

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

In the Matter of:

MOUNT DIABLO UNIFIED SCHOOL  
DISTRICT,

Petitioner,

and

STUDENT,

Respondent.

OAH NO. N 2006011039

DECISION

Keith J. Kirchubel, Administrative Law Judge (ALJ), Office of Administrative Hearings, Special Education Division (OAH), heard this matter on April 25-28, 2006, in Oakland, California.

Petitioner Mt. Diablo Unified School District (District) was represented by Matthew Juhl-Darlington and Kimberly Borah Schulist of the law firm of Miller, Brown and Dannis.

Respondent Student (Student) was represented by his father and mother.

The Petitioner called the following witnesses: Janelle Heley, District Behaviorist and Program Manager; Student's father; Maureen Valley, Program Director for Pleasant Hill Recreation and Park District "KidStop" Program (KidStop); Carla Epps, District Behavior Management Specialist; Bindiya Vaswani, Program Director for Inside Out Early Intervention (Inside Out); Barbara Trent, District Instructional Aide; Corliss Martell, District Supervising Occupational Therapist; and Dena Zachariah, District Speech Pathologist.

The Student called the following witnesses: Robert Berggren, General Manager Pleasant Hill Recreation and Park District; David Hunter, District Full-Inclusion Specialist, Candace Raitano; District Administrator, Student's mother.

The following people were present at different times during the hearing: Katie Gaines, District Special Education Administrator, and Ken Ferro, District Administrator.

Oral and documentary evidence were received. The parties agreed to simultaneously submit closing briefs. The briefs were filed with the OAH on May 23, 2006.

## ISSUE

The District contended that its offer of educational placement and services made on November 10 and November 17, 2005, constituted a free appropriate public education (FAPE) for Student in the 2005-2006 school year. Student's parents contended that the District's offer violated procedural requirements, was unsupported by objective and measurable data, and failed to address Student's behavioral and social needs. The issue for decision in this case is whether the District's offer of placement and services set forth in the IEP dated November 10, 2005, and modified on November 17, 2005, constituted a FAPE for the Student in the least restrictive environment (LRE) for the 2005-2006 academic year.

## FINDINGS OF FACT

### BACKGROUND AND PROCEDURAL HISTORY

1. Student is a five year-old male who qualifies for special education within the category of autistic spectrum disorder. Student's family resides within the boundaries of the District. Student's assigned school is Gregory Gardens Elementary.

2. In April, 2005, Student's parents consented in part to an Individualized Education Program (IEP) offer made by the District on October 13, 2004. This offer created an educational program for Student that implemented goals and objectives written by Inside Out in June, 2004, in a full-inclusion preschool as well as a home-based after school program. Inside Out has been Student's home program provider since July, 2002.

3. On May 25, 2005, the District and Student's parents participated in an IEP team meeting to discuss Student's transition to kindergarten in the fall of 2005. The District provided the parents with copies of procedural safeguards. The parents did not consent to the District's presented offer of placement and services for the 2005-2006 school year.

4. On September 6, 2005, the parents accepted the District's offer of a full-inclusion, general education kindergarten placement for Student with the assistance of a full-time one-to-one instructional aide during Student's 3.5 hour morning class. The parents did not consent to any additional terms of the District's transition plan.

5. On October 10, 2005, the District convened an annual IEP team meeting to discuss Student's educational placement for school year 2005-2006. The Student's mother attended this meeting and read a prepared statement to the IEP team. This statement expressed the parents' dissatisfaction with the lack of updated progress reports to support the present levels of performance set forth regarding Student. The District provided the parents with copies of procedural safeguards. Although the District made an offer of placement at the IEP, the Student's parents did not consent.

6. On October 19, 2005, the District wrote to the parents with a proposal to reconvene the IEP team in order to complete the IEP process begun on October 10, 2005.

