

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2013100575

DECISION

Parent, on behalf of Student (Student) filed a due process hearing request with the Office of Administrative Hearings (OAH), State of California, on October 15, 2013, naming Irvine Unified School District (District). OAH continued the matter for good cause on December 2, 2013.

Administrative Law Judge Laurie Gorsline (ALJ) heard this matter in Irvine, California, on February 18, 19, 20, 24, 25, and 27, 2014.

Attorney Vanessa Jarvis and Attorney Amanda Selogie represented Student. Student's mother (Mother) attended each day of the hearing and Student's father (Father) attended the hearing on February 18, 19, and 27, 2014. Student did not attend the hearing. Attorney Alefia Mithaiwala represented District. Program Specialist Stacy Kredel, Executive Director Mark Miller, and Director of Special Education Erica Hawkes attended the hearing on behalf of District.

At the close of the hearing on February 27, 2014, the ALJ granted a continuance to March 17, 2014 for the parties to file written closing arguments. Upon receipt of the written closing arguments, the record was closed and the matter was submitted for decision.

## ISSUES<sup>1</sup>

1. Did District deny Student a free and appropriate public education (FAPE) in the least restrictive environment by offering a moderate/severe special day class for the 2012-2013 school year?
2. Did District deny Student a FAPE in the least restrictive environment by offering a moderate/severe special day class for the 2013-2014 school year?
3. Did District deny Student a FAPE for the 2013-2014 school year by failing to offer the same number of mainstreaming hours as Student received while attending Culverdale Elementary School (Culverdale) during the 2012-2013 school year?

## SUMMARY OF DECISION

Student contends that at all relevant times a mild/moderate classroom was appropriate and the least restrictive environment because he would have had access to a general education curriculum and the opportunity for modeling higher functioning peers in the areas of language, behavior, and social skills. Student also contends Student was denied a FAPE during the 2013-2014 school year because District did not offer the same amount of mainstreaming hours as Student received during a 13-week diagnostic placement in the 2012-2013 school year.

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<sup>1</sup> At hearing, Student's counsel stipulated that District's offer of FAPE for the 2011-2012 school year was not at issue, despite the allegations in the due process hearing request. Accordingly, the 2011-2012 school year is not addressed by this decision and the ALJ has reordered and revised the issues without changing their substance, for purposes of organizing the decision. 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 contends its offers of placement were appropriate because a moderate/severe placement conformed with Student's needs and IEP goals and that the 13-week diagnostic placement during the 2012-2013 school year demonstrated that the mild/moderate classroom was not appropriate for the 2013-2014 school year. District also argues that both special day classes are the same for purposes of determining the least restrictive environment because neither placement has typical students. District also contends Student was offered the same number of mainstreaming hours for the 2013-2014 school year he received in the diagnostic placement during the 2012-2013 school year.

Student failed to meet his burden of demonstrating District denied Student a FAPE by offering a moderate/severe special day class for the 2012-2013 and 2013-2014 school years. The preponderance of the evidence established that District's offers of placement in the moderate/severe classroom, with its structured program, slower pace, level of language, and other supports, were designed to meet Student's unique needs and was reasonably calculated to provide Student with some educational benefit in the least restrictive environment. Student also failed to meet his burden of proof of demonstrating District denied Student a FAPE for the 2013-2014 school year by failing to offer the same number of mainstreaming hours Student received in the diagnostic placement during the 2012-2013 school year. District's offer of FAPE for the 2013-2014 school year included the same number of mainstreaming hours as Student received during the diagnostic placement.

Student's request for relief is denied.

## FACTUAL FINDINGS

1. Student was seven years old at the time of hearing. At all relevant times, he lived with Parent within District boundaries. Student was eligible for special education as a student with autistic-like behaviors.

2. Student has been eligible for special education and related services since September 1, 2009.

3. Student attended preschool at the Early Childhood Learning Center from 2009 to 2011. Student's placement was in a moderate/severe classroom for the 2009-2010 and 2010-2011 school years. Beginning in July of 2010, Student also received in-home Applied Behavioral Analysis (ABA) services to address Student's severe attention difficulties. The ABA services were provided by ACES, a non-public agency. ABA is the science in which procedures derived from the principles of behavior are systemically applied to improve socially significant behavior to a meaningful degree and to demonstrate experimentally that the procedures employed were responsible for the improvement in behavior. ABA services are the implementation of ABA procedures, including reinforcement and redirection, to encourage or discourage certain behaviors.

4. During the 2010-2011 school year, Student attended a mild/moderate classroom for 45 minutes a day. District took data on Student's attending (defined as sitting in seat or on floor when appropriate, appropriate body orientation and eye gaze toward activity, participation in activity, including hand movements, absence of verbal stereotypy, following individual and group instruction, and responding to his name when called upon) in the mild/moderate classroom as compared to the moderate/severe classroom. The data demonstrated that as of May 2011, Student's ability to attend in the moderate/severe class was 80-90 percent, but showed a decrease in attending during play rotation in the mild/moderate setting. District's data was corroborated by the data ACES had collected on Student.

5. In September 2011, Parents consented to an annual IEP for the 2011-2012 school year that provided for placement in a kindergarten moderate/severe special day class at Canyon View Elementary School (Canyon View). The IEP also provided 90 minutes per day of ABA aide support from ACES and 90 minutes of mainstreaming. The

proposed classroom was an autism specific classroom. District's moderate/severe autism specific classrooms were founded upon a researched-based program known as TEACH and utilized ABA methods. It was a language-oriented classroom with lots of language opportunities for the students and utilized a general-language-general-speech program. The class emphasized prompting, modeling and interaction with peers, adults and the general education population. The classroom utilized lots of visuals. The classroom was highly structured. It had a consistent schedule to lessen student anxiety and increase the opportunities for children to learn. The schedules in moderate/severe classrooms were child specific and rigid, with each child's unique needs and services imbedded into their particular schedule. Moderate/severe classrooms were typically smaller and the ratio of student to teacher was generally two-to-one, but was often one-to-one.

6. District also utilized specialized academic instruction classrooms referred to as mild/moderate classrooms. They are special day classes. District mild/moderate classrooms are not autism specific. Mild/moderate special day classes are non-categorical, attended by children with various types of disabilities. As compared to a moderate/severe classroom, the academic skill of students in the mild/moderate class is usually higher and the class has more academic rigor. The pace is faster and the language is more complex. Children are expected to be more independent and have the ability to follow directions, follow group instruction, not require as much structure and have more fluid incidental schedules which follow a general education schedule.

7. Some of the factors used to determine whether a child could be moved from a moderate/severe classroom to a mild/moderate classroom included: the fading out of adult prompting, increasing size of the group, the ability to follow directions independently, the ability to imitate other peers when directions are given, the ability to model other student's behavior, the desire to initiate interactions, the ability to complete work independently, the ability to attend without needing multiple strategies within the

same learning lesson, the ability to work for longer periods of time without extra support (such as token system, edibles, other reinforcers), the presence of maladaptive behaviors that interfere with their own learning or the learning of others, and the ability to reference other peers.

8. Linda Roth was Student's kindergarten teacher during the 2011-2012 school year. She is a District specialized academic instruction autism specific classroom teacher for kindergarten through second grade. She has a special education credential, a master's degree in ABA, and has been teaching special education students for 18 years. She taught in District's mild/moderate setting from 2008 through 2011 and in a moderate/severe autism classroom setting for 15 years.

9. During the 2011-2012 school year, Student was in Ms. Roth's moderate/severe structured autism special day class at Canyon View for a full day (except during mainstreaming). Ms. Roth observed Student's skills ranged from preschool level to working on kindergarten level skills. Student had the most difficult time with social skills. He had difficulty with social reciprocity. He did not acknowledge peers or adults around him and did not recognize other social activities going on around him. He needed additional prompting to say hello, acknowledge others, or answer questions. He did not imitate without additional prompting from adults and additional supports to help guide his interactions. Motivation, auditory comprehension and following directions were areas of difficulty for Student. He had difficulty following directions in a group without additional prompts, visual supports, priming, or scaffolding. For example, questions had to be simplified in terms of the language used or broken down into smaller parts for Student to answer correctly. Student had splinter skills, meaning areas of strength and areas of weakness. He had the ability to memorize more concrete things like letters and numbers, but had trouble recalling information,

understanding group directions, following two-step directions, or following directions with inference information or that required gathering information from the room.

10. On March 5, 2012, Mother consented to District's assessment plan for Student's triennial IEP with conditions. Mother informed District in writing that educational psychologist Dr. Chris Davidson had been engaged by Student's parents (Parents) to do a comprehensive assessment of Student in connection with his triennial IEP. Mother informed District that Dr. Davidson would provide District with her report prior to Student's triennial IEP team meeting.

