

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

**IN THE MATTER OF:
PARENT ON BEHALF OF STUDENT,**

v.

**DOWNEY UNIFIED SCHOOL DISTRICT.
OAH CASE NUMBER 2019060369**

DECISION

Student filed a request for due process hearing with the Office of Administrative Hearings, State of California, on June 7, 2019, naming Downey Unified School District. Downey Unified School District shall be referred to as Downey. Downey filed its response to Student's case on June 17, 2019 which permitted the hearing to go forward. (M.C. v. Antelope Valley Unified Sch. Dist. (9th Cir. 2017) 858 F.3d 1189, 1199-1200.)

Administrative Law Judge Judith L. Pasewark heard this matter in Downey, California, on September 4, 5, and 10, 2019.

Gabriel M. Torres and Andria Seo, Attorneys at Law, represented Student. Mother and Father attended each day of the hearing. Caitlyn Handy, law clerk, also attended each day on behalf of Student. Student did not attend the hearing.

Megan M. Kinsey, Attorney at Law, represented Downey. Patricia Sandoval, Director of Special Education and Joseph Rubio, program director, attended each day on behalf of Downey.

At the request of the parties, OAH granted a continuance to 5:00 p.m. on October 1, 2019, to file written closing briefs. The parties filed timely written closing briefs. On October 1, 2019, the record was closed and the matter submitted for decision.

ISSUE

In this matter, a free appropriate public education is referred to as a FAPE. An individualized education program is referred to as an IEP.

The issue in Student's case is:

Did Downey's May 6, 2019 IEP offer Student a FAPE in the least restrictive environment?

SUMMARY OF DECISION

The negative effects of Student's presence in the special day class at Downey's Alameda Elementary School had on the teacher, aides, and classmates outweighed the benefit Student received from exposure to typical peers. Placement at Olive Crest, a non-public school, is appropriate because it supports Student with more intensive behavior intervention than can be provided by a Downey public school, which allows Student to access his education. Student did not prove that Downey's May 6, 2019 IEP denied him a FAPE by failing to offer an appropriate placement.

FACTUAL FINDINGS

BACKGROUND

Student is a six-year old boy in first grade who lives with his parents within Downey's boundaries. He qualified for special education and related services in June 2018, under the category of other health impairment due to attention deficit disorder deficits, which resulted in maladaptive behaviors. Although Student is very smart, his behaviors limit his access to the general education curriculum.

Student's initial IEP, created on June 18, 2018, provided Student with three goals. The learning readiness goal sought to have Student independently attend to a task for five minutes. Another learning readiness goal sought to have Student follow one-to-two-step directions the first time given. The social skills goal sought to have Student work with peers and take turns. The IEP team determined Student required a highly structured program to meet his needs regarding learning, communication, and behavior. The IEP team offered visual cues as an accommodation. The IEP team offered placement in Downey's mild to moderate special day class kindergarten for 92 percent of the school day at Alameda Elementary School. Alameda Elementary School is referred to as Alameda. Mother consented to the IEP.

Downey convened a second IEP team meeting on September 21, 2018, to discuss Student's progress and maladaptive behaviors. Student showed an interest in learning. He wanted to engage and participate in class. He could transition independently in the classroom. Behavior strategies utilized by staff in the classroom included a token system, a first-then system, positive reinforcement, social praise and happy notes. Staff offered Student the chance to be a helper or gave him breaks when he was about to become upset.

Student's behaviors, however, remained extreme. Student punched scratched, pushed, and kicked staff and other students. He tackled and tripped other students, and also spit, threw things, and tore materials. Student made statements, such as "you guys are killing me" or "you broke my bone" when no one was touching him. Student would point his fingers like a gun at someone, and state he was going to kill them. Mother informed Downey Student was in private therapy, and said these things to gain attention. The school psychologist provided a list of profanities often used by Student in the classroom. Student self-injured by pinching and scratching himself. These behaviors were not new. Student exhibited behaviors since preschool, but he did not exhibit those behaviors at home. Student told Mother he did not like school.

Downey offered Student school-based counseling and a therapy goal designed to have Student express his anger appropriately. The IEP team also offered a functional behavior assessment to help develop a behavior intervention plan for Student. Mother consented to the June 18, 2018 IEP amendments.

On October 18, 2018, Downey held a third IEP team meeting to discuss Student's continuing maladaptive behaviors. Student tried very hard in class, and could stay on task if he wanted to complete his work. Student developed additional maladaptive behaviors. Student pulled staff hair, punched them in the nose, and hit them in their crotch. He ripped or tore classroom materials. Other behaviors continued, such as hitting, kicking, spitting, eloping, climbing, throwing, screaming, mocking, non-compliance, and self-injury. Other students in the class were beginning to imitate Student. These maladaptive behaviors occurred on a daily basis and could occur at any time of the day.

Student's teacher and classroom staff expressed concern for Student's safety and the safety of others in the classroom. Two staff members remained with Student for safety issues. The teacher changed classroom procedures to ensure classroom safety. The IEP team suggested a half-day school schedule for Student. Mother disagreed with a half-day program. She reported Student recently began medication for attention deficit hyperactivity disorder, and she wanted to see if the medication could provide a positive improvement in Student's behavior. No further changes were made to the June 18, 2018 IEP.

School psychologist Susana Zamarripa conducted the functional behavior assessment completed on November 15, 2018. Dr. Zamarripa holds a bachelor's degree in psychology and social behavior, a master's degree in counseling, specializing in school psychology, and a Psy.D. in educational psychology. She has worked as a school psychologist, substitute teacher, and mental health case worker.

Dr. Zamarripa reviewed Student's education and medical records. She obtained input from Mother and Student's special day class teacher.

