

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SEQUOIA UNION HIGH SCHOOL DISTRICT,

v.

PARENT on behalf of STUDENT.

OAH CASE NO. 2008080060

DECISION

Administrative Law Judge (ALJ) Charles Marson, Office of Administrative Hearings (OAH), State of California, heard this matter in Atherton, California, on October 1 and 2, 2008.

The District was represented by Kathryn Alberti, Attorney at Law. Linda Common, the District's Chief Administrator of Special Education, was present throughout the hearing.

Student was represented by her Mother.

The District filed a due process hearing request on July 28, 2008. On August 18, 2008, OAH granted a continuance of the dates for hearing. At the conclusion of the hearing, the parties were given leave to file closing briefs by October 14, 2008. On that date, the District submitted a brief and the record was closed.

ISSUE

The only issue at the due process hearing was whether the special education placement and services offered by the District to Student at the Individualized Education

Plan (IEP) meetings on March 24 and April 7, 2008, constituted the offer of a free and appropriate public education (FAPE). The District seeks an order so declaring.

BACKGROUND

1. Student is a 15-year-old female who resides with Parents within the geographical boundaries of the District. She is eligible for, and has been receiving, special education and services due to autistic-like behaviors.

2. Student's autism affects her academic, communication, and social skills. She is athletic, energetic, and relatively well behaved, but her reading skills approximate those of a typical student in the first or second grade. She does not learn aurally. She has some delays in processing and in eye-hand coordination.

3. In the school year (SY) 2006-2007, Student was in the eighth grade at Hillview Middle School (Hillview) in the Menlo Park City Elementary School District. On March 1, 2007, Student's IEP team at Hillview convened for her triennial IEP meeting. The IEP written at that meeting (the transition IEP) was for one year, and was intended to apply to Student's remaining three months at Hillview and most of her freshman year in high school. The transition IEP continued Student's ongoing placement in regular education classes with the support of a one-to-one paraeducator (aide) who attended all classes with Student, prompted her in social and academic situations, and modified her curriculum in all academic classes. It also provided for case management by an inclusion specialist, speech and language services for pragmatic language, behavior intervention by a specialist from a nonpublic agency, and one hour a day of resource specialist assistance in math, and provided a similar program for the extended school year. Parents agreed to the IEP, which is Student's last signed and implemented IEP and is still being used by the District.

4. Student entered the District's Menlo-Atherton High School (Menlo-Atherton) as a ninth grader at the beginning of SY 2007-2008. Her annual IEP meeting began on March 24, 2008, and was concluded on April 7th, 2008. The IEP offer that resulted from

those meetings (the offered IEP) was similar to the transition IEP except that, for academic subjects, it offered placement in the special day class (SDC) for Low Intellectual Functioning students (the LIF class) at Menlo-Atherton.¹ The IEP offered the support of a one-to-one aide throughout the school day, case coordination by an inclusion specialist, individual and small group speech and language training once a week, adapted physical education (APE) twice a week (to be combined with regular PE), and an elective regular education course. Since, under the offered IEP, Student would receive instruction in math, science, social science, and English, as well as speech and language services, in the SDC, she would spend 84 percent of her time outside regular education classes and activities, and 16 percent of her time in regular education classes and activities while engaged in regular PE three days a week and in her elective course. Parents declined the offer.

5. Parents have been unwilling to identify any specific flaws they perceive in the offered IEP, except to state that they wish Student to remain in regular education classes. Mother, who represented Student at hearing, declined to identify any issues in her prehearing conference statement. She also declined to provide an opening or closing statement, and did not file a closing brief. When asked to specify her contentions, she stated only that the exhibits speak for themselves. The ALJ has therefore attempted to infer Parents' concerns from Mother's testimony, her questioning of witnesses at hearing, and the documentary evidence, and to respond to them.

¹ The notes of the IEP meeting mention the possibility that Student might appropriately be placed in an SDC for autistic students at Woodside High School. However, the parties have understood and treated the offered IEP as proposing academic instruction only in the LIF class at Menlo-Atherton, so it is assumed here that the offer is for that class.

