

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PLEASANT VALLEY SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2016110597

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v.

PLEASANT VALLEY SCHOOL DISTRICT.

OAH Case No. 2016100473

DECISION

Student filed a due process hearing request with the Office of Administrative Hearings, State of California, on October 7, 2016, naming Pleasant Valley School District. On November 15, 2016, District filed a due process hearing request, naming Student. On November 21, 2016, OAH consolidated the two cases, making District's case the primary case.

Administrative Law Judge Cole Dalton heard this matter in Camarillo, California, on December 13 and 14, 2016.

Parents represented Student on December 13, 2016, until they left mid-day. OAH staff informed Parents of the date and time of the next day of hearing, but they did not attend. Student did not attend the hearing.

Howard Fulfroft, Attorney at Law, represented District. Carol Bjordhal, District's Director of Special Education, attended each day of hearing.

At the conclusion of the hearing, OAH granted a continuance until January 6, 2017, for the parties to file written closing arguments. On December 15, 2016, OAH staff informed Parents that they could file a written closing brief by close of business on January 6, 2017. District filed its closing brief timely; Student did not file a closing brief. On January 6, 2017, upon the timely receipt of closing arguments, the record was closed and the matter was submitted for decision.

ISSUES¹

DISTRICT'S ISSUE:

1. Did District's individualized education programs of August 22, 2016, and September 27, 2016, offer Student a free appropriate public education for the 2016 – 2017 school year, in regards to placement?

STUDENT'S ISSUE:

2. Did District deny Student a FAPE for the 2016 – 2017 school year by offering placement in the moderate to severe special day class at La Mariposa Elementary School instead of the mild to moderate special day class at Camarillo Heights Elementary School?

¹ The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

SUMMARY OF DECISION

District's IEP's, developed on August 22, 2016 and September 27, 2016, were reasonably calculated to provide Student with educational benefit at the time they were offered. Assessments, teacher's reports, and input from providers and Parents at the IEP meetings appropriately identified Student's needs in communication, fine and gross motor skills, and academics, self-care, social emotional development, and health. In turn, the IEP's addressed these needs through measurable annual goals and program supports and services.

District offered Student placement in a visually structured moderate to severe special day class teaching a functional skills curriculum, to address Student's cognitive needs and learning style. The high adult to student ratio addressed Student's needs for adequate adult supervision and opportunities for modeling and repetition in all areas of need. Further, the placement offered Student sensory strategies and a sensory diet, to help Student regulate behaviors and attend to task. The class offered total communication for language development, designed to address Student's communication modes of verbal language, gestures, and signs. The IEP's offered push-in speech and language and occupational therapy to develop Student's communication and fine and gross motor skills while working on classroom activities and engaging with peers in a natural environment. Finally, the IEP's offered a health plan developed by the school nurse and health services to monitor Student's seizure disorder and pumpkin allergy, throughout the school day.

Student did not show that the moderate to severe special day class at La Mariposa Elementary School failed to offer Student a FAPE by making Student unsafe. Rather, the evidence showed two school based incidents occurred over the course of two school years, which were typical of developing elementary school children: tripping on the playground and a minor head bump.

Finally, Student did not demonstrate that he could obtain educational benefit from the modified general education curriculum taught in the mild to moderate special day class at Camarillo Heights. Student attended a mild to moderate science class since the August 22, 2016 IEP, which occurred after his regular school day. The weight of the evidence showed he required an alternate curriculum in that class and interacted minimally with other students, through prompting.

FACTUAL FINDINGS

1. Student, eight-years old at the time of hearing, resided with his Parents within District's jurisdictional boundaries at all relevant times. Student has received special education since the age of three, under the eligibility category of intellectual disability. Doctors diagnosed him with Fragile X, a rare genetic disorder. Consistent with his diagnosis, Student exhibited developmental delays in cognition; academics; speech and language; fine and gross motor skills; social skills; behavior; and sensory processing.

2. Student attended District's La Mariposa Elementary School from kindergarten through third grade in special day classes designed to serve children with moderate to severe disabilities. Ventura County Office of Education administered the special day class program on District's campus. The County offered programs for District students with moderate to severe disabilities. District retained ultimate responsibility for the development of Student's IEP's and to offer a FAPE.

3. From kindergarten through third grade, Student's special day class taught functional skills in a visually structured setting, targeting communication; self-care; fine and gross motor skills; functional academics; social emotional skills; recreation leisure; and prevocational domains. Student received speech and language, occupational therapy, and health and nursing services.

4. California Department of Education's Diagnostic Center assessed Student, then five years, four months old, in September 2013, resulting in a report dated

December 6, 2013. Diagnostic Center addressed Student's medical diagnosis of Fragile X and provided instructional strategies. Student showed cognitive abilities typically developed by two years of age and significant delays across all areas. Diagnostic Center identified needs in academics; communication; fine and gross motor skills; sensory processing; and behavior (distraction, attention to task). Diagnostic Center concluded that Student could continue to learn but at a significantly reduced level and rate compared to typically developing peers. As such, Student should be taught using a developmentally appropriate curriculum, targeting functional domains in self-help (cleaning table before eating, erasing chalkboard, bringing chair to group); recreation and leisure (structured activities with peers); and community access (identification of safety signs, providing name verbally or by identification card). Academically, Student required instructional strategies such as prompting; modeling; teaching one component of an activity at a time; repetition; and movement breaks.

2014 TRIENNIAL ASSESSMENTS

5. District assessed Student in September and October 2014, through the County, and prepared a multidisciplinary psycho educational assessment report dated October 28, 2014. All assessors used a variety of assessment tools and administered standardized tests in accordance with the producer's instructions. All assessment materials were selected and the procedures were valid for the purposes for which they were used, the tests were administered in Student's primary language of English, selected to be non-discriminatory and were administered without regard to race, gender or culture.

