

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

RIALTO UNIFIED SCHOOL DISTRICT.

OAH Case No. 2017010159

CORRECTED DECISION¹

Parent on behalf of Student filed a due process hearing request with the Office of Administrative Hearings on December 16, 2016, naming Rialto Unified School District.² On March 3, 2017, OAH granted Student's request to amend the complaint. OAH continued the matter for good cause on April 6, 2017.

Administrative Law Judge Linda Johnson heard this matter in Rialto, California, on June 7, 8, 13, and 14, 2017.

Parent represented Student and attended all days of the hearing. Student did not attend the hearing.

¹ The previously issued July 19, 2017 decision is corrected to reflect dates in 2016 instead of 2017 in paragraphs 1, 17, 26, and 28. No other changes to the decision were made.

² District served Student with its response to Student's complaint on April 5, 2017, which permitted the hearing to go forward. (*M.C. v. Antelope Valley Unified Sch. Dist.* (9th Cir. 2017) 858 F.3d 1189, 1199-1200.)

Vivian Billups, Attorney at Law, represented District. Dr. Paulette Koss, District's Director of Special Education, attended days one, three, and four of the hearing on behalf of District. Laura Chism, Program Manager for East Valley Special Education Local Plan Area, attended days one, two, and three of the hearing for District.

The parties presented oral closing statements on June 14, 2017, and the record was closed.

ISSUE

1. Did District deny Student a free appropriate public education in the November 17, 2016 individualized educational program by failing to offer Student:
 - (a) an appropriate program in a nonpublic school which provides one-to-one individualized instruction; and
 - (b) an appropriate program to address Student's dyslexia?

SUMMARY OF DECISION

Student alleged District denied him a FAPE by failing to provide one-to-one teaching instruction at a nonpublic school and a specific dyslexia program. District contends it provided Student with meaningful educational benefit in the form of 200 minutes per day of specialized academic instruction.

Student failed to prove he required one-to-one instruction in a nonpublic school or a specific program to address his dyslexia. The Decision therefore finds that District offered Student a FAPE.

FACTUAL FINDINGS

BACKGROUND AND JURISDICTIONAL MATTERS

1. Student was a 17-year-old boy who resided with Parent in District for all relevant times. Student previously resided in Arkansas and attended school there.

Student moved back to District in June 2016. Before Student enrolled in District he attended Fusion Academy for one class. Student also briefly attended a private school in Riverside County in September 2016.

2. From second-to-fifth grade, prior to attending school in Arkansas, Student attended school in District. During that time Student qualified for special education services under the category of specific learning disability.

ENROLLMENT AND INTERIM PLACEMENT

3. Parent met with Michelle Magana-Boswell, school psychologist, and Dr. Paulette Koss, District's director of special education, on September 21, 2016. During the meeting Parent voiced concerns about Student and discussed Student's previous educational setting, but did not have the current IEP. However, Parent did have a related special education due process hearing decision from Arkansas which she presented to District.

4. On August 1, 2016, the Arkansas Department of Education Special Education Section determined Student was denied FAPE and that district was required to develop a new IEP to address Student's needs. The Arkansas decision did not order a specific setting for Student. However, it did include factual findings regarding Student's disability and previous educational setting. Student has diagnoses of Attention Deficit Hyperactive Disorder, Dyseidetic Dyslexia, and mood disorder. Student also has a reading disorder, written expression disorder, and a visual-spatial impairment. Student received special education services in the form of co-taught algebra and physics classes, and a pre-teach class.

5. During the September 21, 2016 meeting, Parent asked Dr. Koss to consider nonpublic school settings for Student. Dr. Koss testified that District was not able to place Student in a nonpublic school because he did not have an IEP listing a nonpublic school setting. Dr. Koss has a Bachelor of Science Degree in Special Education from

Youngstown State University, a Master of Arts Degree in Educational Leadership from California State Polytechnic University, a Doctor of Education Degree in Organizational Leadership from Brandman University, a clear administrative services credential, a professional clear multiple subjects credential, and clear specialist instruction in special education: learning handicapped, Autism Spectrum Disorders, and clear cross-cultural language and academic development. Dr. Koss has 25 years of experience in education as either a special education teacher or administrator, and has been the executive director of special education for District since November 2015. Dr. Koss's testimony regarding interim placements that District was able to offer was persuasive given her knowledge and experience.

