

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

WILLITS UNIFIED SCHOOL DISTRICT,

Petitioner,

v.

STUDENT,

Respondent.

OAH CASE NO. N 2006060355

DECISION

Administrative Law Judge (ALJ) Suzanne B. Brown, Office of Administrative Hearings (OAH), Special Education Division, State of California, heard this matter on July 17-19, 2006, in Willits, California.

Attorney Carl Corbin represented Petitioner Willits Unified School District (District). District program specialist Lois Pleva attended the hearing on behalf of the District.

Attorney James Stoepler represented Respondent Student. Student's parents, Mother and Father, attended the hearing on Student's behalf.

On June 13, 2006, OAH received the District's request for due process hearing. OAH scheduled the hearing for July 14, 2006. On June 23, 2006, OAH granted a very brief continuance and rescheduled the hearing to begin on July 17, 2006.

The ALJ received sworn testimony and documentary evidence at the hearing on July 17-19, 2006. Additionally, at the request of both parties, the ALJ observed the proposed placement location at Willits High School on July 17, 2006. On July 27, 2006, OAH received the parties' written closing arguments by facsimile (fax). Upon receipt of the written closing arguments on July 27, 2006, the record was closed and the matter was submitted.

ISSUE

Does the District's offer of placement at a special day class (SDC) at Willits High School constitute an offer of a free appropriate public education (FAPE) for the 2006-2007 school year?

CONTENTIONS OF THE PARTIES

The parties do not dispute the contents of Student's individualized education program (IEP), and agree that the only issue in dispute concerns the location where Student will attend school for the 2006-2007 school year. Specifically, the parties dispute whether Student's IEP can be appropriately implemented in an SDC at the District's Willits High School, or whether Student's IEP can only be appropriately implemented at his current educational placement, Lattice Educational Services (Lattice).

The District argues that its offer to place Student in an SDC at Willits High School constitutes a FAPE in the least restrictive environment (LRE). The District concurs that Student has been receiving an otherwise appropriate education at Lattice, but argues that Lattice is not the LRE. The District asserts that Student does not require a placement as restrictive as Lattice, and that Lattice's distant location inhibits Student's integration into his local community. The District contends that its proposed placement at Willits High School is safe for Student because he would have one-to-one supervision all day, because the trained SDC staff would implement his behavior support plan to address any elopement behaviors, and because the SDC location towards the back of the high school would minimize any risk that Student could wander away from the SDC. The District also argues that it has trained staff who can implement Student's IEP and behavioral intervention plan (BIP) at Willits High School.

The Student contends that the proposed placement at Willits High School is inappropriate because the placement would be dangerous for him, and the District's offer of one-to-one supervision does not sufficiently address his safety needs. Student argues that, given his tendency to run away from school, the location of Willits High School and

the lack of a fence surrounding the school create an unsafe environment for him. Moreover, Student asserts that the District's history of failing to implement past IEPs establishes that the District will not be able to provide the program it is currently offering to Student. Additionally, Student argues that the SDC staff members are not sufficiently qualified to implement his IEP. Student contends that he should continue to attend school at Lattice, where he has made excellent progress over the past two and a half years, and which placement will continue to provide him with a FAPE.

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. Student is fourteen years old and resides with his parents within the boundaries of the District. He is autistic and is eligible for special education services. He currently attends Lattice, a nonpublic school (NPS) in Santa Rosa, California, funded by the District.

FACTUAL BACKGROUND

2. Following his diagnosis of autism, Student began attending school at the District when he was three years old. In his preschool and elementary school years, Student attended SDC placements at District elementary schools.

3. Over the years, Mother and Father have undertaken extensive efforts to provide a safe and enriching environment for Student. The parents have worked closely with employees from the District and the Redwood Coast Regional Center to develop an appropriate educational program and modify Student's home environment to address his disabilities. The parents have implemented measures including installation of a fence around the family's home and use of the Picture Exchange Communication System (PECS) at home.

