

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

v.

JURUPA UNIFIED SCHOOL DISTRICT.

CASE NO. 2024010623

DECISION

JULY 11, 2024

On January 22, 2024, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student, naming Jurupa Unified School District as respondent. On February 7, 2024, OAH granted the first continuation in this matter. Administrative Law Judge Claire Yazigi heard this matter virtually on May 14, 15, 16, 21, 22, and 29, 2024.

David German represented Student. Parent attended all hearing days on Student's behalf. Jonathan Read represented Jurupa. Sylvia Bottom, Special Education Director for Jurupa, attended all hearing days on Jurupa's behalf.

The matter was continued to June 17, 2024, for written closing briefs. The record was closed, and the matter was submitted on June 17, 2024.

ISSUES

On the last day of hearing, Student withdrew Issues Two and Three as set forth in the Order Following Prehearing Conference. Issue 2 stated: Did Jurupa deny Student a FAPE at the May 12, 2023 individualized education program team meeting by predetermining its offer of placement, thereby denying Parents meaningful participation in the formation of Student's educational program? Issue 3 stated: Did Jurupa deny Student a FAPE at the May 12, 2023 individualized education program team meeting by denying Student full access to both core curriculum modified to Student's level and to an evidence-based curriculum? Jurupa did not object to the withdrawal.

In its closing brief, Jurupa requested OAH deem the withdrawal a dismissal of Issues Two and Three with prejudice, and find Jurupa the prevailing party on those issues. The request was, in essence, a motion, and was untimely. Because the parties' closing briefs were due simultaneously, and the record was closed upon receiving the briefs, Student did not have an opportunity to address Jurupa's motion to deem Issues Two and Three dismissed with prejudice. Additionally, Jurupa had an opportunity to make the motion during hearing following Student's dismissal request. Jurupa did not. As such, Jurupa's motion is not addressed in this Decision. Nothing in this Decision shall prevent Jurupa from making such a motion in a future case.

(This space is intentionally left blank. Text continues on the following page.)

The remaining issue addressed by this Decision is:

Did Jurupa deny Student a free appropriate public education, called FAPE, at the May 12, 2023 individualized education program team meeting by failing to offer a placement in the least restrictive environment within which he could make appropriate progress?

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (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 main purposes of the Individuals with Disabilities Education Act, referred to as the IDEA, are to ensure:

- 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
- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

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 FAPE, to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 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, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Here, Student is the filing party and bears the burden of proof. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was 12 years old and enrolled in the fifth grade in a private school at the time of hearing. Student resided within Jurupa's geographic boundaries at all relevant times. Student was diagnosed with Trisomy 21, or Down Syndrome, hypotonia, and a heart defect, and was eligible for special education under the primary category of Other Health Impairment and secondary category of Intellectual Disability. Student referenced different primary and secondary categories of eligibility in his complaint, but the eligibility categories were not contested at hearing.

ISSUE 1: DID JURUPA DENY STUDENT A FREE APPROPRIATE PUBLIC EDUCATION, CALLED FAPE, AT THE MAY 12, 2023 INDIVIDUALIZED EDUCATION PROGRAM TEAM MEETING BY FAILING TO OFFER A PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT WITHIN WHICH HE COULD MAKE APPROPRIATE PROGRESS?

Student contends that Jurupa's May 12, 2023 IEP offer failed to offer placement in the least restrictive environment. Specifically, Student contends that, even given Student's significant cognitive and communication needs, Student could have nevertheless received both academic and non-academic educational benefit within a general education setting. Student argues that Student would not have received a

greater benefit in a special day class, and that a general education placement would have afforded Student a greater opportunity for socialization with general education peers. Student further argues that Student could have been satisfactorily educated in a general education placement for the 2023-2024 school year given sufficient support, like modified curriculum and a one-to-one aide.

Jurupa contends that it offered Student a FAPE in the least restrictive environment by offering placement outside of the general education setting for 67 percent of the school day. Jurupa contends that its offer was thoughtfully made, taking into consideration Student's individual needs, including instruction from a credentialed special education teacher and an opportunity to work with students at a similar academic level. Jurupa contends that while it offered a special day class for the core academic subjects of math and English language arts, it also offered inclusion opportunities in physical education, commonly known as PE, social studies, and science, where Student could obtain sufficient modeling from typically developing peers. Jurupa contends that Student would not have derived any meaningful academic benefit from more inclusion in a general education classroom, as Student would have had to spend the majority of his time working one-on-one with an aide using a heavily modified curriculum and would not have been able to meaningfully participate with the rest of the class.

A FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Parents and school personnel develop an individualized education program, referred to as an IEP, for an eligible

student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a) and 56363 subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501.)

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204 (*Rowley*); *Andrew F. v. Douglas County Sch. Dist. RE-1* (2017) 580 U.S. 386, 402 [137 S.Ct. 988, 1000].)

California special education law and the IDEA require that special education and related services must be designed to meet student's unique needs and to prepare them for employment and independent living. (20 U.S.C. § 1400(d); Ed. Code, § 56000.) A FAPE consists of special education and related services that are available to the child at no charge to the parent or guardian, meet the standards of the State educational agency, and conform to the student's IEP. (20 U.S.C. § 1401(9).) "Special education" is defined as "specially designed instruction at no cost to the parents, to meet the unique needs of a child with a disability" (20 U.S.C. § 1401(29).) California law also defines special education as instruction designed to meet the unique needs of individuals with exceptional needs coupled with related services as needed to enable the student to benefit fully from instruction. (Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective and supportive services as may be required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26).) In California,

related services include designated instruction and services, which must be provided if designated instruction may be required to assist the child in benefiting from special education. (Ed. Code, § 56363, subd. (a).)

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 District* (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. (*Id.*) For a school district's offer to a disabled pupil to constitute a FAPE under the IDEA, the educational services and/or placement offered must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the pupil with some educational benefit in the least restrictive environment. (*Ibid.*; 20 U.S.C. § 1401(9).) The IEP need not conform to a parent's wishes to be sufficient or appropriate. (*Shaw v. District of Columbia* (D.D.C. 2002) 238 F. Supp.2d 127, 139 [IDEA does not provide for an "education ... designed according to the parent's desires"], citing *Rowley, supra*, 458 U.S. at 207.)

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 results of the most recent evaluations of the child, and the academic, developmental, and functional needs of the child. (20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. § 300.324 (a).)

(This space is intentionally left blank. Text continues on the following page.)

STUDENT'S PRIVATE PLACEMENT

Student was privately placed at St. Catherine of Alexandria School since the 2021-2022 school year. For the 2022-2023 school year, Student attended St. Catherine in a general education fourth-grade classroom. With the full-time help of an aide and an electronic tablet, Student would work on modified curriculum while the rest of the class worked on a lesson in the same subject. For example, during math instruction, Student would work on skip counting while the rest of the class worked on fractions. Student was also pulled out of class for two 45-minute sessions per week for individual tutoring in math and English language arts. Student attended private speech language and occupational therapy services in the morning, specifically, two 50-minute sessions per week of speech language therapy, and one 50-minute session per week of occupational therapy. Student would arrive to school after the beginning of the school day on the mornings of such appointments. During instruction, the one-to-one aide helped focus and redirect Student's attention, and prompted him to transition between tasks.

THE OFFER

In the spring of 2023, Jurupa conducted a triennial assessment of Student, and made an IEP offer in the spring of 2023 for the 2023-2024 school year. For ease of reference, this Decision refers to the IEP offer as the May 12, 2023 IEP, although the IEP

(This space is intentionally left blank. Text continues on the following page.)

team met on several subsequent days as well. Jurupa offered placement and related services for 67 percent of time outside of the general education classroom. That time included

- group specialized academic instruction in a mild to moderate special day class for language arts and math,
- individual and group speech language therapy,
- individual occupational therapy,
- group adaptive PE, and
- time needed for toileting help.

Jurupa also offered one-to-one aide support from 15 minutes before school to 15 minutes after school. Jurupa offered 33 percent of time within the general education setting, which included lunch, recess, and mainstreaming in social studies, science, and PE. Parents did not agree to Jurupa's offer, favoring more inclusion in the general education environment. Student continued at St. Catherine, attending the fifth grade in a general education classroom there for the 2023-2024 school year.

The IDEA expresses a clear policy preference for inclusion to the maximum extent appropriate as an aspiration for all children with special needs. (See 20 U.S.C. § 1412(a)(5)(A); Ed. Code, § 56031; 34 C.F.R. §§ 300.114 & 300.116.) 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); Ed. Code, § 56031.)

