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

In the Matter of : STUDENT, Petitioner, v. LOS ANGELES UNIFIED SCHOOL DISTRICT, Respondent.	OAH CASE NO. N 2006030239

DECISION

Eileen M. Cohn, Administrative Law Judge, Office of Administrative Hearings (OAH), Special Education Division, State of California, heard this matter on September 6, 2006, at the offices of the Los Angeles Unified School District (District), in Los Angeles, California.

Student was represented by her parent ("Parent"), a nonlawyer. Student was present throughout the hearing. An interpreter was made available to assist Parent.

District was represented by Laurie Lafoe, Esq., of Lozano Smith. Also present for the District was Ms. Lisa Kendrick, coordinating specialist, due process department.

PROCEDURAL HISTORY

On March 7, 2006, Student filed a request for due process (complaint). On March 14, 2006, the Parent first raised the sole issue in dispute at this hearing. On May 8, 2006, OAH continued the matter. On June 9, 2006, OAH issued an order setting the hearing for September 6, 2006 through September 8, 2006.

On September 6, 2006, before the hearing commenced, the parties entered into a written settlement agreement which resolved every issue in Student's complaint except the issue below. At the hearing, the parties agreed to amend Student's complaint to include the issue set forth below. District waived its right to an additional resolution session. The parties agreed to deem the complaint amended as of May 14, 2006, and to extend the deadline for issuance of the decision to October 2, 2006. District requested permission to file a closing brief. The Administrative Law Judge granted District's request and invited Parent to file a closing brief. Briefs submitted were required to be filed no later than September 8, 2006. District's brief was timely received. Parent did not submit a brief. The record was closed on September 8, 2006.

ISSUE

Whether District must provide Student a "C500 Permobile" motorized wheelchair with stander during the 2006-2007 school year so that she can access a free and appropriate public education.

CONTENTIONS OF THE PARTIES

Student raises this issue to establish whether District is obligated under the Individuals with Disabilities Education Improvement Act (IDEIA) to provide her with a motorized wheelchair that includes a stander (the "C500 Permobile"). A stander is a device that maintains Student in a standing position. Student contends that the stander is necessary to access her education. Currently, Student uses a nonmotorized wheelchair that does not include a stander. District has available a stand-alone stander for Student. Two people are required to move Student from her wheelchair to the stander. With training, it is Parent's hope that Student will be able to push the lever in the motorized wheelchair and be elevated to a standing position so that she can remain alert and more fully

participate in class.[1] Student also contends that she can not access a free and appropriate public education (FAPE) because she experiences physical pain from remaining in a stationary position most of the day.

District maintains that it has met its obligations to provide Student access to a FAPE by providing the "EZ Stand" stander which fits Student's measurements and can expand in size as she grows. Further, District contends that its stander satisfies the terms of Student's IEP of February 15, 2006. Student's IEP requires Student to be in the stander during class 45 minutes a day. While District admits that Student needs a wheelchair to access her education, District maintains that it is not required to provide Student a motorized wheelchair to access her education because District provides Student an aide to operate the nonmotorized wheelchair and attend to her needs[2].

FACTUAL FINDINGS

1. Student was born on June 20, 1992. She is a 14-year-old ninth grader at Birmingham High School, a District school. She has a medical diagnosis of cerebral palsy

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[1] Parent felt compelled to bring this action to obtain a determination of District's obligation. In addition to District, she requested California Children Services (CCS), which provides for Student's medical needs, to provide the C500 Permobile. From Parent's testimony, it appears that CCS is waiting for a determination of District's responsibility before making its decision. Parent became visibly upset when testifying about the lack of cooperation between CCS and District.

