

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2009101071

DECISION

Carla L. Garrett, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), heard this matter on April 5, 6, 7, 8, and 12, 2010, in Los Angeles, California.

Student's mother (Mother) represented Student. Mother attended all five days of hearing. Student and Student's father attended on April 5, 2010.

Lauri A. LaFoe, Attorney at Law, represented the Los Angeles Unified School District (District). District representative, Shari Robertson, Due Process Specialist, attended the full day of hearing on April 5, and 6, 2010, and attended in the afternoon on April 7, and 8, 2010. Armundo Inclan, Due Process Specialist, attended the hearing on the morning of April 7, 2010. Sue Talesnick, Due Process Specialist, attended on the morning of April 8, 2010. Carmen Martinez, Spanish interpreter, attended all five days of hearing.

Student filed his request for due process hearing (complaint) on October 14, 2009. On November 25, 2009, Student filed an amended complaint, resetting the applicable timelines in this matter. On January 20, 2010, OAH, for good cause shown, issued an order extending the procedural timelines, and ordering the parties to participate in a resolution session. On March 10, 2010, pursuant to District's request, and for good cause shown, OAH continued the due process hearing in this matter to commence on April 5, 2010.

On April 12, 2010, after the parties submitted oral closing arguments, the matter was submitted and the record was closed.

ISSUES¹

1. Did District deny Student a free and appropriate public education (FAPE) in Student's October 22, 2009 IEP by failing to offer appropriate services to address Student's emotional problems, and his hearing, and speech and language deficits?
2. Did District deny Student a FAPE in Student's October 22, 2009 IEP by failing to offer Student an appropriate teaching staff to implement the IEP?
3. Did District deny Student a FAPE in Student's October 22, 2009 IEP by failing to follow the recommendations of the psychological assessment conducted in or around the fall of 2009?

FACTUAL FINDINGS

Jurisdiction and Background Information

1. Student is a 16-year-old young man, who, at all relevant times, resided in the District. On October 22, 2009, he was found eligible for special education under the eligibility category of other health impairment. Student is currently in tenth grade at 32nd Street USC MAST High School (MAST High), a District magnet school.
2. In 1999, when Student was a kindergartener, District conducted an audiometric test of Student, and noted some hearing loss. District advised Mother of its findings. As a result, Mother had Student's hearing evaluated. The audiological evaluations showed Student had normal hearing in his right ear, with the exception of mild hearing loss of low frequencies. In his left ear, Student also had low-frequency hearing loss. Despite the hearing loss, Student's audiological record indicated that Student's hearing was adequate for communication purposes.
3. At hearing, Mother and Student's grandmother provided testimony indicating that Student's hearing difficulties have continued since 1999, as Student often responds by stating, "huh?" or "what?" when people are talking to him.
4. In addition, Mother explained that beginning in 2008, when Student was approximately 14 years old, Student started experiencing behavioral and emotional problems, showing sudden signs of anger. Student's grandmother also

¹ On March 18, 2010, District filed a motion to dismiss Student's claim that he was denied a FAPE in a March 2008 IEP on the ground the issue was barred by an April 30, 2009 settlement agreement, which contained a waiver of all claims through the date of the agreement. Prior to the commencement of hearing in this matter, this ALJ granted District's motion.

explained that Student would get angry and frustrated, resulting in aggressive behavior toward Mother. Specifically, Student would yell, kick, and sometimes slap Mother.

5. On February 8, 2008, pursuant to Mother's request, District conducted a psycho-educational evaluation in order to determine eligibility for special education services. The evaluation included a review of Student's school records, classroom and playground observations, informal student and teacher interviews, as well as the administration of the Cognitive Assessment System (CAS), Woodcock Johnson III, Woodcock Language Proficiency Battery, Motor-Free Visual Perception Test, Beery Visual Motor Integration (VMI), and Draw-A-Person questions. The results of the psycho-educational evaluation showed that Student's general cognitive ability was in the average range, with relative areas of weakness in auditory processing, language, planning (strategy usage), verbal-spatial relationships, attention, and visual-motor integration. The evaluation also revealed that socially and emotionally, Student was friendly and charming, but sometimes demonstrated a bad attitude toward completing assignments, and had occasional emotional outbursts when disciplined at school. Also, Student had overall poor attendance. The evaluation results showed that Student did not qualify for special education services, but recommended that Student improve his attendance, attitude toward school, task completion, and quality of his homework.

6. In approximately January 2009, due to behavioral problems observed at home by Mother, Mother obtained a referral from Student's primary care physician for Student to receive psychological counseling services at Kedren Community Mental Health Clinic (Kedren). At Kedren, Student received a diagnosis of oppositional defiance disorder. Student also received a diagnosis of disruptive behavior disorder. Kedren provided counseling services to Student on three occasions between January 2009 and March 2009.

7. Beginning in approximately February 2009, Student began receiving algebra tutoring services from his Mother's cousin, Reynaldo Rodriguez, five days a week for two hours each session. Mr. Rodriguez, who provided testimony at trial, was a math docent in his country (Nicaragua) for eight years, where he tutored more than 200 individuals in math. During these tutoring sessions, Student often became anxious, hyperactive, and would lose his concentration easily.

8. On March 24, 2009, when Student was in ninth grade, District held a Student Success Team (SST) meeting concerning Student, and prepared an SST report discussing the matters addressed at the meeting. Present at the meeting were Student's English, Algebra, Computer, Creative Writing, Life Skills, Health, and Mandarin teachers, school psychologist, administrators, Mother, Student, and Student's older brother. At the meeting, the SST team discussed Student's strengths, such as reports from all of Student's teachers that Student had good social skills, got along well with others, was popular, and worked well in small groups. The SST team

also discussed concerns regarding Student, such as his failure to complete his assignments, and the frequency with which Student arrived to class unprepared and without his class materials. In addition, the SST team discussed Student's frequent class absences and tardies, particularly in classes held first thing in the morning or immediately following lunch.² On one occasion, Student was ticketed for truancy for walking off campus before school started for the day. The SST also discussed Student's frequent violations of the school uniform policy. Moreover, the SST team discussed concerns regarding Student's limited attention span during class. Specifically, Student's teachers reported that Student was easily distracted, and demonstrated difficulty staying on task when working independently. Mother expressed concern at the SST meeting that Student may have attention deficit disorder (ADD).

