

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH Case No. 2015071054

v.

GLENDALE UNIFIED SCHOOL DISTRICT,

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GLENDALE UNIFIED SCHOOL DISTRICT,

OAH Case No. 2015091020

v.

PARENTS ON BEHALF OF STUDENT.

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**DECISION**

Student filed a due process hearing request (complaint) with the Office of Administrative Hearings, State of California, on July 20, 2015, naming Glendale Unified School District (Glendale). OAH continued Student's case on August 20, 2015. Glendale filed a complaint with OAH on September 25, 2015, naming Parents on behalf of Student. OAH consolidated Student's case and Glendale's case on October 5, 2015, and set timelines for this Decision based upon the dates in Student's case.

Administrative Law Judge Adrienne L. Krikorian heard the consolidated cases in Glendale, California, on October 27, 28, 29, and November 4, 2015.

Attorneys Bryan Winn and Eric Menyuk represented Student. Student's father and mother attended the hearing on all dates and testified.

Attorney Melissa Hatch represented Glendale. Program Coordinator William Gifford attended all days of hearing and testified. Special Education Local Plan Area coordinator Amy Lambert, and Director of Special Education Beatriz Bautista attended the hearing on October 27, 28, and 29, 2015.

OAH granted a continuance for the parties to file written closing arguments and the record remained open until November 23, 2015. Upon timely receipt of the written closing arguments, the record was closed and the matter was submitted for decision.

## ISSUES<sup>1</sup>

### 1. Student's issue:

Did Glendale deny Student a free appropriate public education in the least restrictive environment for the 2014-2015 school year by failing to offer Student placement and related services that met his unique and individual needs because the placement and services offered 1) were too restrictive, and 2) did not provide Student the opportunity to develop requisite educational skills, and/or did not afford an environment for meaningful progress?<sup>2</sup>

### 2. Glendale's issue:

Did Glendale offer Student a FAPE in the least restrictive environment in the February 3, 2015 IEP, as amended on April 14, 2015, for the 2015-2016 school year, and if

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<sup>1</sup> Student withdrew claims alleged in the complaint relating to the 2013-2014 school year at the prehearing conference. The remaining 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.).

<sup>2</sup> Student's counsel attempted to raise issues at hearing and in his closing brief which Student's complaint did not raise, specifically: Glendale's alleged failure to implement Student's February 2014 IEP during the 2014-2015 school year; failure to give Parents appropriate prior written notice; and failure to hold IEP meetings when the need existed. A party who requests a due process hearing may not raise issues at the hearing that were not raised in his request, unless the opposing party agrees to the addition. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *County of San Diego v. California Special Education Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1465.) Student's reliance on *Van Duyn ex rel. Van Duyn v. Baker School Dist.* (9<sup>th</sup> Cir. 2007) 502 F.3d 811, 815, and California Code of Civil Procedure section 469 are inapplicable. Asserting an allegation, in particular, that Glendale failed to implement Student's 2014-2015 IEP is not a "trivial" difference from the stated issues, as Student argues. It is a separate and distinct issue, which requires notice to Glendale, and the opportunity for Glendale to prepare for and present evidence to address that issue. Both counsel reviewed and agreed upon the issues for hearing at the prehearing conference and again on the first day of hearing. Glendale did not agree to the new issues raised by Student as articulated in his closing brief. Accordingly, this Decision does not address the new issues and related arguments.

so, is Glendale entitled to implement Student's February 3, 2015 IEP, as amended on April 14, 2015, without parental consent?

### SUMMARY OF DECISION

In Issue One, Student contends that Glendale's February 2014 IEP offer denied him a FAPE in the 2014-2015 school year. Student asserts the fifth grade teacher and behavior aide used different behavior management reinforcers than used in prior years, making the fifth grade classroom environment and provided services too restrictive; and the classroom environment did not afford Student the opportunity to make meaningful academic progress or acquire requisite skills. The February 2014 IEP offered Student an appropriate placement in the least restrictive environment and appropriate behavior management strategies consistent with Student's behavior intervention plan and based on the information available to the IEP team at the time. Student did not prove Glendale failed to design Student's February 2014 FAPE offer to meet his unique needs at the beginning of the 2014-2015 school year. Student also did not establish that circumstances changed in the 2014-2015 school year such that the February 2014 IEP offer became inappropriate and deprived Student the opportunity to make academic progress. Student made some academic and behavioral progress during the four weeks he attended fifth grade at Glendale's Fremont Elementary School. Student is entitled to no remedies on Issue One.

In Issue Two, Glendale contends that it offered Student, who was then privately placed, a FAPE in the February 2015 IEP, as amended in April 2015. Glendale met all of the required procedural elements of the Individuals with Disabilities Education Act. The IEP included placement in a general education setting, measurable annual goals in the area of behavior, related services including a full-time behavior aide, special academic instruction consultation, counseling to help Student transition back to public school, extended school year and supports, all of which were based upon Student's present levels of performance known to Glendale at the time of the offer. Glendale met its burden both procedurally and substantively. The February 2015 IEP, as amended, offered Student a FAPE, and Glendale may implement the IEP without parental consent if Student returns to a Glendale public school.

### FACTUAL FINDINGS

1. Student is a 12-year-old male who resided at all relevant times with Parents within Glendale's boundaries. At the time of hearing he was enrolled at Parents' expense in a private placement. If enrolled at Glendale, he was eligible for special education under the category of other health impairment based on a diagnosis of attention deficit hyperactivity disorder.

## *Educational Background*

2. Student attended Glendale's Fremont Elementary School from kindergarten through September 8, 2014, the fourth week of fifth grade. Student's individualized educational programs from kindergarten through the third grade consisted of placement in a general education classroom with services that included a behavior support plan; a full time 1:1 Special Circumstances Instructional Assistance aide; behavior intervention supervision; behavior support from a non-public agency contracted with Glendale; specialized academic instruction consultation and collaboration provided by special education resource teacher Elaine Rivera; and counseling. The third-grade behavior support plan included reinforcement strategies for positive behaviors. The reinforcement strategies were based upon Student preference, teacher and parental input, and a behavioral contract. Behavior management strategies included a point system with positive reinforcements. During this time, Student exhibited behavior challenges although he was academically successful without the need for specific academic support. Student's behavior challenges included defiance to adult instructions; attention seeking behavior with adults and peers; lying, calculating and being sly and devious to "get around the system;" and off-task behavior. He experienced behavioral difficulties transitioning from grade to grade, classroom to classroom, and teacher to teacher, which Parents attributed in part to his history of parental abandonment as an infant, and living in an orphanage until he was 11 months old.

