

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LAS VIRGENES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013110490

CORRECTED¹ DECISION

Mother, on behalf of Student, filed a due process hearing request (complaint) on November 14, 2013, naming the Las Virgenes Unified School District (District). The matter was continued for good cause on December 13, 2013.

Administrative Law Judge (ALJ) Alexa J. Hohensee heard this matter in Calabasas, California on January 22 and 23, 2014.

Student's mother (Mother) and father (Father) represented Student on January 22, 2014. Mother represented Student on January 23, 2014.

Wesley B. Parsons, Attorney at Law, represented District. Sahar Barsoum, Coordinator of Special Education, attended the hearing on behalf of District.

On January 23, 2014, the last day of hearing, the record was closed and the matter was submitted for decision.

¹ Typographic error in name of school district corrected.

ISSUES²

1. Did District deny Student a free appropriate public education (FAPE) by:
 - a. Providing Student with a District aide, rather than a nonpublic agency (NPA) aide, when Student enrolled in District?
 - b. Failing to provide Student with an aide on a daily basis for the duration of time specified in Student's 30-Day Placement?
 - c. Failing to have an aide review homework assignments with Student to confirm that they were recorded accurately?
 - d. Failing to offer Student placement in the least restrictive environment (LRE)?
 - e. Failing to provide Student with appropriate speech therapy services?

SUMMARY OF DECISION

Student did not meet his burden of persuasion on any of the issues presented. The weight of the evidence established that District's aides were well trained and sufficiently qualified to provide Student with instructional assistance. Student's aides accompanied him throughout his school day in general education and assisted him in accurately recording his homework assignments. Student's speech therapy provider was well qualified, and Parent's dissatisfaction with one statement made by that provider at an individualized education program (IEP) meeting did not establish that Student was receiving inappropriate speech and language services. The weight of the evidence also established that Student required an hour each day of systematic social communication instruction, and the offer of removal from general education for that purpose did not

² The issues have been rephrased and reorganized for clarity. 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.)

violate federal and state mandates that Student be educated in the LRE. All of Student's requests for relief are denied.

FACTUAL FINDINGS

1. Student was nine years old, and in fourth grade, at the time of the hearing. He is qualified for special education as a student exhibiting autistic-like behaviors, and has been diagnosed on the autism spectrum.

2. Student has lived within District's boundaries at all relevant times.

30-DAY PLACEMENT

3. During the summer before the 2013-2014 school year, Mother notified District that Student would be enrolling at his home school, White Oak Elementary School (White Oak), for the upcoming year. Mother provided District with a copy of Student's then-current IEP from his prior school district.

4. On August 19, 2013, District offered Student an IEP on a form entitled "30-Day Placement" for the 2013-2014 school year. The 30-day IEP consisted of a general education placement with the following supports: speech therapy for 60 minutes/week; counseling for 80 minutes/year; behavior consultation for 30 minutes/week; and instructional aide support "during time in general education." The IEP indicated that the placement was temporary and comparable to Student's previous IEP, and that District would convene an IEP team meeting within 30 days to review placement and make final recommendations. Mother consented to the 30-day IEP.

5. From the beginning of the 2013-2014 school year, District provided Student with instructional aide support with a primary aide, and another aide who worked with Student during the primary aide's breaks or absences. Both instructional aides had completed District's applied behavior analysis (ABA) training.

6. District provides ABA training to all instructional aides who work with students on the autism spectrum. ABA is an instructional technique that breaks down skills into measurable, learnable parts that are initially worked on in a small structured environment, and then practiced in increasingly less structured settings. If the skills are learned in a progressive and systematic way, they should transfer to other settings. District's ABA training program was designed by, and is run in collaboration with, Autism Partnership, an NPA that serves children with autism. The training program consists of two days of lecture, and four days of hands-on training with preschool children. District's ABA training is comparable to, if not better than, that provided by most NPA's in the field. District instructional aides are supervised by District's behavior intervention team, who in turn collaborate with Autism Partnership.

7. Student's primary aide for the 2013-2014 school year was Claudia Padilla, with Mitch Erlich and Jennifer Sunny providing back up support. All three of these aides completed District's six-day training and developed a good rapport with Student. One of these aides accompanied Student at all times when Student was in general education, including in the classrooms, during recess, and at lunch.

8. District placed Student in Deanne Hokanson's general education fourth grade classroom. Ms. Hokanson holds a bachelor's degree in child and family development, and a master's degree in digital technology and learning. She holds a multiple subject teaching credential, and has been teaching since February 2011. Ms. Hokanson has worked for over 10 years with both typically developing and special needs children in a variety of positions, including as a teacher, associate teacher and instructional assistant. At the time of hearing, Ms. Hokanson had taught Student for four months, with the assistance of Student's instructional aides. Her demeanor at hearing was calm and professional, and she testified thoughtfully regarding Student's abilities and performance in the classroom. Her statements regarding the volume of homework

given and the time it should take to complete that work were credible, and her opinions regarding Student's needs and the aides' ability to work with Student were given great weight.

9. Student did well academically, particularly in math, and responded appropriately when called upon. However, Student was slow to learn the classroom routines, and experienced difficulty completing and turning in assignments. Student refused to work on writing assignments, refused help when offered, and preferred to sit or fidget at his desk without completing written work. Behaviorally, Student had difficulty with attention, focus, staying on task, and appropriately asking for help. Student called out for attention and stated his objections to assistance loudly, which was disruptive to other students in the classroom.

10. Student was well liked by his peers, but did not socialize with them unless prompted to do so. On the playground, Student preferred to swing by himself on the swings. His aide used swing time as a reward if Student played with the other children for at least two minutes, but Student discontinued his play with other children when the aide's prompting stopped. Swinging is not a typical play for fourth graders, although some use the activity of going to the swings to start up conversations away from other play. Student, however, did not use the swings to initiate play or conversations with others.

11. In Ms. Hokanson's classroom, Student's aide did not hover over Student, and occasionally answered a question by, or quickly assisted, other students when Student was engaged and on task. However, the aide's primary focus was on providing instructional assistance to Student. Ms. Padilla and Mr. Erlich provided Student with effective instructional assistance and prompted Student to attend, stay focused to task, and interact with his classmates as appropriate. At the end of each day, the aide ensured that Student had accurately recorded his homework in his "reminder binder."

