

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

]MOTHER on behalf of STUDENT,

v.

PLEASANTON UNIFIED SCHOOL DISTRICT.

OAH CASE NO. N2007050067

DECISION

Judith A. Kopec, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on April 21 through 23, and May 5 through 9, and 14, 2008, in Pleasanton, California.

Mother represented Student. A Foukien interpreter was available at all times to assist Mother during the hearing.

Karen E. Samman, Attorney at Law, represented Pleasanton Unified School District (District). Kent Rezowalli, Senior Director of Special Education for District, attended most of the hearing. In Mr. Rezowalli's absence, Sandra Betts, Assistant Director of Special Education for District, attended.

Student filed a third amended request for due process hearing (complaint) on August 2, 2007. A continuance was granted on September 19, 2007. The record remained open until June 9, 2008, when closing briefs were received, and the record was closed.

ISSUES¹

Did District deny Student a free and appropriate public education (FAPE) during the 2005-2006 and 2006-2007 school years by the following:

1. Failing to meet his academic needs in the areas of reading, spelling, writing, mathematics, and his behavioral needs?
2. Placing him in a special day class for children with communications disorders (SDC-CH)?
3. Failing to provide him a program using applied behavior analysis (ABA)?
4. Failing to provide him a one-on-one aide?
5. Failing to ensure that he met his goals concerning "wh" questions, phonemic awareness, and social skills during the 2006-2007 school year?
6. Failing to provide a behavior support plan (BSP) during the 2006-2007 school year?

CONTENTIONS OF THE PARTIES

Student contends that District did not meet his academic or behavioral needs. Student contends that there is no proof that he progressed academically, and any progress he had was the result of Mother's work with him at home. Student contends District failed to meet his needs in the area of behavior and inappropriately discontinued his BSP. Student claims that if he was not engaging in disruptive behavior at school it was because the teacher did not place any academic demands on him. Student claims that District failed to ensure that he met his goals in the areas of

¹The issues were reorganized for this decision. On the first day of the hearing, the parties resolved four additional issues pertaining to occupational therapy services, and those issues were withdrawn.

“wh” questions, phonemic awareness, and social skills. Student contends District placed him in an SDC-CH that did not meet his needs. Student contends he needed an intensive autism intervention program with a strong component using ABA, and an intensive positive behavior plan. Student contends he needs a one-to-one assistant in the classroom to meet his instructional and behavioral needs.

District contends that it met Student’s needs and he made meaningful progress in all areas, even though he did not meet all of his annual goals. District contends that Student’s behavioral needs were met through the behavior support system embedded in the SDC-CH, and by the behavioral consultation services provided to the classroom and offered to Mother. District claims that Student needed a BSP during the 2005-2006 school year, but once he become acclimated to the classroom, he no longer required one. District claims that the SDC-CH was an appropriate placement for Student. The classroom was highly structured and offered appropriate specialized instruction for Student. District also asserts that the SDC-CH classroom had a low student-to-teacher ratio and a highly structured environment so that Student did not need an aide.

REQUESTED RELIEF

Student seeks compensatory education from a nonpublic agency (NPA) in the amount of 120 hours of speech and language therapy; 1,200 hours in reading from a Lindamood Bell provider, or similar NPA; and 2,400 hours for an in-home ABA program.

FACTUAL FINDINGS

BACKGROUND INFORMATION

1. Student is an eight-year-old boy who is eligible for special education services in the category of autistic-like behaviors. Student resided with Mother in District’s geographical boundaries from fall 2005 through the end of the 2006-2007

school year. Mother moved out of District in summer 2007, and currently home schools Student.

2005-2006 SCHOOL YEAR

Student's Unique Needs

2. Student contends that District did not meet his needs in the areas of reading, spelling, writing, math, and behavior. District agrees that Student had unique needs in reading, mathematics and behavior, but disagrees that he had needs in spelling and writing. A child's unique educational needs are to be broadly construed to include the child's academic, social, health, emotional, communicative, physical and vocational needs.

