

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

GARVEY SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH Case No. 2016110339

DECISION

Garvey School District filed a due process hearing request (complaint) with the Office of Administrative Hearings, State of California, on November 7, 2016, naming Student. The matter was continued for good cause on November 28, 2016.

Administrative Law Judge Marian H. Tully, Office of Administrative Hearings, State of California, heard this matter on February 28, 2017, in Rosemead, California.

Attorney Sharon A. Watt appeared on behalf of District. District's Special Education Coordinator, Alma Guerrero, attended the hearing.

Parents did not attend the hearing. Parents had previously informed OAH that they would not participate in the prehearing conference. OAH sent Parents a copy of the prehearing conference order that included the time and location of the hearing. OAH staff telephoned Parents on the morning of February 28, 2017, before the hearing started. Father informed OAH staff that Parents would not participate in or attend the hearing.

The matter was continued for written closing arguments and there cord remained open until close of business on March 3, 2017. The record was closed and the matter was submitted for decision March 3, 2017.

ISSUE

Did the individualized education program dated September 30, 2016, and October 6, 2016, offer Student a free appropriate public education such that District may implement the IEP without Parents' consent if Student is enrolled within District and continues to receive special education and related services?

SUMMARY OF DECISION

Student's IEP developed over meetings on September 30 and October 6, 2016, offered Student highly individualized instruction; full time one-to-one support by a special circumstances instructional assistant; a highly modified curriculum; occupational therapy, physical therapy, speech and language services, adapted physical education and vision services. District demonstrated that the October 2016 IEP met all procedural and substantive requirements of the Individuals with Disabilities Education Act and offered Student a FAPE in the least restrictive environment.

FACTUAL FINDINGS

1. Student was nine years old at the time of hearing. She lived with Parents within District boundaries at all relevant times. Student first qualified for special education in January 2011. Student's primary eligibility for special education was orthopedic impairment with a secondary eligibility of intellectual disability. Student's disabilities included cognitive impairment and other impairments due to epilepsy, cerebral palsy, spastic quadriplegia, and vision impairment that significantly affected all activities in her daily life. Student had deficits in cognition; adaptive behavior; verbal and nonverbal communication; social/emotional functioning; poor muscle control, tone and coordination; exaggerated reflexes; and blurred vision, intermittent outward, inward, upward and uncoordinated eye movement; and cortical visual impairment.

2. Student attended Tiffany Gonzalez' third grade special day class at Sanchez Elementary School. Ms. Gonzalez held a bachelor's degree in social work. She was working on a master's degree. She was preparing to take the California Basic Educational Skills Test and the California Subject Examinations for Teachers. Ms. Gonzalez taught third grade special education under an emergency credential. There were 10 students in her class. There were six adults in the class including Ms. Gonzalez, two instructional aides, two aides assigned to individual students, and a licensed vocational nurse. One of the instructional aides in the class was a full-time one-to-one special circumstances instructional assistant assigned to Student.

3. Student went to school on a bus. Her aide accompanied her on the bus, assisted her with getting on and off the bus and with her wheelchair. Student's school day began at approximately 8:35 a.m. The class had breakfast when they arrived. Student's aide would feed her breakfast with a gastrostomy tube. The class participated in circle time after breakfast. Circle time included short activities related to language, math, social studies, and reading. Ms. Gonzalez used teaching strategies appropriate to Student's abilities such as redirecting avoidance behaviors to secure Student's engagement; using an abundance of clear, energetic, positive expressive language; and hand over hand assistance for page turning and manipulatives. Student's curriculum and grading system were highly modified. Although Student used some spoken words at home and had used some words in her second grade classroom, she was non-verbal in Ms. Gonzalez' class. Her primary method of communication in Ms. Gonzalez' classroom was with eye gaze or by smiling. She turned her face away or jerked her body against the back of her wheelchair to avoid engagement. Ms. Gonzalez believed Student was shy and that Student would begin to verbalize after she became familiar with the third grade environment. Student's social interaction consisted mostly of pushing a plush toy off her table so that someone would pick it up and give it back to her.

4. Ms. Gonzalez taught in 30-minute intervals to allow time for children's toileting, feeding and other needs. Student required feeding with a gastrostomy tube and diaper changes during the day. Student went out in her wheelchair with her aide during recess twice a day. Student smiled and laughed when she watched other children but she did not engage with them.

5. Student received speech and language services, physical therapy, occupational therapy, vision services, and orthopedic services as offered in an agreed-upon IEP dated January 7, 2015. Initially, Student also received adapted physical education. However, Father revoked consent to adapted physical education and District discontinued the service.