9. At the SST meeting, the team developed a plan of action to address the team's concerns about Student, which included interventions and accommodations for Student. Specifically, the plan provided the following: (1) Student to remain on campus during lunch, and only leave campus to walk to his off-campus physical education class; (2) Student to complete a daily log of his assignments; (3) Student to continue receiving outside tutoring, as well as tutoring from his Algebra teacher during nutrition or lunch; (4) Student to continue working with a Joint Educational Program (JEP)³ mentor at school; (5) Student's teachers to redirect Student when he drifted off task, provide additional opportunities for Student to work in small groups, encourage on-task behavior by providing preferential seating, and pair Student with strong peers when working with partners; and (6) Mother to consult with Student's physician regarding her concerns about Student's attention issues. District immediately implemented all components of the plan it was responsible for, and continued implementing these components through the remainder of the school year.

10. In April 2009, Student received his report card, which reflected Student's performance in March 2009. The report card indicated the following:

<u>Subject</u>	<u>Grade</u>	<u>Absences</u>	<u>Tardy</u>
English 9B	Fail	6	1
Mandarin 1B	Fail	6	2
Advanced PE 1B	Fail	3	4
Biology B	D	3	0
Algebra 1B	Fail	4	0
Creative Writing	C	3	0
Web Development	A	5	1
Health	D	3	1

² MAST High permits high school students to leave campus during lunch.

³ The JEP program involved USC students acting as mentors to high school students at MAST.

11. In May 2009, Student received his report card, which reflected Student's performance in April 2009. The report card indicated the following:

<u>Subject</u>	<u>Grade</u>	<u>Absences</u>	<u>Tardy</u>
English 9B	Fail	6	1
Mandarin 1B	Fail	6	2
Advanced PE 1B	Fail	3	4
Biology B	D	3	0
Algebra 1B	Fail	4	0
Creative Writing	D	3	0
Web Development	/	5	1
Health	D	3	1

A “/” mark indicated that Student was performing at a level of “C” or better.

12. In June 2009, Student received his report card, which reflected Student's performance in May 2009. The report card indicated the following:

<u>Subject</u>	<u>Grade</u>	<u>Absences</u>	<u>Tardy</u>
English 9B	Fail	11	5
Mandarin 1B	Fail	9	6
Advanced PE 1B	Fail	6	5
Biology B	D	4	3
Algebra 1B	Fail	9	1
Creative Writing	D	5	1
Web Development	B	7	5
Health	D	5	1

13. On September 16, 2009, District conducted a hearing test on Student. Student passed the hearing test.

14. On September 22, 2009, District conducted an assessment of Student administered by a resource specialist. The assessment involved the administration of the Woodcock-Johnson III Tests for Achievement. The results of the assessment revealed that when compared to others at his age level, Student's academic skills, his ability to apply those skills, and his fluency with academic tasks were well within the average range. Specifically, Student's performance was average in the areas of broad reading, mathematics, math calculation skills, written language, and written expression. However, Student had challenges in the areas of writing and organization, which impacted his ability to complete academic tasks. As such, the resource specialist concluded that Student could benefit from special education services.

15. In October 2009, Student received his report card, which reflected Student’s performance during September 2009. The report card indicated the following:

<u>Subject</u>	<u>Grade</u>	<u>Absences</u>	<u>Tardy</u>
Advanced PE 2A	/	1	1
Algebra 1A ⁴	Fail	0	2
Advanced PE 1A ⁵	/	1	0
Geometry A	C	0	0
History	D	1	2
Life Skills	/	0	1
English 10A	D	1	2
Math Prep	Pass	0	2

A “/” mark indicated that Student was performing at a level of “C” or better.

Psycho-Educational Assessment Report

16. On October 20, 2009, Emma L. Villegas, bilingual school psychologist, prepared a psycho-educational assessment report concerning an assessment she conducted on Student on September 16, 2009, and September 23, 2009. Ms. Villegas, who provided testimony at hearing, has been a school psychologist with the District for six years, and has conducted in excess of 500 assessments. Prior to conducting the assessment, Ms. Villegas interviewed Mother on September 18, 2009, and learned that Student had been demonstrating attention difficulties at home. Specifically, Mother reported Student often failed to follow simple instructions, and failed to complete tasks or stay interested in one activity. Mother also reported that Student had a history of hyperactivity, and was often unable to focus, sit still, and concentrate on his environment. In addition, Mother advised that Student, as a child, had expressive language delays, which resulted in Student’s current limited interactions and conversations with his peers, difficulty expressing himself, and a tendency to stutter, especially when speaking rapidly. Mother described Student as very timid, shy, and had difficulty resolving problems. Student had become angry, yelling at his Mother, requiring Mother, on four occasions, to call the police as a result of Student’s rages. Student has thrown objects, pushed, and stated, “I hate you.” Mother advised that Student has made threats to hurt himself, stating, “I want to die. I hate myself.”

17. Ms. Villegas also reviewed an October 13, 2009 report completed by the school nurse, advising that Student had a history of migraine headaches, panic

⁴ Student was required to take Algebra 1 again because he failed Algebra 1 during the 2008-2009 school year.

⁵ Student was required to take Advanced PE 1 again because he failed Advanced PE 1 during the 2008-2009 school year.

attacks, anxiety attacks, a small benign cyst in his brain⁶, and had reported heart palpitations to his doctor.⁷ The nurse's report also indicated that, due to behavioral problems observed by Mother, Student received counseling at Kedren Community Mental Health Clinic on three occasions between January 2009 and March 2009, and had received a diagnosis of oppositional defiance disorder, as well as disruptive behavior disorder. The report also indicated that Student had passed his most recent hearing test, which was conducted on September 16, 2009. Finally, the nurse's report advised that, overall, Student's physical health did not impact his involvement and progress in the general education curriculum.

18. In addition to the nurse's report, Ms. Villegas reviewed previous assessments, specifically a speech and language assessment conducted in 2006, which found Student ineligible for speech and language services. Ms. Villegas also reviewed a psycho-educational assessment conducted in 2008, which determined Student did not meet the qualifications for eligibility status for specific learning disability or other health impairment. Ms. Villegas also reviewed the March 24, 2009 SST report, as well as the results of the Woodcock-Johnson III Tests for Achievement conducted on September 22, 2009.

19. Ms. Villegas also reviewed Student's cumulative school records, which showed a history of academic and behavioral difficulties during his elementary school years, as well as concerns with social skills, inattentiveness, motivation, and absenteeism, averaging 15 days absent per school year. Attendance history and teacher comments for Student's middle school years were not available for review; however, his grades showed a decline in performance in English, Math, and History. Student's high school records showed that in his ninth grade year, Student received failing marks in English, Algebra, Mandarin, Life Skills, and Advanced Physical Education, and received a grade of "D" in Creative Writing, Web Development & Production, Biology, and Health. Attendance records for Student's ninth grade year revealed that Student was absent 11 days, and tardy 25 times. Student's school records showed that on the California Standards Test administered in Spring 2009, Student performed at a "basic" level in language arts, at a "proficient" level in Algebra 1, and at a "basic" level in Biology. Finally, Student's school records for the 2008-2009 school year showed 27 discipline incidents for repeated violations of the school's uniform policy, not being prepared for class, leaving class without permission, and one incident of truancy.

