

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

GROSSMONT UNION HIGH SCHOOL  
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2010071158

DECISION

Administrative Law Judge (ALJ) Robert F. Helfand, Office of Administrative Hearings, Special Education Division (OAH), State of California, heard this matter in La Mesa, California on September 13, 2010.

The Grossmont Union High School District (District) was represented by Sarah L.W. Sutherland, Attorney at Law. Jenine Henry, site administrator of the Frontier Day Treatment Center also was present during the hearing.

Student's mother (Mother) did not physically attend the hearing, but she did briefly appear telephonically on behalf of herself and Student (collectively referred to as "Student"). Mother stated that she chose not to appear at the hearing. Mother also stated that her only objection to the proposed IEP was to placement. Mother briefly testified telephonically.

The District filed its request for due process hearing on July 26, 2010. The Due Process Hearing was scheduled for August 23, 2010. Because Parent did not attend the August 16, 2010 Prehearing Conference, the hearing was continued until September 13, 2010. Evidence was taken on September 13, 2010, and the record remained open until

September 22, 2010, for the submission of further documentary evidence and closing written argument.

The following witnesses testified during the hearing: Amy Archer; Jenine Henry; Giti Askari, Psy.D.; and Mother.

## ISSUE<sup>1</sup>

Whether the District's May 27, 2010 offer of placement at a residential treatment facility constitutes a free and appropriate public education (FAPE) for Student?

## FACTUAL FINDINGS

### JURISDICTIONAL FACTS

1. Student was born on June 2, 1995, and has been eligible for special education and related services since March 19, 2001, when he was in kindergarten. While in second grade in the Cajon Valley Union School District, Student was re-assessed and found eligible under the disability category of a serious emotional disturbance. Student had been attending the Frontier Day Treatment Center (Frontier), which is jointly operated by San Diego County Mental Health Services (CMH) and the District.

2. Mother testified that Student no longer resides within the boundaries of the District as he currently resides with his father in Tijuana, Mexico, where he is attending school and receiving mental health services. Mother also supplied a letter to the ALJ dated September 13, 2010. In the letter, Mother states that her son "is living with

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<sup>1</sup> The issue has been re-framed as Mother stated during her telephonic appearance, that her objection to the District's proposed IEP was to the proposed placement of Student to a residential treatment facility.

his father outside of the country, but is attending school, and taking his medication.”<sup>2</sup>

The letter fails to state where outside the country Student is residing or what school he is attending.

3. Student stopped attending Frontier on March 17, 2010. Mother informed Amy Archer, Student’s teacher at Frontier, that Student was living in Oregon. Later, she told Archer that he was living in Mexico, where he was receiving one-to-one instruction. When asked Student’s new home address, Mother refused to provide the information. Archer requested that Mother provide the District written notification of the move, which was never provided. Jenine Henry, the site administrator at Frontier, also was told by Mother that Student had moved to Oregon. At a later time, Mother told Henry that he moved to Tijuana. Mother has also stated to Henry that Student was attending school in the Sweetwater Union High School District. Henry testified that the District never received a request for Student’s records from any other school district.

4. On May 19, 2010, Henry forwarded a letter to Mother which stated:

The District is also concerned that you have indicated to some educators that [Student] is in Mexico, and to others that he is [in] Oregon. If [Student] is in fact no longer residing with you, please provide the name and location of his current school so the District can forward his pupil records there, if appropriate.

The District did not receive a response to the letter.

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<sup>2</sup> The letter is in Spanish. It was submitted through the District, which provided a translation under oath by Carlos Gonzalez, a librarian of the law firm representing the District.

5. Henry also testified that a District attendance officer accompanied by the Assistant Director of Special Education had visited Student's home within the past three weeks and found him present. The District has referred Student's non-attendance to the School Attendance Review Board procedure, which is currently pending.

6. The ALJ finds that Mother's testimony should not be given credence based upon past misrepresentations, the presence of Student when the attendance official visited, Mother's failure to give details as to Student's current residency or schooling, and that no school district has ever requested Student's education records. Because there is no credible evidence that Student is currently not residing outside the District, the ALJ finds that the Student is residing within the District and OAH has jurisdiction.