6. District conducted a triennial assessment in June 2016. The assessment team included school psychologist Stephanie Ho; Ms. Gonzalez; Student's second grade special education teacher; speech and language pathologist Kaliegh Tiche; Student's physical and occupational therapists; adaptive physical education specialist Rene Herrera; and vision impairment teacher Roxanna Pena. Ms. Ho produced a comprehensive psycho educational report dated September 20, 2016. Student had severe deficits in all areas. Student's intellectual functioning was below the first percentile relative to same age peers. Student's age equivalency in the areas of fine motor skills, language, and social/emotional was zero to seven months. Student's gross motor functional level ranged between four to 12 months. In bilateral motor skills such as standing, walking, and balancing, she performed at the four to six month level. Student needed adult prompting and hand-over-hand assistance for all tasks. Student's functional vision was affected throughout the day by astigmatism, alternating exotropia (intermittent eye turns outward), esotropia (intermittent eye turns inward), hypertonia, disassociated vertical deviation (eyes drift upward), and cortical visual impairment. These visual impairments interfered with how Student viewed and understood what she saw.

SEPTEMBER 30, 2016 IEP TEAM MEETING

7. District sent Parents an invitation to attend an annual/triennial IEP team meeting scheduled for September 30, 2017. Parents agreed to that date. District met to convene the IEP meeting at the day and time scheduled. Twenty-five minutes after the scheduled start time, District telephoned Father. Father informed District that his only concern was to move Student "to the next level." Father told District to proceed in Parents' absence and to send him the reports. District members proceeded with the meeting. The school psychologist, special education teacher, adapted physical education teacher, physical therapist, occupational therapist, speech pathologist, and visual impairment teacher presented the results of their assessments. The team discussed progress on goals from the January 2015 IEP. Student did not meet four of five academic goals. Student did not meet any of her vision goals. She met her physical therapy goal. She met one of two occupational therapy goals. District members of the team developed new proposed goals in academics, adapted physical education, physical therapy, vision, speech, and occupational therapy. District sent the assessment reports to Parents. Parents did not challenge the assessments, scores or results. District also sent the proposed goals to Parents.

OCTOBER 6, 2016 IEP TEAM MEETING

8. The IEP team met again on October 6, 2016. Father attended the meeting. All required District staff were there except for the visual impairment teacher. Father agreed to start the meeting without the visual impairment teacher. The visual impairment teacher later joined the meeting. Father was upset that the adapted physical education teacher attended the meeting given that Father had revoked consent to those services. District explained that the adapted physical education teacher was present to

explain his assessment. District reminded Father that he had consented to the triennial assessment plan that included adapted physical education.

9. The school psychologist, special education teacher, adapted physical education teacher, physical therapist, occupational therapist, and speech pathologist summarized the assessments. Father informed the IEP team that he did not have any questions about the assessments. Ms. Guerrero, the special education coordinator, asked Father if he reviewed the proposed goals developed at the September 30, 2016 meeting.

10. Father told the team that he cared only about communication goals. District began by explaining the first goal that related to communication. Student's goal was to exchange greetings such as "Hi" and "Bye" with her peers or teachers in any modality (gesture, vocalization, or communication device) at least once every speech session with moderate cueing as measured by clinician data. Father asked how this would be done. The speech pathologist explained Student would be prompted by using a "hand-over-hand" gesture for waving. No other goals were discussed because Father then expressed a concern about Student's one-to-one aide and requested a different aide. Father informed District that Student spoke to a previous aide and she talked to some people on her first day with them. District informed Father that Student was beginning to talk to her aide. Father wanted to know how many of Student's classmates talked. District informed Father that there was a range of communication abilities in the classroom.

11. Father wanted to visit Student's classroom. District did not deny Father's request to visit the classroom but informed Father that they should finish the IEP meeting first. Father told District that he did not care about any issues other than whether Student was with children who talked. Father informed District he wanted to revoke consent to special education and related services and the team could cease all

services, save money and work only on speech. Father informed District that he would revoke consent unless District put Student in a general education class with children who were able to speak. The special education coordinator informed Father that he had the right to revoke consent for special education and related services but that the team did not recommend he do that. The coordinator informed Father that he would need to write a letter if he wanted to revoke services. Father stated he would write a letter and walked out of the meeting.

12. Student continued to attend third grade in Ms. Gonzalez' class and District continued to implement the services in the January 7, 2015 IEP, with the exception of adapted physical education, through the date District filed its complaint.

OCTOBER 6, 2016 IEP OFFER

13. District produced a written IEP with an offer of a FAPE for Student for the 2016-2017 regular and extended school year. District found Student eligible for special education and related services under the category of multiple disability due to cognitive impairment and other impairments related to cerebral palsy, spastic quadriplegia, epilepsy, vision and mobility and fine motor deficits.