20. Ms. Villegas administered the following instruments: (1) Cognitive Assessment System (CAS); (2) Test of Auditory Perceptual Skills-3rd Edition

⁶ On November 4, 2007, Student was struck in the head with a basketball, and suffered a minor concussion. Student received emergency room care at Centinela Hospital Medical Center, which included a C.T. scan of his brain. The C.T. scan showed Student had a cyst, but no evidence of obstructive hydrocephalus. Student was discharged that day in good condition.

⁷ A cardiologist advised Mother that Student's palpitations were possibly due to stress. The cardiologist prescribed no medication, nor restricted Student's activity.

(TAPS-3); (3) Test of Visual Perceptual Skills-3rd Edition (TVPS-3); (4) The Beery Visual Motor Integration (VMI); (5) Behavior Assessment System for Children, Second Edition-Teacher/Parent/Student (BASC-2); and (6) Attention-Deficit Hyperactivity Disorder Test-Teacher/Parent (ADHDT). Ms. Villegas completed Student's testing in two sessions, each lasting approximately one hour and fifteen minutes.

21. The results of the CAS, which measured Student's cognitive processes, revealed that Student had an average ability in understanding relationships among pictures and words, an above-average ability relating parts into a group, and low average ability comprehending orally presented linear information. The results also noted weaknesses within the planning composite, particularly in developing strategies, self-regulations, and utilizing processes and knowledge. In addition, the results also showed weaknesses within the attention composite, indicating below-average skills in resisting distractions, and demonstrating focused attention.

22. The TAPS-3 measured what Student auditorily perceived in the areas of basic phonologic skills (i.e., discrimination between sounds), auditory memory (i.e., immediate working memory), and auditory cohesion (i.e., understanding inferences, deductions, and abstractions). The results from the TAPS-3 revealed that Student's auditory perceptual skills were in the low average range. Student's phonological skills were in the average range, and his ability to recall orally presented sequential information was in the low average range. Also, Student scored well below average in the areas of auditory comprehension and auditory reasoning.

23. The results of the TVPS-3, which measured Student's visual processing skills, indicated that Student had average visual perception skills, but was below average in sequencing clusters. The results of the VMI, which measured Student's ability to copy a developmental sequence of geometric forms on paper, showed that Student's visual motor skills were in the low average range, indicating low average skills in coordinating his visual with fine motor skills. However, Ms. Villegas noted that Student demonstrated good posture, and age-appropriate pencil grip with typical pressure on paper, and concluded that Student's poor performance was more likely due to carelessness, lack of focus, and distractibility.

24. Ms. Villegas concluded that in reference to Student's cognition and processing, Student's strengths were reflected in his ability to process visual information. Student also displayed relative strengths with his ability to integrate his fine motor and visual processing skills. Additionally, Student demonstrated auditory perceptual strengths, specifically in the area of phonological processing. However, Student's weaknesses were apparent in Student's ability to recall orally presented information (auditory memory) with significant weaknesses in auditory comprehension and reasoning. Student also presented with weaknesses in attention, indicating difficulties with focusing and resisting distractions. Student was also weak in his ability to plan and develop strategies. Ms. Villegas surmised that these

weaknesses could impact Student's ability to be organized with classroom materials, be prepared for class, complete assignments in a timely manner, follow multi-step directions, comprehend abstract concepts, and effectively problem solve.

25. Student's English teacher, Kara Smith, advised Ms. Villegas on October 5, 2009, that Student was quiet, did not participate in classroom discussions or language-based activities, appeared withdrawn, and preferred to work alone.

26. Ms. Villegas also interviewed Student. Student appeared initially hesitant to respond to conversational questions and was not verbally spontaneous. However, after Student began feeling more comfortable, he willingly responded to conversational questions, and spoke in simple and short sentences with age-appropriate grammar, intonation, and vocabulary. Student appeared to demonstrate slow language fluency, as he often paused throughout his sentences. Receptively, Student appeared to comprehend conversational questions, but demonstrated a slow response time once the questions were given to him in a non-conversational manner. Student relayed to Ms. Villegas that he made a lot of mistakes as a ninth grader that he regrets, but wanted to do better this school year. When Ms. Villegas asked Student what made him nervous or afraid, Student advised he sometimes feels anxious in groups or crowds.

27. Ms. Villegas concluded that in reference to Student's language and communication skills, Student's strengths were reflected in his ability to interact with his peers with whom he had close relationships, as well as in his ability to speak in simple sentences, and comprehend basic conversational questions. Student's weaknesses were apparent in his ability to comfortably communicate in social situations, participate in classroom activities, and ask for assistance in academic settings. Ms. Villegas surmised that Student's weaknesses could impact his ability to develop appropriate peer and adult relationships, effectively communicate his frustration and feelings, effectively communicate his understanding of academic concepts, and participate in classroom activities. Ms. Villegas concluded that Student should be assessed by a speech and language therapist to determine his eligibility for speech and language services.

28. In order to assess Student's social and emotional skills, Ms. Villegas conducted observations of Student in his geometry and history classes, as well as in his English class with Ms. Smith. In his geometry class during the teacher's lecture, Ms. Villegas observed Student seated towards the back of the class, playing with his pencil, and disengaged from classroom activity. Student did not have school materials ready, nor did he appear to follow along in the classroom discussion. In his history class during group activity, Ms. Villegas observed Student sitting quietly, playing with his pencil, disengaged from the group, even during periods in which Student's group engaged in social conversation. In Ms. Smith's English class during cooperative work sessions, Student appeared hesitant to work with his peer groups, and played with his pencil and looked around the room while the other members of

his peer group orally shared common interests, and asked each other about their assignments. When Ms. Smith posed questions to the group pertaining to the assignment, Student did not participate or share ideas, unless Ms. Smith called on him, for which he responded very quietly and hesitantly. Ms. Villegas concluded, based on her observations, that Student appeared unprepared for class, distracted, disinterested in participating in classroom discussion, and working in cooperative peer groups.