12. Mother disliked Student's primary aide, Ms. Padilla. Mother did not like that Ms. Padilla chewed gum. On one occasion, Ms. Padilla signed off on Student's homework assignments for the night, although Student had recorded the homework incorrectly. Ms. Hokanson once sent home a note that Student had not turned in a homework assignment, which greatly upset Mother because Mother had seen Student complete the work. Mother had not experienced homework confusion at the previous school district, where Student had had an NPA aide. Mother concluded that Ms. Hokanson and Ms. Padilla did not communicate with her sufficiently, and that communication problems would be eliminated if Student had an NPA aide. Mother also generally disliked Student's other aide, Mr. Erlich, and knew that if Student received an NPA aide, Mr. Erlich would be assigned elsewhere.

13. Student had difficulty completing homework at home. Mother arranged for Student to work on homework with an in-home behavior aide provided by an NPA, California PsychCare (Cal Psych). Mother worked with her son on homework not completed with the in-home aide.

SEPTEMBER 17, 2013 IEP

14. On September 17, 2013, District convened an IEP team meeting. Parents, administrator Brandie Rosen, Student's general education teacher Deanne Hokanson, behavior specialist Jake Goodrich, speech pathologist Jil Yaldezian, special education teacher Laila Jafari, and the school principal attended the meeting.

15. Before the meeting, Ms. Rosen and Ms. Jafari reviewed Student's educational records, including assessments, consulted Student's speech therapist, and observed Student in Ms. Hokanson's classroom. They documented and reported Student's present levels of performance to the IEP team. Student had average to high average cognitive ability, and strong skills in reading and math. Student scored "proficient" in English language arts, and "advanced" in math on the May 2013

Standardized Testing and Reporting. In writing, although Student could develop ideas on a given topic, and had strong grammar and spelling skills, he had difficulty answering open-ended questions or developing stories based upon open-ended questions. In communication, Student had an appropriate vocabulary and overall average language skills, but had weakness in pragmatic (social) and non-literal language, and difficulty taking someone else's perspective, making inferences, negotiating conflicts with peers, and being flexible in social situations. In social emotional/behavioral functioning, Student had difficulty accepting corrective feedback from peers and adults, struggles with social cues, and would not socialize with peers without prompting. Student exhibited prevocational difficulty in completing school work in a timely manner, and needed prompting to attend or follow classroom routines.

16. Ms. Hokanson reported that Student was doing well in her class academically, but had difficulty with the classroom routine, refused to begin or complete written work, had difficulty with attention and focus, and did not initiate conversation with peers in class or on the playground without prompting.

17. Ms. Yaldezian, Student's speech pathologist, reported that Student was doing well in his small group speech therapy sessions. She reviewed Student's previous speech goals and recommended new goals. She reported that Student appeared to enjoy learning the skills to communicate and was very successful in his speech therapy sessions. However, she also opined that Student needed to work on self advocacy skills and the ability to stay focused and on task.

18. Based upon Student's present levels and areas of need, the IEP team developed goals in the areas of language/communication (taking the perspective of others; learning to give different but plausible interpretations; and independently reading social cues and adjusting behavior), social/emotional functioning (independently using appropriate coping strategies, such as taking a deep breath or

asking for a break; independently and appropriately joining and participating in a conversation; and independently expanding play activities), vocational skills (appropriately gaining adult attention when presented with a non-preferred or difficult task; independently maintaining focus to task; and independently keeping an organized binder of papers to turn in and homework assignments), and writing.

19. The team developed a positive behavior support plan to address Student's non-compliant behaviors of refusing to begin or complete a non-preferred task at adult request, and engaging in preferred activities instead. The team discussed and adopted strategies to teach Student to independently follow teacher instruction, including asking for help or breaks as needed, with positive rewards for decreased problem behavior and a plan for fading prompts once Student could self-monitor and use internal motivations.

20. District members of the IEP team envisioned Student learning the behavioral strategies and social skills referenced in his goals and behavior support plan in a daily one-hour social skills class in District's Social Communication Program (sometimes referred to as the Social Learning Academy). District developed the Social Communication Program in collaboration with Autism Partnership as part of a more modern, proactive application of ABA principles. The Social Communication Program utilized a curriculum designed to teach social skills in a group setting, with emphasis on internalizing the skill and acquiring independence in generalizing skills across school settings, rather than in an isolated setting requiring Student to rely on adult prompts to use skills in more generalized settings. As a result Student would proactively acquire frustration coping skills, attention skills, and social communication skills, with less dependence upon adults to prompt him reactively.

21. The Social Communication Program was taught at White Oak throughout the day, to third through fifth grade students who were generally at grade level academically but weak in social communication skills. Students of different grades went

in and out of the classroom, some for only the direct instruction of a one hour social skills class, and the class usually had 10 to 12 students at any one time. The social skills class incorporated a curriculum that systematically taught both "learning to learn" and social skills. Aides in the Social Communication Program followed social skills students throughout the day, in the general education classrooms and on the playground, to reinforce acquired skills.

22. Learning to learn skills are necessary to function in a school environment, and include such skills as how to raise a hand to appropriately gain attention, wait to be called upon, sit appropriately, keep an organized binder, bring books to school, be prepared, pick a partner for group activities, and follow instructions. A student who lacks learning to learn skills can be affected socially. For example, if a student does not know that he should not call out in class, or how to work in a group, or how to get organized for his turn, the other students will be distracted or have to wait, and the student can suffer social stigmatization.

23. The social skills component of the Social Communication Program focused on social interaction skills in which a student had a deficit and taught them in small, learnable parts. For example, before a student could master frustration tolerance, he needed to first learn how his body felt under stress, to identify what stressed or calmed him, and how and when to apply calming techniques. Conversation skills lessons included not only greetings, but how to join a conversation appropriately, and conversational turn taking (how to be less "robotic," or to avoid monopolizing conversation). Social skills students are often over-focused on their own areas of interest, and the social skills curriculum exposed them to age-appropriate, popular culture themes (sports, famous people, technology, music, movies, television shows), making it easier for them to join and participate in conversations with their peers.