RACHEL H. BALANCING TEST

When determining whether a placement in general education is appropriate for a child with a disability, four factors must be evaluated and balanced. The IEP team must consider the educational benefits of full-time placement in a regular classroom, and the non-academic benefits of full-time placement in a regular classroom. It must also consider the effects the presence of the child with a disability has on the teacher and children in a regular classroom, and the cost of placing the child with a disability full-time in a regular classroom. (*Sacramento City Unified Sch. Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*) [adopting factors identified in *Daniel R.R. v. State Board of Ed.* (5th Cir. 1989) 874 F.2d 1036, 1048-1050 (*Daniel R.R.*)]). Whether education in the regular classroom, with supplemental aids and services, can be achieved satisfactorily is an individualized, fact specific inquiry. (*Daniel R.R.* at 1048.)

Here, the sole question at issue is whether Jurupa's offer of 33 percent within the general education setting was the least restrictive environment for the 2023-2024 school year. It is against this backdrop that the *Rachel H.* factors are considered.

An IEP is evaluated in light of information available to the IEP team at the time it was developed; it is not judged exclusively in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (*Adams*)). "An IEP is a snapshot, not a retrospective." (*Id.* at 1149, citing *Fuhrmann v. East Hanover Bd. Of Educ.*, 993 F.2d 1031, 1041.) It must be evaluated in terms of what was objectively reasonable when the IEP was developed. (*Ibid.*)

EDUCATIONAL BENEFITS OF PLACEMENT IN A REGULAR CLASSROOM

A school district may not remove a child from the regular classroom solely because of needed modifications in the general education curriculum (34 C.F.R. § 300.116(e).) Whether a child requires significant curricular modifications or support services is irrelevant to the first *Rachel H.* factor; the relevant question is whether the child can receive satisfactory academic benefits inside the regular classroom, measured by progress toward meeting the academic goals established in the child's IEP. (*D.R. by and through R.R. v. Redondo Beach Unified School District* (9th Cir. 2022) 56 F.4th 636, 644-645 (*Redondo Beach*).)

A school district may not remove a child from the regular classroom solely because of needed modifications in the general education curriculum (34 C.F.R. § 300.116(e).) Whether a child requires significant curricular modifications or support services is irrelevant to the first *Rachel H.* factor; the relevant question is whether the child can receive satisfactory academic benefits inside the regular classroom, measured by progress toward meeting the academic goals established in the child's IEP. (*D.R. by and through R.R. v. Redondo Beach Unified School District* (9th Cir. 2022) 56 F.4th 636, 644-645 (*Redondo Beach*).)

Redondo Beach addressed a child's IEP offer for the fifth grade, where the school district wanted to decrease D.R.'s time in the general education setting from 75 percent. (*Redondo Beach* at 642.) Because D.R. had either achieved or made progress on all of his IEP goals, the Ninth Circuit held that decreasing D.R.'s time in the general education setting was too restrictive and not warranted. (*Id.* at 645.)

The present case is distinguishable from *Redondo Beach* in that Student was not attending a district school or working on any measurable IEP goals at the time the May 12, 2023 IEP offer was made. Student's report cards from St. Catherine were also uninformative, as they reflected mostly F grades. The evidence established that St. Catherine's graded Student against fourth-grade general education standards and did not provide any grades on progress made in his modified curriculum. The evidence did establish, however, that Student did make progress on modified assignments.

During the second half of the 2022-2023 school year, Janet Romo provided Student with modified curriculum for use in the general education classroom at St. Catherine. Romo held a doctorate in educational leadership, with a dissertation on inclusion of students with Down Syndrome in kindergarten through third grade. Romo studied best practices for inclusion of intellectually disabled students and taught at the university and graduate level for 20 years, including courses on special education. Prior to that, Romo taught a self-contained special day class for three years.

Romo wrote the modified curriculum for Student in the spring semester of 2023. Specifically, Romo created booklets on topics being taught in class. The booklets were at approximately a second-grade reading level, and, in addition to the text, included pictures to address Student's challenge with working memory. The booklets and practice sheets focused on teaching Student new content by reading, writing, and speaking. Student was able to complete his modified assignments and successfully answer questions about what happened in a story. Throughout the 2023-2024 school year, Student demonstrated progress on multiplication, division, reading sight words, and reading books out loud.

