

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

In the Matter of :

COVINA-VALLEY UNIFIED SCHOOL
DISTRICT,

Petitioner,

vs.

STUDENT,

Respondent.

Case CASE NO. N 2005110312

DECISION

Erlinda G. Shrenger, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), Special Education Division, State of California, heard this matter on January 25, 26, 27, and 30, 2006, in Covina, California.

Petitioner Covina-Valley Unified School District (District) was represented by its attorney, Constance M. Taylor. Ann Jones, Director, Student Services, was also present at the hearing on the District's behalf.

Respondent Student was represented by her Mother, who appeared in pro. per.

On November 4, 2005, the District filed a request for mediation and due process hearing. On November 16, 2005, OAH issued a notice of due process hearing and mediation, which set a due process hearing for December 5, 2005. On December 2, 2005, the District filed a request with OAH to have the December 5th hearing date taken off calendar because the notice of due process hearing was not properly served on Respondent. On December 9, 2005, OAH granted the District's request and continued the December 5, 2005 hearing date. At a telephonic trial setting conference on December 13,

2005, OAH set the due process hearing in this matter for January 23-30, 2006. However, due to a death in Mother's family, the due process hearing did not actually commence until January 25, 2006.

The District called the following witnesses: Alicia Cantwell, occupational therapist, Gallagher Pediatric Therapy; Diane Carroll, school psychologist; Lorraine Mravic, speech and language therapist; Rick Gutierrez, Regional Director, Applied Behavior Consultants, Inc.; Sharon Floyd, ASRD Program Coordinator, East San Gabriel Valley SELPA; Naomi Northrup, teacher, Cypress Elementary School; and Santino LoVullo, special day class (SDC) teacher, Grovecenter Elementary School.

Student called the following witnesses: Mother; Holli Jensen, an instructional aide; Aiden Rudd III, principal, Cypress Elementary School; Mindy Kiel, former ABC afternoon instructor for Student; and Lori Goldstrom, speech pathologist.

At the conclusion of the hearing on January 30, 2006, the record was held open by the ALJ for the parties to file written closing briefs by February 13, 2006. The District's brief was timely received and marked for identification as Exhibit 16. Student's brief was filed late on February 17, 2006, but the ALJ accepted the brief and marked it for identification as Exhibit R-59.

ISSUES

I. Did the District offer Student a free appropriate public education (FAPE) for extended school year (ESY) 2005 and school year (SY) 2005-2006, as described in the June 6, 2005, individual education program (IEP) and as clarified in the District's June 14, 2005, letter to Student's parents?

II. Is the District required to reimburse Student's parents for a private school placement, if any has occurred, for ESY 2005 and/or SY 2005-2006?

FACTUAL FINDINGS

BACKGROUND

1. Student is a seven and one-half year old child who resides with her parents within the jurisdictional boundaries of the District. Student was initially assessed by the District in September 2001 and found eligible for special education in the category of autistic-like behavior with accompanying developmental delays. At the present time, Student continues to be eligible for special education and related services as a student with autistic-like behaviors and language/speech disorder.

2. Pursuant to a February 17, 2004, mediation agreement between the District and Student, Student attended ABC School, a non-public school, from March 8, 2004 until approximately March 2005. Student's classroom at ABC School was a highly structured setting. Student was one of eight pupils in a classroom with one teacher and three to four aides.

FEBRUARY 16, 2005, ADDENDUM IEP

3. On February 16, 2005, the District convened an addendum IEP meeting to discuss the results of assessments of Student and her next placement. Mother was present and participated in this meeting.

4. Diane Carroll, school psychologist, conducted a psycho-educational assessment of Student in February 2005. Ms. Carroll attended the February 16, 2005, IEP meeting and presented the results of her assessment. Ms. Carroll found that Student had made progress in all areas of development when compared to previous evaluations. Student was found to exhibit mild to moderate delays in the areas of cognition, fine motor skills, personal living skills, and social skills. Severe delays were noted in language development. Student's academic skills were at a kindergarten level, and she continued to exhibit specific sensory deficits. Student demonstrated strengths in gross motor skills. Student was able to follow the routine and demands of the highly structured setting of her

classroom at ABC School, and worked adequately in that setting with close monitoring, structure, and immediate rewards. Student was making progress towards her IEP goals. However, Student continued to exhibit behaviors of concern including excessive vocalizations, yelling, inappropriate touching, and restricted interests.

1. Lorraine Mravic, a speech and language therapist for the District, assessed Student in January 2005 in the area of speech and language. Ms. Mravic attended the February 16, 2005, IEP meeting and presented the results of her assessment. Student was found to have receptive language skills at the 2 year to 2 year, 11 month level, and expressive language skills at the 2 year to 3 year, 6 month level. Student often used echolalia¹ and low tone vocalizing, she demonstrated several speech sound substitutions and omissions with fair to good speech intelligibility, and she was able to use occasional spontaneous phrases to make requests.

6. At the February 16, 2005, IEP meeting, the IEP team also reviewed Student's behaviors in her classroom at ABC School and in the afternoon speech therapy class taught by Ms. Mravic. The team also reviewed occupational therapy goals and assessment results.