APPROPRIATENESS OF THE LIF CLASS AT MENLO-ATHERTON

6. The District's offer to place Student in its LIF class at Menlo-Atherton was a response to Student's failure to benefit from regular education academic classes. As soon as Student began her ninth grade year in regular education classes at Menlo-Atherton pursuant to the transition IEP, her teachers became concerned that she did not understand the material and could not access the curriculum. SDC teacher Art Cristerna, who was Student's case manager and was responsible for coordinating her academic program, testified that he, Student's academic teachers, and Linda Common, the District's Chief Administrator of Special Education, held a series of meetings in the fall of 2007 to address these concerns. The teachers stated they were unable to grade Student because her curriculum was far different from that of the typically developing students in their classes, and that they did not know whether Student understood even her greatly modified curriculum. However, Parents insisted that Student should remain in regular education classes, so the group continued to attempt to implement the transition IEP.

7. Because of the teachers' reports, Ms. Common observed Student in several of her academic classes. Ms. Common concluded that the teachers were correct: Student learned nothing from the regular education curriculum, and had difficulty staying quiet while work and discussion went on around her that she did not understand. No witness disagreed with that description.

8. In an SDC setting, however, Student was more relaxed and comfortable. Student's case manager Art Cristerna testified that Student sometimes dropped in on his SDC class to eat lunch, although she was not assigned there, and engaged in some social interaction with other students. Ms. Common also observed Student's interactions in Mr. Cristerna's SDC, and saw "a whole different child," happy and smiling, saying hello to her and to fellow students. Ms. Common attributed this change to a release of energy after being forced to be quiet for so long in regular classes. She testified that Student would do

much better in a smaller, more spontaneous setting like the LIF class, where she could interact with students closer to her own cognitive level and receive information visually rather than by lecture and discussion.

9. The LIF class at Menlo-Atherton was described at hearing by its teacher, Susan Price. Ms. Price has a master's degree in special education, a multiple subject clear credential, and a specialist credential in teaching the learning handicapped. She has taught the LIF class for four years, and before that, had extensive experience in teaching a variety of small special education classes, including other LIF classes. She has taught several autistic students in the LIF class, and has taken three courses at San Francisco State University in the teaching of autistic students.

10. Ms. Price established that Menlo-Atherton's LIF class is designed for the needs of students (like Student) who are at the upper end of the Limited Intellectual Functioning designation. She teaches them all of the subjects normally taught in the District's high school curriculum, but does so in a slower, hands-on fashion in a small class setting with a higher ratio of faculty to students. She conforms the academic curriculum individually to the needs of each student, in order to work with each on his or her IEP goals. She makes individualized modifications for English, math, algebra, world history, U.S. history, government, economics, general science, biology, and driver's education. Students are also encouraged to work at jobs arranged for them in the community.

11. Ms. Price testified that a number of other professionals routinely provide services to her LIF students. One is Jim Bell, the District's expert in individualizing PE programs for disabled students, who creates an APE program for each student in the class who needs one. An occupational therapist, assistive technology providers, an audiologist, and a speech and language pathologist also provide services to the LIF students.

12. Ms. Price attended the March 24 and April 7, 2008 IEP meetings, is familiar with Student's records and needs, and believes that her LIF class is an appropriate

placement for Student. Other District witnesses also persuasively testified that the LIF class would be appropriate for Student's academic instruction. Inclusion specialist Crawford testified that the LIF class was a proper placement for Student because it uses the visual learning techniques that Student requires, and teaches life skills. At present, when Student buys food in the cafeteria, she hands over a bill and accepts the change, but does not understand the concept of change and cannot determine how much she is owed. Ms. Crawford testified that the LIF class could teach her that and related skills.

13. Speech and language pathologist Susan Fan testified that she meets Student once a week to work on her goals. Like other District witnesses, Ms. Fan emphasized that Student is a visual learner with strong visual skills. Her difficulty with reading comprehension can be addressed best in the LIF class because it employs visual learning methods and would give Student opportunities to practice the skills she learns in therapy in other settings.

