

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENTS ON BEHALF OF STUDENT,

OAH Case No. 2016090258

v.

ANAHEIM CITY SCHOOL DISTRICT,

ANAHEIM CITY SCHOOL DISTRICT,

OAH Case No. 2016050770

v.

PARENTS ON BEHALF OF STUDENT.

DECISION

Anaheim City School District filed a request for due process hearing on May 16, 2016, naming Parent on behalf of Student. On September 2, 2016, Parent on Student's behalf filed a request for due process hearing naming District. OAH consolidated the two cases on September 8, 2016.

Administrative Law Judge Marc Levine presided over the due process hearing of the consolidated matters in Anaheim, California, on October 27, 2016, and November 1, 2016. Attorneys Timothy Adams and Phillip VanAllsburg represented Student. Parents attended both hearing days and Mother testified. Student did not attend the hearing. Attorney Lauri Arrow smith represented District. Kristin Cinco, Director of Special Services, attended on District's behalf.

At the request of the parties, OAH continued the matter for written closing arguments, which were timely filed. Subsequently, ALJ Levine became unavailable. Upon stipulation of the parties, OAH extended the timeline for issuance of a written decision. On January 18, 2017, the parties requested the matter be reassigned for a review of the record and issuance of a written decision. OAH granted the parties' request by Order dated January 20, 2017, and assigned ALJ Adrienne L. Krikorian. The parties stipulated to continue the 45-day decision timeline to February 28, 2017.

ISSUES¹

District's Issue: Did District's April 25, 2016 individualized education program offer Student a free appropriate public education in the least restrictive environment?²

Student's Issues: Did the April 25, 2016 IEP deny student a FAPE in the least restrictive environment by failing to offer: 1) an appropriate placement, such as Port View Preparatory Academy, where Student's developmental, academic and social levels matched those of her classmates; 2) appropriate nursing support; and 3) appropriate behavioral support in the classroom from board-certified behavior analyst or applied behavior analysis trained aides?

¹ The issues have 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 The parties agreed at the beginning of hearing that only the offer of placement and nursing and behavioral services were in dispute. Student did not offer evidence disputing the IEP goals, and all other accommodations and related services offered (physical therapy, speech therapy, and occupational therapy).

SUMMARY OF DECISION

District contends in its case that its April 25, 2016 IEP offer constituted a FAPE in the least restrictive environment. District seeks an order permitting it to implement the IEP without parental consent. Student asserts in opposition to District's case that the April 25, 2016 IEP offer of placement was not clear and coherent because it did not specify the type of unique classroom at Horace Mann Elementary School in which Student would receive her specialized academic instruction and services. District did not meet its burden on District's issue. District committed a significant procedural violation of the Individuals with Disabilities Education Act that deprived Parents of important information they needed to decide if the placement offered was appropriate for Student. The placement offer was vague, rendering the procedural violation material enough to impact parental participation and decision making at the IEP meeting in a meaningful way.

Student contends in Student's Issue 1 that District failed to offer Student an appropriate placement, which Student asserted was a non-public school. Student did not meet her burden on Student's Issue 1, because, although vague, the IEP substantively offered Student a FAPE as to the public school placement.

Student contends in Student's Issues 2 and 3 that District failed to offer Student a full-time licensed vocational nurse and a full-time one-to-one board-certified behavior analyst to meet Student's unique medical and behavior needs at school. Student did not meet her burden on Student's Issues 2 and 3. The program District offered had qualified full-time professional and trained paraprofessional staff on site throughout the school day, including a registered nurse, licensed vocational nurses, a board-certified behavior analyst, and paraprofessionals trained in applied behavioral analysis strategies and supports. The IEP offer identified the school nurse and board-certified behavioral analyst

as the responsible staff for implementing Student's medical supports and services and her behavior goals.

Neither party met its burden as to its respective issues, and neither party is entitled to any relief.

FACTUAL FINDINGS

JURISDICTION AND BACKGROUND

1. Student was eight years old at the time of hearing and lived with Parents within District boundaries. She was eligible for special education with primary eligibility of multiple disabilities and secondary eligibility of orthopedic impairment.

2. Student was very low functioning in academics and communication. Her medical conditions and developmental delays significantly impacted Student's daily life and her needs at school. Her medical needs included: genetic cholesterol delays requiring medicated feedings, including up to four times a day during school hours; microcephaly; chronic aspiration requiring soft foods and small bites; sun sensitivity; inability to sweat causing rapid overheating; low muscle tone and mobility challenges; sleep issues requiring medication; seizures controlled by medication; and a small stomach requiring slow G-Tube feedings. She wore leg braces and used a walker to ambulate shorter distances, or used a wheelchair or jogging stroller for longer distances. Parents and Student's grandparents managed her feedings and medical needs at home, with the assistance of a licensed vocational nurse for two hours a week. Student had limited ability to communicate, using a few sounds and hand signs. She engaged in aggressive behavior by hitting herself and others, kicking, and biting. Her periodic aggressive behaviors were triggered by frustration over her inability to communicate, or as a negative response to adult commands. She was generally friendly and well-liked by her peers and staff at school.

3. In March 2015, Mother removed Student from her District school placement because of concerns for Student's health and safety at school. Parents privately retained clinical psychologist Dr. Karen Conway in July 2015 to conduct an independent educational assessment of Student. Dr. Conway held a PhD in childhood developmental psychology, a master of arts in clinical psychology, and was a doctoral level board-certified behavioral analyst. She was familiar with and utilized applied behavioral analysis techniques; she conducted psychological evaluations for private patients, county regional centers and multiple school districts; she supervised staff and provided behavioral services for non-public agencies contracted with school districts; and attended more than 50 IEPs. Dr. Conway qualified as an expert witness.