7. At the February 16, 2005, IEP meeting, the IEP team discussed placement options in an SDC classroom and a general education classroom. Mother insisted that Student needed to be placed with typically developed peers. Consequently, the IEP team agreed to place Student in a full inclusion, general education kindergarten class at Grovecenter Elementary School, and to provide the assistance of a one-to-one aide from ABC.

¹ According to Ms. Mravic's testimony, echolalia is "when students repeat a phrase that they have heard you say or question that they've heard you say. Sometimes students can also just repeat the last word they heard in a sentence."

PLACEMENT AT GROVECENTER ELEMENTARY - GENERAL EDUCATION KINDERGARTEN CLASS

8. On March 14, 2005, Student began attending a full inclusion, general education kindergarten class taught by Mrs. Rappa-Fuentes. There were approximately 20 pupils in the class. Activities in the classroom transitioned approximately every 20 minutes. The academic curriculum for kindergarten included writing complete sentences, reading words, and knowing number concepts up to the number 20.

9. Diane Carroll, the school psychologist who conducted a psycho-educational assessment of Student in February 2005, observed Student's placement in Mrs. Rappa-Fuentes' kindergarten classroom. Student had difficulty with appropriate behavior and attending to the lessons occurring in the classroom. Student would get up from her chair and roam around the classroom; she had difficulty staying in her chair. The behavior of getting up from her chair was "escape behavior," indicating Student did not want to do what was being asked of her at the moment. The behavior was more likely to occur the more difficult the demand being placed on her. Student also had excessive vocalizations and yelling out. Student required frequent verbal redirection. Student also inappropriately touched other pupils on their back if they were sitting in front of or next to her. Student's skills were below the level at which the majority of Mrs. Rappa-Fuentes' kindergarten class was functioning.

10. When Student had behavior difficulties in Mrs. Rappa-Fuentes' classroom, Student's aide would take her to a table outside of the classroom. If Student continued to be too noisy or disruptive, then the aide would take her to an empty music room on the campus. The music room was a place where Student was allowed to engage in some sensory activities to help calm and refocus her. The amount of time Student might spend in the music room varied, sometimes just a few minutes, other times more than a few minutes. Student was fairly cooperative and needed minimal prompting when taken by her aide to either the table outside of the classroom or to the music room due to her behavior.

The purpose of removing Student from the classroom was to give her a little time away to get herself under control, and be rewarded for that control. After necessarily missing some classroom time, Student was allowed to re-enter the classroom.

11. On March 24, 2005, Mother removed Student from Mrs. Rappa-Fuentes' class and requested a change of placement from the District. Student attended Mrs. Rappa-Fuentes' class for a total of nine days from March 14, 2006 to March 24, 2005.

2. By letter dated March 28, 2005, Mother informed the District that Mrs. Rappa-Fuentes' class at Grovecenter was "absolutely not an acceptable option at this point." (Emphasis in original.) Mother felt that Mrs. Rappa-Fuentes was not displaying compassion or acceptance towards Student as a model for the other pupils to emulate. Mother also felt Mrs. Rappa-Fuentes was impolite to Mother, Student's tutors, and other members of the inclusion team. Mother disagreed with Mrs. Rappa-Fuentes' comments regarding Student's behavior issues of not staying in her seat, not paying attention, and touching other pupils. In her letter, Mother also stated she was "offended" by Mrs. Rappa-Fuentes' continual insistence that the other pupils were "traumatized" by Student's presence in the class.

3. In a handwritten letter to the District dated March 29, 2005, Mother stated: "Please accept this as my 10 day written notice to the Covina Valley School District that I will begin funding an appropriate education for my daughter [Student's name] until the district can provide appropriate placement, with the expectation of full reimbursement." (Emphasis in original.)

ATTEMPTS TO SCHEDULE OTHER MEETINGS

14. Between approximately March 29, 2005 and April 18, 2005, the District attempted to schedule IEP planning meetings with Mother. However, Mother cancelled some meetings and requested that other meetings be rescheduled. Eventually, on April 18, 2005, a parent conference was held to discuss placement options and the next IEP

meeting. Student's father, but not Mother, attended this meeting and shared the family's concern about the staff at Grovecenter and the family's request for a change of placement.

15. Subsequently, the District scheduled an IEP meeting for April 25, 2005. Mother informed the District she did not plan to attend that meeting. The District contacted Mother about scheduling another meeting, asking Mother to state her preference for either a May 2, 2005 or May 4, 2005 meeting date and advising her that if she failed to state a preference, the meeting would be held on May 4, 2005. Because Mother failed to state a preference, the District scheduled an IEP meeting for May 4, 2005. At Mother's request, the District rescheduled the IEP meeting from May 4, 2005 to May 9, 2005.

MAY 9, 2005, ANNUAL IEP

16. On May 9, 2005, the District was able to convene an IEP meeting to conduct an annual review of Student's IEP and to review her placement. Mother was present and participated in this meeting.