Two experts testified on Student's behalf in support of inclusion in the general education setting. Dr. Mary Falvey, Ph.D. was an emeriti professor at California State University, Los Angeles in the Charter College of Education. Prior to that, Falvey served as its dean. Falvey held doctorate and master's degrees in special education. Falvey taught and served students with severe disabilities as far back as 1973, and taught as a special education faculty member at the Charter College of Education since 1980. During that time, Falvey coordinated the moderate to severe special education credential program, supervised the doctoral program, and assisted teachers in figuring out how to co-teach general education and special education students in an inclusive setting.

Falvey dedicated her professional life to understanding the education and inclusion of special needs students. Her peer reviewed articles on the education and inclusion of severely disabled students were prolific, spanning as far back as 1980. Through her research, Falvey consistently found that disabled children achieved higher academic and social results with inclusion. She presented to policy makers and other interested stakeholders throughout the United States on the topic of inclusion of students with significant disabilities.

The organizations that sought her help were testament to her expertise: Falvey had been serving on the California Department of Education's Least Restrictive Environment Advisory Panel since 2000. Falvey was also selected as the least restrictive environment expert in a Los Angeles Unified School District consent decree, spanning from 1996-2002, where all parties agreed to her serving in that role. Even Jurupa had hired Falvey to train its staff in 2019. Falvey trained Jurupa staff on how to better include Student when he attended a district school.

Dr. Meghan Cosier, Ph.D. was an associate professor at Chapman University, College of Education Studies. Cosier held a doctorate degree in special education and a master's degree in curriculum and instruction, with a background in special education instruction of the second and third grade. Cosier had been a professor of special education and disability studies since 2010. Cosier worked as a senior researcher at the Thomson Policy Institute on Disability from 2017, then began serving as the executive director since 2020.

Since 2009, Cosier published an extensive list of peer reviewed articles on the education and inclusion of severely disabled students. Like Falvey, Cosier consistently found that disabled children achieved higher academic and social results with inclusion, and also had better outcomes as adults. Cosier was unaware of any research suggesting that self-contained special classrooms result in superior academic outcomes for disabled children, or provided more opportunities for individualized or intensive learning than the general education environment. She, too, presented to policy makers and other interested stakeholders throughout the United States, about two to three times a year, on the topic of inclusion of students with significant disabilities.

Falvey observed Student at a Jurupa school in 2019 and again at St. Catherine in the spring of 2024. Cosier spoke with Student via Zoom for about an hour, during the week of hearing. Neither expert visited Jurupa's proposed fifth-grade special day class, but that did not detract from the weight of their expertise or the credibility of their testimony. Both Falvey and Cosier demonstrated extensive expertise in the field of inclusion. Both demonstrated extensive knowledge of prevailing research indicating that the vast majority of children with developmental disabilities perform better academically when they are educated in an inclusive general education environment as opposed to an isolated special education environment, even for children with significant

developmental disabilities who are performing several grade levels below their non-disabled peers. *See, e.g.,* National Council on Disability, *The Segregation of Students with Disabilities* 37–38 (2018); Thomas Hehir *et al.*, Instituto Alana, *A Summary of the Evidence on Inclusive Education* 13 (2016). Nothing in the record suggested that such data would not apply to Student as well.

Both experts were consistent in their opinions that Student could work on and attain the academic goals offered in the IEP in the general education setting, given content modification and the help of a one-to-one aide. For example, Student, along with the rest of a general education class, could work on reading comprehension at the same time, although Student may read from a different text. Both experts' opinions echoed the Hehir report indicating that for Down syndrome students, access to general education resulted in a steeper increase in literacy and math achievement than segregated education. Both experts discussed the general education strategies of multi-tiered support and universal design. In multi-tiered support, a teacher provides pupils different ways to demonstrate understanding, and with universal design, a teacher makes a lesson plan with the various learning needs of pupils in mind. Both experts opined that these general education teaching principles would further facilitate Student's academic inclusion. Both opined that Student would benefit from more inclusion than what was offered by Jurupa. The testimonies of Falvey and Cosier were consistent, made without reservation, and are afforded great weight.