11. Dr. Davidson has been a licensed educational psychologist with Educational Testing and Assessment, Inc. since 1993. She has a doctorate in education, a master's degree in counseling and a pupil personnel services credential. She was previously employed as a school psychologist by Long Beach Unified School District from 1988 to 1992. She was the Director of Special Education from 1992 to 1996, the Assistant Superintendent of Human Resources from 1996 to 1999, and the Assistant Superintendent of Pupil Personnel Services from 1999 to 2001 for Tustin Unified School District. On her resume, under the heading "education" where Dr. Davidson has listed her educational degrees, it states "Board Certified Behavior Analyst." At hearing, she testified evasively as to whether she was a Board Certified Behavior Analyst. She admitted she was not a Board Certified Behavior Analyst, but had taken units for that certification. The exaggeration on Dr. Davidson's resume and her testimony concerning her credentials undermined her credibility.

12. On March 8, 2012, Dr. Davidson sent District a list of assessments she planned to administer and a list of rating surveys she planned to distribute. Prior to sending her list of assessments and rating surveys to District, Dr. Davidson was aware that District would be conducting its triennial assessment of Student and Student's triennial IEP in the spring of 2012. District cooperated with Dr. Davidson's assessment.

13. Father observed Student at school three times during the 2011-2012 school year, twice in the fall and once in the spring for about 30 minutes on each occasion. Father did not believe Student made progress in kindergarten. Father observed Student during circle time, practicing greetings, doing calendar, and singing songs. He observed some students having problems communicating, attending, and engaging in inappropriate clapping. Father was concerned Student would pick up bad behaviors from other students in the class and did not have good peers to model.

14. On April 1, 2012, District issued Student's Progress Report. It stated that Student had met four of his annual IEP goals and had met the second benchmark on the rest of his annual IEP goals.

15. Rebecca Von Duering, Ph.D., NCSP, and Board Certified Behavior Analyst conducted Student's 2012 Triennial Multi-Disciplinary Assessment. Dr. Von Duering is a licensed educational psychologist. She holds an administrative services credential and a pupil personnel services credential. She has been a District program specialist since July 2012, responsible for overseeing programming for students with special needs. She was a District school psychologist at Canyon View from July 2010 to July 2012, and a preschool autism program specialist at Early Childhood Learning Center from 2009 to July 2010.

16. Dr. Von Duering prepared a Triennial Multi-Disciplinary Assessment Report regarding Student. The report reflected a date of May 16, 2012 and an amended date of June 1, 2012. The District's assessment team concluded based upon the assessment results that Student continued to meet the eligibility for autistic-like behavior. The assessment reported Student became frustrated when the consistent structure of the classroom or adult support was "faded" during the instruction of new/novel materials and that his noncompliance increased as did his rigidity and his need for sameness. When instruction was constantly being scaffolded for him, he met and exceeded expectations. He was able to work and learn consistently in small groups and individual

instruction and he was showing emerging skill for referencing peers. While Student was consistently responding verbally in the special day class, he was not responding verbally during mainstreaming in the general education classroom. Teacher-directed instruction was the least successful in that Student exhibited an increase in disruptive behaviors, an increase in frustration and physical agitation. The assessment report noted that the longer kindergarten day of the moderate/severe classroom afforded Student with the additional repetition and structure he needed to learn academic material. Student needed visual supports, behavior management systems, prompting, adult support, one-on-one instruction, small group instruction, structure, and redirects to continue to learn, to attend to and complete his work, and continue to help him thrive in his education.

17. Student scored extremely low in adaptive skills in the school setting, which Dr. Von Duering credibly explained indicated he needed a lot of assistance in attention and direction in order to be able to function and progress in an educational setting. Student needed direct instruction, with very clear, concrete, and concise demands. Dr. Von Duering explained she was unable to get a full scale I.Q. score for Student because his subtest scores on the non-verbal index were too "scattered" to provide a representation of his true abilities. At hearing, Dr. Von Duering credibly explained Student had good rote skills, but struggled with social interactions, had difficulty with attending and engaging other students, and had expressive and receptive language delays. Although Student had some high scores on the academic assessments, the results indicated Student required a significant amount of direct instruction and teaching to learn skills captured in those specific areas. Coupled with the level of Student's social skills, language, and adaptive functioning, Dr. Von Duering opined that Student would not be able to perform as well in an environment less structured than the moderate/severe classroom. Dr. Von Duering credibly explained that to the extent Student was performing well it was because he was in a moderate/severe classroom.

She also opined that the fact that Student left school one or two hours early on 53 occasions during the 2011-2012 school year affected his ability to make progress on his IEP goals.

18. As of May 1, 2012, ACES was providing Student with 90 minutes per day of one-on-one aide support in the classroom and six hours of home/clinic support. On May 1, 2012, Michael Zhe, M.A, BCBA prepared ACES' report on Student's progress on 14 annual IEP goals and Student's protest behaviors and stereotypy. Mr. Zhe was the program manager at ACES responsible for overseeing Student's services until October 2013 and wrote ACES reports regarding Student which were sent to District. Mr. Zhe has master's degrees in education and school psychology, and is a board certified behavior analyst. In May 2012, ACES reported that Student's verbal protests per hour from September 2011 to April 2012 in the school setting averaged .99 occurrences per hour and that Student's stereotypy was occurring at a high but steady rate across the home, school, and social settings since December 2012. ACES report had met three IEP goals.

19. Student's triennial IEP was held on May 16, 2012, May 31, 2012 and June 15, 2012. The present levels of performance indicated that academically Student had emerging skills at the kindergarten level. Student was also described in his IEP as having emerging skill with pictures in a book or completing math worksheets. In language processing, Student demonstrated difficulty when verbal directions increased in length and complexity. He followed directions best when provided visual support and cues. Student demonstrated difficulty recalling sentences even with the picture for support. Student had moderately low language production abilities. He demonstrated a reduced ability to use developmentally appropriate grammatical language structures in sentences and conversation. Student was not always able to appropriately process social messages, context cues, or verbal and non-verbal communication in both structured and non-structured settings. Student was independent and calm if he knew what he needed

to do and what was expected of him. Student was noted to have of having an emerging skill of wanting to play with his peers in the structured classroom environment and was referencing people and things around him.

20. The IEP team discussed Student's assessments, goals and placement. Father raised concerns about Student's goals and placement based on his belief Student had not made adequate progress on his goals regarding attending, speech, and social play. District proposed 19 goals and objectives for Student. Overall, the goals were appropriate for a moderate/severe classroom. The IEP team discussed placement and services for the 2012-2013 school year when Student matriculated to the first grade.

21. Ms. Roth recommended Student's placement remain in a moderate/severe classroom because he needed the supports and structure of a moderate/severe classroom. She credibly testified she made that recommendation based upon a number of factors including the amount of prompting required by Student and the amount of structure he needed in order to be independent. She explained that when Student's support was faded, Student's maladaptive behaviors started to occur and Student got frustrated and would not attend as well, and his accuracy rate, fluency, and learning rate decreased. When supports were increased (by increasing staffing or making the group smaller), Student's attending increased, he was more on task, his frustration level decreased, he was more focused, his language increased, and his maladaptive behaviors decreased.

22. At hearing, Dr. Davidson claimed she attended all of the IEP meetings in May and June 2012, however, the signatures pages for those meetings indicate Dr. Davidson only attended the June 15, 2012 IEP team meeting. At the June 15 meeting, Dr. Davidson recommended Student be retained in kindergarten and placed in a mild/moderate program.

23. District considered a mild/moderate placement where Student could be more academically challenged, but based upon Student's unique needs did not recommend it. District offered placement in the moderate/severe structured autism special day class at Canyon View with a modified curriculum in all core content areas. District's offer included mainstreaming, beginning at five hours per week with a one-on-one classroom aide, which could flex upwards to include social studies, science, art, and physical education. At hearing, Dr. Von Duering explained that the moderate/severe classroom was the appropriate placement given the overall picture of Student, including his present levels of performance, assessment results, including the "scatter" skills, low independence and adaptive behaviors, and classroom observations, all of which indicated he required significant intervention to attend and learn.

24. District did not have the results of Dr. Davidson's assessment at the time it made the offer of FAPE for the 2012-2013 school year. At hearing, Dr. Davidson testified inconsistently and evasively as to whether her assessment report was completed prior to Student's annual IEP team meeting, whether she shared any part of her assessment report with the IEP team members at the team meeting and the reasons why she did not share her assessment report with the District at this meeting. Dr. Davidson's testimony was not credible based on the inconsistencies and her evasiveness.

25. Parents did not request an independent educational evaluation of District's 2012 Multi-Disciplinary Assessment. At hearing, Father could articulate no specific disagreement with District's assessment results.

26. On June 27, 2012, Parents consented to District's placement recommendation for the 2012-2013 school year and requested "stay-put" with regard to the 90 minutes of in-school one-on-one ACES aide support during mainstreaming.