17. The IEP team reviewed Student's needs and discussed the pros and cons of the following placement options for Student: (1) SDC for students with autism plus mainstreaming, (2) SDC for students with learning disabilities plus mainstreaming, and (3) full inclusion general education. Mother insisted that Student should be placed with typically developed peers. Again, the IEP team acceded to Mother's wishes. The IEP team proposed a placement for Student at Cypress Elementary School in a general education, full inclusion, kindergarten class, with a one-to-one aide, starting on Friday, May 20, 2005. The team recommended Student have a "graduated start" for the program, meaning she would visit the classroom, then attend one class on her first week (i.e., May 20, 2005), then attend three classes on her second week, then attend four classes on her third week, and then attend a full week of classes. Santino LoVullo, an experienced SDC teacher from Grovecenter Elementary School, was to serve as a mentor and trainer to the general

education teacher. An inclusion specialist, behavioral specialist, and psychologist were to assist in the placement.

18. Due to time constraints, the May 9, 2005, IEP meeting was not completed and was held over to May 23, 2005.

MAY 23, 2005, IEP MEETING

19. On May 23, 2005, the IEP team reconvened to complete the IEP meeting started on May 9th. Mother was present and participated in this meeting.

20. The IEP team discussed Student's visits to Cypress Elementary School, the training and preparation for the general education teacher and instructional aide, and Student's start date at Cypress on May 26, 2005. The IEP team also discussed summer school, placement for the first grade in the next school year, and an afterschool program.

21. Rick Gutierrez, Regional Director of ABC, attended the May 23, 2005, IEP meeting and attempted to present ABC's Intensive Behavioral Treatment, Student Program Report, covering the period June 2004 to May 2005. Mr. Gutierrez was unable to complete his presentation of ABC's recommendation that Student be placed in an SDC, because Mother interrupted the presentation several times and said she did not want to hear this. Mother was upset with ABC's recommendation. Mother also cut off Ryan Capito, Student's former teacher at ABC School, when he tried to talk and said she did not want another person to disappoint her. Mother left the meeting room in frustration but returned shortly.

22. Mother was upset at ABC's recommendation for an SDC placement because she contended that someone from ABC had told her that ABC would be recommending that Student be placed in a general education classroom. ABC and its employees have denied making such a recommendation to Mother.

23. When Mother returned to the May 23, 2005, IEP meeting, she gave consent to the offered program for general education kindergarten, but she would not make a decision regarding an afterschool program or summer school. The existing goals for speech and language were left in place because Mother wanted to think about the speech

and language services offered at the May 23, 2005, IEP meeting (i.e., group at once/week at 30 minutes/session, and individual at twice/week at 30 minutes/session).

PLACEMENT AT CYPRESS ELEMENTARY - GENERAL EDUCATION KINDERGARTEN CLASS

24. Pursuant to the IEP meetings held on May 9 and 23, 2005, Student began attending a general education kindergarten class at Cypress Elementary School on May 26, 2005. Her teacher was Mrs. Naomi Northrup.

25. Prior to Student entering her classroom, Mrs. Northrup prepared for Student's placement as she was committed to having Student as pupil in her class and determined to make Student's placement succeed. Santino LoVullo, an experienced SDC teacher from Grovecenter Elementary School with extensive training in dealing with autistic children, was Mrs. Northrup's mentor and trainer regarding Student's placement. Mrs. Northrup reviewed all of the reading materials provided by Mr. LoVullo and had meetings with him to discuss strategies and suggestions regarding Student. One idea Mrs. Northrup received from Mr. LoVullo was the "buddy jar," where Mrs. Northrup would pick a pupil's name from a jar, and that pupil would be Student's "buddy" for the day. The selected pupil would eat lunch with Student and be her partner for small group activities.

26. Mrs. Northrup also prepared the other pupils in her classroom for Student's arrival. She talked to the children about how great it was that "we're all different," and how they all should be "good friends" with Student. She also talked to the other pupils about how to communicate with Student. Mrs. Northrup found the other pupils were "very accepting" of having Student in their classroom.

27. Mrs. Northrup's class was held in an L-shaped room. Mrs. Northrup prepared a work station towards the back of the classroom for Student to do her work with her one-to-one aide. The work station was located in an area of the classroom with less stimuli and interruptions. Earlier in the school year, this area had been used by other pupils in the class for doing their one-to-one work with parent volunteers. From the work station, Student could still see what was happening in the other part of the classroom. In

addition to creating a work station for Student, Mrs. Northrup also put stickers on chairs to make her transitions between activities easier.

28. Soon after Student began attending Mrs. Northrup's class on May 26, 2005, Student had behavior difficulties in the classroom, including yelling, inappropriately touching other pupils, tantrums, attempting to bite, wandering around the room, and throwing things on the ground. Student had tantrums approximately once a day or once every other day, where she would lay on the floor and thrash about. There were instances where all of the other pupils had to be removed from the classroom because of Student's tantrum behavior. Student's inappropriate touching of other pupils on their shoulders or their hair indicated a lack of social control and not understanding boundaries. On one occasion, Student scratched Mrs. Northrup's hand in front of the other children.