14. The October 2016 IEP contained a statement of Student's present levels of performance and how her performance was affected by her multiple disabilities. The IEP contained 13 goals. There was one goal for occupational therapy; one goal for physical therapy; five goals for specialized academic instruction; one goal in the area of visual impairment; two goals in the area of adapted physical education; a speech/language goal for pragmatics/socialization and two speech/language goals for expressive language. Each goal addressed an area of need identified by the IEP team based upon the triennial assessment and information provided by the IEP team members. Each goal was measurable. For example, in the area of fine motor skills, Student required hand-over-hand assistance to grasp small objects during activities. The occupational therapy

goal was for Student to maintain a functional writing grasp with the use of adaptive equipment to imitate drawing a vertical line, horizontal and circular shapes using visual cues with 75 percent accuracy in three of five trials. The goals also included short-term objectives. For example, one of Student's annual expressive language goals was to verbally answer yes/no questions related to her present state or activity with 70 percent accuracy given moderate verbal cues in four of five opportunities as measured by clinician data. The goal included measurable short-term objectives: by November 2016 she would accomplish the goal in two of five opportunities; by March 2017 she would accomplish the goal in three of five opportunities and by June 2017 she would meet the goal by accomplishing the task in four of five opportunities.

15. The 2016 IEP for the regular school year included a start date of September 20, 2016, and an end date of September 19, 2017. The 2016 IEP offered full-time specialized academic instruction; transportation; and full time one-to-one aid support during transportation and the entirety of the school day. Services included individual and group and speech/language therapy for a total of 60 minutes per school week; individual specialized vision services for 30 minutes per school week; individual occupational therapy for 30 minutes per school week; occupational therapy consultation for 30 minutes per school month; individual physical therapy for 60 minutes per school month provided by a nonpublic agency; specialized orthopedic services for 15 minutes per school year; and adapted physical education twice per school week for 20 minutes each session. Accommodations and modifications included preferential seating, grading on progress towards goals, eye level presentation of materials, use of pictures and visual aids, verbal encouragement, coaching, manipulatives and step-by-step directions. Assistive technology included a slant board, a book stand, sorting tray, a light box and accessories, tactile materials and tools, single button communicators, switch activated

toys, braille/tactile books, a black mat for contrasting backgrounds, and a pressure vest. The IEP also included a Health Alert/Emergency Action Plan to address seizures.

16. The placement and services offered in the 2016 IEP for the extended school year were to begin on June 19, 2017, and end on July 14, 2017. Services included 1,200 minutes of specialized academic instruction per week; 60 minutes of language and speech services per week provided by a nonpublic agency; occupational therapy 30 minutes per week of direct services and 30 minutes per month of consultative services; physical therapy 60 minutes per month; specialized vision services 30 minutes per week; intensive individual services 240 minutes per day; and adapted physical education 20 minutes per week.

17. The IEP placement and related services would result in Student spending 91 percent of her day outside of the general education environment. Student's access to typical peers would make up approximately nine percent of her day, mostly comprised of spending recess in her wheelchair on the playground accompanied by her aide. Parents did not consent to the IEP.

LEGAL AUTHORITIES AND CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA¹

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it.

¹ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

(20 U.S.C. § 1400 et seq.; 34 C.F.R. § 300.1 (2006)² et seq.; Ed. Code, § 56000, et seq.; Cal. Code. Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a 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 IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.)

"Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).)

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. On March 22, 2017, the Supreme Court revisited and clarified the *Rowley* standard in *Endrew F. v. Douglas County School District* (March 22, 2017, No. 15-827) 580 U.S. __, __ [Slip Op.] (*Endrew F.*).) *Endrew F.* explained, under *Rowley*, when a child is fully integrated in a regular

² All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

classroom, a FAPE typically means providing a level of instruction reasonably calculated to permit advancement through the general education curriculum. (*Id.*, Slip Op. at pp. 13-14, citing *Rowley*, 458 U. S. at p. 204.) However, both *Rowley* and *Endrew F.* declined to hold that advancing from grade to grade proved a student was receiving a FAPE. (*Endrew F.* Slip Op. at p. 14, fn. 2; *Rowley*, 458 U.S. at p. 202 [no one test for determining adequacy of educational benefits]; see also *id.* at p. 203, fn. 25.); *Endrew F.* held, as applied to a student that was not fully integrated in a regular classroom, the student's IEP must be reasonably calculated to enable the student to make progress appropriate in light of his or her circumstances. (*Endrew F.*, Slip Op. at p. 11.)

