

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. 2012110220

DECISION

Administrative Law Judge (ALJ) Adrienne L. Krikorian, Office of Administrative Hearings (OAH), State of California, heard this matter on February 5 and 6, 2013 in Van Nuys, California.

Student's Father (Father) represented Student and testified at the hearing. A Spanish language interpreter assisted him. Student's mother attended both hearing days. Student was present on the first day of hearing. Attorney Donald Erwin represented Los Angeles Unified School District (District). District Coordinator of Compliance Support and Monitoring, Division of Special Education Diana Massaria was also present on all hearing days.

On November 5, 2012, Student filed a request for due process hearing. OAH granted a continuance for good cause on December 14, 2012. On February 6, 2013, at the request of the parties, the ALJ further continued the hearing to February 13, 2013, to allow the parties time to file closing briefs. The parties timely submitted their briefs and the record was closed on February 13, 2013.

ISSUE

Did District deny Student a free appropriate public education (FAPE) in his June 15, 2012 individualized education program (IEP) by offering Student placement at Salvin Special Education Center?

FACTUAL FINDINGS

1. Student was 10 years old at the time of the hearing and lived with his parents (Parents) within District boundaries. Student has attended District's Salvin Special Education Center (Salvin) in a multiple disabilities/severe (MD-S) classroom since 2005, except for an approximately two-year break for medical reasons. He was in the fourth grade at the time of the hearing. He is eligible for special education under the category multiple disabilities with vision impairment (MD-V). Although Student is non-verbal, his primary language is Spanish and he understands some concepts in English.

2011-2012 Multidisciplinary Assessments

2. During the 2011-2012 school year, Parents requested District to conduct multiple assessments of Student. The following District staff conducted assessments, prepared assessment reports, testified at the hearing and demonstrated that they were qualified to testify about Student's unique needs.

3. Dorthetha Murphy Ph.D. (Dr. Murphy) conducted an annual health evaluation in the spring of 2012. Ms. Murphy is a registered nurse with a Ph.D. in nursing administration. She has a public health certificate and a school nurse credential. She has been a school nurse at Salvin since 1989 and had worked with Student in his classroom from the time he started at Salvin. A summary of her findings was included in Student's psychoeducational assessment report dated April 18, 2012. It reflected that Student was born prematurely at five months gestation with multiple disabilities. He was diagnosed as blind at three to four months and wears a prosthesis in his right eye for esthetic reasons. He suffered from chronic Diamond Fan Anemia, a rare blood condition, which required him to receive blood transfusions every two to three weeks. He required feeding multiple times daily through a gastronomy tube. He also suffered from chronic lung disease, and spina bifida with a neurogenic bladder. Student required full-time adult assistance for health care needs such as gastronomy button feeding, replacement of the gastronomy button when needed, administration of a mechanical nebulizer for wheezing when needed, and diaper maintenance. Two full-time registered nurses, multiple licensed vocational nurses, and several health assistants were available or in Student's MD-S classroom at all times. California Children's Services also provided services to Student on the Salvin campus regarding Student's meals, cleaning his eye prosthesis, and providing him with hearing and other diagnostic tests.

4. Collette Dolland (Ms. Dolland) conducted a psychoeducational assessment which she began in October 2011 and completed in April 2012. Ms. Dolland has a master of science in school counseling, and has worked as a licensed school psychologist since 2000. She began working full time at Salvin in 2002 and was familiar with Student having seen him regularly on campus. She did not provide any direct services to Student. Her assessment found that Student's cognitive levels were severely impaired, and he generally functioned in the age range of one to four months. His skills, including in the areas of cognitive development, academics, adaptive functioning and social emotional functioning,

fell within the severely delayed range. Student's self-help, communication, and social skills fell in the delayed or well below average range when compared to same age peers. In adaptive behavior, Student was adult dependent for all self-care needs, including hygiene care and dressing. Overall, his level of adaptive functioning adversely impacted his educational performance to such a degree that his instruction program was based on the alternate curriculum for students with moderate to severe disabilities. In Ms. Dolland's opinion, Student's level of cognitive ability precluded him from learning braille or effectively using a braille reader.