While an IEP offer is evaluated at the time it is made and "cannot be judged exclusively in hindsight," (*Adams* at 1149), the Ninth Circuit has observed that after-acquired evidence may shed light on the objective reasonableness of a school district's actions at the time the district made its decision. (*E.M. v. Pajaro Valley Unified School*

Dist. (9th Cir. 2011) 652 F.3d 999, 1006.) Here, observations of Student's performance in the general education setting during the 2023-2024 fifth-grade school year further support a finding that Student would have been successful in a general education setting for more than 33 percent of the time. Jeffery Reneau was Student's lead teacher for the 2023-2024 school year at St. Catherine. During Student's time in Reneau's class, Student exhibited more legible writing and exhibited gains in reading, math, and engagement in class, commensurate with Student's cognitive ability. Falvey also conducted an observation of Student in the fifth grade. During the observation, Student was able to use pictures to understand a lesson and demonstrated his understanding by answering questions about the lesson correctly.

Jurupa's offer of only 33 percent within the general education setting was not enough. Jurupa offered mainstreaming in PE, social studies, and science because those subjects were group project based and would afford Student an opportunity to engage with general education peers. But after providing for time spent at lunch and recess, not to mention additional times during the school year spent in assemblies, drills, and field trips, the evidence established little would be left of the one third of the school day for mainstreaming in academics.

By all accounts Student was a sweet, friendly, and motivated pupil, well-liked by students, teachers, and staff alike. The parties do not disagree that Student had significant cognitive deficits, and was not on the same academic level as his general education peers. Pursuant to Jurupa's May 12, 2023 psychoeducation assessment, Student tested in the lower extreme range for cognitive skills, academic achievement in reading, writing, and math, oral language skills, visual-motor integration skills, visual perception skills, and adaptive skills. Student's development and functioning were in the delayed range.

This Decision does not reach a determination of whether exclusive placement in the general education classroom would have been appropriate for Student, like during times he was asked to focus on his own assignment when the rest of the class was, for example, giving presentations. Student struggled with attention and focus, and used noise-cancelling headphones. Casandra Cidila, the Jurupa behavior specialist who conducted the functional behavior assessment of Student, observed such an instance. As Student was working on a computer lesson, he became “distracted looking at his peers as they talked about their proposals.”

Nothing in this Decision is meant to suggest that Student could not still have benefitted from time with a special education teacher, social skills instruction, and the like. Even at St. Catherine, Parent’s preferred placement for which she seeks reimbursement, Student was not with his general education class for the entirety of the school day. At Parent’s behest, Student was pulled out twice a week to receive one-on-one tutoring in the areas of English language arts and math – the same academic areas for which Jurupa offered specialized academic instruction.

Despite this, Student could have received educational benefit from being in the general education setting for more than what Jurupa offered in the May 12, 2023 IEP. Based on his performance on modified work in the regular education setting during his 2022-2023 school year, bolstered by prevailing authority on the general benefits of inclusion, Student established the academic benefits of being in the general education setting for more than 33 percent of the school day.

NON-ACADEMIC BENEFITS OF GREATER INCLUSION

Student established the non-academic benefit of being in a regular classroom. Parent testified to the non-academic benefits Student received in the general education class at St. Catherine, and was credible. Parent testified that Student felt a sense of community and belonging. Student's vocabulary had increased, and after school, Student was excited to retell Parent about his day when previously he did not do so.

Student's interactions with peers in the general education setting were simple and brief, but regular, and occurred during academic as well as non-academic times. Examples included Student kicking a ball back and forth with a classmate at lunch; returning the greetings of peers; standing in line and appropriately engaging in basic societal norms; peers encouraging Student to transition from one classroom to the next; a classmate asking Student if he was excited about art, and, on another occasion, another classmate asking Student if he was hungry for lunch; a peer helping Student put away his tablet; and a classmate retrieving Student's library book and handing it to him on their way to the library. On another occasion, Student made a bid for a peer's attention during lunch by tapping the boy on the shoulder, to which the boy responded by hugging Student. The aggregate observations of Jurupa assessors suggest that peers consistently assisted and motivated Student throughout the school day.

Robles, Student's one-to-one aide, noticed that despite Student's communication challenges, Student would sometimes model his communication after his general education peers. Reneau's observations during the 2023-2024 school year further corroborate Robles' testimony. During Student's year in Reneau's class, classmates regularly helped Student and Student would look to them for technical help as needed. Student regularly communicated with classmates through physical gestures, handshakes,

pats on the back, and smiles. Student's understanding of the class setting and procedures improved over the course of the year. Student was a cohesive fit and welcome part of Reneau's class.

