

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

DUBLIN UNIFIED SCHOOL DISTRICT,

Petitioner,

v.

STUDENT,

Respondent.

OAH CASE NO. N 2006060896

DECISION

Administrative Law Judge (ALJ) Suzanne B. Brown, Office of Administrative Hearings (OAH), Special Education Division, State of California, heard this matter on September 11-15, 19, 21, and 28, 2006, in Dublin, California.

Attorney Amy Levine represented Petitioner Dublin Unified School District (District). Present on the District's behalf was Dr. Blaine Cowick, District Director of Special Education.

Attorney Debra Wright and advocate Jeffie Muntifering represented Respondent Student (Student). Present on Petitioner's behalf was her mother. A Korean interpreter was present to interpret for Student's mother.

OAH received the District's request for hearing on June 27, 2006. On July 6, 2006, OAH received from the parties a joint request to continue the hearing. On July 27, 2006, OAH convened a telephonic trial setting conference, and thereafter ordered hearing dates beginning on September 11, 2006.

The ALJ received sworn testimony and documentary evidence at the hearing. Upon receipt of the written closing arguments on October 12, 2006, the record was closed and the matter was submitted.

ISSUE¹

Is Student eligible for special education under the category of autistic-like behaviors?

CONTENTIONS OF THE PARTIES

The District argues that Student is no longer eligible for special education because: (1) she does not currently meet the criteria under the category of autistic-like behaviors, and (2) she does not require special education instruction or services.

Student contends that she has high-functioning autism and is eligible for special education because: (1) she meets the criteria under the category of autistic-like behaviors, and (2) her impairment requires special education instruction and services of social skills

¹ The District's due process complaint correctly identified the hearing issue as: "Is [Student] currently eligible for special education?" In its Prehearing Conference Statement, the District sought to rephrase the issue as whether at the June 6, 2006 IEP meeting, the District appropriately determined that Student is not eligible for special education. The District's attempted limitation of the issue is disingenuous and would render the entire hearing meaningless, because it would leave the fundamental question of the Student's current eligibility unanswered. Unlike a hearing concerning a past denial of free appropriate public education (FAPE), in the present case the issue concerns the Student's current state, and thus the hearing is not limited to what the IEP team was able to consider at the time of the meeting. (Cf. *Adams v. Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)

training, aide support, and behavioral training and consultation. Student acknowledges that she performs well academically and that, for purposes of special education, she does not have academic needs.

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. Student is a six-year-old girl who resides with her family within the boundaries of the District. Since the time she entered school in the District, she has been determined eligible for special education under the category of autistic-like behaviors. She currently attends first grade at the District's Dougherty Elementary School.

FACTUAL BACKGROUND

2. At age two and a half, Student began receiving early intervention services under Part C of the Individuals with Disabilities in Education Act (IDEA). Shortly thereafter, Dr. Ivy Fisher at Kaiser Permanente diagnosed Student with Pervasive Developmental Disorder, Not Otherwise Specified (PDD-NOS). At age two years, eleven months, Student was evaluated at Children's Hospital and again received a PDD-NOS diagnosis.

3. At age three, Student began receiving special education services from the District under the eligibility category of autistic-like behaviors. She attended a special day class (SDC) diagnostic preschool, and received services including in-home applied behavioral analysis (ABA). In September 2004, Student began splitting her classroom attendance between the diagnostic preschool and Kinderkirk, a general education preschool. In December 2004, Student was exited from the diagnostic preschool, and began attending preschool only at Kinderkirk. She continued to receive related services including behavioral consultation from Psychology, Learning And You (PLAY), a non-public agency (NPA).

4. In April 2005, developmental pediatrician Dr. Linda Copeland evaluated Student. Dr. Copeland found that Student met six of the twelve criteria for autism in the Diagnostic and Statistical Manual, Fourth Edition (DSM-IV), and diagnosed Student with high functioning autism.

5. For the 2005-2006 school year, Student attended a general education kindergarten at Dougherty Elementary School five mornings a week. Student's twin sister, who was also eligible under the category of autistic-like behaviors, attended the same morning kindergarten class with Student. Student had a shadow aide who was assigned to assist both Student and her sister while they were at school.