27. In September 2012, Student began attending a moderate/severe structured autism special day class at Canyon View. Student's class contained first,

second, and third grade students. The most severely disabled students with autism were not in Student's class. District had another moderate/severe special day class for Students more impacted by their disability.

28. Nancy Wilson was Student's first grade special education teacher for the 2012-2013 school year until March 18, 2013. She has a master's degree in special education from the University of Southern California and teaching credentials in special and general education. Ms. Wilson has been an education specialist with the District since 2000.

29. Ms. Wilson implemented the goals adopted at the May/June 2012 triennial IEP meeting. At hearing, Ms. Wilson opined that Student's goals were appropriate for her moderate/severe classroom in that many of the goals were kindergarten goals and beneath the level of other first grade children in the class. Student was mainstreamed during the 2012-2013 school year while he attended Canyon View for 90 minutes per day. Ms. Wilson observed Student once a month in the general education setting.

30. During the 2012-2013 school year, part of the day in Ms. Wilson's class was dedicated to large group (reading, math, social science, language arts) and whole group (art, music, physical education) instruction. The class worked every day on math and reading for each child. The amount of time spent one-on-one for each student depended on their IEP goals at the time. Student was not working at grade level and he exhibited some disruptive behaviors. He occasionally stomped his feet and cried when something was denied to him, which required him to be redirected. Student had difficulty sitting in his chair, attending, referencing his peers, getting to recess, and working independently. He required prompting to socially reference. Student's overall demeanor was happy, but he was often in his own world and not generally aware of what was going on in the classroom. He expressed frustration in the general education classroom and was agitated when he returned from mainstreaming. Some students in

the class occasionally exhibited maladaptive behaviors. The behaviors of the other children did not impact Student. Student did not imitate the disruptive behavior of the other students. Three students in the class had more language than Student and were good communicators and role models for language. Ms. Wilson saw no evidence of Student using language to model his peers in her class or during mainstreaming.

31. On October 12, 2012, Dr. Davidson sent her 204-page Psycho-educational Report to the District, reporting the results of her evaluations conducted on March 31, April 6, April 14 and May 9, 2012. Dr. Davidson's assessment indicated Student's cognitive abilities were as follows: verbal IQ was 64 in the extremely low range, but performance IQ (non-verbal) was 129 in the upper limits of superior range. Student's processing speed of 94 was within average range and his general language score was 86 in the low average range. She concluded Student's full scale IQ was 90 within the lower limits of average. Because of the significance difference between Student's performance IQ and verbal IQ, Dr. Davidson used Student's performance IQ as the better indicator of his cognitive level. Dr. Davidson identified that Student had difficulties with attention, language, self-help, social skills, and behavior issues. Student was rated by Parents as moderate or severe in several areas involving attention problems, language, memory and learning, speed and efficiency, reading, writing, and mathematics. Student was rated by Parents and his teacher as displaying the following behaviors: easily distracted, needs help to remain on task, poor printing, unaware of how his behavior affects others, tries the same approach even when it does not work, difficulty adjusting to new people, upset with change, reacts more strongly than others, and unable to finish describing an event, person, or story. Parents reported Student often had a short attention span. ACES reported Student often had difficulty concentrating or staying on task. Based on her assessments, Dr. Davidson opined Student had good non-verbal skills but had difficulty

with verbal skills. She believed that with appropriate supports and accommodations, Student was able to understand abstract concepts.

32. Dr. Davidson's assessment had 23 pages of recommendations for Student's placement and related services. Dr. Davidson recommended Student be retained in kindergarten for the 2012-2013 school year in a mild/moderate classroom with two hours of mainstreaming in a general education classroom. She reported that Student was a good candidate for retention because Student's birthday was in September and he was the youngest member of his class, he was socially and emotionally immature, and he had receptive and expressive language, self-help, and attention skills all within the very low range. Dr. Davidson further concluded Student's placement should not be in a mild/moderate classroom regardless of whether it is kindergarten or first grade and Student needed to be educated with positive role models in the areas of attention, language, social, play skill, and behavior. At hearing, Dr. Davidson clarified that she made the recommendation for a mild/moderate placement because Student had demonstrated academic success in the classroom, and such a placement would give Student the opportunity for modeling higher functioning peers in the areas of language, behavior, and social skills.

33. As of November 2012, ACES was responsible for tracking only five of Student's IEP goals, in the areas of social skills/communication/pragmatics, classroom routines, social/emotional, social communication/reciprocity and social skills/play skills. On November 11, 2012, ACES reported Student had met the first benchmark of three of his five annual IEP goals.

34. On November 30, 2012, an IEP meeting was convened to review the 204-page private assessment conducted by Dr. Davidson. Dr. Davidson recommended a mild/moderate placement, continued mainstreaming in a general education kindergarten class for two hours a day to allow opportunities for positive role modeling,

and retention in kindergarten for the rest of the 2012-2013 school year. The team proposed three new goals for Student to meet by May 16, 2013, and to reconvene to review the newly proposed goals and discuss recommendations related to placement and mainstreaming. The team did not finish reviewing Dr. Davidson's assessment and recommendations and agreed to convene another meeting.

35. By December 2, 2012, Student met the first benchmarks for most of his 19 original IEP goals.

36. The IEP team meeting scheduled in January 2013 was cancelled and had to be rescheduled due to Dr. Davidson's unavailability for health reasons.

37. On February 27, 2013, the IEP team met to discuss Student's placement. District reported Student was on course to meeting his current goals and objectives. Parents were no longer interested in retaining Student in kindergarten. Instead, Parents recommended Student be placed in a mild/moderate classroom. Dr. Davidson told the IEP team that Student's high non-verbal IQ supported her belief that he should be placed in a mild/moderate classroom. She told the IEP team that she had never had a child moved back from a placement she recommended. At hearing, Dr. Davidson was evasive and inconsistent as to what she said during this IEP meeting. District members of the IEP team believed Student's current placement at Canyon View was appropriate and provided a FAPE to Student, but were willing to consider Dr. Davidson's placement recommendation. District expressed concerns related to Student's ability to attend, functioning and following directions in a larger group setting. Student's general education teacher reported that Student had difficulty attending in her class which is typically 25 students. Even in a small group, Student only did well with one-on-one support provided during mainstreaming with frequent prompting. Student's speech and language pathologist reported Student's attention was inconsistent and a decrease was noted when peers were present, which required more prompting. ACES reported that

Student learned best in a one-on-one setting and expressed concerns about Student making progress on goals in a larger group.

38. Based on Dr. Davidson's recommendation, District agreed to a diagnostic placement of Student in a mild/moderate setting. District believed the moderate/severe placement was appropriate, but decided to implement a diagnostic placement to determine Student's performance in that placement. District amended Student's IEP to provide that the diagnostic placement would be at Culverdale from March 11, 2013 through May 16, 2013. ACES staff were charged with collecting data regarding protest behavior, following group instruction, social initiation, and social referencing in both settings. The transition plan components included a full time aide for the first two days, and then fading to zero by the end of the first week. The IEP team agreed to consider factors other than just progress on IEP goals when determining whether to keep Student in the mild/moderate special day class for the 2013-2014 school year. The IEP team proposed Student would continue to receive the same level of related services during his diagnostic placement as he received while at Canyon View, except for an increase of a total of 4 hours in ACES supervision during the diagnostic placement. One additional IEP goal was proposed for Student to meet by May 10, 2013.

39. On March 6, 2013, ACES reported Student had met three of six of his second benchmark IEP goals.

40. On March 13, 2013, Parents informed District they agreed to the diagnostic placement with the same level of services Student was receiving at Canyon View and with all new, proposed and modified goals from both the November 30, 2012 and February 27, 2013 IEP team meetings.

41. By March 15, 2013, Student had met one annual IEP goal and the second benchmark on 17 of his original annual IEP goals, and Ms. Wilson expected him to meet all 17 of these IEP goals by May 16, 2013.

42. On March 18, 2013, Student began his diagnostic placement at Culverdale in a mild/moderate classroom. An aide from Ms. Wilson's moderate/severe classroom accompanied Student for the first week pursuant to the transition plan. Jodi Cossitt was Student's first grade special education in the mild/moderate classroom during the Culverdale diagnostic placement. Ms. Cossitt has been teaching for more than 11 years. She has a master's degree in special education. She has a mild/moderate cross categorical teaching credential and an additional credential for teaching students with autism. She was employed with District between July 2010 and July 2013, where she taught in a kindergarten/first grade mild/moderate class. She is currently employed as a teacher at Oak Grove Middle School in Bloomington, Minnesota in a moderate/severe classroom for students with autism.