7. On November 10, 2005, the IEP team convened to discuss the District's offer of placement and services for the 2005-2006 academic year. Present at this meeting were Student's father and mother, District full-inclusion specialist David Hunter, District kindergarten teacher Carrie Cole, District Behaviorist and Program Manager Janelle Heley, District Supervising Occupational Therapist Corliss Martell, District Administrator Candace Raitano, District Speech Pathologist Dena Zachariah, District Behavior Management Specialist Carla Epps, Inside Out Early Intervention (Inside Out) Program Director Bindiya Vaswani, and Inside Out Director Michelle Lambert. The District provided the parents with copies of procedural safeguards.

8. During the November 10, 2005 IEP team meeting, the attendees discussed in detail Student's then-present levels of performance as well as each of 14 proposed goals and objectives. Student's goals and objectives required modification because they had not been updated since June of 2004 and Student had largely mastered them in that time period. Mr. Hunter, Ms. Cole, Ms. Vaswani, and Ms. Zachariah reported their observations of Student in his classroom. Mr. Hunter provided written data taken by Ms. Trent on Student's kindergarten progress. The team reviewed progress reports by Applied Behavior Analysis (ABA) provider Inside Out (Ms. Vaswani), Behavioral Consultant Terre Glahn, Ph.D, Speech Pathologist Kristine Thompson, and Occupational Therapist Eufrocina Tomas- Solanga. These reports were incorporated into the IEP document as part of Student's recited present levels of performance. The recommendations set forth in these reports were also discussed.

9. The District made an offer of services at the November 10, 2005 meeting. The parents expressed the need for more time to review the supporting data. The IEP team was re-convened on November 17, 2005, allowing the parents an additional week to review the data presented on November 10. The IEP team members present on November 17, 2005, were the same as those listed for November 10, except that Ms. Zachariah was not present and District Special Education Administrator Katie Gaines was present.

10. During the November 17, 2005, meeting the District proposed modified goals and objectives for Student based upon the input and data reviewed at the November 10 meeting, including input from Student's parents. The District conveyed a written offer of placement and services at the conclusion of the meeting comprised of the following elements:

- a) 14 annual goals supported by 14 corresponding short-term objectives;
- b) General education kindergarten placement at Gregory Gardens Elementary with full time (3.5 hours per day) one-to-one instructional support by a qualified aide;
- c) An after school social skills program, implemented according to a transition plan with full time one-to-one support by a qualified aide;

- d) 2.0 hours per week of District-provided behavioral supervision during Student's school-day and after school program;
- e) 2.0 hours per week of District-provided full-inclusion support during Student's school-day and after school program;
- f) 6.0 hours per week, fading over a period of four weeks to 1.5 hours per week of home program services provided by Inside Out;
- g) 1.0 hours per week of District-provided speech and language services delivered 30 minutes in class and 30 minutes after class;
- h) 1.0 hours per week of District-provided occupational therapy services delivered 30 minutes in class and 30 minutes after class.

11. The November 17, 2005 IEP document attached and incorporated the same progress reports and data described in Factual Finding No. 8, above. In addition, the November 17, 2005 IEP document attaches a Summary of Proposed Social Skills Services prepared by Ms. Epps.

12. The Student's parents did not consent to the offer conveyed on November 17, 2005. They continued to object to the lack of objective, measurable data as a basis for Student's recited present levels of performance.

13. On January 30, 2006, the District filed a request for due process with the OAH seeking a determination that its offer of placement and services in the November 10 and November 17, 2005 IEP documents constituted a FAPE for the 2005-2006 school year.

14. During the November 10, and November 17, 2005 IEP team meetings, the Student's parents had the opportunity to participate fully in the process, including asking questions and providing input regarding Student's present levels of performance and proposed goals and objectives.

## IDENTIFICATION OF STUDENT'S UNIQUE NEEDS AND SERVICES TAILORED TO THOSE NEEDS

15. For the 2005-2006 school year, Student's unique needs were as follows:

- a) Social participation and interaction skills;
- b) Object fixation and behavioral tantrums at home;
- c) Pragmatic speech delays;
- d) Attending and attention;
- e) Understanding of abstract and quantity concepts;
- f) Physically accessing a speaker.