6. During her kindergarten year, Student received resource specialist program (RSP) tutoring, behavioral consultation from the NPA, and social skills training from the NPA. Social skills training involved Student's participation in a social skills group with her sister and two typical peers. In late September 2005, the directors of PLAY informed the District that they intended to cancel their contract with the District to provide the behavioral consultation and social skills services to Student and her sister. Thereafter the NPA Behavior Analysts, Inc. (BAI) took over providing the behavioral consultation and social skills services to Student and her sister. Those services included a weekly social skills group run by behavior analyst Joel Vidovic, consisting of Student, her sister, and two typically developing peers.

7. In kindergarten, Student performed at an average level in most academic areas. By the end of the school year, her report card reflected grades of "Satisfactory" or "Meeting Standard" in all areas except one: doing "neat and careful work," for which she received a grade of "Needs Improvement." Student's kindergarten teacher, Lori Van Dorn, observed that Student had occasional difficulties with skills such as sharing and getting started on work, although Ms. Van Dorn believed that these difficulties were at a level typical for kindergarten students.

8. In April and May 2006, District staff assessed Student as part of her triennial reassessment. District school psychologist Dr. Gary Yabrove conducted Student's psychological assessment, and concluded that Student did not manifest behaviors consistent with a diagnosis of autism spectrum disorder or with the criteria for the special education eligibility category of autistic-like behaviors. Dr. Yabrove also reported that Student had average intellectual skills, but exhibited some deficits in social skills and adaptive behavior skills. Dr. Yabrove based his findings in part on his observation of Student, his review of Student's records, his interviews with Mother and Student's kindergarten teacher, Mother's responses to the Social Communication Questionnaire (SCQ) and Vineland-II Adaptive Behavior Scales (Vineland), and administration of standardized tests, including Module 2 of the Autism Diagnostic Observation Schedule (ADOS).

9. Other evaluations in the triennial reassessment were in the areas of speech-language and academic achievement. District speech-language pathologist Angela Sharp conducted Student's speech-language assessment, and found that Student scored in the average range on tests of functional language skills, receptive language, and expressive language. District RSP teacher Trisha Hahn administered academic testing in reading, math, writing, and listening comprehension; Student's scores on those tests spanned from the average range (34th percentile on a numerical operations subtest) to the superior range (99th percentile on a word reading subtest).

10. Also as part of the triennial reassessment, District behavior specialist Dr. Eric Burkholder and BAI consultant Joel Vidovic conducted a behavioral and social skills assessment. Their results indicated that Student was on-task in the classroom at a rate at or slightly above that of her typical peers, that Student played with other children on the playground and initiated social activities with peers at a rate similar to that of typical peers, and that Student did not display unusual behaviors such as stereotypic, repetitive or perseverative behaviors. The assessors concluded that Student's social and academic skills

were within the average range when compared with typical peers in her kindergarten class, and Student did not require specialized services to benefit from her education or access the curriculum.

11. On June 6, 2006, the IEP team convened for Student's annual IEP meeting. Student's mother and father attended the meeting with their advocate, Ms. Muntifering. After presentation of the assessment reports and review of Student's progress on her goals, the District members of the IEP team recommended that Student be exited from special education because she no longer met the eligibility criteria and no longer required special education. The District members of the IEP team proposed that Student be referred to the Student Study Team (SST) for ongoing monitoring. Student's parents did not consent to the District's proposal to exit Student from special education. On June 27, 2006, OAH received the District's due process hearing complaint.

12. In July 2006, Dr. Gina Green, who is a psychologist, board certified behavior analyst, and university lecturer/professor, provided an independent evaluation report at the request of Student's parents. Dr. Green issued her report following observations of Student at school and at home, a review of Student's records, and an interview with Mother. Dr. Green concluded that, although Student had made good progress, she continued to have autism and continued to need services in behavior, social skills, and communication. Dr. Green explained that Student appears functional in structured situations, but has difficulty generalizing her skills to unstructured situations. Dr. Green noted her concern that Student tends to engage in nonfunctional "fantasy talk" about preferred topics such as the Disney movie "Aladdin." Dr. Green also criticized the measurement methods Dr. Burkholder and Mr. Vidovic used in the behavioral/social skills assessment, explaining that the "partial interval recording" method they used can result in inaccurate data.