### SEPTEMBER 2013 FUNCTIONAL BEHAVIORAL ANALYSIS

3. Student's behavior became more acute near the end of the third grade during the 2012-2013 school year. In preparation for his transition to fourth grade, Student's IEP team met on May 29, 2013, and concluded that Student needed more intensive behavior support. Parent consented to a functional behavioral assessment and to amend Student's February 2013 IEP, pending the outcome of the assessment, to replace the Special Circumstances Instructional Assistance aide with a Behavior Intervention Aide starting August 12, 2013, for the 2013-2014 school year, with additional supervision and training from a board certified behavior analyst.

4. Lydia Ruiz, often referred to as "Miss Lydia," was Student's Behavior Intervention Aid in fourth grade; board certified behavior analyst Christine Karg was her supervisor. Case manager Ms. Rivera collaborated throughout the year with Student's teacher, Ms. Ruiz, Father, and other team members, ensuring that Glendale staff implemented Student's IEP and behavior intervention plan.

5. Kathy Hollimon is a board certified education therapist at Education Spectrum, a non-public agency contracted with Glendale to conduct assessments, work with students, and provide consultation to Glendale staff. She has worked with Glendale for almost 18 years. Ms. Hollimon worked with Student beginning in kindergarten, and was part of his IEP team. In August 2013, Ms. Hollimon conducted a functional behavioral assessment of Student. Ms. Hollimon's functional behavioral assessment included observations of Student and interviews with Parents and his teacher. She concluded that the

intensity of Student's behaviors, which included attention seeking and task deflective actions, was moderate. He required reinforcements to help him in school, but the nature, frequency and specificity of the reinforcers were varied based on Student's reactions to the reinforcers. She included recommendations designed to manage Student's classroom behaviors including positive reinforcement for negative behaviors in her September 2013 assessment report. She recommended continuing a point chart for tracking positive behavior.

6. Ms. Hollimon and Student's IEP team met on September 17, 2013, to review her report and a psychoeducational-Special Circumstances Instructional Assistance assessment report by school psychologist Julienne Chu. The IEP team agreed that Student required full time behavior intervention aide support, and developed a behavior support plan and a behavior contract that incorporated Ms. Hollimon's recommended strategies for behavior management in the general education setting. The point chart was not a required strategy in Student's amended 2013-2014 IEP. Parents consented to the amended IEP.

7. Glendale implemented the amended IEP and behavior support plan using a variety of behavior strategies that resulted in improvement in Student's behaviors. Although Student experienced transitional behavioral difficulties during the first months of the fourth grade, Ms. Ruiz and the teacher successfully managed the behaviors, in part by using the point chart recommended by Ms. Hollimon. Student liked working with adults. In collaboration with Student, Parents, and school staff, Glendale implemented a positive reinforcement strategy where, if Student received sufficient points during the day, he was often awarded the privilege of staying after school to help his teacher with tasks. The after-school reward was successful, although at times Student's teacher was not available after school; in those instances, Student responded positively to other reinforcements as incentives. Student did not have any reported significant behavior events when his teacher was not available after school.

#### *February 4, 2014 IEP Through the 2013-2014 School Year*

8. Glendale held an annual IEP team meeting on February 4, 2014. Parents and all required staff members attended. The IEP team reviewed Student's present levels of performance, his previous behavior support plan, and his goals. Glendale offered Student continued placement in the general education setting; counseling/consult 30 minutes monthly; a full-day behavior intervention aide 1,740 minutes weekly; behavior intervention supervision 240 minutes monthly; behavior support from Education Spectrum 10 hours annually; accommodations including a point system for positive behavior developed by Education Spectrum; and a behavior intervention plan. The IEP did not require after-school rewards as a specific behavior strategy. The IEP team offered three goals in the areas of social emotional and behavior, and supports and accommodations consistent with Student's prior IEPs. Parents consented to the IEP.

9. Glendale staff was responsive to any concerns or questions from Parents through the end of the 2013-2014 school year. Parents regularly communicated with Glendale staff about Student, and they were satisfied that Glendale staff was collaborative.

Although Student occasionally reported to Parents that his teacher and or aide were too strict, Father dismissed Student's complaints.

10. Glendale implemented the February 4, 2014 IEP through the end of the 2013-2014 IEP. Student was academically and behaviorally successful, he accessed his education, and he obtained educational benefit from his program.

#### TRANSITION TO FIFTH GRADE

11. At the end of the 2013-2014 school year, Parents expressed concern that Student should have immediate access to the point chart and the same after-school reward incentive in the fifth grade. Parents wanted the point chart incentive program to begin on the first day of school because that strategy worked for Student. Glendale staff assured Parents that they would attempt to include the after-school incentive, if feasible, as one of the methods used to reinforce Student's positive behavior in accordance with the behavior intervention plan. Parents were concerned that, as of the end of the 2013-2014 school year, they did not have Glendale's assurance that the after-school reward incentive plan was a certainty for the 2014-2015 school year.

12. During the summer of 2014, Parents began researching alternative placements for Student. Parents hired educational advocate Silvia Stein as part of their research.

#### 2014-15 SCHOOL YEAR - FREMONT

13. Student attended Bobbi Wooldridge's fifth grade general education class at Fremont from August 11, 2015 through September 8, 2015. Ms. Wooldridge implemented Student's February 4, 2014 IEP in the fifth grade.

14. Student's class had approximately 38 students, which was consistent with class sizes from his prior school years. Ms. Karg collaborated with Ms. Ruiz regularly regarding Student's intervention plan and behaviors. Ms. Rivera continued as his resource teacher and, in addition to observing Student in the classroom on a few occasions, collaborated with Ms. Wooldridge regularly regarding Student's IEP.

15. Prior to the start of the school year, Ms. Wooldridge met with Ms. Rivera and Ms. Ruiz to discuss Student's IEP, his behavior intervention plan, his goals, accommodations and supports. Ms. Wooldridge understood Student's unique needs and was familiar with him through past informal interactions during the 2013-2014 school year.

