. Her testimony demonstrated an understanding of the nuances of assessing autistic children for eligibility for special education. Dr. Freeman's testimony was more persuasive than the testimony of District's assessors, Ms. Timmons, Ms. White and Ms. Kelly. The District's assessors and its Multi-Disciplinary Initial Assessment Report failed to give adequate consideration to the information about Student provided by Parents and his therapists, who knew Student well and had worked with him for a significant time period. In contrast, Dr. Freeman's independent evaluation prudently considered information about Student gathered from all sources. Dr. Freeman also astutely recognized and addressed the implications of Student's inconsistent subtest scores, which revealed Student's inability to generalize learned skills in his environments.

78. Everyone who observed Student, except the District staff members, reported seeing Student's subtle self-stimulatory behaviors. Dr. Freeman's observations of Student were consistent with the observations of Parents, Student's therapists and Ms. Rozenberg. The District assessors' observations of Student were inconsistent with Parents and Student's therapists' observations of Student.

79. Before the February 22, 2015 IEP team meeting Ms. Timmons and Ms. White reviewed Ms. Scott's report stating Ms. Scott's multiple concerns regarding Student. Ms. Timmons and Ms. White did not revise their opinions about Student after

they read Ms. Scott's report.

IEP TEAM MEETING OF FEBRUARY 22, 2015

80. District convened an IEP team meeting on February 22, 2015, for the purpose of reviewing the independent education evaluations by Ms. Rozenberg and Dr. Freeman. Present at the meeting were: Erin Ferguson, program specialist; Ms. Kelly; Ms. White; Ms. Timmons; Parents; Dr. Freeman and Ms. Rozenberg. Dr. Freeman and Ms. Rozenberg reviewed their respective independent educational evaluations with the IEP team. Dr. Freeman reported her conclusion that Student met the eligibility criteria for special education under the category of autism. Ms. Rozenberg stated her concerns that Student: did not use his speech skills; needed social skills training; and would get lost in a large class.

81. After reviewing the independent evaluation reports by Dr. Freeman and Ms. Rozenberg, the District IEP team members did not change their initial conclusion that Student did not meet the criteria for special education eligibility under the category of autism. Parents disagreed with the team's conclusion. This action was filed shortly thereafter.

STUDENT'S BEHAVIOR AND SPEECH THERAPIST'S OPINIONS REGARDING STUDENT'S PLACEMENT IN A GENERAL EDUCATION CLASSROOM

82. Mr. Henderson, Student's behavior therapy interventionist, competently, confidently and credibly opined Student would very likely have problems in a general education setting because he was easily distracted.

83. Mr. Cooper, Student's clinical behavior therapy manager, competently, confidently and credibly opined if Student was placed in a general education classroom he would need an aide or shadow in order to succeed.

84. Ms. Raemer, clinical director of Patterns Behavioral Services, reviewed the

District's Multi-Disciplinary Initial Assessment report and noted the Diagnostic Classroom appeared to be a structured classroom setting. She opined very competently, believably and confidently that Student would need the support of a full-time shadow if he was in a general education preschool classroom.

85. Both Ms. Newton and Ms. Scott, Student's speech therapists, confidently and credibly expressed their concerns that a general education class was inappropriate for Student because he would get lost and not learn in that environment.

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA³

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)⁴ 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 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 an eligible child at no charge to the parent or guardian, meet state educational

³ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of the issue decided below.

⁴ All subsequent references to the Code of Federal Regulations are to the 2006 version.

standards, and conform to the child's individualized education program (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 California, related services are also called designated instruction and services].) In general, an IEP is a written statement for each child with a disability that is 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)(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 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].) Here, Student is the petitioning party and had the burden of proving the essential elements of his claims.

ISSUE: DID DISTRICT DENY STUDENT A FAPE BY FAILING TO FIND HIM ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES UNDER THE CATEGORY OF AUTISM

5. Student contends District denied him a free appropriate public education by failing to find him eligible for special education and related services under the category of autism at the IEP meeting on October 19, 2015. District contends it appropriately found Student not to be eligible for special education and related services under the category of autism because Student did not require special education and related services in order to access his education.

6. Under the IDEA the term “educational benefit” is not limited to academic needs, but includes the social and emotional needs that affect academic progress, school behavior, and socialization. (*County of San Diego v. California Special Educ. Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467.)

7. A student is eligible for special education if he or she is a “child with a disability” such as autism, and as a result thereof, needs special education and related services that cannot be provided with modification of the regular school program. (20 U.S.C. § 1401(3)(A); 34 C.F.R. § 300.8(a)(1); Ed. Code, § 56026, subds. (a) & (b).) “Special education” is instruction specially designed to meet the unique needs of a child with a disability that cannot be met with modification of the regular instruction program, and related services that may be required to assist the child to benefit from the specially designed instruction. (20 U.S.C. § 1401 (29); Ed. Code, §§ 56031, subd. (a).)

8. When determining eligibility for special education, the local educational agency must conduct an assessment of the child, in all suspected areas of disability. The IEP team or other qualified professionals must review existing data regarding the child and determine, with input from the parents, what additional data is needed to determine questions regarding whether a child is a child with a disability, the present levels of academic performance and developmental needs of the child, whether the

child needs or continues to need special education and related services, or whether modifications to the IEP are required to enable the child to meet annual goals. (20 U.S.C. §§ 1414(c)(1)(A) & (B); Ed. Code, § 56381, subds. (b) & (c).)