13. Also in July 2006, Student saw Dr. Copeland at Kaiser Permanente for a reevaluation. After administering tests and reviewing Student's records, Dr. Copeland

determined that Student met five of the twelve DSM-IV criteria for autism, and thus continued to have a DSM-IV diagnosis of PDD-NOS. Dr. Copeland's findings included that Student demonstrated significant social deficits, repetitive use of language, an overly intense and restricted preoccupation with the Disney movie "Aladdin," and inflexible adherence to non-functional rituals, such as insistence on matching colors of clothes and eating utensils. Dr. Copeland's report also explained her disagreement with Dr. Yabrove's choice of testing instruments and with his findings.

14. In August 2006, speech-language pathologist Coleen Sparkman conducted an independent speech-language evaluation at the request of Student's parents. Ms. Sparkman found that Student scored in the average range on most of the standardized tests. Nevertheless, Ms. Sparkman concluded that Student had difficulty in areas such as spontaneous language and generalizing language skills to less structured settings. Ms. Sparkman based those conclusions in significant part upon Student's behavior around other children at the Kendall School, the nonpublic school where the evaluation took place. In September 2006, Ms. Sparkman observed Student participate in a social skills group held in Student's home.

15. For the 2006-2007 school year, Student is enrolled in a general education first grade class at Dougherty Elementary School.

AUTISTIC-LIKE BEHAVIORS: ORAL LANGUAGE

16. Drs. Green and Copeland both testified that Petitioner meets three of the seven criteria for autism eligibility under the California Code of Regulations, title 5, section 3030, subdivision (g) [hereinafter section 3030(g)]. The first of these three criteria is "an inability to use oral language for appropriate communication." There is ample evidence of Student's appropriate oral communication; for example, Student greets others, makes requests, asks questions, verbally participates in class, and is frequently described as "chatty." While on some occasions Student uses idiosyncratic language or makes out-of-

context statements during social conversations, she also is able to engage in appropriate conversations about a variety of topics. Moreover, although she sometimes makes grammar or syntax errors during spontaneous conversation, Student tends to score at least in the average range on tests requiring oral responses. As noted in Factual Findings 9 and 14, Student scored in the average range on the tests recently administered by both the District's speech-language pathologist, Ms. Sharp, and the independent speech-language pathologist, Ms. Sparkman. In her testimony, Ms. Sparkman agreed that Student can communicate her basic wants and needs, and is able to use oral language.

17. Dr. Copeland agreed that Student uses oral language appropriately in some instances, but asserted that Student nevertheless meets this criterion because her appropriate communication is not consistent. Similarly, Dr. Green found that Student has basic oral communication skills and emerging higher-level language skills, but nevertheless meets this criterion due to deficits such as repetitive statements and fantasy talk. Hence, Student's witnesses essentially suggest that the phrase "inability to use oral language for appropriate communication" should not be read literally. In contrast, Dr. Bryna Siegel testified that Student does not meet this criterion because she has age-level language abilities, and her kindergarten teacher did not observe any language difficulties.² Similarly, Dr. Yabrove found that Student did not meet this criterion; his report and testimony described examples of Student engaging in conversations and other appropriate oral communication.³ Moreover, Dr. Pamela Osnes established in her

² Dr. Siegel is the director of the autism clinic at the Langley Porter Psychiatric Institute at the University of California, San Francisco, where she is also an adjunct professor. She holds a Ph.D. in child development from Stanford University.

³ Dr. Yabrove is an experienced school psychologist who holds a Ph.D. in educational psychology from the University of California, Berkeley, and a California credential in school psychology. Dr. Yabrove also holds a California license for educational

testimony that a child who regularly communicates using oral language but occasionally says things that are inappropriate does not meet this criterion.⁴ On this point, the testimony of Drs. Siegel, Yabrove and Osnes is more persuasive because they interpret the criterion according to its plain meaning.

18. As discussed above, despite occasional difficulties, Student regularly communicates appropriately using oral language. Having some deficits in higher-level language skills does not constitute an inability to use oral language for appropriate communication. Hence, Student does not have an inability to use oral language for appropriate communication.

AUTISTIC-LIKE BEHAVIORS: SOCIAL BEHAVIOR

19. The more difficult question is whether Student has a history of extreme withdrawal or relating to people inappropriately and continued impairment in social interaction from infancy through early childhood, pursuant to subdivision (2) of section

psychology, although that license is currently on inactive status. Dr. Yabrove was reasonably knowledgeable about Student because he conducted Student's psychological assessment in April and May 2006. Contrary to Student's contention, Dr. Yabrove's credibility was not particularly undermined by his failure to update his resume, which appears to be several years old, to reflect changes to the status of his educational psychology license and professional memberships.

