

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

STUDENT,

Petitioner.

vs.

SAN RAMON VALLEY UNIFIED
SCHOOL DISTRICT,

Respondent.

OAH CASE NO. N 2005100688

DECISION

Administrative Law Judge (ALJ), Trevor Skarda, Office of Administrative Hearings (OAH), Special Education Division, State of California, heard this matter on January 24 and 25, 2006, in Danville, California.

Petitioner (Student) was represented at the hearing by his parents, Mother and Father.

Respondent San Ramon Valley Unified School District (District) was represented by attorney Sarah Daniel, from the law firm Miller, Brown & Dannis. Also present on behalf of the District was Joann M. Biondi, the District's Director of Special Education.

Student called the following witnesses to testify: Student; Carina M. Grandison, Ph.D., Director of Neuropsychology at Children's Hospital in Oakland, California; Nadin Rath, Director of Sylvan Learning Center in San Ramon, California; and Mother.

The District called the following witnesses: Barbara Larson, special education teacher at Charlotte Wood Middle School; Jenna Warner, resource paraprofessional at Charlotte Wood Middle School; and Gail Castro, program supervisor in the District.

On October 21, 2005, Student filed a request for a due process hearing with OAH. On November 29, 2005, OAH issued a Notice of Hearing and Mediation scheduling the due process hearing for December 15, 2005.

On December 8, 2005, the District filed a motion to dismiss and a request for a telephonic prehearing conference. Student filed an opposition to the motion to dismiss in which he agreed to the requested prehearing conference. OAH scheduled a telephonic prehearing conference for December 15, 2005, and vacated the hearing date.

On December 15, 2005, ALJ Trevor Skarda convened a telephonic prehearing conference.¹ Both parties agreed at the prehearing conference to schedule the hearing on January 24 and 25, 2006.

Sworn testimony and documentary evidence were received at the hearing on January 24 and 25, 2006. The written closing briefs were received by the ALJ on February 6, 2006. Thereafter, the ALJ received an objection filed by the District to multiple factual allegations contained in Student's closing brief. Student requested an extension of one week to file a response to the District's objection. The ALJ received a response to the

¹ The District requested a prehearing conference on December 8, 2005 in its motion to dismiss. In Student's opposition to the motion to dismiss, received by OAH on December 14, 2005, Student requested that the motion to dismiss be discussed at the prehearing conference scheduled for December 15, 2005

District's objection from the Student on February 15, 2006.² Thereafter, the matter was submitted for decision.

ISSUES³

1. Did the District deny Student a free and appropriate public education (FAPE) from September 22, 2005, through the end of the current school year, by failing to offer Student sufficient math services?

2. If the District failed to offer Student sufficient math services from September 22, 2005, through the end of the current school year, should the District be ordered to provide similar tutoring for the remainder of the current school year and to reimburse Student's parents for private tutoring?

CONTENTIONS OF THE PARTIES

Student's mathematics goals and objectives were revised in September 2005, and agreed to by Student's parents in December 2005. Student contends that, because the mathematics goals and objectives were revised, the District should have also offered Student more services in the area of mathematics in order for Student to receive some educational benefit. Student requests that the District: (1) reimburse his parents for the cost of the privately procured math tutoring from the Sylvan Learning Center, and (2)

² The substance of the District's objection was that the Student's closing brief contained factual allegations which were not in evidence. The ALJ only relied on evidence admitted at the hearing; all factual allegations contained in both closing briefs not consistent with evidence admitted at hearing were not considered

³ Student's hearing issues were clarified over several hours at the prehearing conference

provide the same or similar tutoring to Student in the area of Mathematics through the end of the current school year

The District contends that the services provided to Student from September 2005 to the present were reasonably calculated to provide Student with some educational benefit. The District further contends that it offered Student a FAPE during the relevant time period.

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. Student is a 12-year-old, sixth-grade student who, during the time period at issue herein, has been eligible for special education services under the category of specific learning disability (SLD). Moreover, during the time period at issue herein, Student resided with his parents WITHIN GEOGRAPHICAL BOUNDARIES OF THE DISTRICT.

STUDENT'S MATH GOALS

2. Barbara Larson, Student's resource specialist teacher, revised Student's math goals and short-term objectives on September 23, 2005, at the request of Student's parents. It was undisputed that the revised math goals and objectives are appropriate and that they are designed to meet Student's unique math needs.

3. Parent consented to implementation of the revised math goals in December 2005. Thereafter, the revised math goals were implemented by Barbara Larson in her resource specialist class.

BARBARA LARSON'S RESOURCE MATH CLASS

4. Student receives one period of resource specialist math services each day pursuant to his IEP dated June 27, 2005, taught by resource specialist teacher Barbara

Larson and two paraprofessionals. Ms. Larson's class is designed to help remediate math skill deficits.

5. Barbara Larson utilizes a computer software program in her resource math class called Success Maker. Success Maker utilizes multiple modalities, including visual, auditory, tactile and kinesthetic. Ms. Larson and her paraprofessionals provide Student with individualized instruction using Success Maker.

6. In addition to Success Maker, Ms. Larson and her paraprofessionals provide individual and small-group instruction to Student on a daily basis.

7. The testimony of Jenna Warner, one of the resource paraprofessionals assigned to Ms. Larson's math class during the current school year, established that Student has made consistent progress using Success Maker this school year. Student has progressed approximately 1.1 grade levels in the program. As of one week before the hearing, Student was performing at the early fifth-grade level. Ms. Warner's testimony was unrefuted.