29. Mr. LoVullo assisted Mrs. Northrup and Student's one-to-one aide, Holli Jensen, in the classroom. Mr. LoVullo was present for 75 percent of the time that Student was in class. During class, Mr. LoVullo constantly communicated with Mrs. Northrup. Mr. Lovullo, Mrs. Northrup, and the other staff, met as a team. The team provided every support possible to Student. They adapted the curriculum, provided constant reinforcement, and developed strategies for every move Student made in the classroom. Based on Mr. LoVullo's testimony, it was established that Student's difficulties in Mrs. Northrup's classroom could not be resolved by merely giving her more time to "settle in."

30. Sharon Floyd, Autistic Spectrum and Related Disorders (ASRD) Program Coordinator for East San Gabriel Valley SELPA, observed Student's placement in Mrs. Northrup's classroom. Based on the testimony of Ms. Floyd and Mrs. Northrup, it was established that Student's placement in Mrs. Northrup's general education classroom was not appropriate because the transitions between classroom activities was more than Student could handle, the class size was too large, and there was too large a discrepancy between Student's academic and social skills as compared to those of the other pupils in the class.

31. Based on the testimony of Mrs. Northrup and Mr. LoVullo, it was established that Student received only minimal social benefit from her placement in Mrs. Northrup's classroom. The other pupils tried to be friends with Student, but the discrepancies in her communication and social skills made it difficult. Student's behavior issues impacted the interactions between Student and the other pupils. For example, Mrs. Northrup instituted the "buddy jar" suggested by Mr. LoVullo. Initially, all of the pupils participated in the "buddy jar." Later, however, some of the pupils told Mrs. Northrup they no longer wanted to participate. During storytime, when the class sat on the floor on a rug, pupils would move away from where Student was sitting because of her tendency to touch pupils sitting in front of her or next to her. Although Student liked being with the other children, she did not appear to have learned many social skills from them.

32. Based on the testimony of Mrs. Northrup, Mr. LoVullo, and Ms. Floyd, it was further established that Student received no educational benefit from this general education placement. Student's behavior issues prevented her from making academic gains. Student did not have all of the skills necessary for her to gain any educational benefit from the program and make progress toward the goals and objectives in her IEP. Student's placement affected the other pupils in the class as well as the teacher, Mrs. Northrup. The other pupils were distracted by Student's behavior in the classroom, such as her inappropriate touching, tantrums, and moving around from spot to spot. The other pupils lost instruction time when the classroom had to be cleared because of Student's tantrums. Student's behavior issues distracted Mrs. Northrup from teaching the entire class, and she was not as engaged with the entire class as she could have been otherwise. Mrs. Northrup found it "frustrating" and "stressful" when classroom time needed to teach lessons was lost due to Student's behavior issues.

33. Student attended Mrs. Northrup's class for approximately two weeks, from May 26, 2005, until Mother removed her from the class in early June 2005.

JUNE 6, 2005, IEP

34. On June 6, 2005, the District convened an addendum IEP meeting to review and discuss placement, assessments, as well as Student's needs and her goals and objectives in the areas of occupational therapy, speech and language, behavior, academics, and social skills.

35. Mother arrived late to the June 6, 2005, IEP meeting. However, when Mother arrived, the IEP team reviewed for her the presentations on occupational therapy and speech and language that had already been made, and the purpose of the meeting. Thereafter, Mother was present and participated in the meeting.

OCCUPATIONAL THERAPY

36. Alicia Cantwell, an occupational therapist with Gallagher Pediatric Therapy, attended the June 6, 2005, IEP meeting. Ms. Cantwell has not met Student, but she reviewed an occupational therapy assessment of Student by Casa Colina Children's Services dated December 14, 2004. Based on that review, Ms. Cantwell recommended occupational therapy for Student at two times per month, 30 minutes each session, on a consultative basis. Ms. Cantwell also wrote one goal in the area of visual perceptual/visual motor skills. At the IEP meeting, Mother did not express any concerns or objections to Ms. Cantwell's recommendation for occupational therapy services or the occupational therapy goal.

37. Ms. Cantwell has been employed by Gallagher Pediatric Therapy, a non-public agency, for four years. She is a regional supervisor and provides occupational therapy at clinics and schools. She has a master's degree in occupational therapy and has been licensed in California as an occupational therapist for two years. Ms. Cantwell has been registered with the National Board of Certified Occupational Therapists for four years. She has received training in and has experience working with autistic children.

SPEECH AND LANGUAGE

38. At the June 6, 2005 meeting, the IEP team reviewed Student's needs in the area of speech and language. The recommendation for speech and language was for individual therapy (two times per week, 30 minutes each session) and group therapy (one time per week, 30 minutes each session), with all therapy to be provided in class.

39. The June 6, 2005, IEP contains three speech and language goals in the areas of receptive, expressive, and social language. Lorraine Mravic, speech and language therapist, helped develop those goals. Ms. Mravic is familiar with Student's speech and language needs because she assessed Student in January 2005, and had provided speech and language therapy to Student since March 2004. Student also attended an afterschool speech therapy class taught by Ms. Mravic from October 2004 to January 2005.