16. The November 17, 2005 offer of placement and services addressed Student's Social participation and interaction needs as follows:

- a) Established Student's then-present level of functioning from the perspective of his parents, at-home behavioral providers, reported observations of Student's preschool performance, kindergarten teacher, full-inclusion specialist, District supervising occupational therapist, private occupational therapist, District speech/language pathologist, private speech/language pathologist, and private behavioral consultant;
- b) Proposed goals and objectives tailored to participation in group activities, independent initiation of verbal exchanges with peers, participation in structured games, initiation and participation in cooperative play, sustaining conversation, and proper body orientation.
- c) Offered one-to-one support from a qualified instructional aide during 100% of Student's school-day and after school program to assist with prompting and re-direction in classroom, recess, and after-school (KidStop) environments;
- d) Offered 1.0 hours per week each of speech/language and occupational therapy services tailored to improving Student's social skills and awareness;

- e) Offered full-inclusion school-day and after-school programs to maximize social opportunities with familiar peers in a familiar environment.

17. The IEP next addresses Student's behavioral needs. Student has not exhibited tantrums at school. Although he sometimes has trouble with attention and attending, Student is functioning academically at or near his grade level and can be easily re-directed at school. At the November, 2005 IEP meetings, Ms. Vaswani reported that Student responded well to structure and strict guidance regarding acceptable behavior. At home, Ms. Vaswani established that tantrums are most often connected to object fixations, but are decreasing in frequency to the point where Student's behavior at home is similar to that at school.

18. The November 17, 2005 offer of placement and services addressed behavioral needs as follows:

- a) Established Student's then-present level of functioning based on input from his parents, his at-home behavioral providers, his kindergarten teacher and private behavioral consultant;
- b) Proposed a goal and corresponding short-term objective that promotes independent compliance with adult requests without tantrums or inappropriate behavior;
- c) Supported the goal and objective with full-time one-to-one support in the classroom and after-school settings, supervision by a District behaviorist and full inclusion specialist 2.0 hours per week each in the classroom and after-school setting; supervision by a private ABA behaviorist fading from 6.0 hours per week to 1.5 hours per week in the home program setting, and structured, clear and definite instructions from his teacher in the kindergarten setting.

19. The November 17, 2005 offer of placement and services addressed Student's pragmatic speech needs as follows:

- a) Established Student's then-present level of functioning from the perspective of his parents, at-home behavioral providers, reported observations of Student's preschool performance, kindergarten teacher, full-inclusion specialist, District supervising occupational therapist, private occupational therapist, District speech/language pathologist, and private speech/language pathologist;
- b) Proposed goals and objectives to foster Student's independent verbal exchanges with peers, use of appropriate language and vocal loudness in social situations, and his ability to sustain conversations by asking questions and relating personal information with adults and peers;
- c) Supported the goals and objectives with full-time one-to-one instructional aide, and 1.0 hour per week of speech and language therapy.

20. The November 17, 2005 offer of placement and services addressed Student's attending and attention needs as follows:

- a) Established Student's then-present level of functioning from the perspective of his parents, at-home behavioral providers, reported observations of Student's preschool performance, kindergarten teacher, full-inclusion specialist, District supervising occupational therapist, private occupational therapist, District speech/language pathologist, private speech/language pathologist, and private behavioral consultant;
- b) Proposed goals and objectives that promote retelling of events from a familiar story in a group setting, and answering questions about a novel lesson or story without the use of visual cues;
- c) Supported the goals and objectives with a full-time instructional aide to prompt and re-focus Student as needed as well as 1.0 hour per week of speech and language therapy.