16. On the first day of school Ms. Wooldridge seated the children alphabetically, placing Student a few seats away from Ms. Ruiz. She encouraged the development of independence and increased social interaction between peers. On the second day of school, Father visited the classroom after school and requested that Ms. Wooldridge move Student next to Ms. Ruiz. Ms. Wooldridge reluctantly agreed, although she preferred to move all students around the classroom periodically to enable them to establish social relationships

with their peers. In Student's case, she also hoped to gradually fade his dependence on having the aide at his immediate side. She explained her reasoning to Father, and assured him that Student was doing fine in her classroom.

17. Ms. Wooldridge used a classroom point system where all students had the opportunity to earn points toward a classroom reward for good behavior. This program differed from Student's prior year because it was used as a benefit for all of the students, rather than solely as a specific reward for Student. Parents were concerned that the reward system Ms. Wooldridge used was not specific to Student and deprived him of positive reinforcers unique to his needs. Parents told Ms. Wooldridge that Student responded best to the opportunity to stay after school and interact with an adult staff member as a reinforcer and that Student should consistently have immediate access to Ms. Ruiz. Ms. Wooldridge attempted to redirect Student's behaviors by introducing other successful strategies with Student as reinforcers for positive behavior, including making him a classroom leader, peer mentoring, and giving him chores during the school day. She also suggested Student participate in the chorus, which she knew he had enjoyed during the 2013-2014 school year.

18. Student's defiant and attention-seeking behaviors increased at the beginning of the 2014-2015 school year. This behavior was consistent with his transition difficulties in prior years. Ms. Wooldridge was not available after school for the after-school reward used in fourth grade. Parents expressed concern to other Glendale staff, including school principal Christin Molano, that the after-school program was not available to Student. In response to Parents' concerns, Ms. Molano unsuccessfully attempted to find another adult teacher or staff member who could stay after school to accommodate Parents' concerns. Ms. Wooldridge agreed to remain open to the possibility if her schedule permitted.

19. Within the first two weeks of school, Student reported to the entire classroom in Ms. Wooldridge's presence that he did not have to do his homework because he would not be at Fremont for much longer. Student reported to Parents that Ms. Wooldridge and Ms. Ruiz were "mean" to him; they humiliated him and "shamed" him in front of other students by openly making an example of him; he had no friends; the other children did not want to play with him; and he did not want to go back to Fremont. Based largely upon Student's reports, Father believed that Ms. Wooldridge was: not addressing Student's needs; not using a positive approach to discipline; trying to "mainstream" Student; unfamiliar with Student's IEP; and "throwing him into the deep end." Ms. Wooldridge denied Student's accusations about her behavior toward him; she used successful strategies to manage his behavior, his relationship with her by the end of the second week of school was good, and Student showed respect to her in the classroom. By the third week of school, Student adjusted to his relationship with Ms. Wooldridge, he worked in the classroom, he did not have any reported significant behavior incidents, and he did not bother his classmates other than exhibiting "normal behavior for a 10-year old."

20. Ms. Karg regularly consulted with Ms. Ruiz, in person, by email and by phone. Ms. Ruiz maintained daily Intervention Logs from August 14 through September 2, 2015. She recorded Student's behaviors, including frequency, duration and comments.

Ms. Karg reviewed those logs. Student's behaviors with the highest occurrence were during classroom instruction. Ms. Karg opined based on the Intervention Logs that Student's transition to fifth grade was "smooth," and Ms. Ruiz was managing his behaviors. Ms. Ruiz implemented the behavior intervention plan, including periodic small movement breaks. She continued to utilize a point system for positive reinforcement. She integrated her strategies with Ms. Wooldridge's strategies. Neither Ms. Ruiz nor any other Glendale staff reported to Ms. Karg that Ms. Wooldridge or Ms. Ruiz engaged in inappropriate behavior toward Student.

21. Student's curriculum included math, language arts, social studies and science. He struggled with math and completing math homework. Ms. Wooldridge and other staff recommended that Ms. Ruiz work with Student to break up his math assignments into smaller modules to help him stay on task and complete his homework. He successfully accessed his other subjects. His primary needs were in the area of behavior and peer interaction, which Ms. Wooldridge did not feel impacted his overall access to his education. Student had difficulty with other children and with "kidding around." He was not relaxed around his peers. However, he enjoyed social experiences when he was given leadership roles. He had opportunities during the day to interact with other children, including during recess and lunchtime, and Ms. Wooldridge occasionally worked with Student and his peers in small groups. In Ms. Wooldridge's opinion, if Student had remained at Fremont for the entire school year, Student's memory and class participation suggested that he was bright and had the potential to have a good year based on his response to behavior interventions during the first four weeks of school.

#### CREDIBILITY FINDINGS RE: FIRST FOUR WEEKS AT FREMONT

22. Parents' perception of Ms. Wooldridge's attitude toward Student and how Ms. Wooldridge and Ms. Ruiz treated him during the first four weeks of school through September 4, 2015, was very different from Ms. Wooldridge's perception of her relationship with Student.

23. Ms. Wooldridge, who was popular with students and parents, had 12-13 years' experience as a credentialed teacher at Glendale, and worked in the general education setting with students with IEPs who had all levels of academic and behavioral difficulties. In addition to her role as a classroom teacher, she served Glendale as a learning leader for Core curriculum offering training to other teachers. She had the requisite training, skill and experience to teach Student, having often taught children who had IEPs, behavioral issues, and intervention plans. She was well respected by her colleagues and parents of other children, who often requested that Glendale assign their children to her class. She engaged Student in activities and behavior in the classroom that would lead him to become more independent of his aide and successfully engaged with his peers. She expected her students to follow rules, but she worked individually with Student when his behavior was inappropriate in an attempt to redirect him in a positive way. At hearing she was self-confident, enthusiastic and optimistic about her approach to Student during that time period. Glendale staff credibly corroborated her testimony and her qualifications to work with

Student and his unique needs, including case manager Ms. Rivera, school psychologist Julienne Chu, and school principal Ms. Molano.