14. Biology teacher Nancy Day agreed that the LIF class could teach Student life skills not addressed in regular education classes, and emphasized that in the interactive LIF class she would have many more opportunities to practice social skills. Ms. Common confirmed that in the LIF class substantial attention is paid to social skills and verbalization, which are important areas of need for Student.

15. The District's evidence that the LIF class is an appropriate placement for Student was not contradicted by Parents. Mother testified that she did not know whether placement in the LIF class was appropriate or not, because she had not visited the class. However, as shown below, she had the opportunity to do so. Ms. Price testified that three observers sent by Mother came to watch and evaluate her LIF class. None of those observers testified, and no report of such a visit was offered in evidence.

16. The undisputed evidence showed that placement of Student in the LIF class at Menlo-Atherton for academic instruction would address her unique needs and would be reasonably calculated to allow her to access the curriculum and benefit from it.

LEAST RESTRICTIVE ENVIRONMENT

17. A student must be placed in the least restrictive environment (LRE) in which she can be educated satisfactorily. A special education student must be educated with nondisabled peers to the maximum extent appropriate, and may be removed from the regular education environment only when the nature or severity of the student's disabilities is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. Whether a student can be mainstreamed in regular education classes is determined by balancing the educational benefits of full-time placement in regular classes, the non-academic benefits of that placement, the effect the student would have on the teacher and children in the regular classes, and the costs of mainstreaming the student. The last factor is not relevant here.

Academic classes

ACADEMIC BENEFITS

18. Several of Student's regular education academic teachers testified at hearing that Student could not access the regular education curriculum and was not benefiting from their classes. Typical of the teachers' testimony was that of Ellen Jacobson, who taught Student's ninth grade World Studies class. Ms. Jacobson's curriculum was organized around the study of colonialism and current events in countries in Asia, Africa, and South America. She testified it was apparent that Student understood nothing of her curriculum, so she sought out less challenging material for Student to use. Ms. Jacobson gave Student simpler texts used for English language learners, but Student still did not grasp the material. Student did not do any of the assigned work. Although Ms. Jacobson

emailed homework assignments to Parents every week, the assignments were never returned. When Ms. Jacobson was teaching the history of colonialism in South Africa, she approached Student at her desk and learned that Student, under the supervision of her one-to-one aide, was coloring the South African flag. Coloring was Student's favorite activity, and was all she did in World Studies class.

19. Inclusion specialist Jeanne Crawford has been a special education teacher since 1976 and has extensive training and experience in working with autistic students. In SY 2007-2008, she worked extensively with Student's aide to fashion materials suitable for Student. Ms. Crawford established that Student, like many other autistic children, is a visual learner, not an auditory learner, and therefore cannot learn well in a class that employs lectures and discussion. In an attempt to give Student meaningful work in her mainstream classes, Ms. Crawford and the aide gave Student definitions of words, which she copied well but did not understand. They also gave her flags and maps to color, because they held her attention. Ms. Crawford testified that she felt she was creating "busywork" to keep Student quiet. When she told this to school administrators, they told her that the school was trying to implement the full inclusion program called for in the transition IEP because that was what Mother wanted.

20. With only minor variations, every teacher of an academic subject who testified described the same experience. Gabriela Nevarez, who taught a modified math class in an SDC, testified that Student lacked the basic skills required for understanding double digits, and that her one-to-one aide was doing her classwork. Elizabeth Bannon, Student's ninth grade English teacher, testified that regular education was not suited to Student's abilities. Kristin Broussard, Student's tenth grade English teacher, and James Corboy, Student's Earth Science teacher, testified that Student simply colored things in their classes. Nancy Day, Student's biology teacher, testified that her course was far beyond Student's capabilities. Doss Welsh, Student's sophomore year World Studies

teacher, testified that he tried to get Student to use a third grade text, but Student's aide found it necessary to simplify the material even further. These teachers uniformly and credibly testified that Student did none of the required work, turned in none of the homework, had no performance that could be meaningfully graded, and could not access the regular education curriculum.

