

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2013101083

v.

SAN MARCOS UNIFIED SCHOOL DISTRICT,

SAN MARCOS UNIFIED SCHOOL DISTRICT,

OAH CASE NO. 2013110340

v.

PARENT ON BEHALF OF STUDENT.

DECISION

On October 29, 2013, Parent on behalf of Student t filed with the Office of Administrative Hearings a Request for Due Process Hearing (complaint) in OAH case number 2013101083 (Student’s case) naming the San Marcos Unified School District (District) as respondent.¹

¹ Student had originally filed a prior Request for Due Process Hearing with OAH on January 22, 2013 naming the District and Banyan Tree Foundations Academy in OAH Case Number 2013010566. The complaint in case number 2013101083 alleged similar issues as that in the original case. Student withdrew that case without prejudice and OAH issued an order of dismissal on May 23, 2013.

On November 8, 2013, District filed with OAH a Request for Due Process Hearing in OAH case number 2013110340 (District's case). On November 18, 2013, the District filed a motion to consolidate the first and second cases. On November 20, 2013, OAH granted the District's motion to consolidate. The hearing was set for December 24, 2013. On November 25, 2013, OAH issued an order continuing the hearing until January 28, 2014. During the hearing, Student withdrew several issues which were reflected in the amended prehearing conference order.

Administrative Law Judge Robert F. Helfand heard this matter in San Marcos, California, on January 28, 29, and 30, 2014, and February 3, 4, and 5, 2014.

Ava Nawy Weitzen, Attorney at Law, represented Student. Student's mother (Mother) was present throughout the hearing.

Jonathan P. Read, Attorney at Law, represented the District. Barbara Moore, the District's special education director, was present throughout the hearing.

At the request of the parties, the record remained open for the submission of written closing and rebuttal arguments. The parties filed their closing briefs on February 26, 2014. Rebuttal briefs were submitted on March 4, 2014, and March 5, 2014, when the matter was submitted.

ISSUES²

The following issues were determined:

² The ALJ has reformatted the issues. The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

DISTRICT'S ISSUE:

1. Whether District's May 3, 2013 Individualized Education Program (IEP) offer, as amended on August 28, 2013, constitutes a free appropriate public education (FAPE) in the least restrictive environment?

STUDENT'S ISSUES:

2. Whether District denied Student a FAPE at the January 14, 2013 IEP meeting by (a) failing to offer appropriate placement and services, and (b) committing procedural violations of the Individuals with Disabilities Education Act (IDEA) that denied Mother meaningful participation in the IEP decision-making process by continuing the meeting after Mother left the meeting, failing to consider alternative placements, and failing to review the results of District's triennial assessment with Mother?

3. Whether District denied Student a FAPE in the May 3, 2013 IEP by (a) failing to offer an appropriate placement and services, and (b) failing to provide a vision therapy assessment?

4. Whether District denied Student a FAPE at the August 28, 2013 IEP meeting by failing to have in attendance a general education teacher?

5. Whether District denied Student a FAPE at the March 26 and May 23, 2012 IEP meetings by (a) failing to offer an appropriate placement and services in the area of social pragmatics and social skills, and (b) denying Mother to meaningfully participate in the IEP decision making process by failing to consider alternative placements?

SUMMARY OF DECISION

In Student's case, Student alleges that District failed to provide her with a FAPE at the March 26, 2012, May 23, 2012, January 14, 2013, and May 3, 2013 IEP meetings. Student contends that the District offered placements which did not meet her unique needs or provide appropriate services. At the March 26, 2012 and May 23, 2012 IEP's,

Student contends that the placement offered could not provide her with group speech and language services or offer appropriate peer interaction in light of her needs in the area of pragmatic language/social skills. Student avers that the District placement at the January 14, 2013 IEP was not appropriate because it did not provide her with full time one-to-one instruction. As to the May 3, 2013 IEP, Student contends that the placement was not appropriate because she was not ready to attend a comprehensive campus. She also contends that the January 14, 2013 IEP was not appropriate because it did not provide a vision therapy assessment. Student alleges that District denied Mother to meaningfully participate in the IEP decision-making at all the IEP meetings except for May 3, 2013. District denies all of Student's allegations.

In District's case, District contends that the May 3, 2013 IEP, as amended at the August 28, 2013 IEP meeting, constitutes a FAPE in the least restrictive environment. Student denies the District's allegation.

This Decision (1) denies Student's requests for relief in OAH Case No. 2013101083, and (2) grants the District's request for relief in OAH Case No. 2013110340.

FACTUAL FINDINGS

1. Student is a 16-year old girl who presently resides within the boundaries of District with Mother. Student was initially found eligible for special education by the San Diego Unified School District on March 4, 2005 under the eligibility category of autistic-like behaviors. Currently, Student is eligible for special education under the categories of autistic-like behaviors, speech and language impairment, and other health impairment based on attention deficit hyperactivity disorder and executive dysfunction.

2. San Diego Unified placed Student, then a first grader, at the Balboa City School, a nonpublic school (NPS) for special education students. Since first grade, Student has attended six other nonpublic schools.

3. In January 2009, Student moved within District's geographical boundaries. On February 6, 2009, Student placed Student at the Winston School, a NPS with small classes on what Mother described as a "regular campus."

4. During March 2010, District conducted a triennial assessment which resulted in similar results to Student's previous triennial assessment. The assessor concluded that Student was meeting the expectations of her program academically. The assessor recommended that Student continued to demonstrate a need for small group instruction with opportunities for independent tutoring as needed.

5. In 2011, Student also was assessed twice for the need of vision therapy. In January 2011, ophthalmologist David B. Granet, M.D. at the Shiley Eye Center at the University of California, San Diego, reported that although Student had a tracking problem, she was "quite good in her ability to perform." Dr. Granet also found that Student was not having interference with her ability to concentrate or read. He concluded that she did not require further vision therapy.³ Optometrist Donald Janiuk, O.D., who had been treating Student, also assessed her in May 2011. Dr. Janiuk administered several tests which resulted in Student receiving scattered scores. Dr. Janiuk found that Student had poor eye teaming, poor tracking, and binocular breakdown. He recommended that she continue in vision therapy for 24 more sessions.

6. In the 2011-2012 school year, Student was in the eighth grade. She received grades of A's or B's in all subjects. On a January 30, 2012 report, Winston noted that Student had made sufficient progress on 11 of her 15 goals to meet them. She made partial progress, although not sufficient, to meet four goals in the areas of math/multiplication, vocabulary, writing/revision, and reading speed.

³ In his report, Dr. Graner noted that Mother became verbally insulting to him and his staff when he did not find that Student required vision therapy.

FEBRUARY 13, 2012 IEP

7. The February 13, 2012 IEP noted that Student's difficulty with social skills affected all areas of academic progress which required continued placement in the size and structure of a NPS. Student was reading at a sixth grade level in speed and seventh grade for comprehension. Student demonstrated improvement in writing skills and math. She also showed progress in social skills by improved problem solving, engaging in a responsive role in conversations with peers, and her ability to make friends. The team continued Student's placement at Winston with the following services: 45 minute individual speech and language session with a 30 minute group speech and language session, and 30 minutes of occupation therapy. The IEP also included goal nine in the area of social pragmatics. Goal nine had a baseline: "[Student] initiates conversation with peers about 2/5 opportunities, and makes up to 2 comments to maintain the conversation. [Student] needs support with asking peers personal questions." The ninth goal was for Student to learn and practice strategies (perspective taking, adjusting body language, facial expression, tone of voice to match conversation, asking appropriate questions, and making comments to maintain a conversation for four turns) at 80 percent accuracy on four to five occasions as measured by the speech and language pathologist (SLP)/teacher report or video modeling. Mother consented to the IEP.

MARCH 26, 2012 IEP

8. Mother has been a strong advocate for her daughter. Following the February 13, 2012 IEP, Mother complained of the speech and language services provided by Winston. On March 6, 2012, Mother requested a new IEP meeting to discuss a change of NPS placement and requesting a review of the vision therapy assessments of Drs. Janiuk and Granet. Mother sought a change of NPS because she believed

Winston could not meet Student's the social aspects of Student's education because there were only five girls in Student's class of 23.

9. Mother forwarded to Nancy Harris, the District program specialist assigned to Student, the names of two private schools which featured one-to-one instruction. Ms. Harris proposed Excelsior Academy, a school similar to Winston, as Student's new school. Mother insisted that Student required one-to-one instruction to achieve "intensive intervention remediation" to allow Student to advance to grade level academically. Mother rejected Excelsior as a potential placement as Student would be the 12th student in the proposed class. Mother, in a March 16, 2012 email to Ms. Harris, again insisted on placement in a school which had full time individual instruction and that Mother would address the social aspects of Student's program by after school activities such as volleyball and 4H club.