4. Dr. Conway assessed Student at home in 2015. She recommended in a written report to Parents that Student should receive academic support, behavioral support, social emotional support, and physical support due to medical fragility. In August 2015, District and Parent entered a final settlement agreement that placed Student at Port View Preparatory School, a non-public school, funded by District for the 2015-2016 school year through the 2016 extended school year. Student continued to attend Port View as her "stay put" placement during the pendency of this hearing.³The family privately received 42 hours a week of licensed vocational nursing services. Parents chose to allocate 40 of those hours to Student's transportation to and from school and her needs at Port View. The private licensed vocational nurse, and a one-to-one behavioral assistant, assisted Student for the entire six-hour school day.

³ Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. This is considered a student's "stay put" placement and services. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, § 56505, subd. (d).)

5. District school nurse Roberta Moradi Bidhendi (referred to as Ms. Moradi during hearing) was a registered nurse. Her duties included ensuring District implemented mandated health programs for all District students with health needs; conducting health assessments; creating health plans and alerts; assisting students with health needs; training staff on medical interventions at school; and as a resource for staff. Ms. Moradi monitored District students placed at non-public schools and in the Orange County Department of Education program at Horace Mann Elementary School. Ms. Moradi monitored Student at Port View during the 2015-2016 school year to ensure her health needs were met; health plans were in place; and staff knew how to take care of her and when to alert Ms. Moradi of Student's needs. She attended three IEP meetings for Student in 2016. Based upon her experience, credentials, and knowledge of Student's needs, Ms. Moradi was qualified to and credibly testified at hearing about Student's school-related health needs.

JANUARY AND FEBRUARY 2016 IEP MEETINGS

6. On January 25, 2016, District held part one of Student's annual IEP team meeting at Port View. Parents, District program specialist Tara Pinca, Ms. Moradi, District's attorney, and Port View staff attended the meeting. The IEP team reviewed Student's present levels of performance, progress toward goals, her behavior plan, and then proposed new or modified goals. The IEP team discussed a proposed offer of FAPE, including Student's need for related services of occupational therapy, physical therapy, speech therapy, specialized academic instruction, intensive individual services, assistive technology, and other supplemental supports and services. The Port View IEP team members recommended Student remain at Port View based on the settlement agreement. The IEP team agreed Student would receive extended school year services pursuant to the settlement agreement, but the details would be determined at a later meeting. The IEP team agreed to resume the IEP meeting in February 2016.

7. The IEP team reconvened for part two of Student's annual IEP on February 24, 2016. Parents, District's attorney, and all required District and Port View IEP team members attended or were excused by written consent. Parents shared concerns about Student's health needs, including that the January 2016 proposed IEP offer did not mention the direct services of a nurse or behavior aide. Mother wanted the IEP team to understand that a nurse must be involved in Student's educational program. Mother also provided the IEP team a 2014 Seizure Healthcare Plan, and expressed concern that only a nurse could administer Diastat. Port View Principal Dr. Edward Miguel informed the IEP team that he and Port View staff were trained to administer Diastat. Mother provided the IEP team with a list of reasons why she felt Student needed a full-time nurse.

8. The IEP team members discussed Student's multiple health needs and health status. Ms. Moradi recommended that the licensed vocational nurse continue to serve Student at Port View because the non-public school did not have a staff school nurse in the building where Student's program was located. The licensed vocational nurse was necessary to administer Student's G-Tube feedings four times a day because the feedings included cholesterol, which Ms. Moradi considered to be a medication, which could have side effects. However, in Ms. Moradi's opinion, any health aide or trained instructional para educator could administer G-Tube feedings without medication. Further, if parents provided consent, any non-nursing staff could also administer Diastat if Student suffered seizures. The IEP meeting concluded with an offer of continued placement through the end of the 2015-2016 regular school year at Port View, updated goals, and related services and supports.

2016 HEALTH ASSESSMENT

9. Mother consented to an updated health assessment of Student, and to an exchange of information with Student's physicians. She expressed concern that prior

District school nurses influenced Student's private physicians' educational recommendations. Out of consideration for Mother's concerns, and to ensure that the health assessment results were neutral and data driven, Ms. Moradi agreed to limit her communications to written requests and exchange of information with private physicians.

10. Ms. Moradi assessed Student from February until early April 2016. Her assessment included a review of Student's records, updated medical history, physicals, current medical orders, current medications, and physicians' recommendations for accommodations and services at school. She also observed Student at Port View during different times of the school day. She documented her findings in a report dated April 2016. Ms. Moradi recommended the following services: 1) a licensed nurse to provide G-Tube feedings over 30 minutes four times daily; 2) a licensed nurse available on campus to provide care as needed for Diastat administration and as needed for "Mic-Key" button replacement for the G-Tube; and 3) a school nurse to provide consultation with parents, healthcare providers, and medical doctors on an as-needed basis.

APRIL 25, 2016 IEP

11. The IEP team met again on April 25, 2016, to discuss Ms. Moradi's health assessment and Student's placement for the 2016-2017 school year. Parents, District's attorney, and all required District and Port View IEP team members attended or were excused by written consent. District curriculum specialist Megan Smith attended as the general education representative, and was the note taker. Ms. Smith had a master's degree in education with a reading credential, was a Level Two credentialed teacher for children with mild/moderate disabilities, and had a clear credential in multiple subjects. Her job duties for District included training staff, monitoring students placed in non-public schools, monitoring inclusion practices for special education students, and

attending IEP team meetings. Based upon her qualifications and experience working for District, she credibly testified at hearing regarding inclusion and placement.