24. Parents' understanding of what happened in the classroom was very different. Their testimony made clear that they did not like Ms. Wooldridge's teaching methods because they differed from those used successfully with Student in the fourth grade. Relying on Student's reports to them and his behavior related to school when he was at home, Parents believed that Ms. Wooldridge was not successfully working with Student consistent with his IEP. However, neither parent observed Student in Ms. Wooldridge's classroom during the school day before they removed him from Fremont. They believed that, unlike in prior years, Glendale staff, particularly Ms. Wooldridge, were unwilling to cooperate and collaborate with them on finding successful reinforcers for Student's behaviors and were not capable of providing Student with an appropriate education. Parents were unhappy that, although they had been assured that the after-school incentive would be in place for the 2014-2015 school year, Ms. Wooldridge purportedly "refused" to cooperate, consider or agree to implement that strategy. Ms. Wooldridge denied that she refused to be available after school, credibly explaining that her workload and schedule had changed at the beginning of the school year and she was not available, at least during the first four weeks of the school year. She did not rule out the possibility of being available, when her schedule permitted. Ms. Molano's testimony corroborated Ms. Wooldridge's testimony regarding her after-school availability.

25. Student reportedly interpreted Ms. Wooldridge's adherence to classroom rules, and her attempts to redirect his behaviors using new and unfamiliar strategies, as "being mean," bullying and humiliating. Parents credibly reported that, based upon his history in an orphanage as an infant, Student had difficulties with transitions, and in particular the transition to fifth grade. However, when weighing the evidence to determine what actually happened during those four weeks, Ms. Wooldridge's testimony relating to Student's progress in her classroom, and the extent to which his behaviors impacted his access to his education despite his impressions of her teaching strategies, was more informative and credible than Parents' because she worked with him in the classroom daily. Ms. Rivera, who observed the classroom at least weekly, and Ms. Karg, who reviewed Ms. Ruiz's services and logs, corroborated Ms. Wooldridge's testimony.

26. As to Student's criticisms of Ms. Ruiz, Parents acknowledged that Student had successfully worked with Ms. Ruiz as his behavior intervention aide in the prior school year, despite his occasional complaints that she was "mean" to him. No credible evidence corroborated Students' reports of increased hostile or inappropriate behavior by Ms. Ruiz. The lack of such evidence raised doubt as to whether Student's complaints in the first four weeks of the 2014-2015 school year were based on his historic difficulties with transitions, and his reported knowledge that he was changing schools, or on Glendale staff's alleged failure to offer an appropriate educational environment for him. Ms. Wooldridge's, Ms. Molano's, Ms. Rivera's, and Ms. Karg's testimony was more credible than Parents' testimony on the issue of the appropriateness of Ms. Ruiz's and Ms. Wooldridge's classroom

methodology and Student's progress academically and behaviorally during the four weeks he was at Fremont during the 2014-2015 school year.

27. In summary, Student made progress during the first four weeks of the 2014-2015 school year in Ms. Wooldridge's class with Ms. Ruiz's assistance, even though he experienced difficulty with the transition to fifth grade.

*Transition to Private Placement – September 2014*

28. On September 3, 2014, Ms. Karg learned for the first time that Parents were concerned about Student's behaviors, his relationship with Ms. Ruiz and Ms. Wooldridge, and the absence of the after-school program. She arranged a meeting between Glendale staff and Parents for September 5, 2014 but did not attend.

29. On September 4, 2014, Parents' educational advocate Ms. Stein observed Student in Ms. Wooldridge's classroom, accompanied by Ms. Chu. Parents did not attend the observation. The observation lasted 15-20 minutes. Ms. Chu did not observe Student engage in any inappropriate behaviors. However, Parents received contrary information from Ms. Stein. Ms. Stein did not testify at hearing. Parents offered no evidence to rebut Ms. Chu's testimony, other than their testimony as to statements made to them by their advocate. Ms. Chu's testimony as to what she saw during the observation was credible and more persuasive than Parent's report of what they were told by their advocate.

30. On September 5, 2014, Parents and Ms. Stein met with Ms. Molano, Ms. Ruiz, Ms. Wooldridge, and Ms. Chu to discuss Parents' concerns that the classroom environment lacked any successful positive reinforcement behavior strategies. Staff suggested several alternatives to the after-school incentive, including occasionally having lunch with the principal or other adult staff, or doing chores in the classroom or errands to the office including working with office staff. Parents did not object to any of those alternatives, but remained concerned that none of the recommended alternatives to the after-school program had yet been implemented by Glendale. Mother left the meeting frustrated that Glendale staff refused to work with Parents in a collaborative manner to address what Parents considered successful strategies for Student's behaviors. Mother was also upset that Glendale had not yet implemented any specific strategy acceptable to Parents to replace the after-school incentive program. Mother concluded that Glendale refused to implement previously successful strategies to afford Student positive reinforcers for his maladaptive behaviors.

NOTIFICATION OF PRIVATE PLACEMENT

31. Student last attended Fremont on September 8, 2014. With Ms. Stein's assistance, Parents privately placed him at Art of Learning Academy in Chatsworth, California, which was located in the personal residence of Alicia Viramontes. Student was one of three students at the school; instruction primarily took place in Ms. Viramontes' living

room. On September 16, 2014, Parents sent Glendale a letter advising that they were privately placing Student and would be seeking reimbursement for all associated costs.

#### PRIVATE PSYCHOLOGICAL ASSESSMENT

32. On or about September 22, 2014, at Parents' request, psychologist Dr. Jared Maloff assessed Student to determine his current levels of performance in the area of behavior. Dr. Maloff primarily focused his work on clinical evaluations and support of clientele ranging in age from five years to 50 years. Dr. Maloff had no training or experience as an educator. He did not interview any of Student's teachers or other staff from Fremont because he felt that their input was not relevant to Student's current placement. He relied on standardized test instruments, and interviews with Father and Ms. Viramontes. He did not observe Student at Art of Learning Academy or Ms. Wooldridge's classroom at Fremont.

33. Dr. Maloff confirmed Student's diagnosis of attention deficit hyperactivity disorder combined. Student's case was one of the most severe he had seen. Student's behaviors were extreme and difficult to manage; at the time of Dr. Maloff's assessment Student reportedly struggled with his transition to Art of Learning Academy, which Dr. Maloff found consistent with Student's diagnosis of attention deficit hyperactivity disorder. Student was likely to struggle more with a transition to a new school as opposed to a new teacher at the same school. Dr. Maloff recommended several strategies for addressing Student's behaviors. His recommendations were suitable for both private and public school settings. They were consistent with Student's 2013-2014 and 2014-2015 behavior intervention plans.