6. Isabel Crowning shield assessed Student in the areas of cognitive functioning, adaptive behavior, and academics. Ms. Crowning shield worked as a school psychologist for the County for 16 years, conducting psycho educational and behavior assessments; developing behavior plans; assisting staff with behavior and

developmental strategies; developing goals; consulting with team members and families; attending IEP team meetings; and providing individual and group counseling. She held a bachelor's degree in psychology and history and a master's degree in educational psychology. Additionally, she has held a behavior intervention case manager certification since 2001 and a post-graduate certification in school neuropsychology since 2007. Ms. Crowning shield's demeanor, experience, and training supported her opinions on Student's unique needs in the educational setting.

7. Ms. Crowning shield's assessment included a review of prior assessments, including the Diagnostic Center's December 2013 assessment report, IEP's, and other educational records; classroom and recess observations; parent and teacher surveys; and standardized testing. Assessment materials administered to Student included the Southern California Ordinal Scales of Development, Developmental Scale of Cognition; the Battelle Developmental Inventory, 2nd Edition, Cognitive Domain; the Developmental Profile, 3rd Edition, Cognitive Scale; Differential Ability Scales, 2nd Edition, Differential Ability Scales; and the Adaptive Behavior Assessment System, 2nd Edition.

8. Testing showed deficits in problem solving, classification, and linguistic and intellectual processes that require reasoning, logical thought, and understanding of causality. Student demonstrated a functional level in the last sensory motor stage of development, consistent with that of a typical 18-month old child. He demonstrated a ceiling level at the beginning pre-operational stage, consistent with a typically developing two to four year-old. Student tested well below average in thinking and reasoning skills and attending, perceiving, processing, and remembering information. Standard scores on nonverbal reasoning showed an age equivalency of below two years, seven months to a high of four years, one month.

9. Student's teacher and Father reported adaptive skills well below average range. Student demonstrated low levels of independence in school functioning in communication, community use, functional academics, home living, school living, health and safety, leisure, self-care, self-direction, vocational, social, emotional, and behavioral functioning. Student scored in the extremely low range in all areas per teacher survey and in all but the social domain in Father's survey.

10. Ms. Crowning shield's testing was consistent with that of the Diagnostic Center report from December 2013. Student demonstrated a gain in skills over time, but at a much slower rate than typically developing peers. He continued to qualify for special education services under the primary eligibility category of intellectual disability and required a functionally based curriculum.

11. Consistent with Diagnostic Center's 2013 report, academic testing showed Student had needs in reading, writing, and math. Historically, Student benefitted from individualized and small group instruction in functional academics, adaptive/self-care skills, and opportunities for repeated practice and reinforcement of skills.

12. Carolyn Masson assessed Student's speech and language abilities. She had provided speech and language services to Student since his kindergarten year. Ms. Masson worked for the County since 2007 as a speech and language specialist. She taught communication skills to children with moderate to severe disabilities. She held a master's degree in communication disorders and sciences, a State of California speech and language pathology license, a speech and language pathology services credential, and an American Speech Language Hearing Association certificate of clinical competence.

13. Ms. Masson reviewed prior assessments, administered standardized and non-standardized testing instruments, observed Student in class and obtained teacher input. Ms. Masson concluded Student's language impairment fell in the severe range.

His receptive and expressive language skills and social/pragmatic language fell within the 18 to 24 month developmental level. Comparing her results to Student's educational records, Ms. Masson concluded that Student developed speech and language at a rate commensurate with his cognitive abilities.

14. Usha Agarwal worked as an occupational therapist for the County for 16 years. She provided services to students with moderate to severe disabilities; attended IEP team meetings, provided in-service training, and consulted and collaborated with other providers. She worked with Student since he began attending La Mariposa. From 1974 through 1999, she obtained 25 years of experience in occupational therapy, first, working as a chief occupational therapist at a regional center in Canada, and then as a manager of occupational therapy at hospitals and rehabilitation centers in Canada and the United States. She earned a diploma in occupational therapy in New Delhi, India, in 1973. She held a California license in occupational therapy and a certification by the National Organization of Occupational Therapists.

15. Ms. Agarwal reviewed Student's educational records, used functional, curriculum-based assessments, work samples, observations of Student, and obtained teacher input as to Student's sensory processing abilities and functional performance in school.

16. Ms. Agarwal concluded that Student had needs in every area of sensory processing. He continuously sought sensory input. He became easily distracted and hyperactive, turning towards noise or activity in the classroom. At the same time, Student exhibited sensory avoidance. When overwhelmed with sensory input, he became frustrated and uncooperative.

17. Student functioned at the 18-month level in fine motor skills. In the gross motor domain, Student accessed the classroom and playground independently, under adult supervision. Based on his needs, Student would benefit from a structured class

environment with less sensory input, repeated instructions, and an intense sensory diet. The sensory diet would address the need for tactile input through use of a deep touch, move 'n' sit cushion; and vestibular input through frequent movement breaks; to improve his attention span and engage longer in expected tasks.

18. Robin Gregory, school nurse, conducted a health and developmental evaluation. Ms. Gregory held a bachelor's of science in nursing, a public health credential, and a professional health services credential. She worked as a nurse for various hospitals before becoming a school nurse in August of 2000. She began working for County in August 2014, providing nursing services and medication management, attending IEP team meetings, and consulting with parents and staff.