3. Based on information available to it, District appropriately determined Student had unique needs in the area of reading concerning developing independent reading and comprehension skills, increasing his sight word vocabulary, and tracking skills, and in the area of math concerning counting, writing, and reading numbers, and addition and subtraction facts. Student had a behavioral need in the area of attention.

4. Martha Allen, Student's first grade teacher, persuasively established that Student did not have a need in the area of spelling or writing. Ms. Allen has been a special education teacher for 22 years with District. She holds a bachelor's degree in communication disorders, with a speech pathology emphasis; a master's degree in special education, specializing in communication handicaps; and both regular education and special education teaching credentials. Ms. Allen established that Student entered her first grade classroom in November 2005 knowing his letters and sounds, which is where an entering first grader is supposed to be. Because of this, Student did not have a unique need in spelling or writing.

Initial Administrative Placement

5. When a student eligible for special education services transfers into a school district, the receiving school district shall provide a FAPE, including services comparable to those described in the previously approved individualized education program (IEP), for a period not to exceed 30 days. The school district shall then adopt the prior IEP or develop, adopt and implement a new IEP.

6. On November 7, 2005, Student was administratively placed into a first grade SDC-CH at District's Lydiksen Elementary School taught by Martha Allen. His last IEP was from Hayward Unified School District and expired in March 2004. During the 2004-2005 school year, Student attended kindergarten at Redwood Christian School (Redwood). The classroom at Redwood was a lower level general education classroom that had 14 students, a teacher, and two aides. Sandra Betts, program specialist at the time, spoke with Student's teacher at Redwood, who described him as needing a very structured, organized program. Ms. Betts appropriately determined that Ms. Allen's SDC-CH was a comparable placement.

IEP Team Meeting of December 8, 2005

7. The IEP team met to conduct a 30-day review of Student's initial placement. The team decided to keep him in the SDC-CH and provide related services that are not at issue. The IEP indicates that Student exhibited behavior that impedes his or others' learning. Mother consented to implementation of the IEP.

NEEDS IN READING, MATH, AND BEHAVIOR

8. District offered nine goals, including three in reading, and two in math. The first reading goal addressed independent reading and comprehension. The second reading goal required Student to increase the number of sight words that he knew. The final reading goal concerned accurately tracking and reading words on a page. The first

math goal concerned counting, writing and reading numbers. The second one addressed addition and subtraction facts. Student did not show that these goals did not meet his needs. Therefore, it is found that District's goals met Student's needs in the areas of reading and math. As determined in Factual Finding 4, Student did not have any needs in spelling or writing.

9. A behaviorist from Quality Behavioral Outcomes (QBO) attended the meeting and presented the results of a classroom behavior assessment. Staff from QBO provided behavioral consultation to Ms. Allen's classroom. The team decided that QBO would develop a BSP that would be discussed at the next meeting. In the meantime, the team determined that the behavior support provided by QBO met Student's needs.

10. According to Ms. Allen, when Student first entered her classroom, he was very quiet, highly distractible, and unable to focus. Ms. Allen worked with him to become engaged with the staff and students. At the time of the December 2005 meeting, Student had some behavioral outbursts in class. Staff from QBO assisted Ms. Allen by providing ways to assist him, address his frustration, and allow him to communicate his needs. Ms. Allen persuasively established that Student's behavioral needs were met.

PLACEMENT IN THE SDC-CH AND ABA TECHNIQUES

11. Ms. Allen's classroom is for first graders who have both learning and communication needs. The classroom offers children a highly structured and consistent environment. Ralph Pampino, a behaviorist from QBO, worked with Ms. Allen to establish a behavior management system, based on ABA principles, within the classroom. Mr. Pampino holds a master's degree in psychology and is certified in behavior analysis. As described by Mr. Pampino, the basic principles of ABA include clear expectations, clear communication, positive reinforcement for appropriate behavior, and appropriate consequences for inappropriate behavior. He helped Ms. Allen to incorporate these ABA principles into her classroom. Ms. Allen's classroom utilized a token economy to provide

rewards, and visual schedules to provide structure and predictability. She broke tasks into smaller "chunks," and alternated preferred and nonpreferred activities. If this was not sufficient for a child, QBO staff worked with classroom staff and the child to develop customized strategies for the child.