⁴ Dr. Osnes is the director of educational services at BAI, the NPA from which Student received behavioral and social skills services. She is a board-certified behavior analyst who holds a Ph.D. in Curriculum & Instruction with Emphasis in Special Education, from the University of South Florida, Tampa. She supervises Mr. Vidovic at BAI, and through that role is familiar with Student's functioning, although her testimony is accorded less weight to the extent that she has never worked with or assessed Student.

3030(g). Preliminarily, Student has a friendly, social personality, and she frequently initiates social interactions; hence, there is no persuasive evidence of a history of extreme withdrawal. Thus, the issue is whether Student has a history of relating to people inappropriately and continued impairment in social interaction.

20. Dr. Copeland and Dr. Green each reported that Student meets this criterion due to Student's subtle deficits in social skills. Based upon reports from Mother, Dr. Copeland found that Student "initiates social interaction and chatting with others often, but usually doesn't wait for their answers to get any social closure on the exchange." Dr. Copeland also concluded that Student has poor social reciprocity, poor understanding of social norms, and lack of joint attention. Similarly, Dr. Green found that Student has subtle deficits in social reciprocity, and has only rudimentary interactive play skills.

21. This evidence must be considered in light of the extensive, persuasive evidence that Student's social functioning is generally within the typical range for her age. For example, Student's kindergarten teacher and shadow aide each reported that Student plays appropriately with peers, interacts appropriately with peers and adults, and expresses concern about the well-being of others, and does not have any social deficits unusual for her age. Both witnesses reported that Student did not play by herself any more frequently than the other kindergarten children did. Similarly, Dr. Yabrove observed that Student conversed appropriately with him about different topics, that she had good eye contact during conversation, that she initiated conversations with other children, and that those children responded back to her.

22. BAI behavioral consultant Joel Vidovic led Student's social skills group and also observed her in class and at recess. Mr. Vidovic established that Student played appropriately with other children, and appeared to understand social cues and nonverbal communications. Mr. Vidovic reported that Student exhibited some behavioral issues, such as noncompliance and reluctance to share, but these behaviors were not unusual for a child her age. Similarly, behavioral analyst Dr. Eric Burkholder, who observed Student in

various settings including class, recess, and social skills group, also concluded that Student used appropriate social skills and, by the end of her kindergarten school year, had developed social skills in the average range for her age.

23. As noted in Factual Finding 10, in addition to their anecdotal observations, Dr. Burkholder and Mr. Vidovic measured the frequency of Student's social and on-task behaviors compared to the frequency of social and on-task behaviors of typical kindergarten peers. Because the recording method measured only frequency and not the content of Student's social interactions, the results of this behavioral/social skills assessment are only an approximate indicator.⁵ Even so, the results are revealing: the frequency of Student's social, play, and on-task behaviors were comparable to those of her typical peers.

24. Moreover, in considering whether Student's social behaviors could meet this criterion, the opinion of Dr. Siegel is informative. Dr. Siegel is less familiar with Student's functioning than witnesses who have observed and/or assessed Student, and therefore the ALJ gives less weight to her testimony about that topic. However, Dr. Siegel is a renowned expert on autism who gave knowledgeable, credible testimony about what behaviors constitute eligibility for autism under the special education criteria. The ALJ gives significant weight to Dr. Siegel's testimony regarding the meaning of the autism eligibility criteria and what types of behaviors meet or do not meet those criteria.

⁵ The method of measurement was a "partial interval recording" collection system, wherein the assessors recorded how often Student engaged in specific behaviors during 30-second intervals, compared to how often typical peers in her class engaged in the same behaviors. The assessors' use of inter-observer agreement supports the reliability of the data; the assessors collected data at the same time and only relied upon the items for which they agreed that the behavior had occurred.

25. Regarding this criterion, Dr. Siegel established that the types of behaviors that constitute “relating to people inappropriately” and “continued impairment in social interactions” are more severe behaviors than any reflected in Student’s records. Moreover, to meet any of the seven criteria, the behaviors in question must affect the child’s ability to function at school.⁶ As discussed above, at school Student functions academically and socially within the normal range for her age.

26. Thus, the evidence does not establish that Student’s behaviors constitute a history of relating to people inappropriately and continued impairment in social interaction. While Drs. Copeland and Green are both knowledgeable and credible experts, their opinions on this question were ultimately not persuasive because of the evidence that Student’s social skills are within the typical range for her age, and that any deficits she has do not reach the level constituting “relating to people inappropriately and continued impairment in social interaction.”