24. The social skills curriculum also included engaging in play activities, as play is the primary means by which elementary school children form meaningful peer relationships. Students learned the rules of common games (e.g., the ball bounces twice in handball), common terms of the games (e.g., "rainbow" and "cross-country" in handball), how to be flexible if peers want to change the rules, and how to physically participate (e.g., how to hit the ball and where to aim). In contrast to physical education classes, the social skills class allowed students to learn the rules and physical skills necessary to play a game in a safe environment. Those skills were then generalized to the playground. The Social Communications Program had instructional aides, including Mr. Erlich, who worked with the program's students on the playground during lunch and recess.

25. The general education teachers at White Oak had coordinated their classroom schedules to ensure that students who attended the one-hour social skills curriculum did not miss important academic instruction. Ms. Hokanson already had two students in the social skills class for whom she had adjusted her class schedule to ensure that no new concepts were introduced during that time. Student would miss a small portion of independent study two days a week, half of the art and music classes one day a week, a small portion of playground time and some physical education one day a week, and half of the computer class and library time one day a week. Assigned homework already incorporated practice and review of academic concepts, and Student's attendance in the social skills class would have a minimal impact on the time spent on homework.

26. Laila Jafari taught the Social Communications Program. Ms. Jafari has a bachelor's degree in psychology, a master's of science in special education, and is a credentialed primary special education teacher. She has more than seven years of experience working with children with autism, including over three years as an associate

clinical supervisor at Cal Psych. Ms. Jafari has received over 75 hours of ABA training. During the 2013-2014 school year, Ms. Jafari was Student's case carrier, and responsible for coordinating Student's services in accordance with his IEP and monitoring Student's progress on his goals. Ms. Jafari frequently observed Student and his interactions with his aides, in Ms. Hokanson's classroom and on the playground. At hearing, Ms. Jafari testified with passion about District's Social Communication Program and Student's potential for strong academic, social, and behavioral growth. Her opinions regarding Student's educational needs and his interactions with District aides were accorded significant weight.

27. Ms. Jafari reported to the IEP team that Student's instructional aides worked well with Student and had a good rapport, but Student was overly dependent upon his aides to prompt him for attention, focus to task, implementation of positive behavior strategies and interaction with peers. She recommended that Student attend a daily social skills class in the Social Communications Program to meet his goals, most of which required Student to act with independence. Ms. Jafari felt that Student was quite capable of reducing or eliminating his dependence upon prompts by completing the social skills curriculum.

28. Ms. Hokanson opined that Student needed the social skills class to address his disruptive behaviors, to learn to stay on task, maintain focus, properly ask for help, and interact with his peers without prompting. She felt that Student was capable of earning good grades, but his inability to maintain focus and complete classwork was impacting his access to the curriculum. Ms. Hokanson had no concerns about Student missing class time for social skills instruction, because no new concepts were introduced at that time, and homework assignments would provide sufficient review and practice. She believed that the social skills curriculum would provide Student with independence

in following classroom instruction, engaging in classroom participation, and generally accessing his educational program in a more appropriate manner.

29. Jake Goodrich, a District behavior interventionist, was also on the IEP team. Mr. Goodrich taught some of the social skills lessons for the Social Communications Program. Mr. Goodrich has a bachelor's degree in English, and is working on his master's in counseling. He was an instructional aide for District from 2008-2011, and worked as a behavioral specialist for District for the past three years. He has received over 300 hours of ABA training, and is very knowledgeable about supporting and monitoring student behaviors, developing and implementing behavior support plans, and facilitating proactive teaching strategies for social skills and behavior intervention.

30. In accordance with the 30-day placement IEP, Mr. Goodrich provided weekly direct services to Student, and collaborated monthly with Ms. Jafari, Ms. Hokanson, and Student's aides. He observed Student on many occasions in the classroom and on the playground. Mr. Goodrich worked with Ms. Padilla, Mr. Erlich and Ms. Sunny, and observed Ms. Padilla working with Student. He opined that all three aides were competent, and commended Ms. Padilla for being highly motivated. He believed that Ms. Padilla and Ms. Sunny had developed an appropriate rapport with Student, although he candidly admitted he had not had a chance to observe Mr. Erlich working with Student. Mr. Goodrich considered Student to be intelligent and interesting but quiet, unable to sustain attention, and rigid in his conduct on campus. Mr. Goodrich observed that Student was prompt dependent, and would not follow teacher instructions unless prompted by an aide, peer, or the teacher. On the playground, Student would not join in play or interact with peers on the playground unless prompted to do so. After being prompted to line up with his classmates, Student would not move forward in line unless further prompted, causing other students to move around him and push him back in line. Mr. Goodrich shared his observations with the

IEP team, as well as his opinion that Student required the systematic and proactive intervention provided in the Social Communication Program, rather than the reactive intervention of an aide, which had resulted in Student's prompt dependency. As the consulting behaviorist for Student, Mr. Goodrich could also coordinate and collaborate with the social skills staff and Student's general education teacher and instructional aides to provide consistent communication and behavioral support across settings.

31. Mr. Goodrich had a calm and professional demeanor, and seemed sincere and genuinely concerned about Student's welfare. Mr. Goodrich answered all questions fully and persuasively. When queried whether Student could meet his goals without the social skills class, Mr. Goodrich answered thoughtfully and very compellingly that he believed that although Student might make some progress, Student's progress would not be meaningful, and Student would not achieve his goals with independence in the absence of the systematic instruction of the social skills curriculum. Mr. Goodrich's opinions regarding Student's social needs, behavioral needs, the competency of Student's instructional aides, and Student's interactions with his aides, were given great weight.

32. Jil Yaldezian, Student's speech therapist, taught the social skills class one day each week. She broke the class into small groups in which the students practiced pragmatic language skills, such as the give and take of conversation and peer interaction. These lessons were individualized to each student's IEP. For example, one student would work on waiting one turn in a conversation to speak, while another waited for three turns. Lessons in skills such as conversational turn taking built upon, and provided reinforcement for, other social skills lessons, such as sustained attention and frustration tolerance.