5. Jennifer Flexser (Ms. Flexser) conducted a speech and language (SL) assessment from March 28, 2012 through April 4, 2012. Ms. Flexser has a masters degree in communication disorders, is a licensed speech pathologist, and holds a certificate of clinical competence with the American Speech and Hearing Association. She has worked for District as a speech pathologist for 18 months and was assigned to Salvin and another District elementary school at the time of the hearing. She worked one on one with Student in his classroom during the 2011-2012 school year. Her assessment found that Student's communication skills were limited. He communicated primarily by using gestures and some sounds; he exhibited little interest in activities and objects; and he was unable to consistently use active reach or other means to express his interest in objects or feelings. He was able to comprehend basic word and one step commands when paired with a physical or tactile prompt. He was also able to demonstrate communicative intent through vocalizations of sounds, resistance to undesirable tasks, and facial expressions to protest and seek attention. Ms. Flexser concluded that, based upon his multiple disabilities, Student would not benefit from individual SL related services because he did not yet have the ability to talk, but that his classroom curriculum was communication-based and therefore would address his SL needs through collaboration with the speech pathologist and occupational therapist, and through staff training and classroom modifications.

6. Geneva White (Ms. White) conducted a physical therapy (PT) assessment on October 11, 2012. Ms. White has a master of science in PT, and holds several licenses and certifications, including a license to practice PT. She has worked for District as a physical therapist since 1994. She specializes in pediatric PT up to the age of 22 years old and has been assigned to Salvin for 13 years. Her work experience includes children who have visual and mobility impairments, moderate to severe disabilities, emotional disturbance, and autism. Ms. White was familiar with Student, having assessed him in May 2007. She also worked during the 2011-2012 school year in the classroom on a collaborative model with Student, his teacher, occupational therapist, and speech therapist at least 30 minutes weekly, and occasionally isolated Student for one-on-one instruction when needed.

7. Ms. White's assessment found that Student had limited ambulation skills and inflexible joints due to spina bifida; he walked slowly with the support of a gait trainer, having made some progress by no longer needing arm supports; his balance was very deficient and he required support to navigate; his visual and cognitive deficits interfered with his ability to negotiate obstacles without prompts and supervision; his delays in balance and motor deficiencies prohibited him from appropriately responding to prompts, requiring him

to move from one point to another; and he had low muscle tone, resulting in a compromised ability to move against gravity. Student lacked the critical link of balance needed to transition from standing to walking. He could not stand on one leg, a skill required to independently negotiate stairs; and he was unable to maintain standing balance, which was a precursor for walking, when someone physically challenged his balance. Student could walk while manipulating a pushcart with adult assistance to the lunch area and back to the classroom. Student's areas of physical strength included: the ability to sit on the floor independently, crawl and pull himself into standing postures with external supports; his range of motion was within functional limits for school based access; he had functional strength to meet the demands of the educational environment; he ambulated on surfaces and inclines using the gait trainer with trunk prompts; he could take several steps with adult support on both hands, requiring supervision for safety and navigational assistance; and could access the youth slide in the playground with bilateral railing support, minimal assistance and supervision. Student made consistent gains in functional mobility from June 2005 when he started at Salvin and did not show any notable regression. Student's areas of need included challenges initiating movement; heavy reliance on equipment for ambulation; and impairments in all standing balance activities. He willfully collapsed to the floor and refused to ambulate when attempts were made to remove him from equipment or from hand held support for walking. His gross motor function and mobility was significantly delayed, impacting his ability to access the educational environment. Ms. White recommended that classroom modifications should include an adapted toilet, adapted seating and a gait trainer. He also required a manual wheelchair for distant mobility. Student would also benefit from continued participation in District's Mobile Opportunities via Education (M.O.V.E.) program, staffed by trained personnel, which was designed to provide Student with heavy repetition, causing his system to be "bombarded" with all of the walking experiences to help him reach his full potential. Student was not a suitable candidate for working with a Braille cane to assist with walking because his cognitive functioning in connection with his physical limitations prevented him from walking or standing independently, a skill required for use of the Braille cane. Student did not require individual physical therapy services to benefit from his specially designed instruction. However, Student had access to physical therapy services as needed in his classroom.