Although Student exhibited many maladaptive behaviors, the functional behavior assessment specifically addressed Student's physically aggressive behavior. Downey twice suspended Student from school for physical aggression after the beginning of the 2018-2019 school year. On one occasion, Student punched an assistant in the face with such force it broke her glasses. On the other occasion, Student punched another Student in the face and later pinched and twisted a female's breast, leaving a mark. The assessor noted that Student's physical aggression was accompanied by inappropriate verbalizations of varying content and profanity. These verbalizations were not an area of primary concern as they had recently reduced in intensity.

Student's physical aggression was more likely to occur during whole group instruction, during recess, when transitioning from recess to the cafeteria or while waiting in line if he was not first. His behaviors were less likely when given a specific job or when receiving positive reinforcement. Fourteen specific positive behavior reinforcements were already utilized in the classroom with varying and inconsistent success.

Due to the severity of Student's maladaptive behaviors and injuries to staff, peers and Student, Downey had implemented additional classroom accommodations. Student received additional adult assistance throughout the entire school day. Demands on Student were lessened. Student did not transition between activities with his peers. Student received individual instruction and support from an adult at his desk. Student's desk contained many highly motivating visuals. The break area was adjacent to his desk. Student was provided with immediate and continuous positive reinforcement for appropriate behavior. Positive reinforcers included favored tangibles, walks, and trips to the playground. Student completed tasks individually and received rewards. Student participated in whole group activities or center-activities as long as he displayed safe behaviors, including keeping his hand and feet to himself.

Dr. Zamarripa utilized the Functional Analysis Screening Tool rating scales to assist in identifying environmental and physical factors that might influence maladaptive behaviors. She utilized the Motivation Assessment Scale to help identify the motivation of specified behaviors.

Dr. Zamarripa conducted qualitative observations with direct data collection in the special day classroom over several days at various times of the school day. Additional direct data was collected for a period of 15 days. The data collected showed that when Student engaged in aggressive physical behavior, he would escalate quite

easily and the behavior would persist for extended periods of time. Student exhibited difficulty calming himself. As a result, his elevated state generally included multiple acts of physical aggression, rather than one act of physical aggression. As an example, on one occasion, Student became physically aggressive for a period of 20 minutes. During that time period, Student hit staff a total of 43 times. Over the 15 days observed, Student became physically aggressive 34 times, an average of over twice daily. On five occasions it took at least 30 minutes for Student to de-escalate.

Data indicated there were generally four types of antecedents to the physical aggressive behavior. On 35 percent of instances, staff was unable to identify a clear antecedent. The behavior appeared impulsive with no identifiable trigger. Another 35 percent of instances occurred when Student was presented with a demand, which included directions to transition or complete a task. 23 percent of Student's physical aggression occurred when he was denied access to a desired item or activity. Only six percent of instances occurred after Student was redirected or corrected, however staff had previously been instructed not to correct Student as he escalated when corrected. Instead, staff presented instructions to Student with a choice or "first/then" strategies.

Student's physically aggressive behaviors placed staff and student safety at issue. While Student may have been genuinely remorseful for his aggression, he physically injured staff, peers and himself. Student's aggressive behavior adversely impacted his access to his educational program, whereby he and his classmates lost instructional time due to his aggressive behaviors.

Dr. Zamarripa recommended the IEP team adopt a behavior intervention plan to address Student's behaviors. She recommended additional adult assistance throughout the school day, and consideration of a referral for school-based mental health services.

Dr. Zamarripa's recommendations for preventive strategies included continuing the current reinforcement system, as Student was responding well to the use of tangible reinforcers. She suggested communication with Student with positive language, and verbal praise.

Dr. Zamarripa also recommended reactive strategies, such as the use of nonviolent crisis intervention techniques to de-escalate behaviors, blocking and movement techniques to maintain safety, and evacuation of the classroom, if needed. After de-escalation, review the situation with Student, focusing on positive choices and making a plan to repair relationships with peers, and make safe choices next time.

On November 16, 2018, Downey held an IEP team meeting to review the functional behavior assessment. The IEP team members shared that Student was a very smart child who quickly figured out the strategies the team was using with him. Often when he was aggressive, Student climbed on classroom surfaces. His behaviors continued to be frequent and severe. Even using positive strategies and extra adult support, Student continued to have difficulties in the classroom. The special day class teacher confirmed that demands were decreased for Student and he was given the choice of working individually or joining the whole group if he preferred. Downey's educationally related mental health services program specialist explained possible mental health services. The IEP team gave Mother an assessment plan for an educationally related mental health services assessment, which she took home to review.

The IEP team reviewed the proposed behavior intervention plan which was closely based upon the functional behavior assessment. The IEP team drafted a new behavior goal to replace escalating to maladaptive behaviors with coping and calming strategies. The IEP team modified another goal to support Student in working towards a

common goal by taking turns. The IEP team developed a new writing goal for Student to legibly form letters and numbers.

Mother requested a full-time one-to-one aide for Student. Downey IEP team members explained Student already had an adult with him at all times, and even with that level of support, Student continued to struggle and have behavioral outbursts.

Dr. Zamarripa suggested the IEP team explore placement in a non-public school. The IEP team offered Mother a tour of potential non-public schools. Student's placement remained in the special day class kindergarten while non-public placement was further explored. Mother did not consent to the behavior intervention plan or proposed changes in the IEP.

On December 20, 2018, Billie Barrios, Downey program administrator, sent Parents a prior written notice letter in which Downey further documented its behavior interventions with Student, including the discussion of a one-to-one aide. The letter indicated Student currently had a behaviorally trained one-to-one aide, and at time, two adults supporting his behaviors. All staff in Student's classroom, including his one-to-one aide, received training on implementing Student's behavior intervention plan and on utilizing positive behavior intervention techniques.

