

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

In the Matter of:

STUDENT,

Petitioner,

v.

LONG BEACH UNIFIED SCHOOL DISTRICT,

Respondent.

OAH CASE NO. N2007040442

DECISION

John A. Thawley, Administrative Law Judge (ALJ), Office of Administrative Hearings, Special Education Division (OAH), State of California, heard this matter on October 2 through 5, 2007, in Long Beach, California.

Bruce Bothwell, Attorney at Law, represented Petitioner (Student). Student's Mother attended the hearing. Student's Father attended portions of the hearing.

Debra Ferdman, Attorney at Law, represented Respondent Long Beach Unified School District (District). District representative Doug Siembieda attended portions of the hearing.

Student's due process hearing request was filed on April 13, 2007. There were no continuances. At the hearing, oral and documentary evidence were received. The record was held open for the submission of closing briefs, which were timely filed on October 23, 2007. The record closed and the matter was submitted on October 23, 2007.

ISSUES¹

Did the District fail to provide Student with a free, appropriate public education (FAPE), as to the individual education program (IEP) team meetings on November 9 and December 7, 2006, by:

- a. Failing to invite an appropriate general education (GE) teacher to the IEP team meetings?
- b. Failing to offer an appropriate transition plan?
- c. Failing to offer placement in the least restrictive environment (LRE)?
- d. Failing to offer sufficient intensive behavior intervention (IBI) services to meet Student's unique needs?
- e. Failing to offer IBI services that were scientifically based and supported by peer-reviewed research?
- f. Failing to sufficiently train and supervise IBI staff to provide Student with some educational benefit?
- g. Failing to provide sufficiently trained and experienced Head Start staff to provide Student with some educational benefit?

PROPOSED RESOLUTIONS

Student requests that the District be ordered to reimburse Student's parents in the amount of \$2,760 for private preschool in spring 2007, plus \$13,063.83 for the privately-procured Applied Behavioral Analysis (ABA) services they funded at California Unified Service Providers (CUSP), a non-public agency (NPA) ABA provider (which is the

¹ The ALJ has clarified and reorganized the issues pursuant to the evidence adduced at the hearing, as well as Student's withdrawal of several issues at the start of the hearing.

difference between the hourly rate paid by parents and the rate reimbursed by the District). Student also seeks an order that requires the District to fund, until his next annual IEP, a CUSP program consisting of 40 hours per week, plus 12 hours per month of supervision, plus 16 hours per month of clinic meeting attendance.

FACTUAL FINDINGS

JURISDICTION

1. Student was born September 30, 2001, and lives with his parents within the District's boundaries. The parties do not dispute that Student is eligible for special education and related services due to autistic like behaviors.

GE TEACHER'S ATTENDANCE AT THE NOVEMBER AND DECEMBER 2006 IEP TEAM MEETINGS

2. The IEP team must include at least one of the disabled pupil's GE teachers, if the pupil is or may be participating in the GE environment. This includes pupils attending preschool, if the school district provides GE preschool classes.

3. A procedural violation is a denial of FAPE if it impeded the pupil's right to a FAPE, significantly impeded the ability of the pupil's parents to participate in the decision-making process regarding the provision of a FAPE to the pupil, or caused a deprivation of educational benefits to the pupil.

4. Student asserts that a GE teacher was required to attend the November and December 2006 IEP team meetings because he was attending a GE preschool. Student asserts that his private preschool's refusal to attend the November 2006 IEP team meeting did not relieve the District of its obligation to secure the attendance of a GE teacher. Student also notes that the District failed to ensure that a Head Start teacher attended the December 2006 IEP team meeting, even though Head Start was the District's proposed placement.

5. Sue Campbell, a District special education team leader, observed Student at his private preschool. Ms. Campbell talked to the Teacher-Director, and invited the Teacher- Director, and/or Student's classroom teacher, to attend the IEP team meeting. The Teacher- Director said that that would not be possible, but did not give a reason. The preschool also refused to send a report for the IEP team's consideration.