12. Ms. Allen did not use discrete trial training (DTT), which is a teaching method based on ABA principles, in her classroom. Mr. Pampino persuasively established that Student did not need DTT in order to learn. DTT is designed to teach basic skills in a very structured, organized format. According to Mr. Pampino, Student already had many of the foundational skills that DTT is used to develop in students.

13. Dr. Wachtel is in the Division of Developmental and Behavioral Pediatrics, Children's Hospital Oakland, and has provided pediatric consultation services to Student intermittently over five years. Dr. Wachtel opined in a letter dated December 2005 that Student required an intensive autism intervention program consisting of an intensive positive behavior plan implemented at school and carried over to the home, and an intensive individual ABA therapy program of at least 10 to 15 hours a week. Dr. Wachtel's testimony was consistent with this. Dr. Wachtel's opinion is given limited weight. Her opinion is partially based on evaluations from two or three years prior that indicated Student had very serious behavioral needs, including aggression toward others and injury to himself. There is insufficient evidence that Student exhibited this behavior at school. Dr. Wachtel did not have any information about how Student was performing in the SDC-CH. The evidence establishes that ABA techniques were well utilized in the SDC-CH. There is insufficient evidence that Student required DTT or any additional ABA technique to meet his needs or make progress.

14. The evidence shows that Ms. Allen's SDC-CH was an appropriate placement in December 2006. It was a highly structured and consistent environment and

ABA techniques were appropriately embedded within the classroom. The SDC-CH and its utilization of ABA techniques met Student's needs.

ONE-TO-ONE AIDE

15. An IEP must include services, supplementary aids, modifications, or support that will allow the student to advance appropriately toward attaining the annual goals and make progress in the general education curriculum.

16. There was insufficient evidence that Student required a one-to-one aide in the classroom. During the 2005-2006 school year, the SDC-CH had a student-to-teacher ratio of three-to-one. Sufficient staff was available in the classroom to provide individualized attention when he needed it. For example, the aides routinely provide one-to-one assistance to children, including Student, as necessary to assist with their math work, which can be challenging for children in the class. The evidence does not show that Student required a one-to-one aide.

IEP Team Meeting of March 2, 2006

17. The IEP team met on March 2, 2006, to conduct Student's triennial review. The team found that Student continued to be eligible under the category of autistic-like behaviors. The information from the psychoeducational assessment and Ms. Allen's academic assessment corroborated decisions made about Student's program in December 2005. The team found that the goals adopted in December continued to be appropriate. The team continued to place Student in Ms. Allen's SDC-CH class. Mother consented to implementation of the IEP.

NEEDS IN READING, MATH, AND BEHAVIOR

18. There is no evidence showing that Student's needs changed since December 2005. Accordingly, for the reasons described in Factual Finding 8, the goals

from the March 2006 IEP remained adequate to meet Student's needs in the areas of reading, and math.

19. The team adopted a BSP that targeted screaming, tantrum behavior, aggression, and noncompliance, which were behaviors about which Mother was concerned. It offered strategies to prevent the behavior, such as using clear and consistent instructions; instructional strategies, such as teaching Student how to appropriately gain the teacher's attention; and reactive strategies, such as providing consistent and predictable consequences for inappropriate behavior. The IEP provided that Student continued to receive behavioral support through QBO's consultation with Ms. Allen, and that QBO's behaviorist was available to consult with the in-home behaviorist provided through the Regional Center. Because of Mother's reported difficulty with Student's behavior at home, the IEP team offered her an opportunity to meet with a behaviorist from QBO to discuss strategies that would assist her with Student's behavior at home.² The BSP, the SDC-CH's classroom management system, and QBO's behavioral consultation services to the teaching staff and Mother met Student's needs in the area of behavior.

PLACEMENT IN THE SDC-CH AND ABA TECHNIQUES

20. There is no evidence showing that Student required a different classroom placement or additional ABA techniques in order to meet his needs. For the reasons described in Factual Findings 11 through 14, District provided him an appropriate program in the SDC-CH based on ABA techniques.