BEHAVIOR / ACADEMIC

40. Rick Gutierrez attended the June 6, 2005, IEP meeting and completed his presentation of ABC's Intensive Behavioral Treatment, Student Program Report that he was unable to make earlier at the May 23, 2005, IEP meeting. ABC recommended that Student's goals and objectives continue to be addressed using principals of Applied Behavior Analysis (ABA), including discrete trial training, task analysis, and incidental teaching. ABC also recommended that Student be placed in an educational environment that can provide her with the repetition she needs to acquire new skills. ABC found that, although Student benefited socially from exposure to typical peers, it was not recommended that Student spend her entire school day in a general education setting. ABC recommended that the IEP team explore an SDC setting for Student that would address her communication and academic deficits and provide mainstreaming opportunities throughout the school day, such as during art and recess.

41. The IEP team discussed Student's behaviors while she attended ABC School, Grovecenter Elementary School, and Cypress Elementary School, including her tantrums,

attempts to bite and scratch others, and inappropriate touching of other pupils, behavior interventions and strategies, and deficiencies in Student's school readiness skills in a mainstream setting. At Mother's request, a paragraph from an article regarding full inclusion was read aloud. The IEP team then discussed whether full inclusion was appropriate for Student.

42. Santino LoVullo, an SDC teacher, and Rick Gutierrez, wrote and presented goals in the areas of behavior, expressive communication, communication/behavior, expressive language, receptive and expressive language, social, and pre-vocational. Mr. LoVullo and Mr. Gutierrez also wrote and presented academic goals in the areas of math, reading, and writing.

43. Mr. Lovullo is familiar with Student's needs, based on his involvement with Student's placement in Mrs. Northrup's class at Cypress Elementary. Mr. Gutierrez is familiar with Student's needs because he met Student in June 2004 and supervised her behavior consultant at ABC School.

PLACEMENT OFFER

44. Following the meeting on June 6, 2005, the District made the following offer of placement to Student (as clarified in the District's June 14, 2005 letter to Student's parents):

- a. June 7, 2005 to June 17, 2005: Student would attend an SDC kindergarten class, with some mainstreaming, at Grovescenter Elementary for five days per week, six hours per day. Mr. LoVullo would be Student's teacher. Student would receive ABA therapy provided by ABC at Grovescenter for five days per week, two hours per day, individual and small group speech and language therapy, occupational therapy on a consultative basis, and transportation.
- b. June 20, 2005 to July 15, 2005: Student would attend an SDC kindergarten class, with some mainstreaming, at Grovescenter for five days per week, four hours per day. Student would receive ABA therapy provided by ABC at Grovescenter for five

days per week, two hours per day, individual and small group speech and language therapy, occupational therapy on a consultative basis, and transportation.

- c. July 18, 2005 to August 12, 2005: Student would receive ABA therapy provided by ABC at an ABC site, with small group therapy provided five days per week, four hours per day, and individual therapy provided five days per week, two hours per day, and transportation.
- d. September 7, 2005 to May 9, 2006: Student would attend an SDC first grade class, with some mainstreaming, at Grovescenter for five days per week, six hours per day. Student would receive individual and small group speech and language therapy, occupational therapy on a consultative basis, and transportation. Within 30 days of the start of the 2005-2006 school year, the IEP team would meet to review this placement.

45. Mother did not consent to the June 6, 2005, IEP. Instead, Mother wrote a letter to the District, dated June 6, 2005, stating her disagreement with the IEP team's recommendation. Mother claimed that the placement decision was based on a total of 14 days of Student's attendance at Grovescenter and Cypress, and that a teacher from ABC told her Student would need a minimum of one to two months to "settle in." Mother also claimed the decisions on placement and goals were "predetermined," that behavior data from ABC School was disregarded, and that "placement is chosen by convenience for the district -- not by the child's needs." Mother also claimed that "ABC School completely reversed all the recommendations made to me in 10/04."

46. On June 6, 2005, Mother also sent another letter to the District stating: "This is to serve as 10 day notice that I will be providing my daughter with an appropriate education since the District again refuses to do so."

BEHAVIOR INTERVENTION PLAN

47. Four days after the IEP meeting, on June 10, 2005, Darren Lemon, Behavior Analyst for the District, prepared a Behavior Teaching/Intervention Plan (BTIP) regarding Student, with input from Mr. LoVullo. The purpose of the BTIP was to reduce Student's tantrum behavior during transitions and to teach her to use visual schedules, so that her environment would be more predictable and she would be less likely to resort to tantrums. Data from Student's placement at Cypress Elementary School was used to create the BTIP.

UNILATERAL PLACEMENT BY MOTHER FOR SUMMER 2005

48. For the summer of 2005, Mother unilaterally placed Student at Discovery Montessori School, a private school, located in West Covina. Student attended Discovery Montessori School over an approximately three week period during the summer of 2005. Initially, Student attended class without a one-to-one aide. Later, Mother hired a one-to-one aide to assist Student in the classroom. Mother did not present any school records or receipts relating to Student's attendance at Discovery Montessori School. Mother testified that Student is not attending school at the present time.