10. On March 26, 2012, an IEP meeting was held to discuss placement. Attending was Mother; Ms. Harris, a program specialist;⁴ and Jeff Kozlowski, director of special education at Winston. Mother vocalized her areas of concern regarding Student's educational program at Winston. Mr. Kozlowski stated that Winston was unable to meet Mother's need for communication, her demand for greater one-to-one instruction, and her intensive involvement in IEP and daily activities. For that reason, Winston would no longer be able to be a placement option for Student. Ms. Harris stated that the District continued to believe that Winston offers an appropriate education for Student. The District then offered Student a trial placement at Banyan Tree for the remainder of the Spring semester. Mother verbally agreed to the trial placement.

⁴ Ms. Harris took over overseeing Student when Mother requested that Lola Harlan be replaced.

BANYAN TREE

11. Banyan Tree contains between seven to ten total students in elementary through high school. Banyan Tree provides one-to-one instruction for three hours per day. In addition to the individual instruction, students participate in small groups to complete their class work or work on projects.

12. The Banyan Tree school day commences with all students attending the Pledge of Allegiance followed by 15 minutes of stretching called "brain gym." Students can also socialize during lunch. Speech and language services, including peer group sessions, were conducted by a nonpublic agency, the Crimson Center for Speech and Language, on behalf of Banyan Tree.

13. Student began attending Banyan Tree on April 11, 2012. Student attended the pledge and the brain gym. At lunch, Student was only able to socialize with two other students. Banyan Tree was unable to provide Student group speech and language as provided in the February 13, 2012 IEP because they did not have anyone to group with Student. Banyan Tree did provide one hour of individual speech weekly. On May 17, 2012, the Banyan Tree director forwarded an email to Mother stating Banyan Tree could provide an additional 15 minutes of individual speech per week which would have to be at further District expense.

MAY 23, 2012 AND JULY 24, 2012 ANNUAL IEP MEETING

14. On May 23, 2012 and July 24, 2012, the IEP team convened for Student's annual IEP meeting. Attending the meeting were Student; Mother; Laura Johnson, the Banyan Tree director; and Laurie Leigh, a program specialist from District.⁵ Mother

⁵ Ms. Leigh has B.A. and M.A. in education. She possesses credentials for general education elementary and secondary teaching and pupil personnel services. She had been employed as a general education teacher from 1977 through 1991. She was a

submitted a series of notes to the team members regarding Student's academic achievement, functional performance and parental concerns. These were discussed by the team. Student's present level of performance (PLOP) was discussed. The adopted PLOP was very similar to those adopted in the February 13, 2012 IEP. One of Mother's notes states, "The goal for [Student] is to master proficiency at grade level in all academic areas." Mother actively participated in all aspects of the meeting.

15. Banyan Tree presented a PACE Program Screening Test.⁶ At the time of testing, Student was 14 years and three months of age. Student's age equivalent scores were 8.6 years in processing speed; 8.2 in working memory; 10.5 in visual processing; 8.2 in word attack; 6 in auditory analysis; 6.6 in logic and reasoning; 8.8 in selective attention; and 8.7 in spelling.

16. Ms. Johnson reported that Banyan Tree was reviewing Student's math skills and recommended that she take pre-algebra during ninth grade. Banyan Tree recommended that some goals be revised. These recommendations were accepted by the team. The IEP contained 18 goals in total in the areas of keyboarding; reading fluency; two goals in reading comprehension; reading/multi-syllable; vocabulary; three writing goals in writing process, editing, and revision; four goals in math; self-regulation; independence; and two speech and language goals in the areas of developing social skills and reaching grade level in narrative language. Goal 17 was identical to the ninth goal in the February 13, 2012 IEP with an identical baseline.

school-based mental health professional and counselor from 1991 through 2005 at the Encinitas Union School District. Since 2005, Ms. Leigh has been a program specialist at NCCSE.

⁶ PACE is a learning skills and reading program. Scores are given in age equivalencies.

17. The team adopted 15 accommodations including graphic organizers, sensory breaks, work completion, visual supports, computer writing programs, assistive technology training, one-to-one instruction, and self-regulation strategies. The team agreed to Mother's request for an extended school year and to receive copies of Student's work production on a daily basis. The team reviewed Dr. Janiuk's visual therapy assessment and agreed to 24 sessions. Ms. Johnson also reviewed the PACE program which would commence during the extended school year. The IEP noted that "[Student] requires a small group setting and 1:1 direct instruction in an NPS." The IEP lists under services placement in "specialized academic instruction" in a NPS. Under accommodations, the IEP document states that Student would receive one-to-one instruction during academic instruction. The team offered placement at Banyan Tree with two individual speech and language therapy sessions for a total of 90 minutes per week and four 30 minute speech and language consults.⁷ Mother accepted the offer.

STUDENT AT BANYAN TREE

18. On June 7, 2012, Student was bitten by another student while Student was receiving instruction. Mother then removed Student from the social portion of the program, and Student refused to participate in the morning pledge and brain gym. Thus, Student no longer had any opportunities to work on her social skills.

19. Student had received grades above C in all her subjects. Student took the California Standards Tests during eighth grade and scored in the "basic range" in English language arts; "below basic" in science; and "far below basic" in general mathematics. Student continued to make progress on her annual goals.

⁷ Thus, the group speech and language services which had been in the February 13, 2012 IEP were eliminated.

REQUEST FOR EVALUATION

20. On August 31, 2013, Mother requested that the IEP team discuss at the next meeting whether to complete speech and language portion of Student's triennial assessment early. On September 6, 2013, Mother formally requested a speech and language assessment. The District agreed to conduct the entire triennial assessment early, which Mother accepted.

THE 2012-2013 TRIENNIAL ASSESSMENT

21. The District's triennial assessment team comprised Rana Holcomb, a District school psychologist; Erin Morrison, a special education teacher at Mission Hills High School (MHHS), and Marilea Brock, the SLP at Banyan Tree.

22. Ms. Morrison conducted the academic testing portion of the assessment. Ms. Morrison has a B.A. in psychology, her education specialist credential in mild/moderate disabilities, and an autism authorization. From September 1999 through June 2003, Ms. Morrison taught a mild/moderate special day class with pupils who had learning and/or behavior challenges in the Garden Grove Unified School District. From August 2003 through June 2005, Ms. Morrison taught a special day class for students with language and communication disorders including autism in Clark County, Nevada. Ms. Holcomb has been employed by the District as a school psychologist since August 2004 as a school psychologist at MHHS. She has a B.A. in psychology, an M.S. in counseling, and an Ed.S. (Education Specialist) in school psychology. Ms. Holcomb received a California Certificate of Clearance (2000) and school psychology (2004). Ms. Brock has an M.S. in speech pathology and a CCC (Certificate of Clinical Confidence)-SLP. Ms. Brock is an SLP at Banyan Tree who had provided speech services to Student since April 2012.

23. In the academic portion, Student demonstrated she was performing in the low to average range in math, reading, writing, spelling, and oral language. In the psychoeducation portion, Student demonstrated difficulties in the areas of attention, auditory processing, and visual processing. Student's academic functioning fell within the levels of her ability. In the speech and language portion, Student demonstrated a moderate expressive and receptive language disorder characterized by decreased reading comprehension skills, difficulty organizing written and oral communication, and decreased syntax, grammar, and sequencing skills in written communication. Student also demonstrated moderate social communication and pragmatic language disorder characterized by decreased problem solving and perspective taking. In the area of executive functioning, Student demonstrated deficits in meta-cognition, transitions or flexibility, and task initiation.

DECEMBER 2012

24. Because of her concerns as to Student's academic progress, Mother insisted that Student only receive one-to-one instruction and that Student not participate in the other aspects of the Banyan Tree program. Student also had frequent absences from school. The Banyan Tree director informed Ms. Leigh that she felt Banyan Tree could not meet Student's needs because she was not participating in the full school program and because of her absences.

25. On December 18, 2012, Laura Johnson, Banyan Tree's director, forwarded a letter to Mother informing her that Banyan tree was giving a 20-day notice terminating its contract with the District to provide services to Student because Banyan Tree was unable to provide an appropriate education for Student.

26. On December 19, 2012, Ms. Johnson forwarded a letter to the District giving a 20 day notice of the school's intent to terminate its contract with the District to educate Student. Ms. Johnson stated that Student's program had "been reduced to a

'tutoring program' per mother's request." Ms. Johnson goes on to state Banyan Tree's reason for giving the 20-day notice thusly:

Our model and methods of instruction have always been made clear at all IEP meetings regarding [Student]. During the IEP meetings that have occurred since placement, [Student's] educational program has been reduced to a 'tutoring program' per mother's request. Banyan Tree Foundations Academy has clearly stated in every IEP meeting that we disagree with the decisions to limit social interactions and activities. Due to these limitations, Foundations Academy is no longer providing the educational experience that we feel is key to student success. Therefore, Foundations Academy has given the school district, San Marcos, and [Mother], a 20 day notice of intent to cancel the contract to provide services.

