

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

In the Matter of:

STUDENT,

Petitioner,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT,

Respondent.

OAH CASE NO. N 2006070518

DECISION

Administrative Law Judge (ALJ) Debra Huston, Office of Administrative Hearings (OAH), Special Education Division, State of California, heard this matter on January 2, 2006, in Northridge, California.

Petitioner (Student) was represented by his father (Father) throughout the hearing.

Respondent Los Angeles Unified School District (District) was represented by attorney Debra Ferdman. Deborah Neal, District due process specialist, attended on behalf of the District. During the time Ms. Neal was unable to attend the hearing, District due process specialist Jose Gonzalez attended on behalf of District.

On July 17, 2006, Student, by and through his Father, filed a due process complaint. On August 30, 2006, OAH continued the hearing based on a joint request of the parties and a showing of good cause. Sworn testimony and documentary evidence were received at the hearing, the record was closed, and the matter was submitted on January 2, 2007.

## ISSUES

1. Did District's June 19, 2006, offer of placement at Sun Valley Middle School for the 2006-2007 school year deny Student a free appropriate public education (FAPE)?
2. Did District's June 19, 2006, offer of placement, which included additional instruction to Student to help him become proficient in the English language, deny Student a FAPE?

## CONTENTIONS OF THE PARTIES

Student contends that (1) District's offer of placement in a school on a year-round school calendar, rather than in a school with a traditional school calendar, for the 2006-2007 school year, denied him FAPE because of the number of school breaks, during which breaks Student has difficulty retaining knowledge and regresses, and (2) District's offer of placement, which included additional instruction to Student to help him become proficient in the English language, denied him FAPE because Student does not need any instruction in Spanish and having any instruction in Spanish is confusing to Student and interferes

with his ability to learn and to benefit from his curriculum.<sup>1</sup> As proposed resolutions, Student contends that District should offer placement in a school that offers a traditional school calendar and should offer Student instruction only in the English language.

District contends that its offer of placement in year-round school and its offer of placement, which included the use of Spanish on an as-needed basis to help Student access his curriculum, provided Student a FAPE.

## FACTUAL FINDINGS

### JURISDICTION

1. Student is a twelve-year-old child who resides with his parents within the geographical boundaries of the District.
2. Since October 1998, Student has qualified for special education and related services under the category of autism. Student has also been classified as being limited English proficient (LEP), and has qualified for services as such since 1998.
3. During Student's individualized education program (IEP) meeting held on June 19, 2006, regarding his transition from elementary school to middle school, District

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<sup>1</sup> Student's due process complaint states that Father "disagree[s] with [Student's limited English proficient] classification and would like to change it to English speaker." During the prehearing conference held on December 18, 2006, Father clarified the issue relating to Student's classification as limited English proficient (LEP), stating that the classification denied Student FAPE because learning in Spanish is confusing to Student and interferes with his ability to learn and to benefit from the special education and related services provided to Student. For purposes of this decision, the second issue of Student's due process complaint has been reframed to conform to Father's purpose in filing the special education due process complaint.

offered special education and related services under the eligibility category of autism. District offered Student placement in the special day program at Sun Valley Middle School, which is Student's school of residence. Specifically, District's offer included placement in the specific learning disabled class of the special day program, with mainstreaming up to 90 percent of the day. This offer of placement included resource specialist program services and designated instruction and services, including adapted physical education, 120 minutes per week of speech therapy through a non-public agency, behavioral services through a nonpublic agency, and occupational therapy services. In addition, the offer included extended school year (ESY) services because of Student's pattern of regression and difficulty retaining knowledge during school breaks. Student was classified as LEP in this offer.

4. Student's mother and Father signed the June 19, 2006, IEP, agreeing with the IEP in all respects except for Student's placement at Sun Valley Middle School and his classification as LEP.<sup>2</sup>

5. As discussed in Legal Conclusions 1 to 4, inclusive, in order to determine whether a district has offered a FAPE to a student with a disability, the analysis must focus on the adequacy of the district's proposed program. If a district's program is designed to address a student's unique educational needs, is reasonably calculated to provide the student some educational benefit, and comports with the student's IEP, then the district's

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<sup>2</sup> Student's parents also expressed concern at the June 19, 2006, IEP meeting regarding occupational therapy services, and requested compensatory occupational therapy services. That request was not included in Student's due process complaint, and is not addressed in this decision.

offer is a FAPE, even if the student's parents prefer another program and even if that preferred program would result in greater educational benefit.<sup>3</sup>

#### PLACEMENT AT SUN VALLEY MIDDLE SCHOOL

6. It is undisputed that Sun Valley Middle School is Student's home school. The beginning point for placement for a student with a disability is the local school if the student's needs can be met at his or her local school.