8. Chelsea Armstrong (Ms. Armstrong) conducted an occupational therapy (OT) assessment on February 1, 2012, and February 8, 2012. Ms. Armstrong has a master of science in OT and a bachelor degree in psychology. She holds a California OT license and an OT credential through the National Board of Occupational Therapists. She began working with District in 2008 and is assigned to Salvin and other District schools. She worked one-on-one with Student in his classroom during the 2011-2012 school year, and collaborated with his special education teacher and speech therapist. Her assessment found that Student's areas of strength included sufficient functional neuromuscular development to participate in his educational program with supports. He had functional range of motion to reach for objects; he had foundational motor abilities to use school tools that interested him, particularly those that activated cause and effect; and he oriented his body toward sounds and music; and he appeared to react to bright or flashing lights. He demonstrated tactile defensiveness when given hand-over-hand assistance, and avoided touching messy or sticky

substances. Although he showed auditory sensitivity by covering his ears with his hands, he showed increased interest to toys that were activated by large buttons or switches (switch toys), and would remove his hands from his ears to activate a switch. Student's areas of need included overall body strengthening and development of fine motor and sensory processing skills commensurate with his developmental age of one to four months. Ms. Armstrong concluded that Student would not benefit from individual OT related services. However, Student participated in the District's Advancing Children's Educational Success (A.C.E.S.) program, which was designed to assist Student to develop functional/academic skills and to participate in daily meaningful school activities through the provision of collaborative and coordinated services, including OT, PT, and assistive technology, to school staff, families and students. Student's classroom curriculum included regular consultation and collaboration between the occupational therapist, speech therapist and special education teacher who utilized tools in the classroom, including switch toys, to help develop his motor and sensory processing skills.

9. Student was absent from the classroom 105 days out of 173 days during 2011-2012 school year because of medical issues, including illnesses and his need for blood transfusions every three weeks.

April 2012 IEP meeting

10. District held a triennial IEP meeting on April 26, 2012. Parents, a Spanish language interpreter, assistant principal Mr. Pacheco, and special education teacher Dorothyann Spitzer (Ms. Spitzer) were present for the entire meeting. Mr. Pacheco and Ms. Spitzer testified at the hearing. Ms. Spitzer has a master of arts in special education and has been a credentialed special education teacher at Salvin for 25 years, where she has worked with children with severe developmental disabilities including those who have intellectual disabilities, visual impairment, and are medically fragile. Ms. Spitzer was Student's teacher for the past three years. Dr. Murphy, Ms. Dolland, Ms. Armstrong, Ms. White, and Ms. Flexser attended portions of the meeting for the purpose of presenting their reports and discussed Student's present levels of performance (PLOPs), recommended goals, placement and services in their areas of expertise.

11. Mr. Pacheco facilitated the meeting and recorded the draft IEP. The IEP team reviewed each of the assessment reports. Parents participated in the meeting. They asked no questions about, and expressed no objections to any of the assessment reports. The IEP team also discussed Student's PLOPs, reviewed and drafted six annual goals in the areas of motor skills/mobility, self-help, functional math, communication, functional reading, and English language development.