43. Ms. Cossitt's class followed a general education curriculum. Student had a separate writing curriculum. He was the only child in her class with a modified curriculum. His mild/moderate class had five kindergarteners and six first graders, including Student. The ratio of adults to students was one-to-three or one-to-four depending on the time of the day. Student required one-to-one instruction most of the time he was in her class. Other students required one-to-one instruction about five percent of the time. Student was not able to understand the directions or language within the curriculum and Ms. Cossitt spent a lot of time re-teaching Student on a daily basis the same material covered in group instruction. As compared to other students in the class, Student completed about 25 percent of the classwork. Throughout the 13-week diagnostic period, Student was given extra time to complete his homework. Student completed 50 percent to 75 percent of all of the assigned homework. Student had good rote math skills, but had a difficult time on problem solving math skills required in the mild/moderate curriculum. He was unable to complete the classroom worksheets independently, and unlike the other children in the class he required one-

on-one prompting to get through worksheets. He required more prompting than any other student in the class. At times, an aide gave him the answers or he copied other student's worksheets. By the end of the school year, all of the other first graders in the class could write three sentences. Student could not write one sentence without repeated prompting. The mild/moderate class required a level of independence Student did not have. Student had more difficulty in the afternoons. Student also had difficulty socializing with other students in the class. At the end of the diagnostic period, Student still needed heavy prompting throughout all routines.

44. Mother regularly picked Student up from school at Culverdale. Ms. Cossitt told Mother about her concerns when Mother picked Student up from school during the diagnostic period. Ms. Cossitt told Mother about Student's difficulties, including Student's difficulties learning in a group, his inability to understand directions, his inability to understand the language in the curriculum, and his difficulties with social interactions.

45. Father claimed he was regularly told by Ms. Cossitt that Student was doing well in the diagnostic placement, doing the same work the other children were doing and completing all of his work independently. Father's testimony was not credible. Father admitted it was his wife who regularly picked Student up from school. He also admitted he had only picked Student up from school once or twice. When cross-examined about whether Ms. Cossitt discussed her concerns about Student with him, Father was hesitant and tentative in his responses. He reluctantly admitted Ms. Cossitt had expressed some concerns at some point during the diagnostic placement.

46. Debra Martin was Student's first grade general education teacher during the diagnostic period at Culverdale. Student was mainstreamed for 75 minutes per day in her class and for 15 minutes a day at recess with his general education peers, for a total of 90 minutes. Student had a one-on-one ACES aide with him during

mainstreaming. Ms. Martin credibly testified that during direct instruction, Student engaged in behavior which distracted his learning, including playing with his fingers, biting his fingers, not looking and turning away from the board, and not paying attention to the lesson. On at least one occasion, Student had to be pulled from class because of his behavior. He had difficulty staying on task. This behavior was constant and occurred around 85% of time. During both whole group and seat work instruction, Student had to be constantly prompted by his aide. She did not see Student initiate conversation or interact with peers independently. Student received some academic instruction from his one-on-one aide while in Ms. Martin's class.

47. Kathleen Durocher was Student's speech and language pathologist during the diagnostic period. She has a bachelor's degree in language arts, a bachelor's degree and a master's degree in communicative disorders, and a clinical rehabilitation services credential which allows her to provide speech and language services to students in a public school system. Over the course of her career, she has provided services to students in both mild/moderate and moderate/severe classroom placements and is familiar with the programs offered in those classrooms. Ms. Durocher provided services to Student three times a week during the 13-week diagnostic period. She observed him in the mild/moderate classroom when she conducted group lessons. Student needed continued amounts of prompting, cueing, and modeling to move through his day, and Student exhibited frustration, including rubbing his face, vocalizing, and, on one occasion, elopement from the table in the mild/moderate classroom.

48. Father conducted one observation of Student during the diagnostic period. Father observed Student on May 3, 2013, for thirty minutes in the mild/moderate classroom and thirty minutes in the general education class. Father reported Student took two math tests and one spelling test independently in the mild/moderate placement in a whole group setting. During the diagnostic placement,

Ms. Cossitt sent home some of Student's completed worksheets. Some of the worksheets indicated on their face that Student had one-on-one help or was given the answers. Most of the worksheets did not indicate one way or the other whether the Student had completed them independently. Many of the worksheets had not been fully completed by Student. Father believed these worksheets were completed by Student independently if they did not specify Student had help.

49. ACES prepared a Diagnostic Placement Data Report on May 6, 2013 based on six observations of Student. Overall, the data showed a decrease in Student's ability to follow whole group instruction and socially reference in the mild/moderate setting.

50. District's May 13, 2013 and June 16, 2013 progress reports stated Student had met only six of his IEP goals (one of which had been met in the moderate/severe placement and one of which was adopted on March 13, 2013), but had regressed on two IEP goals.

51. Student's Annual IEP was held on May 6, 2013, May 14, 2013, and June 17, 2013. Student had unique needs in the following areas: academic/cognitive/functional skills, communication skills, motor development, social/emotional development, and vocational. Student's present levels of performance stated Student had emerging skills in the end of kindergarten/beginning first grade level. He had good rote math skills and was a good speller. His reading comprehension was below grade level and he was unable to write one sentence independently. He exhibited very weak communication skills and required visual and verbal cues to "tune into" the environment. He had not been observed to seek interaction with peers and seemed to barely notice them. Student was noted to be independent and calm if he knew what was expected of him and was responsive to behavioral management systems. He had emerging skills of wanting to play with his peers in the structured classroom environment. He referenced people around him and was able to scan his

environment to find what he needed or wanted. He was functional and independent for all adaptive and daily living skills.

52. During the May 14, 2013 meeting, the IEP team reviewed Student's progress on goals and his goals for the 2013-2014 school year. There were 18 proposed goals. Most of Student's proposed goals were below the level proposed for other students in the mild/moderate special day class. At hearing, Ms. Cossitt explained that many of the goals were at or below a kindergarten level. Student's peers could independently perform many of the skills addressed in Student's goals. The other students in class did not require goals with the level of prompting Student required. Ms. Durocher explained that the goals she proposed for Student were less rigorous than the goals she wrote for the other children in Student's mild/moderate first grade class. For example, Student's joint attention goal contained a level of prompting far more significant than other children in the class and required language development below the skills of his mild/moderate peers.

53. On May 14, 2013, the IEP team extended the diagnostic placement for an additional four weeks and charged ACES with collecting additional data for review by the IEP team on June 17, 2013.

54. On May 22, 2013, Parents informed District that they agreed to all goals proposed at the May 14, 2013 IEP team meeting.

55. Ms. Cossitt filled out behavior charts on Student. She gave Student "happy" marks if she believed he was completing as much work as she believed he was capable of doing.

56. On June 10, 2013, ACES prepared its Diagnostic Placement Report. The report stated that the data collected in the mild/moderate setting remained variable across the 10 ACES observation dates. There were days when Student did not demonstrate the skill during observation period (zero percent independence) and there

were days when Student demonstrated the skill at a similar level to what was observed in the moderate/severe setting. Based upon the data, ACES interpreted that Student had the ability to generalize target skills across the two settings, but may require additional support and/or more time to perform the skills on a consistent basis.

57. ACES did not collect data on all of Student's behaviors. ACES did not collect data on the level of prompting required by Student during the diagnostic period. During the diagnostic period, Mr. Zhe observed Student engaging in maladaptive/protest behavior in the mild/moderate classroom as many as two times a day and that Student required one-on-one assistance in that setting. Mr. Zhe's testimony was unclear on the level of protesting and maladaptive behavior exhibited by Student. He claimed the level of maladaptive/protest behavior in both the mild/moderate and moderate/severe settings was similar.

58. On June 17, 2013, the IEP team met again with all required IEP team members present. The team discussed Student's placement for the 2013-2014 school year. Parents and Dr. Davidson recommended a mild/moderate placement. Mr. Zhe from ACES recommended continued placement in the mild/moderate placement with more support. Mr. Zhe also recommended discontinuing Student's 90-minute one-on-one aide support for mainstreaming and transferring it to the mild/moderate classroom with a modified curriculum. At hearing, Mr. Zhe explained that his recommendation was based on his hypothesis that Student had the ability to generalize pre-skills to learning in the mild/moderate setting based on the data he had collected and that Student would benefit from more time and support. He also opined that the mild/moderate placement would provide Student with opportunity for peer modeling.

59. Several District staff expressed their opinion about placement, including Ms. Cossitt, Ms. Durocher, and Ms. Wilson. Ms. Cossitt recommended Student be placed in a mild/moderate autism specific classroom. She explained Student had not met most

of his goals and Student was not functioning at the same level as other students in the class. Ms. Cossitt explained she had to reteach Student the same lesson she taught the day before and that Student required more prompting and direction than other Students in her class. Ms. Durocher and Ms. Wilson and other members of District staff voiced their opinion and agreement with Ms. Cossitt's recommendation for placement. The IEP notes indicate numerous reasons were discussed and detailed by District staff during the IEP meeting as to why a moderate/severe placement was the appropriate placement for Student.