33. Ms. Yaldezian is a licensed, credentialed, and very well-qualified speech and language pathologist, with over 20 years of experience working with school children

with speech and language deficits, including students on the autism spectrum. She provided Student with speech services for 60 minutes each week during the 2013-2014 school year, and worked with him on his prior speech and language goals, as well as the new goals after Parents consented to them. She opined that the 60 minutes per week of speech and language services District offered to Student was appropriate, but that he also needed the systematic social communication curriculum provided by the social skills class to meet his goals with independence. Her demeanor at hearing was thoughtful and professional, and she displayed optimism for Student's potential growth in language and communication. She described Student as smart and eager to learn how to communicate. Her opinion on Student's speech and language needs, including social language needs, and the services required to address those deficits, was given great weight.

34. Mother informed the other members of the IEP team that she did not want her son to attend the social skills class because she did not want him to miss an hour each day of academic instruction. Despite the assurances of Ms. Hokanson and Ms. Jafari that everything would be done to minimize the impact of missed time, and the other team member's opinions that Student would learn to better attend and derive more from classroom instruction, Mother believed that Student's attendance in the social skills class would cause Student to would fall behind his classmates academically and increase Student's homework burden.

35. Mother further asked District to assign Student an aide from an NPA, because she wanted Student to have only one assigned person for consistency, and because she felt that NPA aides were better than District aides. District team members told Mother that District's aides were very well trained and worked well with Student, and that multiple aides trained to work with Student provided him with consistency when one aide took a break or was absent. They also explained the importance of

having another person trained to work with Student to provide Student with opportunities to generalize acquired skills to other adults.

36. The IEP team agreed that Student could complete grade level work and did not need modification to the fourth grade curriculum. Instead, they developed a list of accommodations, including among other things, assistance with recording homework and having the teacher or aide sign Student's assignment notebook to address Mother's homework concerns. Ms. Hokanson told Mother that Student should spend only 45 minutes a night completing homework.

37. District offered Student the following program: placement in a general education classroom with one hour per day (300 minutes per week) in the Social Communication Program; speech and language services for 60 minutes per week; occupational therapy for 15 minutes per week; behavior intervention supervision by a behavior specialist for 30 minutes each week; and behavior intervention consultation and collaboration for 60 minutes per month. Student was not offered direct instructional aide support. Rather, District offered instructional aide support designated "not 1:1" as support for "school personnel (i.e., consultation, training, planning time)."³

38. Parents declined to consent to the September 17, 2013 IEP.

39. Student continued to struggle with homework, and, in October 2013, Mother requested an IEP team meeting to discuss implementation of an NPA aide and Student's homework burden.

³ Student's complaint does not challenge whether the duration and frequency of aide services offered in the September 17, 2013 IEP was sufficient to meet Student's unique educational needs, and that issue is not addressed in this decision.

NOVEMBER 12, 2013 IEP

40. On November 12, 2013, District convened an IEP team meeting, attended by Parents, program specialist Ms. Rosen, case manager Ms. Jafari, Student's general education teacher Ms. Hokanson, behavior specialist Mr. Goodrich, speech therapist Ms. Yaldezian, and the school principal.

41. Mother explained that she was dissatisfied with "everything" about Student's aide, Ms. Padilla. Mother told the team that Student had once written his homework down incorrectly and Ms. Padilla had not caught the error. Mother objected to more than one aide working with her son, and told the team that Student's previous NPA aide had never needed a lunch break or other breaks requiring backup assistance.

42. The behavior specialist, Mr. Goodrich, informed the team that he was working with and providing support for Ms. Padilla. He believed that Ms. Padilla was providing appropriate instructional assistance for Student. Other team members noted that Student had an opportunity to generalize skills to other adults with more than one adult working with him, and that the back-up aides provided coverage when Ms. Padilla took breaks.

43. Mother also reported that Student worked with a Cal Psych in-home behaviorist for one and a half hours per night on homework, and for another hour with Mother. When queried by team members, Mother denied that Student exhibited non-compliant behaviors while doing his work, and insisted that Student was simply overwhelmed by the volume of homework assigned.

44. Ms. Hokanson reminded Mother that homework should not take more than 45 minutes per night. Ms. Hokanson reported that the homework assignments for her class were posted daily on her website. Ms. Jafari shared a printout of the times logged by Student on his math homework, which showed Student spending an average of 15 to 18 minutes on math homework when assigned.

45. District team members concluded that Student's homework should not be taking so long, and that further accommodations might be required. District offered four hours of behavior interventionist time for Mr. Goodrich to observe Student working on homework in the home, collaborate with Cal Psych, identify why Student was spending so much time on homework, and recommend accommodations that could be implemented to make the work more manageable. District did not offer to provide Student with an NPA aide.

46. District team members reminded Parents that Parents had not consented to the September 17, 2013 IEP, which had not yet been implemented.

47. During the IEP team meeting, Student's speech provider, Ms. Yaldezian, took the opportunity to ask Parents about Student's interests, as she was hoping to form small groups among her speech students based upon common interests. Ms. Yaldezian found that students were more likely to feel comfortable discussing things they felt passionate about, and she wanted to learn from Parents whether Student had interests that he had not mentioned to her.

48. Parents did not raise concerns about Ms. Yaldezian's services at any of Student's IEP's. However, Mother expressed her concern at the hearing that Ms. Yaldezian had asked Parents, rather than Student himself, about Student's interests.

49. At the close of the meeting, Parents consented to implementation of the September 17, 2013 IEP, including placement in general education and services, goals, and accommodations, except for (i) placement of Student in the Social Communication Program for one hour a day and (ii) assignment of a District aide rather than an NPA aide. Parents did not consent to the November 12, 2013 IEP addendum offer of four hours of in-home behaviorist services to work on homework issues. Mother wrote onto the IEP addendum that she wanted her son to have an NPA aide, that she would document in a log for District the excessive amount of time Student spent on

homework, and that she wanted District to coordinate with her in-home program provider to observe Student in school.

50. Ms. Hokanson and Student's aides implemented the homework accommodations. They also helped Student on his vocational goal of independently keeping an organized binder for his homework and completed papers by checking that Student had written down each homework segment correctly and completely, assisting him with writing down the assignments, checking his understanding of assignments, and signing off in his reminder binder at the end of each day.