12. The IEP team discussed placement. At the time of the IEP, District's MD/S class had nine students, including Student, and eight adults, including three licensed vocational nurses and four health care assistants. Student was well liked by staff and students. All of the students were non-verbal, visually impaired, and had health needs, including needing feeding tubes, suction machines, breathing treatment, and attention to

fragile bones. Some were auditory impaired. Student was the only child who had some ability to walk. The alternate curriculum used in the classroom was designed for children with multiple disabilities. The medical protocols for the children were posted in the classroom and were utilized by the adult staff on a regular basis. The classroom operated on a daily schedule that incorporated each student's medical needs. Ms. Spitzer's duties included insuring that Student made progress on his IEP goals. She collaborated daily or multiple times weekly with the speech therapist, physical therapist, school nurse, occupational therapist, nurse, and psychologist regarding Student's needs and goals. Student's class participated with general education students from other District schools, and other special needs children at Salvin, at least twice a week, in assemblies, dances, carnivals and play yard activities, including watching general education students play sports. The Salvin campus provided a safe and protective environment with specially designed programs for Student's unique needs; it was accessible to Parents for consultation with service providers and support; the M.O.V.E. program staff were trained to help with Student's mobility and medical needs; and activities were geared to helping Student access activities.

13. District staff members concluded that the MD-S classroom at Salvin continued to remain an appropriate placement for Student. Although they did not stay for the entire IEP meeting, each of the District staff members who assessed Student agreed that Salvin was an appropriate placement for Student because of the multidisciplinary services and trained staff available to Student and Parents. District's offer included placement 1600 minutes a week in an MD-S classroom at Salvin with an alternate curriculum designed for students with low cognitive abilities; instructional accommodations and modifications; participation in specially designed physical education twice a week for 60 minutes; participation in A.C.E.S.; participation in District's English Language Development curriculum; full time adult support by medically trained staff; home to school transportation; and extended school year.

14. Parents expressed their concern to the IEP team that Student had potential to learn more skills and would benefit from individual PT, OT and speech therapy, where the service providers could provide him with more individualized prompts and instruction. They felt he needed more attention in the areas of mobility and vision. They declined to sign the IEP at the meeting because it had not yet been translated into Spanish and because they had concerns about the placement at Salvin.

15. Parents signed the IEP on June 15, 2012. They did not consent to placement, but instead requested in writing on the signature page that District place Student at the Junior Blind of America Special Education School (SES) in Los Angeles.

16. In Father's opinion, Salvin offered an excellent program for children with multiple disabilities, but it did not specialize in children who were blind. Father felt that his son had potential, energy and perseverance to learn more advanced skills, and he disagreed with the conclusions to the contrary of Ms. Dolland, Ms. White, Ms. Flexser, and Ms. Armstrong. Father also believed that the staff at Salvin who worked with Student were not specifically trained to work with children who were completely blind or had visual

impairment. Although Student made progress at Salvin, in Father's opinion SES was a more appropriate placement because its program was designed to focus on the needs of blind children. Father based his opinions on his visits to SES in 2012, where he met with school administrators and observed the programs offered at the school, and information on the SES website. He observed blind children at SES learning to walk with braille canes, learning to use a braille reader, learning self-help skills, using outdoor ramps for walking, and participating in musical programs. No witnesses from SES were presented at hearing. Father had no expertise in the areas of PT, OT, or SL.

LEGAL CONCLUSIONS

1. Parents contend that the District's placement offer in the June 15, 2012 IEP was not an appropriate placement and denied Student a FAPE because: a) the District's program did not provide enough instruction by staff qualified to work with visually impaired children, including braille, sign language, and braille cane instruction, to address Student's needs in the areas of vision and mobility, and b) because it did not offer Student individualized instruction in OT, PT and SL. As a remedy, Parents seek an order that compels District to fund placement at SES. District contends that its offer was a FAPE in the least restrictive environment (LRE) and that Student is not entitled to any relief.

Burden of Proof

2. In a due process hearing under the Individuals with Disabilities Education Act (IDEA), the party filing the request for due process has the burden of proof, which is determined by relevant and credible evidence offered through admissible documents and credible testimony of witnesses. (See *Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].) As the petitioning party, Student has the burden of proof on the only issue in the case.