Despite the significant behavior interventions utilized, Student continued to exhibit behaviors that interfered with his learning and the learning of others, and which resulted in injury to Student and others. Downey continued exploring a non-public school placement. Mother did not find Spectrum Center in Downey an appropriate placement for Student. The IEP team agreed to schedule another IEP team meeting. Mother was invited to tour other non-public school options. In the meantime, when the students returned from 2018 winter break, Downey added an additional adult to

Student's classroom to support the behavior, learning and safety of all student's in Student's class.

On March 5, 2019, the parties reached a settlement agreement in which Downey placed Student at Olive Crest until the completion of an independent psycho-educational evaluation and independent functional behavior assessment. The agreement contained a provision that if a further disagreement arose regarding Student's placement, Student's "stay put" placement pending resolution of the disagreement, would be the placement offered at the IEP team meeting in which the parties reviewed the independent educational evaluations. Student also waived and released all claims related to Student's educational program in this settlement agreement.

On March 22, 2019, the June 18, 2018 IEP was amended to change Student's placement to Olive Crest pursuant to the March 5, 2019 settlement agreement.

On May 6, 2019, the IEP team convened to review the independent educational evaluations. Parents attended the IEP team meeting along with all required members of the IEP team including, administrators, education specialists, and counselors from both Downey and Olive Crest.

FUNCTIONAL BEHAVIOR ASSESSMENT

Paula Santos reviewed her independent functional behavior assessment at the May 6, 2019 IEP team meeting. Dr. Santos has a bachelor's degree in psychology, a master's degree clinical psychology, and a Psy.D. in clinical psychology. She is a licensed clinical psychologist and board certified behavior analyst-doctoral, specializing in diagnostic and functional behavior assessment as well as interventions based in applied

behavior analysis for individuals with behavioral-based conditions. Her credentials and experience is extensive.

During the course of the assessment Student transferred from Alameda to Olive Crest. Dr. Santos's assessment included observations of Student at both schools in the natural school environment, interviews and communications with school staff and parents, records review, and data collection. Dr. Santos also utilized the Functional Assessment Screening Test, which Student and Mikisha Terry, his one-to-one aide at Alameda, completed.

On March 6, 2019 and March 20, 2019, Dr. Santos observed Student at Alameda in the classroom, recess, and various other school settings. On April 12, 2019, Dr. Santos observed Student at Olive Crest in similar settings.

At Alameda, Dr. Santos observed Student frequently run out of the classroom. These running breaks occurred three times during the first observation, but not at all during the second observation, at which time Student was with a different aide. During his first two weeks at Olive Crest, the classroom teacher reported Student occasionally left the area without permission, though often to retrieve something or throw something away, rather than an effort to elope. Student bit his fingernails multiple times at each location.

Student was an effective verbal communicator. However, instead of making requests or clarifying his wants and needs, Student initiated running breaks by eloping or resorting to physical means, particularly with peers, rather than attempting to make his needs known verbally.

At Alameda, Student had his own work and play area, containing a table partitioned off next to a counter that stored Student's preferred items. Student both worked and took breaks in this area. The classroom did not appear to possess a classroom behavior management system. Olive Crest utilized a school-wide level system for behavior, to which Student reportedly responded positively.

At Alameda, Ms. Barrios reported Student was supported by a one-to-one aide, although this support was not specifically provided in his IEP. Downey provided the one-to-one aide because it was necessary to maintain Student's safety as well as the safety of other students and staff. Ms. Barrios noted three classroom aides had been in Student's classroom since the beginning of the school year. Due to Student's needs, a senior instructional assistant trained for the behaviorally challenged was with Student at all times. Student's aide coverage was often provided by different staff throughout the day, rather than by a designated aide. Due to Student's escalating behaviors, Downey added on January 7, 2019, another behaviorally trained senior instructional assistant to the classroom, and on February 4, 2019, added additional staff again to be with Student the entire school day. As of February 4, 2019, Downey also once again lowered demands of Student in an attempt to decrease behavioral concerns in the classroom.

Dr. Santos interviewed Ms. Terry, Student's most recent Downey one-to-one aide, who had worked with Student for approximately a month. Ms. Terry is a senior instructional assistant, hired by Downey in January/February 2019. She holds a bachelor's degree in child development. Ms. Terry indicated her job was to provide support for Student and ensure his safety. She was not defined as a one-to-one aide, but assigned to support only Student. Ms. Barrios supervised Ms. Terry. Ms. Terry shared a daily notebook with brief details regarding Student's problematic behaviors with Dr. Santos. She indicated Student had a behavior intervention plan, but she could

not identify Student's target behaviors without "taking a look" at his behavior intervention plan. Ms. Terry did not collect data on his academics or IEP goals, and could not identify any of Student's specific IEP goals.

Ms. Terry's testimony contradicted parts of Dr. Santo's observation and interview. Ms. Terry explained part of this disconnect was due to her interview with Dr. Santos. Ms. Terry did not present with a sophisticated knowledge of behavior protocols or strategies. Ms. Terry acknowledged she did not answer Dr. Santos' questions well. The interview took place during recess when Ms. Terry was watching Student. She indicated she was focused on Student and never made eye contact with Dr. Santos.

At hearing, Ms. Terry reported she collected data and reported behaviors to Ms. Barrios daily. She implemented strategies to manage Student's behaviors. She had visuals around Student's desk, such as posters relating to behaviors. The class schedule was on the wall. She kept reinforcers on Student's desk which were used when he became frustrated. Ms. Terry opined that physical aggression was Student's most challenging behavior. Ms. Terry received nonviolent crisis training, and was strictly "hands off" during his outbursts.

Ms. Barrios reported all classroom staff were trained in crisis prevention intervention, but she could not provide the certification dates for staff members. Dr. Santos' observations at Alameda did not provide sufficient details regarding staff responses to determine whether nonviolent crisis intervention techniques were appropriately utilized by staff. It remained uncertain whether any physical interventions had been utilized, and it did not appear that any behavior emergency reports were completed. This was in contrast to Mother's contention that Student's arm had been dislocated by staff at school. Student told Mother he had his arms crossed over him, twisted, and his feet held down and shoes taken off.