51. Mother never provided District with a log of the times her in-home behaviorist spent with Student on homework.

52. On or about December 19, 2013, Student's in-home aide supervisor observed Student on the playground. Ms. Jafari, who accompanied him, understood him to say that Student took a little over an hour each night to complete his homework, and that Student would benefit from a social skills program.

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA⁴

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.⁵; Ed. Code, § 56000, et seq.; Cal. Code. Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that

⁴ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

⁵ All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

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

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; Cal. Code Regs., tit. 5, § 3001, subd. (p).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a) [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; 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].)

ISSUE 1A: DID DISTRICT DENY STUDENT A FAPE BY PROVIDING STUDENT WITH A DISTRICT AIDE, RATHER THAN AN NPA AIDE, WHEN STUDENT ENROLLED IN DISTRICT?

5. Student contends that District denied him a FAPE because it did not agree to provide him with an NPA aide when he entered District. District contends that it was not required to duplicate Student's IEP from a prior school district because Student was a summer transfer student, and that District appropriately provided Student with well-trained instructional aides.

6. Each school district must have an IEP in place for a child at the beginning of the school year. (20 U.S.C. § 1414(d)(2)(a); 34 C.F.R. § 300.323(a).) Districts must convene a meeting to develop an IEP within 30 days of the initial determination that the student needs special education and related services. (34 C.F.R. § 300.323(c).)

7. In *Ms. S. ex rel G v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1134, the Ninth Circuit Court of Appeals addressed the question of a school district's obligation to provide a program when a student transfers from another school district. The *Vashon* opinion ruled that when a dispute arises under the IDEA involving a transfer student, the new district must implement the last agreed-upon IEP to the extent possible. If it is not possible for the new district to implement in full the student's last agreed-upon IEP, the new district must adopt a plan that approximates the student's old IEP as closely as possible. (*Id.* at 1134.)

8. Subsequently, the law was revised, effective July 1, 2005, concerning placement for students who transfer to a new school district, as follows: When a special education student transfers to a new school district *in the same academic year*, the new district must adopt an interim program that approximates the student's old IEP as

closely as possible until the old IEP is adopted or a new IEP is developed. (20 U.S.C. § 1414(d)(2)(C)(i)(1); 34 C.F.R. § 300.323(e).) California Education Code section 56325, subdivision (a)(1), mirrors Title 20 United States Code section 1414(d)(2)(C)(i)(1), with the additional provision that, for a student who transfers into a district not operating under the same special education local plan area, the local educational agency (LEA) shall provide the interim program "for a period not to exceed 30 days," by which time the LEA shall adopt the previously approved IEP or shall develop, adopt, and implement a new IEP that is consistent with federal and state law.

9. These rights of a transferring student only apply in the case of a transfer within the same academic year that he was in the previous district. In the official comments to the 2006 Federal Regulations, the United States Department of Education addressed whether it needed to clarify the regulations regarding the responsibilities of a new school district for a child with a disability who transferred during summer. The Department of Education stated that the IDEA, (20 U.S.C. § 1414(d)(2)(a)), is clear that each school district must have an IEP in place for a child at the beginning of the school year. Therefore, the new district could either adopt the prior district's IEP or implement a new one. (71 Fed. Reg. 46682 (August 14, 2006).)

10. The assignment of qualified instructional personnel is an administrative decision within the discretion of school districts. (*Letter to Wessels* (OSEP 1990) 16 IDELR 735).

11. In this case, the weight of the evidence did not support Student's contention that District denied him a FAPE by failing to provide him with the related service of an NPA aide upon enrollment in District.

12. First, District was not required to implement Student's previous IEP because Student transferred to District between academic school years. Accordingly,

District was entitled to either adopt the prior IEP or develop a new one, and District chose to develop a new IEP after a 30-day temporary placement.

13. District met its obligation to have an IEP in place at the beginning of the 2013-2014 school year with the 30-day placement. The parties do not dispute that the 30-day program was comparable to Student's previous program, except for the offer of a District aide rather than an NPA aide. As discussed below, the evidence established that District's aides were as well trained as NPA aides, and therefore the 30-day placement offer was comparable to Student's prior educational program.

14. Second, Student did not establish that he required an NPA aide. Although Parents testified that Student's IEP from another district had designated an "NPA" aide as a related service, the previous IEP was not in evidence, and Student offered no expert testimony or other credible evidence on the development of the previous IEP. This lack of evidence leaves to speculation whether, why, and to what extent Student's educational program specifically required an aide from an NPA; for instance, the use of NPA aide services by Student's prior school district might have been unrelated to Student's educational needs and due to such unrelated matters as lack of staff, budget or personnel issues. Parents' testimony that Student's prior district provided Student with an NPA was insufficient to establish that Student required an NPA aide in order to benefit from his educational program in his new placement within District per *Rowley*.

15. Student offered no evidence to establish that Student required an aide from an outside agency with specific training not available to District's aides, or an aide supervised by an NPA. The weight of the evidence established that District's aides received comparable, if not better, training than most NPA aides. District's aides were appropriately monitored and supervised by District's well qualified special education staff, including Ms. Rosen, Ms. Jafari, and Mr. Goodrich, a behavior interventionist with over 300 hours of ABA training.

16. All of the witnesses who had observed Student in the classroom and on the playground testified consistently that Ms. Padilla, Mr. Erlich, and Ms. Sunny worked well with Student and had developed a good rapport with him as his instructional aides. The assignment of multiple aides ensured that Student had aide coverage when his primary aide took a break, went to lunch, or was absent. Multiple aides also benefitted Student by requiring Student to generalize his skills with more than one adult.

17. Mother's personal dislike of Ms. Padilla and Mr. Erlich was insufficient to establish that these District aides were not capable and qualified to provide Student with appropriate instructional aide services to meet his unique needs, that is, redirecting Student's attention, helping Student to maintain attention to task, encouraging social interaction, and implementing the social and behavioral strategies necessary for Student to make progress on his goals and under his behavior support plan. Similarly, Mother's desire for one person as a point of information concerning her son was insufficient to establish that two or more aides could not meet Student's educational needs.