Additionally, Ms. Johnson cited the difficulty "to have a cohesive, comprehensive program" due to Student being absent for more than 18 percent of the time "due to emotional upsets, travel, illness and assessments."

27. Prior to the District's winter break, Ms. Leigh and Mother communicated about the 20-day notice and the need to find a new placement. Mother understood that the IEP team would discuss placement at the upcoming January 14, 2013 IEP meeting as demonstrated by Mother's January 8, 2013 letter to the IEP team where stated that she did not agree to a change of placement. Mother suggested that her conflicts with Banyan Tree could be resolved by Banyan Tree changing Student's program specialist, who was the Banyan Tree director.

JANUARY 14, 2013 IEP MEETING

28. On January 14, 2013, the IEP team convened. Attendees included Mother, Ms. Harlan, Ms. Leigh, Ms. Holcomb, and Ms. Morrison. Mother threatened to leave the meeting as she objected to the attendance of Ms. Harlan. Mother did not want Ms. Harlan in attendance as Mother had a number of disputes with Ms. Harlan when she was Student's program specialist. Ms. Leigh explained that she had requested Ms. Harlan attend to take meeting notes. Mother then agreed to continue the meeting. Participating by telephone from Banyan Tree were Ms. Johnson, director; Leann Poluak, a general education teacher; Ms. Brock; and Sara Frampton, an educational consultant retained by Banyan Tree. Mother objected to Ms. Frampton being in attendance and requested that the meeting be continued. Mother felt that there was a conflict of interest on behalf of Ms. Frampton, who had been retained by Mother as a consultant/advocate at the end of July 2012, but was no longer retained by September 2012. Mother asked to continue the meeting. Ms. Leigh stressed the importance of the meeting, which was to review the triennial assessment results and to determine a placement for Student, and stated the meeting would continue. Mother then exited. Ms. Frampton then discontinued her participation in the meeting. Because of the need to offer Student a placement, Ms. Leigh continued the meeting without Mother.

29. Ms. Brock reviewed her speech and language assessment and recommended that the annual goals from the May 23, 2012 IEP be continued. Ms. Brock did note that Student should be in a placement which would give her more exposure to independence and opportunities for self-advocacy. Banyan Tree members, noting that Student did well with one-to-one instruction, stated that Student "needs more group opportunities with peers."

30. Ms. Holcomb and Ms. Morrison reviewed her assessment results. The team found Student as continuing to be eligible for special education under the categories of

autism with other health impaired and speech and language impairment. The team also agreed to continue the 18 annual goals from the May 23, 2012 annual IEP as Student had not met the goals.

31. The team discussed possible placement for Student. Ms. Morrison and Ms. Holcomb shared that based on the assessment results and Student's academic performance, they both were of the opinion that Student does not require one-to-one instruction. Ms. Morrison opined that although Student's academic abilities were below average, Student was similar to many other mild/moderate students. Ms. Morrison believed that Student could succeed academically in a supportive environment like a special day class. Ms. Holcomb and the team believed that Student could access the curriculum without one-to-one instruction. The team felt that MHHS could meet Student's unique needs and was the least restrictive environment. The team felt that Student should be placed at a NPS as a transition to the large MHHS campus. The team determined that the appropriate placement would be the Excelsior School with the related services continued from the May 23, 2012 IEP.⁸ Placement at Excelsior was to commence on January 31, 2013. At Excelsior, Student would have an opportunity to experience a classroom setting and be exposed to socializing with peers. The IEP team was willing to meet with Mother at another time to review all of the information and reports from the meeting.

⁸ Excelsior is a small, NPS, elementary through high school, in San Diego. Excelsior is similar to Winston with small classes. Excelsior could provide individual instruction if needed. Thus, Excelsior could provide Student a small group setting with individual instruction when needed.

JANUARY 14, 2013 TO MAY 3, 2013

32. After leaving the IEP meeting, Mother delivered a hand written letter addressed to the District superintendent, Ms. Leigh and Dawn Dully, the District's special education director. She requested that the District reconvene the IEP meeting because she objected to the attendance of both Ms. Harlan and Ms. Frampton.

33. On January 15, 2013, Ms. Dully responded by letter to Mother. Ms. Dully stated that the District was willing to implement Student's IEP at Excelsior, which was not a change in placement as Banyan Tree could no longer provide services to Student. Ms. Dully offered to meet informally or through the IEP process.

34. On February 1, 2013, Student ceased attending school due to Mother's refusal to accept the District offered placement. District, through Ms. Dully, offered to provide interim home instruction in an effort to permit Student to receive some education services while she was absent from school. This offer was later accepted by Mother and one hour of home instruction to Student was provided from March 28, 2013 to May 3, 2013.

35. On March 6, 2012, the District forwarded a Team Meeting Notice to hold Student's annual meeting on March 14, 2013. On March 11, 2013, Mother refused to meet on March 14. On March 14, 2013, District forwarded to Mother a Team Meeting Notice scheduling the annual IEP meeting for March 18, 2013. On March 15, 2013, Mother forwarded an email to the IEP team confirming that she could not attend the scheduled IEP meeting scheduled for March 18, 2013. She requested that the District contact her after March 23, 2013, with alternative dates. Mother cited as a reason for not being available that her water heater leaked on March 13, 2013, and it needed to be replaced. On April 10, 2013, the District once again forwarded a Team Meeting Notice for Student's annual IEP scheduled for May 3, 2013. Mother consented to the meeting.

MAY 3, 2013 IEP MEETING

36. On May 3, 2013, the IEP team convened for Student's annual IEP meeting. Attending were Mother; Student; Ms. Morrison; Ms. Harlan; Ms. Holcomb; Ms. Leigh; Carrie Goodwiler, a District SLP; and Monique Frost, a general education teacher. Ava Weitzen, attorney for Student, and Jonathan Read, counsel for the District, were also in attendance. Mother and the home instructor reported that Student was doing well with her home instruction.

37. In discussing Student's present levels of performance, the team reviewed Student's assessment results and her performance academically and socially. In the Social/Emotional/Behavioral section of the present levels, it was noted that Student had only been exposed to small settings with little or no exposure to non-disabled peers which resulted in her being unable to access the social and academic modeling of non-disabled peers. Mother objected as she did not feel that Student was isolated because Student had been involved in YMCA, acting classes, overnight camp, ballet, and ice skating outside of school.

38. The team reviewed a Vision Therapy Status Report dated April 1, 2013, which was prepared by Lyna Dyson, a certified optometric vision therapist,⁹ who did not attend the meeting. The report contained no test results but did report that Student had made excellent progress in all areas. Ms. Dyson commented that Student was easily distracted and recommends that time be set aside for reinforcement of her visual skills. No details were given as to this recommendation. Ms. Dyson noted that Student was "still struggling in the areas of visual perception speed and tracking speed." She then

⁹ Ms. Dyson did not testify nor did Student present any witness as to Student's need for vision therapy. A certified vision therapist works under the supervision of an optometrist.

recommended that a Developmental Optometrist should conduct an evaluation to confirm Student's progress so that scores can be compared. The team denied Mother's request for a vision therapy evaluation based on the triennial assessment, observations, and Student's academic grades. The team did agree to have Student be given an occupation therapy assessment to further look at whether a vision therapy assessment was needed.

39. The team adopted the following statement of how Student's disability affects her involvement and progress in the general curriculum thusly:

Deficits in visual processing speed, auditory memory, executive functioning, attention, and speech and language negatively affect [Student's] ability to focus, plan, follow multi-step directions, remember things she hears, process visual information expeditiously, and communicate effectively, all of which negatively affects her progress in reading comprehension, math calculation, vocabulary, and communication.

40. The team adopted 14 goals, designed to meet Student's needs, in the areas of typing, reading-ninth grade vocabulary, reading comprehension, writing-editing, writing-organization, mathematics, mathematics-word problems, vocabulary, pragmatic language-prosody, pragmatic language-topics, pragmatic language-perspective, expressive language, social emotional-large group and new settings, and self-regulation. In three of the goals, examples of settings where the goals could be implemented included general education classes and special academic instruction (SAI) classes (which relate to a special day class). At Mother's request, the team agreed to establish a monthly communication system as to Student's progress on her goals and

objectives. The team rejected Mother's request to limit speech and language services in a group no larger than three students.

41. The IEP team decided on the following accommodations/modifications: graphic organizers; access to a computer writing program at home and school; use of a calculator; sensory breaks and regulation breaks; visual supports; extended time on assignments and tests; edit check list; preferential seating; chunk assignments; use of a planner; self-regulation strategies; copy of teacher notes; reduced volume of writing and copying; use of a formula sheet; grade on content not spelling; check for understanding; training for computer writing program; frequent repetition of information; monitoring of work; and aide support.