12. Ms. Moradi reviewed her health assessment report, noting Student's current medical conditions and restrictions, and medications. Student had not had a seizure for more than two years. However, she remained at risk for a seizure at any time and therefore required a seizure action plan provided by Orange County Children's Hospital. Ms. Moradi provided several other written plans for school staff working with Student, including an aspiration plan, fall precautions, management of G-Tube, and an individual health plan. She recommended review and the possible development of new safety guidelines for Student while at Port View because Student used a step stool at Port View to access the toilet and sink in the bathroom. Ms. Moradi also recommended new safety plans for the Port View outdoor area access adjacent to her classroom, which was not fully protected by a railing.

13. Mother had no concerns about Student's program at Port View. She was satisfied that Student was making progress at Port View. She requested that District continue the placement, program, nurse, behavior aide, and IEP that was currently in place.

14. District recommended Student attend the program operated by the Orange County Department of Education at Horace Mann Elementary School in the 2016-2017 school year, based on Student's goals and proposed services. Ms. Smith had previously visited the County program at Mann Elementary several times and was familiar with the program, services, student population, and staff qualifications. The County program staff were trained and could implement Student's IEP services and supports. In her opinion, the County program was appropriate for Student, in part because it provided Student with opportunities for inclusion with general education students.

15. Mother disagreed with the proposed change of placement, informing the IEP team she had previously visited two types of classrooms at the County program. She did not agree that either of the two classrooms she observed was appropriate for Student because one consisted of very high functioning children and one had very low functioning children, neither of which met Student's level of functioning. Ms. Pinca explained that placement at the County program offered more opportunities for Student to integrate with typically developing peers. Mother believed and was concerned that Student had previously sustained injuries while at a District school in early 2015; she was concerned that if similar incidents occurred, District would not inform Parents. Ms. Pinca reviewed the supports available at the County program and offered Parents the opportunity to visit the program again. Parents declined a second observation.

16. The IEP team did not propose any changes to the IEP goals or existing related services proposed in January and February 2016. District offered 10 academic goals, four speech and communication goals, six goals in fine and gross motor and ambulation, and nine behavior goals that identified a board-certified behavioral analyst as the person responsible for implementation. The goals identified short term objectives, were measurable, and were designed to be completed within one year. District offered placement through August 26, 2016 at Port View, and from August 29, 2016 through the 2016-2017 school year in the County program at Mann Elementary. The IEP offer also included accommodations and supports; specialized academic instruction 360 minutes daily five days a week; physical therapy; occupational therapy; speech therapy; intensive individual behavioral services 360 minutes daily five times a week for instructional support; health and nursing consultation 30 minutes four times a year, with one consultation offered during extended school year; and health and nursing direct service 30 minutes four times daily for G-tube feeding and medication

administration. The offer identified Student's mainstreaming opportunities as five percent of the school day. The IEP offer included an explanation that because Student was attending Port View through 2016 school extended school year, the IEP did not provide for mainstreaming at Port View. However, for the 2016-2017 school year, the opportunities for participation in the general education setting increased with the proposed County placement. The IEP team incorporated Ms. Moradi's recommendations relating to nursing services in the IEP as they related to placement on a public school campus. The IEP offer did not identify a specific classroom at the County program where specialized academic instruction and services would occur.

17. Parents declined District's offer of placement and services. District did not hold a follow up IEP meeting regarding placement at the County program at Mann Elementary because Parents did not provide their consent for District to release information for the referral process to begin.

18. Mother understood that District wanted to refer Student to the County program at Mann Elementary. However, she was concerned about District's April 2016 placement offer because it did not specify in which classroom District proposed to place Student at the County program. District offered no evidence, including in the April 25, 2016 IEP notes, that it explained to Parents at the April 25, 2016 IEP meeting how it would manage Student's mobility needs in the classroom for medically challenged children if she were placed there, which was one of Mother's concerns. Mother was willing to consider the County program at Mann Elementary as a placement option if she had more information about which classroom District proposed to place Student and how District proposed to implement Student's IEP in the specified classroom. She needed assurance that arrangements were "in place" before she agreed to any offer.

The County Program at Mann Elementary

19. In June 2016, Dr. Conway accompanied Mother, Ms. Pinca, and a school psychologist from the County program, at an observation of the program. Dr. Conway spent approximately two and one half to three hours observing both types of classrooms available to Student at Mann Elementary. She documented her observations in a letter to Parents dated July 20, 2016, upon which she relied in part during hearing as the basis for her opinions of the County program.

20. Christina Romanosky, program administrator and interim principal at Mann Elementary, was employed by the Orange County Department of Education. She was familiar with the County program located at Mann Elementary and supervised the professional program staff. The campus was located approximately 3.5 miles from Student's home and was a general education elementary school campus in Anaheim. The County program operated in the bottom wing of a building separate from the general education classrooms. Therapy services were available on campus. The County program served special needs children from preschool through eighth grade. The program had nine classrooms; four classrooms were for children with medical needs, and five were for students with behavioral needs, intellectual disabilities, or in need of administration of an Epi Pen or Diastat.

21. The County program had a full time registered nurse on the program site, three full-time licensed vocational nurses, and occasionally an additional licensed vocational nurse assigned to a specific student, who also supported that student's classroom. If a medical emergency occurred, the program had an "all-call" system in the classroom that triggered a fast response from the school nurse and other staff. All staff were trained in Diastat administration and handling aspiration issues. They were familiar with how to handle children with sun sensitivity, implementing feeding through G-Tubes, and reinsertion of G-Tubes. The County program had a physical therapist and

assistive technology specialist who traveled between multiple school sites; and a speech therapist trained in assistive technology.