4. At the beginning of the 2003-2004 school year, when Student was eleven years old, he attended the District's Brookside Elementary School (Brookside) in an SDC for

students with autism. Brookside otherwise served only students from preschool through second grade, and Student was older than the other students in the SDC. Student's IEP team agreed that the Brookside SDC placement was inappropriate, and District staff began searching outside the District for an appropriate placement for Student. Student began residing at Turning Point, a residential facility, but after a brief trial period the parties agreed that the placement was not appropriate. Shortly thereafter, in January 2004, the IEP team placed Student at Lattice in Santa Rosa. Student has continued to attend school at Lattice since that time, pursuant to his IEP. Student continues to reside with his family in Willits, while the District reimburses Mother for mileage for transporting Student to and from school. The trip from Student's home in Willits to Lattice in Santa Rosa is approximately 85 miles each way, and takes Mother approximately one hour and 25 minutes to drive.

5. At an IEP addendum meeting in March 2005, District members of the IEP team raised the possibility of returning Student to school in Willits. Student's parents expressed concerns about the District's autism program. At Student's annual IEP meeting in June 2005, District members of the IEP team proposed a placement for Student at a Willits High School SDC, with a transition plan. Student's parents expressed concerns about Student's safety at the proposed location and the qualifications of the SDC staff. The parents requested continued placement at Lattice, and the IEP team agreed to continue the Lattice placement.

5. In November 2005, the IEP team again discussed the possibility of changing Student's placement from Lattice to an SDC at Willits High School. District program specialist Lois Pleva told the IEP team that the educational components of the SDC were appropriate for Student, but the physical location of the SDC was not appropriate. The District members of the IEP team agreed to continue Student's placement at Lattice, but indicated that they would revisit the placement issue in April 2006.

6. In or about March 2006, the District contracted with licensed psychologist Melanie Johnson to conduct an independent evaluation of the two placements, Lattice and

the proposed SDC at Willits High School. The District provided Dr. Johnson with a general description of Student, including his age and disabilities, but did not provide Dr. Johnson with Student's name or educational records. On April 13, 2006, Dr. Johnson issued a report finding that both placements offered appropriate programs for students with significant disabilities.

7. On June 6, 2006, the IEP team convened for Student's annual IEP meeting.¹ During the meeting, the District presented Dr. Johnson's evaluation report. The District proposed changing Student's placement from Lattice to the SDC taught by Jessie Rees at Willits High School. District members of the IEP team explained that the SDC's new location would be appropriate for Student, because the SDC would be moving to a different classroom, which would be towards the back of the high school campus, away from the street at the front of the school. Student's parents did not agree to the proposed change, and requested continued placement at Lattice.

8. In a letter to the parents dated June 8, 2006, the District superintendent reiterated the program offer that the District proposed at the June 6, 2006 IEP meeting. On June 13, 2006, OAH received the District's request for due process hearing in this matter.

SUMMARY OF STUDENT'S UNIQUE EDUCATIONAL NEEDS

9. Student is severely autistic and has low cognitive ability. His areas of need include expressive and receptive language, communication, social skills, sensory, self-help/adaptive skills, and behavior. He has developed some limited verbal skills, but also uses PECS to communicate. He is currently working on areas including basic counting and sorting, basic reading of simple sight words, using PECS to construct longer sentences, and community walking while dependent on an adult. He is sensitive to changes in routine, and works best with a structured daily routine. There is no dispute that Student needs

¹ The parties dispute allegations regarding scheduling of this IEP meeting; however, that disagreement is irrelevant to the sole issue to be decided in this case.

placement in a small special education class with a low adult-to-student ratio, a high level of structure and routine, and highly qualified, well-trained staff. There is also no dispute that he needs a BIP or behavior support plan, the assistance of a behavior specialist, speech-language therapy, occupational therapy, and door-to-door transportation.