6. Because Parent was not able to provide Student's current IEP, District offered an assessment plan to gather more information. District proposed to assess in the areas of academic achievement, cognitive development and learning ability, perception process and memory, social emotional and behavior development, self-help and adaptive skills, health and development, records review, and educationally related mental health services. Parent signed the assessment plan during the meeting on September 21, 2016.

7. Based on the information Parent provided, and the information in the Arkansas decision, Dr. Koss made an administrative placement that placed Student in Jerome Rucker's special day class, a mild to moderate special education placement with an emphasis on behavior. That class was also referred to as an emotional disturbance special day class. Student was in Mr. Rucker's class for four periods, English literature, integrated science, math 2A, and study skills. Student was placed in two general education classes, introduction to business and physical education.

8. Mr. Rucker has a Bachelor of Science Degree in Special Education from the University of Arkansas, a Master of Arts Degree in Teaching from National University, a

mild/moderate credential, a multiple subjects credential, and a preliminary administrative services credential. Mr. Rucker has worked in education for 16 years and for District for a year as a special education teacher.

9. Prior to Student starting school, Student and Parent visited the proposed classroom and met with Mr. Rucker. Mr. Rucker testified regarding that meeting. Mr. Rucker believed his classroom was appropriate. Mr. Rucker's class has a focus on behavior support, which he felt was necessary for Student because of Student's history of suicidal ideation and Student made a comment that he did not want to be in school.

10. Parent filled out the school enrollment paperwork on September 29, 2016. Parent did not provide a copy of Student's most recent IEP, with the enrollment paperwork. Student started District's school on October 3, 2016.

THE OCTOBER 31, 2016 INTERIM IEP TEAM MEETING

11. On October 31, 2016, the IEP team met to discuss the administrative placement of Mr. Rucker's special day class for four periods and two periods in general education. District did not make any changes to Student's placement or services at that time.

NOVEMBER 3, 2016 INCIDENT

12. On November 3, 2016, Student was in the restroom with several other boys. School administrators suspected that the boys were using drugs due to suspicious activity. Consequently, all of the boys were taken to the school nurse and evaluated for drug use.

13. Student was evaluated by Pamela Carnes, school nurse. Ms. Carnes determined that Student was not under the influence of drugs and not acting suspiciously. Student had slightly elevated blood pressure, but that was to be expected of a student who was being evaluated for drug use. Ms. Carnes further determined

Student had nothing to do with any possible drug use and sent Student back to class. Other than a slightly elevated blood pressure, Ms. Carnes did not observe any signs that Student was upset or distressed about the incident. During the IEP team meetings Parent was told District would contact parents regarding similar incidents. However, Ms. Carnes testified that she would not call a parent regarding this type of incident because the student did not do anything wrong. Ms. Carnes did not call Parent to discuss the incident.

14. After the incident, Student took the bus home from school and was visibly upset when he got home. Parent was on the phone with Sara Davidson-Amici, social worker, when Student got home and Student agreed to speak to Ms. Davidson-Amici about the incident.

15. Ms. Davidson-Amici is a medical social worker for Kaiser Permanente Hospital. Ms. Davidson-Amici has a master's degree in social work and 10 years of experience working with children with disabilities and mental and physical health issues. Ms. Davidson-Amici is currently responsible for bio-psychosocial assessments, assisting patients and family members adjust to the hospital setting, and running support groups. Ms. Davidson-Amici testified for Student.

16. Student and Parent went to Kaiser that afternoon to speak with Ms. Davidson-Amici. Student took a drug test and the results were negative. Student was perseverating on the incident and presented with suicidal ideation. However, once Student was able to tell his side of the story he calmed down and was no longer suicidal. Ms. Davidson-Amici ruled out suicidal ideation because Student calmed down and, when asked, did not have a plan to commit suicide.