²Mother met with a QBO behaviorist in February 2006 to discuss strategies to address Student's problematic behavior at home.

ONE-TO-ONE AIDE

21. Mother requested one-to-one aide support for Student at this meeting. She sincerely testified that she believed an aide would assist him develop social skills because he did not know how to play with other children. Mother observed that when she came to pick Student up, he was sitting by himself on a bench. She also noted that when they were at the library listening to a story being read, Student was looking around and not listening. Mother was concerned about an incident that occurred after a session with Jeanne Rivera Ayala, the school psychologist who performed Student's triennial assessment. Ms. Rivera Ayala was waiting with Student for Mother to pick him up at school. As Mother approached them, Student began to disrobe. Mother believed this demonstrated that Student had a pattern of conduct warranting a one-to-one aide.

22. Ms. Rivera Ayala holds a master's degree in psychology and a school psychology credential. She recommended that Student stay in Ms. Allen's class because he was adjusting to it and making progress. She did not recommend an aide for Student. Ms. Rivera Ayala persuasively testified that initially, Student had a difficult time with the structure of the class. However, during the course of her assessment, she observed that he adjusted to the class, understood what was expected, and acted as an appropriate student in the class. Ms. Rivera Ayala had not observed any other behavior similar to the incident in which Student disrobed upon seeing his Mother. Mother's concern about this incident is understandable; however, the evidence does not show that it was part of a pattern of more serious conduct at school that impeded Student's learning. Weighing all the evidence, and giving considerable weight to Mother's experience and concerns, Student did not require a one-to-one aide in March 2006.

IEP Team Meeting of May 11, 2006

23. Mother requested an IEP team meeting to discuss her request for in-home behavioral help. Ms. Allen reported that Student was making good progress and his skills

were at late kindergarten level. She reported that Student followed classroom rules and did not exhibit the type of behavior that Mother observed at home. The team recommended that Student be retained in first grade for the following school year so that he could gain additional maturity and growth. The team also recommended that homework be reduced or eliminated, since the behavior that concerned Mother at home revolved around homework. In addition, the QBO behaviorist was available to consult with Mother and the Regional Center behaviorist. Mother did not consent to implementation of this IEP addendum.

NEEDS IN READING, MATH, AND BEHAVIOR

24. A school district is not required to address a student's behavior problems that occur outside of school when the student demonstrates educational progress in the classroom.

25. Mother described Student's behavior at home as screaming, tearing homework papers, crying, and, at times, hitting her. Much of the aberrant behavior was precipitated by Mother attempting to have Student do his homework. Mother did not like the recommendation that homework be reduced or eliminated, because she wanted Student to be challenged academically and do homework like other children. According to Ms. Allen, the offer to reduce homework was appropriate under the circumstances. If doing homework was creating additional stress on the family, the homework can be reduced to alleviate the stress.

26. The evidence does not show that Student's behavior at home impeded his educational progress in the classroom. Ms. Allen established that Student was progressing on all of his goals, and any problematic behavior in school was effectively addressed. Student did not show that he required in-home behavioral services in order to meet his behavioral or academic needs. His behavior was not problematic at school. The suggestion to reduce or eliminate homework was reasonable; there was no

evidence that Student would not make adequate progress if these changes were made. District continued to make the services of the behaviorist available to Mother to assist her with problems she had at home. Therefore, Student did not require in-home behavioral services to meet his needs. Further, there was no evidence that Student's needs in the areas of reading or math were not being met.

PLACEMENT IN THE SDC-CH, ABA TECHNIQUES, AND ONE-TO-ONE AIDE

27. The evidence does not show that the SDC-CH and its use of ABA techniques did not meet Student's needs. Nor did the evidence show that Student required a one-to-one aide to meet his needs.

FAPE during 2005-2006 School Year

28. District met Student's needs in the areas of reading, math, and behavior during the 2005-2006 school year. He did not have needs in the areas of spelling and writing. Mother sincerely testified that she believed that Student did not have any behavior problems at school because he was not being academically challenged. However, the evidence does not support this. District met Student's behavioral needs. The SDC-CH program and its use of ABA techniques met Student's academic and behavioral needs. The evidence does not show that Student needed a one-to-one aide. District offered a program that was reasonably calculated to provide Student with educational benefit. District did not deny Student a FAPE during the 2005-2006 school year.