6. As a result, the District had Marsha Swinford, a District GE teacher with several years of experience, attend both the IEP team meetings. Ms. Swinford is aware of the District's preschool programs, and often observes Head Start classrooms, because part of her District job is to assist parents with the transition from regional center services to District services. Ms. Swinford was knowledgeable about the Head Start opportunities available in the District, and could share that information with the other members of the IEP team. Hence, Ms. Swinford fulfilled the role of GE teacher at both of the IEP team meetings.

DISTRICT'S OFFER OF FAPE

7. A school district provided a FAPE to a disabled pupil if its program or placement was designed to address the pupil's unique educational needs, was reasonably calculated to provide some educational benefit in the LRE, and if the services provided comported with the IEP.

8. The District held an IEP team meeting on November 9, 2006, and reconvened the meeting on December 7, 2006. The District offered, among other things, a four-week transition plan to District services, a GE preschool placement in the Head Start program for the 2006-2007 SY, one-to-one IBI aide support at school and at home, and weekly individual and group speech and language therapy. For the 2007-2008 SY, the District offered a GE kindergarten class starting in September 2007. Parents did not consent to the IEP.

Student's Unique Needs

9. The parties do not dispute that Student has unique needs in a variety of areas consistent with a child with autistic spectrum disorder, including a diagnosis of a mixed expressive/receptive language disorder, behavior (self stimulation, perseveration, non-compliance, and tantrums), social and play skills (related to both his communication deficits and his behavior), self-help skills, attention, and transitions.

The District's Transition Plan²

10. A school district is required to offer a disabled pupil an educational program and related services that, among other things, is reasonably calculated to meet the pupil's unique needs. A disabled pupil's unique needs may require the formulation of a plan to transition the pupil into a new program provided by the school district, which the pupil has not previously attended. In addition, when a pupil transfers from a nonpublic school into a regular class in a public school for any part of the school day, an IEP must include a transition plan. The transition plan must include a description of the activities provided to integrate the pupil into the GE program, including the nature of each activity and the time spent on each activity each day or week.

11. Student contends that the District's four-week plan for him to transition from a NPA to the District did not provide sufficient time for the transition. In addition, Student contends that the transition plan should have been based on his progress, rather than an arbitrary time line.

² The only statutory or regulatory requirements for a transition plan have to do with the transition from high school to post-secondary life. (See 34 C.F.R. §§ 300.43; 300.320(b); Ed. Code, § 56345, subd. (a)(8)(A).) Such requirements are obviously irrelevant here.

12. District argues that its four-week transition plan was appropriate, particularly in light of the fact that Student had no transition plan when he switched NPA ABA service providers, from Autism Partnership (AP) to CUSP in about October 2006, and from one private preschool to another in about January 2007.

13. As noted above, Student had unique needs in the area of transitions. In November 2006, Parents had Student assessed by Mary Large, Ph.D. The assessment corroborated this area of unique need.

14. Under the District's four-week transition plan, Student would continue receiving ABA services through CUSP until the end of the winter break on January 6, 2007. For the school week beginning on January 8, 2007, the District would overlap Student's home program for four hours per week. The next week, the District would add IBI/shadow support at school for 16 hours per week. For the school week that began on January 22, 2007, the District would begin providing an IBI in-home program for 18 hours per week of direct services, and four hours per week of supervision. During the final week of the transition plan, the District would add eight hours of supervision. The IEP specified that an IEP addendum team meeting would be held by January 31, 2007, to discuss Student's progress and the home IBI hours.

15. There was no evidence that Student had difficulty with the transition of ABA providers from AP to CUSP in October 2006, or from one private preschool to another in about January 2007, in spite of the fact that both of these transitions were abrupt, and done without a written transition plan.

16. Instead, Tamara Hopkins, the owner and director of the second private preschool that Student attended, established that Student's only transition problems at her preschool were in between various daily activities.