21. No witness contradicted the testimony of Student's academic teachers in any way. In questioning witnesses, Mother drew attention to progress reported on Student's goals from the eighth grade. However, the nature of that progress, and the level at which it occurred, do not demonstrate that Student could access any regular high school academic curriculum. On Student's reading goal, for example, it was reported that Student was able to sequence simple sentences and answer "who" questions ninety percent of the time when shown a picture, and was progressing on "what" questions by answering them correctly in two out of four attempts. On Student's math goal, she could now perform such acts as combining a five dollar bill with three one dollar bills when asked to present eight dollars. These accomplishments, while welcome, are remote from the skills required in regular high school academic classes.

22. In preparation for the March 2008 IEP meeting, Parents sought an observation and report from Consultants for Learning and Autism Support Services (CLASS), a private group of behaviorists. CLASS sent Erica Andresen, a board certified behavior analyst, to Menlo-Atherton to observe Student in her classes and write a report with recommendations. Ms. Andresen observed Student in all her classes and reported on her observations. Her report was largely consistent with the testimony of District witnesses. Ms. Andresen reported that Student's curriculum was modified so that she did not do the same work as her classmates; instead, her work was "parallel in nature." Ms. Andresen further reported that Student did not attend to the teacher or her classmates, and instead worked exclusively with her aide. At Parents' request, Ms. Andresen made

many recommendations for adapting Student's program to regular education classes. However, she made no recommendation that Student continue to be placed in those classes. She stated only that Student "should be expected to participate in some of the curriculum" of those classes. Ms. Andresen did not testify at hearing.

23. At hearing, Parents' only description of Student's abilities was less optimistic than the District's. Confirming a claim that she made in a prehearing motion to quash a subpoena, Mother testified that Student is nonverbal, cannot answer questions, and does not understand concepts such as yes, no, where, when, truth, or lies.

24. The evidence showed persuasively and without contradiction that Student cannot access the curriculum presented in regular education academic classes, even with appropriate accommodations and modifications, and cannot benefit academically from those classes.

NONACADEMIC BENEFITS

25. Student's social skills are largely undeveloped. Social skills development was the object of six of the eight elementary school goals carried over from Student's transition IEP.

26. Student's academic class teachers all testified that Student never initiated contact with her peers in academic classes. When another student greeted her, she was incapable of responding, even by just saying "Hi," unless prompted by her aide. Ms. Andresen of CLASS confirmed those observations, reporting that "throughout [her] observations it was apparent that [Student] did not attend to her peers, respond to peer actions or initiations, or initiate with her peers."

27. Student's case manager Art Cristerna and Chief Administrator Linda Common testified that Student had no social contact with her peers in academic classes because the lecture and discussion format of the classes deprived her of any opportunity to acquire and practice social skills. Several of Student's teachers agreed. Peer interaction

during those classes occurred only in class discussions, in which Student could not participate. The District witnesses agreed that Student needed a more interactive environment in order to acquire and practice social skills.

28. The evidence persuasively showed that Student received no nonacademic benefit from her participation in regular education academic classes. There was no evidence to the contrary.

EFFECT ON OTHER STUDENTS AND ON TEACHERS

29. World Studies teacher Jacobson testified that Student frequently appeared “wound up” in her class and sometimes emitted a high-pitched squeal. On those occasions, Ms. Jacobson had to ask Student’s aide to take her outside for a break. Biology teacher Day and English teacher Broussard testified that similar incidents occurred in their classes. However, no teacher testified, and the evidence did not show, that these incidents seriously disrupted the mainstream classes. Ms. Day testified that the incidents were disruptive and distracting at first, but the students eventually got used to it.