#### STUDENT'S UNIQUE NEEDS

7. Student has had a long history of anger and behavior problems since starting school including disruptive violent outbursts, yelling profanity, threatening and assaulting adults and peers, damaging property, failing to stay focused and complete academic tasks, and failing to take responsibility for his actions. Student had been diagnosed with Bipolar Disorder, manic phase. A March 2006 social-emotional assessment indicated that Student had areas of concern in hyperactivity, aggression, conduct problems, anxiety, and self-esteem. During the 2009-2010 school year, Student was taking several psychotropic drugs: Ritalin, Risputal, Tenex, and Prozac. Additionally, Student obsesses and identifies himself with gangs and has had problems socially with his peers and adults.

8. Student also has low-average range cognitive abilities and visual processing difficulties. Student has a second grade, nine months reading fluency level and a reading comprehension level of second to third grade, a spelling level of second

grade, and written expression at the third grade level. In mathematics, Student was at the fourth to fifth grade level.<sup>3</sup>

#### FRONTIER DAY TREATMENT CENTER

9. Frontier is a daily six to eight hour highly structured program with classes comprising between five and 10 pupils, taught by a special education teacher who is assisted by two instructional assistants. During the morning, pupils attend academic instruction. In the remainder of the day, pupils participate in various mental health services provided by CMH.

#### FALL 2009

10. For school year 2009-2010, Student was assigned to Archer's class. Archer has a B.S. in education studies and special education from the University of Oregon. She received her levels one and two special education credentials from San Diego State University, where she is currently in a master's in special education program. Archer has been a special education teacher specializing in teaching emotionally disturbed children for six years, of which, two have been with the District.

11. Student was often late to school and arrived hungry, tired and disheveled. Upon arrival, Student was given breakfast and allowed to brush his teeth. Student could stay on task for no more than 10 minutes and then would be given a break. Frequently, Student would become aggressive and threaten staff or his peers and then leave the classroom. Approximately two days per week, Student would sleep through the school day and refuse to participate in class. When Student was redirected or given directions

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<sup>3</sup> Student's academic levels were informally assessed by his teacher, Archer, at the beginning of the 2009-2010 school year.

he did not like, he would storm out of class and not reenter for up to three hours. Student also misinterpreted words and actions of peers and staff which often led to verbal altercations and threats. Student had no friends among his peers. Student constantly used profanity when addressing others. Student's behavior became more problematic as time passed to such a degree that he was unable to function and was assigned a one-to-one aide. Student spent 75-80 percent of his school day unavailable for instruction resulting in Student making no discernable progress academically. Because of these developments, an IEP team meeting was held on October 26, 2010.

#### OCTOBER 26, 2009 IEP MEETING

12. The IEP team comprised of Mother; Lucida Moaney, a therapist from Frontier; Archer; Student; Henry; and Kevin Robertson, program manager. The team concluded that Student's lack of participation in class, which included his refusal to join the class and refusal to be in the classroom, had significantly impacted his ability to progress academically. The team noted that Student's behaviors had escalated which resulted in a three-day suspension for threatening staff and peers as well as disrupting the school environment. Student's Behavior Support Plan (BSP) was reviewed, and the team decided to shorten Student's academic day so it would end after lunch. A point system was adopted which would permit Student to return to a normal schedule. The team then referred Student for a reassessment by CMH. Mother consented to the IEP and the CMH reassessment.

#### THE CMH ASSESSMENT

13. Student was assessed by Dr. Giti Askari. Askari has 15 years of experience in mental health services with eight of those years dealing with children. Askari received a B.A. in English literature and humanities from the University of Tehran, a M.A. in human behavior from National University, a M.A. in Counseling from United States

International University and her Psy.D. in clinical psychology from Alliant International University. She has a California license in clinical psychology. In the referral to CMH, a checklist of behavioral symptoms indicated that Student exhibited the following: temper tantrums, impulsivity, stubbornness, sleep problems, school problems, aggression towards peers, aggression towards adults, and aggression towards property. The purpose of the assessment was to determine if Student's mental health issues were impacting his ability to benefit from his current educational placement.