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.) If a parent refuses services in an IEP that was 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).) 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].) District had the burden of proof in this matter.

5. When a school district seeks to demonstrate that it offered a FAPE, the legal analysis consists of two parts. First, the district must prove it has complied with both the procedures set forth in the IDEA and, secondly, that the IEP offered Student a FAPE. (*Rowley*, 458 U.S. at pp. 206-207.) Whether a student was denied a FAPE is

determined by looking to what was reasonable at the time the IEP was developed, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)

PROCEDURAL REQUIREMENTS

6. District contends that it complied with the procedural requirements of the IDEA. For the reasons set forth below, District met its burden of proof on this issue.

Applicable Law

7. An IEP is developed by a team. The IEP team must include: 1) one or both of the student's parents or their representative, 2) a regular education teacher if a student is, or may be, participating in the regular education environment, 3) a special education teacher, and 4) a representative of the school district who is qualified to provide or supervise specially designed instruction to meet the unique needs of children with disabilities, is knowledgeable about the general education curriculum and is knowledgeable about available resources. (34 C.F.R. § 300.321(a).) The IEP team is also required to include an individual who can interpret the instructional implications of assessment results, and, at the discretion of the parent or school district, include other individuals who have knowledge or special expertise regarding the child. (34 C.F.R. § 300.321(a).) In developing the IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the child's education, the result of the most recent evaluation of the child, and the academic, developmental, and functional needs of the child. (20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. §§ 300.324 (a).)

8. 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.) In instances when parents fail or refuse to cooperate, the school district is not relieved of its obligation to provide a FAPE to publicly enrolled IDEA-eligible

students. Therefore, the IDEA permits school districts to conduct IEP meetings without parental participation when the school district is unable to convince the parents to attend. (34 C.F.R.300.322(d); *Cupertino Union School Dist. v. K.A.* (N.D. Cal. 2014) 75 F.Supp.3d 1088, pp. 1100-1102.)

9. A school district must make a formal written offer of FAPE in the IEP that clearly identifies the proposed program. (*Union School Dist. v. Smith* (9th Cir. 1993) 15 F.3d 1519, 1526.) The IEP must detail the student's current levels of academic and functional performance, provide a statement of measurable academic and functional goals, a description of the manner in which goals will be measured, a statement of the special education and related services that are to be provided to the student and the date they are to begin, an explanation of the extent to which the child will participate with non-disabled children in a regular class or other activities, and a statement of any accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district-wide assessments. (20 U.S.C. § 1414(d); Ed.Code, § 56345, subd. (a).)

Analysis

10. The 2016 IEP met procedural requirements. The annual/triennial IEP team meeting was scheduled for September 30, 2016. District attempted to secure Parents' participation in the September 30, 2016 meeting. District invited Parents to the September 30, 2016 IEP team meeting, and Parents agreed to that date. District members of the team met for the start of the meeting but Parents did not arrive. After a reasonable time, District telephoned Father. Father asked District to proceed in Parents' absence and to send him the assessment reports. Qualified assessors presented the results of their assessments. The team reviewed the results of the June 2016 triennial assessment, progress on goals from the January 7, 2015 IEP and Student's academic and functional needs. District members of the team developed appropriate measurable

goals for occupational therapy, physical therapy, specialized academic instruction, vision, adapted physical education and speech/language.

11. Father's instruction to proceed without him on September 30, 2016, and send him the assessments did not relieve District of the obligation to develop an IEP. District further attempted to secure Parents' participation in the decision-making process by sending them the assessments and the proposed goals and by scheduling another IEP team meeting.

12. The IEP team met again on October 6, 2016. Father and all required members of the IEP team attended. Father actively participated in the October 6, 2016 meeting up until the time he left the meeting. The assessors summarized the assessments. Father did not have any questions about the assessments. Father expressed concerns about the participation of the adapted physical education instructor, Student's aide, and asked District to place Student in a general education environment with services only in the area of speech. District responded to each of Father's concerns. District was not required to stop the IEP meeting midstream to visit the classroom. Father then walked out of the IEP meeting.

13. Father's absence did not relieve District of its obligation to make a written offer for a FAPE, and District did so. The 2016 IEP clearly identified the proposed program. The IEP included a statement of Student's then present levels of cognitive and functional performance, and how Student's impairments affected her participation and progress in the educational environment. The IEP stated measurable goals in the areas of specialized academic instruction, social/emotional skills, speech and language deficits, and occupational therapy, physical therapy and adaptive physical education. Each goal included objectives and a description of how to measure progress on the goal. The IDEA does not require a particular number of goals nor does it require goals for every particular manifestation of the Student's disability. The IEP included start dates,

frequency, location and duration of special education and related services for the regular school year and the extended school year. The IEP stated that Student would spend 91 percent of her time in a special day class and nine percent of her time participating in activity with nondisabled peers. Accordingly, District met the IDEA's procedural requirements.