THE NOVEMBER 17, 2016 TRIENNIAL IEP

17. District held a triennial IEP team meeting to review the new assessment data and create an IEP. This meeting was held over three days, November 17, 2016,

December 5, 2016, and December 13, 2016. School psychologist Michelle Magana-Boswell, counselor Jeffrey Prentice, assistant principal Jeannette Martinez, case carrier and special education teacher Mr. Rucker, Kaiser social worker Ms. Davidson-Amici, general education teachers Jacqueline Johnson and Rosemary Bauer, special education coordinator Erica Johnson, Student, and Parent all attended the November 17, 2016 IEP team meeting. With the exception of Erica Johnson, all the same people attended the December 5, 2016 IEP team meeting, in addition, program specialist Earlene Hyman, Dr. Koss, and Ms. Carnes attended the meeting. The same people who attended the December 5, 2016 IEP team meeting attended the December 13, 2016 IEP team meeting with the exception of Ms. Davidson-Amici and Ms. Bauer.

18. Ms. Magana-Boswell conducted a psycho educational assessment of Student and created a written report. Ms. Magana-Boswell has a Bachelor of Science Degree in Human Services from California State University Fullerton, a Master of Science in Educational Counseling from the University of La Verne, and a pupil personnel services credential. Ms. Magana-Boswell has been a school psychologist for four years and has worked for District for over a year. Ms. Magana-Boswell testified for both Student and District.

19. Ms. Magana-Boswell assessed Student using a variety of measures and observation. Student scored in the average range on Woodcock-Munoz Language Survey, a test that assessed Student's oral language skills through picture vocabulary and verbal analogies. On the Wide Range Assessment of Memory and Learning, Second Edition, Student scored in the average range for both the verbal and visual subtests, which assessed how well Student could recall verbal and visual information. However, Student scored in the borderline range for attention and concentration, which measures how well Student could recall sequential information. Student also scored in the borderline range for general memory on the Wide Range Assessment. Student scored in

the average range on the Developmental Test of Visual Motor Integration, which assessed how well Student was able to copy geometric designs and how well he drew geometric designs while staying in the given lines. Student scored in the borderline range on the Motor-Free Visual Perception Test-Fourth Edition which assessed Student's perceptual ability such as spatial relationships, visual discrimination, visual closure, and visual memory. Ms. Magana-Boswell testified that this result is indicative of dyslexia, which was similar to information in Student's records. Student was also given the Comprehensive Test of Phonological Processing, which assessed phonological awareness, phonological memory, and rapid naming. Student scored in the average range on phonological awareness and rapid symbolic naming, and in the below average range for phonological memory.

20. For the psycho educational evaluation, Ms. Magana-Boswell conducted a Behavior Assessment System for Children, Second Edition assessment for Student. Student reported clinically significant scores for attitude toward school. During the IEP team meeting, Student stated that he did not like the high school because it was too large and he felt unsafe. Parent rated Student as clinically significant for hyperactivity, aggression, conduct problems, externalizing problems, depression, a typicality, and attention problems; however, Student's teachers did not rate him clinically significant in any area. At the time Student's teachers were filling out the Behavior Assessment they had only known Student for approximately one month. District offered to conduct a supplemental assessment after Student attended school longer to gather more information; however, Parent refused that offer.

21. Mr. Rucker conducted academic assessments as part of the psycho educational evaluation. Mr. Rucker administered the Woodcock-Johnson IV test which measured academic achievement. Student scored in the average range for both reading and mathematics. Mr. Rucker also administered the Test of Written Language, Fourth

Edition. Student's contextual convention and story composition skills fell in the average range; however, his spontaneous writing skills fell in the very superior range.

22. The IEP team discussed an assessment report Dr. Rebecca West, a clinical psychologist from Memphis, Tennessee, wrote on March 21, 2015. Dr. West suggested Student may benefit from extended time on assignments, regular meetings with his teacher, and a behavior plan that established consequences and rewards. Dr. West also recommended a vision therapy assessment and a significant list of interventions to use at school and home.