22. Classrooms for children with behavior needs consisted of eight to 10 students, with one credentialed special education teacher and four to five para-educators. The credentialed teachers went through multiple levels of training for behavior, including in applied behavioral analysis and de-escalating crises. Many of the trainings were done in-house in collaboration with a speech therapist or psychologist. The staff school psychologist was a licensed educational psychologist and behavior intervention case manager who trained directly with Dr. O. Ivar Lovaas in applied behavioral analysis techniques.

23. Children in the County program had opportunities to integrate with typically developing peers on the adjacent general education elementary campus. Integration was individualized based on the needs of the student. The children in the medically fragile classroom did not stay in the classroom all day. Some children from that classroom went out during recess, depending on their ambulation goals, needs, and abilities including sun-sensitivity. The school nurse created protocols for staff to follow for children who needed limited exposure to sunlight. The protocols included use of sunglasses, a hat, or sunscreen. Children walked around the building in areas with covered breezeways.

24. Regarding the referral process, when a school district in Orange County did not have a placement or service that a student required to receive a FAPE, the district could offer the student a placement or service provided through the Orange County Department of Education to meet the student's unique needs. School districts within the county typically initially referred children to the County program at Mann Elementary without identifying any specific classroom at the campus. The typical referral process required information from the referring District about the child's needs. The

County program staff then reviewed the student's goals and objectives, observed the student, and then evaluated and decided into which classroom the student would be placed. Students came into the County program on an administrative 30-day interim placement, during which time staff talked to parents to discuss adjustments to the program and classroom. The IEP team then met to discuss specific classroom placement and the details of what mainstreaming would be appropriate for the student. Program staff typically did not put children with medical issues in a classroom with more ambulatory children for safety reasons. The program had a classroom for children who were more physically handicapped and required more equipment.

25. Despite Ms. Romanosky's explanation of the program and referral process at the due process hearing, District offered no evidence that at or after the April 25, 2016 IEP team meeting District IEP team members told Parents anything about the classroom designation process, who would make the decision, how the decision would be made, on what time table the decision would be made, or what opportunity Parents would have to be part of that decision. District addressed Mother's concerns about the placement offer by inviting Parents to observe the County program at Mann Elementary.

26. Dr. Conway opined that the County program was not appropriate for Student. She was critical of District's April 25, 2016 IEP offer because it did not specify in which classroom at the County program it proposed to place Student. She observed each of the two types of classrooms District proposed for Student. Dr. Conway opined none of the children in the medically fragile classroom were ambulatory or had functional communication skills, and all were in some form of wheelchair. Their ability levels were below Student's abilities. The classroom was crowded with assistive devices, which she opined would interfere with Student's ability to maneuver around the class with her walker. She was critical of the exterior walkways of the portion of the campus

where the County program operated because Student would be exposed to the sun, which was not appropriate based on her inability to sweat.

27. Dr. Conway also opined the behavioral classroom was not appropriate for Student because the other children's ability level was above Student's abilities. Student required staff support from people with a strong background in applied behavior analysis. Staff needed to understand how to take data, report to their supervisor, and implement the techniques of applied behavioral analysis. Student's behaviors were self-injurious and injurious to others; she needed behavior support for skill acquisition and to become more independent in adaptive behaviors. Dr. Conway's opinions were based upon how well the peers she saw at the County program in June 2016 matched to Student's needs. She asserted if their needs were too high or too low, Student would not benefit from being in the program. Although Dr. Conway opined that Student would not be able to access appropriate academic instruction in the behavioral classroom, she did not explain why she thought Student could not make academic progress; because of the lack of explanation, her opinion on that issue was less persuasive.

28. Ms. Smith opined Student's behaviors did not cause her to be a danger to others, and Student's behaviors would not impede her ability to benefit from access to typical peers in the County program. Ms. Smith also opined Student's April 25, 2016 IEP provided for a full-time one-to-one behavior aide based on the description of the intensive behavior services; other offered supports and services would address any concerns arising from Student being on a large campus.

29. Student's health needs were manageable with adult assistance, and did not prevent her from engaging with typical peers. Ms. Smith opined the benefits of her being in a program that shared a campus with typical peers included opportunities for socialization, which was consistent with Parents' interest in having her learn skills in expressing herself and communication. District recommended the County program

because it was designed to provide Student a FAPE in the least restrictive environment based on Student's unique needs, in contrast to Port View, where Student had no access at the school site to typically developing peers.

30. Although Mother previously visited both types of classrooms, at the time of the April 25, 2016 IEP offer and after she visited the County program in June 2016, Mother did not have enough information to understand where Student would be placed and how her IEP supports and accommodations would be implemented in either of the two types of classrooms. Mother understood that the IEP offer did not specify that Student would have a licensed vocational nurse with her full time, or a full time one-to-one behavior aide. Mother also felt both classrooms she observed in June 2016 were not appropriate for Student, based on the functional level of the students she observed in contrast to Student's functional levels. She was concerned about Student's ability to move around in the classroom for children with developmental disabilities.

Port View Preparatory

31. Dr. Miguel was Port View's founder and principal. He had a doctorate in education and a master of arts degree in teaching applied behavior analysis. He was a board-certified behavior analyst. He was familiar with Student from the time she enrolled at the beginning of the 2015-2016 school year. He credibly testified at hearing. Port View's program served only children with special needs. Focus was placed on a child's access to an education that allowed children to thrive and meet their potential. The program included exposure to the community in the form of field trips. Students spent most of the school day indoors, except when participating in community-based instruction, including field trips where they were exposed to typically developing peers.