30. The transition IEP contained a behavior support plan and provided for support by a behaviorist through the end of eighth grade and at the beginning of the ninth. By March 2008, when the offered IEP was written, Student’s behavior had improved enough that the District believed ongoing behavioral support beyond that provided by the one-to-one aide was no longer necessary, and the IEP does not offer it. In response to the question, “Does student’s behavior impede learning of self or others?” on the IEP form, District staff checked the “No” box.

31. The evidence showed that Student, by making noises or by acting on excess energy, sometimes caused mild disturbances in her academic classes. However, these incidents were not serious, and teachers and other students were able to adjust to them. Student’s behavior did not significantly interfere with her academic classes.

32. On balance, the evidence showed that, although Student was not disruptive, she could not derive academic or nonacademic benefit from her regular education academic classes, and therefore could not be satisfactorily educated in them. Instead, the LRE for Student's academic instruction is the LIF class at Menlo-Atherton, a smaller, more interactive class with students more like her in cognitive ability, where her curriculum can be more readily modified to her capabilities, where visual learning is stressed, and where opportunities for learning and practicing social skills are maximized. The evidence showed that Student can be satisfactorily educated in that class.

Elective mainstream class

33. In her freshman and sophomore years, Student has taken guitar class as an elective, and would continue to do so under the offered IEP. She succeeds there, enjoys the class, and mixes well with typically developing peers. The parties agree, and the evidence confirmed, that the guitar class elective is appropriate for Student. The evidence showed that Student can satisfactorily be educated in that class.

Mixture of mainstream and adapted physical education

34. Under the offered IEP, Student would take regular physical education three days a week and APE two days a week.

35. Student's processing and cognitive limitations have posed difficulties for her regular PE teachers. Student was in Mary Podesta's PE class as a freshman and is enrolled in it again this year. The class serves 42 to 48 students. Ms. Podesta testified that Student was able to join the other students in football, basketball, and volleyball, with some modifications to suit her physical abilities. However, she was unable to participate with typically developing peers in other activities. Pamela Wimberly, another PE teacher who worked with Student, testified that the rotation of students from station to station in the fitness room happened too fast for Student. Mother, apparently for safety reasons,

requested that Student not be allowed to use the free weights and exercise equipment in the fitness room. Instead, she was given an alternative exercise program to be done separately on the track

36. Ms. Wimberly also testified that while the PE class was playing badminton, she attempted to put Student with other youngsters who were making shots and serving, but Student was unable to participate due to her eye-hand coordination deficit. She and the other students became frustrated as a result. Student's attempts to compete in badminton matches were also unsuccessful and frustrating to all, for the same reason. Ms. Wimberly testified that she and the other PE teachers then created a separate program for Student, and she did much better with that program.

37. Ms. Podesta testified that Student did not understand the general instructions given to the rest of the class at the beginning of the period, so she had to get the rest of the class going, and then slow down and explain repeatedly to Student what the day's class would involve. She testified that in a class of 42-48 students she could not give Student the attention she required. Ms. Wimberly agreed that in a class that size it was difficult for Student to benefit. Ms. Podesta and Ms. Wimberly credibly testified that the much smaller APE class taught by Jim Bell would, for many activities, fit Student better than a mainstream PE class. The activities there are more adapted to individual needs, and more individual attention is available from Mr. Bell and his aides.

38. Parents did not address the merits of Mr. Bell's APE class at hearing.

39. The undisputed evidence showed that placement of Student in the proposed mixture of regular and adapted PE would address her unique needs and would be reasonably calculated to allow her to access the curriculum and benefit from it. It would also maximize her opportunities to mix with typically developing peers while still being satisfactorily educated in PE class, and is therefore part of her LRE.

PROCEDURAL COMPLIANCE

Participation in the decision-making process

40. A parent of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, assessment, educational placement, and provision of a FAPE to the child, including the development of the child's educational plan.

41. The notes of the IEP meetings on March 24 and April 7, 2008, are detailed, and Parents do not challenge their accuracy. The notes reflect that Mother appeared at both meetings by telephone (at her choice) and participated extensively in the discussion of each aspect of the offered IEP. At the first meeting, she had an unidentified advisor with her on the telephone who also offered comments. Mother's opportunity to participate in the formulation of Student's program was full and unrestricted.