Definition of FAPE

3. A child with a disability has the right to a FAPE under the IDEA. (20 U.S.C. § 1412(a)(1)(A); Ed. Code, §§ 56000, 56026.) FAPE means special education and related services that are available to the student at no cost to the parent or guardian, that meet the state educational standards, and that conform to the student's IEP. (20 U.S.C. § 1401(9); Ed. Code, § 56031; Cal. Code Regs., tit. 5, § 3001, subd. (o).) The term "related services" (in California, "designated instruction and services"), includes transportation and other developmental, corrective, and supportive services as may be required to assist a child to benefit from special education. (20 U.S.C. § 1401(26); Ed. Code, § 56363, subd. (a).)

4. In *Board of Education of the Hendrick Hudson Central School District, et al. 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, 207; *Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1031.)

5. The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, to date, 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.)

6. In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district’s proposed program. (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 LRE. (*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.)

7. 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*, 458 U.S. at p. 202).)

Contents of IEP

8. At the beginning of each school year, each local educational agency (LEA) must have an IEP in effect for each child with a disability within its jurisdiction. (34 C.F.R. § 300.323(a)(2006) ; Ed. Code, § 56344(c).) The IEP consists of a detailed written statement that must be developed, reviewed, and revised for each child with a disability. (*Honig v. Doe* (1988) 484 U.S. 305, 311 [108 S.Ct. 592, 98 L.Ed.2d 686]; 20 U.S.C. §§ 1401 (14), 1414 (d)(1)(A); Ed. Code, §§ 56032, 56345.) Each school district is required to initiate and conduct meetings for the purpose of developing, reviewing, and revising the IEP of each individual with exceptional needs. (Ed. Code, § 56340.) If the IEP team determines that to

provide a FAPE a child needs a particular service, intervention, accommodation or program modification, in order to make progress on annual goals, make progress in the general education curriculum or be educated with other students, the program modifications must be listed in the child's IEP. (Ed. Code, §§ 56341.1, subd. (c) & 56345, subd.(a)(4).)

9. In the case of a student who is blind or visually impaired, the IEP team shall provide for braille instruction and the use of braille unless it determines after an assessment of the student's needs that instruction or the use of braille is not appropriate for the student. (Ed. Code § 56341.1, subd. (a)(3).) A school district shall provide opportunities for braille instruction for pupils who, due to a prognosis of visual deterioration, may be expected to have a need for braille as a reading medium. (Ed. Code, § 56351.) A school district may provide braille instruction using a braille instructional aide who is fluent in reading and writing grade two braille and possesses basic knowledge of the rules of braille construction. (Ed. Code § 56351.5, subd. (a).) A teacher who holds an appropriate credential to teach pupils who are functionally blind or visually impaired shall provide braille instruction. (Ed. Code § 56352, subd. (d).)

Placement in the LRE

10. School districts are required to provide each special education student with a program in the LRE. 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)(2006)¹; ; Ed. Code, § 56031.)

11. In determining the educational placement of a child with a disability a school district must ensure that: 1) the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and takes into account the requirement that children be educated in the LRE; 2) placement is determined annually, is based on the child's IEP and is as close as possible to the child's home; 3) unless the IEP specifies otherwise, the child attends the school that he or she would if non-disabled; 4) in selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and 5) a child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. (34 C.F.R. § 300.116).

12. 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 full-time in a

¹ All subsequent references to the Code of Federal Regulations are to the 2006 edition.

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 (*Daniel R.R.*)].