42. The team then discussed placement. Ms. Weitzen stated she did not feel that there was anything in any of the assessments to demonstrate that Student should not be placed in an NPS. The District members opined that Student's profile and abilities do not demonstrate a need for one-to-one instruction and that placement at in mild/moderate special day classes at a public high school was warranted and would be the least restrictive environment.

43. The District members felt that Student's goals could be worked on in a public school placement. Based on Mother's statement that Student was participating in acting classes and other such after school activities, District team members felt that Student could handle the social aspects of attending MHHS. The District team members determined that it was important for Student to generalize social and language pragmatics by being exposed to peers including those who were non-disabled. Based on the assessments, District team members concluded that Student could receive a high school diploma with appropriate supports, accommodations, and modifications. They also determined that it was important for Student to be in a stable situation.

44. Ms. Holcomb discussed the numerous opportunities available at MHHS. Student would be able to have four academic classes in a special day class with special education teachers with up to 20 students, attend an academic skills class, attend general education classes, including physical education where she would be exposed to non-disabled peers, and participate in programs where she could practice her social skills. Ms. Holcomb suggested Student participate in programs such as Circle of Friends, where general education students are teamed with special education students in a mentor-type arrangement; and Link Crew, which connects new students with sophomores. Ms. Holcomb also offered to give a permanent pass for Student to see the school psychologist whenever she felt anxious.

45. The District FAPE offered placement at MHHS with transportation because MHHS was not Student's home school. Student would be placed in SAI in a mild/moderate special day class which is comprised of eight to 20 students. Student would have her four core subjects in special day classes with a general education physical education class.

46. The District offered the following services: specialized academic instruction for five class periods; 45 minutes of group speech per week; 45 minutes of individual speech per week; 30 minutes per week of speech consultation to the classroom teacher; 360 minutes yearly of counseling; aide support throughout the day; 60 minutes yearly of work experience education; and 30 minutes yearly for vocational assessment, counseling, and guidance. The IEP states that 79 percent of Student's time would be outside general education with 21 percent of her time with in the general education environment. Additionally, all specialized academic instruction classes are located in the Yellowstone pod area which is located at the end of campus, adjacent to the tennis courts and baseball field. Student would be allowed to be brought to campus and dropped off immediately in front of the Yellowstone building where her SAI classes

would be located. The school gym is across the quad from Yellowstone. Immediately in front of the Yellowstone area is a lunch area. Thus, Student's potential for anxiety would be limited as she would not be required to transverse the entire campus between classes.

47. The IEP also offered a transition plan for Student to ease her entry to MHHS. Student would have a tour of campus which would include an opportunity to meet her teachers in their classrooms prior to attending MHHS. A counselor or staff member would monitor Student on a daily basis throughout the remainder of the school year. Student would have aide support in addition to her monitor. Staff and Student would be trained on the Solo program. Student would participate in Link Crew. Mother informed the IEP team that she rejected the District IEP offer and intended to make a unilateral placement and seek reimbursement.

AUGUST 28, 2013 IEP MEETING

48 On August 28, 2013, the IEP team reconvened with Ms. Leigh; Heather Chamberlain, a program specialist; Grace Ridgeway, a District coordinator; Melyssa Johnson, a District occupational therapist; Ms. Holcomb; Ms. Goodwiler; and Ms. Morrison. Mother and attorneys for Student and the District were also in attendance. No general education teacher was in attendance. Ms. Leigh holds certifications as a general education teacher and had 14 years teaching. Ms. Johnson reviewed her recent evaluation. Ms. Johnson reported that Student did not demonstrate a significant deficit in fine motor, visual motor, or sensory motor skills.¹⁰ Ms. Johnson administered Developmental Test of Visual Perception-A (DTVP-A) which showed Student in the average range in the areas of vision motor integration, vision perception,

¹⁰ Ms. Johnson has a Masters in occupational therapy. She has been a school based therapist since 2005.

and motor-reduced visual perception. The DTVP-A was similar to Dr. Janiuk's May 2011 evaluation. The team discussed the results of the assessment and determined that a vision therapy assessment would not be required as Student scored in the average range in DTVP-A.

ARCH ACADEMY

49. Student did not receive any educationally related services following the end of school year 2012-2013 when Mother enrolled her at Arch Academy. Student attended Arch Academy for three weeks during October 2013. The Arch Academy student body totals between 12 and 18 students. The school is located in an industrial area and contains two classrooms. There is one student in each of the sixth and seventh grades, three students in the eighth grade, and between nine and 12 students in grades nine through twelve. Arch Academy students work on one subject at a time during three, one hour periods per day. Each subject is divided into modules. While not in class, students may be in small groups doing course work. Physical education requirements are met by a morning swim program. Arch Academy specializes in educating students with drug and behavioral problems. It uses a 12-step program similar to that used by Narcotics Anonymous. One of Student's teachers, Domenic Manente, Arch Academy's sole general education teacher, stated that Student had completed seven of the 20 modules in biology with a grade of 84 percent. Student required more prompting than other students. Mr. Manente stated that Student would sit there and blend in if not prompted to do her work.

NORTH COUNTY ACADEMY

50. Student seeks as a remedy joint placement at North County Academy (NCA) and MHHS. NCA is operated by the North Coastal Consortium for Special Education (NCCSE) and is designed to be a therapeutic environment with mental health

services available throughout the entire day for its students. NCA educates students who have significant emotional and behavioral needs so that they cannot function on a general education campus. Gayle Patterson is an NCCSE program specialist who processes the applications referred by school districts to NCA. Ms. Patterson termed NCA students as overtly aggressive who are placed at NCA to prevent them from harming themselves or others, including both peers and staff. Since Student is not a child with significant emotional and behavioral needs, NCA is not an appropriate placement for her.

EXPERT TESTIMONY

District's Experts

51. Based on assessments including observations and interviews with Student and Mother, Ms. Holcomb, Ms. Leigh, and Ms. Morrison all opined that Student did not require one-to-one full time instruction to access the curriculum at a public high school. Ms. Holcomb characterized Student's skills as better than most students attending a mild/moderate special day class. Both stressed that Student would require supports, such as those contained in the May 3, 2013 IEP. Student did not offer any testimony to dispute this. Ms. Goodwiler noted that Student had made progress on her social skills during the 2012-2013 school year, as she made gains in structured one-to-one social situations with adults. By attending MHHS, Student would be able to practice and generalize her social skills in natural and novel settings with same aged peers and nondisabled peers. Ms. Holcomb pointed out that participating in the Circle of Friends and Link In programs would be beneficial to her socially. As Student became more comfortable at MHHS, Ms. Holcomb pointed out that there would be numerous social opportunities for Student at MHHS including pep rallies, team games, clubs, theatre, and student store. Additionally, Student would be able to have the benefit of transition

planning and workability program. Ms. Holcomb noted that Student would have to transition back to a school environment from not being in school. She opined that this will be a difficult transition. It was advantageous for Student to do a single transition to MHHS in lieu of transitioning to an NPS and then to MHHS. Ms. Holcomb and the other District IEP team members felt that the transition plan was appropriate and that Student would receive educational benefit not only academically but, more importantly, in the areas of socialization and language pragmatics by being exposed to peers, including nondisabled peers. Ms. Holcomb and Ms. Morrison both conducted assessments and observed Student during the assessment and also in class at Banyan Tree. Ms. Holcomb interviewed Student's teachers and her SLP at Banyan Tree and was aware of Student's education history and past assessments. Student offered no evidence that the triennial assessment was not appropriate. The District assessors understood Student's unique needs and how those needs could be met at MHHS. Thus, the ALJ gave great weight to their opinions.

Student's Expert

52. Christine Wyeth testified as an expert on behalf of Student. Ms. Wyeth possesses a B.A. and an M.A. in psychology, another M.A. in school psychology, a certification as a school psychologist from New York and California, and is also a California licensed educational psychologist. Since 2010, she is the owner of Kids in Harmony which conducts psychoeducational, educational, behavioral, and social-emotional assessments. Ms. Wyeth has been a school psychologist since 2000. Ms. Wyeth was retained to determine which of two potential placements for Student, MHHS and Arch Academy would be most appropriate for Student. Ms. Wyeth met with Student for a one hour period on November 18, 2013. She also only reviewed Student's last annual IEP, the most recent triennial assessment, and interviewed Mother. Ms. Wyeth did not interview any of Student's teachers or service providers. Based on her one hour

with Student, Ms. Wyeth opined that Student exhibited a “middle school maturity,” and she was not complex in her ability to communicate.

53. In her January 14, 2014 written report, Ms. Wyeth notes that Student attended nonpublic schools at Sierra, Winston, and Banyan Tree, although Student had attended seven such schools. Ms. Wyeth observed Arch Academy for one hour on November 18, 2013 which included a campus tour. Ms. Wyeth did not observe Student at Arch Academy. Ms. Wyeth visited MHHS also on November 18, 2013 for one hour. Her observations at MHHS were during lunchtime. She noted that the special education class comprised 12 to 15 students. She observed a physical education class which numbered about 60 students with two coaches. Ms. Wyeth noted that Student would rotate classrooms for her academic classes and that the classes would allow her to earn high school credits towards college. She did not report that all the classrooms would be in the immediate area of Student’s homeroom in the Yellowstone pod. Ms. Wyeth failed to interview any special education teachers.