19. Ms. Gregory, based upon record review, Parent interview and nursing assessment, determined Student had the following diagnoses: mental retardation, attention deficit hyperactivity disorder, autism, Fragile X Syndrome, seizure disorder, and significant pumpkin allergy (when ingested). Student passed his hearing test. His optometrist diagnosed him with myopia and astigmatism. Student did not like anything on his face, so he did not receive treatment for visual issues. Most of Student's seizures were partial or absence seizures, meaning that Student would stare into space. He experienced grand mal seizures, but never demonstrated seizure activity while at school. Ms. Gregory developed an emergency/health plan for school to address Student's seizure disorder and pumpkin allergy. Ms. Gregory trained Student's providers on how to identify and respond to anaphylactic shock and seizures.

20. Jean Kent, adaptive physical education specialist, assessed Student. She consulted with staff, observed Student, and administered the Gross Motor Checklist and parts of the Test of Gross Motor Development. Based on her assessment, Ms. Kent recommended that Student work on simple games, fitness, strength, and motor skills within the special day classroom program.

OCTOBER 12, 2015 IEP

21. On October 12, 2015, District held Student's annual IEP meeting, which addressed the remainder of Student's second grade school year and beginning of his third grade year. Based upon the 2014 triennial assessments and Student's progress, District offered Student placement in a special day class designed to address the needs of students with moderate to severe developmental delays.

22. The class was located on the La Mariposa Elementary School campus. The class ranged from kindergarten to third grade, had eight to nine students, one special education credential teacher with five paraeducators. Three of the paraeducators were assigned to specific students. The class focused on teaching functional skills curriculum in a visually structured setting, targeting communication, self-care, fine and gross motor skills, functional academics, social emotional skills, recreation leisure, and prevocational domains. The class used a total communication approach, which included verbal models, sign language, objects, pictures, gestures, and tech talkers. Student communicated through one to two word utterances, pictures, gestures, and signs.

23. Student's program included daily academic circle time, music, sensory motor activities, sensory diet, daily living skills, art, adaptive physical education, and opportunities for age appropriate activities integrated with general education students on campus. Goals addressed Student's needs in the areas of communication, academics, and fine motor skills. The school nurse developed a health plan to address the risk of seizures and anaphylactic shock. The nurse trained classroom staff to implement the health plan throughout the school day. Student received speech and language services for 60 minutes, weekly; occupational therapy for 120 minutes, monthly; and health and nursing services for 330 minutes daily. Parents consented to the IEP. Student remained in the La Mariposa placement throughout the 2015 – 2016 school year. The October 12,

2015, along with the addendums referenced below, constituted Student's stay put placement during the pendency of these proceedings.

MARCH 16, 2016 IEP TEAM MEETING

24. Parents requested an IEP team meeting to address Student's need for one-on-one playground support. Parents were concerned because Student tripped and fell while on a weighted backpack sensory walk with his class. Kam Kearns, Student's special education teacher since the beginning of the 2015 – 2016 school year, attended the meeting. Ms. Kearns worked with the County as a special education teacher for over 16 years at the time of the hearing. Her duties included developing IEP's; enhancing lessons using smart board technology and computers; promoting language skill development through reading and storytelling; administering minor first aid to injured students; and conducting small group and individual classroom activities based on students' differentiated learning needs. She also supervised and trained, on average, more than 15 paraeducators during the school year. Ms. Kearns held a bachelor of arts in psychology and recreation administration and a masters of arts in teaching with an emphasis in professional learning communities. She held an educational specialist credential, which allowed her to teach children with moderate to severe disabilities.

25. Ms. Kearns witnessed the tripping incident as she stood across the playground with an observer who watched Student transition from a classroom activity to the playground. Student left the class behind his peers, walking with a paraprofessional. According to Ms. Kearns, Student stumbled, caught himself, stood up, and continued walking. He did not have any scrapes or visible injuries and did not behave as though he sustained an injury.

26. The class regularly engaged in the sensory walk to help students regulate their behavior and attend to classroom tasks. District agreed with Parents' request to cease the weighted backpack activity. However, District did not offer one-on-one

support during recess. The class maintained a ratio of three staff to four students, which provided sufficient adult supervision to ensure Student's safety. As Student enjoyed walking with other students the team agreed he would continue to participate in the walk, without wearing the weighted vest.

APRIL 15, 2016 IEP TEAM MEETING

27. On April 15, 2016, District held an addendum IEP team meeting to address Parent's request to increase speech and language services from 60 to 90 minutes per week. District offered 60 minutes one-on-one and 30 minutes group, weekly. Parents consented. The IEP did not add new goals to Student's IEP.

AUGUST 10, 2016 DIAGNOSTIC CENTER FIELD BASED ASSESSMENT

28. At Parents' request, Diagnostic Center conducted a field-based follow up assessment addressing Student's communication intervention, curricular programming, and instructional strategies. Diagnostic Center recommended that District continue to provide strategies identified in its December 2013 report, including teaching functional skills through hands-on experiential learning; direct, systematic instruction; and supported physical play.

CAMARILLO HEIGHTS ELEMENTARY SCHOOL

29. Parents wanted to observe the mild to moderate special day class at Camarillo Heights Elementary School and hold an IEP team meeting prior to the start of Student's 2016 – 2017 school year. On a mutually agreeable date, Parents visited Camarillo Heights, though classes were not yet in session. Parents viewed the classroom and received input on the structure of the class through Laurie Matson, District's program specialist supervisor.