13. If a District determines that a child cannot be educated in a general education environment, then the LRE analysis requires determining whether the child has been mainstreamed to the maximum extent that is appropriate in light of the continuum of program options. (*Daniel R.R., supra*, 874 F.2d at p. 1050.) The continuum of program options includes, but is not limited to: regular education; resource specialist programs; designated instruction and services; special classes; nonpublic, nonsectarian schools; state special schools; specially designed instruction in settings other than classrooms; itinerant instruction in settings other than classrooms; and instruction using telecommunication instruction in the home or instructions in hospitals or institutions. (Ed. Code, § 56361.)

Analysis

A. Vision and Mobility Instruction

14. Student did not meet his burden of persuasion by the preponderance of evidence that District’s offer of placement at Salvin in the June 15, 2012 IEP denied Student a FAPE in the LRE because he required more or different mobility and visual training, which Parents argued SES could provide because it specialized in children with visual impairments. Student also did not meet his burden of establishing that District’s program at Salvin did not offer instruction by staff qualified to work with visually impaired children, or that he required braille, sign language, and braille cane instruction. The determination of whether Student was offered a FAPE is focused on the appropriateness of the proposed placement under *Rowley*, not on whether the placement desired by Parents, in this case SES, is more appropriate. (See *Gregory K., supra*, 811 F.2d at p. 1314.)

15. Although Father testified, he did not offer any documents or witness testimony that credibly challenged District’s assessment results or District’s witnesses’ opinions. He offered no evidence that Salvin’s program did not constitute an appropriate comprehensive educational program, with qualified staff, that was designed to address all of Student’s unique needs and to provide him with meaningful educational benefit. The ALJ considered Father’s opinions in the context of his personal knowledge of and experience with his son. However, Father’s opinions carried less weight than District’s witnesses’ opinions, based on their academic and relevant professional work experience and their recent assessments of Student.

16. The weight of the evidence established that District’s placement offer was appropriate and in the LRE. Although neither party contended that Student should be placed in a general education setting, the ALJ analyzed whether a general education setting was appropriate under *Rachel H., supra*, 14 F.3d at page 1404. Based upon the credible

testimony of Dr. Murphy, Ms. Dolland, Ms. White, Ms. Flexer, Ms. Armstrong and Ms. Spitzer, Student would have received little to no benefit in a general education setting. His cognitive abilities were at the one to four month developmental level and he had minimal communicative skills, which prevented Student from any meaningful interaction, either academic or non-academic, in a general education classroom with typically developing students. His medical and personal care needs were considerable, he required full time adult assistance for all tasks, and special equipment and trained medical personnel to administer services and handle equipment in the classroom. He was absent from class for medical reasons for nearly half the school year during the past two school years. The overwhelming evidence through the testimony of Dr. Murphy, Ms. Dolland, Ms. White, Ms. Flexser, Ms. Armstrong, and Ms. Spitzer established that the nature of Student's disabilities, the level of his abilities, and the multifaceted support and specially designed instruction that he required were likely to cause disruption to the students and teachers in a general education classroom. Additionally, providing the necessary medical services and equipment to meet his needs in the general education classroom would likely be impractical. Neither party offered evidence of the cost factors that would be involved; however, one can infer from the evidence that providing the level of constant medical support and equipment needed by Student in a general education classroom would potentially be costly when compared to the program at Salvin, which had the trained staff and necessary equipment onsite to meet Student's multiple needs. Thus, when considering all of the *Rachel H* factors, the evidence established that Student was not an appropriate candidate for placement in the general education setting.

17. In considering the continuum of placement options, the evidence established that Salvin's program offered Student mainstreaming to the maximum extent that was appropriate in light of the continuum of options. Ms. Spitzer credibly testified that the program at Salvin included multiple opportunities for Student to have some interaction with typically developing children brought in from other schools, and with other special education students on the Salvin campus whose disabilities were less severe. Student's class participated in school activities such as assemblies, carnivals, and watching sports events with general education students, at least twice a week. The opportunities for mainstreaming were appropriate given Student's needs.