SUBSTANTIVE REQUIREMENTS

14. District contends that the 2016 IEP offered Student a FAPE in the least restrictive environment. Although Parents did not participate in the due process hearing, it was clear from the IEP notes and the testimony of District witnesses that Father objected to the placement, services, and goals contained in the 2016 IEP because Student was not talking at school.

Applicable Law

15. School districts are required to provide each special education student with a program in the least restrictive environment. Removal from the regular education environment may occur only when the nature or severity of the student's disabilities is such that education in regular classes with the use of supplementary aids and services could not be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); Ed. Code, § 56031.) The IDEA also requires, to the maximum extent appropriate, that a child with a disability must be educated with children who are not disabled. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2); Ed. Code, § 56342.)

16. Four factors must be evaluated and when determining whether a placement is the least restrictive environment for a child with a disability: (1) the educational benefits of full-time placement in a regular classroom; (2) the non-academic benefits of fulltime placement in a regular classroom; (3) the effects the presence of the child with a disability has on the teacher and children in a regular classroom; and (4) the

cost of placing the child with a disability full-time in a regular classroom. (*Sacramento City School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1403.) Special education classes, separate schooling, or other removal of individuals with exceptional needs from the regular educational environment is permitted only if the nature or severity of the disability is such that education in the regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (Ed. Code, § 56040.1, subd. (b).)

17. A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314 (*Gregory K.*)). 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*, 458 U.S. at pp. 176, 208.) A school district is required to provide a FAPE to a disabled child; the school district is not required to guarantee successful results. (20 U.S.C. § 1412(a)(5)(A); Ed. Code, § 56301, *Andrew F. Slip Op.* at pp. 11-12; *Rowley*, 458 U.S. at p. 200.)

19. In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (See *Gregory K.*, 811 F.2d at p. 1314.)

Analysis

20. The October 2016 IEP was based upon the results of the 2016 comprehensive triennial assessment and the personal observations of experienced District staff and service providers.

21. District's proposal to change Student's eligibility to multiple disability was based on reliable and valid data demonstrating global deficits. The IEP team developed the October 2016 IEP based upon valid assessments and information relating to Student's cognitive abilities, academics, social/emotional skills, speech and language

deficits, and occupational therapy, physical therapy and adaptive physical education needs, which represented all areas of suspected disability related to her education. The IEP goals addressed these needs. The methods and level of services for specialized academic instruction; speech and language, occupational, and physical therapy; specialized vision services with full time support from her aide, were appropriate.

22. District understood, from his comments at the October 6, 2016 meeting, that Father wanted his daughter placed in a regular education environment with goals and services only for speech. The undisputed evidence demonstrated that Student required a more restrictive environment and more services than could be accomplished satisfactorily in a general education environment. In this case, Student would receive no educational benefit from full-time placement in a regular classroom. She required a highly modified functional curriculum delivered by a special education teacher with the assistance of a full-time one-to-one special circumstances academic aide to obtain educational benefit from her program. Her participation in recess with typical peers was the maximum extent appropriate given her level of social interaction and communication skills. Student's unique needs required the more restrictive environment of a moderate/severe special day class with individualized related services.

23. The clarification of the *Rowley* standard by the decision in *Endrew F.* does not affect the outcome of this case. District proved the October 2016 IEP was reasonably calculated to provide educational benefit to Student and allow her to make progress on her goals. Moreover, the evidence demonstrated that District members of the IEP team carefully considered Student's needs and multiple disabilities when preparing goals, offering accommodations and related services, and in her classroom placement. As a result, the October 2016 IEP was also reasonably calculated to enable Student to make progress appropriate in light of her circumstances.

24. Accordingly, District offered Student a FAPE in the least restrictive environment.

ORDER

1. The October 2016 IEP offered Student a FAPE in the least restrictive environment.

2. District may implement the 2016 IEP without parental consent if Student is enrolled in a District school and continues to receive special education and related services.

PREVAILING PARTY

Pursuant to 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. In accordance with that section, the following finding is made: District prevailed on the single issue presented in this case.

RIGHT TO APPEAL THIS DECISION

The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within 90 days of receipt of this Decision in accordance with Education Code section 56505, subdivision (k).

Dated: March 23, 2017

/s/

MARIAN H. TULLY

Administrative Law Judge

Office of Administrative Hearings