54. Ms. Wyeth did not take exception to the triennial assessment conducted by District. Ms. Wyeth opined that the District should not have placed Student at MHHS without conducting some sort of assessment to determine if Student was ready to make such a transition after being out of a school environment for three months. Interestingly, Ms. Wyeth testified that she did not need to conduct any additional testing to reach her opinion as she relied on interviews with Student and Mother as well as two rating scales administered by Ms. Holcomb.

55. Ms. Wyeth opined that Arch Academy was the appropriate placement for Student as it offers a therapeutic environment with individual and group counseling services built into the school day. She also cited that the school environment had a positive group dynamic which would result in building Student’s self-esteem and developing appropriate social skills. Ms. Wyeth offered no evidence to support this

opinion. She opined, without explanation, that the one-to-one instruction with one subject at a time would help Student become more independent and successful. Ms. Wyeth did not offer any observations as to the make-up of the Arch Academy student body, which is comprised of students with significant drug and behavioral problems. She offered no opinion as to whether the triennial assessments results indicated that Student did or did not require full time individual instruction to access the curriculum. Ms. Wyeth also failed to address whether Student would be able to receive educational benefit, including academically and socially, at MHHS. Thus, the ALJ was not able to give great weight to her opinion.

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA¹¹

1. This hearing was held under the IDEA, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et seq.; 34 C.F.R. § 300.1 et seq.; Ed. Code, § 56000, et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational

¹¹ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below. All references to the Code of Federal Regulations are to the 2006 version, unless otherwise noted.

standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; Cal. Code Regs., tit. 5, § 3001, subd. (p).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).) Related services include speech and language services and other services as may be required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26)(A); Ed. Code, § 56363, subd. (a); *Irving Independent School Dist. v. Tatro* (1984) 468 U.S. 883, 891 [104 S.Ct. 3371, 82 L.Ed.2d. 664]; *Union School Dist. v. Smith*, (9th Cir. 1994) 15 F.3d 1519, 1527.) Related services shall be provided "when the instruction and services are necessary for the pupil to benefit educationally from his or her instructional program." (Ed. Code, § 56363, subd. (a).)

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

4. In *Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs. *Rowley* expressly rejected an

interpretation of the IDEA that would require a school district to “maximize the potential” of each special needs child “commensurate with the opportunity provided” to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to “confer some educational benefit” upon the child. (*Id.* at pp. 200, 203-204.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.]) Although sometimes described in Ninth Circuit cases as “educational benefit,” “some educational benefit,” or “meaningful educational benefit,” 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. 950, fn. 10.)

5. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 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, § 56505, 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]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].)

DID THE DISTRICT COMMIT PROCEDURAL VIOLATIONS?

6. There are two parts to the legal analysis of a school district's compliance with the IDEA. First, there is the determination whether a district has complied with the procedures set forth in the IDEA. (*Rowley, supra*, 458 U.S. at pp. 206-207.) Second, there is the decision whether the IEP developed through those procedures was designed to meet the child's unique needs, and was reasonably calculated to enable the child to receive educational benefit. (*Ibid.*) A procedural violation constitutes a denial of FAPE only if it impeded the child's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the child, or caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E); Ed. Code, § 56505, subds. (f) and (j); see also, *W.G. v. Board of Trustees of Target Range School District No. 23* (9th Cir. 1992), 960 F.2d 1479, 1483-1484 (*Target Range*); *Rowley, supra*, 458 U.S. at p. 200.)

Laws Relating to Parent Participation in the IEP Process

7. The development of an IEP is a collaborative activity accomplished by an IEP team convened by the school district. A parent is an integral and required member of the IEP team. (20 U.S.C. § 1414(d)(1)(B)(i); 34 C.F.R. § 300.321(a)(1); Ed. Code, § 56341, subd. (b)(1).) A school district is required to conduct, not just an IEP team meeting, but also a meaningful IEP team meeting. (*Target Range, supra*, 960 F.2d at p. 1485; *Fuhrman v. East Hanover Bd. of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1036 (*Fuhrmann*).) The standard for "meaningful participation" is an adequate opportunity to participate in the development of the child's IEP. (*Ms. S. ex rel. G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133 (*Vashon*).)

8. In determining educational placement, a school district must ensure that the placement decision is made by a group of persons including the child's parents. (34

C.F.R. § 300.116 (a)(1); see also 34 C.F.R. §§ 300.327 and 300.501(c).) Parents must have the opportunity “to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(1).) In this regard, an educational agency must ensure that one or both of the parents of a child with a disability is present at each IEP team meeting. (34 C.F.R. § 300.322(a); Ed. Code, §§ 56341.5, subd. (a), 56342.5.) The United States Supreme Court has recognized that parental participation in the development of an IEP is the cornerstone of the IDEA. (*Winkelman v. Parma City School Dist.* (2007) 550 U.S. 516, 524 [127 S.Ct. 1994, 167 L.Ed.2d 904]. Parental participation in the IEP process is also considered “(a)mong the most important procedural safeguards.” (*Amanda J. ex rel Annette J. v. Clark County School District* (9th Cir. 2001) 267 F.3d 877, 882.)

9. Parents have meaningfully participated in the development of an IEP when they are informed of their child’s problems, attend the IEP meeting, have an opportunity to express their disagreement regarding the IEP team’s conclusions, and request revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693 (*Knox*)). An adequate opportunity to participate can occur when parents engage in a discussion of the goals contained in the IEP. (*J.G. v. Briarcliff Manor Union Free School Dist.* (S.D.N.Y 2010) 682 F.Supp.2d 387, 394.) A parent who has an opportunity to discuss a proposed IEP, and whose concerns are considered by the IEP team, has participated in the IEP development process in a meaningful way. (*Fuhrmann, supra*, 993 F.2d at p.1036.)

HOLDING THE JANUARY 14, 2013 IEP TEAM MEETING AFTER MOTHER LEFT

10. Student contends that the District committed a procedural violation of the IDEA by not stopping the January 14, 2013 IEP meeting after Mother left the meeting. Student contends that the District was obligated to cease the meeting when Mother

objected to the presence of Ms. Harlan and then Dr. Frampton, who represented Banyan Tree and had formerly advised Mother. Student also avers that the District should have tried to ensure Mother's attendance by contacting her after she left; or in the alternative, continuing the meeting. The District contends that it met its obligations because it was prepared to discuss placement options and review the triennial assessment results at the meeting. The District also contends that Mother has no right to demand that certain persons not attend an IEP meeting.¹²

11. A similar problem occurred in *L.S. v. Newark Unified School District* (N.D. Cal. 2006) 2006 WL 1390661 (*L.S.*). In *L.S.*, the student's parents left an IEP meeting prior to the discussion of placement. The student contended that the District continuing the IEP meeting in their absence amounted to a violation of their right to meaningful participation in the IEP decision making process. The District Court ruled that the school district did not commit a procedural violation: "However, rather than waiting to hear what the District had to say on the question of placement, L.S.'s parents chose to leave

¹² In her closing and rebuttal briefs, Student contends that the attendance of Ms. Harlan and Dr. Frampton were not included on the IEP meeting notice and that the District failed to provide Mother with a prior written notice of the offered placement at Excelsior. Neither of these issues was raised in the due process request, the prehearing conference statement, or at either of the two prehearing conferences. These issues were not raised until the filing of the closing brief. Because these issues were not raised timely, the ALJ will not address either in this Decision. A party who requests a due process hearing may not raise issues at the hearing that were not raised in the request, unless the opposing party agrees otherwise. (20 U.S.C. § 1415(f)(3)(B); Ed. Code § 56502, subd. (i); *County of San Diego v. California Special Education Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1465.)

the meeting before the parties had an opportunity to engage in that discussion. The Court finds no fault on the District's part in continuing the hearing." In *K.E. ex rel. K.E. v. Independent School District No. 15* (8th Cir. 2011) 647 F. 3d 795, 806 (*K.E.*), the court also found no procedural violation after parents walked out of an IEP meeting which continued without their presence by noting that where a parent has truncated her own procedural right to contribute to the development of an IEP, the District is not at fault. (See also, *L.I. v. Hawaii Department of Education* (D. Haw. 2011) 2011 WL 6002623.)

12. Student's case can be distinguished from *Doug C. v. Hawaii Department of Education* (9th Cir. 2013) 720 F.3d 1038. In *Doug C.*, the school district refused to postpone a student's annual IEP meeting when parent was unable to attend because of illness. The District cited the need to meet the timelines for holding student's annual meeting. The Ninth Circuit rejected the state's argument that it needed to hold the meeting so as not to exceed timelines for holding student's annual IEP meeting. Here, unlike *Doug C.*, Mother was in attendance and voluntarily walked out of the meeting.