With regards to Student's elopements, Ms. Terry used "first-then" strategies and a token board with Student where he was encouraged to first complete his work, then run. Nevertheless, Student continued to elope randomly, although not daily. No one could tell when Student was going to run, unless he started making faces.

In contrast, at Olive Crest, Student was not supported by a one-to-one aide. There were nine students in the class, and one teacher, a behavior interventionist, and a classroom aide. All staff was trained in behavior strategies to some extent. Dr. Santos noted that staff consistently delivered specific praise for things like following directions, and also provided on-going corrective feedback to students.

Dr. Santos observed Student to overwhelmingly interact appropriately with his peers across both school settings. However, peer conflict occurred at both schools during unstructured time. Student displayed difficulties with not being first and with sharing.

Dr. Santos identified three target behaviors. Student engaged in disruptive behaviors to gain attention and escape or avoid non-preferred tasks and activities. Disruptive behavior included verbally refusing, name calling, mocking others, swiping, kicking and throwing items, physical posturing, verbal threats towards others, and climbing on furniture and countertops. Student engaged in elopement, defined as walking or running away from an area without permission, to escape or avoid non-preferred tasks and activities. Student became physical aggressive to gain access to preferred activities and to escape or avoid non-preferred tasks and activities. Physical aggression consisted of forceful contact with another's body, including slapping, punching, head butting, scratching, spitting, pushing, pinching and or throwing items at someone.

Dr. Santos observed Student's cycle of behavior began when demands were placed or certain expectations related to demands were in place. Student might first continue with his previous activity, and/or verbally refuse. When the demands were not withdrawn, Student then might name call, use profanity or elope. If blocked from eloping or physically assisted, Student may escalate to aggressing on adults or directing aggression towards peers. Student was more likely to immediately aggress on peers. Given this cycle of behaviors, Dr. Santos concluded non-compliance was believed to be a precursor behavior for the target behaviors, as was elopement a precursor for disruptive behaviors as well as physical aggression should demands be followed through.

Since the beginning of the 2018-2019 school year, Student's behavior resulted in him being picked up early from school 15 times, and suspended from school five times, each time due to physical aggression and disruptive behaviors. Student's target behaviors varied in their duration and severity, and resulted in physical injury to Student and on at least one occasion, to staff, both requiring medical attention. An escalation could occur up to 40 minutes at a time.

Dr. Santos expressed great concern over the functionally equivalent replacement behaviors identified on Student's November 2018 behavior intervention plan to which Mother did not provide consent. According to Dr. Santos, the plan lacked functional equivalence. Specifically, Dr. Santos interpreted the functional equivalent replacement behaviors identified in the November 2019 behavior intervention plan as, "Student will have opportunities to gain attention and gain access to preferred items after when he engages in safe/target behaviors in the school setting" to be taught through "direct instruction in how to appropriately express his anger" "use of a token board with immediate and frequent reinforcement" and "consider use of time for task completion

or transitions.” Dr. Santos determined this did not constitute a functionally equivalent replacement behavior as it did not serve the same purpose or function as Student’s physical aggression. No functionally equivalent replacement behaviors were reported by staff. However, his IEP behavior goal sought to manage frustration through appropriate means and refrain from physical aggression. Student’s social-emotional goal sought for Student to express anger using appropriate language and/or selecting an appropriate coping strategy.

During his first two weeks at Olive Crest, Student was reported to engage in no significant behaviors of concern. During the first week Student got out of his seat without permission, but once corrected, it was no longer a concern. Student at times engaged in verbal refusal and name calling.

Dr. Santos recommended revising the behavior intervention plan to teach Student more appropriate ways to get his needs met. Dr. Santos recommended the following interventions:

1. Increase response efforts for climbing on countertops and furniture, and move Student’s work area to a safer location.
2. Provide functional communication training by capturing and contriving opportunities to teach Student to communicate verbally for attention, interaction, and appropriate social initiations.
3. Train staff to identify Student’s cycle of escalation and utilize prompting at the earliest sign of escalation by offering functionally equivalent replacement behaviors.
4. Provide non-contingent reinforcements such as scheduled breaks from tasks and significant attention and interaction as well as access to desired items or activities to reduce the on-going need for such reinforcement.

5. Provide a token economy focused on reinforcing specific functional equivalent replacement behaviors with the use of strong reinforcers.
6. Provide compliance training with systematic planned increases in demands and structured step-by-step plans for follow-through.
7. Utilize choice making by providing ongoing choices to Student to increase his overall sense of control as well as forced choices.
8. Develop extinction procedures such as planned ignoring, access extinction and escape extinction.
9. Review reinforcement inventories regularly to assess what is most motivating to Student, and obtain parental approval for reinforcers to be utilized.

Based upon her assessment, Dr. Santos recommended Student continue in the public school special day class setting with the support of a non-public agency behavior interventionist aide with behavior consultation by a board certified behavior analyst. She noted Student required the support of an aide skilled at assessing environmental conditions and their impact Student's behavior who could implement behavior interventions with fidelity. Student required ongoing oversight to monitor his progress and adjusting the plan as necessary to effect change. Dr. Santos anticipated the consultation would initially consist of more hours on a weekly basis to insure the behavior intervention plan was being implemented with fidelity.

PSYCHO-EDUCATIONAL ASSESSMENT

Jason Degtyarev reviewed his independent psychoeducational assessment. Mr. Degtyarev holds a bachelor's degree in psychology, dual masters' degrees in counseling and industrial and organizational psychology, and a Ed. S. degree. Mr. Degtyarev holds a school psychology clear credential and is licensed as an educational psychologist and school psychologist.