30. Ms. Matson worked for 15 years as a program specialist for District. Her duties included working as Student's case manager, attending IEP team meetings, and advising team members on appropriate program components. She was familiar with District's programs and services regarding the continuum of least to more restrictive environments for students in preschool through eighth grade. Previously, she worked as a speech and language pathologist. Ms. Matson held a bachelor's and master's degree in communicative disorders; a clinical rehabilitative services credential in language, speech, and hearing; and, an administrative services credential. She earned a certificate of clinical competency from the American Speech Language Hearing Association and held a California license to practice as a speech and language therapist. She did not have a teaching credential in either general or special education.

31. In preparation for the site visit, Ms. Matson reviewed the Diagnostic Center 2013 report, District's 2014 multidisciplinary triennial assessment, and served as a District representative at Student's IEP team meetings. She accompanied Mother on the visit to District's mild to moderate special day class at Camarillo Heights Elementary School, prior to the start of the 2016 – 2017 school year. Parents were informed that the mild to moderate class used general education curriculum with modifications and accommodations to teach students with various disabilities.

AUGUST 22, 2016 IEP TEAM MEETING

32. Parents requested an IEP team meeting prior to the start of Student's third grade year. On August 17, 2016, District provided notice to Parents of an IEP team meeting set for August 22, 2016. Parents signed the notice, indicating agreement to attend the meeting. The meeting went forward as scheduled. Both Parents attended.

33. Vice Principal of La Mariposa Aaron Burke, speech pathologist Carolyn Masson, occupational therapist Usha Agarwal, Executive Director of Special Education Fran Arner-Castello, special education teacher Kam Kearns, and Parents attended the IEP

meeting. Parents' main concern involved maximizing Student's potential to make sure the educational instruction met his intellectual level.

34. The team discussed Parents' concerns in science, technology, and data collection. First, Parents requested Student's inclusion in a general education science class to address his interest in the planets and space. Mother expressed concern that Student's intelligence was being overlooked. The team agreed that Student would attend Anne Miller's mild to moderate special day class for science on Tuesdays and Wednesdays, at La Mariposa. Ms. Miller taught the class using modified general education curriculum. The team agreed that Student would attend the class after his regular school day.

35. Next, Mother asked that District address Student's interest in foreign countries. According to Mother, when naming such locations, Student spoke in full sentences. The team agreed that Student's class would continue to use "interest reading" materials, without changing the curriculum of the class. Parents requested that books be used and not just the iPad. They also discussed pairing use of music with non-preferred activities in the classroom. The team agreed to play music during writing activities and share information on what worked between home and school, prior to the annual IEP team meeting in October 2016.

36. Finally, Parents requested more data be sent home. Ms. Kearns explained that data on goals would continue to be provided. However, Mother believed that school reports did not match what Student did at home. Mother did not see changes in Student's work from year to year. The school team believed the data collection on goals showed Student made slow, gradual progress.

37. Parents expressed their willingness to explore other school options, such as the Camarillo Heights Program, but agreed to continue to work with the County class. Parents consented to the IEP addendum.

SEPTEMBER 14, 2016 BUMPS, BRUISES, AND BLOWS REPORT

38. On September 14, 2016, Ms. Kearns, filed a Bumps, Bruises, and Blows report regarding a mark on Student's forehead. Student sat with his head on his desk for approximately 10 minutes during a classroom activity at the end of the school day. When Student raised his head up, there was a circular mark in a purplish shade on his forehead. Ms. Kearns did not observe any marks on Student's forehead prior to the incident. Ms. Kearns walked Student out at the end of the day and communicated what happened to Student's Mother.

SEPTEMBER 27, 2016 TEACHER REPORT

39. Ms. Kearns compiled the September 27, 2016 Teacher Report reflecting Student's progress on academic and communication goals from the October 12, 2015 IEP. Student made good progress on, but did not meet, his communication goal to sequence 10 sets of three pictures to show the first, middle, and last pictures of a story and retell the story following a model and prompts. When focusing, Student put up to four pictures in sequential order and told the story with one word per picture, following a verbal model.

40. Student met and exceeded his second communication goal to verbalize five sentences that include two word phrases describing size and/or color of objects and pictures with one verbal and one gestural prompt. Given familiar pictures, Student demonstrated the ability to use a sentence with an adjective to describe more than 15 pictures per speech session. He showed enthusiasm while describing pictures of planets, including their shapes and colors.

41. In academics, Student made progress on his writing goal to draw a line between straight and curved lines with four verbal and four pointing cues. He progressed toward the goal by drawing a line between vertical and horizontal lines with

100 percent accuracy, while needing physical and verbal prompts to draw a line between curved lines.

42. Student did not meet his second writing goal to make letters of his first name using Handwriting Without Tears materials with two verbal and two point cues for each letter, after tracing the letter with his finger with physical guidance. Handwriting Without Tears materials included wikkie sticks (soft, bendable sticks), an iPad, wooden pieces, and chalkboard. Student made good progress by making the letters of his first name using wood pieces with two verbal and pointing cues for each letter. He required extra time to process the information and tended to mouth the pieces he used to make letters. He required verbal and physical prompts to make three of the letters on a chalkboard.

43. Student met his reading goal of reading simple sentences using consonant-vowel-consonant and high frequency words, given visual cues.

44. Student did not meet his math goal of counting out objects when given manipulatives and a visual number from 1 through 10. He showed progress toward the goal by being more consistent in his counting and ability to stop on the correct number. He tended to become highly distracted with other people in the classroom.

SEPTEMBER 27, 2016 IEP TEAM MEETING

45. On September 13, 2016, District sent notice of Student's annual IEP team meeting, set for September 27, 2016. Though District did not produce a signed copy of the notice, both Parents attended the meeting. Mr. Burke, Ms. Masson, Ms. Kearns, Ms. Agarwal, Ms. Arner-Costello, and program specialist Laurie Matson, also attended the meeting.