SDC PROGRAM AT GROVECENTER ELEMENTARY

49. Grovecenter Elementary School has three SDC classrooms. Each classroom has approximately six to nine students. The pupils placed in the SDC classrooms have access to speech and language therapy, occupational therapy, and adaptive physical education. All of the SDC classroom teachers use TEACH methodology, visual schedules, a visually structured environment, independent work stations, and, when appropriate, a manipulative-based curriculum. The SDC classrooms emphasize adaptive skills and social skills. Behavioral data is also tracked.

50. Based on Mr. LoVullo's testimony, it was established that some environments are preferable over others for autistic children in terms of the types of behavioral methods that can be used. In an SDC classroom, there are a variety of behavior

methods that can be used. For example, Student engages in tantrum behavior as a means to get what she wants. "Extinction" is one of the strategies that may help reduce that behavior. When "extinction" is implemented, the behavior (i.e., tantrums) goes through an extinction burst, meaning that the behavior increases and gets really extreme until it comes down and becomes extinct. Over time, if a behavior is not reinforced, then it loses its functional value and becomes extinct. In a general education setting, using "extinction" as a behavior strategy is not an option because it involves going above and beyond the acceptable behavior "norms" in the general education setting. By contrast, in a special education setting, there is a wider range of acceptable behaviors as well as behavior methods that can be implemented.

STUDENT'S UNIQUE NEEDS IN JUNE 2005

51. Based on Mr. LoVullo's testimony, it was established that, in June 2005, Student's unique needs were small group instruction, frequent reinforcement, a structured environment, visual scheduling, an independent work area, intervention for social skills, language at her level that she can comprehend, possibly a manipulative based curriculum, and access to mainstreaming opportunities for socialization.

52. Mr. LoVullo is familiar with Student's needs because he was involved with Student's placement in Mrs. Northrup's general education kindergarten class at Cypress Elementary School. He trained, mentored and provided support to Mrs. Northrup regarding Student's placement in her classroom. Mr. LoVullo was present in the classroom for 75 percent of the time Student was in class, and assisted Mrs. Northrup and Student's instructional aide.

LEGAL CONCLUSIONS

1. A child with a disability has the right to a free appropriate public education (FAPE) under the Individuals with Disabilities Education Act (IDEA) and California law. (20

U.S.C. §1412(a)((1)(A))²; Ed. Code, § 56000.³) A FAPE is defined in pertinent part as special education and related services that are provided at public expense and under public supervision and direction, that meet the State's educational standards, and that conform to the student's IEP. (20 U.S.C. § 1401(8); Cal. Code Regs., tit. 5, § 3001, subd. (o).) Special education is defined, in pertinent part, as specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(22); Ed. Code, § 56031.) Special education related services include, in pertinent part, developmental, corrective, and supportive services, such as speech-language pathology services and occupational therapy, as may be required to assist a child with a disability to benefit from special education. (20 U.S.C. § 1401(26); Ed. Code, § 56363.)

2. A school district must provide "a basic floor of opportunity . . . [consisting] of access to specialized instruction and related services which are individually designed to provide educational benefit to the [child with a disability]." (*Bd. of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201.) The IDEA requires neither that a school district provide the best education to a child with a disability, nor that it provide an education that maximizes the child's potential. (*Bd. of Education of the Hendrick Hudson Central School Dist. v. Rowley, supra*, 458 U.S. at pp. 197, 200; *Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.)

² The Individuals with Disabilities Education Improvement Act of 2004 (IDEIA), effective July 1, 2005, amended and reauthorized the IDEA. The allegations in this matter involve IEPs developed prior to July 1, 2005. Accordingly, the IDEA will be applied and all citations to Title 20 United States Code are to sections in effect prior to July 1, 2005. (*Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 882 fn. 1.)

³ The California Education Code was amended, effective October 7, 2005, in response to the IDEIA. (Stats. 2005, ch. 653.) All citations to the Education Code are to sections in effect prior to October 7, 2005.

3. In addition to these substantive requirements, the Supreme Court recognized the importance of adhering to the procedural requirements of the IDEA. Thus, the analysis of whether a student has been provided a FAPE is two-fold: (1) the school district must comply with the procedural requirements of the IDEA, and (2) the IEP must be reasonably calculated to provide the child with educational benefits. (*Bd. of Education of the Hendrick Hudson Central School Dist. v. Rowley, supra*, 458 U.S. at pp. 206-207.)

2. While a student is entitled to both the procedural and substantive protections of the IDEA, not every procedural violation is sufficient to support a finding that a student was denied a FAPE. Mere technical violations will not render an IEP invalid. (*Amanda J. v. Clark County School Dist., supra*, 267 F.3d at p. 892.) To constitute a denial of a FAPE, procedural violations must result in deprivation of educational benefit or a serious infringement of the parents' opportunity to participate in the IEP process (*Ibid.*)⁴

5. As the petitioner, the school district has the burden of proving that it has complied with the IDEA. (*Schaffer v. Weast* (Nov. 14, 2005, No. 04-698)____U.S.____ [2005 U.S. Lexis 8554].)