29. Mother completed the BASC-2 rating scale, which is a comprehensive measure of social-emotional adjustment, including adaptive and problem-solving behaviors in the community and home settings. Mother reported clinically significant concerns regarding Student. Ms. Villegas explained at hearing that scores on the BASC-2 in the clinically significant range suggests a high level of maladjustment. Mother reported clinically significant concerns in the following areas: (1) externalizing problems, such as hyperactivity, aggression, using foul language, breaking rules, and lying to get out of trouble; (2) internalizing problems, such as anxiety, depression, and complaining of being sick when nothing is wrong; (3) exhibiting behavioral symptoms, such as a tendency to appear unaware of others, to stare blankly, to seem out-of-touch with reality; to be shy with other adolescents, to prefer to be alone, to experience difficulty in making new friends, to not pay attention, and to become easily distracted; (4) engaging in behaviors associated with complaining when asked to do things differently, such as being stubborn, never volunteering to help clean up around the house, often being unclear when presenting personal ideas, or when describing his feelings or personal experiences. Ms. Villegas explained at hearing that the number of Mother's ratings in the clinically significant category raised a red flag that the behavior seen at home occurs more frequently, intensely, and longer in duration than Student's behaviors described outside of Student's home. The "F index" of the BASC-2, which measures the rater's tendency to be excessively negative in describing a child's behaviors, found that Mother fell into the "extreme caution" range.

30. Student's teachers also completed the BASC-2 rating scale regarding behaviors in the school setting. The teachers reported no concerns in the categories of externalizing problems, internalizing problems, and in the behavioral symptoms index. However, the teachers did report "at risk" concerns, signifying either a significant problem that may not be severe enough to require formal treatment, or a potential of developing a problem that needed careful monitoring. Specifically, the teachers noted at-risk concerns in Student's tendency not to complete tests, to not keep up in class, to get failing school grades, to not adjust well to new teachers, and difficulty recovering after a setback. The teachers noted clinically significant concerns in Student's tendency not to show interest in others' ideas, to never be chosen as a leader, to never work well under pressure, not to read assigned chapters, to never try to do well in school, and a tendency never to be organized. The "F index" found that the teachers' tendency to be excessively negative in describing Student's behavior fell into the "acceptable" range.

31. In addition to giving BASC-2 rating scales to Student's Mother and teachers, Ms. Villegas gave a rating scale to Student. Student reported no problems in the areas of internalizing problems, inattention, hyperactivity, emotional symptoms, and personal adjustment. However, Student reported clinically significant concerns in Student's tendency to feel teachers were not understanding, that teachers do not care, and that teachers were not proud of Student. Student reported at-risk concerns in a tendency to play rough sports and take chances. The "F index" found that Student's tendency to be excessively negative in describing his behavior fell into the "acceptable" range.

32. Ms. Villegas also gave Mother, and Student's teachers, the ADHDT, which is a method for identifying characteristics that may be associated with attention-deficit hyperactivity disorder (ADHD), in three domain areas: hyperactivity, impulsivity, and inattention. Mother's responses indicated an above-average probability that Student exhibited ADHD behaviors. Teachers' responses indicated a very low probability of ADHD characteristics. Student's former ninth grade English teacher described that Student was very quiet, respectful to adults, and seemed to get along well with peers; however, Student seldom completed assignments, and was chronically absent or tardy. Student's current math prep⁸ instructor described Student as being respectful and cooperative, with a "great" attention span and good peer relationships. Ms. Villegas explained at hearing that, overall, a discrepancy existed between how Mother viewed Student at home, and how teachers viewed Student at school. Also, the way Student viewed himself did not match up with how Mother viewed Student.

33. Ms. Villegas concluded that in reference to Student's social-emotional functioning, Student had strengths in developing close relationships, participating in sports activities, showing compassion for others' weaknesses, and participating in math activities. However, Ms. Villegas concluded that Student's history of behavioral difficulties along with poor academic achievement and lack of academic work production, may be due to behavioral characteristics associated with ADHD, which often appear as lacking motivation, disinterest in school, disobedience towards adults and school rules, and poor decision-making. Ms. Villegas also concluded that concerns regarding Student's poor verbal participation in the classroom, poor social development, and issues regarding anxiety and fear of social groups could be associated with language difficulties since childhood, such as stuttering difficulties, which may require further investigation by a language and speech therapist. Ms. Villegas noted the importance of considering Student's poor attention history as a factor impeding his learning and causing him difficulty to catch up with missed classroom lectures. Ms. Villegas recommended that Student receive counseling services to help Student improve his school conduct, achievement, and set realistic

⁸ The math prep class is a course designed to strengthen students' understanding of math concepts in preparation for higher level math courses.

goals. Ms. Villegas also recommended that a positive behavior contract be developed with attainable weekly goals and positive consequences.

34. Ms. Villegas reported that the results of the psycho-educational assessment indicated that Student exhibited heightened alertness to environmental stimuli that could be due to ADHD, and which adversely affected his educational performance. Based on these findings, Ms. Villegas concluded that Student appeared to meet the eligibility criteria for other health impairment (OHI), and may be in need of special education services. Ms. Villegas recommended the following: (1) referral to the IEP team for final determination of eligibility and special education services; (2) designated instruction and services (DIS) in counseling; (3) assessment to determine eligibility for speech and language services; (4) allow Student to set his own pace for task completion; (5) provide short, specific, and direct directions; (6) provide kinesthetic and visual modes of learning along with auditory cues; (7) provide extended time for school projects; (8) provide frequent feedback on academic progress and comprehension of tasks; (9) teach and reinforce organizational techniques, such as utilizing daily planners, schedules and time management strategies; (10) develop new learning strategies when necessary; (11) implement school/student behavioral contract that includes positive consequences with attainable goals along with negative consequences; and (12) provide a check in/out system in which Student is required to check in with his progress on a daily basis with an adult school staff.

October 22, 2009 IEP

35. On October 22, 2009, the IEP team met to discuss the results of the psycho-educational assessment. Pamela Maddox, MAST High's magnet coordinator, facilitated the IEP meeting. Ms. Maddox was the only member of the team from MAST High, as Mother requested that no MAST teachers be present at the meeting. Mother recounted distrust of MAST staff, given her belief that the MAST staff had not done enough previously to help Student with his behavioral and academic problems. At the meeting, the team discussed Student's present levels of performance in the areas of health, reading, writing, math, and prevocational skills. In reference to health, the team set forth in the IEP, information concerning Student's passing of a September 16, 2009 hearing test, and his previous diagnosis of oppositional defiance disorder, and disruptive behavior disorder. For reading, the team stated that Student needed to work on reading and comprehending grade-level expository and narrative text with expression and fluency. For writing, the team stated that Student needed assistance organizing the main idea and supporting details of his writing. For math, the team stated Student needed no assistance, as Student was proficient in math according to his results on the California Standardized Test, and was able to perform addition with regrouping into the thousands, calculate two-digit multiplication problems, add two-digit positive and negative integers, and correctly solve four-digit division problems. For prevocational skills, the team stated that Student needed

assistance and instruction on how to organize his class folders, assignments, and class notes.