Mr. Degtyarev reviewed Student's educational records, Dr. Zamarripa's finding in her functional behavior assessment, and Student's social-emotional goal. He interviewed Mother and recounted her concerns, which were similar to those reported by Downey. Mother reported Student had been suspended eight times during the current school year. She found punishment was ineffective towards eliminating Student's problem behaviors. He seemed to benefit more when given time to cool off, given prompts to take deep breaths, and given explanations for rules and consequences. Mother reported that Student was being treated by a psychiatrist, marriage and family therapist, and a secondary therapist. Mr. Degtyarev briefly interviewed Hector Hernandez, Student's teacher at Alameda. Mr. Hernandez provided little information, as he was a substitute teacher.

Mr. Degtyarev observed the special day class kindergarten at Alameda on March 21, 2019. The classroom consisted of eleven students, the substitute teacher and four instructional assistants. The classroom was structured for whole-group and small-group learning. He described Student's separate workstation similarly to Dr. Santos. Mr. Degtyarev noted a remarkable amount of unstructured material visible and accessibly by students. While this arrangement seemed to facilitate transitions to independent free time, it also enabled considerable distraction during instruction.

During an indoor recess, Student remained calm and focused on a video for 20 minutes. When recess ended, Student declined to respond to instructions and picked up an electronic tablet device without permission. Student failed to transition his seat and was offered a token reward if he sat down. Instead, Student walked to the opposite side of the classroom, and took a toy from another student.

During whole-group math lesson, Student complained that the other student had broken the toy. He began moving between his chair and his workstation while the teacher lectured, calling out the correct answer. When asked to create a math problem for the class, Student eagerly complied, and given a high-five upon finishing. Approximately 30 seconds later, for no apparent reason, and without permission, Student walked across the classroom to take out a board game while the teacher continued lecturing.

As the lesson continued, Student continued to call out answers. He left the whole-group area and climbed underneath the counter at his workstation area, appearing to hide

Mr. Degtyarev conducted the psycho-educational testing in Student's home. Student initially appeared as happily uninterested in the assessment, but complied with prompting and encouragement from Mother. Student's focus was erratic, but not significantly atypical for a boy his age. At the end of a sub-test, Student tended to leave to get a toy or pet his cat and would return on his own after getting a toy or after verbal prompting from Mother. Student expressed little or no frustration when asked to continue working, but his willingness to persist was somewhat of a concern.

Mr. Degtyarev assessed Student's academic skills with the Wechsler Individual Achievement Test, Third Edition. He administered the Kaufman Assessment Battery for Children, Second Edition Normative Update to assess Student's learning performance and information processing skills. Student presented with average academic achievement, consistent with his cognitive functioning.

Mr. Degtyarev administered the NEPSY-2 which assessed various cognitive processes that serve to facilitate social interaction and social perception. Mr. Degtyarev utilized the Behavior Assessment Scale for Children, Third Edition, which required Mother, and Mr. Hernandez to complete rating scales designed to facilitate differential diagnosis and educational classification of a variety of emotional and behavioral difficulties, as well as assist in the design of treatment plans. He also utilized the Conners Rating Scales, Third Edition to further investigate Student's attention related behaviors in the classroom and at home.

Socially and emotionally, Student presented with strengths and weaknesses of varying proportions depending on the situation. During the testing, Mr. Degtyarev presented Student with a schedule and reinforcement with auditory and visual cues. He gave Student clear instructions, feedback about his performance and a clear positive reinforcement system. With these accommodations, Student demonstrated compliance, effort, social interest, and no emotional dysregulation. Nevertheless, classroom observations identified strengths and difficulties with social and emotional functioning.

School records documented Student's difficulties with self-regulation, which included lack of control over impulsivity and poor use of coping strategies when denied access to preferred items. The assessment scores confirmed Student's attention deficit hyperactivity disorder and impulsivity. The NEPSY-3 also revealed difficulties with response inhibition, including failure to restrain automatic behavior.

Mr. Degtyarev acknowledge Student had a behavior intervention plan, but based upon his classroom observation, opined it was not being implemented effectively. Mr. Degtyarev concluded the physical environment of the classroom at Alameda was not suitable for Student in its present form. The classroom contained a significant amount of visual and tactile stimuli which were not essential to teaching, and which

interfered with classroom management. Visual reminders of rules and schedules were not prominent or clearly featured. Materials which were notable distractions, required staff to repeatedly redirect Student back to instruction. Student was primarily managed through repetitive verbal cues. Ultimately, the lack of efficient, clear, and multimodal cues contributed to Downey's difficulty maintaining instructional control and implementing Student's IEP. Student appeared to understand his specially-designated work area was for him. This area, however, did not contain visual cues related to the implementation of his behavior intervention plan, his star chart, or his "first/then" board. Also, Student could crawl under the counter, requiring an aid to redirect him.

Mr. Degtyarev made recommendations to the IEP team.

1. Modify the classroom to better enable Student's focus and self-regulation or place Student in a class that is more responsive to his needs. While the existing special day classroom could be re-arranged, Mr. Degtyarev opined that an alternate classroom might be a better option.
2. Implement the behavior intervention plan, particularly the escalation cycle management plan.
3. Provide Student with more immediate access to visual and auditory information about his behavior goals, his progress towards rewards, and the various strategies he can use to self-regulate.
4. Consider behavior intervention services to further train instructional staff on implementing and monitoring Student's behavior plan with fidelity.
5. Add social skills goals to Student's IEP and direct instruction in social-emotional learning to address friendship skills, emotional self-regulation, management of disappointment, waiting, and problem solving.

Mr. Degtyarev found consideration of Student's least restrictive environment to be of high importance. He opined that ideally, Student should be in a setting with access to typically developing peers. Any alternative setting should be carefully evaluated in terms of the quality of peer interactions and the benefit or impact this could have on his social-emotional learning at his age.