42. Shortly before the IEP meeting of March 24, 2008, Mother wrote a letter to the District making twenty requests concerning Student's IEP, and enclosing a copy of Ms. Andresen's report. By the beginning of the IEP meeting, the District had not yet received that letter, so the District scheduled a continuation of the meeting for April 7, 2008, to consider its contents. At the beginning of the April 4 meeting, Ms. Common asked Mother whether she wished to discuss each of the twenty concerns raised in the letter. Mother responded that Ms. Common could just mail her a reply. The IEP team then discussed Ms. Andresen's report.

43. On April 16, 2008, Ms. Common wrote a letter to Mother replying to each of the twenty concerns Mother's letter had raised. Ms. Common accepted some of the requests, denied others, and explained those decisions. Mother testified she never received the reply, but the evidence showed that the District sent it. The District introduced in evidence a properly addressed mailing envelope bearing appropriate

certified mail labeling and containing Ms. Common's letter. The Post Office returned the envelope marked "Unclaimed."

44. Mother testified that she had been unable to visit the LIF class at Menlo-Atherton because she had been told by Ms. Common in February 2008 that she would need District authorization to do so, and that such authorization was promised but never delivered to her. Ms. Common testified that she made no such statement to Mother. Instead, she stated that since Mother wanted three advisors to visit the LIF class, Mother would have to provide a waiver of confidentiality to those advisors before they could visit. It is unnecessary to resolve this conflict in testimony. Ms. Price testified that the three advisors did eventually visit her LIF class. The IEP offered in March and April repeatedly encouraged Mother to visit the LIF class. Mother admitted in her testimony that she was told at the IEP meetings she could visit the class, but she never made an effort to do so. At hearing, Mother was offered additional opportunities to visit the LIF class, which she declined. The District gave Mother ample opportunity to visit the LIF class.

Content of the IEP

45. An annual IEP must contain, inter alia, a statement of the special education and related services to be provided; a statement of measurable annual goals; a statement of the extent to which the student will not participate with nondisabled students in regular classes and activities; a statement of the accommodations necessary to measure academic achievement and functional performance, including reasons why an alternative assessment was selected and is appropriate; and a statement of the anticipated frequency, location, and duration of services.

46. The offered IEP contained a clear statement of the special education and services to be provided. It proposed seven measurable annual goals that, collectively, addressed Student's unique needs. It contained a statement that 84 percent of Student's time would be spent outside of mainstream classes and activities and 16 percent in those

classes and activities. It offered a variety of accommodations and modifications that Parents do not challenge. It contained a statement that alternative assessment had been selected and was appropriate because, even with substantial modifications of curriculum, Student could not participate meaningfully in regular statewide testing. It specified the anticipated frequency, location, and duration of all services. One such service was that the inclusion specialist was to provide 240 minutes a month of instructional strategy support for all of Student's classes. In her questioning Mother faulted that statement for failing to break the 240 promised minutes down by week, but there is no requirement that an IEP describe the frequency of a service by week.

47. In her questioning, Mother criticized the IEP because it did not attach a number of test results, including the results of hearing, vision, and physical education tests, and Student's score on the California Alternate Performance Based Assessment (CAPA). However, there is no requirement that any test results or test data be attached to an annual IEP.

48. Mother's questioning also implied that the IEP was defective because it did not include written reports by CLASS evaluator Erica Andresen and inclusion specialist Crawford. However, the report by Ms. Andreson had been obtained by Mother, furnished to the District, and discussed extensively at the April 7, 2008 IEP meeting. The IEP notes state that a report by Ms. Crawford was sent to Mother separately. The contents of both reports were fully discussed at the IEP meetings. There is no requirement that the reports be attached to the IEP itself.