10. Student has a history of “elopement” behaviors, wherein he tries to leave his classroom during the school day. Elopement is one of the two targeted behaviors in Student’s current BIP. During his previous attendance at the District’s schools several years ago, on two occasions Student managed to leave the school campus altogether, and was returned to school by the California Highway Patrol. Initially when he arrived at Lattice, Student would wander away when he was walking with a staff person; since that time, Student has received Pedestrian Education (Ped Ed) Training, which has taught him to walk with a staff person. During his attendance at Lattice over the past two and a half years, on some occasions Student has left his classroom and wandered into another room, but he has not left the campus. During his attendance at Lattice, Student initially attempted to open the gates surrounding the school; however, he ceased those attempts after approximately the first two weeks of his attendance there, and he has not attempted to open the gates since that time. Student’s current teacher, Andre Fortain, describes Student as an “opportunistic eloper,” meaning that Student will attempt to leave when the opportunity presents itself, such as when the attention of school staff is diverted. Typically, Student does not “bolt” for the door, but instead wanders away when he believes that no one is looking.

11. Assaultive behavior is the other targeted behavior in Student’s current BIP. Student’s assaultive behaviors are relatively mild; he will occasionally hit others when he is frustrated, but he does not hit hard enough to cause a bruise or other injury. Staff members trained in behavior management are generally able to address this behavior by implementing Student’s behavioral intervention plan and utilizing behavior management strategies. Student’s assaultive behaviors have diminished since he began attending Lattice.

12. Student also exhibits some masturbation behaviors while at school. Student will sometimes rub the outside of his pants when he is sitting and not engaged in another activity. However, Student is easily redirected to another activity. This behavior can be addressed by school staff trained in behavior management, and has decreased since Student began attending Lattice.

13. Student will occasionally remove or start removing his pants while in public areas at school. This behavior seems to occur when Student needs to urinate. This behavior can be addressed by school staff trained in behavior management, and has decreased since Student began attending Lattice.

14. Student needs rewards as positive reinforcement. Currently, the rewards that motivate Student include receiving verbal praise, looking at books, listening to music, watching videos, running, and swinging on a swing when no one else is on the swing set. Student occasionally rides a three-wheeled bicycle, but that is not his preferred activity. Student usually prefers to be outside, rather than indoors.

15. Student needs to be integrated into his community, and needs to learn to function in his community. Regarding mainstreaming at school, program specialist Pia Banerjee testified that Student would benefit from interaction at school with typically developing peers; in contrast, Student's current teacher, Andre Fortain, testified that currently Student does not interact with peers, does not appear to benefit from being around typically developing peers, and is not ready to work with a peer tutor. While Dr. Banerjee was a credible witness, Mr. Fortain's testimony was more persuasive on this point because Mr. Fortain has taught Student for over two years and has greater personal knowledge about Student's needs than Dr. Banerjee has. Thus, the evidence established that currently Student does not appear to benefit from interaction with typically developing peers, and is not ready to work with a peer tutor.

PROPOSED PLACEMENT AND QUALIFICATIONS OF STAFF

16. As noted in Factual Finding 7, the District offered placement in an SDC taught by Jessie Rees at Willits High School. For fall 2006, the class will consist of one teacher, two instructional aides and seven students, not including Student. If Student attends the class, the District will add an additional instructional aide, which will create a total of four adults and eight students in the class, for a 4:8 adult-to-student ratio.² The disabilities of the other students in the SDC include cerebral palsy, visual impairment, mental retardation, and autism. The students range in age from 14 to 18.

17. The SDC students have individualized curriculums according to their respective IEP goals. Most of the SDC students work on functional living skills, such as cooking and laundry. Some also work on academic and vocational goals, such as functional math. Most of the SDC students use daily schedules. Computer reading programs, such as the Ed-Mark reading skills program identified in Student's June 6, 2006 IEP, are available in the SDC. Some of the students are mainstreamed with typically developing peers, at varying levels depending on the particular SDC student's needs and abilities. Additionally, typically developing peers visit the classroom to assist the SDC staff as "peer tutors" who interact with the SDC students.