34. Dr. Maloff offered no credible testimony with respect to whether the placement at Fremont was too restrictive, or whether Student's program offered him an opportunity to develop requisite educational skills, and/or afford an environment for meaningful progress. Dr. Maloff did not observe Student at Fremont during the first four weeks of the 2014-2015 school year or interview any Glendale staff working with Student during that time. He could not recall reviewing any of Student's records from Fremont. He opined that the more restrictive setting at Art of Learning Academy was an appropriate setting, although he did not observe Student in that setting. His assessment conclusions corroborated other testimony relating to Student's extreme behavioral needs and he credibly agreed that Glendale's 2014 and 2015 behavior intervention plans were appropriately designed to meet Student's needs.

#### *February 2015 Glendale IEP and Assessment*

#### FEBRUARY 3, 2015 IEP MEETING

35. Glendale convened a triennial IEP meeting on February 3, 2015. Father, Ms. Stein and all required Glendale staff were present. Mother declined to attend. The IEP team reviewed Student's current placement; considered input from Father and Ms. Stein who informed the IEP team about Dr. Maloff's assessment, that Student was receiving private

psychiatric care and was participating in a privately-run social skills group. The IEP team reviewed Student's previous goals, and considered input from Ms. Stein regarding Student's academic progress and her opinions regarding Student's behavior and placement needs. During the meeting, the team agreed that Glendale should conduct full assessments to determine Student's current levels of performance because of his private placement, and staff requested copies of all privately funded assessments. Father consented to a psychoeducational multidisciplinary assessment.

36. Pending the completion of the multidisciplinary assessment, Glendale presented Father with a written offer of placement in a full inclusion general education classroom at Fremont; special academic instruction 20 minutes a month; behavior intervention services 1,740 minutes a week; behavior consultation 240 minutes a month; counseling/consult 30 minutes monthly pending completion and review of the assessments; a behavior intervention plan consistent with the 2014 plan; and consideration of outside assessments and reports from private providers at the next IEP meeting. The IEP included a start and end date for services. Accommodations included use of a point system. It also included an example of a Daily Point Sheet.

#### 2015 GLENDALE PSYCHOEDUCATIONAL ASSESSMENT

37. Ms. Chu administered an appropriate and valid multidisciplinary psychoeducational assessment, which included analysis of current and past data for a functional behavioral assessment. Ms. Chu is a school psychologist employed by Glendale since June 2012, with a master of science in counseling with an emphasis in school psychology. She holds a credential in pupil personnel services, a preliminary multiple subject teaching credential, and a Preparing Autism Spectrum Specialist certificate. Her job duties include administering psychoeducational and functional behavioral assessments; providing support to special education students and school staff working with those students; participating in IEP team meetings; and developing IEPs. She had previously conducted a psychoeducational assessment of Student during the 2012-2013 school year and was part of Student's IEP team. She was qualified to administer the assessment.

38. Ms. Chu observed Student in his placement at Art of Learning Academy. During Ms. Chu's observation, Student was alone in the room, except for a 10-minute period during a spelling test with a classmate. She collected data from her observations. In collaboration with Ms. Karg, her reported findings included a comparison to data collected by Glendale staff from February 2014 until Student left Fremont in September 2014, which both Ms. Karg and Ms. Chu concluded was more reliable and covered a longer period of time. She reviewed Student's prior records and educational history, and administered several standardized assessments. Ms. Chu sought feedback from Parents by using the Behavior Assessment Success System for Children, Second Edition. She interviewed Student, who responded "[i]t's easy" when asked what he liked most about Art of Learning Academy.

39. Ms. Viramontes, who did not testify at hearing, provided Ms. Chu with a letter describing her impressions of Student, portions of which Ms. Chu quoted in her report.

Ms. Viramontes reported to Ms. Chu that Student's emotions overwhelmed him on a daily basis; he had difficulty in focusing on schoolwork because of an obsessive desire to express negativity to other students and adults; he was a consistent "wrong decision maker"; when he was supervised by an adult he did his work but he did not care whether he received high or low grades; he had difficulty holding back from mocking other students; and if he thought he could "lie or fight his way out of a consequence, he tried." Ms. Viramontes did not use a point system similar to that used by Ms. Ruiz with Student, although Student had some access to after-school activities periodically. In Ms. Chu's opinion, Ms. Viramontes "played into" Student's inappropriate behaviors rather than ignoring or redirecting him. Ms. Viramontes' strategies were inconsistent with his 2014 IEP behavior intervention plan.

40. Ms. Chu concluded that Student's ability to learn was within average range. He demonstrated clinically significant difficulties in the area of executive functioning, consistent with his diagnosis of attention deficit hyperactivity disorder. His visual memory and oral communication skills were below average. He had a relative weakness in auditory memory. He continued to exhibit slightly elevated scores in inattention. Academically, Student was successful, achieving grades on his March 20, 2015 report card of A's and B's in all subjects.

41. Student's maladaptive behaviors during the time Ms. Chu observed him were significantly more intense and frequent than when he was in Ms. Wooldridge's classroom. His behaviors were similar to those reported in earlier years by Ms. Hollimon and Ms. Chu. Ms. Viramontes acknowledged to Ms. Chu that Student continued up to the time of the assessment to demonstrate significant behaviors, and reported that she worked with Student regularly, in collaboration with Parents, to manage those behaviors.

42. Based on the very small class size and Student's reported behaviors and abilities, the Art of Learning Academy was not an appropriate placement for Student. While at Fremont, he had been making academic and behavioral progress in a general education setting with full time aide support and was capable of continuing to do so.

#### APRIL 14, 2015 IEP TEAM MEETING

43. Student's IEP team reconvened on April 14, 2015. Father and Ms. Stein attended in addition to all required Glendale staff. The IEP team reviewed Student's present levels of performance based on Ms. Chu's report. The team developed three measurable annual goals in the areas of social-emotional and behavior to be completed by February 2016. Student remained eligible for special education as other health impaired.

44. The Glendale staff members of the IEP team felt that Glendale could meet Student's needs and provide educational benefit for him. Glendale amended its February 3, 2015 IEP by offering Student public school full-inclusion placement in a general education classroom; 60 minutes a week of counseling through May 15, 2015 to assist with transition back to public school; 30 minutes of counseling weekly thereafter; special academic instruction consultation/collaboration 20 minutes weekly; a full-day behavior intervention

aide at 1,740 minutes a week; behavior intervention supervision 240 minutes monthly; a behavior intervention plan; eligibility for extended school year; and accommodations and supports consistent with his 2014 IEP, including a point chart. The IEP included a projected start date for services and the anticipated frequency, location and duration of services. Father only agreed with Glendale's determination of eligibility and did not consent to the IEP. Father noted on the signature page that Parents would seek reimbursement for private placement and services for the 2014-2015 school year through summer 2015.