2006-2007 SCHOOL YEAR

Student's Unique Needs

29. District appropriately determined that Student had unique needs in the area of reading concerning developing independent reading and comprehension skills. Ms. Allen persuasively established that Student was working at grade level in math

and he no longer had a unique need in that area. Student did not show that he had needs in spelling or writing.

30. From July 2006 to January 2007, on behalf of Regional Center, Menaka Dealwis provided social skills training to Student at home using ABA techniques. Student's behavior was so challenging, it was necessary to have two therapists work with him for several months. His behavior included screaming, hitting, biting, scratching, throwing things, and having lengthy tantrums. On one occasion, Student attempted to pull down a large television. In fall 2006, Ms. Tofte, one of Ms. Dealwis' supervisors who also worked with Student at home, observed him in Ms. Allen's classroom. Ms. Tofte described Student as being very well behaved at school. The evidence shows that Student did not exhibit the problematic behavior at school that Mother observed at home. Nevertheless, Student continued to have a need in the area of behavior concerning attention and focus.

IEP TEAM MEETING OF OCTOBER 26, 2006

31. The team met to conduct Student's annual review on October 26, 2006. The District continued to offer placement in Ms. Allen's SDC-CH. The IEP indicated that Student did not exhibit behavior that impeded his or others' learning. The IEP noted that QBO's behavioral services were available if the need arose for Student. Mother consented to implementation of the IEP.

Needs in Reading and Behavior

32. One reading goal required Student to increase his reading level for independent reading and comprehension. The second reading goal concerned phonemic awareness and required Student to identify beginning, middle, and final sounds.

33. The evidence shows that Student made progress in his goals during the 2005-2006 school year. For example, his reading went from level A to level 3, and he

gained skills in categorization to develop vocabulary. The evidence shows that his reading goal met his needs.

34. Ms. Allen established that Student did not have any behavioral problems at school in fall 2006. After a year in her classroom, Student had matured and developed; he fit in well and participated fully. Although Student was exhibiting some very challenging behavior at home for his Mother and the Regional Center's providers, he was not engaging in similar conduct at school. The evidence shows that Student's behavioral needs continued to be met by the behavioral management system embedded in the SDC-CH, and QBO's consultation services to Ms. Allen. Student did not require a BSP.

PLACEMENT IN THE SDC-CH, ABA TECHNIQUES, AND ONE-TO-ONE AIDE

35. There is no evidence showing that Student needed a one-to-one aide, additional ABA techniques, or another classroom placement to meet his needs.

IEP Team Meeting of April 4, 2007

36. The team met on April 4, 2007, to discuss Student's behavioral needs. District offered Student four hours a month of in-home behavior support for Mother. Mother did not consent to implementation of this IEP.

NEEDS IN READING AND BEHAVIOR

37. Ms. Allen reported that Student had a few more serious behavioral incidents, but they were managed and had not been repeated. In February 2007, Student

received a "stop sign" for spitting at girls on the playground.³ There was another incident of Student spitting at someone shortly after this. After the first incident, Student was unable to have recess; after the second, he lost some time in the center where he participates in activities with a regular education class. Ms. Allen followed her classroom's behavior management system when responding to Student's inappropriate behavior. She persuasively established that using the system effectively addressed Student's inappropriate behavior, which did not recur. Mr. Pampino persuasively established that Student's behavior at school at this time was not the same that Mother observed at home. Student followed the rules, listened to directions, and was acting appropriately at recess.

38. Mother reported that after the incident with the "stop sign," Student's behavior changed significantly: he no longer wanted to go to school, and he did not want to get on the school bus. Student often arrived at school late, and he had a difficult time transitioning into the classroom when he was late. Student's behavior at home started to interfere with his educational progress. To prevent this and assist Mother, District offered her four hours of in-home behavioral support by a QBO behaviorist. Mr. Pampino offered to personally provide these services to Mother to make sure that she would receive the assistance she needed.