Jurupa essentially argues that Student's interactions in the general education setting were superficial at best, and did not bestow any real social benefit on Student. Olga Garcia was the Jurupa school psychologist that conducted the psychoeducational evaluation of Student. Garcia testified at hearing and opined that Student's social interaction should be more than turn-taking, in favor of more complex communication. Jurupa members of the IEP team were concerned that Student primarily interacted with his one-to-one aide instead of his general education peers. As a result, the Jurupa members of the IEP team offered a special day class placement outside of the general education setting for the majority of the school day.

Jurupa reasoned that doing so would provide Student more opportunities to interact with other special education peers working on the same curriculum in a small group instructional setting. But a special day class is necessarily composed of children with disabilities, albeit mild to moderate, that need IEPs themselves. Special day class peers may communicate well, not have social deficits, follow directions, and model good transitions. But the class makeup of pupils and their various areas of need and ability is ultimately a variable of chance and enrollment.

Jurupa's assertion that Student's interactions with general education peers had little value is unpersuasive. As Student points out in his closing brief, Student was a "grade school student with intellectual disability and expressive communication deficits"; the quality of his interactions with others should be considered in that light. A testament to the benefit of being in the general education academic setting for the majority of the

school day at St. Catherine is that long after the school day was over, Student went home and told Parent about his school day. Student recounted to Dr. Cosier who was absent from class that day, the names of several classmates, and how he liked math and completed art assignments. These are all things occurring in the academic context that made an impression on Student, lasting long enough for him to retell.

As Falvey credibly testified, simply being in the atmosphere of a general education classroom, existing among general education peers, and learning to be part of the social norm, held inherent learning value. The evidence established that Student received non-academic benefits, particularly socially, in a general education setting. Accordingly, this factor weighs in favor of a less restrictive placement than what was offered.

EFFECTS THE PRESENCE OF THE CHILD WITH A DISABILITY HAS ON THE TEACHER AND CHILDREN IN A REGULAR CLASSROOM

Rachel H. asks whether (1) Student was disruptive, distracting, or unruly and (2) would take up so much of the teacher's time that other students would suffer from lack of attention. (*Rachel H.* at 1401.)

In evaluating non-academic benefits of a regular classroom, *Rachel H.* gave most weight to the testimony of Rachel's mother, who testified to Rachel's excitement about school, learning, new friendships, and improved self-confidence. (*Rachel H.* at 1401.) These factors parallel those described by Parent in the present case, and ultimately weighed in favor of placing Rachel in a regular classroom.

The May 12, 2023 IEP offered a vocational goal and behavior intervention plan because Student had difficulty transitioning from one activity to another by physically staying in his chair or location, not initiating the next task, or verbally refusing to transition by saying no. But by its own description, the IEP team characterized Student's behaviors as "mild."

The behaviors were also brief; non-verbal refusal occurred not more than three times daily, lasting not more than one minute per refusal. Verbal refusals occurred four to 10 times daily, lasting less than five seconds per verbal refusal. At most, then, Student's physical refusal to move to the next task lasted no more than three minutes per day, and his verbal refusals lasted no more than 50 seconds per day. The observations of Jurupa's own assessors conducted at St. Catherine describe a child who would comply with a transition request after mild urging from an aide or a peer, or eventually by his own accord.

Once Student grew accustomed to Robles, his one-to-one aide, Student became less shy and made smoother transitions. During Robles's time with Student, Student was able to pay attention to whole class instruction for about 10 minutes at a time, consistent with the attention span of his general education peers. At times, Student would also talk during class, but this too was consistent with the behavior of his general education peers and was not identified as an area of concern by the IEP team. Student understood expectations on how to behave during play time versus work time. Because St. Catherine was a parochial school with times for prayer, Student also exhibited appropriate demeanor then. Further, Student's good conduct and effort won him an award at the end of the school year.

Reneau's observations during the year for which the May 2023 IEP was designed further bolsters a finding that Student would not have had a negative effect on the teacher or peers in a regular classroom. Reneau did not have any difficulty in providing instruction to other pupils because of Student. While the inquiry in *Rachel H.* focuses on disruptive behavior, it is noteworthy that Student's presence in Reneau's class had a positive impact on classmates by way of their understanding and appreciation of differently abled peers. Notwithstanding his mild challenges with transitions, no evidence suggested that Student's presence in the general education setting had a negative impact on the teacher or other students in the regular classroom.