45. Student did not return to Glendale, and completed the 2014-2015 year at Art of Learning Academy. Parents did not know whether Ms. Viramontes implemented Student's IEP or his behavior intervention plan during the school year.

## LEGAL CONCLUSIONS

### *Introduction: Legal Framework Under the IDEA<sup>3</sup>*

1. This hearing was held under the IDEA, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000, et seq.; Cal. Code. Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

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

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<sup>3</sup> Unless otherwise indicated, this Decision incorporates by reference the legal citations in the introduction into the analysis of each issue decided below.

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, § 56502, 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).)

5. 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].) Student is the petitioning party on Issue One and has the burden of proof on that issue. Glendale is the petitioning party on Issue Two and has the burden of proof on that issue.

*Issue 1: Did Glendale Deny Student a FAPE in the 2014-15 School Year?*

6. Student contends that: Glendale failed to offer Student a FAPE in the least restrictive environment for the 2014-2015 school year; that Ms. Wooldridge’s classroom strategies were too restrictive; that the lack of the after-school program as an incentive resulted in Student’s resistance to school; and, therefore Student did not have educational access in order to make academic progress or benefit from his IEP. Glendale contends that: it was not required to utilize a methodology or strategy requested by Parents; and, in the

short time Student was in Ms. Wooldridge's class, Student made academic and behavioral progress under the February 2014 IEP implemented by the teacher.

#### APPLICABLE LAW

7. 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.) For a school district's offer of special education placement and services to a disabled pupil to constitute a FAPE under the IDEA, a school district's offer must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the pupil with some educational benefit in the least restrictive environment. (*Ibid.*) Whether a student was denied a FAPE is determined by looking to what was reasonable at the time, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrman v. East Hanover Bd. of Education* (3d Cir. 1993) 993 F.2d 1031, 1041.)

8. 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. 209.; *Roland M. v. Concord Sch. Committee* (1st Cir. 1990) 910 F.2d 983, 992 (citing *Rowley, supra*, 458 U.S. at p. 202).)

9. The determination of whether a school district offered Student a FAPE is focused on the appropriateness of the proposed placement under *Rowley*, not on whether the placement desired by parents is better. (See *Gregory K, supra*, 811 F.2d at p. 1314.)

10. To provide the LRE, school districts must ensure, to the maximum extent appropriate: 1) that children with disabilities are educated with non-disabled peers; and 2) that special classes or separate schooling occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. 300.114 (a); Ed. Code, § 56031.) 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 placement fulltime in a regular class"; 2) "the non-academic benefits of such placement"; 3) the effect [the student] had on the teacher and children in the regular class"; and 4) "the costs of mainstreaming [the student]." (*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*) [adopting factors identified in *Daniel R.R. v. State Board of 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].)

11. A school district must ensure that the IEP team revises the IEP, as appropriate, to address "any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate." (20 U.S.C. § 1414 (d)(4)(A); 34 C.F.R. §

300.324(b)(2).) California law provides that an IEP team “shall meet” whenever “[t]he pupil demonstrates a lack of anticipated progress.” (Ed. Code, § 56343, subd. (b).)

#### ANALYSIS

12. Student did not meet his burden of persuasion on Issue One. No dispute existed that the February 2014 IEP offered Student a FAPE through the end of the 2013-2014 school year. Student offered no evidence that established that the offer became inappropriate for the 2014-2015 school year.

#### *RESTRICTIVE PLACEMENT AND SERVICES*

13. The placement and services offered in the February 2014 annual IEP were not too restrictive. The IEP offer, which was based upon the information available to the IEP team at that time, included placement in a full-inclusion general education classroom, with typical peers, where he received full-time support from a trained behavior aide implementing a behavior intervention plan to help Student manage his behaviors and access educational benefits from the classroom. No one disputed that he was successful in that placement with those services in the 2013-2014 school year. He continued under the February 2014 IEP in the same placement, in a different classroom with a different teacher, at the beginning of the 2014-2015 school year. He historically had difficulty transitioning from grade to grade, but successfully managed those transitions after a month or two. He had the same difficulty at the beginning of the 2014-2015 school year. Although Student’s behaviors were occasionally disruptive to the classroom, he did well in all academic subjects, despite some struggles with math homework, which Ms. Ruiz and Ms. Wooldridge managed successfully. He had opportunities during the day to interact with other children, including during recess and lunchtime, and Ms. Wooldridge attempted to work with Student in small groups of peers and by rotating his seating to promote his social relationships with peers. On the continuum of options available to the IEP team in February 2014, Student’s placement at Fremont in a general education classroom with a fulltime behavior intervention aide, to which Parents had consented, continued in the 2014-2015 school year to be appropriate and not too restrictive. Student offered no persuasive evidence or argument that circumstances changed requiring Glendale to hold an IEP meeting to change any elements of the February 2014 IEP offer.

14. Ms. Rivera’s, Ms. Wooldridge’s and Ms. Karg’s testimony supported a finding that the February 4, 2014 IEP offer of services and supports was not too restrictive for the 2014-2015 school year. The offer of related services consisting of a behavior intervention plan, a full time behavior intervention aide with supervision, and special academic instruction resource support was appropriate and consistent with the information available to the IEP team in February 2014. Dr. Maloff opined that the behavior intervention plan in the 2014 IEP was appropriate for Student and consistent with Dr. Maloff’s recommendations. Ms. Hollimon, Ms. Rivera, and Ms. Karg credibly testified that the offered behavior support services were beneficial to Student. Student offered no evidence that any of these services, which were previously successful, became “too restrictive” in the 2014-2015 school year, necessitating a change in the 2014 IEP offer. Although Student reported to Parents that

Ms. Wooldridge and Ms. Ruiz were “too strict,” Student offered no credible evidence that the IEP services offered by Glendale restricted him from accessing his education under the meaning of *Rowley, supra*, 458 U.S. 176, at pp. 200, 203-204.

*REQUISITE EDUCATIONAL SKILLS OR ENVIRONMENT FOR MEANINGFUL PROGRESS*

15. Student did not prove that Glendale’s offer in the February 2014 IEP of either the IEP services or the classroom environment at Fremont was detrimental to his ability to acquire requisite educational skills or achieve meaningful progress in fifth grade. Student offered no credible evidence that supported a finding that he could not acquire “requisite skills,” or make meaningful progress under the February 2014 IEP offer.