18. Willits High School is located on Highway 101, which is the main road running through Willits. The campus comprises several permanent buildings and a few portable buildings. The SDC is located in a classroom towards the back of the Willits High School campus. The SDC room has two doors, both of which lead into a hallway; a person must exit through both a classroom door and the hallway door in order to get outside. Outdoors, the campus has a track and field which is partially enclosed by a fence.

² Because some students leave the SDC for activities such as mainstreaming and WorkAbility, during those times the class may be smaller, with perhaps five students and three adult staff.

19. At the time of the ALJ's observation of the school site on July 17, 2006, the SDC had just moved from its previous classroom into the new classroom, and school staff were still unpacking from the move. The classroom was somewhat messy, and the hallway outside the classroom contained some clutter, such as old chairs which appeared to be trash. Testimony from District witnesses established that the classroom and hallway were in atypical condition due to the recent move and summertime cleaning at the end of the extended school year (ESY), in preparation for the deep cleaning and classroom renovation scheduled to occur prior to the start of the new school year.³ Additionally, during the observation a water heater in the classroom was leaking water onto the floor. However, testimony from District superintendent Steve Jorgensen established that, shortly thereafter, he had the maintenance director fix the problem.

20. SDC paraprofessional Cheryle Koch is the instructional aide who would be primarily assigned to work with Student.⁴ Testimony from Ms. Rees and program specialist Lois Pleva established that Ms. Koch is an experienced, trained paraprofessional who has worked as an SDC aide in the District for several years. Ms. Koch has received training in areas including PECS, PART/Pro-Act, autism and Treatment and Education of Autistic and Related Communication Handicapped Children (TEACCH).

21. The SDC teacher, Ms. Rees, holds a master's of science degree in education curriculum and instruction, and holds three California teaching credentials, including a moderate to severe special education credential. Ms. Rees has received training in areas including Professional Assault Response Training (PART)/Pro-Act, autism and discrete trial

³ The new classroom was previously a home economics room. The renovation will include removing two of the three stoves in the room.

⁴ Some exhibits and witnesses used the term "aide" or "instructional aide," while others used the term "paraprofessional." All of the terms refer to the same positions, and this Decision uses the terms interchangeably.

training (DTT), and PECS. In addition to her experience as a special education teacher, previously Ms. Rees worked for several years as a paraprofessional in an SDC and as a behavioral therapist tutor for students with autism. In her testimony, Ms. Rees established that, in her SDC, she would be able to implement Student's BIP and IEP, including goals and objectives, and described how she would address other behavioral issues that Student might present.

22. Student argues that Ms. Rees is not qualified to teach Student's SDC. None of the arguments Student raises on this point are persuasive. For example, Student argues that Ms. Rees is not sufficiently qualified in PECS because she does not list her PECS training on her resume. Ms. Rees established in her testimony that she is trained in PECS, that she could implement Student's use of PECS in her class, and that the absence of the listing on her resume was an oversight. In light of the above factual findings, the ALJ concludes that Ms. Rees is qualified to be Student's SDC teacher and would be able to implement his IEP and BIP.

ADDRESSING STUDENT'S UNIQUE NEEDS IN THE PROPOSED PLACEMENT

23. The parties dispute whether placement at the Willits High School SDC would sufficiently address Student's safety needs, given Student's history of elopement behaviors and the high school's location on Highway 101. Student's safety at an unsecured high school campus located on a highway is a serious concern, because of the possibility that he could manage to slip away and go out onto the highway. However, testimony from Mr. Fortain established that, if Student had full-time supervision by a staff person, the staff person could prevent Student from leaving. For the first one to two weeks, two staff people may be needed to physically detain Student from leaving, until the assigned staff person develops sufficient rapport with Student to the degree that Student will respond to

only verbal control.⁵ In reaching these conclusions, the ALJ gives significant weight to the testimony of Mr. Fortain, who is an experienced, credentialed special education teacher with extensive training in areas related to Student's disabilities. Mr. Fortain is particularly knowledgeable about Student's educational needs because he been Student's teacher since January 2004. Moreover, although Student called Mr. Fortain to testify, and despite Mr. Fortain's relationship as a co-worker of Mother, Mr. Fortain did not tailor his testimony to Student's position. Instead, Mr. Fortain's testimony was notably candid, objective, and unbiased.