36. The team also discussed Student's present levels of performance in the areas of cognitive ability and processing, language and communication, and social-emotional functioning, which Ms. Villegas drafted as part of the IEP document, based on the assessment results contained in her psycho-educational assessment report. Specifically, Ms. Villegas stated in the IEP that, in reference to his cognitive abilities, Student's strengths were reflected in his ability to process visual information, to integrate his fine motor and visual processing skills, and to process phonological information. Ms. Villegas also included Student's weaknesses in his auditory memory, auditory comprehension, auditory reasoning, as well as in his ability to remain focused, resist distractions, and to plan and develop strategies. Ms. Villegas indicated that the impact of these weaknesses could impact Student's ability to be organized with classroom materials, be prepared for class, complete assignments in a timely manner, follow multi-step directions, comprehend abstract concepts, and effectively problem solve, thereby negatively impacting Student's involvement and progress in the general education curriculum.

37. Regarding Student's language and communication skills, Ms. Villegas stated in the IEP that Student's strengths were reflected in Student's ability to interact with close peers, develop appropriate English language skills, speak in simple sentences, and comprehend basic conversational questions, but had apparent weaknesses in his ability to comfortably communicate in social situations, participate in classroom activities, and ask for assistance in academic settings. Ms. Villegas indicated the impact of these weaknesses could impact Student's ability to develop appropriate peer and adult relationships, effectively communicate his frustration and feelings, effectively communicate his understanding of academic concepts, and participate in classroom activities. Ms. Villegas recommended in the IEP that Student be assessed by a speech and language therapist to determine Student's eligibility for speech and language services.

38. For Student's social-emotional development, Ms. Villegas stated in the IEP that Student's strengths were in developing close relationships, participating in sports activities, showing compassion toward others' weaknesses, and participating in math activities. However, as shown by records from the 2008-2009 school year, Ms. Villegas stated Student had weaknesses in the school setting in the areas of absences, truancy, tardiness, lack of preparation for class, non-compliance with adult requests, non-compliance with school rules, not completing academic assignments, disorganization of school materials, demonstrating disinterest and a lack of motivation for academic learning, and leaving class without permission. Ms. Villegas stated that Student's behavioral difficulties along with poor academic achievement may be due to behavioral characteristics associated with ADHD, such as impulsivity, inattention, and hyperactivity, which may appear as lacking motivation, disinterest in school, disobedience toward adults, non-compliance with school rules, and poor

decision-making. Ms. Villegas recommended in the IEP that Student receive DIS services to help Student improve school conduct, achievement, and set realistic goals. Ms. Villegas also recommended the development of a behavior contract with attainable weekly goals and positive consequences that include improving attendance.

39. Based on the assessment results and Ms. Villegas' recommendations, the team found Student eligible for special education services as a student with other health impairment. As such, the team recommended that Student should participate in the resource support program (RSP), and receive counseling and guidance. The IEP also provided the following supports: (1) consultation with the RSP teacher; (2) consultation with the special education bridge coordinator; and (3) consultation with the school psychologist.

40. The team drafted a reading goal in the IEP aimed at improving Student's reading comprehension skills, as well as a writing goal aimed at helping Student organize his expository writing. The team also drafted a prevocational goal aimed at getting Student to demonstrate organization of his school work and assignments by completing a daily and weekly list of all of his course assignments and corresponding due dates. The RSP teacher would be responsible for working with Student on achieving his reading, writing, and prevocational goals.

41. Ms. Villegas drafted a social-emotional goal aimed at helping Student accept responsibility for completing assignments, getting to class on time, wearing his school uniform, being prepared for class, attending counseling, and following school rules, as measured by teacher or counselor observation. As an incremental objective, Student would be required to identify assignments, situations, or responsibilities he wished to avoid, and identify solutions for meeting his responsibilities. Also, Student would be required to break down classroom assignments into smaller components, and complete all of the steps. The school psychologist would be responsible for helping Student with his social-emotional goal.

42. District made the following offer of placement and services: (1) Student to remain at MAST High, and receive RSP support for reading, writing, and prevocational skills in a "pull out" service model, one to five times per week, for a total of 105 minutes; (2) Student to be pulled out from general education setting for counseling and guidance by the school psychologist, one time per week, for 30 minutes; and (3) Student to receive the following instructional accommodations based on recommendations contained in Ms. Villegas' report: (a) assistance organizing work; (b) breaking down long term assignments into smaller increments; (c) additional time to complete reading and writing assignments; (d) graphic organizers to organize multi-paragraph writing assignments; (e) repeated directions; (f) preferential seating; (g) peer tutor/peer assistance for classwork and assignments; and (h) shortened assignments that do not modify the standard being taught and assessed. Ms. Villegas testified that it was her opinion that District's offer of a FAPE was

sufficient to address Student's unique needs. At the meeting, Mother consented to District's offer of a FAPE.

43. Within a week following the IEP meeting, Ms. Maddox met with Student's teachers regarding the IEP, and their respective roles in implementing the IEP. Ms. Maddox, who provided testimony at hearing, has been the MAST High magnet coordinator for three years, in charge of special education services. Ms. Maddox advised that she provided copies of the IEP to Student's teachers, and went over every page of the IEP with Student's teachers.

44. Student's teacher for his 10th grade English and History classes, Kara Smith, provided testimony at hearing. Ms. Smith has been employed with the District for six years, five years as a middle school teacher and one year as a high school teacher. She initially received a teaching credential in Texas, and then obtained her California teaching credential in 2003. Ms. Smith is currently in graduate school to earn her master's degree in education. She has had Student in her English and History classes since the beginning of the 2009-2010 school year. After meeting with Ms. Maddox concerning Student's IEP at the end of October 2009, Ms. Smith implemented the instructional accommodations listed in the IEP, such as breaking down assignments into smaller increments, changing Student's seat to the second row, giving Student extra time to finish his assignments, giving him shortened assignments, and giving him peer assistance. She explained that Student preferred to work alone rather than within groups for collaborative assignments. Because of this, she did not assign group work to Student, but rather allowed him to work with only one other Student. Ms. Smith also reported she has never encountered any difficulty understanding Student when he speaks, and has not noticed any problems with his word retrieval, even during oral presentations. In addition, she has never noticed Student having any hearing problems. Finally, she advised that Student's behavior has always been good in her class, as he has never shown her signs of disrespect.