17. For all of these reasons, the District's transition plan was appropriate. The plan provided a weekly description and duration of the activities that would be provided

to integrate Student into the GE Head Start classroom with District-provided IBI services. Four weeks was more than adequate for the transition period, in light of Student's ability to abruptly make substantial transitions, such as changing ABA providers and preschools, without difficulty.

Least Restrictive Environment

18. One of the components of a school district's obligation to provide FAPE is the requirement to educate a disabled pupil with his/her nondisabled peers to the maximum extent appropriate. The four factors to be considered in the LRE analysis are the educational benefits to the child of placement full-time in a regular class, the non-academic benefits to the child of such placement, the effect the disabled child will have on the teacher and children in the regular class, and the costs of educating the child in a regular classroom with appropriate services, as compared to the cost of educating the child in the district's proposed setting. However, the four factors are not applicable here, because the District offered a placement in the GE setting – the Head Start preschool classroom.

19. Student contends that the Head Start preschool classroom offered by the District did not constitute the LRE because it contained a number of pupils who were disabled and who were English language learners. As a result, Student contends that the District should have offered placement in a GE preschool with aide support.

20. As noted in the IEP, the District offered Student a GE preschool placement in the Head Start program with 16 hours per week of IBI aide support at school.

21. Aleta Millner, the head teacher at the Head Start program, would have been Student's teacher for the 2006-2007 SY. There were 19 pupils in Ms. Millner's class, none of whom were disabled, and five of whom were English language learners. Ms. Millner was not bilingual, she taught only in English, and her pupils understood her English-language directions. Ms. Millner's aide was bilingual, and sometimes spoke in Spanish to

an English- language-learning pupil, if necessary, to ensure that the pupil understood. Then the aide immediately switched back to English.

22. In June 2007, Dr. Large observed a Head Start classroom with 14 pupils. Dr. Large was concerned about the classroom's appropriateness for Student, because the teacher spoke to some of the pupils in a language other than English (which appeared to be their primary language), because at least two of the pupils were not self-directed, and because there was inconsistent re-direction by the teacher.

23. However, Dr. Large apparently observed a Head Start classroom different than that offered by the District. To Ms. Millner's knowledge, no one on behalf of Student had observed the Head Start program. Also, as noted above, Ms. Millner's class had 19 pupils, none of whom were disabled, and she taught only in English.

24. The District's offer constituted the LRE for Student, in that the GE Head Start class was comprised of typically developing peers.

District's IBI Program

SUFFICIENCY OF DISTRICT'S OFFER OF IBI SERVICES

25. Student asserts that the District's offer of 34 hours of IBI services per week was insufficient, because his unique needs required more hours of service, because the IEP indicated that the services were to end on March 2, 2007, and because the school IBI services were to terminate at the end of the 2006-2007 SY. Student asserts that the District's offer ignored the reports of AP and CUSP, his NPA ABA service providers, which recommended a total home and school program of 35 and 40 hours per week, respectively.

26. District argues that its offer of scientifically based, peer-reviewed IBI services, provided by appropriately trained personnel who were properly supervised by very qualified District staff, was for a total of 34 hours per week, which was only one hour

less than AP recommended, and was more than Student was receiving from CUSP. District argues that its offer was designed to meet Student's unique needs, and was reasonably calculated to provide Student with educational benefit.

27. At the December 2006 IEP team meeting, the District offered, among other things, a GE preschool placement in the Head Start program until June 2007 (four days a week for four hours each day), with 16 hours per week of one-to-one IBI aide support at school until June 14, 2007 (the last day of the 2006-2007 SY), 18 hours per week of one-to-one IBI aide support at home until March 2, 2007, 12 hours per month of home-school IBI supervision until March 2, 2007, and weekly group and individual speech and language therapy. For the 2007-2008 SY, the District offered a GE kindergarten class starting in September 2007. The IEP specified that several IEP addendum meetings would be held to address Student's future needs for IBI services.