21. The November 17, 2005 offer of placement and services addressed Student's needs in the area of understanding of abstract and quantity concepts as follows:



- a) Established Student's then-present level of functioning from the perspective of his parents, at-home behavioral providers, reported observations of Student's preschool performance, kindergarten teacher, full-inclusion specialist, District speech/language pathologist, and private speech/language pathologist;
- b) Proposed goals and objectives to foster understanding of quantity concepts, temporal concepts, and classification of objects using varied attributes;
- c) Supported the goals and objectives with full-time one-to-one instructional aide, and 1.0 hour per week of speech and language therapy.

22. The November 17, 2005 offer of placement and services addressed Student's needs in the area of physically accessing a speaker as follows:

- a) Established Student's then-present level of functioning from the perspective of his parents, at-home behavioral providers, reported observations of Student's preschool performance, kindergarten teacher, full-inclusion specialist, District supervising occupational therapist, private occupational therapist, and private behavioral consultant;
- b) Proposed goals and objectives to promote proper orientation of Student's body to the speaker and listener with appropriate visual references in communications with adults and peers with minimal prompting;
- c) Supported the goal and objective with full-time one-to-one support in the classroom and after-school settings, supervision by a District behaviorist and full inclusion specialist 2.0 hours per week each in the classroom and after-school setting; supervision by a private ABA behaviorist fading from 6.0 hours per week to 1.5 hours per week in the home program setting, and 1.0 hours per week each of speech/language and occupational therapy services tailored to improving Student's communication skills.

#### APPROPRIATENESS OF FULL-INCLUSION KINDERGARTEN PLACEMENT

23. The November 17, 2005 offer of a full-inclusion general education kindergarten placement with the support of a qualified one-to-one instructional aide was described as a "most welcoming educational setting" for Student by his parents' private behavioral consultant. Witness testimony, including that of Student's mother, consistently established that the full-inclusion kindergarten class was the appropriate and least restrictive placement for Student. He is able to access his education while benefiting from social contact with his non-disabled peer group in this setting.

24. Student understands the expectations regarding his behavior at school. He remains on task, participates consistently and transitions independently between tasks with his peers. He responds well to his kindergarten teacher and the structure she creates in the class. Student is not defiant, although he is occasionally unfocused. He has never had a tantrum episode in kindergarten.

#### APPROPRIATENESS OF FULL-INCLUSION SOCIAL SKILLS PROGRAM

25. The proposed after-school social skills program at KidStop appropriately addressed Student's needs in the least restrictive environment. The program is supervised by a qualified early childhood educator with 30 years of experience with children diagnosed with cerebral palsy, attention deficit disorder, muscular dystrophy and autism. This educator, Maureen Valley, demonstrated that she could effectively respond to Student's behavioral needs in that she described a tantrum strategy that was functionally identical to that of Student's home program providers, Inside Out. Ms. Valley understood that Student was to be supported by a one-to-one aide and behaviorist in the KidStop program and she was amenable to the Student's after school program. The daily schedule at the KidStop program was also designed to be flexible as dictated by the weather or Student's needs. The KidStop program, although not implemented for Student, was observed and reviewed

by Ms. Epps and Ms. Vaswani and deemed an appropriate placement for his after-school social skills program.

#### APPROPRIATENESS OF TRANSITION PLAN

25. Autistic children are resistant to rapid or abrupt change. Student had been served by Inside Out in his home program since July, 2002. Ms. Vaswani, Program Director for Inside Out since September, 2003, is intimately familiar with Student and his needs. He responds to her and has fun with her. Ms. Vaswani credibly established that Student no longer needed extensive one-to-one behavioral intervention at home during the 2005-2006 school year as he has mastered skills that allow him to play independently with peers in that setting and does not require Inside Out's assistance to set up play dates. Multiple witnesses established the need for a gradual transition from Student's home program to the KidStop setting. Ms. Epps presented a fade-in transition plan for these services that was endorsed by Ms. Vaswani. The transition plan expressly provided that it was subject to modification according to Student's progress in the course of implementation.