39. Considering all of the evidence, and giving great weight to Mother's testimony and her concerns about Student's behavior, it is determined that District continued to meet Student's needs in the area of behavior without a BSP. Student did not show that District did not meet his needs in reading.

³A "stop sign" is given to a child who engages in inappropriate behavior, such as spitting, to inform the child that the behavior is not acceptable. It typically results in the child losing a reward or privilege.

PLACEMENT IN THE SDC-CH, ABA TECHNIQUES, AND ONE-TO-ONE AIDE

40. The evidence does not show that Student needed a one-to-one aide, additional ABA services, or a different classroom placement.

IEP Team Meeting of June 13, 2007

41. The IEP team met on June 13, 2007, to discuss Student's services, placement, and goals. Ralph Pampino reported that Student's on-task behavior was age-appropriate, and that Student was doing well with the classroom management system used in the SDC-CH. District continued to offer Mother four hours a month of behavioral services to provide parent training while the extended school year was in session. At Mother's request, District offered three additional goals addressing receptive and expressive language. Mother did not consent to implementation of the IEP.

NEEDS IN READING AND BEHAVIOR

42. Mr. Pampino observed Student in the classroom between the April and June 2007 IEP team meetings. He observed Student behaving appropriately: he followed the classroom's routine, did his work, and appropriately transitioned to other activities. Mr. Pampino persuasively opined that Student may be exhibiting different behavior at home and school as a result of the different environments. Student may have learned that in the classroom, he cannot get away with problematic behavior, and that there were positive rewards or 'pay offs' for him acting appropriately at school. At home or elsewhere, the reactions he received for engaging in problematic behavior were different than those he received in the classroom. The reactions he received outside of school for his behavior gave him a 'pay off' for acting inappropriately that he did not receive at school. Mr. Pampino opined that as a result of the SDC-CH's structure and consistent application of the behavioral management system, Student learned to control his inappropriate behavior and meet the expectations of the classroom. In his view,

Student responded well to the behavioral strategies in place in Ms. Allen's classroom. The evidence shows that District met Student's behavioral needs and he did not need a BSP.

43. According to Ms. Allen, by June 2007, Student was reading at level 7 and working towards level 8. Mother sincerely testified that she believed that any progress Student was making was a result of work she was doing with him at home, using ABA techniques under the guidance of a consultant. While Mother's efforts with Student may have aided his progress, there is insufficient evidence to determine that all of his progress was due to her efforts and not those at school. The evidence shows that District met Student's needs in the area of reading.

PLACEMENT IN THE SDC-CH, ABA TECHNIQUES, AND ONE-TO-ONE AIDE

44. Joan Wenters, Ph.D., in the Division of Developmental and Behavioral Pediatrics at Children's Hospital Oakland, assessed Student in January and February 2008. She recommended that Student be placed in an SDC for children with mild cognitive deficits. In her opinion, Student would do better in a class that was not specifically geared to children with autism. According to Dr. Wenters, Student might initially need an aide, but once he learned the routine of the class, she believed he would be able to appropriately work in a small group setting. Dr. Wenters' recommendation, although provided seven months after Student last attended school in District, is consistent with the program District provided him in the SDC-CH. The evidence shows that District met Student's academic and behavioral needs in Ms. Allen's SDC-CH classroom without providing one-to-one assistance, or additional ABA techniques.

Goals Concerning "Wh" Questions, Phonemic Awareness, and Social Skills

45. Student contends that District failed to ensure he met his goals concerning "wh" questions, phonemic awareness, and social skills. At the October 2006 IEP team meeting, the team developed a language goal requiring Student to answer mixed "wh" questions when presented with a picture and a question prompt. Another goal required him to demonstrate appropriate conversational skills, including greeting peers, expressing emotions to peers, and using language to obtain what he wants with peers and adults. A reading goal concerned phonemic awareness and required Student to identify beginning, middle, and final sounds.