28. "Educating Children with Autism," published by the National Research Council in 2001, recommends that autistic children receive at least 25 hours of services per week on a year-round basis. A study by G.O. Sallows and T.D. Graupner, published in the American Journal on Mental Retardation in November 2005, demonstrated that 48 percent of a group of autistic children who received intensive ABA services achieved "dramatic increases in cognitive and social skills." For the study, a clinic-directed subgroup started with an average of 39 hours of ABA per week during the first year, decreased to 37 hours per week the second year, and continued to decrease in the last two years of the study as the children entered school. The study's parent-directed subgroup started with an average of 32 hours per week during the first year, and decreased to 31 hours per week the second year, with the exception of one family who chose to have 14 hours per week for both years.

29. An AP report in August 2005, with an attached observation report, noted that Student had made progress while receiving 25 hours of ABA services per week. The

report recommended that Student continue to receive 25 hours of ABA services per week. AP's reports in July, August, and October 2006, including two updates on goals and objectives, discussed Student's continued progress. For example, the August 2006 report indicated that Student previously had been disruptive to the play of his peers because he lacked the skills to appropriately join the play, but that he was currently able to join peer play about 80 percent of the time. In October 2006, just before Student switched ABA providers from AP to CUSP, AP recommended that Student continue to receive the current level of services, which AP recommended to be 35 hours of ABA services per week outside the school setting, plus 14 hours per month of program coordination and four hours per month of program development. Parents told Dr. Large that, while Student was funded for a full-time program of 35 hours of ABA services per week from AP, there were fairly persistent problems in receiving the full allotment of services due to AP staffing shortages.

30. Dr. Large assessed Student in November 2006. Dr. Large recommended that, for at least the next 18 months, Student continue to receive the current level of ABA services, which Dr. Large characterized as 40 hours per week plus supervision.

31. CUSP initially recommended, among other things, no less than 30 hours per week of home ABA services, plus 10 hours per week of shadow aide support in a GE preschool setting, using a shadow aide who was familiar with Student's home program and who could conduct behavior interventions. However, an analysis of the CUSP bills to Parents from November 2006 to July 2007 indicates that CUSP did not provide Student with the level of ABA services that it had recommended. For example, in November 2006, CUSP billed for a total of 108.92 hours which, when divided by approximately four weeks in the month, indicates that Student received about 27.25 hours per week. In March 2007, CUSP billed for the highest number of hours during this period, a total of 151.91 hours. This means that, in the four and a half weeks of March 2007, Student received about

33.75 hours of ABA services per week. Nevertheless, the CUSP August 2007 progress report indicates that Student met 21 out of 30 goals, some of which had been in “maintenance” mode for months prior to the report. Hence, Student made progress even though he was only receiving ABA services from CUSP for about 27 to 34 hours per week.

32. For all of these reasons, the District’s offer of a total of 34 hours of IBI services per week was designed to meet Student’s unique needs, and was reasonably calculated to provide some educational benefit.

33. Student also asserts that the District’s offer was insufficient because the IBI services were to end while he still needed the services. However, the December 2006 IEP specifically noted that an IEP addendum meeting would be held, prior to March 2, 2007, to determine Student’s need for home IBI services based on progress reports and intervention data. The IEP also noted that an IEP addendum meeting would be held by June 14, 2007, the last day of the 2006-2007 SY, to determine school IBI services for the 2007-2008 SY. Dennis Swengingson, manager of the District’s autism department, corroborated the District’s intent to hold the IEP addendum meetings noted in the IEP. Mr. Sweningson also indicated that, if there were a disagreement, the District would continue to provide the previous level of services until the disagreement could be resolved, which was the District’s legal duty. Therefore, the District appropriately planned to hold future IEP addendum meetings to ensure that there was no interruption of IBI services to Student, and to ensure that the IBI services provided to Student were designed to meet his unique needs and reasonably calculated to provide some educational benefit.

SCIENTIFIC BASIS AND PEER-REVIEWED RESEARCH SUPPORT

34. An IEP must contain a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to a student who qualifies for special education.

However, a school district's failure to provide services based on peer-reviewed research would does not automatically result in a denial of FAPE. Rather, the IEP team must determine the special education and related services, and supplementary aids and services, necessary to meet a disabled pupil's unique needs and provide some educational benefit.