60. At hearing, Ms. Cossitt clarified that her recommendation was based on several factors, including the supports Student required in order for him to access the curriculum, Student's considerably lower level of language as compared to the other Students in her class, the fact that the moderate/severe classroom had more visual supports, smaller groups, simple language, slower pacing and provided a greater opportunity for Student to learn. According to Ms. Cossitt, Student needed to learn language skills before he could be placed in the mild/moderate setting. By the end of the diagnostic period, Student still needed to be prompted throughout all routines. Historically, she made recommendation for mild/moderate placement when students were making progress on all goals, participating in class discussions, being socially appropriate, completing all academic work and otherwise performing in conformity with the mild/moderate classroom expectations. Student was not at this level.

61. At hearing, Dr. Davidson stated she did not know if at the June 2013 IEP meeting District staff agreed with her opinion as to placement and she was unaware of their opinions about placement, but she also inconsistently claimed she was shocked District did not recommend a mild/moderate placement at this meeting and that the opinions Ms. Cossitt expressed at the IEP meeting were not convincing or persuasive to her. At hearing, Dr. Davidson stated that Ms. Cossitt led the June 17, 2013 IEP team

meeting and “did a lot of the talking,” but Dr. Davidson implausibly claimed she was unable to recount the specifics of Ms. Cossitt’s statements about placement. Dr. Davidson’s testimony about the June 17, 2013 IEP team meeting was combative, evasive, and inconsistent. Dr. Davidson’s inconsistencies and her evasiveness rendered her testimony less persuasive than that of District’s witnesses.

62. District finalized its offer of FAPE at the June 17, 2013 IEP team meeting. District’s offer of FAPE for the 2013-2014 school year included specialized academic instruction using an alternative curriculum in a moderate/severe classroom at Canyon View, with mainstreaming for 90 minutes per day and individual behavior intervention services support during mainstreaming from a nonpublic agency.

63. Student’s report card was issued for the March through June 2013 diagnostic period after the diagnostic period. Ms. Cossitt filled out a report card on Student for the diagnostic period. Student’s progress was rated between 1 (for rarely shows evidence) and 4 (for consistently shows evidence) and areas of concern were denoted with a checkmark. Areas of concern were noted in class participation and activities, word analysis, fluency, vocabulary development, reading comprehension, literacy response and analysis, written language conventions, and mathematical reasoning. Student received no scores of 4 or 1. He received scores of 2 (sometimes shows evidence) in reading progress, writing progress, language progress, listening, and speaking. He received a score of 3 (usually show evidence) in mathematics progress, science progress, and social science progress. The school made a decision to give all students a score of 3. It was unclear from the testimony at the hearing why that decision was made. Student also received “satisfactory” ratings and one “good” rating in achievement in those areas which rated achievement, and “satisfactory” ratings and one “outstanding” rating in those areas which rated effort.

64. On June 28, 2013, Parents consented to some of the services offered by District at the June 2013 IEP team meeting. Parents declined to consent to placement in a moderate/severe classroom and requested placement in the mild/moderate classroom with a full-time one-on-one aide.

65. On July 1, 2013, Mother informed District Student would not be attending the extended school year at Canyon View in the moderate/severe placement. During the summer, Student received private tutoring at Dr. Davidson's office.

66. On July 17, 2013, District sent Parents a prior written notice letter which denied Parents' requested placement for the 2013-2014 school year in the mild/moderate classroom and detailed the reasons why such a placement was inappropriate for Student. District also denied Student's request for full-time one-on-one ACES aide support.

67. In September 2013, Student began attending second grade in a moderate/severe structured autism special day class at Canyon View. Ms. Wilson, who had taught Student in the 2012-2013 school year prior to the diagnostic placement, was Student's teacher. The class was composed of second and third graders. There were seven students in the class. The class used second grade level books which Ms. Wilson supplemented with materials aligned with a common core curriculum, and which had been developed for children with disabilities using simplified language. Spelling tests and math worksheets were utilized in class. Student was not working at grade level, but there were three students in class working at grade level. Student continued to exhibit short outbursts about twice a week, but he did not copy or react to the behavior of other students in the special day class or the general education classroom. He had difficulty attending, working independently, and getting to lunch and recess, but no longer had difficulty sitting in a chair. Student continued to show good rote skills, but had difficulty with reading comprehension and composition. He had difficulty socially

interacting with other students without adult facilitation. He rarely initiated language unless he wanted or needed something, and had difficulty answering questions.

68. Ms. Wilson believed Student's failure to attend the extended school year had an impact on him educationally in that he initially demonstrated a loss of some independent skills he had previously learned. She did not believe Student regressed as result of being placed in the moderate/severe classroom for the 2013-2014 school year. As of the hearing, Student had made good progress on his annual goals. Ms. Wilson concluded that Student's needs were better served in a moderate/severe special day class for the 2013-2014 school year.

69. Beginning in fall 2013, Student was mainstreamed for 90 minutes a day, five times a week at Canyon View in a second grade general education class. Student had a one-on-one aide during mainstreaming. Phyllis Hamilton was Student's general education teacher. She has been teaching at Canyon View for about 13 years. She has a master's degree and teaching credentials. Her classroom is composed of about 30 children. While in her class, Student exhibited no independence, except in obtaining and retrieving books from a bookshelf. Student was unable to perform the work in the classroom and did not have the level of language necessary to participate in class. He was able to copy after his aide pointed to an object, word, or sentence, but Student could not perform any tasks which required a higher level of thinking or comprehension. He did not acknowledge peers or interact with peers, even with prompting. He did not copy the behavior or language of his typical peers, and his use of language had not increased since fall 2013.

70. Dr. Davidson continued to tutor Student during the 2013-2014 school year. At hearing, Dr. Davidson opined Student had regressed based upon certain behaviors Student exhibited in her office during the 2013-2014 school year.

71. Dr. Davidson prepared a 108-page pre-hearing report in January 2014. Dr. Davidson estimated she spent over 100 hours with Student prior to the hearing, including two observations of Student during the diagnostic placement and one observation at Canyon View just prior to the hearing. She reviewed Student's work samples and homework, IEP documents, ACES data, District assessments, and other District documents regarding Student. The report repeatedly makes reference to documents which were not mentioned during the testimony at the hearing. It also refers "the IEP documents" without identifying the specific IEP document or the page number of such document. Student made no effort during the hearing to have Dr. Davidson explain the specifics of her report to the trier of fact. Some of Dr. Davidson's assumptions for her conclusions appear to be lacking evidentiary support or were contrary to the evidence at hearing. Accordingly, her report was given little weight because it substantially post-dated the IEP offers at issue, was not explained by Dr. Davidson, made reference to documents which were not discussed or mentioned during the hearing, and appeared to contain unsubstantiated assumptions.

72. Mary A. Falvey, Ph.D. testified on behalf of Student. Dr. Falvey has been on the faculty at California State University Los Angeles since 1980. She is currently an Emeriti Professor and part-time faculty member of the Charter College of Education. From 2006-2013 she was the Dean of the Charter College of Education. She was the Director of Student Services from 2004 to 2006. From 1973 to 1977, she was a special education teacher and principal with the Marin County Office of Education. She has both a masters and doctorate degree in special education. Dr. Falvey opined that the general education setting with supports was most appropriate for Student and that she disagreed with the District's recommendation of a moderate/severe placement for the 2013-2014 school year. Her opinion was based upon an observation of Student on February 12, 2014 for 30 minutes in the moderate/severe class, and 30 minutes of

mainstreaming with a one-to-one aide in a general education second grade class, and a review of records, including worksheets completed by Student during the diagnostic placement in 2013. She also observed a mild/moderate classroom, but did not know if it was similar to the class Student attended. From her 30 minute observation during mainstreaming, as compared to the moderate/severe classroom, Dr. Falvey perceived Student was more often on task, had less distracting behaviors, focused on his lesson, and engaged in higher level academic work at grade level.

73. Dr. Falvey never reviewed any work samples from Student's moderate/severe class. She was aware that many of Student's worksheets had not been completed. She assumed Student completed 90 percent of the diagnostic placement work samples independently. Her testimony regarding her observations during mainstreaming were inconsistent. Dr. Falvey claimed she was both near Student and heard him verbally respond in class, but later admitted she never heard Student respond because she was too far away from him. Dr. Falvey also testified inconsistently on the level of prompting required by Student, initially claiming he might have been prompted a couple of times, but later stated he was prompted every couple of minutes. When questioned as to which setting was most appropriate for Student, Dr. Falvey repeatedly qualified her responses, stating she was unfamiliar with the entire program, that her observations were limited and that she would have to engage in further observations in order to determine if her observations were an anomaly.