[2] Since Student's use of a wheelchair, motorized or nonmotorized, is a medical necessity, District maintains that it is not obligated to fund any wheelchair.

and scoliosis.[3] Student is eligible for special education and related services under the categories of multiple disabilities orthopedic (severe orthopedic impairment), mental retardation, speech and/or language impairment and visual impairment. Student's developmental age is significantly below her chronological age. Her academic and communication ages are thirteen and fourteen months, respectively. Her social skills are at the eighth month level of development. She does not use language to communicate.

2. Student is dependent on adult assistance for all aspects of her care. Student has one assistant from a nonpublic agency (NPA) directly assigned to assist her throughout her school day. She can not change her seated position, stand, walk or satisfy her personal needs, without assistance.

3. Student attends a regular education class with inclusion support. She receives related services including adaptive physical education, language and speech, physical therapy, occupational therapy, behavior intervention and inclusion services. Student's most recent annual IEP meeting was held on February 15, 2006. Parent signed the IEP.[4] The IEP team reported that Student presents herself as a pleasant student with a beautiful smile. According to the IEP team, Student is mostly happy when she is around other kids. She does not suffer from behavioral problems and remains happy and comfortable when people are attuned to her needs. Team members observed that she is very alert to others, that she likes to observe her environment and that she enjoys being part of a group. Student primarily communicates her needs using vocalization, eye gaze, bodily motions, and facial expressions. In the classroom, Student needs to be redirected to another activity or presented the same activity with auditory and tactile support to keep

[3] ("Cerebral palsy" is defined in pertinent part as "a nonprogressive motor disorder with onset in early childhood resulting from a lesion in the brain". (Cal. Code Regs., tit. 2, § 60300(j)(1))

[4] It was only amended as to placement in June, 2006.

her engaged. She utilizes assistive technology devices to participate in class, including, a frogger, jelly bean switches, spinners, tape recorder, head phones, and velcro.

4. Although it is clear that Student enjoys the company of other pupils in her regular education program, Student's cognitive deficits and orthopedic impairment impact her ability to meet District grade level standards. In English and language arts, she enjoys listening to stories read aloud during class activities. She responds well when pupils read to her. She demonstrates reading comprehension when listening to stories by expressing emotions that correspond with the elements of the story. She is presented with pictures and objects above eye level for specific activities throughout the day above eye level. Objects are also placed under her hands and her fingers are manipulated to feel the object. She enjoys feeling objects and the sense of touch from others. She likes to have her hands massaged. In mathematics, she responds well to touching objects. In vocational education she understands when she has a "job" in the group. She must use a switch to activate various devices, such as a spinner, tape recorder or voice output device when it is her turn.

5. Student requires certain adaptive equipment so that she can access her education. As part of her physical therapy goal for January, 2007 the IEP team determined that Student "will continue to access her educational environment with the appropriate adapted equipment and adult assistance." She requires a wheelchair and adapted toilet system. She requires a gait walker to walk during physical education. To stand during class, she requires special equipment, referred to as a stander

6. District attempts to alleviate Student's discomfort arising from her physical disabilities in a variety of ways so that she can access her education. Like other pupils with similar disabilities, Student needs to be repositioned periodically throughout the day. District trained Student's one-on-one assistants to reposition Student and keep her body appropriately aligned in her wheelchair. The gait walker District provides to Student for use in adapted physical education supports Student at her seat and trunk, leaving her free

to walk. District's physical therapist also manually stretches Student to prepare her for adapted physical education

7. A stander is required to achieve Student's 2006-2007 goals and objectives. The IEP team's incremental objective for Student is to have her "tolerate standing in an appropriate stander for periods up to forty-five minutes, holding her head up for up to one minute at a time, 4/5 days a week." Student uses a stander in her regular education class no more than forty-five minutes a day. District makes available two assistants (other than her NPA assistant) to move Student from her wheelchair to the EZ Stander. To avoid interrupting Student from regular education classroom activities, Student is generally placed in the stander during regular education classes where she follows her own program. Where she can participate in regular education classes, she remains in her wheelchair. Her assistant moves the wheelchair around the class as needed and Student sits eye level to her classmates.

8. Student appears to be more alert and engaged when she stands. Both District's stand-alone stander and Student's proposed electric C500 Permobile wheelchair with stander reposition Student to a standing position. District's stand-alone EZ Stander is less efficient and elegant than the C500 Permobile. It takes two aides to place Student in the District's stand-alone stander. Student must be physically lifted from her wheelchair and placed in District's stander. To avoid disrupting the class, Student is placed in the stander in the hallway. In contrast, the C500 Permobile includes a stander that is activated by pressing a button or using a switch**.** Only one person is required to activate the C500 Permobile stander and assist student to a standing position. The C500 Permobile stander is integrated into the design of the electric wheelchair and as a consequence it is a less conspicuous and more efficient method of repositioning Student. Student can not currently activate the switch by herself and requires assistance to activate the C500 Permobile stander to make sure she is correctly positioned.

9. Student's stander in the previous school years was a supine stander. Student was placed in the stander on her back, and her body was locked in place at the buttocks, knees and feet, and then raised to a standing position. During the 2005-2006 school year, the stander did not fit Student and Student did not have access to a working stander for approximately ten weeks. For the 2006-2007 school year, District purchased a stander for Student's use throughout high school. District secured the EZ Stander for Student and a special mechanical lifting mechanism, the Hoya lifter, to more easily lift Student from her wheelchair. In contrast to the supine stander, the EZ Stander allows Student to move into a standing position from a chair built-in to the equipment. Student is placed in the chair and once she is properly positioned in the chair, the chair is pushed up until she is in a standing position. The EZ Stander is more adjustable than Student's previous stander. Unlike the previous stander, it can be adjusted to accommodate for the difference in muscle strength between Student's right and left legs. The EZ Stander was sized to Student's current height and weight. In addition, the EZ Stander can be adjusted as she grows through high school.

10. District provides equipment which is necessary to serve Student's educational needs. District is only required to provide adaptive equipment to Student, including the stander, during the school day. Any equipment supplied by District remains the property of the District and is available to Student at school only. In choosing or purchasing equipment, District coordinates with California Children's Services (CCS). District does not supply the wheelchair to Student. Student's wheelchair is supplied by CCS. .

11. Parent failed to provide any probative evidence that District is obligated to make the C500 Permobile available to Student in order to provide Student a FAPE. Parent was Student's sole witness. Her testimony was heartfelt. She wants the District to purchase the C500 Permobile so that her daughter can be as independent and as much like the other students as possible. However, in view of Students severe disabilities, she could not

point to any specific educational goal or objective that could not also be achieved by the EZ stander and Hoya lifter.

LEGAL CONCLUSIONS

APPLICABLE LAWS

1. A child with a disability has the right to a FAPE under the Individuals with Disabilities Education Improvement Act (IDEIA) and California law. (20 U.S.C. §1412(a)(1)(A); Ed. Code § 56000.) A FAPE means special education and related services that are provided at public expense, under public supervision and direction, and without charge, that meet the State's educational standards, and that are provided in conformity with the child's individualized education program (IEP). (20 U.S.C. § 1401(9).) "Special education" is defined, in pertinent part, as specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); Ed. Code § 56031.) "Related services" is defined, in pertinent part, as developmental, corrective, and other supportive services, including physical and occupational therapy, as may be required to assist a child with a disability to benefit from special education." (20 U.S.C. § 1401(29).)

2. Special education and related services must be tailored to meet the unique needs of the child with a disability by means of an IEP. (*Polk v. Centra Susquehanna Intermediate Unit 16*, (3rd Cir. 1988) 853 F.2d 171, 173).) The IEP is the "centerpiece of the [IDEIA's] education delivery system for disabled children" and consists of a detailed written statement that must be developed, reviewed, and revised for each child with a disability. (20 U.S.C. § 1401(14) and § 1414(d)(1)(A); Ed. Code §§ 56032, 56345; *Honig v. Doe*, (1988) 484 U.S. 305, 311).