Ms. Barrios had concerns regarding the independent functional behavior assessment. The independent assessment did not include information or strategies used in the classroom. The majority of the data collection and observations occurred at Olive Crest, which provided a smaller environment and intense behavior support system. Downey members of the IEP team expressed concern that moving Student back to a Downey special day class at that time was not in his best interests. The special day class setting was a larger setting with more students, and continuous academic demands. Student had not yet learned behavioral regulation skills, acquired necessary social and coping skills, and had not had sufficient time to practice newly learned skills. Further, based upon current classroom information from Olive Crest, Student's physical aggression increased to an average of twice a day or eleven-to-twelve times per week.

Ryan Pipkin, education specialist at Olive Crest, was Student's teacher. Student's class contained between seven and eleven kindergarten-to-first grade students. The number varied during the year. Olive Crest utilizes common core academics and a research-based curriculum. Given Student's high academic abilities, he was given both kindergarten and first grade level materials. Mr. Pipkin reported Student completed his work and worked within a token economy. Student did well when he was reminded of the reinforcement he was working for. He was trying to form relationships with peers. On the other hand, Student still yelled out and was quick to get off task.

Student continued to demonstrate aggressive behaviors such as hitting, kicking, throwing things, and hitting the wall. Student still engaged in inappropriate behaviors to gain attention. Student was making progress on his academic goals. He could attend to table top activities from two-to-five minutes, depending on the task and his emotional state. He made some progress, but remained inconsistent, on his goal to follow one-to-two step instructions. He made progress on legibly writing letter and numbers with visual cues. He could write his first name.

Student had more difficulty with his social-emotional goals. He still had a difficult time expressing his anger appropriately, and using positive strategies when he was upset or angry. He exhibited some progress with turn taking. Two new behavior goals were developed. The IEP team developed one goal intending to reduce instances of physical aggression to a frequency of two-to-six times per week. The second goal sought to have Student gain access to preferred tasks by verbalizing his needs appropriately.

The IEP team discussed placement options. Ms. Barrios reported Downey did not currently have a program to address Student's behavior needs. Downey staff still had a concern regarding the continued intensity of Student's aggression. Student showed progress in the Olive Crest placement, but still continued to engage in aggressive behaviors despite the intensive level of support provided. Downey's recommendation was continued placement at Olive Crest to support Student's behavioral needs. Student needed support to learn behavior regulation strategies. Olive Crest's goal was to get Student back in the public school setting. The Olive Crest IEP team members communicated their professional opinion that Student was appropriately placed at Olive Crest.

Mother did not agree. Student came home using inappropriate language after his first week at Olive Crest. Student told his Mother that the kids at Olive Crest were really bad. Mother feared these behaviors would become normal for Student.

Mr. Pipkin opined at hearing that Student came to Olive Crest with profanity worse than most of the others in his class. Other students in class exhibited more aggression, but Student also had positive role models in those students who had been at Olive Crest longer, knew the rules, and complied. Student's poor social skills, such as verbal threats and profanity, provoked other kids and led to physical altercations with peers. Moreover, Student's behaviors interfered with the education of other students.

Mother expressed concern to the IEP team that Olive Crest staff were reinforcing Student with electronics and candy. The Olive Crest team responded that they were teaching Student strategies to self-regulate using clear expectations and positive reinforcement, including a leveling system. Downey members of the IEP team reiterated that Student was making progress at Olive Crest. His behaviors had improved at Olive Crest, and he was receiving the level of support he required to be successful in school. Downey members of the IEP team recommended waiting until Student's behaviors had decreased in both frequency and intensity before developing a transition plan back to a District classroom.

Mother still disagreed with placement at Olive Crest. She opined that Student needed more intensive supports from Downey in a Downey placement. Student needed more consistency from Downey. She felt there was a lack of communication from the classroom to home.

Dr. Santos supported this opinion, indicating the Alameda special day class was a highly structured classroom, but consistent interventions were not in place. Dr. Santos expressed concern with keeping Student in a highly restrictive non-public program. She believed the next step should be to move Student back to a Downey school with a behaviorally trained assistant.

Ms. Barrios disagreed. Downey's board certified behavior manager consistently supported the classroom by meeting with the teacher and classroom assistant to review behavioral expectations in addition to providing training needed. Downey's offer of FAPE consisted of specialized academic instruction at Olive Crest.

All services, supports and accommodations continued pursuant to the June 18, 2018 IEP and its amendments. Parents did not consent to placement at Olive Crest, and filed this complaint for due process. It should be noted that Student's annual IEP took place on June 10, 2019, less than one month after the May 6, 2019 IEP at issue in this matter, and is not at issue in this matter.

LEGAL CONCLUSIONS

INTRODUCTION – USE OF LEGAL CONCEPTS THROUGHOUT THE DECISION

In the discussion herein, unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of the issue decided below. Further, all references in this discussion to the Code of Federal Regulations are to the 2006 version.

LEGAL FRAMEWORK UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

This hearing was held under the Individuals with Disabilities Education Act, 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) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The Individuals with Disabilities Education Act is often referred to as the "IDEA." The main purposes of the IDEA are:

1. to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and
2. to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

A FAPE, which is an acronym for "free appropriate public education," means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's 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).)

In general, an individualized education program, or “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. This statement describes the child’s needs, and academic and functional goals related to those needs. It also provides 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).)

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 Supreme Court revisited and clarified the *Rowley* standard in *Endrew F. v. Douglas County School Dist.* (March 22, 2017) 580 U.S. [137 S.Ct. 988] (*Endrew F.*). It explained that *Rowley* held that when a child is fully integrated into a regular classroom, a FAPE typically means providing a level of instruction reasonably calculated to permit advancement through the general education curriculum. (*Id.*, 137 S.Ct. at pp.

1000- 1001, citing *Rowley, supra*, 458 U.S. at p. 204.) As applied to a student who was not fully integrated into 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. (*Andrew F., supra*, 137 S.Ct. at p. 1001.)

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.)