32. Port View did not have a full-time school nurse in the building where Student attended class. Student had her own parent-provided licensed vocational nurse and a dedicated one-to-one paraprofessional. Both the instructional aide and vocational

nurse assisted Student with toilet training hourly while at school. They assisted her during her speech therapy and at snack time, and while moving to and from the classroom and outdoors. Student functioned better when she was not distracted by the activities of other children in the classroom. During class time, Student's aides used a tri-fold board placed on her table to block her view of other students to avoid distractions.

LEGAL AUTHORITY AND CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA⁴

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)⁵et 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 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"

⁴ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

⁵ All subsequent references to the Code of Federal Regulations are to the 2006 edition.

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); Ed. Code, § 56032.)

3. In *Board of Education of the Hendrick Hudson Central School Dist. 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,” these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 950, fn. 10.)

4. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); 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(l).)

5. 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. 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, District had the burden of proof in District’s case, and Student had the burden of proof in Student’s case.

DISTRICT’S ISSUE: APRIL 25, 2016 IEP OFFER; AND STUDENT’S ISSUE 1: APPROPRIATE PLACEMENT

6. District contends its April 25, 2016 IEP offer constituted a FAPE in the least restrictive environment. District argues its proposed placement, supports, and services at

the County program provided Student with opportunities to interact with typically developing peers on the shared campus, while receiving the academic program, and intensive supports and services she needed to address her physical and behavioral challenges and meet her goals. District contends the County program had appropriately trained staff, including a full-time registered nurse and a board-certified behavior analyst, to implement the many health plans designed by District's school nurse and the behavior goals.

7. Student contends none of the public school classrooms at the County program were appropriate for Student, based on the level of functioning of other students, and the physical impediments in the classroom. Student contends a non-public school, and specifically Port View, was the appropriate placement for Student because she made progress at Port View during the 2015-2016 school year and 2016 extended school year, and she had more opportunities for interaction with typical peers through its four hours a week of community-based instruction. Student also contended District did not meet its burden of proof regarding the adequacy of the April 25, 2016 IEP because District did not make a clear written offer; specifically, District did not indicate in which classroom Student would be placed at the County program, leaving Parents unclear as to where Student would be placed if she enrolled in the County program.

Elements of a FAPE Offer

8. When a school district seeks to prove that it provided a FAPE to a student, it must also show that it complied with the procedural requirements under the IDEA. (*Rowley, supra*, 458 U.S. at pp. 200, 203-204, 206-207.) Whether Student was denied a FAPE is determined by looking to what was reasonable at the time, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (*Adams*), citing *Fuhrman v. East Hanover Bd. of Education* (3d Cir. 1993) 993 F.2d 1031, 1041.)

9. For purposes of evaluating a child for special education eligibility, the district must ensure that "the child is assessed in all areas of suspected disability." (20 U.S.C. § 1414(b)(3)(B); Ed. Code, § 56320, subd. (f).) 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. The assessments used must be: 1) selected and administered so as not to be discriminatory on a racial or cultural basis; 2) provided in a language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally; 3) used for purposes for which the assessments are valid and reliable; 4) administered by trained and knowledgeable personnel; and 5) administered in accordance with any instructions provided by the producer of such assessments. (20 U.S.C. §§ 1414(b) & (c)(5); Ed. Code, §§ 56320, subds. (a) & (b), 56381, subd. (h).) No single measure, such as a single intelligence quotient, shall be used to determine eligibility or services. (Ed. Code, § 56320, subds. (c) & (e).)

10. An IEP team is required to include: one or both of the student's parents or their representative; a regular education teacher if a student is, or may be, participating in regular education; a special education teacher; a representative of the school district who is qualified to provide or supervise specially designed instruction, is knowledgeable about the general education curriculum, and is knowledgeable about available resources; a person who can interpret the instructional implications of assessments results; at the discretion of the parties, other individuals; and when appropriate, the

person with exceptional needs. (34 C.F.R. § 300.321(a); Ed. Code, §§ 56341, subd. (b), 56342.5 [parents must be part of any group that makes placement decisions].)

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

12. An IEP must include a statement of the special education and related services, based on peer-reviewed research to the extent practicable, that will be provided to the student. (20 U.S.C. § 1414(d)(1)(A)(i)(IV); 34 C.F.R. § 300.320(a)(4); Ed. Code, § 56345, subd. (a)(4).) The IEP must include: a projected start date for services and modifications; and, the anticipated frequency, location and duration of services and modifications. (20 U.S.C. § 1414(d)(1)(A)(i)(VII); 34 C.F.R. § 300.320(a)(7); Ed. Code, § 56345, subd. (a)(7).) Only the information set forth in title 20 United States Code section 1414(d)(1)(A)(i) must be included in the IEP and the required information need only be set forth once. (20 U.S.C. § 1414(d)(1)(A)(ii); 34 C.F.R. § 300.320(d); Ed. Code, § 56345, subds. (h) & (i).)

13. An IEP must contain a statement of measurable annual goals related to "meeting the child's needs that result from the child's disability to enable the child to be

involved in and progress in the general curriculum” and “meeting each of the child’s other educational needs that result from the child’s disability.” (20 U.S.C. § 1414(d)(1)(A)(ii); Ed. Code, § 56345, subd. (a)(2).) The IEP must also contain a statement of how the child’s goals will be measured. (20 U.S.C. § 1414(d)(1)(A)(viii); Ed. Code, § 56345, subd. (a)(3).) The IEP must show a direct relationship between the present levels of performance, the goals, and the educational services to be provided. (Cal. Code Regs., tit. 5, § 3040, subd. (c).)