45. Student's Algebra teacher, Emile Houndonougbo, provided testimony at hearing. Mr. Houndonougbo has been employed at MAST High since 1997, where he teaches Math, Physics, and Russian. He completed his undergraduate and post-graduate studies in West Africa, and received his California single-subject teaching credential in 2006 in the area of mathematics. He has been Student's Algebra teacher since Student was in ninth grade. At the end of October 2009, when Ms. Maddox advised Mr. Houndonougbo of Student's IEP, he began implementing the instructional accommodations, such as allowing Student to turn in his assignments late with no penalty. Mr. Houndonougbo reported no difficulty in understanding Student when he speaks, and has not noticed Student experiencing any difficulty with his hearing.

46. Valerie Romain, Student's RSP teacher, who provided testimony at hearing, has been employed with District for 14 years as a resource support specialist at MAST High, and holds bachelor's and master's degrees, as well as a resource

specialist certificate, a staff development certificate, a special education specialist certificate, and a multiple-subject teaching credential. In late October 2009, after meeting with Ms. Maddox regarding Student’s IEP, Ms. Romain encountered difficulty in implementing services, as Student was frequently absent or did not come to her resource room to receive services.

47. School psychologist, Jenny Jordan, who provided testimony at hearing, has been a school psychologist for three years at MAST High, holds a bachelor’s and master’s degree in psychology, and has a school psychology credential. Ms. Jordan explained that after Ms. Maddox advised her about Student’s IEP, she immediately attempted to provide counseling services to Student, but Student was frequently absent, or not in class when she attempted to have him pulled out for his weekly, 30-minute, counseling session. Typically, Ms. Jordan would attempt to retrieve Student from his Algebra class, which met on Tuesdays for 30 minutes, and on Wednesdays and Fridays for 90 minutes each.⁹ Because of the lengthened class period on Wednesdays and Fridays, Ms. Jordan would attempt to pull out Student on one of those days.

48. In November 2009, Student received his report card, which reflected Student’s performance during October 2009. The report card indicated the following:

<u>Subject</u>	<u>Grade</u>	<u>Absences</u>	<u>Tardy</u>
Advanced PE 2A	B	2	4
Algebra 1A	Fail	4	5
Advanced PE 1A	A	1	0
Geometry A	D	2	0
History	D	3	3
Life Skills	C	3	2
English 10A	Fail	5	3
Math Prep	C	5	2

49. In December 2009, Student received his report card, which reflected Student’s performance during November 2009. The report card indicated the following:

<u>Subject</u>	<u>Grade</u>	<u>Absences</u>	<u>Tardy</u>
Advanced PE 2A	C	3	4
Algebra 1A	Fail	10	6

⁹ The school operated on a block schedule. On Mondays and Thursdays, students were required to attend their first, third, fifth, and seventh period classes for 90 minutes each class. On Wednesdays and Fridays, students were required to attend their second, fourth, sixth, and eighth period classes for 90 minutes each class. On Tuesdays, students were required to attend all of their classes for 30 minutes each class.

Advanced PE 1A	C	5	0
Geometry A	D	5	0
History	Fail	5	6
Life Skills	/	7	2
English 10A	D	7	3
Math Prep	D	12	2

A “/” mark indicated that Student was performing at a level of “C” or better.

50. At hearing, Ms. Smith reported that Student’s November 2009 performance, which showed a failing mark in History, and a mark of “D” in English, was due to Student’s frequent absences and tardies, as well as his failure to turn in his assignments, despite multiple extensions. Similarly, Mr. Houndonougbo explained that Student failed to turn in his classroom and homework assignments, was frequently absent, and failed to make up any exams he missed when he was absent. Consequently, Student received a failing mark in Algebra 1 for his performance in November 2009.

51. Student provided testimony at hearing, remaining on the stand for approximately two hours. Student was fully engaged, focused, articulate, and was easy to understand. Student explained that in his previous school years, he had a negative attitude about school, and did not try his best to succeed. As a result, he would not turn in his assignments, and would sometimes miss school. Student admitted to missing more school in November 2009, particularly in Algebra 1 class, as he felt it was a waste of time, given he was failing the class. Also, many of his absences over the years were due to doctors’ appointments his mother would make for him, or because he was sick. Student reported he would be tardy for class sometimes, especially after lunch, when he had difficulty returning to campus on time. At home, Student advised that he would let his emotions get the better of him, resulting in him acting aggressively at times, but his problems were only at home. At school, he made it a practice of isolating himself when he observed a problem brewing. Teachers did not generally complain of his behavior at school, as he did not disrespect his teachers. However, he did admit he would sometimes get in trouble for not wearing his white uniform shirt, as he did not like the collar. Student felt he communicates well, in that people do not have a hard time understanding him. However, as far as his hearing is concerned, Student acknowledged that he sometimes misses information, because he is not always paying attention.

*Subsequent Facts*¹⁰

¹⁰ Subsequent facts which postdate the filing of the amended complaint are not relevant to the time frame at issue and are not used in the analysis of this decision. These facts are included in recognition of Student’s subsequent achievements.

52. In December 2009, at the beginning of the month, Ms. Jordan, the school psychologist, had her first counseling session with Student. After her initial session with Student, Student continued to be absent.

53. In December 2009, Student took the final exam in Algebra 1 for the first semester, and Student received the highest grade in the class on the exam.

54. In December 2009, prior to winter break, which began on December 21, 2009, and ended on January 8, 2010, Ms. Maddox had a discussion with Student expressing her concern about his repeated absences, and his failure to show up to receive RSP and counseling services.

55. In January 2010, when Student returned to school after winter break, Ms. Romain, Student's RSP teacher, had a talk with Student about improving his attendance, so that he could take advantage of the resource services provided in his IEP. During their conversation, Student advised her that he felt embarrassed coming to her room for services. As a result, Ms. Romain made arrangements to meet Student in a private setting in which to receive RSP services, such as in the library or in another teacher's room. Thereafter, Ms. Romain began working with Student more consistently. Specifically, Ms. Romain began seeing Student every Tuesday for 30 minutes to work on his prevocational goals, and every Wednesday and Friday for a total of 75 minutes to work on Student's reading and writing goals. Ms. Romain would talk to Student's teachers daily to discuss Student's assignments, and how well Student was progressing in class. Since Student began receiving RSP services on a consistent basis, Student began putting forth more effort toward his schoolwork, and has been making progress. Ms. Romain noted that during her interactions with Student, she never detected any problem with Student expressing himself, and stated Student communicated very well. Also, during all of her conversations with Student's teachers, none of them ever indicated that they had any difficulty understanding Student.

56. After Student returned from winter break, Ms. Jordan began giving Student counseling services on a more consistent basis, because Student began making significant improvement in his attendance.