24. Student argues that the proposed level of supervision will not address his safety needs because the District has a history of failing to provide the things it promises. This argument does not succeed. There was no evidence that the District would be unable or unwilling to provide the one-to-one supervision and other supports offered for the 2006-2007 school year. The District has identified the specific aide, teacher, and classroom proposed, and there was no indication that any component of the District's offer would become unavailable to the Student. Student's general allegations of past failures were not sufficient to establish that the District will fail to comport with the current IEP in the future.

25. Hence, as determined in Factual Findings 16 and 20, the District's offer of placement includes one-to-one supervision by a trained paraprofessional, and placement in an SDC with an adult-to-student ratio of 4:8. Student would also have a behavior support plan and behavior specialist consultation services for 120 minutes per month, which would be used to help address targeted behaviors including elopement. Pursuant to Factual Findings 10 and 23, in light of the one-to-one supervision, small adult-to-student ratio, and behavioral supports, the District's offer of SDC placement would provide the level of supervision necessary to prevent Student from eloping. Similarly, the level of

⁵ Either a male or female staff person should be able to develop this control over Student, so long as that person is well-trained and sufficiently assertive.

supervision, classroom structure and behavioral supports would be sufficient to address Student's other behavioral needs, such as assaultive behaviors and masturbation.

26. The methods of providing Student's positive reinforcement will be available in the proposed SDC placement, or can be made available if needed. Testimony from Ms. Rees and Mr. Jorgensen established that the District can put a swing on the high school campus if Student's IEP team determines that he needs to swing. Pursuant to Factual Findings 14 and 23, once Student and his aide have developed sufficient rapport, Student should be able to run outside on the track with one-to-one supervision. Rewards such as books, music, and videos are also available in the proposed placement.

27. The District's written offer included "an opportunity to have access and interact with typically developing peers." As determined in Factual Finding 15, currently Student does not benefit from interacting with typically developing peers, and is not ready to work with a peer tutor. However, testimony from Mr. Fortain established that Student should be able to go to the school cafeteria with one-to-one supervision. Testimony from Ms. Rees established that Student would be mainstreamed with typically developing peers as appropriate. While peer tutors will be present in the SDC to work with other students, there is no evidence that the District's offer entails Student working with a peer tutor before he is ready. Thus, given that Student's mainstreaming will be limited to what is appropriate for him at the time, the mainstreaming component of the District's offer is designed to address Student's unique needs.

28. Student argues that the SDC's adult-to-student ratio of 4:8 is insufficient, and that he instead requires a 5:8 ratio like he has in his class at Lattice.⁶ Considering

⁶ Dr. Johnson reported that the adult-to-student ratio at Lattice was 6:8, and that the ratio at the Willits SDC was 3.5 to 8. However, Mr. Fortain established that his class consisted of himself, four aides, and eight students, for a 5:8 ratio. District witnesses established that, if Student attends the SDC for the 2006-2007 school year, the ratio will be at least 4:8.

persuasive testimony from Mr. Fortain and Ms. Pleva, it is evident that the 4:8 ratio is sufficient to address Student's needs. In light of all evidence, the District's proposed placement and program offers the daily structure, low adult-to-student ratio, curriculum, and qualified staff necessary to implement Student's goals and objectives, and address his educational needs.

29. Student raises other concerns about the proposed SDC, but these claims are not ultimately persuasive. For example, Student contends that the SDC would be unsafe for him because he will break the classroom's windows. While testimony from Mother established that Student has broken windows at home, testimony from Mr. Fortain established that Student has never attempted to break the windows at Lattice, and that glass windows in a classroom should not be a problem for Student. Moreover, there was no evidence that Student has ever broken windows at any school classroom he has attended. In light of all evidence, the type of windows in the SDC room does not indicate that the room would be unsafe for Student.