14. Student's counselor, Moaney, reported to Askari that "Client's anger and inability to focus and pay attention interfere with his ability to learn as well as have appropriate adult and peer interaction." Archer reported that Student's individualized academic plan and behavior support plan have "not yet [been] able to show appropriate classroom behavior at school," and that Student spends 75 to 80 percent of the day unavailable for instruction.

15. Askari conducted clinical interviews with Student and Mother, reviewed school records, and discussed Student with various Frontier officials who have daily contact with Student. She observed in her December 29, 2009 written report:

[Student] demonstrates recurrent pattern of negative, defiant, disobedient, and hostile behaviors toward authority figures. He has continued to demonstrate problematic temperament such as hyperactivity, and high motor activity since preschool years, which possibly results in anxiety, low self-esteem, mood change, and low frustration tolerance. His negative and defiant behaviors are expressed by persistent stubbornness, resistance to directions, and unwillingness to compromise, give in or negotiate with adults or peers. He seems deliberately or persistently testing the limit usually by

ignoring orders, arguing and failing to accept blame for misdeeds. The above behaviors are more evident in interactions with adults or peers whom he knows well (home and school). He also demonstrates interests/enthusiasm regarding joining/affiliation with gang[s].

16. Askari opined that Student required more intensive services than he was then receiving "to aide him in learning appropriate expression of his anger, frustration, and defensiveness in a supportive, consistent and structured setting," as well as services designed to help him improve his social interactions and responsibility to himself and others so that he can benefit from his academic program. Askari recommended that Student receive mental health services at a residential facility which would provide individual therapy a minimum of one time per week for 40-50 minutes, group therapy a minimum of once per week for 30-60 minutes plus family counseling. She proposed a treatment plan with behavioral and academic goals. The behavioral goal was that after six months, Student will decrease overall intensity and frequency of angry feelings and increase ability to recognize and appropriately express angry feelings as they occur in seven out of 10 trials plus follow adult directions 80 percent of the time with no more than two prompts. His academic goal was that within six months, Student will be completing and turning in a sufficient amount of work to be passing all of his academic classes and to increase his classroom participation by 70 percent.

#### THE JANUARY 21, 2010 IEP MEETING

17. Student's behaviors continued to become more problematic as the school year progressed. He continued to come to school hungry, disheveled and tired. He slept throughout the day daily and was basically unavailable for instruction. Based on her experience dealing with emotionally disturbed youth, Archer believed that Student was



abusing alcohol and/or illegal substances which also may be interfering with his psychotropic medications. Archer also testified that Student had made no, if any, progress academically.

18. The IEP team reconvened on January 21, 2010, to review Askari's assessment report. School staff reported that Student was not progressing academically and his problem behaviors were significant. District team members and Mother were in agreement with Askari's recommendation for residential treatment. Askari discussed two possible placement options. The options were New Haven in the Oceanside area and New Alternatives in the Chula Vista area. Mother stated that she preferred New Alternatives because of its close location to the family. The team agreed that Student not be informed of the proposed placement as everyone feared that he would abscond. When placement was finalized, an escort would be utilized. Mother consented in writing to the IEP.

19. A few weeks following the January 21, 2010 IEP meeting, an opening became available at New Haven. Because Mother failed to respond to numerous attempts to contact her, the placement was lost.

#### MARCH 1, 2010 IEP MEETING

20. On March 1, 2010, the IEP team reconvened. In attendance was Mother, Robertson, Henry, Student's brother and the brother's girlfriend. The purpose of the meeting was to discuss placement options. Since the previous meeting, Mother indicated that she no longer was in agreement to have Student placed in residential treatment. District team members reviewed the District's FAPE offer and Student's need for residential treatment. Placement at New Alternatives was also discussed. After much discussion, the family agreed with residential treatment placement as offered. CMH offered to submit admission packets to several facilities which might have openings;

Mother chose to wait until New Alternatives had an available opening for Student because of its close proximity to the family.