26. Student's parents refused to consent to the transition plan on the basis that they did not have the opportunity to observe Student's KidStop placement beforehand. Parents did observe the KidStop program generally prior to the November, 2005 IEP team meetings. They were not able to observe Student's program because they refused to consent to its implementation.

#### APPROPRIATENESS OF COLLABORATION AND COMMUNICATION

27. The educational program offered to Student featured a full-inclusion general education classroom, an after-school social skills program housed on the school campus, and continued – though decreasing – home behavioral services. Accordingly, collaboration and communication between the various service providers were critical to the success of the proposed program. Representatives of the various components of Student's educational program understood the importance of collaboration between them and they

communicated effectively regarding Student. This appropriate level of collaboration made the success of Student's program substantially likely.<sup>1</sup>

## APPLICABLE LAW

1. Under both State law and the federal Individuals with Disabilities Education Act (IDEA), students with disabilities have the right to a free appropriate public education (FAPE). (20 U.S.C. §1400; Ed. Code § 56000.) The term "free appropriate public education" means special education and related services that are available to the student at no cost to the parents, that meet the State educational standards, and that conform to the student's individualized education program (IEP). (20 U.S.C. § 1401(9).) "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(29).) Likewise, California law defines special education as instruction designed to meet the unique needs of individuals with exceptional needs coupled with related services as needed to enable the student to benefit fully from instruction. (Cal. Educ. Code § 56031.) The term "related 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).) California Education Code

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<sup>1</sup> Student's parents asserted that a breach of confidentiality occurred when District personnel discussed Student's placement with KidStop personnel. Specifically, parents objected to the disclosure of Student's diagnosis of autism to KidStop personnel without parents' consent. When questioned regarding any harm or detriment that had actually occurred to Student from this discussion, parents could establish none. Additionally, Student's mother testified that effective intervention methodologies are limited for autistic children. Thus, a service provider should know of the diagnosis in order to be able to intervene appropriately. Accordingly, parents' concerns in this regard did not invalidate the appropriateness of the District's offer of placement and services.

section 56363, subdivision (a), similarly provides that designated instruction and services (DIS), California's term for related services, shall be provided "when the instruction and services are necessary for the pupil to benefit educationally from his or her instructional program."

2. In *Board of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley* (1982) 458 U.S. 176, 200, 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 that are individually designed to provide educational benefit to the student. (Id. at 201.)

3. To determine whether a district offered a student a FAPE, the focus is on the adequacy of the placement the District actually offered, rather than on the placement preferred by the parent. (*Gregory K. v. Longview School District* (9<sup>th</sup> Cir. 1987) 811 F.2d 1314.) To constitute a FAPE as required by the IDEA and *Rowley*, a district's offer must be designed to meet a student's unique needs and be reasonably calculated to provide the student with some educational benefit. Additional requirements are that the District's offer must conform to the IEP, must be in the least restrictive environment (LRE), and provide the student with access to the general education curriculum. (See 20 U.S.C. § 1412(a) (5) (A); 34 C.F.R. §§ 300.347(a), 300.550(b); Education Code § 56031.)

4. Federal and California special education law California is designed to ensure the protection of the rights of children with disabilities and their parents. Specifically, a student's parent(s) must be included in the IEP process and have the opportunity to present information and express concerns regarding the student's needs and educational plan. (20

U.S.C. §1400(d)(1)(B); Educ. Code §§ 56341, 56341.1, 56341.5.) A failure to abide by the procedural requirements of the IDEA may form the basis for a finding of denial of FAPE if the failure results in a loss of educational opportunity to a student or seriously infringes on a parent's opportunity to participate in the IEP process. (*W.G. v. Board of Trustees of Target Range School District No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.)