46. The IEP team reviewed and discussed the teacher report on progress towards past goals, new draft goals, and present levels of performance.

47. Overall, Student's length of utterance increased, he used more words and phrases, and demonstrated growth in communication skills. Ms. Masson presented new goals in the area of sequencing using motivating materials and practicing verb tenses. Student did not use verbs when talking and needed to develop this skill to move to the next level of communication. Another goal addressed functional communication, for Student to verbalize wants and needs, such as, "I need a break."

48. Mother reported using a similar strategy at home. She described asking Student to use his words to tell her what he needed. She repeated the request back to him, saying, "[Student] wants..." and he then repeated the phrase back to her. She described seeing a decline in tantrum behaviors at home. She believed Student feared failure, which made him anxious. She described how Student used "Face Time" at home to communicate with family members back east, how he speaks up and shows them things in his house.

49. The team described how Student did not demonstrate behaviors that impeded learning at school. However, when he first came to Ms. Kearns' classroom, he would sometimes cover his face or put his head down when feeling shy. He progressed to just looking down when called on, though he also participated more and raised his hand to answer questions.

50. Ms. Kearns presented an academic goal in reading for Student to develop a stronger reading foundation by reading four to five word sentences composed of high frequency words, given visual or picture cues. The goal addressed Student's needs in word analysis, reading fluency, and systematic vocabulary.

51. A second reading goal addressed Student's need to learn how to categorize items into categories. The goal required Student to sort items, using motivating materials, in three categories, using nine pieces, with four verbal prompts.

52. Ms. Kearns developed a math goal to address Student's need to understand the concept of left to right. The goal required Student to match an eight-piece AB pattern from left to right order, given verbal prompts to see what picture is next. A second math goal addressed Student's need to practice consistency in representing a number of objects with a written number of 1 through 10.

53. Ms. Agarwal reported Student's progress toward writing goals and present levels in motor abilities and self-care. Student could walk, run, jump, and gallop. He played catch with staff from a short distance. He enjoyed going down the slide at recess. Staff assisted him to access all areas of the playground. He benefitted from having movement breaks in the classroom and access to a sensory choice board. He liked being outside and enjoyed being social. Student could toilet with minimal accidents; wash his hands with a verbal prompt; and generally did not require help eating.

54. Ms. Agarwal helped develop the academic math and reading goals, which also addressed Student's fine motor and visual memory needs. She offered continued occupational therapy services in the classroom on a push in basis, which she believed to be more appropriate than pull out services. Push in services allowed Student to practice developing fine and gross motor skills in a natural setting. Ms. Agarwal recommended continued use of proprioceptive input to help Student regulate his behavior to improve his focus.

55. The team offered Parents an opportunity to ask questions and provide input on proposed goals. Mother shared that she did not have questions and believed Student would achieve the goals quickly.

56. Student's accommodations included use of a visual schedule, a timer to signal the end of a break, warning before transitions, frequent breaks, testing in a quiet environment, allowing choice of two tasks, seating away from distractions and noise. Teacher direction accommodations included use of "first, then" picture cards, on-task

reminders, verbal encouragement, allowing extra classroom movement, directions given in multiple ways, and questions and items presented verbally. Student response accommodations included use of manipulatives; increased verbal response time; and alternative response modes, such using words or gestures. The IEP offered a sensory diet consisting of sensory choice board, ball chair, fidget object, low noise, and frequent breaks.

57. Ms. Gregory revised Student's a health and emergency care plan addressing ongoing needs in the areas of seizure disorder and pumpkin allergy. The plan remained essentially the same since the 2014 triennial assessment. However, Ms. Gregory communicated with staff and Parents at least annually to update the plan. Prior to the September 2016 IEP meeting, Mother reported no changes in Student's health needs to Ms. Gregory. During the IEP team meeting, Mother confirmed her collaboration with Ms. Gregory regarding development of the health plan.

58. The team discussed the need for new triennial assessments. Mother shared that, while she reported Student's anxiety at school, she believed that was typical for him and no assessment was needed in this area. Mother reported that Student was coming into himself and finding his voice.

59. District offered continued placement in the moderate to severe special day class at La Mariposa, with accommodations, an alternate functional curriculum, and related services. Related services included push-in speech and language therapy for 60 minutes per week, one-on-one and small group for 30 minutes per week; push-in occupational therapy for 120 minutes, monthly, one-on-one; and health and nursing services for 330 minutes per day for staff to monitor for seizures and allergic reactions. District offered continued participation in its mild to moderate special day class for science, for 42 minutes, two times weekly, after Student's regular school day. Finally,

District offered extended school year services consisting of specialized academic instruction in a self-contained setting for 19 school days.

60. After District's offer, at the end of the IEP meeting, Parents shared concerns at the meeting about Student's placement. Mother described an incident at home where she asked Student to get a reading book and he began banging his head on the bed, repeating, "I'm lazy." He told Mother that someone at school called him lazy. Mother asked who said that and he responded unintelligibly. According to Mother, he became sad. Parents agreed that Student transitioned to and from school normally, after the incident. The County principal conducted an investigation and could not find anyone who either made the comment to Student or heard someone make the comment to Student. Mother provided new information to the team, stating that the incident related to a staff member who walked Student over to science instruction. Parents and Ms. Kearns observed that Student's demeanor and performance did not change after the incident.