LEAST RESTRICTIVE ENVIRONMENT (LRE)

30. Testimony from Mr. Fortain, Dr. Banerjea, and Dr. Johnson established that the Willits SDC is generally a less restrictive environment than Lattice, because Willits High School is a general education campus with typically developing peers, whereas Lattice is an NPS serving only disabled students. This evidence must be considered in light of the determination that, pursuant to Factual Finding 15, at this time Student does not appear to benefit from interaction with nondisabled peers. However, Willits is also a less restrictive environment for Student because it is located close to his home and is the school he would attend if he were not disabled.

31. Student argues that the door-to-door transportation to Willits High School would be more restrictive than his door-to-door transportation to Lattice, because the

proposed transportation to the high school is by school bus.⁷ When Student attended District schools when he was younger, he had to wear a harness when riding the school bus. However, Student is now older and has improved behavior. Testimony from Ms. Pleva established that the District seeks to transport Student on the bus in a seat belt, and would use a harness only if a seat belt was insufficient. The ALJ also considers that the distance and time required to travel to Lattice creates a more restrictive environment than the proposed transportation to Willits High School.⁸ Given the uncertainty of whether Student would require a harness on the school bus, compared to the long commute to Lattice in Santa Rosa, the proposed door-to-door transportation to Willits High School does not render the proposed placement more restrictive than Lattice.

LEGAL CONCLUSIONS

APPLICABLE LAW

1. In an administrative hearing, the petitioner has the burden of proving the essential elements of its claim. (*Schaffer v. Weast* (2005) 126 S.Ct. 528, 163 L.Ed 2d 387.)
2. Under the Individuals with Disabilities in Education Act (IDEA) and California special education law, children with disabilities have the right to a free appropriate public education (FAPE). (20 U.S.C. § 1400(d); Ed. Code § 56031.) FAPE consists of special education and related services that are available to the child at no charge to the parent or guardian, meet the State educational standards, and conform to the child's individualized

⁷ There was no evidence regarding whether the parents had requested the option of transporting Student to the high school by car with mileage reimbursement, as is the current arrangement with his transportation to Lattice.

⁸ While the parties dispute how long the school bus ride would take, there is little question that the bus ride would still take significantly less time than the drive to Santa Rosa.

education program (IEP). (20 U.S.C. § 1401(8).) "Special education" is defined as specially designed instruction, at no cost to the parents, that is provided to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(25).) "Related services" or designated instruction and services (DIS) means transportation and other developmental, corrective and supportive services as may be required to assist the child to benefit from special education. (20 U.S.C. § 1401(22); Ed. Code § 56363, subd. (a).)

3. In *Board of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley* (1982) 458 U.S. 176, 200, 102 S.Ct. 3034, the United States Supreme Court addressed the level of instruction and services that must be provided to a student with disabilities to satisfy the requirement of the IDEA. The Court determined that a student's IEP must be designed to meet the unique needs of the student, be reasonably calculated to provide the student with some educational benefit, and comport with the student's IEP. However, the Court determined that the IDEA does not require school districts to provide special education students with the best education available or to provide instruction or services that maximize a student's abilities. (*Id.* at pp. 198-200.) The Court stated that school districts are required to provide only a "basic floor of opportunity" that consists of access to specialized instructional and related services which are individually designed to provide educational benefit to the student. (*Id.* at pp. 200.) Moreover, the *Rowley* opinion established that, as long as a school district provides an appropriate education, methodology is left up to the district's discretion. (*Rowley*, 458 U.S. at 208.)