23. The IEP team discussed a psycho educational evaluation from Easter Seals in Arkansas, dated September 9, 2015. That report recommended following Dr. West's recommendations, along with continued supportive services in school, modified written assignments, and use of a calculator.

24. The IEP team also discussed a report from MedPro Services in San Bernardino, California conducted on September 30, 2016. The purpose of the report was to determine eligibility for disability, not educational services. Overall, the report found that Student would have a difficult time in a work setting if he was not in a supportive environment with one-to-one supervision and coaching.

25. The IEP team discussed eligibility and determined Student met the eligibility category for specific learning disability as a result of a significant discrepancy in reading comprehension and mathematical reasoning due to attention and visual processing deficits. The IEP team also determined Student met the eligibility category for other health impairment due to a diagnosis of attention deficit hyperactivity disorder. However, District did not make a determination on emotional disturbance as student had only attended school in District for approximately one month when Student's teachers filled out the rating scales.

26. Parent requested an independent educational evaluation in the area of emotional functioning, instead of having District conduct a supplemental assessment to revisit a potential emotional disturbance. District granted the request and gave the approval to Parent at the December 13, 2016 IEP team meeting.

27. The IEP team discussed Student's present levels of performance and updated the IEP to reflect the results of the testing. In addition to the testing information, Student regularly volunteered to read in class and, in math, was working on solving quadratic equations. Student got along with his peers well, and enjoyed talking in class, and enjoyed leadership roles among peers. Student exhibited typical high school behavior while in Mr. Rucker's class.

28. Based on the assessment data, and teacher observations, the IEP team created seven goals for Student: one reading goal, one math goal, one writing goal, two transition goals, and two behavior goals. Parent was asked for her input regarding goals, however, she responded with "we can move on." During the December 5, 2016 IEP team meeting Parent stated she did not agree with goals but that the team needed to move on. Parent did not provide any input on what was wrong with the goals, why she believed they were inappropriate, or how she thought the goals should be written. Mr. Rucker testified regarding how he created the goals. Mr. Rucker did not write a goal specifically for dyslexia, however, he wrote goals for reading comprehension and written expression. These goals were designed to work on Student's deficits caused by the dyslexia. Mr. Rucker developed the goals based on the academic testing, work samples, and daily quizzes.

29. Parent asked for recommendations for vision therapy due to the Student's specific form of dyslexia. District offered a vision assessment and put in the IEP team

meeting notes that the assessment would come from the special education local plan area.

30. Ericka Johnson, special education coordinator for District, testified regarding discussions at the November 17, 2016 IEP team meeting. Ms. Johnson has a master's degree in speech and language and education administration as well as a preliminary administration credential. Ms. Johnson is a special education coordinator for District; her role is to assist in developing IEPs and supporting special education. During the IEP team meeting Ms. Johnson explained what a home hospital placement was, but did not discuss specific recommendations for Student as she only attended the November 17, 2016 IEP team meeting and the team only reviewed the psycho educational assessment at that meeting.

31. During the IEP meetings Ms. Davidson-Amici voiced concerns over the size of the campus. Based on her conversations with Student and Parent, she believed Student did not feel safe at school because of the large size and the number of students and that she also believed Student felt bullied the first week he attended school. Ms. Davidson-Amici opined that Student needed a smaller school setting. Ms. Davidson-Amici testified that she based her opinion on personal knowledge regarding the size of high school campuses and conversations with Student and Parent. Ms. Davidson-Amici did not conduct any assessments, nor did she observe Student at school. Ms. Davidson-Amici's background is in medical social work, not education. Although her testimony was credible, given her lack of assessment, observation, and experience with special education, Ms. Davidson-Amici's testimony was given little weight.

32. Parent voiced concern about safety and Student's suicidal behavior when on campus unsupervised. Mr. Rucker testified that Student had a great personality and people enjoyed being around him, however, he noticed a difference in Student's

behavior from December 5, 2016, to December 13, 2016; Student was still respectful and compliant, but was refusing to complete work.

33. Student believed that teachers he did not know were watching him. For example, Student believed that several teachers were watching him during his physical education class. During the IEP meeting District explained to Student that all the teachers watched all students during open physical education classes.