#### NEW ALTERNATIVES

21. New Alternatives is a 38-bed sub-acute psychiatric residential facility for adolescents between 12 and 18 years of age. The children placed at New Alternatives have a high level of psychological disturbance. The goal of New Alternatives is to re-establish a sense of psychological order in the lives of children through a well-defined treatment process within the residential environment. An on-site school is operated by Alta Vista Academy with each class comprised of no more than 14 students, a teacher specializing in emotionally disturbed children, a teacher's aide, and a counselor. The facility is operated in cooperation with CMH.

22. Mother was notified by New Alternatives of an available opening, and was requested to complete the intake process. Mother did not do so or respond to contacts by CMH, Henry, or New Alternatives. Mother did inform Archer that she would not permit Student to return to Frontier or enter a residential treatment facility. Archer requested that Mother reiterate her position in writing. Mother never provided such writing to Archer, CMH, or the District.

23. Commencing on March 17, 2010, Student ceased attending Frontier or any other school within the District.

#### APRIL 13, 2010 IEP MEETING

24. On April 13, 2010, District IEP team members convened. The IEP meeting notes indicated that numerous attempts were made to contact Mother to hold another IEP meeting since Student stopped attending Frontier. The IEP team documented the events which occurred since the March 1, 2010 IEP meeting in the notes section and adjourned. The notes also stated that the District intended to file a due process request

to establish that placement and services offered at the March 1, 2010 IEP meeting were appropriate, and that the District would also attempt to enforce compulsory attendance laws because of Mother's refusal to have Student attend either Frontier or a residential treatment facility.

#### MAY 27, 2010 IEP MEETING

25. On May 19, 2010, the District forwarded by regular and certified mail to Mother a notice of an IEP meeting for May 27, 2010. The notice was accompanied by a cover letter from Henry which stressed the District's desire to work together with Mother and that the District is "concerned that [Student] is missing out on crucial educational services" since he has not been attending school. The certified mail was not picked up by Mother. The District also attempted to reach Mother telephonically to inform her of the scheduled IEP meeting on May 18, 25, and 27, 2010. Mother did not respond to any of the voicemail messages left. Additionally, Askari attempted to reach Mother telephonically and was unsuccessful during this time period. On May 27, 2010, Mother phoned to inform the District that she would not be attending the IEP team meeting scheduled for that day.

26. The IEP team reconvened on May 27, 2010, for Student's annual IEP meeting without Mother. Present was Henry, Archer, Askari, Moaney and Robertson. The team discussed Student's unique needs including frequent absences, gang affiliations, drug use, significant lack of supervision outside of school, disruptive behaviors, truancies, aggressive behavior, instigating peer aggression, distractibility, hyperactivity, depression, anxiety, and significant health and safety concerns. The team agreed that services at Frontier were not meeting Student's needs. The team determined that Student's needs could only be met at a residential treatment center, which would be the least restrictive environment (LRE). The team's FAPE offer included placement at a residential treatment facility and individual therapy once per week for 40-50 minutes,

group therapy a minimum of once per week of 30 to 60 minute duration, and family therapy as determined by the facility's counselors. The focus of the treatment would be as outlined in the Treatment Plan developed by CMH. Since Mother had indicated at prior IEP meetings that she preferred New Alternatives because it was close to Student's home, the IEP team agreed to placement there as it met Student's needs.

27. Mother did not consent or respond to the FAPE offer.

## LEGAL CONCLUSIONS

1. As the petitioning party, the District has the burden of proof in this matter. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].)

2. A child with a disability has the right to a FAPE under the Individuals with Disabilities Education Act (IDEA) and California law. (20 U.S.C. § 1412(a)(1)(A); Ed. Code, § 56000.) A FAPE is defined as appropriate special education and related services, that are available to the pupil at no cost to the parent or guardian, that meet the state educational standards, and that conform to the pupil's IEP. (20 U.S.C. § 1401(9); Ed. Code, §§ 56031 & 56040; Cal. Code Regs., tit. 5, § 3001, subd. (p).) A child's unique educational needs are to be broadly construed to include the child's academic, social, health, emotional, communicative, physical and vocational needs. (*Seattle Sch. Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500, citing H.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2106.) The term "related services" (also known as designated instruction and services in California) includes transportation and other benefits from education. (20 U.S.C. § 1401(26); Ed. Code, § 56363.)