61. Mother also described concern over a bruise on Student's head, occurring on September 14, 2016. She provided pictures to Student's doctor, who advised her to take Student to the hospital for a scan. According to Mother, she did not take Student to the hospital because he could not be sedated to tolerate a scan. The sedation medication had the opposite effect on Student. The Doctor advised Mother to closely monitor the bruise and watch for a fever. According to Ms. Kearns, Father shared that the bump improved. Ms. Kearns did not see a raised bump when Student left school. According to Mother, the following day they applied make up to the bump so Student could attend school for picture day.

62. Mother expressed concern that Student came home from school three times with injuries. Father shared that one of the incidents did not count as it involved Student walking into a pole while his Father walked him to the car. Mother described an

incident where Student tripped over a weed on the playground and believed the teacher changed her story at the IEP meeting that occurred afterwards.

63. Mother described how Student kicked her in the jaw after the September 14, 2016 incident. She believed Student no longer wanted to attend class at La Mariposa and she wanted to honor that. She believed Camarillo Heights had an appropriate program for Student. Mother reported that Ms. Matson told her that Camarillo Heights would be appropriate for Student. Ms. Matson denied making that comment.

THE PLACEMENT

64. Each of Student's providers believed he received educational benefit in the La Mariposa placement. Each described how Student made slow and steady progress in the moderate to severe special day class, commensurate with his ability. Ms. Crowning shield credibly showed that Student continued to require a functionally based curriculum to address deficits in cognition, academics, communication, and adaptive skills. Student needed individualized attention that placement in a moderate to severe special day class provided. Student would not receive education benefit from a class using the general education curriculum, even when modified because of his low levels of functioning and need for repeated instruction and consistent prompting.

65. Ms. Masson credibly described how the push in model of speech and language used in Student's moderate to severe special day class provided great benefit to Student. The model allowed Ms. Masson to observe Student in class communicating with other children, provide consultation to his teacher and staff, and further develop communication skills. She opined that the class met Student's unique needs, provided educational benefit, and offered the least restrictive environment for him. Ms. Masson did not believe the mild to moderate class could provide educational benefit, as Student required a high level of support to complete tasks and did not yet learn independently. Student performed at a 24 month old level, linguistically. He benefitted from the use of

visual schedules and pictures as prompts. Further, the Peer Buddies program at La Mariposa provided Student with access to typically developing communication partners. Peers joined students during the lunch break to perform crafts and play games. This provided Student with social modeling from peers with more developed social pragmatic functioning.

66. Ms. Agarwal, based on her training, experience, and provision of services to Student, credibly described Student's need for a small, structured class with less sensory input and use of repeated instructions. He required a more intense sensory diet than students in the mild to moderate class, including tactile and vestibular input to improve his attention span and engage longer in expected tasks.

67. According to Ms. Matson, students in the Camarillo Heights class were more independent than Student, in that they accessed the general education curriculum with minimal directions and prompting.

68. Having taught Student in her special day class beginning with the 2014 – 2015 school year, Ms. Kearns credibly demonstrated that Student continued to require repeated practice and reinforcement in a functional skills curriculum, in order to obtain educational benefit. Student continued to rely on use of manipulatives (picture icons), gestures, and short utterances to communicate in class. He required extra prompting from an aide to follow teacher instruction in the alternate curriculum. As such, he could not access a modified general education curriculum.

69. Anne Miller worked at District first as a paraeducator for six years, then as a special education teacher for 11 years. She held a bachelor's degree in liberal studies and a master's degree in special education. Her teaching credential allowed her to teach students with mild to moderate developmental disabilities.

70. At the time of hearing, Ms. Miller taught the special day class at La Mariposa that Student attended for science. One of her lessons involved teaching the

children about dolphins. Though other students required some prompting, they answered comprehension questions related to dolphin facts. Student required several prompts to describe a dolphin fact as he continued to use the word shark to describe the dolphins. After Ms. Miller provided a two choice prompt, Student responded appropriately. Ms. Miller explained that Student typically picked the last of two choices offered in prompting. Ms. Miller often offered the correct choice second, in order to provide Student with some measure of success.

71. In contrast, other students in her class were able to answer comprehension questions and write sentences about what they learned. Student could not trace over the sentence highlighted for him after learning about dolphins. He scribbled over it. He could not write a sentence either independently or with prompts.

72. Ms. Miller taught her class using the general education curriculum, modified to meet individual student needs. She developed lessons from common core state standards, using a particular skill from the standard and scaffolding to build toward the overall standard. Her special day class students were more impaired than those being instructed in the mild to moderate special day class at Camarillo Heights. Based on her experience, training, and education, she did not believe that full time placement of Student in the Camarillo Heights program would provide Student with educational benefit in academics.

73. Socially, Student minimally interacted with his peers in the science class. Classmates often tried to engage with Student, to no avail. Student could respond with a one-word utterance, with prompting.

74. Neither Ms. Kearns, Student's other providers, nor Parents, knew of any school related incidents involving Student's safety, other than the tripping and head bump incidents that occurred during the 2015 – 2016 school year.

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA²

1. This hearing was held under the Individuals with Disabilities Education Act (IDEA), its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006)³et 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" 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

² Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

³ All subsequent references to the Code of Federal Regulations are to the 2006 version.

designated instruction and services].) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of Parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a).)

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to "maximize the potential" of each special needs child "commensurate with the opportunity provided" to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to "confer some educational benefit" upon the child. (*Id.* at pp. 200, 203-204.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.]) Although sometimes described in Ninth Circuit cases as "educational benefit," "some educational benefit" or "meaningful educational benefit," all of these

phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 951, fn. 10.)

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

BURDEN OF PROOF

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. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) Here, each party bears the burden of proof on its own issue.

ISSUE 1: DID DISTRICT'S IEP'S OF AUGUST 22, 2016 AND SEPTEMBER 27, 2016 OFFER STUDENT A FAPE IN REGARDS TO PLACEMENT?