In *Andrew F.* the Supreme Court held that a child's "educational program must be appropriately ambitious in light of his circumstances." "[E]very child should have a chance to meet challenging objectives." (*Ibid.*) *Andrew F.* explained that "[t]his standard is markedly more demanding than the 'merely more than de minimis' test...The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." (*Supra* at pp. 1000-1001.) However, the Supreme Court did not define a new FAPE standard. The Court was "[m]indful that Congress (despite several intervening amendments to the IDEA) has not materially changed the statutory definition of a FAPE since *Rowley* was decided, we decline to interpret the FAPE provision in a manner so plainly at odds with the Court's analysis in that case." (*Id.* at p. 1001.) The Court noted that "[a]ny review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether

the court regards it as ideal.” (*Id.* at p. 999 [italics in original].) The Ninth Circuit affirmed that its FAPE standard comports with *Andrew F. (E.F. v. Newport Mesa Unified School Dist.* (9th Cir. 2018) 726 Fed.Appx. 535.)

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, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).)

At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387] (*Schaffer*); see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) In this case, Student requested the hearing and has the burden of proof.

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. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) 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. (*Ibid.*) For a school district’s offer of special education services to a disabled pupil to constitute a FAPE under the IDEA, a school district’s offer must be designed to meet the student’s unique needs, comport with the student’s IEP, and be reasonably calculated to provide the student with some educational benefit in the least restrictive environment. (*Ibid.*) Whether a student was offered or denied a FAPE is determined by looking to what was reasonable at the time

the IEP was developed, not in hindsight. "An IEP must take into account what was, and what was not, objectively reasonable . . . at the time the IEP was drafted." (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (*Adams*), citing *Fuhrman v. East Hanover Bd. of Education* (3rd Cir.1993) 993 F.2d 1031,1041.)

IS DOWNEY’S MAY 6, 2019 IEP OFFER OF PLACEMENT AT OLIVE CREST APPROPRIATE?

Student contends Student’s appropriate placement in the least restrictive environment is a mild-moderate special day class with supports and services consisting of a behaviorally trained one-on-one aide for the full school day, and revised behavior intervention plan developed from an appropriately conducted functional behavior assessment.

Downey contends Student has been unable to access his education in a Downey mild-moderate special day class placement and requires a highly-structured environment with behavioral and therapeutic supports which are not available at any Downey educational site.

A student’s unique educational needs are to be broadly construed to include academic, social, health, emotional, communicative, physical, and vocational needs. (*Seattle School Dist., No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1501, abrogated in part on other grounds by *Schaffer v. Weast, supra*, 546 U.S. at pp. 56-58.) In addition, educational needs include functional performance. (20 U.S.C. § 1414 (d)(1)(A)(i)(I); Ed. Code § 56345, subd. (a)(1).) The “educational benefit” to be provided to a child requiring special education is not limited to addressing the child’s academic needs, but also social and emotional needs that affect academic progress, school behavior, and

socialization. (*County of San Diego v. California Special Education Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467 (San Diego).)

Very little difference existed in evidence by Downey and the independent evaluators. All agreed Student is a very smart little boy. All agreed Student has serious maladaptive and physically aggressive behaviors which interfered with his access to his education. All agreed Student required a smaller, highly-structured and slower paced classroom setting with the support of a highly trained behavior interventionist aide, and behavior consultation by a board certified behavior analyst. All agreed Student required the support of an aide skilled at assessing environmental conditions and their impact on Student's behavior. All agreed Student required an aide who can implement Student's behavior interventions with fidelity. All agreed Student required a behavior intervention plan, including accurate data collection to measure his progress and adjustment of the plan and reinforcers as necessary to effect change.

Student and Dr. Santos maintained Downey's functional behavior assessment was highly flawed, and the subsequent behavior intervention plan was carelessly implemented resulting in little to no reduction of Student's maladaptive behaviors. While Dr. Santos conducted a far more thorough functional behavior assessment than Downey, the ultimate findings of antecedents, behaviors and consequences were very similar in nature. Student presented numerous examples of Downey's failures at proper implementation of a behavior intervention plan. These examples, however, bear little relevance in this case.

No matter how appropriate or inappropriate the behavior intervention plan might have been, it was never part of Student's IEP. Parents did not consent to the behavior intervention plan, the additional behavior goals, or the behavior services to support it. Downey offered an additional mental health assessment, which Parents

declined. As a result, Downey could not implement any formal behavior intervention plan for Student nor was Downey obligated to provide data collection or the services of a board certified behavior analyst. Any denial of FAPE contentions regarding the validity of the functional behavior assessment and the proposed behavior intervention plan or whether Downey was required to file for due process to implement the behavior intervention plan, terminated on March 6, 2019, when the parties reached a settlement agreement which waived all prior claims. This issue in this case is the adequacy of Downey's May 6, 2019 IEP offer based on the information known at that time, which included the two independent evaluations.

LEAST RESTRICTIVE ENVIRONMENT

Although Downey and the independent evaluators' assessment results were similar, they reached different conclusions regarding Student's appropriate placement. Both Dr. Santos and Mr. Degtyarev concluded Student would benefit from interaction with typical peers and typical peer role modeling. Both recommended Student return to the Alameda special day class as his least restrictive environment, while Downey offered a non-public school placement to provide a FAPE in the least restrictive environment.

A school district is required to provide educational instruction specially designed to meet the unique needs of a child with a disability, supported by such services as are necessary to permit the child to benefit from the instruction. (*Rowley, supra*, 458 U.S. 176, at pp. 188-189; *Endrew F., supra*, 137 S.Ct. 988, at pp. 997-1002; *San Diego, supra*, 93 F.3d at p. 1468.)

School districts are required to provide each special education student with a program in the least restrictive environment, with removal from the regular education environment occurring 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); 34 C.F.R. § 300.114 (a)(2); Ed. Code, §§ 56031, 56033.5, 56040.1, subd. (b), 56342, subd. (b).)