74. Jan Benner has been a District program specialist since 2000. As a program specialist, she is responsible for overseeing District's autism specific classrooms from preschool through sixth grade. She oversees the moderate/severe autism specific classroom at Canyon View. From 1990 through 2002, she was a District speech pathologist providing speech and language therapy to special education students. She has a bachelor's degree in speech and hearing and a master's degree in speech

pathology. Ms. Benner was part of Student's IEP team and attended Student's June 17, 2011, June 15, 2012, February 27, 2013, and June 17, 2013 IEP team meetings. Ms. Benner credibly testified she observed Student on approximately ten occasions since fall of 2012, four or five times during 2012-2013 school year in the moderate/severe setting and three or four times in the 2013-2014 school year both in the moderate/severe and general education setting. Ms. Benner observed Student had difficulty understanding and expressing his language, attending and socially engaging with teachers and other students. His rate of learning was slower than other students and he needed prompts for attending. He required a lower level of language and a rate of language which was slower in order for him to process the language. He was successful in one-to-one and small group settings and with support on the playground with other students.

75. Jennifer Mobley, M.A., LEP, NCSP has been a District school psychologist since 2005, and the school psychologist at Canyon View since September 2012. She has assessed approximately 200 kindergarten through first grade students placed in autism specific classrooms. She observed Student during the 2012-2013 school year in Ms. Wilson's moderate/severe class on approximately five occasions and during mainstreaming on approximately two occasions. She credibly testified Student did not exhibit social regard for others. He did not reference peers or initiate social interactions. She observed he required less prompting, exhibited more language, and a greater degree of independence in the moderate/severe classroom. She did not see any disruptive behaviors during any of her observations. At hearing, Ms. Mobley explained that moderate/severe placement was appropriate because the pace in that class was slower, had more structure with more visual prompts, the classroom expectations were more clearly defined and the ratio of student to teacher was smaller.

76. Kristen DiGiuseppe has been teaching at District in a mild/moderate classroom for transitional kindergarten, transitional kindergarten, first, and second grade

levels since 2006. She has a master's degree in special education and she holds an education specialist instruction credential in mild/moderate disabilities and a multiple subject teaching credential. She is a behavior intervention case manager. Currently, she teaches a District class composed of transitional kindergarten, kindergarten, and first grade students. She also taught at Canyon View in the moderate/severe classroom during the summers of 2007 through 2011. Based on her experience, she was asked by District to opine about the level of some Student's June 17, 2013 IEP goals and objectives for the 2013-2014 school year as compared to what was typical of other students transitioning from first to second grade in a mild/moderate classroom. Her testimony regarding the level of goals of other students was considered solely for the issue of whether the offered placement was appropriate.

77. After reviewing Student's proposed goals and objectives, Ms. DiGiuseppe concluded only two of 15 of Student's goals were typical of a student in a mild/moderate setting transitioning from first to second grade and that 13 of Student's goals were at a level far beneath that of a student in a mild/moderate setting transitioning from first to second grade. Several of Student's goals addressed skills which should have been attained by or in kindergarten and a typical student transitioning from a mild/moderate first to second grade class would not require the amount of prompting to perform simple tasks in order for Student's goals to be accomplished. For example, one of Student's goals was to respond to a greeting from familiar adults and peers by waving or saying "hi" with no more than two verbal/visual cues. Ms. DiGiuseppe credibly explained this is not a goal which would be typical for a child even at the kindergarten level in a mild/moderate class. By the end of first grade, a student in a mild/moderate class should have already mastered the skill of joint attention to peers which Student had not. Based on the level of Student's goals, it was her opinion that appropriate placement would be in a moderate/severe class. A

mild/moderate class placement was not appropriate because the student-to-teacher ratio is larger and it does not have the level of one-to-one support which Student's goals appeared to require for him to assess the curriculum.

## LEGAL CONCLUSIONS

### INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA<sup>2</sup>

1. This hearing was held under the Individuals with Disabilities Education Act (IDEA), its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) 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 free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's individualized education program (IEP). (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17 (2006); 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 (2006); 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

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

U.S.C. § 1401(26); 34 C.F.R. § 300.34 (2006); Ed. Code, § 56363, subd. (a) [In California, related services are also called designated instruction and services].) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

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

phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 950, fn. 10.)

4. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6); 34 C.F.R. § 300.511 (2006); Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56505, subd. (i).) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3)(C), (D).) 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. 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].) In this case, Student, as the complaining party, bears the burden of proof.

#### ISSUE 1: DISTRICT'S OFFER OF PLACEMENT FOR THE 2012-2013 SCHOOL YEAR

5. Student contends District failed to provide him with a FAPE for the 2012-2013 school year by offering placement in the moderate/severe classroom at Canyon View. Student contends a mild/moderate classroom was the least restrictive environment for Student. Student contends he could have received educational benefit within the meaning of *Rowley* from a placement in a mild/moderate classroom because he would have had access to a general education curriculum and the opportunity for modeling higher functioning peers in the areas of language, behavior, and social skills. District contends its offer of placement was appropriate based on the information available to it at the time of its offer of FAPE for the 2012-2013 school year. District

argues that its offer of placement in a moderate/severe classroom was designed to meet Student's unique needs and was reasonably calculated to provide Student some educational benefit under *Rowley* in the least restrictive environment.

6. In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Ibid.*) For a school district's offer of special education services to a disabled pupil to constitute a FAPE under the IDEA, a school district's offer must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the student with some educational benefit in the least restrictive environment. (*Ibid.*) Whether a student was offered or denied a FAPE is determined by looking to what was reasonable at the time the IEP was developed, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrman v. East Hanover Bd. of Education* (3rd Cir. 1993) 993 F.2d 1031, 1041.)

7. School districts are required to provide each special education student with a program in the least restrictive environment. To provide the least restrictive environment, school districts must ensure, to the maximum extent appropriate: 1) that children with disabilities are educated with non-disabled peers; and 2) that special classes or separate schooling occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a) (2006); Ed. Code, § 56031.)

8. In determining the educational placement of a child with a disability, a school district must ensure that: 1) the placement decision is made by a group of

persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and takes into account the requirement that children be educated in the least restrictive environment; 2) placement is determined annually, is based on the child's IEP and is as close as possible to the child's home; 3) unless the IEP specifies otherwise, the child attends the school that he or she would if non-disabled; 4) in selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and 5) a child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. (34 C.F.R. § 300.116 (2006).)

9. To determine whether a special education student could be satisfactorily educated in a regular education environment, the Ninth Circuit has balanced the following factors: 1) "the educational benefits of placement full-time in a regular class"; 2) "the nonacademic benefits of such placement"; 3) "the effect [the student] had on the teacher and children in the regular class"; and 4) "the costs of mainstreaming [the student]." (*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 ("*Rachel H.*") [adopting factors identified in *Daniel R.R. v. State Board of Education* (5th Cir. 1989) 874 F.2d 1036, 1048-1050 ].)

10. If a school district determines that a child cannot be educated in a general education environment, then the least restrictive environment 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., supra*, 874 F.2d at p. 1050.) The continuum of program options includes, but is not limited to: regular education; resource specialist programs; designated instruction and services; special classes; nonpublic, nonsectarian schools; state special schools; specially designed

instruction in settings other than classrooms; itinerant instruction in settings other than classrooms; and instruction using telecommunication instruction or instruction in the home, in hospitals, or other institutions. (Ed. Code, § 56361.)

11. Here, the preponderance of the evidence established that District's placement offer in a moderate/severe classroom for the 2012-2013 school year was designed to meet Student's unique needs and was reasonably calculated to provide Student with some educational benefit under *Rowley, supra*, in the least restrictive environment. At the time of Student's 2012 triennial IEP, Student had a history of attention difficulties, necessitating ABA in-home therapy to Student since July 2010 and one-on-one aide support in the classroom during the 2011-2012 school year. In May 2012, ACES reported Student's stereotypy was occurring at a high but steady rate across the home, school, and social settings. District's triennial assessments and Student's IEP indicated he needed the supports offered by a moderate/severe classroom. The assessment indicated Student continued to have attention difficulties and required a placement with visual supports, behavior management systems, prompting, adult support, one-on-one instruction, small group instruction, structure, and redirects to continue to learn, to attend to, and complete his work. District's witnesses credibly testified as to the reasons why District's moderate/severe classroom provided the type of structured classroom appropriate for Student in light of his unique needs. A moderate/severe classroom addressed Student's needs for smaller groups and one-to-one instruction. It utilized behavior management systems and visual supports, had a slower pace, and utilized lower level of language. District witnesses credibly testified that the moderate/severe classroom provided opportunities for language modeling and social interaction with peers, adults, and the general education population. Student was also being mainstreamed in the general education classroom for 90 minutes a day,

providing Student with further opportunities for modeling and social interaction with his general education peers.