6. District contends that its IEP's offered Student a FAPE for the 2016 – 2017 school year by addressing his unique needs and providing educational benefit in the least restrictive environment in which his needs could be appropriately met. Student contends that placement at La Mariposa Elementary School denied him a FAPE because it did not address safety concerns.

Applicable Law

7. Parents, no matter how well motivated, do not have a right to compel a school district to provide a specific program or employ a specific methodology in providing education for a disabled child. (*Rowley*, supra, 458 U.S. 176, 208.) The methodology used to implement an IEP is left to the school district's discretion so long as it meets a child's needs and is reasonably calculated to provide some educational benefit to the child. (See *Rowley*, supra, 458 U.S. at p. 208; *Adams v State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (*Adams*); *Pitchford v. Salem-Keizer School Dist.* (D. Or. 2001) 155 F. Supp.2d 1213, 1230-32; *T.B. v. Warwick School Committee* (1st Cir. 2004) 361 F.3d 80,84.)

8. When a school district seeks to prove that it provided a FAPE to a particular 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.)

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 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)(2006); 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).)

11. 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)(i)(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)(i)(III); Ed. Code, § 56345, subd. (a)(3).) The IEP must show a direct relationship between present levels of performance, the goals, and the educational services to be provided. (Cal. Code Regs., tit. 5, § 3040, subd. (c).)

12. 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].)

13. 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 meaningfully participated in the development of an IEP 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.* (3rd Cir. 1993) 93 F.2d 1031, 1036 (*Fuhrmann*) [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].)

14. 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 LRE, 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.)

15. To determine whether a pupil was denied a FAPE, an IEP must be examined in light of the information available to the IEP team at the time it was developed. (*Adams, supra*, 195 F.3d at p. 1149; *Roland M. v. Concord Sch. Comm.* (1st Cir. 1990) 910 F.2d 983, 992.) "An IEP is a snapshot, not a retrospective." (*Id.* at p. 1149, *citing Fuhrman, supra*, 93 F.2d at p. 1041.) The offer of FAPE must be objectively reasonable at the time it was developed, not in hindsight. (*Ibid.*)

16. To provide the LRE, 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.) The LRE mandate does not override the FAPE requirement. If a child's placement does not confer a "meaningful benefit" to the student and a more restrictive program is likely to provide such benefit, the child is entitled to be placed in that more restrictive program. (*P. v. Newington Bd. of Educ.* (2d Cir. 2008) 546 F.3d 111.)

17. School districts must have available a continuum of program options to meet the needs of students who require special education and related services as required by the IDEA and related federal regulations. (Ed. Code, § 56360.) The continuum of program options includes, but is not limited to regular education programs; resource specialist programs; designated instruction and services, including, speech and language, adapted physical education and occupational therapy; special classes such as special day classes; nonpublic schools; and instruction in the home, hospitals or other institutions. (Ed. Code, § 56361.) There is no requirement that the IEP

team discuss all possible choices on the continuum of program options at the IEP team meeting.

18. Districts have an obligation to consider safety concerns related to a student's qualifying disability when developing and implementing the student's IEP. (*Lillbask v. Connecticut Department of Education* (2nd Cir. 2005) 397 F.3d 77, 93.) The "related services" that a district may be required to provide to assist a child in benefitting from special education include developmental, corrective and supportive services. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).) These, of necessity, must include appropriate measures to ensure the child's safety.

19. If a parent refuses services in an IEP that had been consented to in the past, or the school district determines that the refused services are required to provide a FAPE, the school district shall file a request for a due process hearing. (Ed. Code, § 56346, subds. (d) & (f).)

Analysis

20. District demonstrated that Student was properly assessed in all areas of suspected disability, by properly qualified providers, prior to the development of District's offer of placement and services for the 2016 – 2017 school year. The IEP meetings were procedurally appropriate in that they were properly noticed and included all necessary members. Parents fully participated in the development of the IEP's as reflected in the IEP notes. District responded to Parents' various requests for meetings, changes to the IEP's, and observation of a different school placement. The needs were properly identified using past assessments, progress on prior goals, and observations by providers. Program components such as Peer Buddies, circle time, reading time, and sensory strategies addressed Student's needs in cognition, behavior, communication, fine and gross motor skills, academics, and social skills. Further, the IEP's contained measurable annual goals that addressed Student's areas of need in communication, fine

motor skills, social skills, and academics. Further, the IEP's met all written requirements by describing the placement, services, modifications, and accommodations.

21. District showed that its IEP's were designed to meet Student's unique needs and were reasonably calculated to provide Student with some educational benefit. District demonstrated that Student met his communication and reading goal and made meaningful progress on all other goals in communication, writing, and math. Student demonstrated progress overall in pragmatic speech, and enjoyed engaging in playground activities with other students. Parents consented to each of Student's IEP's, with the exception of the last annual IEP of September 27, 2016.

PLACEMENT

22. The crux of the dispute between Parents and District lies in Student's placement. While Parents sought full time placement in a mild to moderate special day class at Camarillo Heights, District offered continued placement in the moderate to severe special day class at La Mariposa. The evidence demonstrated that District considered Parents' request, toured the mild to moderate special day class with them, and discussed the continuum of placement options at the September 27, 2016 annual IEP meeting.

23. District demonstrated that Student required a functional skills curriculum focusing on communication, self-care, fine and gross motor skills, functional academics, pragmatic social emotional development, recreation leisure, and prevocational domains such as self-help. He required the small structured setting with a high teacher to student ratio. Such structure offered more opportunities for individual attention and repetition of skills to foster Student's development, consistent with his abilities.