7. Mr. Antonio Delgado, an educator since 1975 and currently the principal of Sun Valley Middle School, testified credibly that Sun Valley Middle School was placed under a three-track year-round school calendar because of overcrowding, and plans are now underway to return the school to a traditional calendar.

8. Each school within District is on either a traditional school calendar or a three-track year-round school calendar. While the schools on the traditional school calendar offer 15 days more of instruction each school year (not including ESY), the schools on three-track year-round school calendar offer more instructional minutes each day. Therefore, the instructional time per school year for each type of school calendar is the same, not including ESY.

9. At the June 19, 2006, IEP team meeting, the IEP team was in agreement that Student has a pattern of regression with respect to his education, that he has difficulty retaining knowledge during school breaks, and that ESY services are required to address these needs. Therefore, it is undisputed that Student has unique educational needs relating to his pattern of regression and his difficulty retaining knowledge during school breaks.

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<sup>3</sup> Student does not dispute District's provision of FAPE to Student in any area except those described above.

10. Schools within District that are on a traditional school calendar offer ESY for eight weeks per school year and during the summer only. Students in schools within District that are on the three-track year-round calendar are "off track" for six to eight weeks two times per school year, and ESY is offered for five or six weeks each time a student is off track. Thus, Students attending year-round school within District actually receive more ESY services, and more school time in total, than those attending school on a traditional calendar.

11. Mr. Delgado testified credibly that a three-track year-round school program can provide a special education student with a FAPE, and that all of the services required by Student's IEP can be provided at Sun Valley Middle School.

12. Father testified that Student's placement in a year-round school will cause Student to regress, and that Student needs a traditional school calendar to benefit from his education. Father conceded that there is no reason why Student's IEP cannot be implemented at Sun Valley Middle School. In addition, Father conceded that during the recent December 16, 2006, IEP team meeting, he requested that Student be placed at Sun Valley Middle School, which is on a three-track year-round school calendar, if Student could be fully included in the general education program at that school.

13. Given the fact that the three-track year-round school calendar will enable Student to have more consistency in school attendance and fewer weeks out of school, District's offer of placement at Sun Valley Middle School, which is on a three-track year-round school calendar, is designed to address Student's unique educational needs, and is reasonably calculated to provide Student some educational benefit

PROGRAM DELIVERY IN ENGLISH ONLY, WITH NO ADDITIONAL INSTRUCTION TO HELP STUDENT BECOME PROFICIENT IN THE ENGLISH LANGUAGE

14. Student's second contention is that District's offer of placement, which included additional instruction to Student to help him become proficient in the English

language, denied him FAPE. The threshold question is whether Student has a unique educational need to have his special education program delivered in English only, and to have no additional instruction to help him become proficient in the English language.

15. Mr. Delgado, principal of Sun Valley Middle School, and Ms. Madeline Wilson, an administrator for special education services within District, testified credibly that when a child enters public school, the child's parents are required to complete a home language survey that contains questions regarding the child's primary language. If the form indicates the child's primary language is one other than English or that a language other than English is spoken in the child's home, a credentialed teacher with the appropriate bilingual certificate administers a language assessment to the child. This is a two-part assessment with a language examination in English and one in the child's primary language. These tests are given when the student enters school and annually thereafter. The PRE-LAS Language Assessment Scale was used until a few years ago, and since that time state law has required use of the California English Language Development Test (CELDT).

16. According to Ms. Wilson, a student's language is a factor considered in a special education placement, but not a primary consideration. If a special education student is LEP, it might mean that the school considers placing an assistant in the student's class. In addition, District requires that the LEP student's teachers have a California Language Acquisition and Development (CLAD) certificate.

17. Over the years, Father completed language survey forms for Student, all of which indicated that Student's primary language is Spanish, that Father uses Spanish and English with Student, but that Spanish is the language most often spoken by adults in Student's home. The results of the CELDT assessment administered to Student on October 10, 2005, indicate that, overall, Student was then at the "intermediate" level of English proficiency, according to the CELDT scale of proficiency. As of June 19, 2006, Student's CELDT score showed that Student had made progress in English from the prior year, and

had attained the LEP "3" level of English proficiency. The LEP "5" level of English proficiency is the highest level of English proficiency, within the context of a Student's CELDT scores. According to Ms. Wilson, Student's instructional program, which includes additional instruction in becoming proficient in the English language, has benefited him because it offers additional supports to Student in helping him "grasp" English. Student's English test scores over the years show that he has made progress in learning English and increasing his level of English proficiency. Thus, Student does not have unique educational needs that require that his special education program be delivered in English only, without any instruction to help him become proficient in the English language.

## LEGAL CONCLUSIONS

### APPLICABLE LAW

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)<sup>4</sup>; Ed. Code, § 56000.)