6. As discussed below, a preponderance of the evidence persuasively establishes that the District has met its burden in offering Student a FAPE during the time periods alleged.

ISSUE NO. 1: DID THE DISTRICT OFFER STUDENT A FREE APPROPRIATE PUBLIC EDUCATION (FAPE) FOR EXTENDED SCHOOL YEAR (ESY) 2005 AND SCHOOL YEAR (SY) 2005-2006, AS DESCRIBED IN THE JUNE 6, 2005, INDIVIDUAL EDUCATION PROGRAM (IEP) AND AS CLARIFIED IN THE DISTRICT'S JUNE 14, 2005, LETTER TO STUDENT'S PARENTS?

⁴ A substantially similar standard was codified in the IDEIA. (20 U.S.C. § 1415(f)(3)(E)(ii).)

PROCEDURAL APPROPRIATENESS

7. The ALJ finds that the District complied with the procedural requirements of the IDEA in developing the June 6, 2005, IEP. The District's conduct was reasonably calculated to gain the maximum input from the proper parties into developing a correct IEP. Mother attended and participated in the June 6, 2005, IEP meeting, and the previous IEP meetings in February 2005 and May 2005. On several occasions, Mother canceled meetings or requested that the meetings be rescheduled. The District acted reasonably in accommodating Mother's scheduling requests.

8. The ALJ finds that Mother meaningfully participated in the development of the June 6, 2005, IEP. Mother's concerns and her disagreements with the IEP team's conclusions were expressed and considered at the June 6, 2005, IEP meeting, as well as at the previous IEP meetings in May 2005 and February 2005. The IEP team acceded to Mother's wishes at the May 2005 and February 2005 IEP meetings, which led to Student's placements in Mrs. Rappa-Fuentes' class and Mrs. Northrup's class. Although the June 6, 2005, IEP team ultimately did not agree with Mother's request for another general education placement, the team discussed, considered and documented the concerns of Mother expressed at the June 6, 2005, meeting.

9. A parent has meaningfully participated in the development of an IEP when the parent is informed of her child's problems, attends the IEP meeting, expresses her disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693.) 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 way. (*Fuhrmann v. East Hanover Bd. of Education* (3rd Cir. 1993) 993 F.2d 1031, 1036.)

SUBSTANTIVE APPROPRIATENESS

Designed to Meet Student's Unique Needs

3. An IEP is evaluated in light of information available at the time it was developed; it is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)⁵ "An IEP is a snapshot, not a retrospective." (*Id.* at p. 1149, citing *Fuhrmann v. East Hanover Bd. of Education* (3rd Cir. 1993) 993 F.2d 1031, 1041.) It must be evaluated in terms of what was objectively reasonable when the IEP was developed. (*Ibid.*) The focus is on the placement offered by the school district, not on the alternative preferred by the parents. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987), *supra*, 811 F.2d at p. 1314.)

11. Based on the factual findings in this matter, the District's offer of placement and services in the June 6, 2005, IEP was designed to meet Student's unique needs. Student needs small group instruction, frequent reinforcement, a structured environment, visual scheduling, language at a level she can comprehend, intervention for social skills, an independent work area, and mainstreaming opportunities, to address her academic and communication deficits and control her behaviors. The proposed SDC placement at Grovescenter Elementary School addresses Student's unique needs. Student's two prior placements in a general education kindergarten class were unsuccessful because that setting was not appropriate. The class sizes were too large, the classroom environments were overstimulating and more than Student could handle, the transitions between

⁵ Although *Adams* involved an Individual Family Service Plan and not an IEP, the Ninth Circuit Court of Appeals applied the analysis in *Adams* to other issues concerning an IEP (*Christopher S. v. Stanislaus County Off. of Education* (9th Cir. 2004) 384 F.3d 1205, 1212), and District Courts within the Ninth Circuit have adopted its analysis of this issue for an IEP (*Pitchford v. Salem-Keizer School Dist.* No. 24J (D. Or. 2001) 155 F.Supp.2d 1213, 1236).

classroom activities was too much for Student, and there was too large a discrepancy between Student's academic and social skills as compared to the other pupils in the general education classrooms.

Reasonably Calculated to Provide Some Educational Benefit

12. Based on the factual findings in this matter, the District's offer of placement in an SDC at Grovecenter was reasonably calculated to provide Student with meaningful educational benefit.

Student's behavior issues prevented her from making academic gains in prior full inclusion, general education placements. Student was unable to stay focused on classroom lessons and had difficulty staying in her chair. At Grovecenter Elementary, Student had to be taken outside of the classroom, either to a table outside of the classroom or to the music room, when her behavior was too disruptive or noisy. Since Student was outside of the classroom, she would necessarily miss whatever classroom lesson or instruction was going on at the time. Similarly, at Cypress Elementary, Student's behaviors distracted the other pupils from classroom lessons, and instruction time was lost when the classroom had to be evacuated because of Student's tantrum behavior.

On the other hand, an SDC setting is reasonably calculated to provide Student with meaningful educational benefit because of the wider range of behaviors and strategies that are acceptable in an SDC setting as compared to a general education setting. Student's behaviors can be addressed in the classroom without having to remove Student or the other pupils from the room. Student will receive closer monitoring in an SDC setting, given the smaller class size and the presence of a larger number of adults, than in a general education setting.