18. Mother's assertion that Student's homework difficulties were directly related to a lack of communication with Ms. Padilla was also unpersuasive. Student's homework assignments were posted daily on Ms. Hokanson's website, and either Ms. Hokanson or Ms. Padilla signed off on Student's homework log at the end of each school day. The evidence showed that Ms. Padilla made only one error in approving the log over a three to four month period.

19. Mother's credibility was adversely impacted by testimony that was improbable or exaggerated. To support her contention that Student only required one NPA aide as opposed to multiple District staff aides, Mother testified that Student's previous NPA aide never took breaks, and that no other person from the NPA worked with her son. It is highly improbable that Student's prior NPA aides worked a six-hour school day without a break, and never called in sick or otherwise needed back-up

coverage. Mother also testified variously and inconsistently throughout the hearing as to the average amount of time her son spent on homework each night, from a low of over one hour to a high of four hours. Many of these statements were inconsistent with what she wrote onto the September and November IEP documents, the statements she made to school staff, and other evidence of the volume of Student's homework. The inconsistency of Mother's testimony, both internally and with the other evidence, adversely affected her credibility with regard to the amount of time her son spent on homework, and the reasons for the excessive amount of time spent.

20. Student did not meet his burden of establishing by a preponderance of the evidence that he required an NPA aide rather than a District aide, and was denied a FAPE during the 30-day placement because he was provided with a District aide.

ISSUE 1B: DID DISTRICT DENY STUDENT A FAPE BY FAILING TO PROVIDE STUDENT WITH AN AIDE IN THE CLASSROOM ON A DAILY BASIS FOR THE DURATION OF TIME SPECIFIED IN STUDENT'S 30-DAY PLACEMENT?

21. Student contends that District denied him a FAPE because it did not implement his 30-day transition IEP by providing aide support for the entire school day. In support of his contention, Mother testified that Student arrived at school at 8:05 a.m., but the District aide did not begin to work with him until 8:15 a.m. District contends that Student's aide is present with Student throughout his school day in general education.

22. Legal Conclusions 1 through 4 are incorporated by reference

23. A school district must implement a student's IEP with all required components. (34 C.F.R. § 300.323(c).) However, a minor discrepancy between the services provided and the services required in the IEP is not enough to amount to a denial of a FAPE. (*Van Duyn v. Baker School Dist. 5J* (9th Cir. 2007) 502 F.3d 811, 822 (*Van Duyn*)). When a student alleges the denial of a FAPE based on the failure to implement an IEP, in order to prevail the student must prove that any failure to

implement the IEP was “material,” which means that the services provided to a disabled child falls “significantly short of the services required by the child’s IEP. (*Id.*, at p. 822.) “There is no statutory requirement of perfect adherence to the IEP, nor any reason rooted in the statutory text to view minor implementation failures as denials of a free appropriate public education.” (*Id.* at p. 821.)

24. The weight of the evidence did not demonstrate that Student received aide services for any less than a full day during his time in general education, as required by his 30-day IEP.

25. Because Parents did not consent to the elimination of Student’s aide services as provided in the September 17, 2013 IEP, District was required to implement Student’s last agreed upon IEP, the 30-day transitional IEP. Under the 30-day IEP, Student was entitled to an instructional aide “during time in general education.” Appropriate implementation of this provision did not require aide support while in special education settings, such as during speech therapy or occupational therapy. However, District was required to provide aide support throughout the day in all general education settings, including assemblies, recess, lunch, and general education classrooms.

26. Student did not present any evidence of his school schedule, or that his attendance in general education, including assemblies or classes, began prior to his aide’s arrival. In contrast, District witnesses testified that Student had a dedicated one-on-one aide for the entire school day. Ms. Hokanson testified that Student required, and had, an aide in her classroom who generally did not help other students. Ms Jafari testified Student’s aide was present to intervene when two girls made fun of the way Student was sitting during lunch period. Parents did not testify concerning observations in the classroom or on the playground, or provide any credible testimony supporting a

finding that Student was not provided with an instructional aide throughout his time in general education.

27. Even had Mother's testimony been sufficient to establish that Student arrived at school a few minutes prior to his aide, this fact would be insufficient to demonstrate that the services provided to Student fell significantly short of those required by the 30-day IEP. Student produced no evidence that he was unable to attend classes or assemblies, or was deprived of valuable academic instruction or non-academic benefits, during those few minutes without an aide. Per *Van Duyn*, this would constitute no more than a minor implementation failure, and would not rise to the level of a denial of a FAPE.

28. Student did not meet his burden of establishing by a preponderance of the evidence that District failed to implement the 30-day IEP by failing to provide Student with an instructional aide during his time in general education, and that he was therefore denied a FAPE.

ISSUE 1C: DID DISTRICT DENY STUDENT A FAPE BY FAILING TO HAVE AN AIDE REVIEW HOMEWORK ASSIGNMENTS WITH STUDENT TO CONFIRM THAT THEY WERE RECORDED ACCURATELY?

29. Student contends that District denied him a FAPE because Student's aides did not confirm that Student accurately recorded his homework every day, and as a result Student missed important academic practice and review. District disagrees, contending that (i) Student's teacher and his aides ensured Student accurately wrote down his homework, and that (ii) even if they had not done so, the classroom homework was posted every day on Ms. Hokanson's website and available to Student.

30. Legal Conclusions 1 through 4, and 23, are incorporated by reference.

31. Each IEP must contain a statement of the special education and related services to be provided to the child to enable the child to advance appropriately toward

attaining the annual goals or to be involved and make progress in the general education curriculum. (34 C.F.R. § 300.320(a)(4)(i) and (ii).)

32. The weight of the evidence established that Student's teachers and aides assisted Student to accurately document his homework assignments, both in response to Mother's concerns while the 30-day placement was in effect, and after Parents consented to the accommodations in the September 17, 2013 IEP.

33. Ms. Hokanson testified persuasively that she and Student's aides ensured that Student had recorded his homework correctly and completely on a daily basis in response to the concerns relayed by Mother during the 30-day placement and the September and November IEP team meetings. After Parents consented to a majority of the September 17, 2013 IEP, Ms. Hokanson and Student's aides did this in accordance with Student's vocational goal and accommodations. Ms. Hokanson was required to, and did, collect data on Student's ability to accurately record homework, and to organize and turn in completed homework, in order to measure progress on Student's homework and organizational goal.