18. Parents offered no expert testimony or other relevant evidence that supported a finding that District's program failed to offer Student appropriate visual and mobility training, including braille instruction. On the other hand, the overwhelming weight of the evidence established that the program offered by the District was designed to address those needs at Student's present levels of ability. For example, Ms. Dolland's credible testimony established that Student's cognitive abilities at the one to four month age range prevented him from acquiring the skill of reading by braille, and for that reason braille reading instruction was not included in his educational program. Ms. Spitzer and Ms. Armstrong testified credibly that Student's curriculum included modified educational instruction using switch toys and other sensory tools appropriate for Student's cognitive levels and visual impairment. Ms. White testified credibly that Student's cognitive and physical development was not at a level where Student could stand or walk unassisted, a skill needed for Student to use a braille cane. However, Student received support and instruction on a daily basis to help

him make progress in mobility, and Student had made progress, for example, acquiring the ability to use his gait walker without arm restraints, and by manipulating a pushcart with adult assistance by walking to the lunch area and back to the classroom.

19. Ms. Spitzer, Ms. Armstrong, and Ms. White had experience working with children with visual impairments. Ms. Armstrong credibly testified that she and the speech therapists in the classroom worked with Student using educational tools and equipment that accommodated his visual impairment but were suitable for his cognitive ability. Additionally, the MD-S classroom had nine students, all of whom were visually impaired, and eight adults on a full-time basis.

20. District was not required under the IDEA to provide placement at a school that Parents preferred, such as SES. Instead, District was required to offer placement in the LRE with program supports and services that addressed all of Student's unique needs. Here District's placement offer in Student's June 15, 2012 IEP was appropriate, in the LRE, and met all of Student's unique needs in the areas of vision impairment and orientation and mobility with the meaning of *Rowley*. (Factual Findings 1-16; Legal Conclusions 1-20.)

B. *Related Services*

21. Parents also contend that Student required individual PT, OT and SL services and that District refused to offer individual related services in Student's June 15, 2012 IEP. Student did not meet his burden of establishing that District denied Student a FAPE by failing to offer him individual PT, OT, or SL services as part of his IEP.

22. Student offered no expert testimony or other relevant evidence at hearing that supported a finding that Student required individual related services beyond what the program at Salvin offered to Student. On the other hand, Dr. Murphy, Ms. White, Ms. Dolland, Ms. Armstrong, Ms. Flexser, and Ms. Spitzer credibly testified that District's program for Student included multiple opportunities to access and benefit from educational instruction in PT, OT and SL at his level of cognitive and physical ability, through the M.O.V.E. and A.C.E.S. programs, the communication based curriculum, as well as regular collaboration with Student's special education teacher between District occupational therapists, speech therapists, physical therapists, and school psychologists. The service providers and medical staff who regularly worked with Student in the classroom were qualified to address Student's needs. In addition to the small group environment, Student had access to and received individual PT, OT and SL services through District service providers throughout the school day if needed. Parents also had access to consultations with those service providers as needed or requested. In sum, Student's IEP did not need to specify a frequency and duration of individualized related services in PT, OT, and SL, because the entire program in Student's SDC at Salvin met his needs in these areas. (Factual Findings 1-16; Legal Conclusions 1-22.)

23. As to all contentions, Student failed to meet his burden that District denied Student a FAPE in his June 15, 2012 IEP by offering Student placement at Salvin Special

Education Center. Specifically, the SDC placement at Salvin was appropriate to meet Student's unique needs in all areas, including his visual impairment and orientation and mobility needs, and the program offered to Student met his needs for other services without the need for individualized PT, OT, or SL services. District's program at Salvin was appropriate and offered a FAPE in the LRE. (Factual Findings 1-16; Legal Conclusions 1-23.)

ORDER

Student is not entitled to any relief.

PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that this Decision indicate the extent to which each party prevailed on each issue heard and decided in this due process matter. District prevailed as to the single issue that was heard and decided in this case.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56506, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within ninety days of receipt.

Dated: March 1, 2013

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings