

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

In the Matter of:

CALIFORNIA SCHOOL FOR THE DEAF -
FREMONT,

Petitioner,

v.

STUDENT and FREMONT UNIFIED
SCHOOL DISTRICT,

Respondents.

OAH No. N 2005090646

AMENDED DECISION¹

Suzanne B. Brown, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on November 14, 15, 28, 29, and 30, and December 5, 2005, in Fremont, California.

Petitioner California School for the Deaf - Fremont (CSDF) was represented by attorney Rebecca Freie, Deputy General Counsel for the California Department of Education. Dr. Debra Guthmann, CSDF's Director of Pupil Personnel Services, was present on behalf of CSDF.

Respondent Fremont Unified School District (District) was represented by attorney Bridget Flanagan. Jack Bannon, the District's Director of Special Services, was present on

¹ The Decision is amended solely to add one sentence on page 13 regarding which parties prevailed. No other changes have been made to the original Decision issued on January 3, 2006.

behalf of the District during most of the hearing. Charlene Okamoto, the District's Assistant Director for Special Services, was present on behalf of the District on one hearing day in place of Mr. Bannon.

Respondent Student (Student or Student) was represented by attorney Michael Zatopa. Mother, Student's mother, was present on behalf of Student. Student's father, Father, also was present on behalf of Student during portions of the hearing.

CSDF called the following witnesses to testify: Dr. Anne Moxley, clinical neuropsychologist at CSDF; Anne MacIntyre, principal of CSDF's Special Needs Program; Diane Muscadine, teacher at CSDF's Special Needs Program; Lisa Hancock, Student's former instructional aide; David Eberwein, CSDF bilingual/deaf studies curriculum specialist; Lorraine Flores, CSDF American Sign Language (ASL) specialist; and Dr. Debra Guthmann, CSDF's Director of Pupil Personnel Services.²

The District called the following witnesses to testify: Judy Pounder, District special day class (SDC) teacher; Lynda Koraltan, District deaf/hard-of-hearing specialist; Carrie Irwin, District inclusion specialist; and Kimberly Moore, Student's instructional aide.

The Student called the following witnesses to testify: Diane Russell, augmentative communication specialist; Mother, Student's mother; Kevin Williams, former behavioral psychologist for Idaho School for the Deaf and the Blind; Dr. Joan Wenters, clinical psychologist at Children's Hospital Oakland, and Jackie P., mother of a classmate of Student's.³

OAH received a due process hearing complaint in this matter from CSDF on September 14, 2005, and scheduled the hearing to convene beginning on October 14, 2005.

² Ms. Hancock testified by telephone from Arizona. Mr. Eberwein and Ms. Flores each testified using an ASL interpreter.

³ Mr. Williams testified by telephone from Idaho.

On October 13, 2005, OAH granted a continuance of the hearing date until November 14, 2005. Sworn testimony and documentary evidence were received at the hearing on November 14, 15, 28, 29, and 30, and December 5, 2005. On December 19, 2005, the parties submitted written closing arguments by mail or fax. Upon receipt of the written closing arguments, the record was closed on December 20, 2005, and the matter was submitted.

Pursuant to the 45-day timeline, this Decision is due on January 3, 2006.

ISSUE⁴

Does the April 25, 2005 IEP offer of full-time placement in the special day class (SDC) at Maloney Elementary School (Maloney) offer Student a free appropriate public education (FAPE) in the least restrictive environment (LRE) for the 2005-2006 school year?

CONTENTIONS OF THE PARTIES

CSDF asserts that the proposed full-time placement in the Maloney SDC pursuant to the April 25, 2005 individualized education program (IEP) is an offer of FAPE in the LRE for Student. CSDF argues that Student's primary disabilities are mental retardation and autism, not deafness. CSDF further contends that American Sign Language (ASL) is not Student's primary language, that Student does not meaningfully communicate in ASL, and that instead her communication system is a combination of some signs, gestures, and use of a picture exchange communication system (PECS). CSDF's position is that Student does not benefit

⁴ The ALJ has reorganized and condensed the issues for purposes of clarity. While initially CSDF had submitted an issue statement containing four issues, two of those issues were factual questions which will be addressed within this Decision. Moreover, the issue regarding whether Student is currently obtaining meaningful educational benefit in her present program at CSDF is not in dispute.

from an ASL environment, and that she does not obtain meaningful educational benefit from placement at CSDF.

The District argues that its April 25, 2005 IEP offer of full-time placement in the Maloney SDC constituted an offer of FAPE for the 2005-2006 school year. The District contends that CSDF is not an appropriate placement for Student.

The Student agrees that currently CSDF does not offer an appropriate placement for her, but argues that an appropriate placement can be created for her at CSDF, which would include peers that can communicate with her in ASL and a teacher who is trained and credentialed in both deaf education and education of severely handicapped students. However, the Student does not seek a placement outside of the "tri-city area" of Fremont, Hayward and Union City, California, because she does not eat during school hours due to her feeding issues, and therefore eats lunch at home shortly after school is over. Student contends that the April 25, 2005 IEP does not offer an appropriate placement because: (1) the IEP does not identify deafness as her primary disability; (2) the Maloney SDC does not address her language needs and does not offer any opportunity for communication with peers in her native language as required by California Education Code section 56000.5, subdivision (b); and (3) the IEP goals do not address her needs related to ASL. Student argues that her primary disabilities are deafness and autism, that ASL is her native language, and that she needs to communicate with peers in her native language of ASL. Other than the language and communication aspects, Student does not disagree with the appropriateness of the Maloney SDC placement or the related services offered. Similarly, other than the absence of ASL goals, the Student does not disagree with the goals in the April 25, 2005 IEP. In her closing brief, Student raised the argument that the placement does not offer a teacher whose professional preparation and credentials are specific to deaf education as required by California Education Code section 44265.5, subdivision (b).

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. Student is a 13-year-old student who is eligible for special education services due to her multiple disabilities of autism, mental retardation, and deafness. Student has been a resident of the District during all time periods at issue, and has attended CSDF since she was approximately 20 months old. She currently attends part of her school day at CSDF in the Special Needs Program, and attends the remainder of her school day in an SDC at the District's Maloney Elementary School.

FACTUAL BACKGROUND

2. Student has multiple disabilities of autism, mental retardation, and deafness. She also has Bell's palsy, which has caused partial paralysis of the left side of her face. Beginning when she was approximately 20 months old, Student has attended school at CSDF. Since elementary school, she has attended CSDF's Special Needs Program (SNP), which serves students who have disabilities in addition to deafness.

3. Student's parents have created an excellent home environment to address her multiple disabilities. To address Student's need for structure and routine, the family adheres to a set daily schedule, and they inform her in advance of any changes to the schedule. Both parents have learned ASL and use it every day to communicate with Student. The parents have been successful in using rewards, such as television and computer time, to motivate Student to perform tasks and learn new skills. Moreover, Parents have been cooperative and helpful to the school employees at CSDF and FUSD in working together to further Student's education. The parents have reasonable concerns which created the current, legitimate difference of opinion with the educational agencies regarding Student's placement.

DESIGNATION OF PRIMARY DISABILITY

4. Student's April 2005 IEP designates her primary disability as "Multiply Disabled (autistic, m.r.)" and identifies deafness and Bell's palsy as additional disabilities. While it is accurate for the IEP to identify Student as multiply disabled due to autism and mental retardation, with deafness as a secondary disability, it is also not inaccurate to characterize her as multiply disabled due to all three of those conditions.⁵ In any event, neither characterization changes the analysis of what placement is appropriate for her, given that the placement must address her educational needs related to all three disabilities.

CSDF PLACEMENT

5. For the 2002-2003 and 2003-2004 school years, Student attended CSDF's elementary school SNP class, which was conducted in ASL and was taught by Diane Muscadine. The students in the class had disabilities such as cerebral palsy or mild cognitive delays, but most were able to communicate in ASL. Student attended the class accompanied by a full-time one-to-one "signing" aide who was fluent in ASL. Student was highly dependent on her aide, and generally did not communicate or otherwise interact with her peers at CSDF. The classroom instruction consisted primarily of group instruction at an academic pace slower than an age-level general education class, but at a higher level than Student could perform. Despite efforts by the aide to involve Student in the class activities, Student usually had no interest in those activities. Ms. Muscadine's class did not have the level of structure and routine that Student needed. During the time she attended Ms. Muscadine's SNP class, Student sometimes engaged in behaviors such as picking at her skin, grinding her teeth, or rubbing her forehead with her thumb and index finger.

⁵ There is no dispute that Bell's palsy is not a primary disability for Student.

SPLIT PROGRAM AT CSDF AND MALONEY SDC

6. In April 2004, Student's IEP team convened to plan her program for the 2004-2005 school year. The District and CSDF proposed that Student transition to the autism SDC taught by Judy Pounder at the District's Maloney Elementary School (Maloney). Initially Student's parents did not agree to this offer, and raised concerns that Student would be unable to communicate with the teacher and the other students. However, after participation in mediation, the parents and the two agencies eventually agreed that Student would continue to attend the SNP class at CSDF in the mornings, then attend the Maloney SDC for two hours each afternoon on a trial basis.

7. In December 2004, Student began attending the Maloney SDC in the afternoons, accompanied by her one-to-one signing aide, Lisa Hancock. The other students in the SDC were not hearing impaired, but they were autistic and also had cognitive impairments. Student functioned in the middle range among the other students, with some students who were higher-functioning and others who were lower-functioning. The SDC students primarily received individualized instruction, with only limited group instruction. Student received instruction at her level and, with prompting from her aide, would usually complete the academic activities presented to her. Student appeared to be more relaxed at Maloney than at CSDF; her anxious behaviors such as picking at her skin or grinding her teeth occurred much less frequently at Maloney than at CSDF.

8. On April 25, 2005, Student's IEP team convened to review her progress. CSDF and the District proposed full-time placement at the Maloney SDC, with continued provision of a full-time one-to-one signing aide and continued designated instruction and services (DIS) of adaptive physical education (APE), occupational therapy (OT) consultation, behavior consultation, and assistive/augmentative communication (AAC) consultation. Due to their concern that the Maloney SDC did not address Student's language needs, Student's parents did not agree to the offer of full-time placement at Maloney, but agreed to continue the

"split program" wherein Student attends CSDF in the mornings and Maloney in the afternoons.

9. For the 2005-2006 school year, Student has continued to attend CSDF in the mornings and the Maloney SDC in the afternoons, accompanied by a one-to-one signing aide, Kim Moore, for the entire school day.⁶ For the new school year, Student attends a middle school class instead of an elementary school class at CSDF. However, her behavior at CSDF has not changed; she remains uninterested in the work, unwilling to participate in the class activities, and uncommunicative with the other students. At CSDF, Student continues to display anxious behaviors such as picking at her skin, but does not engage in those behaviors at Maloney, where she appears more relaxed. At Maloney, Student has grown accustomed to the class and has made progress in some areas, such as making more eye contact, making more signs, counting up to 12 objects, and completing other academic tasks. When the SDC teacher hands Student a piece of chalk and makes the sign for "name," Student will now respond by writing her name on the chalkboard.

STUDENT'S ABILITIES AND EDUCATIONAL NEEDS RELATED TO LANGUAGE AND COMMUNICATION

10. There is no dispute that the proposed full-time placement in the Maloney SDC, as contained in the April 25, 2005 IEP, would appropriately address most of Student's areas of need, including self-help skills and other functional living skills. The areas of dispute concern the appropriateness of the SDC placement in addressing her needs in language and communication.

⁶ At the beginning of the 2005-2006 school year, the regular SDC teacher, Judy Pounder, was on medical leave and did not return to work until November 2, 2005. Student adjusted to the substitute teacher without significant difficulty.

11. Witnesses including SDC teacher Judy Pounder, AAC specialist Diane Russell, and clinical psychologist Dr. Joan Wenters established that, in order to learn new skills and improve her socialization and communication, Student needs to be in an environment where she can receive and understand information from others. Student understands sign language when signed to her directly by a familiar person, such as her aide, her teacher, or one of her parents. Student's one-to-one aide uses short, simple signs to communicate, and Student demonstrates her understanding of those signs by following the aide's directions. At school, Student understands the picture schedule that sets out her schedule for the day; when she has completed an activity on the schedule, she moves that activity's icon into a different column. Student also recognizes some words by sight, and can match some words to pictures.

12. There is no question that Student's receptive communication skills are greater than her expressive skills. In order to get her preferences met and improve socialization, Student needs to be in an environment where she can expressively communicate with others. Student has a sign language vocabulary of a few hundred signs that she will use to correctly identify a picture when prompted to do so. However, she does not use most of those signs to communicate in a functional way while at school. She will not sign at all to people she does not know, but will make single signs to people with whom she feels comfortable, such her one-to-one aide and the SDC teacher. Occasionally, she will combine two or more signs to express herself, but this occurs infrequently.⁷ At Maloney, Student has signed "hello" to other students on a couple of occasions, and the staff have successfully

⁷ On rare occasions, Mother has observed Student expressively communicate by putting five or six signs together. Recently, Ms. Pounder and Ms. Moore were pleasantly surprised when Student used two signs, "wrong movie," to convey that she did not like the movie that was playing in the SDC.

prompted the other students to wave or sign “hello” in response. Other than those occasions, Student generally does not sign to peers at school. Because Student feels most comfortable with her parents, she signs to them more than to anyone else. Student also uses a picture exchange communication system (PECS) to communicate expressively. In the Maloney SDC, she primarily uses the PECS cards to request backrubs. Student also sometimes communicates using gestures, such as pointing.

13. There is no dispute that Student does not communicate in ASL with her signing peers at CSDF. She typically does not pay attention when other people are using ASL near her, such as when her CSDF teacher is signing to the entire class, or when other students at CSDF carry on a conversation in ASL. Witnesses including Dr. Joan Wenters established that Student does not learn incidentally and instead requires direct instruction to learn.

DESIGNATION OF PRIMARY LANGUAGE

14. Student does not use the complex syntax, grammar, body movements, or facial expressions of ASL. Her signs do not use ASL’s four parameters of orientation, movement, location, and hand shape. She does not have the level of eye contact necessary to communicate fluently in ASL. Several witnesses who are fluent in ASL, including bilingual/deaf studies curriculum specialist David Eberwein, ASL specialist Lorraine Flores, CSDF director Dr. Debra Guthmann, and deaf/hard-of-hearing specialist Lynda Koraltan, established that Student’s language technically cannot be considered ASL because she does not use these components of ASL. In contrast, the witnesses who testified that ASL is Student’s primary language, such as Mother and AAC specialist Diane Russell, are less knowledgeable about ASL than Mr. Eberwein, Ms. Flores, Dr. Guthmann and Ms. Koraltan, who have all earned California deaf education credentials. Moreover, the distinction is more a matter of characterization than a dispute regarding Student’s skills; the evidence is clear

that Student uses signs, and the witnesses simply disagree as to whether use of signs alone, without the grammar and syntax of ASL, nevertheless constitutes ASL.

15. Nevertheless, there is no question that Student signs expressively and understands signs receptively. As discussed in the preceding paragraphs, Student can understand simple phrases using the basic signs that comprise ASL, and often demonstrates her understanding by following instructions that her aide, teacher, or parent signs to her. She will make simple, mostly one-word signs to familiar adults. Signing is a key way that Student communicates with her aide, teacher, and parents. In light of these findings, the ALJ concludes that, while not complying with the technical parameters of ASL, Student's use of signs is her primary language. Regarding how to describe Student's language, the ALJ finds that Ms. Koraltan stated most accurately that Student does not use not ASL, but does use sign language. The ALJ concurs and finds that, while Student's primary language cannot technically be identified as ASL, it can be generally described as sign language or basic sign language.

IEP GOALS AND ASL INSTRUCTION

16. The Student contends that her language and communication needs include ASL instruction, and that the April 2005 IEP goals are inappropriate to the extent that they do not include ASL instruction. As determined in Factual Findings 14 and 15, ASL is not Student's primary language, but she uses the basic signs that are part of ASL. Testimony from Ms. Pounder, Ms. Moore and Ms. Hancock established that Student does not benefit from sign language instruction out of context, but instead benefits from learning and using new signs in a functional way. While the April 2005 IEP does not identify sign language instruction as one of Student's goals, Ms. Moore and Ms. Pounder established that Ms. Moore already tries to develop Student's signing vocabulary.⁸

⁸ Parents also work on Student's signing vocabulary during non-school hours.

17. Given the determinations in Factual Findings 14, 15, and 16, Student does not need formal ASL instruction. However, given that she already communicates using basic signs, she needs to continue to utilize this means of communication to learn new skills and communicate with those around her. Accordingly, Student's educational program should include continuing to develop her ability to receptively and expressively communicate in sign language, and this aspect of her program should be reflected in the IEP goals. Student does not need instruction in aspects of sign language that she does not use, such as grammar and syntax, but instead needs to develop her basic receptive and expressive vocabulary of signs in a functional context within the classroom. She needs this instruction in addition to continuing to develop her use of PECS and printed words.

MALONEY SDC PROPOSED PLACEMENT

18. A total of ten students, including Student, attend the Maloney SDC. Excluding Student's one-to-one aide, the Maloney SDC staff is composed of the teacher, two full-time aides, and one part-time aide who is present only in the mornings. One of the full-time aides is hard of hearing and is fairly proficient in ASL; the other two aides began ASL instruction a few months ago. The SDC teacher, Judy Pounder, has also been receiving ASL instruction for a few months and has learned a basic signing vocabulary. Ms. Pounder has a California severely handicapped special education teaching credential and a California multiple subject teaching credential. Ms. Pounder is a dedicated, highly qualified special education teacher who has developed a good relationship with Student.

19. Kim Moore, Student's one-to-one signing aide, is fluent in ASL and gets along very well with Student. Ms. Moore interprets spoken English into sign language for Student, communicates directly with Student in sign language, and provides assistance such as prompting Student to work on tasks.

20. Ms. Pounder conducts two forty-five minute sessions of group instruction each school day, and the students spend the remainder of the class time working individually. Ms.

Pounder conducts the group instruction in spoken English, but also includes some ASL signs during the instruction, and uses more signs when Student is present in the class. Given the small teacher-to-student ratio, the SDC students receive a significant amount of one-to-one attention from the teacher and aides. The class is highly structured and individualized for each student. Student follows her own picture schedule for each day's activities.

21. While Mother and Dr. Wenters testified that Maloney was inappropriate to the extent that it lacked signing peers, this testimony was not persuasive in light of the totality of the evidence. As discussed above in paragraphs 5 and 9, placement with the signing population at CSDF was not appropriate for Student. Student does not learn incidentally and did not benefit from being surrounded by other students who sign fluently in ASL.⁹ Moreover, Dr. Wenters' acknowledged that her opinion regarding the Maloney placement did not take into account that the SDC teacher was learning ASL or that another SDC aide, Kathy Kiehl, knows ASL.

22. Instead, the ALJ finds persuasive the testimony of knowledgeable, credible witnesses, including Ms. Pounder, Dr. Moxley, and Ms. Koraltan, that the SDC addresses Student's communication needs. As those witnesses described, Student is able to communicate with and receive instruction from both Ms. Moore and Ms. Pounder using sign language. She is also able to expressively communicate using PECS, and receptively communicate using printed words. While Ms. Pounder does not have the fluency in ASL to carry on a lengthy conversation, she is able to use signs to communicate with Student. As determined above in paragraph 9, Student has made progress during her attendance at Maloney. Because she is more comfortable at Maloney, she is more open to communication with peers there. While the other SDC students are not hearing-impaired and are not fluent

⁹ This is consistent with the determination in Factual Finding 15 that ASL is not Student's primary language.

in ASL, several are nonverbal and use PECS and a few signs to express themselves. Although still very limited, Student currently has more interaction with her SDC classmates than she had with her CSDF classmates. In light of this information and the findings above, the ALJ determines that the SDC students comprise an appropriate peer population for Student.

LEGAL CONCLUSIONS

APPLICABLE LAW

1. Pursuant to the Individuals with Disabilities in Education Improvement Act (IDEIA) and State special education law, children with disabilities have the right to a FAPE that emphasizes special education and related services designed to meet their unique needs and to prepare them for employment and independent living. (Cal. Educ. Code § 56000.) FAPE consists of special education and related services that are available to the student at no charge to the parent or guardian, meet the State educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9).) "Special education" is defined as specially designed instruction, at no cost to parents, to meet the unique needs of the student. (20 U.S.C. § 1401(29).)

2. Likewise, California law defines special education as instruction designed to meet the unique needs of individuals with exceptional needs coupled with related services as needed to enable the student to benefit fully from instruction. (Cal. Educ. Code § 56031.) The term "related services" includes transportation and other developmental, corrective, and supportive services as may be required to assist a child to benefit from special education. (20 U.S.C. § 1401(26).) California Education Code section 56363, subdivision (a), similarly provides that designated instruction and services (DIS), California's term for related services, shall be provided "when the instruction and services are necessary for the pupil to benefit educationally from his or her instructional program."

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 IDEIA. The Court determined that a student's IEP must be reasonably calculated to provide the student with some educational benefit, but that the IDEIA 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 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 201.)

4. The petitioner has the burden of proving at an administrative hearing the essential elements of its claim. (*Schaffer v Weast* (2005) 126 S.Ct. 528, 163 L.Ed 2d 387.)

5. To determine whether Student has been offered a FAPE, the analysis must focus on the adequacy of the District's proposed program. (*Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1314.) If the proposed program is designed to address Student's unique educational needs, is reasonably calculated to provide her some educational benefit, and comports with her IEP, then the District has offered a FAPE, even if the Student's parents preferred another program and even if her parents' preferred program would have resulted in greater educational benefit. Although not specifically at issue here, the District is also required to provide the Student with a program which educates her in the least restrictive environment, with removal from the regular education environment occurring only when the nature or severity of her disabilities is such that education in regular classes with the use of supplementary aids and services can not be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); Cal. Educ. Code § 56031.)

6. California Education Code section 56000.5 contains legislative findings and declarations regarding children who are deaf or hard-of-hearing. That section includes the finding and declaration that "it is essential that hard-of-hearing and deaf children, like all children, have an education with a sufficient number of language mode peers with whom they can communicate directly and who are of the same, or approximately the same, age

and ability level.” (Cal. Educ. Code § 56000.5, subd. (b)(4).) Other findings and declarations in section 56000.5 include that “it is essential that hard-of-hearing and deaf children have an education in which their special education teachers are proficient in the primary language mode of those children.” (Cal. Educ. Code § 56000.5, subd. (b)(3).)

7. The IDEIA and California special education law both require that an IEP team must consider special factors when developing, reviewing, or revising a student’s IEP. Specifically, the federal regulations to the IDEIA require that the IEP team must:

Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child’s language and communication needs, opportunities for direct communications with peers and professional personnel in the child’s language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child’s language and communication mode.

(34 C.F.R. § 300.346, subd. (a)(2)(iv).)

8. Likewise, California Education Code section 56345, subdivision (d), requires the IEP team to consider the child’s communication needs, including the child’s primary language mode, the availability of a sufficient number of age, cognitive, and language peers of similar abilities, and access to special education teachers and specialists who are proficient in the pupil’s primary language mode.

9. California Education Code section 44265.5, subdivision (b), provides that “pupils who are deaf or hard of hearing shall be taught by teachers whose professional preparation and credential authorization are specific to that impairment.”

10. California Education Code section 80047.3, subdivision (c), authorizes a teacher with a special education specialist instruction credential for the severely handicapped to

teach a special day class in which the primary disability is "multiple disabilities" as defined in the federal regulations to the IDEIA. Title 34, Code of Federal Regulations section 300.7, subdivision (b)(7), defines "multiple disabilities" as follows:

Concomitant impairments (such as mental retardation-blindness, mental retardation-orthopedic impairment, etc.), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness.

DETERMINATION OF ISSUE

11. As determined in Factual Findings 5, 9, and 21, placement in an ASL environment at CSDF did not address Student's unique needs. Given that Student uses basic sign language and not the complex syntax and grammar of ASL, placement in an ASL environment is not necessary to address her unique needs. Instead, as determined in Factual Findings 11 and 12, Student needs to be in an environment where she can understand others in order to learn new skills, and where she can expressively communicate with others. As determined in Factual Findings 19, 20, and 22, the Maloney SDC provides that environment to sufficiently address Student's language and communication needs. As determined in Factual Findings 11, 12, and 22, Student is able to communicate with both her one-to-one aide and the SDC teacher using ASL signs, gestures and PECS, and that communication is at a level sufficient to address her needs and allow her to gain educational benefit. Pursuant to Factual Findings 7 and 22, the Maloney SDC is comprised of an appropriate peer population who function in the same range as Student does.

12. While the Student points to the provision of Education Code section 44265.5, subdivision (b), which states that deaf students must be taught by a teacher who has a deaf education credential, this argument is misplaced because Student is not only deaf, but also

has autism and mental retardation. Ms. Pounder's special education specialist instruction credential authorizes her to teach students who are eligible for special education due to multiple disabilities. The definition of "multiple disabilities" specifies that the combination of the student's disabilities causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. (34 C.F.R. § 300.7, subd. (b)(7).) Hence, Education Code section 44265.5, subdivision (b), must be read to be consistent with this definition. It would be an absurd result if the Legislature created a credential authorizing a teacher to teach students whose multiple disabilities cannot be accommodated in a program designed solely for one impairment, yet also required that teacher have an additional credential to teach solely one of those impairments. Thus, because Student is eligible due to multiple disabilities, Ms. Pounder has professional preparation and credentialing specific to Student's impairment of multiple disabilities.¹⁰

13. In light of Factual Findings 11, 12, 13, 18, 19, and 22, Student's April 2005 IEP reflects the IEP team's consideration of Student's communication needs, including her primary language mode, communication with peers, and access to special education teachers and specialists who are proficient in her primary language mode. (See Cal. Educ. Code § 56345, subd. (d); 34 C.F.R. § 300.346, subd. (a)(2)(iv).)

14. Regarding California Education Code section 56000.5, subdivision (b), Factual Findings 14 and 15 found that to the extent Student uses language, her primary language mode is basic sign language, not ASL. Several of Student's peers at the SDC use some basic signs, as does the SDC teacher. Given that Student is not fluent in ASL, and uses only basic signs, placement in an environment where the other students are fluent in ASL would

¹⁰ Moreover, as determined in Factual Findings 18, 20, and 22, Ms. Pounder is a highly qualified teacher who works well with Student, is able to communicate with Student in sign language, and is able to address Student's educational needs.

arguably be inconsistent with the findings and declarations of section 56000.5, subdivision (b). Moreover, section 56000.5, subdivision (b), must be read as consistent with the legal requirements to offer the student a FAPE that is designed to address her unique educational needs and allow her to receive educational benefit.¹¹ Considering also this Decision's findings regarding how the proposed SDC placement addresses Student's language and communication needs, the placement is also consistent with section 56000.5, subdivision (b).

15. Pursuant to Factual Findings 16 and 17, Student's IEP goals should be amended to include a goal for developing her ability to receptively and expressively communicate in sign language.

16. In light of the above factual findings and legal conclusions, the ALJ concludes that the District's April 25, 2005 IEP offered Student a FAPE for the 2005-2006 school year.

PREVAILING PARTY

17. 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: *CSDF and the District substantially prevailed on the sole issue for hearing.*

RIGHT TO APPEAL THIS DECISION

18. 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. (Cal. Educ. Code § 56505, subd. (k).)

¹¹ Significantly, section 56000.5, subdivision (b), only contains findings and declarations. Unlike the IDEIA and California Education Code section 56031, section 56000.5 does not impose any legal requirements on the educational agencies.

IT IS SO ORDERED THIS 5 DAY OF JANUARY 2006.

A handwritten signature in cursive script, reading "Suzanne B. Brown", is written over a horizontal line. The signature is contained within a light gray rectangular box.

SUZANNE B. BROWN

Administrative Law Judge

Office of Administrative Hearings