13. The Ninth Circuit in *Doug C.* also recognized that in some circumstances accommodating a parent's schedule would do more harm than good and that in those types of circumstances it was permissible for the educational agency to hold a meeting without parent in attendance. (720 F.3d at 1046-1047.) The example the *Doug C.* court gave was when a student, on an IEP is new to the school district. (*Ibid.*) In the instant matter, a similar circumstance was encountered. District had a pressing need to conduct and complete an IEP team meeting as Banyan Tree dismissed Student and she would be without a school placement within two weeks. Thus, this situation meets the exception cited by the Ninth Circuit.

14. Mother initially attended and had an opportunity to participate in the complete January 14, 2013 IEP meeting, but she chose not to. Here, Mother, like the parents in *L.S.*, left the January 14, 2013 IEP meeting voluntarily. Mother chose not stay

and participate in the meeting. She demanded the meeting adjourn and when Ms. Leigh stressed the importance of the meeting in an effort to have Mother stay, she walked out of the meeting. The District does not control who attends an IEP meeting for a NPS. Mother could have stayed and presented her objection to the attendance of Dr. Frampton, who did leave the meeting.. Mother's failure to participate was a result of her own actions. Additionally, the District offered to meet with Mother either informally or in another IEP meeting. As in *L.S.*, the District was not at fault in continuing the meeting following Mother's exit.

Failure to Review the Triennial Assessment with Mother at the
January 14, 2013 IEP

15. Student contends that the District committed a procedural violation by its failure to review the results of the triennial assessment with Mother at the January 14, 2013 IEP meeting.

16. Had Mother not departed the January 14, 2013 meeting, she would have been present at the triennial assessment review by the assessors. Additionally, Mother was provided a draft copy of the written psychoeducational assessment report prior to the meeting. At Mother's request, the final report included a section on Student's progress to meeting her annual IEP goals. The District made attempts to schedule another IEP meeting following the January 14, 2013 meeting, which was unsuccessful due to Mother's refusal to schedule a meeting until the time of the annual IEP meeting. At the May 3, 2013 meeting, the result of the assessments was discussed in the setting of present levels of performance and goal baselines. Thus, Student has failed to meet her burden of demonstrating that Mother was deprived of the right to meaningful participate in the IEP decision making process or that Student was deprived of educational benefit.

Failure to Consider Alternative Placements

17. Student contends that Mother's right to meaningful participation in the IEP decision making process was infringed by the District at the March 26, 2012, May 23, 2012, and January 14, 2013 IEP meetings when the IEP teams (1) predetermined placement at the May 3, 2013 IEP meeting, and (2) failed to discuss alternative placement locations at the March 26, 2012, May 23, 2012, and January 14, 2013 IEP's. District denies Student's allegations.

18. Student contends that the District failed to present the available options on the continuum of placements at the May 23, 2012 and January 14, 2013 IEP meetings.

19. The Fifth Circuit held that parents "are afforded input as to the determination of the general characteristics of an appropriate educational placement, they cannot summarily determine a specific placement." (*Weill v. Board of Elementary and Secondary Education* (5th Cir. 1991) 931 F.2d 1069,

MAY 23, 2012 IEP MEETING

20. The May 23, 2012 IEP team did discuss and review alternative placement options. Prior to the March 26, 2012 meeting, Mother demanded that Student receive all instruction at Winston on a one-to-one basis and complained that Student did not have sufficient social interactions with peers. At the March 26, 2012 IEP meeting, Winston stated that it could not meet Mother's demands for a higher level of one-to-one instruction and other demands. Winston cited Mother's intensive involvement in IEP and daily activities as reasons for Winston no longer being a placement option for Student. District, at Mother's request, agreed to place Student at Banyan Tree on a trial basis until the end of the Spring 2012 semester. At the annual meeting on May 23, 2012, the IEP team reviewed Student's present levels of performance and her progress on her annual goals. The team also discussed transitioning Student to the least restrictive environment

at a public school campus, but the team determined that at that point of time that Banyan Tree was the appropriate setting.

JANUARY 14, 2013 IEP MEETING

21. The evidence demonstrates that the District did consider alternative placements and settings at the January 14, 2013 meeting. The purpose of the January 14, 2013 IEP meeting was to discuss the triennial assessment results and to determine another educational setting for Student after Winston dismissed her. The IEP team reviewed the triennial assessment and determined that the annual IEP of May 23, 2012 should not be altered. The team reviewed Student's assessments and concluded that there was not a significant discrepancy between Student's functioning and her cognitive ability and that she possessed similar skills as other mild/moderate students attending MHHS. Based on Student's performance at Banyan Tree, results of Banyan Tree's Pace screening evaluation, and the triennial assessment results, the IEP team determined that Student did not require one-to-one instruction to access the curriculum and to receive educational benefit. The team also examined whether placement at a special day class at MHHS was appropriate at that time and decided it was not. Accordingly, the FAPE offer was for placement at Excelsior so that Student would get exposure to peer interaction and group settings as a step to being enrolled in the high school setting, which would be the least restrictive environment.

Failure to Have all Mandatory Members at the August 28, 2013 IEP Meeting

22. Under the law, an IEP team must be composed of the following persons: (1) the parents of a child with a disability; (2) "not less than 1 regular education teacher of such child (if the child is, or may be, participating in the regular education environment);" (3) not less than one special education teacher of the child; (4) a

representative of the educational agency who is qualified to provide or supervise the provision of specially designed instruction for the child, who is knowledgeable about the general education curriculum, and who is knowledgeable about the availability of resources of the agency; 5) an individual who can interpret the instructional implications of evaluation results; and 6) at the discretion of the parents or educational agency, other individuals who have knowledge or special expertise regarding the child. (20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. § 300.321(a); Ed. Code, § 56341, subd. (b).)

23. The Ninth Circuit has held that regular education teachers often play a central role in the education of children with disabilities. (*M.L. v. Federal Way School District* (9th Cir. 2005) 394 F.3d 634, 643 (*M.L.*)) The *M.L.* court found that the “plain meaning of the terms used in section 1414(d)(1)(B) compels the conclusion that the requirement that at least one regular education teacher be included on an IEP team, if the student may be participating in a regular classroom, is mandatory - not discretionary.” (*M.L., supra*, 394 F.3d at p. 643.) In the case of *R.B. v. Napa Valley Unified School Dist.* (9th Cir, 2007) 496 F.3d 932), the Ninth Circuit determined that it is only necessary for a general education teacher who has instructed the child in the past or who may instruct the child in the future to be present. (*Id.* at pp. 938-940.)

24. The District did not commit a procedural violation at the August 28, 2013 IEP meeting. There is no evidence that Parent’s right to meaningfully participate in the IEP decision making process was infringed or Student was deprived of educational benefit by the failure to have a general education teacher who taught Student. Ms. Leigh possesses general education elementary and secondary school teaching credentials and had taught for 14 years. Because Student had not been in general education classes prior to the meeting, the District could not have in attendance a general education teacher who had instructed her. Thus, the District had met its burden

to demonstrate that there was not a substantive procedural violation since Ms. Leigh was a general education teacher.

DID THE DISTRICT DENY STUDENT A FAPE?

25. The Student, in her complaint, contends that the District failed to provide her a FAPE at the IEP meetings of March 26, 2012, May 23, 2012, January 14, 2013, and May 3, 2013 because of a failure to provide Student with appropriate placement and services. In its complaint, the District contends that the FAPE offer contained in the annual IEP of May 3, 2013, as amended on the August 28, 2013 IEP meeting constituted a FAPE.

26. Federal and state special education law require generally that the IEP developed for a child with special needs contain the present levels of the child's educational performance and measurable annual goals, including benchmarks or short-term objectives, related to the child's needs. (20 U.S.C. § 1414 (d)(1)(A)(ii); Ed. Code, § 56345, subd. (a).) The purpose of goals and measurable objectives is to permit the IEP team to determine whether the pupil is making progress in an area of need. (Ed. Code, § 56345.) In developing the IEP, the IEP team shall consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial evaluation or most recent evaluation of the child and the academic, functional, and developmental needs of the child. (20 U.S.C. § 1414(d)(3)(A); Ed. Code § 56341.1, subd. (a).) The IEP team also must consider special factors, such as whether the child needs assistive technology devices and services. (20 U.S.C. § 1414(d)(3)(B); 34 C.F.R. § 300.324(a)(2); Ed. Code, § 56341.1, subd. (b).) For each area in which a special education student has an identified need, the IEP team must develop measurable annual goals that are based upon the child's present levels of academic achievement and functional performance, and which the child has a reasonable chance of attaining within a year. (Ed. Code, § 56344.)