Least Restrictive Environment (LRE)

13. When determining whether a placement is the LRE, four factors must be evaluated and balanced: (1) the educational benefits of full-time placement in a regular classroom; (2) the non-academic benefits of full-time placement in a regular classroom; (3) the effect of the presence of the child with a disability has on the teacher and children in a regular classroom; and (4) the cost of placing the child with a disability full-time in a regular classroom. (*Ms. S. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1136-1137; *Sacramento City Unified School District v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404.)

14. In this matter, the proposed SDC classes at Grovecenter constitute the LRE for Student based on the following factors: there is no educational benefit from full time placement in a regular classroom, there is "minimal" non-academic benefit for both Student and the children in the regular classroom, Student's behavior has been disruptive to the classroom (both to the other pupils and the teacher), and there is no evidence that cost is a factor.

Mother's Contentions

15. Mother claims that the placement decision is based on insufficient data (i.e., Student's nine days at Grovecenter and five days at Cypress), and Student just needs time to acclimate to a new classroom setting. Given the nature of Student's behavior issues and communication deficits, Student's problems in the two prior general education placements could not be resolved by merely giving Student more time to acclimate. Also, Mother contends that Student's behavior of not staying in her seat is not a problem at all, but merely Student exploring and getting to know her surroundings. However, Student's wandering and refusal to stay in her chair during classroom instruction time was inappropriate and disruptive to the rest of class.

Determination of Witness Credibility

16. Mother gave testimony regarding Student that was sincere, although she appears to have misconstrued or misunderstood the recommendation of ABC School regarding Student's readiness for placement in a general education setting. Mother's testimony was not altogether persuasive because her preference for Student's education does not necessarily correspond with special education law.

17. The key District witnesses, Mr. LoVullo, Ms. Floyd, Ms. Carroll, and Ms. Mravic, were knowledgeable regarding both educational requirements and Student's needs. Those witnesses also offered credible testimony. In light of all the circumstances, when all relevant evidence was weighed and evaluated, those District witnesses were more credible due to their particular knowledge of relevant educational matters.

Conclusion

18. The ALJ finds that the District's offer of placement in the June 6, 2005, IEP was designed to meet Student's unique needs, reasonably calculated to provide Student with some educational benefit in the least restrictive environment, and therefore constituted an offer of a free appropriate public education.

ISSUE NO. 2: IS THE DISTRICT REQUIRED TO REIMBURSE STUDENT'S PARENTS FOR A PRIVATE SCHOOL PLACEMENT, IF ANY HAS OCCURRED, FOR ESY 2005 AND/OR SY 2005-2006?

19. Parents may be entitled to appropriate relief, including reimbursement for the costs of placement or services that they have independently procured for their child, when the school district has failed to provide a FAPE and the private placement or services are determined to be proper under IDEA and are reasonably calculated to provide educational benefit to the child. *School Committee of the Town of Burlington v. Department of Education* (1985) 471 U.S. 359, 369, 105 S. Ct. 1996. Court decisions subsequent to *Burlington* have also extended relief in the form of compensatory education to students who have been denied a FAPE. *Student W. v. Puyallup School District* (9th Cir. 1994) 31 F.3d 1489, 1497.

20. Based on the findings in this matter, the District offered Student a FAPE in the June 6, 2005, IEP. Consequently, there is no legal basis for an award of reimbursement for any private placement made by Student's parents for ESY 2005 or SY 2005-2006. In addition, no probative evidence was presented that Mother actually placed Student in any non-public school nor were receipts for the cost of any such a placement presented at the due process hearing.

ORDER

1. The District's request that their program offers for ESY 2005 and SY 2005-2006 be deemed a FAPE is granted.

2. The District is not required to reimburse Student's parents for a private school placement, if any has occurred, for ESY 2005 and/or SY 2005-2006. To the extent that any private placement occurred during ESY 2005 and/or SY 2005-2006, and such placement can be appropriately documented, and should Student's parents seek reimburse for any such private placement, the District is not liable for reimbursement because (1) the District offered a FAPE, and (2) Student's parents failed to provide evidence that any such private placement was appropriate.

3. The District's closing brief included a request for an order that Student be presented to the District for enrollment in accordance with the June 6, 2005, offer or, alternatively, that Student's parents provide the District with proof of enrollment in a private school sufficient to meet the requirements for compulsory education. This request is denied.

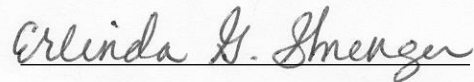
PREVAILING PARTY

1. Education Code section 56507, subdivision (d), requires that the hearing decision indicate the extent to which each party has prevailed on each issue heard and decided. The District prevailed on all issues heard and decided.

RIGHT TO APPEAL THIS DECISION

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. (Ed. Code §56505, subd. (k).)

DATED: March 30, 2006



ERLINDA G. SHRENGER

Administrative Law Judge

Special Education Division

Office of Administrative Hearings