24. Further, Student required a placement that would lessen sensory input, such as noise and other distractions, while allowing him to use tactile and vestibular input to regulate behavior. Student operated in the 18 to 24 month old developmental

range, with emerging skills in the two to four-year-old range. Over time, he made slow and steady progress, consistent with his level of cognitive functioning.

25. To foster Student's independence, he required participation with other students at or near his developmental level. He communicated in the range of a two year old, using one to two word utterances and gestures. He required numerous verbal and physical prompts to stay on task and obtain benefit from his instruction. Student also required practice in daily living skills in order to develop some level of independence in meeting his own functional needs, such as toileting and feeding himself.

26. District persuasively demonstrated that the moderate to severe class had met and could continue to meet Student's social emotional needs. The program included using Peer Buddies, where typically developing Peer students provided modeling and pragmatic social interaction by demonstrating how to take turns, ask questions, and follow rules.

27. District offered Student a placement and services consistent with program components and strategies identified in Diagnostic Center assessments, District's triennial assessments, annual teacher reports, and goal progress reports. The evidence showed that Student made meaningful progress in the La Mariposa placement in 2015 – 2016 school year. The evidence did not show that Student's needs had changed, warranting a different placement.

SAFETY

28. Parents believed that District denied Student a FAPE by continuing placement in an unsafe environment. The evidence showed three incidents during the 2015 – 2016 and 2016 – 2017 school year, specifically, Student: tripped on the playground in March 2016; bumped his forehead on his desk in September 2016; and walked into a pole while being escorted off campus by his Father.

29. However, the evidence did not show that Student suffered an injury when he tripped on March 14, 2016, while walking with a weighted backpack. Likewise, he suffered either a simple discoloration or slight bump when he laid his head on his desk on September 14, 2016. Parents did not take Student to the doctor after either incident. Student did not require medical intervention as a result of either incident.

30. The third incident involved Student walking into a pole while Father escorted him to their vehicle after school. Even Father conceded this incident did “not count,” as Student was with him at the time. Student did not produce any evidence that he sustained an injury or required medical attention afterwards. Nor did the evidence show that an unsafe element of Student’s placement caused the incident.

31. Further, Student produced no evidence that either the campus or the special day class at La Mariposa Elementary School was an unsafe environment. On the contrary, District had a high staff to student ratio. An experienced and knowledgeable credentialed special education teacher supervised staff in Student’s class. District trained staff to address the needs of children, like Student, with developmental disabilities. Children experience minor accidents and injuries as part of the learning and growing process. Though districts must take steps to ensure student safety, they cannot *guarantee* that accidents will never occur.

32. Finally, Parents produced no evidence that merely placing Student at Camarillo Heights would prevent such incidents from occurring in the future. For the foregoing reasons, Student did not prove District denied him a FAPE by failing to provide a safe learning environment.

33. The preponderance of evidence demonstrated that Student’s continued placement in a moderate to severe special day class at La Mariposa offered Student a FAPE in the least restrictive environment that was appropriate to provide educational benefit to him. The law requires nothing more.

ISSUE 2: DID DISTRICT'S FAILURE TO OFFER PLACEMENT IN THE MILD TO MODERATE SPECIAL DAY CLASS AT CAMARILLO HEIGHTS DENY STUDENT A FAPE FOR THE 2016 – 2017 SCHOOL YEAR?

34. Student contends that his abilities require a higher level of instruction, warranting placement in the mild to moderate special day class at Camarillo Heights. District contends that Student requires a class teaching the alternative curriculum, not modified general education.

35. Legal conclusions 1 through 19 are incorporated by reference.

Analysis

36. Parents preferred placement at Camarillo Heights, a general education campus, where Student would have opportunities for interaction and role modeling with typical peers during lunch, recess, and assemblies. Further, they believed District's placement did not maximize Student's potential.

37. However, Parents presented no evidence to demonstrate that Student's needs went unmet by District. First, District offered Student access to typically developing peers during Peer Buddies, lunch, recess, and assemblies in the La Mariposa placement. Second, none of the assessments, progress reports, IEP notes, or any of the witnesses corroborated Parents' theory that Student could access or obtain educational benefit from a modified general education curriculum.

38. Rather, the evidence demonstrated that Student required chunking of information, repetition, and individualized learning opportunities. Moreover, he required access to a functional life skills curriculum, which the La Mariposa placement offered. Such skills were not part of the mild to moderate special day class at Camarillo Heights. Student made progress commensurate with his ability with the supports and services offered in his La Mariposa placement.

39. Student's participation in the science mild to moderate special day class showed that he could not access a modified general education curriculum. He could not respond to comprehension questions, like other students in the class. He demonstrated the need to use an alternate curriculum. Further, he required adult prompting to engage even minimally with the other students.

40. Finally, Student required intensive instruction in functional academics to make meaningful progress on four of his goals and meet two. This level of progress did not support that Student would obtain benefit from placement in a class using more demanding curriculum.

41. The IDEA does not require District to maximize Student's potential. (*Rowley*) District offered Student a program that would meet his unique needs and offer meaningful educational benefit. For all of the foregoing reasons, Student did not meet his burden of proving District failed to offer a FAPE for the 2016 – 2017 school year by denying him placement at Camarillo Heights.

ORDER

The IEP's dated August 22, 2016 and September 27, 2016, offered Student a FAPE. District may implement its IEP's over lack of parental consent.

All relief sought by Student is denied.

PREVAILING PARTY

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

RIGHT TO APPEAL

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

DATED: January 23, 2017

/s/

COLE DALTON

Administrative Law Judge

Office of Administrative Hearings