27. There is no one test for measuring the adequacy of educational benefits conferred under an IEP. (*Rowley, supra*, 458 U.S. at pp. 202, 203, fn. 25.) A student may derive educational benefit under *Rowley* if some of his goals and objectives are not fully met, or if he makes no progress toward some of them, as long as he makes progress toward others. A student's failure to perform at grade level is not necessarily indicative of a denial of a FAPE, as long as the student is making progress commensurate with his abilities. (*Walczak v. Florida Union Free School Dist.* (2d Cir. 1998) 142 F.3d 119; *E.S. v. Indep. School Dist., No. 196* (8th Cir. 1998) 135 F.3d 566, 569; *In re Conklin* (4th Cir. 1991) 946 F.2d 306, 313; *M.H. v. Monroe-Woodbury Central School Dist.* (S.D.N.Y. March 20, 2006, No. 04-CV-3029-CLB) 2006 WL 728483, p. 4; *Houston Indep. School Dist. v. Caius R.* (S.D.Tex. March 23, 1998, No. H-97-1641) 30 IDELR 578; *El Paso Indep. School District v. Robert W.* (W.D.Tex. 1995) 898 F.Supp. 442, 449-450.) A child's academic progress must be viewed in light of the limitations imposed by his or her disability and must be gauged in relation to the child's potential. (*Mrs. B. v. Milford Board of Education* (2d Cir. 1997) 103 F.3d 1114, 1121.)

28. In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (See *Gregory K. 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*; see also, *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 p. 207.) In considering the substance of an educational plan, "(T)he test is whether the IEP, taken in its entirety, is reasonably calculated to enable the particular child to garner educational benefits." (*Lessard v. Wilton-Lyndeborough Cooperative School Dist.* (1st Cir. 2008) 518 F.3d 18, 30 (italics added) (*Lessard*); see also *T.Y. v. New*

York City Department. of Education (2nd Cir. 2009) 584 F.3d 412, 419 [judging the “IEP as a whole”].) 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 of educational services and/or placement 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).)

29. In *Rowley*, the United States Supreme Court addressed the level of instruction and services that must be provided to a student with disabilities to satisfy the requirements of the IDEA. Under *Rowley*, and federal and state statutes, the standard for determining whether a district’s provision of services substantively and procedurally provided a FAPE involves four factors: (1) the services must be designed to meet the student’s unique needs; (2) the services must be reasonably designed to provide some educational benefit; (3) the services must conform to the IEP as written; and (4) the program offered must be designed to provide the student with the foregoing in the least restrictive environment. While this requires a school district to provide a disabled child with meaningful access to education, it does not mean that the school district is required to guarantee successful results. (20 U.S.C. § 1412(a)(5)(A); Ed. Code, § 56301, *Rowley*, *supra*, at p. 200.) The IDEA does not require that school districts provide special education the best education available or to provide instruction designed to maximize a student’s abilities. (*Rowley*, 458 U.S. at p. 198.) It does require school districts to provide a “basic floor of opportunity” that consists of access to specialized educational benefit to the student. (*Id.*, at p. 201; *J.L. v. Mercer Island*, *supra*, 592 F.2d at 947.)

30. Federal and state laws require LEA’s to provide a program in the least restrictive environment to each special education pupil. (Ed. Code, §§56031; 56033.5; 34 C.F.R. § 300.114.) A special education pupil must be educated with nondisabled peers to the maximum extent appropriate and may be removed from the regular education

environment only when the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412 (a)(5)(A); 34 C.F.R. § 300.114(a)(2); Ed. Code, § 56031.) However, if it is determined that a child cannot be educated in a general education environment, as has been done here, then the analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (*Daniel R.R. v. State Board of Education* (5th Cir. 1989) 874 F.2d 1036, 1050.) In *James D. v. Board of Education of Aptakisic-Tripp Community Consolidated School District* (N.D. Ill. 2009) 642 F.Supp.2d 804, 832-833, the District Court held that if a student could receive a satisfactory education in a public school placement, while spending 30 percent of his school placement with typical peers, then placement in a private therapeutic day school was inappropriate because it was not the least restrictive environment.

March 26, 2012 IEP

31. Student contends that the District failed to provide an appropriate placement at the March 26, 2012 IEP because Banyan Tree could not materially implement the speech and language services contained in the February 13, 2012 IEP as it failed to provide 30 minutes of group speech services.

32. A material failure to implement an IEP violates the IDEA. (*Van Duyn v. Baker School District* (9th Cir. 2007.) 502 F.3d 811, 823 (*Van Duyn*.) A material failure to implement an IEP occurs when there is more than a minor discrepancy between the services provided and the services required by a child's IEP. (*Van Duyn*, 502 F.3d at 85, 826.) In an earlier case, the Fifth Circuit noted that a *de minimis* failure to implement all elements of the IEP does not constitute a violation of the IDEA. (*Houston Independent School District v. Bobby R.* (5th Cir. 2000) 200 F.3d 341, 349 (Not providing one hour a week of speech therapy for two months was a *de minimis* failure to implement).) The *Van Duyn* court noted that in doing an analysis of whether a failure to implement is material,

it is permissible to take into account the progress or lack of progress made by the child resulting from the failure. (*Van Duyn*, 502 F.3d at 823.)

33. There is no dispute that Student has deficits in the area of speech pragmatics/social skills. The February 13, 2012 IEP contained an annual goal to address this deficit along with speech and language services which included 45 minutes of individual speech and 30 minutes of group speech services. These services were based upon Student being in the educational setting of Winston. After Mother's disputes with Winston and Winston's dismissal of Student, Mother worked with Student's program specialist, Ms. Harris, to find a new setting. The District agreed to place Student at Banyan Tree per parental request. At the time of her request, Mother had observed and conferred with Banyan Tree and was aware that Banyan Tree offered limited opportunities for peer interaction as it comprised seven to ten students total in elementary through high school. Mother's March 16, 2012 email indicated that she was aware of this limitation when she insisted that Student required individual full time instruction and that the social aspects of her program could be done after school.

34. Because of the inability to provide speech services as called for in the February 13, 2012 IEP, Banyan Tree provided one hour of individual speech sessions in lieu of the 45 minutes individual and 30 minutes group sessions in the IEP.

35. The evidence fails to demonstrate that District failed to implement the February 13, 2012 IEP. Banyan Tree did fail to provide group speech but this was not a material breach of the February 13, 2012 IEP. As to the March 26, 2012 IEP, Student's placement at Banyan Tree was a trial placement from April 1, 2012 through the May 23, 2012 IEP meeting. During that approximate six week period, Student received one hour of individual speech therapy, which included an additional 15 minutes of individual speech-as opposed to 30 minutes of group speech. Student offered no evidence to demonstrate that Student's receiving an additional 15 minutes of individual

speech therapy, as compared to the benefit of a 30 minutes group session each week for less than two months, caused her to regress or not make sufficient progress on making her pragmatics goal. The evidence demonstrated that Student was able to meet her October 23, 2012 benchmark in her pragmatics goal.

May 23, 2012 IEP

36. Student has failed to meet her burden to show that the District failed to provide her a FAPE in the May 23, 2012 IEP in the area of pragmatic speech and social skills. Student contends that the District has failed to provide her a FAPE in the May 23, 2012 IEP because Banyan Tree could not appropriately offer the pragmatic/social skills component of her IEP as Student was not provided with group speech services. Student offered no evidence to support her position. The IEP team took into account the limitations of Banyan Tree, an educational setting requested by Student, to supply group speech, by providing individual speech therapy twice per week for a total of 90 minutes. As stated above, Ms. Holcomb, in the triennial assessment report, and Banyan Tree, in its October 21, 2012 report, stated that Student had met her pragmatics goal's October 23, 2012 benchmark. Thus, the evidence demonstrates that the Student received educational benefit in the area of speech pragmatics/social skills.

January 14, 2013 IEP

37. Student contends that the offered setting, Excelsior, failed to comply with the IEP then in effect as it Excelsior did not offer full time one-to-one instruction. Additionally, Student contends that the January 14, 2013 IEP did not provide appropriate speech and language services as it did not provide a small group setting with one-to-one instruction.

38. The District contends that Excelsior meets the requirements of the May 23, 2012 IEP which required a small group setting and one-to-one direct instruction

in a NPS. Additionally, the District contends that there is no evidence that Student required one-to-one full time instruction based on the triennial assessment.

39. The evidence clearly shows that the January 14, 2013 IEP provided Student with appropriate placement and services to meet her unique needs. The IEP team reviewed the triennial assessment which included Student's academic, developmental, and functioning levels, determined Student's areas of strength and need, and took into account Mother's concerns. The team determined that she did not require one-to-one full time instruction to access the curriculum. The team noted in that there was not a significant discrepancy between Student's ability and her academic performance. Ms. Morrison and Ms. Holcomb identified Student as meeting the profile of the students in the MHHS mild/moderate special day classes. The team also reviewed Student's progress on her annual goals and determined that she had made progress on meeting the majority of her goals, although she had not yet met the May 23, 2012 annual goals.