35. Student asserts that the District's IBI services, which are an "eclectic" mix of services, are not scientifically based and supported by peer-reviewed research. As a result, Student asserts the program denied him a FAPE.

36. The five components of the District's comprehensive IBI program are ABA, DTT, TEACCH, PRT, and PECS. All of these programs except PECS were among the 10 comprehensive model programs selected by the National Research Council (NRC) in its book, "Educating Children with Autism." In discussing the comprehensive programs, the NRC noted that, while the "differing conceptual frameworks influence the intervention models in substantial ways, there is also considerable overlap between and across the various models," and that "gaps in practice appear to be narrowing." The book includes a section entitled "Intervention Studies" that discusses studies of each program that have been completed, some of which were peer-reviewed. However, the Council stated, "There is no outcome study published in a peer-reviewed journal that supports comparative statements of the superiority of one model or approach over another."

37. ABA is an intensive behavioral intervention which employs behavior modification treatment. The component parts of early intervention through the use of ABA techniques include the intensity of a 40-hour week, primarily involving one-on-one repetitive drills, or DTT, by a therapist trained in this methodology, and detailed daily

data collection to monitor skill acquisition.³ ABA's scientific basis dates back to the work of Dr. Ivar Lovaas at the University of California, Los Angeles, in the 1960s and 1970s, as described in *Behavioral Treatment and Normal Educational and Intellectual Functioning in Young Autistic Children*. Since then, Dr. Lovaas's work has been examined by many peer-reviewed studies, some of which have confirmed Dr. Lovaas's results.

38. TEACCH uses a mixture of approaches and methods, including several techniques in combination.

The premise of TEACCH is to utilize the typical strengths of children with autism, including visual learning, visual cues and visual scheduling, to develop other related skills that are generally more challenging. The program emphasizes a variety of communication skill and socialization all aimed at helping the child "generalize" skills that are fostered in her educational environment. TEACCH also employs behavioral intervention, incidental teaching through various structured activities, and the Picture Exchange Communication System.⁴

TEACCH, using the PECS methodology, is a widely accepted method for the treatment of autism.⁵

³ *Deal v. Hamilton County Dept. of Educ.* (E.D.Tenn. 2006) 2006 U.S. Dist. LEXIS 27570, p. 10, fn. 2.

⁴ *Pitchford v. Salem-Keizer School District* (W.D.Or. 2001) 155 F.Supp.2d. 1213, 1217.

⁵ See footnote 5.

39. Mr. Maier admitted that PRT was an ABA-analytic treatment that has been published in journals and peer-reviewed.

40. PECS is a program designed to develop early nonverbal communication through the use of icons, pictures or photographs to facilitate communication.⁶ The NRC noted that PECS was one of the communication systems taught to autistic children in several of the programs, including TEACCH.

41. Therefore, the scientific research regarding the various methodologies to teach autistic children is still emerging and inconclusive at best. The Individuals with Disabilities Education Improvement Act (IDEIA) does not mandate a particular methodology if the educational agency can establish that its chosen methodology is based on peer-reviewed research to the extent practical and that the methodology will allow the pupil to make adequate educational progress. At least three components of the District's program, ABA using DTT, and PRT, have been subjected to peer-reviewed research. The other components, TEACCH, which uses PECS, are established and widely accepted methods of treatment. For all these reasons, the District's comprehensive IBI program is based on peer-reviewed research to the extent practicable.

TRAINING AND SUPERVISION OF DISTRICT IBI STAFF

42. As noted above, school district staff must be sufficiently educated and trained to provide educational benefit to disabled pupils.

43. Student claims that the District's IBI training program was insufficient, because it only provided IBI staff with a total of 50 hours of training in various methodologies. Student also notes that only two of the District's seven Autism Department supervisors are Board Certified Behavior Analysts (BCBA), and that the District's Autism Department manager only has a bachelor's degree. As a result, Student

⁶ *Ptichford, supra*, 155 F.Supp.2d at p. 1217, fn. 2.

claims that the District's IBI staff do not have sufficient training or supervision to provide him with educational benefit.