57. In February 2010, Student received his report card, which reflected Student's performance during the first semester of the 2009-2010 school year. The report card indicated the following:

<u>Subject</u>	<u>Grade</u>	<u>Absences</u>	<u>Tardy</u>
Advanced PE 2A	D	7	5
Algebra 1A	Fail	14	8
Advanced PE 1A	C	8	2
Geometry A	D	10	0

History	Fail	8	6
Life Skills	D	10	3
English 10A	D	10	3
Math Prep	C	15	2

58. In March 2010, Student received his report card, which reflected Student's performance during February 2010. The report card indicated the following:

<u>Subject</u>	<u>Grade</u>	<u>Absences</u>	<u>Tardy</u>
Advanced PE 2A	/	6	1
Algebra 1A	/	10	1
Advanced PE 1A	/	4	0
Geometry A	C	6	1
History	/	2	0
Life Skills	/	8	0
English 10A	/	8	0
Math Prep	C	4	1

A "/" mark indicated that Student was performing at a level of "C" or better.

59. At the beginning of the second semester in February 2010, Student advised Ms. Smith that he would make a better effort at completing his assignments. At hearing, Ms. Smith reported that since then, Student completes his assignments, and has sometimes remained in class during his lunch break to ensure he completes them. Student has raised his grade to a "B" in History, and to a "C" in English. In addition, Student has reduced his absences and tardies, and appears more "present" mentally.

60. At the beginning of the second semester, Mr. Houndonougbo had a discussion with Student concerning his performance on the final exam in Algebra 1, and offered to allow Student to work on Algebra 2 material, since Student had shown that he had mastered the Algebra 1 material. Student accepted the offer, and began working independently on the Algebra 2 material, at his own pace. During class, Student would work on his Algebra 2 assignments at a table away from the other students, while Mr. Houndonougbo taught the remainder of the class the Algebra 1 material. Mr. Houndonougbo worked out an arrangement with Student where he would start at chapter one of the Algebra 2 book, complete the first ten problems of the lesson, and then would come to Mr. Houndonougbo to have his work reviewed. If Mr. Houndonougbo determined that Student understood the material, he would permit Student to finish working on the chapter, and then begin working on the next chapter. Presently, Student has completed the work in chapters one, two, and three, and is currently working on chapter four. In addition, Student's attendance has shown some improvement since the beginning of the second semester. Student misses some class

time when he is called out of class by the school psychologist to receive counseling, but it has not negatively impacted his performance in the class. Student is currently receiving a passing grade in Algebra.

61. Ms. Jordan explained at hearing that since receiving counseling services, Student seems socially adjusted, has friends, and seems pleased with the progress he has made since the beginning of the second semester. Student now seems more relaxed and more motivated, and her discussions with Student's teachers, which she has approximately twice a month, indicate the same. Ms. Jordan has not seen or heard of any reports of Student showing aggressive behaviors at school. Ms. Jordan has concluded that 30 minutes of service per week has been appropriate to meet Student's social-emotional needs. Although Ms. Jordan was aware of Mother's concerns about Student's anxiety problems, Ms. Jordan has not witnessed any evidence of anxiety. Student did express to Ms. Jordan, however, that he sometimes feels anxious in large groups. Consequently, Ms. Jordan and Student discussed strategies to address it, such as walking away from the group to calm down.

62. At hearing, Student explained that since his IEP, he has been receiving accommodations from his teachers. He has found most helpful the accommodation allowing him an extension of time to complete his assignments. Also, he has found helpful his RSP class with Ms. Romain, because Ms. Romain allows him to use the time to catch up on any incomplete work, and Ms. Romain helps him stay organized and prepared for class. Student has received counseling sessions from Ms. Jordan, and expressed to her that he has changed his attitude about school. At the beginning of second semester, Student told her that he realized it was his own choice to do the work in school, and that he was doing nothing but hurting himself when he did not do the work. Student advised that he wanted to get through high school and then go to college, which meant he needed to put in more effort at school.

LEGAL CONCLUSIONS

1. As the petitioning party, Student has the burden of persuasion on all issues. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].)

Issue 1: Appropriate Services

2. Student contends that he was denied a FAPE, because his October 22, 2009 IEP did not provide appropriate services to address Student's hearing, speech, and language deficits, or appropriate services to address Student's emotional problems. District disagrees, and contends that neither the psycho-educational assessment nor the IEP team found Student eligible for services in the areas of hearing, speech, or language. In addition, District contends it offered Student appropriate services by providing RSP and counseling services, as well as

instructional accommodations to address Student’s academic and social-emotional issues. Furthermore, District contends that Student’s progress after the implementation of the IEP demonstrates that the services provided in the October 22, 2009 IEP are appropriate to help Student meet his goals. As discussed below, Student has failed to prove that District failed to offer Student appropriate services in his October 22, 2009 IEP.

3. California special education law and the IDEA provide that children with disabilities have the right to a FAPE that emphasizes special education and related services designed to meet their unique needs and to prepare them for employment and independent living. (20 U.S.C. § 1400(d); Ed. Code § 56000.) Under the IDEA, eligible children with disabilities are entitled to a FAPE, which means special education and related services that are available to the child at no charge to the parent or guardian, meet State educational standards, and conform to the child’s individualized education program. (See 20 U.S.C. §§ 1400(d), 1401(3), 1401(9), 1401(29), 1412(a); Ed. Code, §§ 56001, 56026, 56040.) “Special education” is defined as “specially designed instruction at no cost to the parents, to meet the unique needs of a child with a disability....” (20 U.S.C. § 1401(29).) California law also defines special education as instruction designed to meet the unique needs of individuals with exceptional needs coupled with related services as needed to enable the student to benefit fully from instruction. (Ed. Code, § 56031.) “Related services” are transportation and other developmental, corrective and supportive services as may be required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26).) In California, related services are called designated instruction and services (DIS), which must be provided if they may be required to assist the child in benefiting from special education. (Ed. Code, § 56363, subd. (a).)

4. In *Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 200 [102 S.Ct. 3034] (“*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.)

5. In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district’s proposed program. (See *Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1307, 1314.) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*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 of educational services and/or placement must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the pupil with some educational benefit in the least restrictive environment. (*Ibid.*) An IEP is evaluated in light of the information available to the IEP team at the time it was developed; it is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) "An IEP is a snapshot, not a retrospective." (*Id.* at p.1149, citing *Fuhrman v. East Hanover Bd. of Education* (3d Cir. 1993) 93 F.2d 1031, 1041.) Whether a student was denied a FAPE must be evaluated in terms of what was objectively reasonable at the time the IEP was developed. (*Ibid.*)

6. Here, on October 22, 2009, at the time the IEP was developed, District had no credible information demonstrating that Student suffered from any hearing impairment requiring special education services. Although District was aware of an audiological report submitted by Mother showing that in 1999, Student had some low-frequency hearing difficulties in his left ear, the same report stated that Student's hearing was adequate for communication purposes. In addition, Student passed his most recent hearing test conducted on September 16, 2009. Moreover, Student's teachers, Ms. Smith, who has worked with Student since the beginning of the 2009-2010 school year, and Mr. Houndougbo, who has worked with Student since Student was in ninth grade, provided credible testimony that they detected no hearing issues in Student.