12. Student's claims he was not making progress in the moderate/severe classroom during the prior 2011-2012 school year were not supported by the evidence. Student had already demonstrated progress on his IEP goals in the moderate/severe placement in meeting four of his annual goals and the second benchmark on the rest of his annual goals by April 1, 2012. Student previously demonstrated an increased ability to attend in a moderate/severe placement as compared to a mild/moderate placement at the Early Childhood Learning Center. These factors made it reasonably likely that Student would achieve educational benefit in a moderate/severe placement. Although Father may have been sincere in his perceptions, Father's three 2011-2012 observations were insufficient to establish otherwise.

13. Student presented no credible evidence District had any information which indicated that the triennial offer of placement in a moderate/severe special day class setting for the 2012-2013 school year was inappropriate at the time it was made. There was no evidence Student disagreed with any of District's assessment results. While Dr. Davidson orally recommended retention in kindergarten in a mild/moderate placement, she not did not provide District with any assessment data to support her oral recommendation at Student's triennial IEP. At hearing, Dr. Davidson was inconsistent and evasive as to what she orally shared with District at Student's triennial IEP. In fact, the evidence established District was not provided with a copy of Dr. Davidson's report until October 12, 2012, several months after District's offer of FAPE was made and Student had already begun attending school at Canyon View.

14. To the extent Student is contending the offer of placement should have changed after Dr. Davidson's report was provided to District, that claim was not supported by the preponderance of the evidence. Dr. Davidson's assessment report was

over 200 pages long and reasonably required more than the one November 30, 2012 IEP meeting to discuss and review it. Because of the illness of Dr. Davidson, the IEP team was not able to conclude its review of Dr. Davidson's assessment report until February 2013, at which point District offered a diagnostic placement in a mild/moderate setting at the urging of Dr. Davidson and Parents. Further, the evidence established that while in the moderate/severe placement, Student received educational benefit, had already met one of his IEP goals, and met the majority of the first and second benchmarks on his IEP goals. The evidence established as of February 27, 2013, Student was on track to meet most of his annual IEP goals. On March 6, 2013 ACES reported Student had met three of six second benchmark IEP goals and on March 15, 2013, District reported Student had achieved one of his IEP goals and met the second benchmark on 17 of his original annual IEP goals.

15. Student did not contend the mild/moderate diagnostic placement requested by Parents and Dr. Davidson beginning February 27, 2013, was inappropriate, and that time period is not addressed by this decision.

16. In determining whether District placed Student in the least restrictive environment, the four factor test from *Rachel H.* shows that general education was not appropriate, and that Student was provided exposure to typical peers to the maximum extent appropriate. At none of the IEP team meetings relevant to the 2012-2013 school year had Parents, or their expert Dr. Davidson, provided information to District indicating full-time mainstreaming was appropriate. Regardless, the evidence showed that full-time mainstreaming was inappropriate. The educational benefits of placement full-time in an age appropriate general education class would have been very low due to Student's autistic-like behaviors and the level of support and structure Student required in the classroom in order for Student to attend and learn. Student's one-on-one ACES aide was always present with Student in his regular classes to support and assist him in

his interactions with his classmates and his focus and attention in class. While there may have been some non-academic benefits of mainstreaming, the weight of credible evidence showed Student had very little interaction with his peers during mainstreaming. There was no evidence that Student had an effect on the teacher and children in his regular classes. Neither party presented evidence on the cost of mainstreaming Student. Weighing the above, it would not have been appropriate for Student to be placed full-time in a general education class.

17. The evidence failed to demonstrate that there was an issue of least restrictive environment regarding the two special day classes, namely that offered by the District and the one desired by Parents. Both were located on the same place on the continuum of placement options because Education Code sections 56360, 56361, and 56364.2 do not differentiate between mild/moderate and moderate/severe placements. In fact, the evidence established that both placements were special day class placements containing only special education students, and thus were equal in their level of exposure to typically developing peers. Both placements were on a public day school campus and both provided Student equal or similar degrees of participation with general education students and opportunities for mainstreaming. Along the continuum of program options, the evidence established Student was properly placed in a special day class and received services which supported his attending regular education classes to the maximum extent appropriate for Student. Student was therefore placed in the least restrictive environment.

18. In sum, the moderate/severe classroom placement, with its lower teacher-student ratio, additional adult support staff, structured program, slower pace, level of language and other supports, was designed to meet Student's unique needs. At all times, the placement was reasonably calculated to provide Student some educational benefit under *Rowley* in the least restrictive environment. Student's placement therefore

provided him a FAPE. Student failed to meet his burden of proof that District denied Student a FAPE in the least restrictive environment by offering a moderate/severe special day class for the 2012-2013 school year.

## ISSUE 2: DISTRICT'S OFFER OF PLACEMENT FOR THE 2013-2014 SCHOOL YEAR

19. Student contends District failed to provide him with a FAPE for the 2013-2014 school year by offering placement in the moderate/severe classroom at Canyon View. Student maintains that a mild/moderate classroom was the least restrictive environment for Student. Student argues he received educational benefit from the mild/moderate diagnostic placement during the 2012-2013 school year such that a mild/moderate special day class placement should have been offered by District for 2013-2014 school year. Student contends the moderate/severe placement deprived Student of access to general education curriculum, whole/large group instruction and positive peer modeling. District contends its offer of placement for the 2013-2014 school year was appropriate because during the diagnostic placement Student regressed on his goals and demonstrated an inability to function at the level required in the mild/moderate classroom. District maintains its offer of placement was made in conformity with Student's unique needs and IEP goals, including Student's need for small group and one-on-one instruction, prompting, redirection and the level of language and other support provided in a moderate/severe classroom.

20. Legal conclusions 1 through 4, 6 through 10, and 17 are incorporated by reference.

21. Student failed to establish by the preponderance of evidence that District's placement offer in a moderate/severe classroom for the 2013-2014 school year was not designed to meet Student's unique needs, and was not reasonably calculated to provide Student with some educational benefit in the least restrictive environment.

22. The evidence established at the time District made its offer of FAPE for the 2013-2014 school year, Student continued to have unique needs in the areas of academics, behavior, language, communication, and social/emotional development. Student required substantial prompting, smaller groups, and one-to-one instruction to learn. He was unable to complete work independently and had an inability to attend or reference peers without extra support. The evidence proved Student's difficulty with language, his skill level and his level of dependence on adults could be addressed in the moderate/severe special day class placement offered by District. District witnesses credibly established that Student's needs required the structure of a moderate/severe classroom, with its slower pace, simpler language, smaller group sizes, and other supports such as visual.

23. Keeping in mind that the measure of a FAPE is whether the District's June 2013 offer of placement was reasonably calculated to "confer some educational benefit" on Student, the evidence established that at the time of District's offer, Student could not meet the rigors of a mild/moderate placement. By June 15, 2013, Student had already been in the diagnostic placement about 13 weeks. Ms. Cossitt credibly testified Student was only able to complete about one-quarter of the mild/moderate classroom work. As compared to the other students in the class, Student required a significant amount of one-to-one instruction or very small group support with all subjects, reteaching, and prompting to access the curriculum in that placement. The weight of evidence established Student did not have a sufficient level of independence or a basic level of language required in the mild/moderate classroom, and if he were to be placed there, he would mainly need one-to-one instruction. Ms. Cossitt had contemporaneously relayed her concerns about Student's difficulties to Mother when Mother picked Student up from school during the diagnostic period and Father had

insufficient contact with Ms. Cossitt or firsthand knowledge of Student's progress to rebut Ms. Cossitt's conclusion.

24. Student's progress in the moderate/severe classroom prior to the diagnostic placement also demonstrated he could achieve some educational benefit in a moderate/severe classroom. At the outset of the diagnostic placement, Student was on track to meeting most of his IEP goals. By March 15, 2013, Student had met one of his annual goals and the second benchmark for 17 of his annual IEP goals all while in the moderate/severe placement. Ms. Wilson credibly testified that she expected Student to meet all 17 of those goals by May 16, 2013. However, by May 16, 2013, after eight weeks into the mild/moderate placement, Student had regressed on two of his annual goals (his language arts/reading comprehension goal and his social communication/reciprocity goal) and had met only met four of the original annual IEP goals he had been on track to meet.

25. The fact that Student made progress on some of his goals while in the diagnostic placement did not prove that District's placement offer was improper. There was no credible evidence which indicated Student would not have otherwise met those same goals if he had remained in moderate/severe placement during the remainder of the 2012-2013 school year.

26. Student attempted to show he was capable of working independently by relying on the worksheets Student completed during the diagnostic placement. However, the weight of evidence proved Student's worksheets were completed by Student with one-on-one support and that, on several occasions, Student's aide had given him the answers. Both Ms. Cossitt and Ms. Martin credibly testified that Student had great difficulty completing his worksheets without one-on-one support. Although Father claimed he saw Student complete one or two worksheets independently during his one-hour observation on May 3, 2013, this testimony was not sufficient to overcome

the credible testimony of Student's teacher about Student's performance over the length of the diagnostic placement. Student based much of his case on the assumption Student had completed his worksheets independently. Both Dr. Falvey and Dr. Davidson partly based their opinions about placement on this incorrect supposition. The failure of Student to prove this assumption undermined Dr. Falvey's and Dr. Davidson's opinions, and necessarily, Student's case.