34. During the IEP team meetings Parent expressed a desire for a one-to-one teaching setting. Student believed he was successful at Fusion Academy and wanted to attend there. Student stated he felt unsafe at Carter but could not articulate a reason why. Student did not provide any evidence that he required a one-to-one teaching setting to benefit from his education.

35. Based on Student's present levels of performance, goals, and teacher observation, District's offer of FAPE was 200 minutes a day of specialized academic instruction in Mr. Rucker's class, 20 minutes of group counseling a week, and an instructional aide assigned to Student. Mr. Rucker's class has a limit of 12 students with two instructional aides. However, during the 2016/2017 school year the maximum number of students enrolled in Mr. Rucker's class was seven. Group counseling was provided in class on Tuesdays for 25 to 30 minutes, topics included greeting people, drug use, suicide, etc.

36. Mr. Rucker testified regarding the positive behavior interventions in his class. Mr. Rucker greeted each student in the morning to gauge their emotional state. He had a thought of the day each day for students to start the day by writing to get focused on school. He also implemented an incentive and reward system based on positive behavior.

37. District also offered curb-to-curb transportation for Student.

38. District received Student's last IEP from Arkansas on December 9, 2016. District did not use the Arkansas IEP to develop Student's triennial IEP, however, the IEP team was able to confirm that District was offering more specialized academic instruction than Student previously received.

39. Ms. Martinez testified regarding District's offer of FAPE. Ms. Martinez has a Bachelor of Arts Degree in Psychology and a Master of Arts Degree in Educational Administration and Leadership from California State University, San Bernardino; she has a multiple subjects credential, a single subject social studies credential, and a clear administrative services credential. Ms. Martinez has 10 years of experience as a teacher or administrator, and has worked at District as an assistant principal since February 2015. Part of District's offer of FAPE was a one-to-one instructional aide for Student to alleviate Parent's concern about Student not feeling safe. However, Parent declined the instructional aide. Parent believed a one-to-one aide would increase Student's paranoia, not help keep him safe.

40. Dr. Chavez also testified regarding District's offer of FAPE and the instructional assistant. Dr. Chavez has a Bachelor of Arts Degree in Fine Arts Education from California State University, Fullerton, a Master of Arts Degree in Education – School Counseling from Azusa Pacific University, a Doctor of Education Degree in Organizational Leadership from the University of La Verne, an administrative services credential, an administrative services credential, a clear pupil personnel services credential, and a clear single subject teaching credential. Dr. Chavez has 12 years of experience as a teacher or administrator. Although District did not see the extreme behaviors that would warrant a one-to-one aide, District offered the aide because Parent was concerned about Student's safety on campus. Dr. Chavez did not think the aide was necessary for academic reasons because Student was making progress in class.

41. Ms. Martinez testified that after the December 13, 2016 IEP team meeting, Mr. Rucker and Ms. Martinez called Parent to explain the instructional aide's role. District offered the aide to provide additional support because Parent was concerned about Student's safety on campus. District followed that call up with a letter dated January 11, 2017. District's letter to Parent explained that the instructional aide was offered to Student as part of District's offer of FAPE, but it could not implement the aide without Parent consent.

42. On January 17, 2017, Parent consented to a trial period of the instructional aide through January 25, 2017.

THE JANUARY 25, 2017 IEP TEAM MEETING

43. Parent requested a supplemental IEP team meeting to discuss the one-to-one aide, the large campus size, Student's dyslexia, and emotional concerns. District agreed and convened an addendum IEP Team meeting on January 25, 2017. During the IEP team meeting the discussion of the aide and campus size was deferred to a later time.

44. The need for counseling was discussed. Student had 30 minutes of counseling weekly on his IEP from Arkansas. Parent's concern for Student was the large school size and the change in Student's behavior since he returned to District. Mr. Rucker noticed new behaviors. Student was very compliant, but more recently had verbalized that he didn't want to attend class or complete work. In physical education and career transition Student was not showing any behaviors and was compliant and participatory. The team discussed creating a goal to cope and manage feelings, however, Parent wanted to wait to make a decision about adding counseling.