AUTISTIC-LIKE BEHAVIORS: SELF-STIMULATORY, RITUALISTIC BEHAVIORS

27. The third criterion under consideration is whether Student has self-stimulatory, ritualistic behaviors, pursuant to subdivision (7) of section 3030(g). Dr. Copeland, Dr. Green, and Mother each testified that Student frequently engages in nonfunctional, repetitive fantasy talk about the Disney movie characters Aladdin and Jasmine. Dr. Green observed Student interact with other children on the playground, in the classroom, and in the social skills group; at some points Student played and interacted appropriately, but at other points Dr. Green heard Student making out-of-context statements about Aladdin, Jasmine, or Ariel, another Disney movie character. Drs. Green

⁶ On this point, the testimony of Dr. Osnes was also persuasive. Dr. Osnes established that a “continued impairment in social interactions” involves nonfunctional behavior that interferes with normal functioning.

and Copeland each testified that this fantasy talk appeared to be self-stimulatory, ritualistic behavior.

28. Both Dr. Green and Dr. Siegel established that a strong interest in the Disney princess characters is typical for girls Student's age, although Dr. Green distinguished Student's behavior on the grounds that typical girls talk about other things besides Disney princesses.⁷ However, extensive evidence established that Student talks about a variety of topics. For example, Student's shadow aide did not recall ever hearing Student speak about Aladdin or Jasmine. Moreover, Dr. Osnes explained that fantasy talk about a cartoon character can be self-stimulatory, ritualistic behavior only if the talk excludes other behaviors.⁸ There is no evidence that Student's fantasy talk excludes other behaviors; Student participates in school and engages in a variety of games and other activities. For example, Student's kindergarten teacher and other witnesses established that Student played with different toys, such as blocks and toy animals, and sought out different types of play activities, such as playing "house" or a chasing game.

29. Pursuant to Factual Finding 25, the evidence does not indicate that Student's fantasy talk affects her ability to function at school. Additionally, Drs. Siegel and Osnes established that imaginative talk about favorite characters is not indicative of autism; rather, a lack of imaginative play is part of the DSM-IV autism criteria. Given all of

⁷ Both Jasmine and Ariel are Disney "princess" characters.

⁸ Drs. Osnes and Green both established that behavior is only self-stimulatory if it is non-functional, meaning that the behavior does not fulfill a function such as communicating with others. Both witnesses theorized regarding the likely function, or lack thereof, of Student's fantasy talk. However, these witnesses also established that it is difficult to conclusively determine the function of Student's fantasy talk without formal measurement, such as a functional assessment.

the above findings, Student's fantasy talk does not meet the criterion for self-stimulatory, ritualistic behavior.

30. Drs. Copeland and Green also testified that Student's insistence on matching clothes constituted ritualistic behavior. Student often insisted not only that her own clothes match, including her underwear, but also that her clothes must match those of her mother and sister. Dr. Siegel established that it is not unusual for girls Student's age to insist upon matching clothes and, therefore, that this is not the type of behavior that constitutes ritualistic behavior under the criterion. Moreover, this behavior occurred only at home, and did not affect Student's functioning at school. In light of all evidence, this behavior does not meet the criterion for self-stimulatory, ritualistic behavior pursuant to subdivision (7) of section 3030(g).

IEP TEAM'S DETERMINATION OF STUDENT'S INELIGIBILITY

31. In her closing brief, Student raised the new argument that the District predetermined its findings regarding her eligibility prior to the individualized education program (IEP) meeting on June 6, 2006.⁹ The only evidence supporting this claim is Dr. Siegel's testimony that the District's law firm, Miller Brown & Dannis, sought to retain her for this case on April 1, 2006, more than two months prior to the IEP meeting on June 6, 2006. However, the District's special education director, Dr. Blaine Cowick, gave credible testimony establishing that he did not tell anyone on the IEP team what they should find about the Student, that he did not speak to Dr. Siegel about this case until well after the

⁹ In most circumstances, a respondent must identify its affirmative defenses prior to the hearing; raising a defense for the first time in a closing argument is generally too late, in large part because it denies the other party a full opportunity to respond. However, in the present case the ALJ makes an exception because it was clear that Student did not learn about the evidence supporting this defense until Dr. Siegel testified.