5. Special education law requires that to the maximum extent appropriate, children with disabilities should be educated with children who are not disabled. Removal of children with disabilities from the regular educational environment should only occur when the nature or severity of the child's disability is such that he or she cannot benefit from a satisfactory education with the use of supplementary aids and services. (20 U.S.C. §1412 (a)(5)(A), Educ. Code §56031.) In addition, the following factors are relevant to a determination of appropriate placement: 1) the educational benefits available to the child in a regular classroom supplemented with appropriate aids and services, as compared to the benefits of a special education classroom; 2) the non-academic benefits to the handicapped child of interaction with nonhandicapped children; 3) the effect of the presence of the handicapped child on the teacher and other children in the regular classroom; and 4) the costs of supplementary aids and services necessary to mainstream the handicapped child in the regular classroom setting. (*Sacramento City Unified School District v. Rachel Holland* (9th Cir. 1994) 14 F.3d 1398, 1404.)

6. In this case, the burden of persuasion regarding the issue presented rests on the District as the party seeking relief. (*Schaffer v. Weast* (2005) 126 S.Ct. 528.)

## ANALYSIS

THE NOVEMBER, 2005 IEP PROCESS WAS NOT INVALIDATED BY PROCEDURAL ERROR

As set forth above, the District repeatedly provided "procedural guidelines" to Student's parents throughout the process of developing Student's kindergarten IEP. The District also provided timely notice to the parents of proposed IEP team meetings such that

one or both parents attended the October 10, 2005, November 10, 2005, and November 17, 2005 meetings. During the course of the meetings, Student's parents were permitted to participate and provide input to the IEP process. Following the October 10, 2005 meeting, additional progress report information was obtained pursuant to parents' requests. As a result of discussions held at the November 10, 2005 IEP team meeting, the proposed goals and objectives were updated using input from parents and the proposed transition plan was modified to prescribe a more appropriate, gradual fade-out of Student's home program.

Parents' principal complaint regarding the procedural conduct of the November 10 and November 17, 2005, IEP team meetings is that they did not have adequate time to review the information to be able to provide meaningful input at the meetings. They also complain that their recommendations were in some cases not adopted by the IEP team in finalizing the District's offer. Lastly, the parents dispute that the District's offered goals and objectives are supported by adequate data.

With regard to the first issue, the evidence established that parents were provided with documentation that the District received from various outside sources in a timely manner. The parents did correspond with the District on November 7 and November 9, 2005 regarding additional documentation they had requested, but this information was not essential to their participation in the IEP team meetings. Specifically, their requests for a contract between the District and Inside Out were not shown to have any connection to the appropriateness of the District's offer for Student. Additionally, parents' concerns regarding an alleged breach of confidentiality, as discussed in footnote no. 1 above, are not material to the development of an appropriate IEP.

Turning to documents that were relevant to Student's IEP process, the District transmitted the Inside Out recommendations dated October 31, 2005, to parents on November 2, 2005. The parents had the progress report by Student's private occupational therapist as early as October 28, 2005. The parents received Dr. Glahn's report first on

November 7, 2005, and forwarded it to the District on November 8. Student's private speech and language pathologist generated a progress report dated November 8 that was apparently reviewed for the first time at the November 10, 2005 IEP team meeting. The same is true for an updated progress report from Inside Out dated November 4, 2005. Although the District presented an offer at the November 10 meeting, the parents requested additional time to review the new information. This request was granted by the District. The IEP team re-convened on November 17, 2005, and considered further all of the information presented a week prior. This process afforded the parents a reasonable amount of time to prepare.

The parents also complain that their input was not accepted by the IEP team. The parents advocated strenuously for additional "measurable, objective" data as the basis for the offered goals and objectives. The other IEP team members established that the parents' input was considered, even if it was not formally adopted in the IEP document. For example, parents repeatedly challenged the sufficiency of documentation pertaining to Student's tantrum episodes. However, as noted above, Student was compliant in class and had not ever thrown a tantrum at school. Thus, parents' insistence on objective data for tantrum episodes was not material to the development of an appropriate educational program and was not required as an element of the IEP document.