4. School districts are also required to provide each special education student with a program in the LRE, with removal from the regular education environment occurring 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 could not be achieved satisfactorily. (20 U.S.C. § 1412 (a)(5)(A); 34 C.F.R. § 300.550(b) (1999); 34 C.F.R. § 300.114 (2006); Ed. Code §§ 56031, 56364.2.) To the maximum extent appropriate, special education students should have opportunities to interact with general education peers. (*Id.*) The law demonstrates a strong preference for mainstreaming which rises to the level

of a rebuttable presumption.⁹ (*Daniel R.R. v. State Board of Education* (5th Cir.1989) 874 F.2d 1036, 1044- 45; see *Sacramento City Unified Sch. Dist. v. Rachel H.*, (9th Cir. 1994) 14 F.3d 1398, 1404, *cert. denied*, 114 S.Ct. 2679 (1994).)

5. In determining the placement of a child with a disability, each public agency shall ensure that the placement decision is made in conformity with LRE provisions and that the placement is as close as possible to the child's home. (34 C.F.R. § 300.552(b) (1999); 34 C.F.R. §300.116(b) (2006).) The public agency shall also ensure that, unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled. (34 C.F.R. § 300.552(c) (1999); 34 C.F.R. § 300.116(c) (2006).) In selecting the LRE, consideration shall be given to any potential harmful effect on the child or on the quality of services that he or she needs. (34 C.F.R. § 300.552(d) (1999); 34 C.F.R. § 300.116(d) (2006).)

6. To determine whether the District offered Student a FAPE, the analysis must focus on the adequacy of the District's proposed program. (*Gregory K. v. Longview Sch. Dist.* (9th Cir. 1987) 811 F.2d 1314.) If a school district's program was designed to address a pupil's unique educational needs, was reasonably calculated to provide him some educational benefit, comported with his IEP, and was in the LRE, then that school district

⁹ Student's closing brief points to *Sacramento City Unified Sch. Dist.*, *supra*, 14 F.3d at 1404, for its four- factor test regarding LRE. However, that standard is not directly applicable in the present case because the four- factor test evaluates placement in a special education setting compared to placement in a general education classroom with typically developing peers. In contrast, the present case involves only placements in special education settings, and there is no proposal to place Student in a general education classroom.

offered a FAPE, even if the pupil's parents preferred another program and even if his parents' preferred program would have resulted in greater educational benefit.¹⁰

DETERMINATION OF ISSUE

7. Pursuant to Factual Findings 16-29, the District's placement offer at Willits High School is designed to address Student's unique needs and is reasonably calculated to provide him with educational benefit. Pursuant to Factual Finding 24, the District will be able to provide services in conformity with Student's IEP. Pursuant to Factual Findings 30 and 31, the proposed offer is in the LRE to address Student's unique needs. In light of these determinations, the District's June 2006 offer of placement at the SDC at Willits High School constitutes an offer of FAPE.

ORDER

8. The District's offer of placement at an SDC at Willits High School constitutes an offer of FAPE for the 2006-2007 school year.

PREVAILING PARTY

9. 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 findings are made in accordance with this statute: The District prevailed on the only issue heard and decided.

¹⁰ Student's closing brief cites *Clyde K. v. Puyallup School District* (9th Cir. 1994) 31 F.2d 1489, for the proposition that, when evaluating the appropriateness of the proposed placement, the ALJ should consider the parents' hostility towards the school district if it effectively undermines placement in the district. No such case exists at that citation. It is unclear if Student's attorney meant to cite *Clyde K. v. Puyallup Sch. Dist., No. 3* (9th Cir.

RIGHT TO APPEAL THIS DECISION

10. The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within ninety days of receipt of this decision. (Ed. Code § 56505, subd. (k).)

Dated: August 21, 2006

A handwritten signature in cursive script, reading "Suzanne B. Brown", written in dark ink.

SUZANNE B. BROWN

Administrative Law Judge

Office of Administrative Hearings

Special Education Division

1994) 35 F.3d 1396, or *Parents of Student W. v. Puyallup Sch. Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489. In any event, neither case stands for the proposition Student asserts.