16. The evidence established that the February 2014 IEP offer remained appropriate for Student in the 2014-2015 school year. In academics, Student accessed all of his academic subjects and made some progress in the four weeks he was in Ms. Wooldridge’s general education classroom with full time aide support. Although he struggled with math homework, Ms. Wooldridge addressed his needs in that area by directing Ms. Ruiz to break his assignments into smaller segments. Student offered no evidence that he was unable to access any specific academic subject or acquire any specific educational skill because of his classroom environment, requiring a change to the February 2014 IEP offer.

17. Regarding his behaviors, Student reported to Parents he was unhappy at school because Ms. Wooldridge and Ms. Ruiz were too strict. He perceived their adherence to rules and strategies that were new to him, and efforts to redirect his behaviors in a positive way, as their being “mean,” humiliating, and constituting bullying. He reported to Ms. Wooldridge and his classmates that he would not be returning to Fremont and therefore did not have to do his homework. Given Student’s history of lying to try to avoid undesired consequences, Parents’ testimony of Student’s reported perceptions of how he was being treated in the classroom did not overcome the credible testimony of Ms. Rivera, Ms. Karg and Ms. Wooldridge regarding the classroom environment, or his manageable behaviors in relation to adults and peers. Their testimony established that, despite his difficulty with the transition, Student gradually adjusted to Ms. Wooldridge’s classroom, regularly participated with his peers, and accessed his educational program.

18. Parents’ contend that, at the time of the September 5, 2014 meeting, Glendale had not yet implemented successful strategies acceptable to them as positive reinforcers for Student’s maladaptive behaviors, asserting that the absence of the after-school incentive, in particular, impeded Student’s access to his education. However, whether or not Glendale implemented a particular strategy not required by Student’s IEP is not probative of Student’s issue, specifically whether or not District offered an academic environment for the 2014-2015 school year that failed to provide Student with access to “requisite skills” or meaningful progress. Furthermore, Glendale was not required by the IDEA to offer the teaching methodologies or strategies that Parents wanted, including the after-school reward incentive. The after-school reward incentive was not a strategy required by Student’s behavior

intervention plan, and was not available during the time Student was at Fremont in fifth grade. Notably, Parents acknowledged at hearing that they did not know whether Ms. Viramontes implemented Student's behavior intervention plan, and she did not regularly use an after-school incentive reward like the one used by Glendale in the 2013-2014 school year. Student's grades in March 2015 were A's and B's. This evidence supported Glendale's position that Student was capable of accessing and did successfully access his academic program without that specific incentive. The evidence established that incentives Ms. Wooldridge and Ms. Ruiz used, as well as the strategies in place in the behavior intervention plan, worked in the classroom despite the fact that Student reported to Parents that he did not like Ms. Wooldridge's rules or approach to teaching. Dr. Maloff confirmed that the February 2014 behavior intervention plan, as written and in effect at the beginning of the 2014-2015 school year, was appropriate for Student. Although by September 4, 2014, Glendale had not implemented a specific alternative to Parents' preferred after-school reward incentive, Student offered no evidence establishing that Student was deprived of any academic benefits caused by the absence of an offer of an after-school reward incentive for the 2014-2015 school year.

19. Student did not meet his burden of persuasion on Issue One and is entitled to no remedies.

*Issue 2: Glendale's February 4, 2015 FAPE Offer*

20. Glendale contends that it offered Student a FAPE in the February 4, 2015 IEP as amended on April 14, 2015; that the IEP placement and services were consistent with Student's February 2014 IEP which previously enabled Student to make progress academically and behaviorally and continued in February and April 2015 to remain consistent with Students then-current PLOPs; that Glendale followed all of the procedural requirements; and the offer was substantively designed to meet Student's unique needs known to the IEP team at the time the IEP was developed. Student contends that the IEP was not a FAPE; it was based upon a faulty assessment by Ms. Chu; and, based upon Dr. Maloff's opinions, Student required a smaller classroom setting with fulltime dedicated adult assistance.

APPLICABLE LAW

21. Legal Conclusion number seven is incorporated by reference.

22. When a school district seeks to prove that it provided a FAPE to a particular student, it must also show that it complied with the procedural requirements under the IDEA. (*Rowley, supra*, 458 U.S. at pp. 200, 203-204, 206-207.)

23. For purposes of evaluating a child for special education eligibility, the district must ensure that "the child is assessed in all areas of suspected disability." (20 U.S.C. § 1414(b)(3)(B); Ed. Code, § 56320, subd. (f).) The assessment must be conducted in a way that: 1) uses a variety of assessment tools and strategies to gather relevant functional,

developmental, and academic information, including information provided by the parent; 2) does not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability; and 3) uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. The assessments used must be: 1) selected and administered so as not to be discriminatory on a racial or cultural basis; 2) provided in a language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally; 3) used for purposes for which the assessments are valid and reliable; 4) administered by trained and knowledgeable personnel; and 5) administered in accordance with any instructions provided by the producer of such assessments. (20 U.S.C. §§ 1414(b) & (c)(5); Ed. Code, §§ 56320, subs. (a) & (b), 56381, subd. (h).) No single measure, such as a single intelligence quotient, shall be used to determine eligibility or services. (Ed. Code, § 56320, subs. (c) & (e).)

24. An IEP must include a statement of the special education and related services, based on peer-reviewed research to the extent practicable that will be provided to the student. (20 U.S.C. § 1414(d)(1)(A)(i)(IV); 34 C.F.R. § 300.320(a)(4)(2006)<sup>4</sup>; Ed. Code, § 56345, subd. (a)(4).) The IEP must include: a projected start date for services and modifications; and, the anticipated frequency, location and duration of services and modifications. (20 U.S.C. § 1414(d)(1)(A)(i)(VII); 34 C.F.R. § 300.320(a)(7); Ed. Code, § 56345, subd. (a)(7).) Only the information set forth in title 20 United States Code section 1414(d)(1)(A)(i) must be included in the IEP and the required information need only be set forth once. (20 U.S.C. § 1414(d)(1)(A)(ii); 34 C.F.R. § 300.320(d); Ed. Code, § 56345, subs. (h) & (i).)