Finally, parents identified discrepancies between the stated "present levels of performance" on the goals and objectives pages of the IEP document and source documents such as the November 4, 2005 Inside Out progress report. These discrepancies had no substantial impact on the appropriateness of the District's offer. In many cases, the discrepancy was the result of trying to condense a narrative finding from a report into a small physical space on a pre-printed form. All of the source documents were attached to the IEP document, and the evidence established that the findings and recommendations of these source documents were thereby incorporated as more detailed statements of Student's present levels of performance.



Another example highlighted by parents was the alteration on one of the data tracking sheets used by Ms. Trent in Student's kindergarten class. The tracking sheet attempted to capture data connected to a verbal exchange goal. However, as the goal had been written in June, 2004, more than a year before Student began kindergarten, Ms. Trent attempted to adapt the criteria in order to appropriately reflect the new classroom setting. The parents also correctly point out that some of the District-developed kindergarten data tracking sheets reflect goals and objectives that were proposed in the May 25, 2005 IEP offer but were not consented to by parents. To the extent that the District implemented non-consented goals prior to the November, 2005 IEP offers, the propriety of it doing so is not framed by the due process complaint in this case and will not be decided here. As for the impact on determining Student's present level of functioning, the ALJ finds that the kindergarten data sheets tracked his progress in areas sufficiently related to his unique needs that their use does not represent a significant procedural violation that deprived Student of any educational benefit.

Throughout the IEP process, Student's parents were provided with adequate notice of their rights and were included in the development of the District's educational offer.

Parents' request for additional time to review and prepare was honored. Ultimately, the information available to all members of the IEP team was considered and incorporated into the final document. These facts establish that no procedural violation seriously infringed on the parents' opportunity to participate or resulted in a loss of educational opportunity to Student. (*W.G. v. Board of Trustees of Target Range School District No. 2, supra*)

#### SUBSTANTIVE FAPE ANALYSIS

Pursuant to *Rowley* and its progeny, the District's offered educational program must satisfy the following substantive requirements in order to constitute FAPE: it must 1) be designed to meet Student's unique needs; 2) be reasonably calculated to provide him with

some educational benefit beyond de minimis; 3) comport with his IEP<sup>2</sup>; and 4) provide the above in the least restrictive environment.

THE DISTRICT'S IEP OFFER OF NOVEMBER 10, AND NOVEMBER 17, 2005 WAS DESIGNED TO MEET STUDENT'S UNIQUE NEEDS.

Factual findings 15 through 22 identify Student's unique needs known in November, 2005, and the services proposed to meet each of those needs. Among all of the identified needs, the parents only contended that Student's behavioral and social skills needs were "ignored" by the District's offer. With respect to behavioral needs, parents attempted to establish that Student's tendency to have severe tantrums was not adequately addressed by the IEP. However, as noted above, Student had no problems with tantrums in his kindergarten class and was noted to be cooperative and compliant. As for the proposed after school program at KidStop, Ms. Valley established that she and her staff were prepared to handle Student's behavior, were flexible in their approach to his needs, and were willing to permit Student's one-to-one aide, behaviorist, and full-inclusion specialist to support Student in the KidStop setting. In the home program setting, the District offered to continue Student's behavioral support based upon a transition plan endorsed by the home program provider. Significantly, the transition plan expressly provided that it could be modified based on Student's progress as the program was implemented. Based on the evidence adduced with regard to Student's behavior, the ALJ finds that the District's offer properly identified and addressed his needs in this area.