COST OF PLACING THE CHILD WITH A DISABILITY IN A REGULAR CLASSROOM

Neither party introduced evidence regarding the cost of placing Student in a general education classroom for more than the amount offered in the May 12, 2023 IEP as opposed to the cost of what Jurupa offered. Jurupa does not contend, nor did the evidence establish, that the cost of providing Student with supplementary aids and services in a regular classroom would have been prohibitively expensive.

CONCLUSION

Moving Student to a placement where most of Student's time was outside of general education, when Student had demonstrated educational progress in a setting where most of his time was spent within general education, was not supported by the facts of this case or the law's strong preference for inclusion. In addition to the

academic benefits of mainstreaming, Student established non-academic benefits as well. On balance, Student's differences in communication and cognitive ability did not justify the degree of exclusion from the general education environment.

The question at issue is whether Jurupa offered a placement in the least restrictive environment to the maximum extent appropriate. With its offer of almost 70 percent outside of the general education setting, it did not.

CONCLUSIONS AND PREVAILING PARTY

As required by 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.

ISSUE 1:

Did Jurupa deny Student a free appropriate public education, called FAPE, at the May 12, 2023 individualized education program team meeting by failing to offer a placement in the least restrictive environment within which he could make appropriate progress?

Student prevailed on Issue 1.

REMEDIES

Parent seeks reimbursement for costs incurred for the 2023-2024 school year in having to place Student at St. Catherine due to Jurupa's failure to offer him a FAPE in the least restrictive environment. Parent seeks \$6,600.06 in school tuition and a \$525.00 registration fee, \$627.00 for school lunches, \$7,725.00 in inclusion support to Dr. Janet

Romo, and \$18,035.50 in behavioral support. The inclusion support request is comprised of \$3,850.00 for the 2023-2024 school year and \$3,875.00 for the summer of 2024. The behavioral support request is comprised of \$13,468.00 to Christian Aguilera and \$4,567.50 to Daniel Rodriguez who took shifts in providing Student with individual assistance during the school day.

Administrative Law Judges have broad latitude to fashion appropriate equitable remedies for the denial of a FAPE. (*School Comm. of Burlington v. Department of Educ.* (1985) 471 U.S. 359, 370 [105 S. Ct. 1996, 85 L. Ed. 2d 385 (*Burlington*)]; *Parents of Student W. v. Puyallup School Dist.*, No. 3 (9th Cir. 1994) 31 F.3d 1489, 1496.) In remedying a FAPE denial, the student is entitled to relief that is "appropriate" in light of the purposes of the IDEA, specifically providing Student with a FAPE which emphasizes special education and related services to meet Student's unique needs. (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3); *Burlington* at 374.)

School districts may be ordered to reimburse the parents of a child who has been denied a FAPE for the cost of private instruction. (20 U.S.C. § 1412(a)(10)(C)(ii); 34 C.F.R. § 300.148(c).) Where parents enroll their child in private services

"without the consent of or referral by the public agency, a court ... may require the agency to reimburse the parents for the cost of that enrollment if the court ... finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment." (20 U.S.C. § 1412(a)(10)(C)(ii).)

A parental placement may be deemed appropriate even if it did not meet state standards that apply to education provided by the district. (34 C.F.R. § 300.148(c).) St. Catherine did not provide speech language or occupational services to Student; Student

received those services privately. Student also arranged for his own individual adult assistants. Nevertheless, Student established that he received educational benefit at St. Catherine for the 2023-2024 school year, making academic and non-academic progress there.

Student further established that the modified curriculum created by Romo was the way in which Student was able to participate and make academic progress in the general education setting. Throughout the 2023-2024 school year, Student demonstrated progress on multiplication, division, reading sight words, and reading books out loud. St. Catherine provided the general education setting that accommodated this modified curriculum model. Reimbursement for St. Catherine tuition for the 2023-2024 school year, plus annual registration fee for the 2023-2024 school year, and inclusion support is warranted.

Student sought reimbursement for school lunches. Had Student been offered a FAPE and attended public school in Jurupa, Student would have been eligible for free lunches under California's Universal Meals Program (Ed. Code §49501.5.) Accordingly, it is appropriate to reimburse Parent for the out-of-pocket expense they paid to replace the free meals to which Student would have been entitled.