49. Beginning not later than the first IEP to be in effect when the pupil is 16 years of age, or earlier if the IEP team finds it appropriate, an IEP must contain appropriate measurable postsecondary goals based on age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills, and must also contain transition services needed to assist the student in reaching those goals.

Mother implied in her questioning that the offered IEP is faulty because it lacks a transition plan.

50. The offered IEP was to be in effect from March 24, 2008, to March 24, 2009. Student will be 16 years old on February 1, 2009. The IEP that will be in effect on February 1, 2009, therefore, must contain a transition plan. The offered IEP contains a page labeled Transition Plan, which recites that Mother wants Student to attend college and get job experience when she leaves school. However, the spaces on the form for postsecondary goals are blank.

51. The notes of the March 24, 2008 IEP meeting show that Mother requested that discussion of postsecondary goals be postponed until a later meeting. Mother stated that Parents were working with Hope Services to get job experience for Student, and wanted to discuss the transition plan at a time when Hope Services could be invited to the IEP meeting. The District agreed to this proposal, and sent to Mother a permission form and information release so that a vocational education assessment could be conducted. Because the parties have, at Mother's request, agreed to conduct another IEP meeting before Student's sixteenth birthday to develop a transition plan, any argument that the offered IEP is defective because it lacks such a plan is not yet ripe for decision.

LEGAL CONCLUSIONS

BURDEN OF PROOF

1. The District, as the party seeking relief, has the burden of proving the essential elements of its claim. (*Schaffer v. Weast* (2005) 546 U.S. 49 [163 L.Ed.2d 387].)

ELEMENTS OF A FAPE

2. Under the Individuals with Disabilities in Education Act (IDEA) and state law, children with disabilities have the right to a FAPE. (20 U.S.C. § 1400(d); Ed. Code, § 56000.) FAPE means special education and related services that are available to the child at no

charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(a)(9).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(a)(29).) "Related services" are transportation and other developmental, corrective and supportive services as may be required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26).) In California, related services are called designated instruction and services (DIS), which must be provided if they may be required to assist the child in benefiting from special education. (Ed. Code, § 56363, subd. (a).)

3. There are two parts to the legal analysis of a school district's compliance with the IDEA. First, the tribunal must determine whether the district has complied with the procedures set forth in the IDEA. (Board of Educ. v. Rowley (1982) 458 U.S. 176, 206-07 [73 L.Ed.2d 690].) Second, the tribunal must decide whether the IEP developed through those procedures was designed to meet the child's unique needs, and reasonably calculated to enable the child to receive educational benefit. (Ibid.)

4. In Rowley, the Supreme Court held that the IDEA does not require school districts to provide special education students the best education available, or to provide instruction or services that maximize a student's abilities. (Rowley, supra, at p. 198.) School districts are required to provide only a "basic floor of opportunity" that consists of access to specialized instruction and related services individually designed to provide educational benefit to the student. (Id. at p. 201.)

5. A procedural error does not automatically require a finding that a FAPE was denied. Since July 1, 2005, the IDEA has codified the pre-existing rule that a procedural violation results in a denial of FAPE only if it impedes the child's right to a FAPE, significantly impedes the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to their child, or causes a deprivation of

educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); see, *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.)

6. Based on Findings of Fact 1-2 and 6-39, and Conclusions of Law 1-4, the special education placement and services offered by the District to Student at the IEP meetings on March 24 and April 7, 2008, including placement in the LIF class at Menlo-Atherton, constituted the offer of a FAPE. The offer appropriately addressed all of Student's unique needs, and was reasonably calculated to allow her to benefit from her education.

LEAST RESTRICTIVE ENVIRONMENT

7. Federal and state law require a school district to provide special education in the LRE. A special education student must be educated with nondisabled peers "to the maximum extent appropriate," and may be removed from the regular education environment only when the nature or severity of the student's disabilities 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); 34 C.F.R. § 300.114(a)(2)(ii)(2006).) In light of this preference, and in order to determine whether a child can be placed in a general education setting, the Ninth Circuit, in *Sacramento City Unified Sch. Dist. v. Rachel H.* (1994) 14 F.3d 1398, 1403, adopted a balancing test that requires the consideration of four factors: (1) the educational benefits of placement full-time in a regular class; (2) the non-academic benefits of such placement; (3) the effect the student would have on the teacher and children in the regular class, and (4) the costs of mainstreaming the student.