34. Student's proffered evidence in support of his contention that District aides failed to assist Student in accurately recording his homework assignments was vague and unpersuasive. Mother's testimony concerning confusion over homework was neither credible nor convincing. Mother could recall only one erroneous recording incident, and Student offered no other evidence to support Student's assertion that there was ongoing confusion regarding Student's homework assignments. Mother testified that Student did not display noncompliant behaviors at home, and that the excessive time spent was due to the volume of homework and the lack of clarity regarding assignments, neither of which implicates whether the District aides were accurately reviewing Student's daily assignment record.

35. At most, Student's evidence established isolated instances of improperly recorded homework and one of an uncredited homework assignment. These few and infrequent homework errors are the type of minor implementation failure contemplated in *Van Duyn*, and did not constitute a material failure of implementation of Student's educational program.

36. Student did not meet his burden of establishing by a preponderance of the evidence that his aides failed to review and ensure the accuracy of his recorded homework assignments, under the 30-day placement or the September 17, 2013 IEP, or that he was therefore denied a FAPE.

ISSUE 1D : DID DISTRICT DENY STUDENT A FAPE BY FAILING TO PROVIDE STUDENT WITH APPROPRIATE SPEECH THERAPY SERVICES?

37. Student contends that District's speech therapist did not properly work with Student on pragmatic language. District contends that Ms. Yaldezian is qualified to provide Student's speech and language services, and provided services in accordance with Student's language/communication goals.

38. Legal Conclusions 1 through 4 are incorporated by reference.

39. The weight of the evidence established that Ms. Yaldezian was qualified to provide speech and language services, and provided appropriate services to Student. Ms. Yaldezian testified to her impressive education, training and credentials, and to working effectively with Student on his pragmatic language skills as set forth in his language/communication goals.

40. Parents consented to the language/communication goals written into the September 17, 2013 IEP team meeting, and did not dispute the appropriateness of the goals at hearing. In order to work with Student on his communication and language goals of taking the perspective of others, understanding that information may be interpreted differently by different people, and interpreting conversational social cues

such as tone of voice and body language, Student's speech therapist unquestionably had to engage Student in reciprocal social communication. However, Student presented no evidence that Ms. Yaldezian was incapable of engaging Student in conversation, or teaching him pragmatic language skills. In contrast, Ms. Yaldezian's testimony established that Student was eager to learn the skills needed to communicate appropriately with his peers, worked well with Ms. Yaldezian and the small peer groups she arranged during speech therapy sessions, and was making progress on his language goals. Ms. Yaldezian's question to Parents concerning Student's areas of interest was a reasonable attempt to objectively determine if Student had additional interests not relayed to her, and Student's contention that such a question established an inability to communicate with Student in unconvincing and contrary to the weight of the evidence.

41. Student did not meet his burden of establishing by a preponderance of the evidence that District denied him a FAPE by failing to provide Student with appropriate speech services.

ISSUE 1E: DID DISTRICT DENY STUDENT A FAPE BY FAILING TO OFFER STUDENT PLACEMENT IN THE LRE?

42. Student contends that District's offer of placement in the September 17, 2013 IEP was not the LRE for Student. Specifically, Student contends that an NPA aide would provide Student with social skills instruction throughout the school day, and would eliminate the need for Student to attend a daily social skills class in a more restrictive setting, during which time Student would miss academic instruction and opportunities to interact with typically developing peers. Student asserts that he enjoys art, music, computers, and physical education, and should not miss important class time in which to form relationships with typical peers. District contends that Student has not made meaningful relationships at school to date, and that participation in the social skills curriculum is critical to Student's success in the classroom and beyond. District

asserts that the social skills class provides proactive targeted instruction needed by Student to reach his goals and access the curriculum.

43. Legal Conclusions 1 through 4 are incorporated by reference.

44. In determining the educational placement of a child with a disability a school district must ensure, among other things, that the student be educated in the LRE. (34 C.F.R. § 300.116.) To provide the LRE, school districts must ensure, to the maximum extent appropriate, that (1) children with disabilities are educated with non-disabled peers; and that (2) 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); Ed. Code, § 56031; 34 C.F.R. 300.114 (a).)

45. To determine whether a special education student could be satisfactorily educated in a regular education environment, the Ninth Circuit Court of Appeals has balanced the following factors: (1) the educational benefits of full-time placement in a regular class; (2) the non-academic benefits of such placement; (3) the effect the student has 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 Ed.* (5th Cir. 1989) 874 F.2d 1036, 1048-1050]; see also *Clyde K. v. Puyallup School Dist. No. 3* (9th Cir. 1994) 35 F.3d 1396, 1401-1402 [applying *Rachel H.* factors to determine that self-contained placement outside of a general education environment was the LRE for an aggressive and disruptive student with attention deficit hyperactivity disorder and Tourette's Syndrome].) If it is determined that a child cannot be educated in a general education environment, then the LRE analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate in light of the

continuum of program options.⁶ (*Daniel R.R. v. State Board of Ed.*, *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 in the home or instructions in hospitals or institutions. (Ed. Code, § 56361.)

46. The IDEA expresses a clear policy preference for inclusion to the maximum extent appropriate as an aspiration for all children with special needs, requiring that a child be educated in general education classes with typically-developing peers unless the nature or severity of a particular disability may require separate instruction in order to meet the equally important need for educational benefit. (See 20 U.S.C. § 1412(a)(5)(A); Ed. Code, § 56031; 34 C.F.R. §§ 300.114 & 300.116.) Under *Rachel H.*, the question of whether general education is appropriate requires balancing multiple factors. (See *Rachel H.*, *supra*, 14 F.3d at p. 1404.)