Reimbursement for these expenses as described above is ordered for the entire regular 2023-2024 school year, with no proration. The IEP offer at issue was made well before the date of Student's complaint, and falls within the statutory period to be litigated. The evidence established that Jurupa's failure to offer Student a FAPE for the 2023-2024 school year impacted Student for the entire 2023-2024 school year, and that

Student attended St. Catherine for the duration of the 2023-2024 school year. Thus, a balance of equities establishes that remedies be awarded for the entire 2023-2024 school year period.

Curriculum content modification support by Romo, including any coaching and training, will only be reimbursed for the 2023-2024 regular school year in the amount of \$3,850.00. The IEP at issue in this case concluded on its own terms in May 2024. There was no issue pled nor evidence presented regarding the 2024 extended school year. Additionally, Parent testified that the summer 2024 services had not yet been fully rendered at the time of hearing, and because extended school year was not at issue, no reimbursement for services attendant to the 2024 extended school is awarded.

Student requests reimbursement in the amount of \$18,035.50 for behavioral support. To provide behavioral intervention, including implementation of behavior plans, personnel must have a high school diploma and either be supervised by personnel or possess themselves the licenses or credentials as set forth in 5 C.C.R. §3051.23(a) (34 C.F.R. 300.156; Ed. Code §56070(a)(3); 5 C.C.R. §3051.23(b).) While it is not necessary for parents to provide Student with exactly the same level of expertise or service a student would receive in a public school, here the evidence did not establish that reimbursement for behavioral assistance from Christian Aguilera and Daniel Rodriquez is warranted. The evidence established that a one-to-one aide was helpful

(This space is intentionally left blank. Text continues on the following page.)

for Student to access the learning environment. What Student did not establish, however, were the qualifications of the individuals that Parent hired to sit in class with Student, namely Christian Aguilera and Daniel Rodriguez. Aside from the fact that Christian Aguilera and Daniel Rodriguez were at least 18 years of age and college students, the evidence did not establish that they were in any way trained, supervised, or qualified as aides.

Student did not present evidence that they worked under or in consultation with Student's teacher. Student did not establish that the young men were any different than the average parent volunteer. Moreover, given the lack of certification and training, Student did not establish that the cost associated with their services was reasonable. Accordingly, Student is not entitled to reimbursement for their time.

Parent also seeks an order that district personnel participate in a three-hour inclusion training to address Jurupa's obligation to educate students with disabilities among their typically developing peers to the maximum extent appropriate. Student requests that the training be conducted by a qualified expert of Parent's choice. A training order is not appropriate here.

In making its placement offer, Jurupa made an individual analysis of Student's needs. The Jurupa team members demonstrated an understanding of their obligation to mainstream Student to the maximum extent appropriate, and engaged in a robust discussion of the continuum of placement options. The team made an effort to identify the subjects with more group work and collaboration, specifically, social studies, science, and PE, where Student would have the most opportunity to collaborate and interact

with general education peers. Jurupa miscalculated the amount of inclusion appropriate for Student, but the team members did not demonstrate systemic or pervasive, district-wide misunderstanding of the law or the principle of least restrictive environment. Further training on the legal obligation to mainstream students to the maximum extent appropriate would not have prevented the risk of such an individual miscalculation. The remedy for Jurupa's miscalculation is the reimbursement award to Student. No training on the inclusion obligation is warranted.

Student also requests a determination that to receive a FAPE, he requires prospective placement in a general education setting for the full school day, with three hours a week of inclusion support. The 2024-2025 school year was not at issue in this case. The IEP at issue concluded before hearing in this matter, and no IEP for the 2024-2025 school year was adjudicated. Student's request for prospective full-time general education placement is tantamount to a request for declaratory relief that would usurp an IEP team's ability to have a full IEP discussion regarding Student's appropriate placement options. No order for prospective placement in a full inclusion general education setting is warranted here.

ORDER

1. Jurupa shall reimburse Parent for the following expenses for the 2023-2024 school year: \$6,600.06 in school tuition, \$525.00 for school registration fee, \$627.00 for school lunches, and \$3,850.00 in inclusion support to Dr. Janet Romo.
2. All other requests for relief are denied.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

Claire Yazigi

Administrative Law Judge

Office of Administrative Hearings