Clear Written FAPE Offer

14. In *Union School Dist. v. Smith* (1994) 15 F.3d 1519, cert. denied, 513 U.S. 965(*Union*), the Ninth Circuit held that a district is required by the IDEA to make a clear written IEP offer that parents can understand. The Court emphasized the need for rigorous compliance with this requirement, finding that the formal requirement has an important purpose that is not merely technical, and should be enforced rigorously. The requirement of a formal, written offer creates a clear record, eliminating future factual disputes about when placements were offered, what placements were offered, and what additional educational assistance was offered to supplement a placement, if any. A formal, specific offer from a school district will greatly assist parents in “present[ing] complaints with respect to any matter relating to the . . . educational placement of the child.” (*Id.* at p. 1526, quoting 20 U.S.C. § 1415(b)(1)(E).)

15. *Union* involved a District’s failure to produce a formal written offer at all. However, numerous judicial decisions invalidate IEPs that, though offered, were insufficiently clear and specific to permit parents to make an intelligent decision whether to agree, disagree, or seek relief through a due process hearing. (See, e.g., *A.K. v. Alexandria City School Bd.* (4th Cir. 2007) 484 F.3d 672, 681; *Knable v. Bexley City School Dist.* (6th Cir. 2001) 238 F.3d 755, 769; *Bend LaPine School Dist. v. K.H.* (D. Or., June 2, 2005, No.04-1468) 2005 WL 1587241, p. 10; *Mill Valley Elem. School Dist. v. Eastin* (N.D.

Cal., Oct.1, 1999, No. 98-03812) 32 IDELR 140, 32 LRP 6047; see also *Marcus I. v. Department of Educ.* (D. Haw., May 9, 2011, No. 10-00381) 2011 WL 1833207, pp. 1, 7-8.). *Union* requires “a clear, coherent offer which [parent] reasonably could evaluate and decide whether to accept or appeal.” (*Glendale Unified School Dist. v. Almasi* (C.D.Cal. 2000)122 F.Supp.2d 1093, 1108.)

16. The rule of *Union* extends to the statement of the frequency, location, and duration of offered services. The IDEA requires that an IEP contain a projected date for the beginning of special education services and modifications, and “the anticipated frequency, location, and duration of those services and modifications.” (20 U.S.C. § 1414(d)(1)(A)(VII); see also 34 C.F.R. § 300.320(a)(7); Ed. Code, § 56345, subd. (a)(7).) The Ninth Circuit has observed that the length of time that an offered service will be delivered must be “stated [in an IEP] in a manner that is clear to all who are involved.” (*J.L.v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 953[citation omitted].) The requirement ensures that “the level of the agency’s commitment of resources” is clear to all members of the IEP team, including parents. (*Bend LaPine School Dist. v. K.H.*, *supra*, 2005 WL 1587241 at p. 9 [citation omitted].)

Least Restrictive Environment

17. School districts are required to provide each special education student with a program in the least restrictive environment. To provide the least restrictive environment, school districts must ensure, to the maximum extent appropriate: 1) that children with disabilities are educated with non-disabled peers; and 2) that special classes or separate schooling occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); 34 § C.F.R. 300.114 (a); Ed. Code, § 56031.)

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

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

20. The IEP must include an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities in special education, related services, supports and services identified in the child's IEP. (34 C.F.R. § 300.320(a)(5).)

Parental Participation

21. The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of FAPE to the child. (34 C.F.R. § 300.501(a); Ed.

Code, § 56500.4.) A parent has participated in the development of an IEP in a meaningful way when he or she is informed of the child's problems, attends the IEP meeting, expresses disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann v. East Hanover Bd. of Educ.*, 993 F.2d at p. 1036 [parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way].)

22. If the local educational agency determines that the proposed special education program component to which the Parent does not consent is necessary to provide a FAPE to the child, it shall initiate a due process hearing. (Ed. Code, § 56346, sub. (f).) The local educational agency must act with reasonable promptness to override lack of consent by adjudicating differences with the Parents. (*I.R. v. Los Angeles Unified School Dist.* (9th Cir. 2015) 805 F.3d 1164, 1169-1170 [waiting one and one half years to file is too long].)

Analysis– District's Issue

23. District had the burden of proving that it procedurally complied with the IDEA in developing Student's April 25, 2016 IEP, and that the IEP substantively offered Student a FAPE by addressing her unique needs and providing her with the opportunity for educational benefit under *Rowley, supra*, at 458 U.S. at pp. 200, 203-204. District failed to meet its burden as to procedural compliance regarding its placement offer.

24. District proved that it procedurally complied with the IDEA in convening the April 25, 2016 IEP meeting; defining present levels of performance; and developing and documenting²⁹ goals, various accommodations and supports, and related services in physical therapy, occupational therapy, speech therapy and behavior. All required IEP team members were present or excused, including Parents who actively participated by asking questions and expressing concerns. Ms. Moradi was qualified to conduct and

appropriately conducted a health assessment, including utilizing information provided by Student's physicians and health history before the meeting. Her assessment, performed with Mother's consent, was documented in a report and included recommendations, which the IEP team discussed at length. The assessment was appropriate. The IEP team appropriately discussed Student's present levels of performance, reviewed Student's goals and objectives from her January/February IEP, and added nine appropriately defined behavior goals in April 2016. The IEP team incorporated Ms. Moradi's recommendations for nursing and health services to the April 25, 2016 IEP, in the context of District's placement offer at the County program at Mann Elementary. District included an appropriate description of proposed related services and supports in the IEP document, including projected start date for services and modifications. It included the anticipated frequency, location, and duration of services and modifications. Ms. Moradi credibly testified that the school nurse and other qualified trained staff could address Student's medical and behavioral needs.