27. The evidence did not support Student's claim that a moderate/severe placement denied him access to a general education curriculum and the opportunity for modeling higher functioning peers in the areas of language, behavior, and social skills. The uncontradicted evidence proved Student was mainstreamed for 90 minutes per day, five days a week with his general education peers while attending at Canyon View. Accordingly, Student had the opportunity for access to some parts of the general education curriculum and to model higher functioning peers on a daily basis. The evidence also established that Ms. Wilson utilized second grade level books and other materials used in the general education second grade class, which Ms. Wilson supplemented with materials aligned with a common core curriculum.

28. Student's May 29, 2013 and June 3, 2013 behavior charts did not support Student's position. The uncontradicted evidence was that Ms. Cossitt gave Student "happy" marks if she believed Student was completing as much work as he was capable of doing. Similarly, the evidence regarding the grades on Student's report card during the diagnostic period did little to prove District's offer of placement was inappropriate. Student's grades varied and there were numerous areas of concern noted in class participation and activities, word analysis, fluency, vocabulary development, reading comprehension, literacy response and analysis, written language conventions, and mathematical reasoning. Student also had low marks in reading progress, writing progress, language progress, listening and speaking. These noted deficiencies

supported District's position that Student required a placement in the more structured moderate/severe special day class.

29. District presented persuasive evidence that the level of Student's goals supported District's placement offer. While Student took issue with the fact that Ms. DiGiuseppe had never testified as an expert, her education and experience in the District established her qualifications to opine on the level of Student's goals relative to other students in the mild/moderate special day class. Ms. Cossitt, Ms. Durocher and Ms. DiGiuseppe all credibly testified that the bulk of Student's IEP annual goals for the 2013-2014 school year were inappropriate for a student transitioning from first to second grade in a mild/moderate placement. District proved some of Student's annual goals were far below grade level of a first grader in a mild/moderate classroom. For example, the evidence established that several of Student's goals addressed skills which should have been attained by, or in kindergarten, and a typical student transitioning from a mild/moderate first to second grade class would not require the amount of prompting Student required to perform simple tasks in order for Student's goals to be accomplished.

30. ACES' data and recommendations did not establish that District's offer of placement in a moderate/severe setting was improper. Student had many areas of need and ACES was only collecting data on four target skills. ACES data demonstrated there were days Student demonstrated the target skill at a similar level to what was observed in the moderate/severe setting and days when he did not demonstrate the skill at all. ACES hypothesized that Student had the ability to exhibit the target skills in the mild/moderate classroom on a consistent basis to the level seen in the moderate/severe placement if he had more support and/or more time. The fact that Student needed more support and/or more time in the mild/moderate placement to enable him perform as well as in the moderate/severe setting supports District's position that a

moderate/severe placement was reasonably calculated to confer educational benefit to Student. This is especially true where overall the goal was for Student to learn to function as independently as possible. Mr. Zhe's testimony regarding his observations of Student in the two placements also supported District's position.

31. Student was unpersuasive in demonstrating District's offer of placement was improper based on Dr. Davidson's less than credible opinion that Student regressed as a result of being placed back in the moderate/severe placement during the 2013-2014 school year. The preponderance of the evidence demonstrated that any skills Student lost after the 2012-2013 school year, were likely due to his failure to attend the extended school year. The decision not to attend the extended school year was a decision made by Parents. Even so, Ms. Wilson credibly testified Student quickly recovered any lost skills of independence and he was making good progress on his annual goals.

32. Overall, Dr. Davidson was not a credible witness. Her testimony and resume was misleading regarding her credentials. Her testimony was inconsistent and evasive on many points. At hearing, Dr. Davidson was incredulous that District had not accepted her placement recommendation and she seemed more concerned with defending her recommendation than answering the questions candidly. She had excellent recall regarding matters which supported Student's position, and less ability to recall matters when under examination by District. For example, Dr. Davidson claimed she was shocked District did not recommend a mild/moderate placement at the June 2013 IEP meeting and that the opinions Ms. Cossitt expressed at that meeting were not persuasive. Contradicting herself, Dr. Davidson also claimed to have no knowledge as to whether any of District staff agreed with her opinion as to placement and to have no understanding as to their opinions about placement. Both the documentary and

District's credible testimonial evidence at hearing proved that several District staff verbally expressed their opinions about placement to her at that meeting.

33. Dr. Davidson's evasiveness and inconsistent testimony affected her overall credibility and the weight given to her reports. In fact, some assumptions Dr. Davidson makes for the conclusions in her Pre-Hearing Report appear to be lacking evidentiary support or were contrary to the evidence. The report repeatedly makes reference to documents which were not mentioned during the testimony at the hearing. Dr. Davidson's Pre-Hearing Report also repeatedly makes reference to "the IEP documents" without identifying the specific document or the page number of such document. Student made no effort during the hearing to have Dr. Davidson explain the relevant specifics of her report, if any, to the trier of fact. Most importantly, Dr. Davidson's Pre-Hearing Report was issued long after the IEP offer at issue and was not provided to the District for purposes of developing Student's IEP. For these reasons, Dr. Davidson's opinion was not given much weight.

34. Student's other expert was also unpersuasive. Dr. Falvey only observed Student for one hour, eight months after District made its offer of FAPE for the 2013-2014 school year. When questioned as to which setting was most appropriate for Student, she repeatedly qualified her responses, claiming unfamiliarity with District's program and that her observations were limited. She never reviewed any work samples from Student's moderate/severe class, and she also incorrectly assumed Student completed 90 percent of the diagnostic placement work samples independently. Although she admitted she was aware Student's work samples indicated Student never completed many of his work assignments during the diagnostic placement, she failed to address why that did not affect her opinion. The reliability of her observations during mainstreaming was also questionable because her testimony was inconsistent. For example, Dr. Falvey claimed she was both near Student and heard him verbally respond

in class, but later admitted she never heard Student respond because she was too far away from him. Dr. Falvey was impeached on the level of prompting required by Student, initially claiming he might have been prompted a couple of times, but later stated he was prompted every couple of minutes. Furthermore, Dr. Falvey's opinion was inconsistent with the opinion of Student's other expert, Dr. Davidson, and inconsistent with the relief sought by Student in this case, which diminished the persuasiveness of both her and Dr. Davidson's opinions.

35. To the extent Student contends District's offer of placement for the 2013-2014 school was not the least restrictive environment because Student should have been placed in a mild/moderate special day class, the analysis is exactly the same as for Issue One. Like the moderate/severe special day class, the mild/moderate special day class contained only special education students, and at all times Student was offered the same amount of mainstreaming, such that there was no difference in degree of exposure to typical peers. In addition, as discussed above, Dr. Falvey's opinion regarding full-time mainstreaming was not persuasive. Accordingly, Student's claim that the 2013-2014 offered placement was not the least restrictive environment fails.

36. In sum, the moderate/severe classroom placement, with its lower teacher-student ratio, additional adult support staff, structured program, slower pace, level of language and other supports, was designed to meet Student's unique needs. The placement was reasonably calculated to provide Student some educational benefit in the least restrictive environment. Student's placement therefore provided him a FAPE. Student failed to meet his burden of proof that District denied Student a FAPE in the least restrictive environment by offering a moderate/severe special day class for the 2013-2014 school year.

### ISSUE 3: DISTRICT'S OFFER OF MAINSTREAMING FOR THE 2013-2014 SCHOOL YEAR

37. Student contends District denied Student a FAPE for the 2013-2014 school year by failing to offer the same number of mainstreaming hours at Canyon View Student received during the diagnostic placement at Culverdale. District contends Student was offered the same number of mainstreaming hours at Canyon View as he received at Culverdale.

38. Legal conclusions 1 through 4, and 6 through 10 are incorporated by reference.

39. The evidence established that while at Culverdale, Student was receiving 90 minutes of mainstreaming, five times a week with one-on-one ACES aide support. District's offer of FAPE for the 2013-2014 school year included the same number of mainstreaming hours, 90 minutes per day with one-on-one aide support from a nonpublic agency.

40. Student failed to meet his burden of proof on this issue. District did not deny Student a FAPE for the 2013-2014 school year by failing to offer the same number of mainstreaming hours Student received while attending Culverdale during the 2012-2013 school year.

### ORDER

All relief sought by Student is denied.

### PREVAILING PARTY

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

## RIGHT TO APPEAL

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

DATED: April 7, 2014

\_\_\_\_\_/s/\_\_\_\_\_

LAURIE GORSLINE

Administrative Law Judge

Office of Administrative Hearings