9. The assessment must be conducted in a way that: 1) uses a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent; 2) does not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability; and 3) uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. (20 U.S.C. §§ 1414(b) & (c)(5); Ed. Code, §§ 56300, 56381, subd. (h).)

10. A child shall qualify as an individual with exceptional needs, if the results of his assessment demonstrate that the degree of the child's impairment, as described in the applicable regulation, requires special education in one or more of the program options authorized by Education Code section 56361. The decision as to whether or not the assessment results demonstrate that the degree of the child's impairment requires special education shall be made by the IEP team, including personnel in accordance with Education Code section 56341, subdivision (b). The IEP team shall take into account all the relevant material which is available on the child. No single score or product of scores shall be used as the sole criterion for the decision of the IEP team as to the child's eligibility for special education. (Cal. Code Regs., tit. 5, § 3030, subd. (a).)

11. According to the applicable California regulation governing eligibility for special education and related services under this eligibility category, "autism" means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, and adversely affecting a child's educational performance. Other characteristics often associated with autism are

engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. (Cal. Code Regs., tit. 5, § 3030, subd. (b)(1).)

ANALYSIS

12. Because Student is a preschooler he is too young to have grades. However, Student's teachers, speech and behavioral therapists, and Parents know him well from working with him over a period of time. Their observations of Student illuminate his unique needs, which must be met in order for him to obtain educational benefit from school. The opinions and concerns of those professionals that Student would not be able to learn in a general education classroom without a full time aide or shadow were largely discounted by the District IEP team members. The District IEP team members also discounted Mother's observations of Student, even though three of the District's assessors (Ms. Timmons, Ms. White and Ms. Kelly) all testified Mother is an accurate historian of Student's behaviors. The District IEP team members gave less weight to the information collected from the people who worked with Student extensively and knew him well, than to the observations of District staff in the Diagnostic classroom and to the results of standardized tests.

13. The District IEP team members failed to take into appropriate account, and failed to afford sufficient weight to, all the relevant material available on Student when determining his eligibility for special education. Dr. Freeman's report convincingly pointed out material errors in the District's Multi-Disciplinary Initial Assessment report. The IEP team discounted Dr. Freeman's psychological assessment of Student and her conclusion based on relevant data that he met the criteria for eligibility for special education under the category of autism. The District also failed to appropriately consider Ms. Rozenberg's speech and language evaluation, which stated that, even though Student's language skills tested in the average range, he was unable to apply

those language skills functionally in social situations. The District further failed to appropriately weigh Ms. Rozenberg's conclusion that Student had a wide discrepancy between his knowledge of language and his spontaneous use of novel language when he communicated in unstructured social settings. The District also failed to give appropriate weight to the concerns expressed by Student's speech and behavior therapists that Student would be lost in a general education classroom without significant supports.

14. District's reliance on Student's standardized tests results was misplaced because District failed to account for Student's inconsistent scores on subtests. The inconsistent scores indicated Student had learned certain skills, but he was not able to adapt those skills and generalize them to his environments.

15. The evidence demonstrated Student had significant deficits in social skills. Student exhibited characteristics often associated with autism, such as engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. Student's verbal communication, nonverbal communication and social interaction skills were all impaired to a significant degree that adversely affected Student's educational performance. Due to Student's developmental disability of autism he had unique educational needs, which could not be met with modifications to the regular general education instruction program. In order to gain educational benefit from school Student requires a specially designed instructional program and related services.

16. "Educational benefit" is not limited to academic needs, but includes social and emotional needs that affect academic progress, school behavior, and socialization. District failed to recognize Student will not progress on his delayed social skills unless he continues to have interventions provided through special education and related services, and without those continued interventions he will likely regress. Those social

skills are so essential to learning they will adversely affect Student's academic progress if he does not have a specialized academic program tailored to meet his unique needs. Student was well behaved and cooperative in a structured setting with plenty of adult supervision, attention and redirection, like the Diagnostic Classroom. However, he would not be able to generalize and adapt his learned skills to a larger, less structured setting, such as a general education class. Student's significant social deficits, consistently reported by Parents and Student's therapists and teachers, would prevent him from obtaining educational benefit in a general education class, unless he had significant supports.

17. Student met his burden of proof by establishing with a preponderance of the evidence that District denied him a FAPE by failing to find him eligible for special education and related services under the category of autism at the IEP meeting on October 19, 2015.

REMEDIES

1. Under federal and state law, courts have broad equitable powers to remedy the failure of a school district to provide FAPE to a disabled child. (20 U.S.C. § 1415(i)(C)(iii); see *School Committee of the Town of Burlington, Massachusetts v. Dept. of Education* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996, 85 L.Ed.2d 385].) This broad equitable authority extends to an ALJ who hears and decides a special education administrative due process matter. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 244, n. 11, 245 [129 S.Ct. 2484, 174 L.Ed.2d 168].)

2. Student prevailed on the sole issue in this case. As a remedy, Student requests the District be ordered to find Student eligible for special education and related services under the category of autism. Student's requested remedy is granted.

ORDER

District is ordered to find Student eligible for special education and related services under the category of autism. District is further ordered to hold an IEP team meeting within 30 days from the date of this order for the purpose of developing an appropriate IEP for Student.

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 sole 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: June 30, 2016

_____/s/_____
CHRISTINE M. ARDEN
Administrative Law Judge
Office of Administrative Hearings