45. District referred Student for a vision assessment; however, the assessor from the special education local plan area came to the school instead of contacting

Parent. District confirmed the vision assessor would contact Parent to conduct the assessment.

46. Parent was under the misimpression Student could remain in school until he turned 22. District explained that because Student was on track to graduate he would remain in school until he received his high school diploma. At that time, Student was on track to graduate at the end of the 2016/2017 school year.

47. The IEP team discussed Student's schedule; he needed three classes to graduate, but could take a full six classes. District offered a sixth period class for study skills to work on reading and math skills. Rather than direct instruction, that class included online programs with assistance from the one-to-one aide and Mr. Rucker. Parent wanted to wait to make a decision about the sixth period study skills class.

48. No changes were made to Student's IEP as a result of the meeting.

ACADEMIC PERFORMANCE

49. Work samples showed that Student could complete the work he was assigned. Mr. Rucker testified regarding Student's performance in class. Student's writing was not perfect, but was legible. Mr. Rucker did not see that Student scrambled any words, nor did he see anything that made him believe Student's dyslexia was inhibiting Student from accessing his education. Mr. Rucker did not see a need for any additional intervention. Additionally, Student actively participated in group counseling; he was a leader who was willing to share.

50. Student took an introduction to business class the first semester of the 2016/2017 school year with Jacqueline Johnson. Ms. Johnson is a general education teacher for District and testified regarding Student's performance in class. Although there was a period of time Student was skipping Ms. Johnson's class, overall, Student did very well in the class. Student was well liked by the other students and able to complete the work. Ms. Johnson recalled specific details about a group project; Student

was absent from class and when he returned he was concerned he may have missed his opportunity to present his project. Student was able to present his project with his partner, but his partner was nervous and did not want to speak. Student took the lead, presented the project to the class, did not have any trouble speaking or reading the information on the PowerPoint presentation, and had the class engaged and laughing. Ms. Johnson was impressed with Student's performance and enjoyed having him in class. Ms. Johnson's testimony regarding Student's performance and behavior in class was persuasive and given significant weight in light of the detail she remembered as neither Parent nor Student testified.

51. Mr. Prentice and Ms. Lee testified regarding Student's credits and transcripts. Both Mr. Prentice and Ms. Lee are academic counselors for District. District had some difficulty obtaining Student's official transcript, however, they eventually received it and were able to calculate Student's credits.

52. Student's transcript dated May 17, 2017, listed his grades from first semester of the 2016/2017 school year. Student received a C in introduction to business, a C in physical education, an A in study skills, a B in English literature, a B in integrated science, and a C in math 2A. Student required three additional classes to graduate: government, physical education, and vocational education.

COMPLAINTS

53. Dr. Cuauhtemoc Avila, District's superintendent, testified regarding complaints Parent and Student made against District. Dr. Avila testified that he recalled that Parent complained that Student needed a nonpublic school and District was not responding. Parent and Student both made numerous complaints to the District including wanting all emails sent about Student, Dr. Koss giving a funny look to Student and using her phone in an IEP team meeting, Student having something stolen from his physical education locker, an intra-district transfer, and a substitute teacher bullying

student. Although District did not respond to all the complaints in writing, Dr. Avila met with Parent regarding the complaints.

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA³

1. This hearing was held under the IDEA, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006)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 and appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, 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 free and appropriate public education means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's individualized education program. (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

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

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

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)(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.)

4. The Supreme Court recently clarified and expanded upon its decision in *Rowley*. In *Endrew F. v. Douglas County School District*, the court stated that the IDEA guarantees a FAPE to all students with disabilities by means of an IEP, and that the IEP is required to be reasonably calculated to enable the child to make progress appropriate in light of his or her circumstances. (*Endrew F. v. Douglas County School District* (March 22, 2017, No. 15-827) 580 U.S. ____ [137 S.Ct. 988, 996, 197 L.Ed.2d 335] (*Endrew F.*)).

5. 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).) 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] (*Schaffer*); see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) By this standard, Student had the burden of proof for all issues alleged in this matter.