8. Based on Findings of Fact 1-2 and 17-39, and Conclusions of Law 7-8, placement of Student in regular education academic classes would not have been in the LRE. She could derive no academic or nonacademic benefit from those classes, and could not be satisfactorily educated in them. Instead, placement in the LIF class at Menlo-Atherton would constitute placement in the LRE for those classes. Placement in one

mainstream elective course such as guitar, and in the offered mix of regular and adapted PE, would also constitute placement in the LRE.

PARENTS' RIGHT TO PARTICIPATE IN THE DECISIONAL PROCESS

9. Federal and state law require that parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, assessment, educational placement, and provision of a FAPE to their child. (20 U.S.C. § 1414(d)(1)(B)(i); Ed. Code, §§ 56304, 56342.5.) A district must ensure that the parent of a special education student is a member of any group that makes decisions on the educational placement of the student. (Ed. Code, § 56342.5.) Among the most important procedural safeguards are those that protect the parents' right to be involved in the development of their child's educational plan. (*Amanda J. v. Clark County Sch. Dist.* (9th Cir. 2001) 267 F.3d 877, 882.)

10. Based on Findings of Fact 40-44 and Conclusions of Law 9-10, the District did not deprive Parents of their right to participate in the decisional process regarding the provision of a FAPE to Student.

CONTENTS REQUIRED IN AN IEP

11. An annual IEP must contain, inter alia, a statement of the student's present levels of academic achievement and functional performance, including the manner in which the disability of the student affects his or her involvement and progress in the regular education curriculum. (20 U.S.C. § 1414(d)(1)(A)(i)(I); Ed. Code, § 56345, subd. (a)(1).) The IEP must also contain measurable annual goals designed to allow the student to be involved in and make progress in the general educational curriculum. (20 U.S.C. § 1414(d)(1)(A)(i)(II); Ed. Code, § 56345, subd. (a)(2).)

12. An annual IEP must also contain, inter alia, a statement of the special education and related services to be provided; a statement of the extent to which the

student will not participate with nondisabled students in regular classes and activities; a statement of the accommodations necessary to measure academic achievement and functional performance, including reasons why an alternative assessment was selected and is appropriate; and a statement of the anticipated frequency, location, and duration of services. (20 U.S.C. § 1414(d)(1)(IV)-(VII); Ed. Code, § 56345, subds. (a)(4)-(7).)

13. Beginning not later than the first IEP to be in effect when the pupil is 16 years of age, or younger if determined appropriate by the IEP team, the IEP must contain appropriate measurable postsecondary goals based on age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills, and must also contain transition services needed to assist the student in reaching those goals. (20 U.S.C. § 1414(d)(1)(A)(VIII); Ed. Code, § 56345, subd. (8).)

14. Federal law provides that the section of the IDEA governing the contents of IEPs "shall not be construed to require ... that additional information be included in a child's IEP beyond what is explicitly required in this section" (20 U.S.C. § 1414(a)(1)(A)(ii); Ed. Code, § 56345, subd. (i).)

15. Based on Findings of Fact 45-51 and Conclusions of Law 11-14, the District's offered IEP contained all matters required by statute.

16. Based on Findings of Fact 49-51 and Conclusion of Law 13, no dispute over the presence or absence of a transition plan in the offered IEP is ripe for decision.

ORDER

The special education placement and services offered by the District to Student at the IEP meetings on March 24 and April 7, 2008, including placement in the LIF class at Menlo-Atherton High School, constituted the offer of 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. Here, the District prevailed on the issue presented.

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: October 23, 2008

_____/s/_____

CHARLES MARSON

Administrative Law Judge

Office of Administrative Hearings