47. As long as a school district provides an appropriate education, methodology is left up to the district's discretion. (*Rowley*, *supra*, 458 U.S. at p. 208.) This rule is applied in situations involving disputes regarding choice among methodologies for educating children with autism. (See *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141; *Pitchford v. Salem-Keizer School District* 155 F.Supp.2d 1213, 1230-32 (D. Ore. 2001); *T. B. v. Warwick School Commission* (1st Cir. 2004) 361 F.3d 80, 84.) Courts

⁶ "Mainstreaming" is a term used to describe opportunities for disabled students to engage in activities with nondisabled students. (*M.L. v. Federal Way School Dist.* (9th Cir. 2005) 394 F.3d 634, 640, fn. 7.)

are ill-equipped to second-guess reasonable choices that school districts have made among appropriate instructional methods. (*T.B., supra*, 361 F.3d at p. 84.)

48. Parents consented to Student's placement in general education for the entire school day under the 30-day placement, and argue that the social skills instruction offered in the September 17, 2013 IEP would place Student in an impermissibly restrictive setting. Here, applying the *Rachel H.* factors to the facts shows that one hour daily of a special education social skills curriculum was appropriate, and that District's offer of a social skills class did not fail to meet the IDEA's aspiration of inclusion to the maximum extent appropriate.

49. As to the first *Rachel H.* factor, the evidence established that Student was receiving educational benefit from inclusion in a general education classroom. Academics were a strength for Student, and although Student needed frequent prompts for attention and focus to task, the weight of the evidence also showed that Student was absorbing the material and capable of mastering grade level work in the general education fourth grade classroom, despite being frequently off-task and occasionally disruptive. Although there was evidence that Student was having difficulty with the increasing amount of written work expected in fourth grade, and the IEP team developed an academic goal to address this difficulty, the weight of the evidence established that Student was able to keep up with his typical peers in reading, writing, and math, and did not require a special education placement to benefit educationally.

50. As to the second *Rachel H.* factor, the non-academic benefits of a general education placement, the evidence showed that Student benefitted socially in the general education classroom and playground. However, Student regularly failed to maintain attention to task, refused to complete written classwork, refused to accept help on non-preferred tasks, and engaged in outbursts and inappropriate means of gaining adult attention that were disruptive to Student's classmates. Student would not engage

in conversation or play with his peers without prompting, and would stop socializing with peers as soon as the prompting stopped. These behaviors and social deficits were addressed by Student's language/communication and social/emotional goals, as well as by his behavior support plan, but both the goals and behavior plan appropriately sought to have Student independently utilize strategies to address areas these areas of concern, rather than rely on adult prompts.

51. The education professionals who testified at hearing were all of the opinion that Student needed to be taught communication and behavior strategies proactively through a systematically presented curriculum, rather than being prompted reactively by an aide in the moment, so that Student could achieve independence and break out of his prompt dependency. This proactive approach was available in the daily one-hour social skills class of the Social Communication Program, which was developed for students like Student, who were at grade level but experiencing social and behavioral difficulties.

52. The evidence demonstrated that an hour a day of social skills instruction would meet Student's unique nonacademic needs with minimal disruption to Student's participation in the general education curriculum for the remainder of his school day. Ms. Hokanson arranged her class schedule to ensure that her other students in the social skills class did not miss introduction of new concepts. Ms. Hokanson, Ms. Jafari, Ms. Yaldezian, and Mr. Goodrich testified persuasively that the benefit Student would receive from the systematic social skills curriculum, including the ability to better attend, focus on tasks, participate in classroom activities and interact with peers on the playground, would far outweigh the lost classroom and playground time. The evidence established that acquisition of these skills would enable Student to participate more fully, and without disruption, in general education settings. Separate instruction in the Social Communication Program was of equal importance to, if not more important than,

Student's need to be educated with typically-developing peers for that one hour each day. Therefore, Student's placement in a special education social skills program for one hour each day continued to include him in general education to the maximum extent appropriate.

53. As to the third *Rachel H.* factor, Student's behaviors disrupted the classroom and had an effect on the teacher and general education students. A preponderance of the evidence established that the social skills class would provide Student with the skills to practice frustration tolerance, appropriate attention getting, and per to peer communication in order to decrease classroom disruptions. These skills would also enrich Student's time in the general education setting, and enable him to participate more fully and appropriately in the classroom and on the playground.

54. Finally, as to the last *Rachel H.* factor, cost, neither party offered evidence that the cost of providing social and behavioral instruction through the services of a dedicated instructional aide, rather than through the Social Skills Program, was prohibitive.

55. In conclusion, each of the four *Rachel H.* factors weighed in favor of Student's placement in a general education setting, with one hour daily in the social skills class. Student obtained educational and non-academic benefit from his placement in general education, but was disruptive and did not interact with his peers without constant adult prompting. The social skills class would systematically and proactively teach Student the skills he needed to better attend, maintain focus to task, appropriately request assistance and communicate with his peers. Acquisition of these skills would eliminate the adverse impact on the teacher and other students and enable Student to reach his language/communication and social/emotional goals and access the general education curriculum, thereby warranting a change to a more restrictive setting for one hour each day.

56. The weight of the evidence established that a social skills class for one hour daily would provide Student with the social skills necessary to obtain educational benefit in the LRE.

57. Parents preferred that Student have an aide-based social skills program, despite substantial evidence that Student did not form meaningful peer relationships with aide support and encouragement, would leave conversations, and walked away from peers when prompting ceased. However, Student presented no evidence of how an aide-based social skills program would be accomplished.

58. Student also did not offer any credible evidence or expert testimony establishing that a reactive aide-based social skills program would be as effective as a proactive systematic social skills curriculum. Even if he had done so, as long as a school district provides an appropriate education, methodology is left up to District's discretion. (*Rowley, supra*, 458 U.S. at p. 208.) Accordingly, the choice of social skills instruction methodology was within District's discretion and provided a FAPE.

59. Student failed to meet his burden of establishing by a preponderance of the evidence that District denied him a FAPE by failing to offer Student placement in the LRE.

ORDER

All relief sought by Student is denied.

PREVAILING PARTY

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

RIGHT TO APPEAL THIS DECISION

The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within 90 days of receipt of this decision. (Ed. Code, § 56505, subd. (k).)

DATED: February 27, 2014

_____/s/_____

ALEXA J. HOHENSEE

Administrative Law Judge

Office of Administrative Hearings