ISSUE 1(A): FAILING TO OFFER AN APPROPRIATE PROGRAM IN A NONPUBLIC SCHOOL WHICH PROVIDES ONE-TO-ONE INDIVIDUALIZED INSTRUCTION IN THE NOVEMBER 17, 2016 IEP

6. Student contends District denied him a FAPE by failing to offer him full-time one-to-one instruction from a nonpublic school in the November 17, 2016 IEP. Student alleges the campus size was too large and therefore made him feel unsafe; Student further alleges there were too many people watching him and he preferred to receive instruction from only one teacher.

7. District argued they offered FAPE by providing specialized academic instruction in a small group setting for the majority of Student's day. District further argued they offered a one-to-one aide to provide assistance and supervision due to Student's concerns about feeling unsafe.

8. In developing an IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the child's education, the results of the

most recent evaluations of the child, and the academic, developmental, and functional needs of the child. (20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. § 300.324 (a).) The “educational benefit” to be provided to a child requiring special education is not limited to addressing the child’s academic needs, but also 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.) A child’s unique needs are to be broadly construed to include the child’s academic, social, health, emotional, communicative, physical and vocational needs. (*Seattle School Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500, citing H.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2106.)

9. An IEP is evaluated based on information available to the IEP team at the time it was developed; it is not judged exclusively in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) “An IEP is a snapshot, not a retrospective.” (*Id.* at p. 1149, citing *Fuhrmann v. East Hanover Bd. of Education* (3rd Cir. 1993) 993 F.2d 1031, 1041.) It must be evaluated in terms of what was objectively reasonable when the IEP was developed. (*Ibid.*) However, after-acquired information may be used to assess the reasonableness of a school district’s determinations. (*E.M. v. Pajaro Valley Unified School Dist.* (9th Cir. 2009) 652 F.3d 999, 1004.)

10. To determine whether a school district substantively offered a student a FAPE, the focus must be on the adequacy of the district’s proposed program. (*Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1307, 1313-1314.) If the school district’s program was designed to address the student’s unique educational needs, was reasonably calculated to provide the student with some educational benefit, comported with the student’s IEP, and was in the least restrictive environment, then the school district provided a FAPE, even if the student’s parents preferred another program, and even if the parents’ preferred program would have resulted in greater educational benefit. (*Ibid.*) School districts need to “offer a cogent and responsive explanation for

their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances." (*Andrew F., supra.*)

11. Parent's concerns for Student are serious. Student has a documented history of suicidal ideation, and at least one experience at school caused enough stress for Student to need to speak with a mental health professional to calm down. However, District offered persuasive evidence that Student did not manifest these behaviors at school. Ms. Carnes testified that Student did not show signs of distress when being assessed for drug use, Mr. Rucker testified that Student exhibited typical high school behavior in class, and Jacqueline Johnson testified Student did well in his general education class. Student provided persuasive evidence that Parent was extremely concerned about Student's safety as evidenced by numerous statements in every IEP team meeting and frequent complaints to District, however, Student did not provide any testimony either from himself, Parent, or an expert, that demonstrated he required a more restrictive setting due to the safety concerns.

12. Student moved back into District boundaries after being educated in a different state for six years. Student did not provide District with his most recent IEP, therefore District conducted a triennial evaluation to assist in creating an IEP. District considered not only their own assessment data when offering services and placement to Student, but also the recommendations of three outside evaluations Parent presented, and current teacher observations.

13. Although it was clear that both Parent and Student preferred a one-to-one teaching setting for Student, District is not obligated to provide the program the Parent prefers. Student did not provide any evidence that he required one-to-one instruction to benefit from his education. District offered Student 200 minutes a day of specialized academic instruction in a special education setting. This was already a more restrictive environment than what Student's last IEP offered. District provided persuasive evidence

that Student received educational benefit. Student passed all his classes first semester of the 2016/2017 school year. Furthermore, neither Jacqueline Johnson nor Mr. Rucker observed Student struggling to complete work, or had any concerns with the work that Student turned in. In addition to the 200 minutes a day of specialized academic instruction, District offered Student counseling, curb-to-curb transportation, and a one-to-one aide to ensure Student made it to all his classes, and was safe while on campus.