2. A child who meets eligibility requirements for special education is entitled to a FAPE. 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(a)(9); 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

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<sup>4</sup> 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 an IEP developed after July 1, 2005. Accordingly, the IDEIA will be applied and all citations to Title 20 of the United States Code are to sections in effect after July 1, 2005. (See *Amanda J. v. Clark County Sch. Dist.* (9th Cir. 2001) 267 F.3d 877, 882, fn. 1.)



needs of a child with a disability. (20 U.S.C. § 1401(29); Ed. Code, § 56031.) Federal law requires that children with disabilities be educated in the least restrictive environment (LRE) to the maximum extent appropriate, and authorizes removal of children with disabilities from the regular educational environment only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A).)

3. A school district is required to 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 Educ. v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 3048].) 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. (*Id.* at pp. 197, 200; *Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314 [hereafter *Gregory K.*].) The public educational benefit must be more than *de minimis* or trivial. (*Doe v. Smith* (6th Cir. 1989) 879 F.2d 1340, 1341.) The Third Circuit has held that an IEP should confer a meaningful educational benefit. (*T.R. ex rel. N.R. v. Kingwood Twp. Bd. of Educ.* (3rd Cir. 2000) 205 F.3d 572, 577.) If a parent disagrees with the IEP and proposed placement, he or she may file a request or notice for a due process hearing. (20 U.S.C. § 1415(b)(7)(A).)

4. To determine whether a school district’s offer constitutes a FAPE, the analysis must focus primarily on the adequacy of the proposed program. (*Gregory K., supra*, at p. 1314.) If the school district’s program was reasonably calculated to provide the student some educational benefit, the school district’s offer will constitute a FAPE even if the student’s parents preferred another program and even if the parents’ preferred program would have resulted in greater educational benefits to the student. (*Ibid.*)

5. An IEP is evaluated in light of information available at the time it was developed, and is not to be evaluated in hindsight. (*Adams by & Through Adams v.*

*Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)<sup>5</sup> An IEP is “a snapshot, not a retrospective[,]” and it must be evaluated in terms of what was objectively reasonable when the IEP was drafted. (*Ibid.*) The focus is on the appropriateness of the placement offered by the school district, and not on the alternative preferred by the parents. (*Gregory K., supra*, 811 F.2d at p.1314.)

6. Petitioner has the burden of proving at an administrative hearing the essential elements of his claim. (*Schaffer v Weast* (2005) 546 U.S. 49 [126 S.Ct. 528].)

## DETERMINATION OF ISSUES

ISSUE 1: DID DISTRICT’S JUNE 19, 2006, OFFER OF PLACEMENT AT SUN VALLEY MIDDLE SCHOOL FOR THE 2006-2007 SCHOOL YEAR DENY STUDENT A FREE APPROPRIATE PUBLIC EDUCATION (FAPE)?

As discussed in Legal Conclusions 2 and 3, an IEP provides a FAPE only if it (1) is designed to meet a child’s unique needs; (2) is reasonably calculated to provide some educational benefit, and (3) is the LRE for the child. As discussed in Legal Conclusion 4, the IEP must be examined based upon what was objectively reasonable at the time the IEP was developed. As determined in Factual Findings 6 to 13, inclusive, based upon what was objectively reasonable at the time the IEP was developed, District’s offer of placement in year-round school, as opposed to a school with a traditional academic calendar, for the 2006- 2007 school year did not deny Student FAPE. Student’s unique needs, and all

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<sup>5</sup> 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 Office of Educ.* (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 Sch. Dist. No. 24J* (D. Or. 2001) 155 F.Supp.2d 1213, 1236.)

concerns regarding regression and difficulty retaining knowledge, are addressed under the three-track year-round school schedule.

ISSUE 2: DID DISTRICT'S JUNE 19, 2006, OFFER OF PLACEMENT, WHICH INCLUDED ADDITIONAL INSTRUCTION TO STUDENT TO HELP HIM BECOME PROFICIENT IN THE ENGLISH LANGUAGE, DENY STUDENT A FAPE?

As determined in Factual Findings 14 to 17, inclusive, applying the law relating to FAPE cited above and based upon what was objectively reasonable at the time the IEP was developed, the June 2006 IEP did not deny Student FAPE. Student's limited English language proficiency requires additional instruction to help him become proficient in the English language. Therefore, the program District offered did not deny Student FAPE. The program is appropriate and meets Student's unique needs.

## ORDER

The District's offer of placement at Sun Valley Middle School, which is on a three-track year-round school calendar, with additional instruction to Student to help him become proficient in the English language, did not deny Student a FAPE.

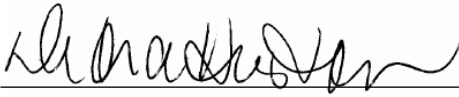
## PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. The following finding is made in accordance with this statute: *The District prevailed on all issues.*

## 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).)

IT IS SO ORDERED THIS 19th day of January, 2007.



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DEBRA R. HUSTON

Administrative Law Judge

Office of Administrative Hearings

Special Education Division