- (a) The team designed the IEP placement, services, and setting to meet Student's unique needs. The team reviewed the assessment results to determine Student's needs, had the input of her then setting, Banyan Tree, then determined services and goals based on that information before deciding the proper placement.
- (b) The FAPE offer was designed to provide Student educational benefit. The assessment, as well as past assessments and performance, clearly demonstrated that Student required more group opportunities with peers, including non-disabled peers, to overcome her deficits caused by her autism and her speech deficits. Academically, the team was of the opinion that she did not require full time individual instruction to access the curriculum.
- (c) The team continued services, especially speech and language, in conformity to the then current IEP after considering her needs and the assessment results.

As to Excelsior, it offered small classes with one-to-one instruction available as needed. The IEP called for “a small group setting and 1:1 direct instruction in an NPS.” Excelsior could provide this.

(d) The team also designed the FAPE offer to be in the least restrictive environment. The May 23, 2012 IEP placed Student in a restrictive environment where she received individual instruction full time and had little, if any, contact with peers since Banyan Tree had only seven to ten students. In addition, Mother and Student refused to participate in the few opportunities to have peer interactions. Basically, Student’s program, as described in the Banyan Tree director’s December 19, 2012 letter, had been reduced to nothing more than a tutoring program. In attending Excelsior, Student would have an opportunity to engage in peer interaction in and out of the classroom. Excelsior was designed by the team to be a transition placement which would permit Student to re-experience learning inside a classroom in order to get prepared for attending a comprehensive public high school campus.¹³

May 3, 2013 IEP and August 28, 2013 IEP Meetings

40. The evidence demonstrates that the May 3, 2013 IEP, as amended on August 28, 2013, provides Student with a FAPE in the least restrictive environment.¹⁴ In

¹³ In her closing brief, Student admits she needs to attend a comprehensive public high school. Student characterizes the primary issue as being “whether [Student] has the necessary academic and social/emotional skills to successfully navigate a comprehensive high school at this time or not.” (Student’s closing brief, p. 1.)

¹⁴ Student does not dispute that Student would benefit from placement at MHHS. During the hearing, Student moved to amend the remedy being requested. Originally,

examining the appropriateness of an IEP, as stated above, the focus is on the adequacy of District's proposed program and whether the IEP, taken in its entirety, is reasonably calculated to enable the pupil to receive some education benefit. (*See, Legal Conclusion 39.*) Student's deficit areas were visual processing speed, auditory memory, executive functioning, inattention, and poor social skills. As discussed above, Student did not require one-to-one instruction. Student did require being in special day class, where she could be given supports, to permit her to access the curriculum due to her deficits in visual processing speed, auditory memory, executive functioning, and inattention. Student required to be exposed to social situations with peers, including nondisabled peers, to generalize the pragmatic language skills she was attempting to master in her speech and language therapy sessions.

GOALS AND ACCOMMODATIONS

41. The IEP team determined Student's unique needs by reviewing the triennial assessment and examining her progress on the prior IEP annual goals to adopt 14 goals in the areas of typing, ninth grade-reading (two goals relating to comprehension), eighth grade-writing (editing), ninth grade-writing (organization and paragraph construction), seventh grade mathematics (addition, subtraction, multiplication, and division), eighth grade-mathematics (multi-step linear and word problems), vocabulary, pragmatic language-prosody, pragmatic language-topic shifting,

Student sought placement at Arch Academy. Student now seeks dual enrollment at NCA and MHHS. This undercuts the opinion of Ms. Wyeth that Student was not prepared to attend a program at a comprehensive public school campus. Also, the ALJ finds that NCA, which is operated by NCCSE and designed to educate students with significant emotional and behavioral needs, would not be appropriate for Student as she does not have such needs.

pragmatic language-perspective, expressive language, social/emotional (encountering new or unfamiliar situations in group situations), and self-regulation (to stay focused and pay attention).¹⁵ Student offered no evidence that the goals and accommodations were not appropriate to meet Student's needs.

PLACEMENT AND TRANSITION PLAN

42. The District's offer of placement and services at the May 3, 2013 IEP was appropriate. The team placed Student in a mild/moderate special day class with a regular physical education class. There can be no dispute that Student's social deficits require her to be exposed to peers, especially nondisabled ones, so as to practice and generalize the skills she works on in her speech and language therapy sessions. Mother complained that Student did not have sufficient opportunities to be in group settings at her last two nonpublic schools. Student's participating in volleyball, acting classes, ballet, ice skating, and overnight camp indicate that Student would be socially able to navigate the MHHS campus with support. At MHHS, Student will be able to participate in programs such as Circle of Friends, Link Crew, school rallies as well as opportunities to join clubs where she will have opportunities to have social contact with nondisabled peers. Student's academic profile matched those in the mild/moderate classes. Ms. Holcomb opined that Student's skills were better than most students in those classes. Student's expert, Ms. Wyeth, offered no contrary opinion. Additionally, Student's out of school participation in the YMCA, acting classes, overnight camp, ballet, and ice skating demonstrate that she would be able to handle the transition to MHHS on a social level.

43. Student contends that the District should have placed Student in a NPS as a transition to eventual placement at MHHS. Student points to the January 14, 2013 IEP

¹⁵ Student has not contended nor offered any evidence to demonstrate that the present levels of performance and goals and baselines were not appropriate.

as offering to place Student at Excelsior as a transition prior to placing her at MHHS. Ms. Wyeth opines that the District should have conducted a new assessment to determine if Student was ready to attend a comprehensive campus because she had not been attending any school since February 1, 2013, when Mother kept her home. Ms. Wyeth did not state how that assessment should have been conducted, what areas it should have covered, nor how would this new assessment be different than the triennial assessment. Interestingly, Ms. Wyeth did not feel the need to assess Student to render her opinion. The District assessors and Ms. Goodwiler opined that it was appropriate to transition Student directly to MHHS due to Student being required to do a difficult transition to any new placement. Transitioning directly to MHHS would force only a single transition as opposed to two if Student would be placed at a NPS for a short time. The ALJ gave little weight to Ms. Wyeth's opinions as she was not as knowledgeable with Student as the District's assessors. On the other hand, the ALJ gave great weight to the opinions of Ms. Holcomb, Ms. Goodwiler, and Ms. Morrison. Ms. Holcomb and Ms. Morrison spent considerable time conducting their assessments and were very knowledgeable as to Student's strengths and deficits and the programs offered at MHHS and how these may assist Student. Student offered no evidence to demonstrate that Student would not receive educational benefit if placed at MHHS.

44. Student offered no evidence that the transition plan proposed by the IEP team was not appropriate. The transition plan called for Student to go on a tour of the campus, to meet her teachers in their classrooms prior to starting at MHHS, a counselor or staff member would be assigned to monitor Student daily throughout the school year, aide support throughout the day, participate in the Link Crew, train on the Solo program, and a pass to see the school psychologist at any time Student felt the need. This is in addition to Student being permitted to be dropped off and picked up directly at the Yellowstone pod.

VISION THERAPY ASSESSMENT

45. Student contends that the IEP team should have provided Student with a vision therapy assessment by a developmental optometrist based on Student's history and an April 1, 2013 report by Ms. Dyson, a certified optometric vision therapist.

46. The evidence demonstrates that the decision by the IEP team to not provide Student with a vision therapy assessment was appropriate. Student relies on a Vision Therapy Report by Ms. Dyson. This report fails to establish a need for vision therapy as it did not contain any results of standardized tests or any other measurement as to Student's levels of performance. Ms. Dyson merely recommends that a vision therapy assessment be conducted by a developmental optometrist without stating why such assessment was needed. The psychoeducational assessment demonstrated that there was no discrepancy between Student's achievement and her ability. Even after denying Mother's request for a vision therapy assessment at the May 3, 2013 IEP, the team provided an occupational therapy assessment to include screening to determine if vision therapy assessment was warranted. The results of occupational therapy assessment were that Student was functioning in the average range. These results indicated that vision therapy was not an area of suspected disability at that time. Student offered no evidence that Student continued to have a need for, or needed to be further evaluated, for vision therapy.

ORDER

1. The District's May 3, 2013 IEP as amended by the August 28, 2013 IEP was appropriate and constituted a FAPE in the least restrictive environment. The District may implement the May 3, 2013 IEP as amended by the August 28, 2013 IEP.

2. Student's requests for relief are denied.

PREVAILING PARTY

Pursuant to Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. In accordance with that section the following finding is made: the District prevailed on all issues heard and decided in this consolidated case.

RIGHT TO APPEAL THIS DECISION

This Decision is the final administrative determination and is binding on all parties. (Ed. Code § 56506, 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: April 14, 2013

/s/

ROBERT HELFAND

Administrative Law Judge

Office of Administrative Hearings