3. For a school district's offer of special educational services to a disabled pupil to constitute a FAPE, a school district's offer of educational services and/or placement must meet the following substantive requirements: (1) be designed to meet the student's unique educational needs; (2) comport with the student's IEP; (3) be reasonably calculated

to provide the pupil with some educational benefit; and (4) be in the least restrictive environment. (*Bd. of Education of the Hendrick Hudson Central School Dist. v. Rowley*, (1982) 458 U.S. 176, 206-207.)

4. A child's IEP must be reasonably calculated to provide the child with some educational benefit to satisfy the IDEIA, but the school district is not required to provide the child with the best education available or instruction and services that maximize the child's abilities. (*Id.* at pp. 198-200.) A school district is required to provide only a "basic floor of opportunity" consisting of access to specialized instruction and related services that are individually designed to provide educational benefit to the child. (*Id.* at p. 201.) The IDEIA requires neither that a school district provide the best education to a child with a disability, nor that it provide an education that maximizes the child's potential. (*Rowley, supra*, 458 U.S. at 197, 200; *Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.)

5. The U.S. Supreme Court has ruled that the petitioner in a special education administrative hearing has the burden to prove their contentions at the hearing. (*Schaffer v. Weast* (2005) 546 U.S.___, [126 S.Ct. 528, 163 L.Ed. 2d 387].)

DETERMINATION OF ISSUE

DISTRICT IS NOT REQUIRED TO PROVIDE THE C500 PERMOBILE TO STUDENT FOR STUDENT TO ACCESS A FAPE

As set forth in Applicable Laws 1, 2 and 3, Student is entitled to an IEP tailored to her unique needs which include related services to ensure that she can access her education. As set forth in Factual Findings 1 through 4, Student has severe cognitive and physical disabilities that limit her ability to meet grade level standards. She can not move independently and requires a one-on-one aide throughout the day. Furthermore, although she is included in a regular education program, her cognitive and physical disabilities limit her ability to participate with other pupils her age. As required by the IDEIA, District developed an IEP that provides a range of physical, behavior, occupational

therapy services to Student. As set forth in Factual Findings 5 and 6, District also provides Student the use of adaptive equipment to address her orthopedic challenges so that she can access her education to the fullest extent possible. District trained Student's aides to reposition her so that she remains comfortable (to the extent possible). District's specialists also manually stretch Student.

As set forth in Applicable Law 4, District has provided Student with a stander that is consistent with Student's IEP. Although Student is more alert when she stands, as set forth in Factual Findings 7, 8 and 9, the District's EZ Stander and Hoya lifter, satisfies the goals and objectives of Student's IEP. District has taken care to accommodate Student's physical, and developmental and social needs by choosing the EZ Stander and Hoya lifter. Moreover, as set forth in Factual Finding 9, District's obligation under the IDEIA does not extend beyond what is educationally necessary. The C500 Permobile may be required to fulfill other needs of Student unrelated to her schooling. However, the jurisdiction of the Administrative Law Judge in this hearing is limited to the dispute between Student and District regarding Student's access to special education and related services. As set forth in Legal Conclusion 5 and Factual Finding 10, Parent has not proven by a preponderance of the evidence that Student can not access her education without the C500 Permobile. On the contrary, it is evident that the C500 Permobile, however elegant, is not required to provide Student a FAPE.

ORDER

Student's request for the C500 Permobile is denied.

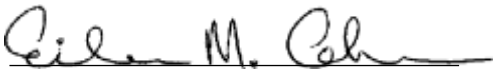
PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that the hearing decision indicate the extent to which each party has prevailed on each issue heard and decided. The District prevailed on the sole issue heard and decided.

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: September 27, 2006



EILEEN M. COHN

Administrative Law Judge

Special Education Division

Office of Administrative Hearings