A school district is required to have a continuum of program options available for a child. (Ed. Code, § 56360.) The continuum of placement options includes, but is not limited to, regular education; resource specialist programs; designated instruction and services; special classes; nonpublic, nonsectarian schools; state special schools; specially designed instruction in settings other than classrooms; itinerant instruction; and instruction using telecommunications in the home or hospitals or institutions. (Ed. Code, § 56361.)

Placements outside of the general education setting are more restrictive placements. As indicated above, the least restrictive environment requires the discussion of the continuum to exhaust possible school district placements before considering non-public schools or residential placement. As a result, school district placements must always be considered before non-district placements.

Student maintained Downey did not utilize additional behavior interventions and accommodations before seeking placement in a non-public school. Without consent to the behavior intervention plan, Downey relied on traditional classroom behavior strategies. Mother testified Downey attempted to implement the proposed behavior intervention plan without her consent. Dr. Barrios and Mr. Degtyarev referred to the behavior intervention plan as if it were authorized. In reality, the strategies utilized in the classroom as developed by Ms. Gonzalez and Ms. Barrios were similar to, if not the same as, the strategies proposed by the behavior specialists. Those strategies included "first-then" choices, token economies, positive reinforcements and visual cues. Sometimes they worked, other times they did not.

Downey continued to address Student's behavior and increase his behavior supervision until his placement at Olive Crest. Downey amended Student's IEP to include school based counseling services. The physical environment of the classroom was changed, providing Student a separate workspace. Classroom aides often worked with Student on a two-to-one basis to ensure his safety and/or the safety of others in the classroom. Academic demands were lowered to lessen Student's escalation when refusing to attend to task. Downey offered a half-day kindergarten program to lessen Student's anxiety. Downey hired an additional aide, Ms. Terry, designated to specifically attend to Student. None of these behavior modifications or strategies significantly impacted Student's behaviors, especially his physical aggression. Downey made genuine attempts to modify Student's maladaptive behaviors to allow him to remain in a public school placement.

When determining whether a placement is the least restrictive environment for a child with a disability, four factors must be evaluated and balanced:

1. the educational benefits of full-time placement in a regular classroom;
2. the non-academic benefits of full-time placement in a regular classroom;
3. the effect 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 Unified School Dist. v. Rachel H. (9th Cir. 1994) 14 F.3d 1398, 1404 (Rachel H.))

The first factor of *Rachel H.* is not a consideration in this matter. Neither party is requesting placement in a general education setting. Both parties agree Student

requires a highly structured, small classroom in order to be successful. The parties also agree the fourth factor of cost is not at issue.

The crux of the disagreement regarding Student's placement lies in weighing the considerations of the second and third factors of *Rachel H.* Neither party disputes that Student could potentially benefit from exposure to typical peers. Dr. Santos observed that Student overwhelmingly interacted appropriately with his peers across both school settings. She noted, however, that peer conflict occurred at both schools during unstructured time. Mr. Degtyarev acknowledged Student's social and emotional weaknesses, but strongly advocated consideration of the least restrictive environment. He opined that Student should ideally be in a setting with access to typically developing peers. Any alternative setting needed to be carefully evaluated in terms of the quality of peer interactions and the benefit or impact this could have on his social-emotional learning at his age.

During the 2018-2019 school year, however, Student spent little time interacting with peers. He rarely interacted with peers during recess. He spent little time with peers during lunch. Much of his interaction was annoying to peers. On the other hand, Student's reluctance to interact at Alameda was appropriately addressed with a one-to-one aide during mainstreaming times. However, even with intense support at Alameda, Student was not receiving the benefit of interaction with his peers due to significant maladaptive behaviors and his classmates were losing significant classroom instruction.

Dr. Santos' and Mr. Degtyarev's evaluations and their recommendations were credible and valid on an academic or theoretical level. Their opinions constituted best practices in an ideal setting. Their findings and opinions, however, overlooked the magnitude and severity of Student's maladaptive behaviors at school, especially his physical violence towards others. Neither evaluator seriously acknowledge Student's

physical aggression that occurred outside of their limited observations. They did not consider the impact of Student's behavior on other students as well as staff.

Downey attempted a variety of behavioral strategies with Student to minimize his impact on the classroom. The sheer number of disruptive and physically aggressive incidents preclude further consideration of returning Student to the special day class. Student's ongoing behaviors resulted in unreasonable educational consequences. Classmates were evacuated from the classroom to avoid physical injury. Classroom staff expended significant time away from classroom lessons to chase or de-escalate Student. Classmates received compensatory services for another child's ongoing disruptions of their education. Task expectations were lowered to accommodate Student's avoidance behaviors.

Although Student was making progress, his maladaptive behaviors at Olive Crest were still severe despite consistent implementation of intensive behavior interventions. Student's behavior had not yet subsided to an acceptable level to consider a transition back to the public school setting. The negative effect Student's continuing presence in the special day class had on his teacher, aides, and classmates outweighs the benefit Student might receive from exposure to typical peers. Further, Student did not establish that Olive Crest did not provide Student with a FAPE, only that it was not the least restrictive environment for Student.

Downey did not have an appropriate public school placement for Student. The program at Olive Crest was designed to address Student's unique behavioral needs, and provided more intensive behavior intervention than available in Downey. With the exception of placement site, the behavioral program as presented by Olive Crest witnesses, comports with the type of behavioral services sought by Dr. Santos, and can be implemented with fidelity.

Student did not meet his burden of proof. Placement at Olive Crest was reasonably calculated to provide Student with some educational benefit, and comported with his IEP as required by the IDEA. Olive Crest Academy remains the appropriate placement for Student.

ORDER

Student's request for relief 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. In this matter, Downey prevailed on the sole issue.

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: October 25, 2019

/s/

Judith Pasewark

Administrative Law Judge

Office of Administrative Hearing