With regard to Student's social needs, significant resources were dedicated in this area. The offer provided a full-time one-to-one aide in the classroom, recess, and after

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<sup>2</sup> As the issue in this case involves whether the District's proposed educational program constituted a FAPE, the element of the program comporting with the IEP is not applicable. There was no evidence adduced at hearing to suggest that the District could not or would not implement the IEP as written.

school settings who actively promoted Student's social interactions. Student was also to receive 2.0 hours per week of speech and occupational therapy focused on pragmatic language, participation in group activities, independent initiation of verbal exchanges with peers, participation in structured games, initiation and participation in cooperative play, sustaining conversation, and proper body orientation. Additionally, the testimony of Ms. Vaswani, Ms. Epps and Ms. Trent established that Student benefits socially from increased time with his peers in the familiar environment of his school campus. Ms. Valley established that other autistic children have succeeded at KidStop in that they were happy and experienced positive improvement in social skills. No evidence was adduced to suggest social needs that are inconsistent with these proposed services. Accordingly, the District's offer appropriately identified and addressed Student's social skills needs.

Parents' disputes with regard to the other areas of unique needs focused on their dissatisfaction with the stated present levels of performance associated with Student's goals and objectives. As noted above, their concerns fail to account for the fact that the more detailed statements contained in the progress reports of Inside Out, Dr. Glahn, Ms. Tomas- Solanga, and Ms. Thompson were incorporated within the IEP document. With respect to the Inside Out report of November 4, 2005, parents criticized the lack of observation in the kindergarten environment. This flaw is by no means fatal to the IEP, however. Ms. Vaswani established that Student had already mastered most of his outdated goals by the time he completed preschool in August, 2005.

For the period of September and October, 2005, Ms. Cole and Mr. Hunter provided the IEP team with information regarding Student's progress in kindergarten. Ms. Vaswani had also observed Student approximately five to seven times in the kindergarten classroom and reported that he was on task, compliant, participating consistently and transitioning independently between tasks with his peers. The IEP team considered these perspectives and those of Student's parents in arriving at its offer.

The District's offer appropriately identified Student's unique needs and designed a program to meet those needs.

#### THE IEP WAS REASONABLY CALCULATED TO PROVIDE STUDENT SOME EDUCATIONAL BENEFIT.

It was not disputed that Student is functioning academically at or near grade level. For those areas where Student demonstrated needs – understanding abstract and quantity concepts – the IEP supported those needs with appropriate goals and objectives. The vast majority of services, however, were devoted to improving Student's social and pragmatic speech skills. Kindergarten is not a rigorous academic setting. Children are taught to function and learn in a group environment. Thus, as Student strengthens his socialization skills, compliance skills, attending and attention skills, he receives the educational benefit intended for his age. As it was also not disputed that Student is ready and able to succeed in a full-inclusion educational setting with appropriate support, the offer of a general kindergarten and after school social skills program supported by a qualified one-to-one aide, full-inclusion specialist, behaviorist, speech and occupational therapy was reasonably calculated to confer these benefits on him.

#### THE IEP PROPOSES SERVICES IN THE LEAST RESTRICTIVE ENVIRONMENT

As noted herein above, the District offers Student fully-included placement in general-education kindergarten, with an after school social skills program, one hour total of after school speech and occupational therapy, and a fading quantity of home behavioral services. This is essentially a "mainstream" placement consistent with Student's level of academic and social functioning. Each of the *Holland* factors enumerated above weighs in favor of the District's offered placement: Student will benefit from the full-inclusion setting educationally and socially, his teacher advocated for his placement in the regular education classroom, and the costs and/or burdens of placing him there are not objectionable to the

District. Moreover, no less-restrictive educational environment was advocated by any witness or party. Therefore the ALJ finds that the District's offer was made in the LRE.

## ORDER

The District's offer of placement and services contained in the November 10 and November 17, 2005 IEP documents constituted a free appropriate public education for Student in the least restrictive environment for the 2005-2006 academic year.

## PREVAILING PARTY

The District prevailed on all issues. (Ed. Code §56507.)

## RIGHT TO APPEAL THIS ORDER

The parties have the right to appeal this Decision to a court of competent jurisdiction within ninety days of the receipt of the same. (Ed. Code § 56505, sub. (k).)

DATED: June 9, 2006.

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KEITH J. KIRCHUBEL

Administrative Law Judge

Office of Administrative Hearings

Special Education Division