8. The testimony of Barbara Larson established that Student has made meaningful, measurable progress towards achievement of his revised math goals and objectives since December 2005, even though he has received only one period. Ms. Larson's testimony was unrefuted.

9. Student's expert, Carina M. Grandison, Ph.D., Director of Neuropsychology at Children's Hospital in Oakland, California, did not opine that Student's current level of math instruction is not reasonably calculated to provide him with some educational benefit.

10. In light of Factual Findings 7, 8 and 9, Student's math services (one period of resource math taught by a credentialed teacher and two paraprofessionals) are reasonably calculated to provide Student with some educational benefit.

SYLVAN LEARNING CENTER SERVICES

11. Student's parents obtained private tutoring for Student from the Sylvan Learning Center beginning in October 2005.

LEGAL CONCLUSIONS

APPLICABLE LAW

1. Pursuant to California special education law, the Individuals with Disabilities in Education Act (IDEA) and, effective July 1, 2005, the Individuals with Disabilities in Education Improvement Act (IDEIA), children with disabilities have the right to a FAPE that emphasizes special education and related services designed to meet their unique needs and to prepare them for employment and independent living. (Cal. Ed. Code § 56000.) FAPE consists of special education and related services that are available to the student at no charge to the parent or guardian, meet the State educational standards, include an appropriate school education in the State involved, and conform to the child's IEP. (20 U.S.C. § 1401(8)(IDEA 1997); 20 U.S.C. § 1402(9)(IDEIA 2004).) "Special education" is defined as specially designed instruction, at no cost to parents, to meet the unique needs of the student. (20 U.S.C. § 1401(25)(1997 IDEA); 20 U.S.C. § 1402(29) (2004 IDEIA).)

2. In *Board of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley* (1982) 458 U.S. 176, 200, 102 S.Ct. 3034, the United States Supreme Court addressed the level of instruction and services that must be provided to a student with disabilities to satisfy the requirement of the IDEA. The Court determined that a student's IEP must be reasonably calculated to provide the student with some educational benefit, but that the IDEA does not require school districts to provide special education students with the best education available or to provide instruction or services that maximize a student's abilities. (*Id.* at 198- 200.) The Court stated that school districts are required to provide

only a “basic floor of opportunity” that consists of access to specialized instructional and related services which are individually designed to provide educational benefit to the student. (*Id.* at 201.)

3. The Supreme Court in *Rowley, supra*, also recognized the importance of adherence to the procedural requirements of the IDEA. However, procedural flaws do not automatically require a finding of a denial of a FAPE. Procedural violations may constitute a denial of FAPE only if the procedural inadequacies impede the child’s right to a FAPE, cause a deprivation of educational benefits, or significantly impede the parents’ opportunity to participate in the decision making process regarding the provision of FAPE. (20 U.S.C. § 1415(f)(3)(E)(ii); see *W.G. v. Board of Trustees of Target Range School District No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.)

4. To determine whether the District offered Student a FAPE, the analysis must focus on the adequacy of the district’s proposed program. (*Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1314.) If the school district’s program was designed to address Student’s unique educational needs, was reasonably calculated to provide him some educational benefit, and comported with his IEP, then that district provided a FAPE, even if Student’s parents preferred another program and even if his parents’ preferred program would have resulted in greater educational benefit.

5. The Student has the burden of proving at an administrative hearing the essential elements of his claim. (*Schaffer v Weast* (2005) 126 S.Ct. 528, 163 L.Ed 2d 387.) However, regardless of the applicable burden of proof, or any presumptions regarding the appropriateness of an IEP, as discussed below, the District established that it complied with the IDEA, and offered a FAPE to Student, during the applicable period.

6. Parents may be entitled to reimbursement for the costs of services they have procured for their child when: (1) the school district has failed to provide a FAPE and (2) the private placement or services are determined to be proper under the IDEA.

(School Committee of the Town of Burlington v. Department of Education (1985) 471 U.S. 359; *Student W. v. Puyallup School District* (9th Cir.1994) 31 F.3d 1489, 1496.)

However, parents are not required to have procured an exact proper placement under the IDEA in order to be entitled to reimbursement. (*Alamo Heights Independent School District v. State Board of Education* (5th Cir.1986) 79 F.2d 1153, 1161.) The parents may receive reimbursement so long as their placement met the student's unique needs and provided the student with educational benefit. *Id.*

DETERMINATION OF ISSUES

Issue 1: Did the District deny Student a free and appropriate public education from September 22, 2005, through the end of the current school year, by failing to offer Student sufficient math services?

7. As determined in Factual Finding 10, the math services offered to Student, one period of resource math, are reasonably calculated to provide Student with some educational benefit. Accordingly, as determined in Legal Conclusions 1 through 4, the District offered Student a free and appropriate public education.

Issue 2: If the District failed to offer Student sufficient math services from September 22, 2005, through the end of the current school year, should the District be ordered to provide similar tutoring for the remainder of the current school year and to reimburse Student's parents for private tutoring?

8. Because it has been determined in Legal Conclusion 7 that the District offered Student a FAPE, Student is not entitled to additional mathematics instruction. Additionally, Student's parents are not entitled to reimbursement for private tutoring.

9. In light of the above factual findings and legal conclusions, all of Student's requests for relief are denied.

PREVAILING PARTY

10. 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 following findings are made in accordance with this statute: *The District prevailed on all issues heard and decided.*

RIGHT TO APPEAL THIS DECISION

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

IT IS SO ORDERED THIS 5th day of April 2006.



TREVOR SKARDA

Administrative Law Judge

Office of Administrative Hearings

Special Education Division