46. Student presented evidence that in July 2007 and February 2008, a speech and language pathologist assessed Student and found he had not mastered answering "wh" questions. Student relies on this to show that he did not benefit from Ms. Allen's classroom. Ms. Allen acknowledged that Student had not mastered all "wh" questions. However, she persuasively testified that Student went from being a child unable to process language to one who was able to answer "Who?" and "What?" questions, and he was making progress on answering "When?" and "Where?" questions. He still had difficulty with "How?" questions, but these are very difficult for children with language delays to master.

47. Ms. Allen established that Student made meaningful progress on the phonemic awareness and social skills goals. Student was independently making initial and final sounds, but needed to continue working on the middle sounds. He needed prompting to greet others, but was more comfortable interacting with peers, and was helping other children. District was not required to ensure that he meet any of his goals. However, it met its obligation to make sure that his needs were met and he made adequate progress on all of his goals.

FAPE During 2006-2007 School Year

48. District met Student's needs in the areas of reading and behavior during the 2006-2007 school year. He did not have needs in the areas of spelling, writing, and math. District met Student's behavioral needs without a BSP. The SDC-CH program and its use of ABA techniques met Student's academic and behavioral needs. The evidence does not show that Student needed a one-to-one aide. District offered a program that was reasonably calculated to provide Student with educational benefit. District did not deny Student a FAPE during the 2006-2007 school year.

LEGAL CONCLUSIONS

1. As the party seeking relief, Student has the burden of proving that District did not offer or provide him a FAPE. (*Schaffer v. Weast* (2005) 546 U.S. 49, 62 [126 S.Ct. 528].)

2. A child with a disability has the right to a FAPE under the Individuals with Disabilities in Education Improvement Act (IDEA) and California law. (20 U.S.C. §1412(a)(1)(A); Ed. Code, § 56000.) 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(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 needs of a child with a disability that are needed to assist the child to benefit from instruction. (20 U.S.C. § 1401(29); Ed. Code, § 56031.) A child's unique educational needs are to be broadly construed to include the child's academic, social, health, emotional, communicative, physical and vocational needs. (*Seattle Sch. Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500, citing J.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2106.)

3. 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 Educ. v. Rowley* (1982) 458 U.S. 176, 200 [102 S.Ct. 3034].) A school district must offer a program that meets the student's unique needs and is reasonably calculated to provide more than a trivial or minimal level of progress. (*Amanda J. v. Clark County Sch. Dist.* (9th Cir. 2001) 267 F.3d 877, 890, citing *Hall v. Vance County Bd. of Educ.* (4th Cir. 1985) 774 F.2d 629, 636.) An IEP is evaluated in light of information available at the time it was developed; it is not judged in hindsight. (*Adams v. Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) The IEP's goals and methods are evaluated as of the time they were developed to determine whether they were reasonably calculated to confer an educational benefit to the student. (*Ibid.*)

DID DISTRICT DENY STUDENT A FAPE DURING THE 2005-2006 AND 2006-2007 SCHOOL YEARS BY:

Failing to meet his academic needs in the areas of reading, spelling, writing, mathematics, and his behavioral needs?

4. An IEP must include annual goals designed to meet the needs that result from the child's disability to enable the child to be involved in and make progress in the general curriculum, and that meet the child's other education needs that result from his or her disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); Ed. Code, § 56345, subd. (a)(2).) An IEP must include services, supplementary aids, modifications, or supports that will allow the student to advance appropriate toward attaining the annual goals, to be involved in and make progress in the general education curriculum, and to be educated and participate with other students with disabilities and those who do not have disabilities. (20 U.S.C. § 1414(d)(1) (A)(IV); Ed. Code, § 56345, subd. (a)(4).)

5. When a student transfers with an IEP into another school district not operating under the same local plan, the receiving school district shall provide the student with a FAPE, including services comparable to those described in the previously approved IEP, in consultation with the parents, for a period not to exceed 30 days. The school district shall then adopt the prior IEP or develop, adopt and implement a new IEP. (Ed. Code, § 56325, subd. (a)(1).)