25. An IEP must contain a statement of measurable annual goals related to “meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum” and “meeting each of the child’s other educational needs that result from the child's disability.” (20 U.S.C. § 1414(d)(1)(A)(ii); Ed. Code, § 56345, subd. (a)(2).) The IEP must also contain a statement of how the child’s goals will be measured. (20 U.S.C. § 1414(d)(1)(A)(viii); Ed. Code, § 56345, subd. (a)(3).) The IEP must show a direct relationship between the present levels of performance, the goals, and the educational services to be provided. (Cal. Code Regs., tit. 5, § 3040, subd. (c).)

26. An IEP team is required to include: one or both of the student’s parents or their representative; a regular education teacher if a student is, or may be, participating in regular education; a special education teacher; a representative of the school district who is qualified to provide or supervise specially designed instruction, is knowledgeable about the general education curriculum and is knowledgeable about available resources; a person who can interpret the instructional implications of assessments results; at the discretion of the parties, other individuals; and when appropriate, the person with exceptional needs. (34 C.F.R. § 300.321(a); Ed. Code, §§ 56341, subd. (b), 56342.5 [parents must be part of any group that makes placement decisions].)

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<sup>4</sup> All subsequent references to the Code of Federal Regulations are to the 2006 edition.

27. The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child; and the provision of FAPE to the child. (34 C.F.R. § 300.501(a) (2006); Ed. Code, § 56500.4.) A parent has meaningfully participated in the development of an IEP when he or she is informed of the child's problems, attends the IEP meeting, expresses disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann v. East Hanover Bd. of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1036 [parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way].)

28. If a parent refuses services in an IEP that had been consented to in the past, or the school district determines that the refused services are required to provide a FAPE, the school district shall file a request for a due process hearing. (Ed. Code, § 56346, subs. (d) & (f).) When a school district seeks to prove that it provided a FAPE to a particular student, it must also show that it complied with the procedural requirements under the IDEA. (*Rowley, supra*, 458 U.S. at pp. 200, 203-204, 206-207.)

#### ANALYSIS

29. Glendale met its burden of persuasion. The February 4, 2015 IEP as amended on April 14, 2015, offered Student a FAPE.

30. Glendale followed all of the procedural IDEA requirements. After Father consented to a multidisciplinary assessment at the February 4, 2015 IEP meeting, Ms. Chu appropriately and timely conducted a comprehensive assessment which included standardized tests; observations of Student at his then-current private placement; Parent and teacher interviews; review of prior records; and analysis of behavioral data from both the placement at Art of Learning Academy, and at Fremont from February 2014 through September 8, 2015. The IEP team met twice and at both meetings all required Glendale staff were present, along with Father and Ms. Stein. At the April 2015 meeting they discussed Student's present levels of performance based upon Ms. Chu's comprehensive assessment and developed three new measurable annual goals targeting Student's unique behavioral and social needs. They appropriately determined that Student did not require any related services to address academic needs because he was making academic progress, both at Art of Learning Academy and while he was at Fremont. The IEP team considered Father's and Ms. Stein's input at both meetings and considered Dr. Maloff's assessment report, resulting in the opportunity for meaningful parental participation in the development of Student's educational program. Based upon the information known to the IEP team at the time, they developed a sufficiently documented written offer that appropriately articulated proposed placement, a behavior intervention plan, related services, supports and classroom accommodations, including a point chart. They presented the written offer to Father, who signed and consented to eligibility only, confirming Parents' intent to privately place Student and seek reimbursement from Glendale.

31. Student argued in his closing brief that the February 3, 2015 offer was incomplete and therefore not an offer of FAPE. The argument was not persuasive. All members of the IEP team knew at the time Glendale made the offer that it was subject to change, pending Ms. Chu's assessment and the IEP team's review of private assessment reports, which Parents had not provided to Glendale prior to the meeting. Father consented without objection to the psychoeducational assessment and continuation of the IEP meeting. Glendale made the February 3, 2015 written FAPE offer as part of Student's annual IEP; it was complete based on the information known to the IEP team at the time. On April 4, 2015, after considering the new information available to it, Glendale modified the IEP offer by adding extended school year and counseling as part of a transition plan back to public school. Student offered no evidence supporting a finding that District failed to meet any of its procedural obligations under the IDEA relating to its offer of FAPE.

32. Substantively, the IEP offer was appropriate and calculated to confer some educational benefit to Student under *Rowley, supra*, 458 U.S. 176, at pp. 200, 203-204. As to placement, based upon the information the team had at the time, including recent evaluations of Student at Art of Learning Academy, Glendale appropriately offered Student a fully inclusive general education placement at a Glendale school as the least restrictive environment, with weekly specialized academic instruction consultation and collaboration. Contrary to Dr. Maloff's opinion, which was not credible in this regard, Student did not have unique needs that required a more restrictive setting such as Art of Learning Academy, characterized by Student as "easy." Dr. Maloff was not an educator, did not observe Student in any educational setting and he assessed Student within two weeks after Parents removed Student from Fremont. Dr. Maloff's opinion on placement was not instructive. Instead, the evidence demonstrated Student had historically and successfully accessed his education in a general education setting with full-time behavior support.

33. The IEP also addressed Student's behavioral needs known to it at the time, which were consistent with prior years, by offering a comprehensive behavior intervention plan that was consistent with successful plans from prior years. Dr. Maloff agreed that the 2015 behavior intervention plan was appropriate for Student based upon his own assessment results and recommendations. The IEP offered Student a full time behavior intervention aide in the classroom to implement the behavior intervention plan in collaboration with the classroom teacher and other staff. Based upon his historic issues with transitions between school years and classrooms, as well as to Art of Learning Academy, the IEP team offered Student extended school year, 60 minutes of monthly counseling to help him transition back to public school, and 30 minutes of counseling thereafter. Finally, Glendale offered Student accommodations and supports consistent with his February 2013 and February 2014 IEPs, which Parents agreed enabled Student to make progress until fifth grade.

34. District proved that the February 2015 IEP as amended in April 2015, offered Student a FAPE. If Parents choose to return Student to Glendale, Glendale may implement the IEP without parental consent.

ORDER

1. On Issue One, all relief is denied.
2. On Issue Two, if Parents choose to return Student to Glendale, Glendale may implement Student's February 4, 2015 IEP as amended on April 14, 2015 without parental consent.

PREVAILING PARTY

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

RIGHT TO APPEAL

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

DATED: December 29, 2015

\_\_\_\_\_/s/  
ADRIENNE L. KRIKORIAN  
Administrative Law Judge  
Office of Administrative Hearings