June 6, 2006 IEP meeting, and that Dr. Siegel had apparently confused the initial contact date in this case with another Miller Brown & Dannis case. Given all of the circumstances, the simplest explanation - that Dr. Siegel juxtaposed the initial contact dates regarding two different Miller Brown & Dannis cases – appears to be the most plausible. In contrast, the Student’s proposed scenario - wherein the District knew prior to even the triennial assessments that the assessors would find Student ineligible and knew that it would want to secure Dr. Siegel as an expert witness – sounds less likely. Moreover, it is notable that Student’s parents attended the IEP meeting with their advocate, that the IEP notes reflect participation by the parents and their advocate, and that there is no other evidence of predetermination. Overall, there is no persuasive evidence that the District predetermined the outcome regarding Student’s eligibility.

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) 546 U.S. 49 [126 S.Ct. 528, 163 L.Ed 2d 387].)
2. Under the Individuals with Disabilities in Education Improvement Act of 2004 (IDEIA) and state law, only children with certain disabilities are eligible for special education. (20 U.S.C. § 1401(3)(A); Ed. Code § 56026, subd. (a).) For purposes of special education eligibility, the term “child with a disability” means a child with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, a specific learning disability, deaf- blindness, or multiple disabilities, and who, by reason thereof, require instruction, services, or both, which cannot be provided with modification of the regular school program. (20 U.S.C. § 1402(3)(A)(ii); 34 C.F.R. § 300.8(a).) Similarly, California law

defines an “individual with exceptional needs” as a student who is identified by an IEP team as “a child with a disability” pursuant to 20 U.S.C. section 1402(3)(A)(ii), and who requires special education because of his or her disability. (Ed. Code § 56026, subd. (a), (b).) California Code of Regulations, title 5, section 3030 includes a list of conditions that may qualify a pupil as an individual with exceptional needs and thereby entitle the pupil to special education if required by “the degree of the pupil’s impairment.”

3. Pursuant to California Code of Regulations, title 5, section 3030, subdivision (g), a student meets the eligibility criteria for “autistic-like behaviors” if he or she exhibits any combination of the following autistic-like behaviors, including but not limited to:

- (1) An inability to use oral language for appropriate communication.
- (2) A history of extreme withdrawal or relating to people inappropriately and continued impairment in social interaction from infancy through early childhood.
- (3) An obsession to maintain sameness.
- (4) Extreme preoccupation with objects or inappropriate use of objects or both.
- (5) Extreme resistance to controls.
- (6) Displays peculiar motoric mannerisms and motility patterns.
- (7) Self-stimulating, ritualistic behavior.

If a pupil exhibits any combination of these behaviors and the autistic disorder is adversely affecting his educational performance to the extent that special education is required, the pupil meets the eligibility criteria for autism. (20 U.S.C. § 1402; 34 C.F.R. § 300.8; Cal. Code Regs., tit. 5 § 3030, subd. (g).)

4. Similarly, federal regulations define autism as “a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child’s educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or

change in daily routines, and unusual responses to sensory experiences.” (34 C.F.R. § 300.8(c)(1)(i).)

5. Under the IDEA, children with disabilities have the right to a FAPE. (20 U.S.C. § 1400(d).) 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 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 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(a).)

DETERMINATION OF ISSUE

6. Petitioner contends that she is eligible for special education under the category of autistic-like behaviors. Pursuant to Factual Findings 16-30, Student does not exhibit a combination of the criteria listed in section 3030(g).¹⁰ Therefore, Student is not eligible under the category of autistic-like behaviors.

¹⁰ As noted in Legal Conclusions 2 and 3, the law provides that a child is eligible for special education if he or she has one of the listed impairments and requires special education because of that disability. This Decision determined that, pursuant to the legal definition of autistic-like behaviors, Student does meet the criteria for that impairment. Hence, because Student does not have autistic-like behaviors, this Decision does not address the question of whether she requires special education because of such impairment.

ORDER

The District has established that Student is not eligible for special education under the category of autistic-like behaviors.

PREVAILING PARTY

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

RIGHT TO APPEAL THIS DECISION

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

Dated: November 1, 2006

A handwritten signature in cursive script, reading "Suzanne B. Brown", is written above a horizontal line.

SUZANNE B. BROWN

Administrative Law Judge

Office of Administrative Hearings

Special Education Division