7. Similarly, regarding Student's speech and language claims, District had no information at the time of the IEP establishing that Student had any speech or language deficits that warranted services. While it is true that Ms. Villegas expressed in her report, as well as in the IEP, that Student should undergo a speech and language assessment to determine whether Student required speech and language services, the fact remains that her report included no information that Student met the eligibility standards for speech and language services. In addition, Ms. Villegas credibly testified that she believed that District's offer of placement and services, which did not include speech and language services, was appropriate to meet Student unique needs. Moreover, Student's teachers at the time of the IEP, Ms. Smith and Mr. Houndougbo, encountered no difficulties understanding Student when he spoke, and Student himself testified he had no trouble communicating with others. Furthermore, this ALJ understood Student's speech and language during his two hours of testimony, as he spoke clearly, and articulated his thoughts well.

8. Finally, with respect to Student's claims concerning services to address his emotional issues, the evidence shows that, at the time of the IEP, Ms. Villegas recommended that Student receive counseling from the school psychologist, evidenced by her report that was discussed at the IEP meeting, as well as by the present levels of performance Ms. Villegas drafted concerning Student's social-emotional deficits. In addition, Ms. Villegas, herself, developed Student's social-emotional goals, and clearly set forth in the IEP that a school psychologist should

implement those goals. Consequently, District offered Student 30 minutes per week of counseling by a school psychologist, to which Ms. Villegas credibly testified was appropriate to meet his needs. As such, District's offer of counseling services was appropriate, and objectively reasonable. Given the above factors, Student has failed to meet his burden of demonstrating that District failed to offer him appropriate services, thereby denying him a FAPE. (Factual Findings 1 – 42, 44 - 45; Legal Conclusions 1 - 8.)

Issue 2: Appropriate Teaching Staff

9. Student contends he was denied a FAPE because his teachers were unqualified to implement the October 22, 2009 IEP, as evidenced by Student's poor grades on his report cards. District disagrees, and contends Student's teachers were well qualified to teach Student, but his poor attitude about school at that time, his repeated failures to turn in assignments, as well as his excessive absences, impacted his ability to do well in class. As discussed below, Student has failed to demonstrate that District offered inappropriate teaching staff to implement the October 22, 2009 IEP.

10. As discussed above, California special education law and the IDEA provide that children with disabilities have the right to a FAPE that emphasizes special education and related services designed to meet their unique needs and to prepare them for employment and independent living. (20 U.S.C. § 1400(d); Ed. Code § 56000.) A FAPE consists of special education and related services that are available to the child at no charge to the parent or guardian, meet the standards of the State educational agency, and conform to the student's individual education program. (20 U.S.C. § 1401(9).) (*See* Legal Conclusion 3, incorporated by reference.)

11. As discussed above, *Rowley* 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, and reasonably calculated to “confer some educational benefit” upon the child. (*Rowley, supra*, 458 U.S. at pp. 200, 203-204.) (*See* Legal Conclusion 4, incorporated by reference.)

12. Here, Student failed to meet his burden of demonstrating that at the time of the October 22, 2009 IEP, his teachers were not qualified to properly implement the IEP. Student's teachers were appropriately educated, as they held a minimum of a bachelor's degree, and were credentialed, and experienced. Ms. Romain, the RSP teacher, held four California credentials, including a resource specialist certificate, as well as a special education certificate, and had 14 years experience as a RSP teacher. In addition, Ms. Smith, who had six years teaching experience, and Mr. Houndonougbo, who had 12 years teaching experience, credibly testified that they have held California teaching credentials since 2003, and 2006, respectively. In addition, the evidence shows, through the credible testimony of Ms.

Maddox, the magnet coordinator, that within one week of the IEP, she met with Student's teachers to discuss Student's IEP, and explain their respective roles in implementing the IEP. The evidence also shows that Student's teachers did, in fact, implement the IEP, demonstrated by the credible testimony of Ms. Smith and Mr. Houndonougbo that they immediately afforded Student instructional accommodations outlined in the IEP. Moreover, Student, himself, offered credible testimony stating that his poor academic performance following the IEP was due to a negative attitude toward school he had held for years. Specifically, Student's academic performance in November 2009,¹¹ reflected failing marks in Algebra and History, marks of "D" in Geometry, English, and Math Prep, and a total of 54 days absent. Given these factors, and contrary to Mother's contention, there is insufficient proof establishing that Student's poor performance was the result of District assigning unqualified teachers to properly implement Student's IEP. Student has failed to meet his burden of demonstrating that District denied him a FAPE. (Factual Findings 1 - 51; Legal Conclusions 1, 3, 4, 9 - 12.)

Issue 3: Psychological Assessment Recommendations

13. Student contends he was denied a FAPE as a result of the District not following the recommendations of the psycho-educational assessment completed by Ms. Villegas in October 2009. District disagrees, and contends that District followed the recommendations of the psycho-educational assessment, as evidenced by the IEP's incorporation of information contained in the psycho-emotional assessment report, particularly in the present levels of performance, the developed goals, and the level of services offered in the IEP. As discussed below, Student has failed to meet his burden of demonstrating that District failed to follow the recommendations of the psychological assessment in the IEP.

14. California special education law and the IDEA provide that children with disabilities have the right to a FAPE that emphasizes special education and related services designed to meet their unique needs and to prepare them for employment and independent living. (20 U.S.C. § 1400(d); Ed. Code § 56000.) A FAPE consists of special education and related services that are available to the child at no charge to the parent or guardian, meet the standards of the State educational agency, and conform to the student's individual education program. (20 U.S.C. § 1401(9).) (*See* Legal Conclusion 3, incorporated by reference.)

15. Here, Student provided no evidence demonstrating that District failed to follow the recommendations set forth in the psycho-educational assessment. On the contrary, the evidence shows that the IEP incorporated Ms. Villegas' recommendations. Specifically, the IEP included Student's present levels of performance based almost entirely on information contained in the psycho-

¹¹ For the purpose of this analysis, the only relevant period was the time of the IEP, October 22, 2009, to the time Student filed his amended complaint, November 25, 2009.