3. In *Board of Educ. v. Rowley* (1982) 458 U.S. 176 [73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that the IDEA does not require school districts to provide special education students the best education available, or to provide instruction or services that maximize a student's abilities. (*Rowley, supra*, at p. 198.) School districts are required to provide only a "basic floor of opportunity" that consists of access to

specialized instruction and related services individually designed to provide educational benefit to the student. (*Id.* at p. 201; *J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950-953.) In *J.L. v. Mercer Island School District*, the Ninth Circuit found that the *Rowley* FAPE standard still applies and that the proper standard to determine whether a disabled child has received a FAPE is the “educational benefit” standard. (*Id.* at p. 951.) The Ninth Circuit has previously also referred to the educational benefit standard as “meaningful educational benefit.” (*N.B. v. Hellgate Elementary School Dist.* (9th Cir. 2007) 541 F.3d 1202, 1212-1213; *Adams v. State of Oregon* (9th Cir. 1999) 195 F.2d 1141, 1149 (*Adams*).)

4. The Ninth Circuit Court of Appeals has endorsed the “snapshot” rule, explaining that the actions of the school cannot “be judged exclusively in hindsight...an IEP must take into account what was, and what was not, objectively reasonable when the snapshot was taken, that is, at the time the IEP was drafted.” (*Adams, supra*, 195 F.3d at p. 1149, citing *Fuhrman v. East Hanover Bd. of Education* (3d Cir. 1993) 993 F.2d 1031, 1041 (*Fuhrman*).)

5. There are two parts to the legal analysis. First, the tribunal must determine whether the school district has complied with the procedures set forth in the IDEA. (*Rowley, supra*, 458 U.S. at pp. 206-207.) Second, the tribunal must decide whether the IEP developed through those procedures was designed to meet the child’s unique needs, and was reasonably calculated to enable the child to receive educational benefit. (*Ibid.*)

6. The Supreme Court has recognized the importance of adherence to the procedural requirements of the IDEA. (*Rowley*, 458 U.S. at 205-206.) However, a procedural error does not automatically require a finding that a FAPE was denied. A procedural violation results in a denial of a FAPE only if it impedes the child’s right to a FAPE, significantly impedes the parents’ opportunity to participate in the decision-

making process regarding the provision of a FAPE to their child, or causes a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (j); *W.G. v. Board of Trustees of Target range Sch. Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.)

## PARENTAL PARTICIPATION IN IEP MEETINGS

7. A parent has meaningfully participated in the development of an IEP when she is informed of her child's problems, attends the IEP meeting, expresses her disagreement with the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6<sup>th</sup> Cir. 2003) 315 F.3d 688, 693.) A 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 manner. (*Fuhrmann, supra*, 993 F.2d at p. 1036.)

8. Federal and State law require that parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, assessment, educational placement, and provision of a FAPE to their child. (20 U.S.C. §1414(d)(1)(B)(i); Ed. Code, §§ 56304 & 56342.5.) A school district must ensure that the parent of a student who is eligible for special education and related services is a member of any group that makes decisions on the educational placement of the student. (Ed. Code, § 56342.5.) Among the most important procedural safeguards are those that protect the parents' right to be involved in the development of their child's educational plan. (*Amanda J. v. Clark County Sch. Dist.* (9th Cir. 2001) 267 F.3d 877, 882.) Accordingly, at the meeting, the parents have the right to present information in person or through a representative. (Ed. Code, § 56341.1.)