14. Student failed to demonstrate that he needed a more restrictive environment, or that he was not receiving academic benefit from District.

ISSUE 1(B): FAILING TO OFFER AN APPROPRIATE DYSLEXIA PROGRAM IN THE NOVEMBER 17, 2016 IEP

15. Student asserts that he required a specific instructional methodology to remediate his dyslexia. District acknowledges that Student had dyslexia, but argues that the educational program it provided appropriately addressed that disability.

16. The IDEA does not require that the IEP identify the specific methodology that a school district will use for a student. The Education Department stated “[t]here is nothing in the [IDEA] that requires an IEP to include specific instructional methodologies.” (*Analysis of Comments and Changes to 2006 IDEA Part B Regulations*, 71 Fed. Reg. 46665 (August 14, 2006).) On this point, the Education Department went on to say that it is the Education Department’s longstanding position that an IEP team decides whether to include instructional methodologies in a child’s IEP. (*Ibid.* [However, “[i]f an IEP team determines that specific instructional methods are necessary for the child to receive FAPE, the instructional methods may be addressed in the IEP.”].) The methodology used to implement an IEP is left up to the school district’s discretion so long as it meets a student’s needs and is reasonably calculated to provide meaningful educational benefit to the child. (*Rowley, supra*, 458 U.S. at p. 208; *Adams v. State of Or.*(9th Cir. 1999) 195 F.3d 1141, 1149 (*Adams*); *Pitchford v. Salem-Keizer School Dist.*

No. 24J (D. Or. 2001) 155 F.Supp.2d 1213, 1230-32; *E.B. v. Warwick School Com.* (1st Cir. 2004) 361 F.3d 80, 84.) The Ninth Circuit, in *Mercer Island, supra*, 592 F.3d at page 952, reiterated its position in *Adams* that a district is not necessarily required to disclose its methodologies. (See also *S.M. v. Hawai'i Dept. of Education* (2011 D. Hawaii) 808 F.Supp.2d 1269 [affirming the determination in *Mercer Island* that methodologies to address a student's needs do not have to be specified in the IEP].) In *Mercer Island*, the court found that it is not necessary for a school district to specify a methodology for each student with an IEP if specificity is not necessary to enable the student to receive an appropriate education. (*Mercer Island, supra*, 592 F.3d at p. 952.) In finding that the district had not committed a procedural violation of the Act by failing to specify the teaching methodologies it intended to use, the court stated, "We accord deference to the District's determination and the ALJ's finding that J.L.'s teachers needed flexibility in teaching methodologies because there was not a single methodology that would always be effective." (*Ibid.*)

17. Student contends he needed a specific program to address his dyslexia, and because District did not write one into the IEP, he was denied FAPE.

18. District contends Student was doing well in class, making academic progress, and his teachers did not see Student struggle with the work given to him. District further contends they were offering services to meet Student's needs.

19. Based on Student's present levels of performance and goals, District offered Student 200 minutes a day of specialized academic instruction. Mr. Rucker, who is a credentialed special education teacher with 16 years of experience, provided the specialized academic instruction to Student in a small group setting. Mr. Rucker developed a reading comprehension goal and written expression goal to address Student's deficits. Based on his experience, Mr. Rucker's testimony that he did not see a need for additional interventions for Student was persuasive. Additionally, District

offered a vision assessment to determine if, due to Student's dyslexia, vision services would be appropriate. Student failed to prove he needed a specific dyslexia program.

20. For the foregoing reasons, Student failed to prove by a preponderance of evidence that District denied him a FAPE, by failing to provide one-to-one instruction at a nonpublic school or a specific program for dyslexia.

ORDER

All relief sought by Student is denied.

PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that this Decision indicate the extent to which each party prevailed on each issue heard and decided in this due process matter. District prevailed on all issues heard and decided in this matter.

RIGHT TO APPEAL

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56506, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

Dated: August 28, 2017

/s/

LINDA JOHNSON

Administrative Law Judge

Office of Administrative Hearings