25. The IEP description of mainstreaming was sufficient. The IEP identified that Student would spend 95 percent of her school day in her special education classroom, and five percent in the regular class, extracurricular, and non-academic activities. The IEP document explained that because Student was attending Port View through 2016 school year, the IEP did not provide for mainstreaming for that time. However, for the 2016-2017 school year, the opportunities for participation in the general education setting increased with the proposed County placement. Ms. Romanosky, Ms. Smith, and Ms. Pinca credibly testified that Student would have opportunities to interact with general education students both on campus during recess and when typical peers were brought into Student's classroom, the library, or during other extracurricular activities. The IEP procedurally complied with title 34 Code of Federal Regulations section 300.320(a)(5) by

explaining the extent to which Student would not participate with nondisabled children in the regular class and in special education and related services.

26. However, District's written placement offer was not clear. Thus, it did not procedurally comply with the IDEA, as addressed in *Union, supra*, 15F.3d at p. 1526. As a result, District deprived Parents of the opportunity to participate in a meaningful way in the IEP process. District's offer of placement in the April 25, 2016 IEP was not clear and coherent, such that Parents could make an informed decision at the IEP meeting as to whether the proposed placement in the County program was appropriate for Student. The County program had specific types of classrooms with staff and facilities designed to address the unique needs of children with either behavior or intellectual and developmental disabilities. The IEP did not identify for Parents which classroom District proposed for Student and how her IEP would be implemented within either of those classrooms, given her crossover needs.

27. Of the two types of classroom programs, one classroom addressed students with behavioral needs who were higher functioning than Student, and the other addressed students with medical needs who were lower functioning than Student. Student had both behavioral and medical needs. Mother was concerned that neither class was appropriate for Student based on her 2015 observations. Her observations of the classrooms in June 2016 did not change her concerns. The children in the behavior class functioned at a higher level than Student, which caused Mother concern that the class was not suitable for Student. The classroom for medically challenged children was crowded and had limited access for Student's walker. District offered no evidence, including in the April 25, 2016 IEP notes, that it explained to Parents at the April 25, 2016 IEP meeting how it would manage Student's mobility needs in the classroom for medically challenged children if she were placed there.

28. Ms. Romanosky's testimony supported Mother's concerns about the ambiguity of the placement offer. Based upon the referral process Ms. Romanosky described, and the lack of specificity in the IEP document, an inference can be made that District and County program staff did not know at the time of the IEP offer which classroom Student would attend. Ms. Romanosky testified County program staff would evaluate Student after referral papers were complete, and determine how her needs would best be served and in which classroom. An IEP team would then determine within 30 days which classroom was appropriate for Student. District offered no evidence proving the IEP team members explained to Parents at the IEP meeting in what setting this evaluation would occur or by whom or how the referral process occurred. The ambiguity in the April 25, 2016 IEP as to classroom placement left Mother unclear as to in what classroom District proposed to place Student at the County program at Mann Elementary, including for the 30-day initial placement.

29. Although Parents initially declined a second observation of the program at the April 25, 2016 IEP meeting, or to release information for the County referral process, their choice not to observe the program at that time or release information did not excuse District from making a more specific offer at the IEP meeting. District did not give Parents any information that suggested what Mother saw in her earlier observation of the County program was any different as of the April 25, 2016 meeting. Mother credibly testified that she was willing to consider the County program as a placement option if she knew in advance in which classroom District proposed to place Student and if she understood how District proposed to manage Student's needs in the specified classroom. Given the unique setting for the County program at Mann Elementary, Student's unique needs in multiple areas, and the differing nature of the classroom types, District should have made a more specific offer identifying in which classroom it proposed to place Student for at least the 30-day interim transition period, and how her

IEP would be implemented in that classroom at least until the 30-day IEP meeting occurred.

30. Thus, District did not meet its burden of proving that it procedurally complied with the IDEA by making a clear and coherent placement offer. The procedural violation deprived Parents of the opportunity to participate in a meaningful way in the development of Student's IEP. Therefore, District did not meet its burden regarding District's Issue and is not entitled to an order that it may implement the IEP without parental consent.

Analysis - Student's Issue 1: Placement

31. Student had the burden of proving District's placement offer did not substantively offer her a FAPE, entitling her to a remedy. Student failed to meet her burden of persuasion.

32. Although vague, District's placement offer at the County program at Mann Elementary for the 2016-2017 school year substantively offered Student a FAPE. District offered an appropriate placement designed to meet Student's unique needs under the standard set in *Rowley, supra*, at 458 U.S. at pp. 200, 203-204. The analysis is focused on District's offered placement, and not on whether Student's preferred placement at Port View or a similar school was more appropriate. The IDEA does not require District to offer a placement where Student's developmental, academic, and social levels "matched those of her classmates," as Student argued.

33. For the 2016-2017 school year, District and Parents agreed that a general education classroom was not an appropriate placement for Student given her present levels of performance and unique behavioral and medical needs. Thus, under *Rachel H., supra*,¹⁴ F.3d at p. 1404, District's discussion of the continuum of placement options appropriately excluded consideration of a general education classroom. In considering the least restrictive environment for Student, District IEP team members concluded she

would benefit from placement in the County program which was located on a general education campus, with sufficiently trained and professional staff on site to implement her IEP goals and various health plans. The IEP specified that Student's opportunity for interaction with typical peers would be for five percent of the school day, on a general education campus.