9. A school district must notify parents of an IEP meeting "early enough to ensure that they will have an opportunity to attend." (34 C.F.R. § 300.322(a)(2) (2006); Ed. Code, §§ 56043, subd. (e) & 56341.5, subds. (b) and (c).) A school district may not conduct an IEP team meeting in the absence of parents unless it is "unable to convince"

the parents that they should attend, in which case it must keep a record of its attempts to arrange a mutually agreed upon time and place. Those records should include detailed records of telephone calls, correspondence, and visits to the parents' home or place of employment. (34 C.F.R. § 300.322(d) (2006); Ed. Code, § 56341.5, subd. (h); see *Shapiro v. Paradise Valley Unified Sch. Dist., No. 69* (9th Cir. 2003) 317 F.3d 1072, 1077-1078.)

10. Based on Factual Findings 25 and 26, the District made extensive efforts to attempt to have Mother attend and participate in the IEP team meeting of May 27, 2010. Mother was unwilling to attend the meeting, so the District properly proceeded without her. Nonetheless, the IEP team members did consider Mother's input in determining placement based on her participation at the October 26, 2009 and January 21, 2010 IEP meetings, including Student being placed at New Alternatives. (Factual Findings 12, 17, and 18.)

#### WHETHER THE DISTRICT'S MAY 27, 2010 OFFER OF PLACEMENT AT A RESIDENTIAL TREATMENT FACILITY CONSTITUTES A FAPE FOR STUDENT?

11. 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 Sch. Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314 (*Gregory K.*)). 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.*) Nor must an IEP conform to a parent's wishes in order to be sufficient or appropriate. (*Shaw v. Dist. of Columbia* (D.D.C. 2002) 238 F.Supp.2d 127, 139.) For a school district's offer of special education services to constitute a FAPE under the IDEA, a school district's offer of educational services and placement must be designed to meet the student's unique needs and be reasonably calculated to provide some educational benefit in the least restrictive environment LRE. (*Ibid.*) To determine whether a pupil was denied a FAPE, an

IEP must be examined in terms of what was objectively reasonable at the time it was developed, not in hindsight. (*J.G. v. Douglas County Sch. Dist.* (9th Cir. 2008) 552 F.3d 786, 801; *Adams, supra*, 195 F.3d at 1149; *Roland M. v. Concord Sch. Comm.* (1st Cir. 1990) 910 F.2d 983, 992.)

12. 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 pupil 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 in a full-time 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 Sch. Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*); see also *Clyde K. v. Puyallup Sch. 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].)

13. If it is determined that a child cannot be educated in the 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. v. State Board of Ed.* (5th Cir. 1989) 874 F.2d 1036, 1050.) The continuum of program options includes, but is not limited to: regular education; resource specialist programs; designated instruction and services; special



classes; non-public, non-sectarian schools; state special schools; specifically designed instruction in settings other than classrooms; itinerant instruction in settings other than classrooms; and instruction using telecommunication in the home or instruction in hospitals or institutions. (Ed. Code, § 56361.)

14. The District's May 27, 2010 offer of placement at a residential treatment center, like New Alternatives, constitutes a FAPE. Student is unable to receive any academic benefit from being placed in either a regular classroom with supports or continuing at Frontier because of his disruptive behaviors, his inability to attend to instruction, and his threatening and aggressiveness to adults and peers. (Factual Findings 7, 8, 11, 12, 13, 14, 15, 16, and 17.) In order for Student to receive some educational benefit, he requires a supportive, consistent and structured environment where he can receive mental health services designed to improve Student's social interactions, control his aggression and hyperactivity so as to allow Student to improve his academic skills. (Factual Findings 13, 14, 15, 16, 17, and 23.)

## ORDER

The IEP of May 27, 2010 offered Student a FAPE in the least restrictive environment.

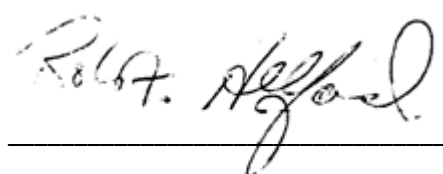
## PREVAILING PARTY

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. The District prevailed on all issues.

## RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by this Decision. Pursuant to Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within ninety (90) days of receipt.

Dated: October 12, 2010

A handwritten signature in black ink, reading "Robert F. Helfand", is written over a horizontal line. The signature is enclosed in a rectangular box.

ROBERT F. HELFAND

Administrative Law Judge

Office of Administrative Hearings