6. An IEP team must consider whether a child's behavior impedes his or her learning or that of others. (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.346(a)(2)(i); Ed. Code, § 56341.1, subd. (b)(1).) If the team determines that it does, it must consider the use of positive behavioral interventions and supports, and other strategies to address the behavior. (*Id.*) An IEP that does not appropriately address behavior that impedes a child's learning denies a student a FAPE. (*Park v. Anaheim Union High Sch. Dist.* (9th Cir. 2005) 464 F.3d 1025; *Neosho R V Sch. Dist., v. Clark* (8th Cir. 2003) 315 F.3d 1022, 1028; *San Rafael Elem. Sch. Dist. v. Cal. Special Educ. Hearing Office* (N.D. Cal. 2007) 482 F.Supp.2d 1152, 1161-1162; *Escambia County Bd. of Educ. V. Benton* (S.D. Ala. 2005) 406 F.Supp.2d 1248.) A school district is not required to address a student's behavior problems that occur outside of school when the student demonstrates educational progress in the classroom. (*San Rafael Elem. Sch. Dist. v. Cal. Special Educ. Hearing Office, supra*, 482 F.Supp. at p. 1160.) A school district is required to address behavioral problems extraneous to the academic setting only to the extent they affect the student's educational progress. (*Id.* at p. 1162.)

7. As determined in Factual Findings 8 through 10, 18, 19, 26, 33, 34, 37 through 39, 42, and 43, District met Student's needs in the areas of reading and behavior during the 2005-2006 and 2006-2007 school years. As determined in Factual Findings 8, 18, and 26, District met Student's need in the area of math during the 2005-2006 school year.

8. As determined in Factual Findings 4 and 29, Student did not have any needs in the areas of spelling or writing for either the 2005-2006 or 2006-2007 school year. As determined in Factual Findings 29, Student did not have any need in the area of math for the 2006-2007 school year.

Placing him in a special day class for children with communications disorders (SDC-CH)?

9. As determined in Factual Findings 11 through 14, 20, 27, 35, 40, and 44, District met Student's needs and provided him meaningful educational benefit in the SDC-CH.

Failing to provide him a program using ABA?

10. As determined in Factual Findings 11 through 14, 20, 27, 35, 40, and 44 District utilized appropriate ABA techniques to meet Student's needs and provide educational benefit in the SDC-CH. The evidence does not show that Student required additional ABA techniques or programs in order to meet his needs or receive adequate educational benefit.

Failing to provide him a one-on-one aide?

11. As determined in Factual Findings 16, 22, 27, 35, 40, and 44, District met Student's needs and provided educational benefit in the SDC-CH without a one-to-one aide. The SDC-CH had a low student-to-teacher ratio and the flexibility to provide individualized assistance if needed. The evidence does not show that Student required a one-to-one aide to meet his needs or receive adequate educational benefit.

Failing to ensure that he met his goals concerning “wh” questions, phonemic awareness, and social skills during the 2006-2007 school year?

12. As determined in Factual Findings 46 and 47, District met Student’s needs and he made adequate educational progress during the 2006-2007 school year. Student made progress on all his goals, including those involving “wh” questions, phonemic awareness, and social skills. While Student did not meet the goals in these areas, he showed meaningful progress on each of them. Student’s progress is consistent with his significant language delays resulting from his disability.

Failing to provide a behavior support plan (BSP) during the 2006-2007 school year?

13. As determined in Factual Findings 34, 39, and 42, Student did not require a BSP during the 2006-2007 school year to meet his needs. The aberrant behavior that Student exhibited at home was not present at school. The few times that Student exhibited problematic behavior, such as spitting at other students, Student responded well to the behavioral management system.

14. Based on Factual Findings 28 and 48 and Legal Conclusions 7 through 13, it is determined that District did not deny Student a FAPE during either the 2006-2007 or the 2007-2008 school year.

ORDER

Students’ request for relief is denied.

PREVAILING PARTY

Education Code section 56507, subdivision (d), requires a decision to indicate the extent to which each party prevailed on each issue heard and decided. 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 90 days of receipt of this decision. (Ed. Code, § 56505, subd. (k).)

Dated: June 27, 2008

A handwritten signature in black ink, appearing to read "J. A. Kopec", written over a light gray rectangular background.

JUDITH A. KOPEC

Administrative Law Judge

Office of Administrative Hearings