34. Applying *Adams, supra*, 195 F.3d at p. 1149, the testimony of District's witnesses regarding the appropriateness of placement at the County program at the time of the April 25, 2016 IEP offer was more persuasive than Dr. Conway's testimony. District's witnesses were familiar with the County program, its staff and their qualifications, the services available to Student, and Student's unique medical and behavioral needs as of April 25, 2016, making their testimony more persuasive. Dr. Conway had not assessed Student since the summer of 2015. She did not observe the County program in 2016 until two months after District made the April 25, 2016 IEP offer. Student offered no evidence that Parents ever provided the District or Student's IEP team with Dr. Conway's assessment report. In comparison to the District witnesses, Dr. Conway was not familiar with the training of the County program staff, and therefore could not offer credible opinions as to whether they were qualified to implement Student's IEP and serve her unique needs.

35. In considering the continuum of options, including a non-public school placement such as Port View, the IEP team appropriately concluded that placement in the County program on a public school general education campus would increase Student's opportunity for mainstreaming because her then-current placement at Port View did not have typical peers as students. Therefore, the placement offer at the County program substantively offered Student educational benefit and a FAPE in the least restrictive environment.

36. In summary, the April 25, 2016 IEP substantively offered Student a FAPE as to placement in the least restrictive environment in a special day class at a public school campus, and all services and supports, including the disputed health services and behavior services, which will be discussed below under Student's Issues 2 and 3. Because placement in a special day class at a public school campus was an appropriate placement for Student, Student did not meet her burden on Student's Issue 1 by proving District denied her a FAPE or educational benefit by not offering a non-public school such as Port View.

STUDENT'S ISSUES 2 AND 3 – RELATED SERVICES IN HEALTH/BEHAVIOR

37. Student contends in Student's Issues 2 and 3 District denied her a FAPE because the April 25, 2016 IEP failed to offer her a full-time nurse at school to address her medical needs, and one-to-one behavioral support in the classroom by a board-certified behavior analyst or applied behavior analysis trained aides. District contends the County program at Mann Elementary had ample full-time staff in the classrooms who were trained to address Student's health needs, staff trained in applied behavioral analysis to serve Student's behavior needs, and a school psychologist who was a board-certified behavioral analyst. Student did not meet her burden on these issues.

38. The legal authorities cited above in District's Issue and Student's Issue 1 are incorporated by reference.

Analysis –Student's Issue 2: Health Services

39. The April 25, 2016 IEP specifically identified two related services in health and nursing. The first offered individual specialized physical health care services 30 minutes four times a day for G-Tube feeding and medication administration. The second offered health and nursing – other services four times a year, with one session during extended school year, for 30 minutes. The latter provided for consultation to monitor

health status at school; consult with family, staff and health care providers as needed; train/monitor staff; develop health care plans; and maintain medical records and orders as needed. The IEP team based those services on its review and discussion of Ms. Moradi's appropriately conducted and comprehensive health assessment, and her recommendations. Although Ms. Moradi's report recommended a full-time nurse for Student, she reached that conclusion based on Student's then-current placement at Port View, which did not have a staff nurse in the same building as Student's classroom. The IEP team appropriately modified Ms. Moradi's recommendations consistent with the services and supports available at the County program.

40. Ms. Moradi credibly testified that staffing at the County program was adequate both to meet Student's health needs and to implement the two health services specified in the IEP. Qualified staff at the County program, including a registered nurse and several licensed vocational nurses, could feed Student her medicated feedings, administer Diastat, address seizures, address aspiration if it occurred, and implement the various medical plans Ms. Moradi developed for Student. Ms. Moradi would monitor Student's needs, train staff, and communicate with Parents and Student's medical providers. In contrast to the County program, Student's full-time licensed vocational nurse at Port View was provided by Parents because Port View had no full-time staff professional to serve Student's needs. However, Student did not offer any expert testimony or otherwise prove by the preponderance of evidence that Student required a dedicated one-to-one full time licensed vocational nurse in addition to the on-site staff who were available to address Student's need at the County program.

41. Under *Union, supra*, 15F.3d at p. 1526, the description in the April 25, 2016 IEP of the two health-related services in the IEP was clear and coherent, and the offer was designed to meet all of Student's medically related needs at the County program.

The IEP offered FAPE as to the health services. Student did not meet her burden on Issue 2.

Analysis – Student’s Issue 3: Behavior Services

42. Student did not prove by the preponderance of evidence that District denied Student a FAPE by failing to offer a full time one-to-one aide trained in applied behavioral analysis or a board-certified behavioral analyst at the County program.

43. Ms. Romanosky credibly testified that the County program had qualified and trained full time staff who were capable of meeting Student’s behavioral needs in whichever classroom she was placed. Student’s IEP included nine behavior goals that identified a board-certified behavioral analyst as the person responsible. The school psychologist was a board-certified behavioral analyst. The IEP also specified intensive individual behavioral services 360 minutes daily five times a week for instructional support. Mother testified that Student’s behaviors had improved over the past year; she had never hurt another student; and her relevant behaviors related to her unwillingness to follow directions regarding undesired activities. Student offered no credible evidence or expert testimony that the staff at the County program were not trained or qualified or could not meet her unique behavior needs, including by using applied behavioral analysis techniques, in either the medical or behavior classroom at the County program. The IEP offered FAPE as to behavior services. Student did not meet her burden on Student’s Issue 3.

ORDER

All requests for relief are denied.

PREVAILING PARTY

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

RIGHT TO APPEAL

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

DATED: February 23, 2017

/s/

ADRIENNE L. KRIKORIAN

Administrative Law Judge

Office of Administrative Hearings