44. Mr. Sweningson joined the District's autism department in 2004. The department consists of seven staff supervisors, and about 42 aides who are service providers. Mr. Sweningson earned a bachelor's degree in psychology from the California State University, Long Beach, in 1998. He has completed the coursework necessary for an Education Specialist Credential, but has not yet completed the student teaching necessary to earn the credential. He was a program specialist with AP from 1997 to 1999, when he left due to inconsistent hours while being paid on an hourly basis. He worked for the Regional Center of Orange County from 1999 to 2001, as the Service Coordinator and then the Autism Project Coordinator. He was a teacher in a special day class for moderate to severe autistic children from 2001 to 2004. During Mr. Sweningson's 10 years in the field, he has developed about 75 programs, and has overseen about 100 programs.

45. The District's minimum qualifications for autism supervisors is two years of supervising programs for autistic children, as well as a bachelor's degree, while a master's degree is preferred. All of the District's autism supervisors have nine or more years in the field, came from non-public schools, and hold a master's degree in the field. Two have moderate-to-severe teaching credentials, and two have BCBA certification.⁷ The average supervision caseload is 65 to 70 hours per month, in addition to other duties such as providing training to school sites and District administrators.

46. The District's minimum qualifications for IBI aides is high school graduation,

⁷ BCBA certification requires six or seven classes as part of a master's degree, successful completion of a written exam, and about 1500 hours of directly and indirectly supervised field work.

at least 48 semester/60 quarter units of coursework, and a year of experience in implementing an ABA-type program. Applicants must score at least 80 percent in the intensive interview process, including a written test, to be placed on a hiring list. Of the District's current 42 IBI aides, 10 are working on a bachelor's degree, 11 have a bachelor's degree, four are working on a master's degree, two hold a master's degree, and two are working on a credential.

47. The District's IBI staff training program consists of six modules: ABA/Autism and Behavior (seven hours), Discrete Trial Teaching (DTT, 25 hours), the Picture Exchange Communication System (PECS, six hours), the Treatment and Education of Autistic and Communication Handicapped Children (TEACCH) and Data Collection (four hours), Pivotal Response Training (PRT, four hours), and Confidentiality and Reporting Suspected Child Abuse (four hours). After an IBI aide completes the training, the aide spends 20 hours of "overlap" time with experienced staff before being cleared to provide direct IBI services alone.

48. Student presented the testimony of Eric Maier, a co-founder of CUSP who has a master's degree in psychology and BCBA certification, for the proposition that the District's training program was insufficient. However, Mr. Maier's testimony was not persuasive. For example, Mr. Maier opined that a minimum of 200 hours of training was required for an ABA provider, and that the District's 50-hour training module was insufficient for the provision of one-to-one services to an autistic child. However, Mr. Maier's curriculum vitae indicates that his clinical and research experience began in August 1992, about two years before he earned his bachelor's degree, and there is no indication that Mr. Maier had received at least 200 hours of training prior to August 1992. In addition, Mr. Maier's testimony exuded a strong bias that any training program would be insufficient if it differed in any substantial way from the CUSP training program. Yet Mr. Maier admitted that the number of hours of training required would vary, depending

on a person's background prior to receiving the training. Mr. Maier also opined that the "minimum" requirement to "ethically" supervise an ABA program was BCBA certification. But Mr. Maier admitted that he supervised ABA programs before he earned BCBA certification. Mr. Maier admitted that some CUSP behavioral technicians, who are one step above the entry level in the CUSP hierarchy, are working on their bachelor degrees. Therefore, the qualifications of the first two levels of CUSP employees, behavioral assistants and behavioral technicians, are similar to the District's IBI aides.

49. In any event, the District's IBI aides must have completed a substantial amount of coursework and have at least one year of experience implementing an ABA program. The District's training program includes 20 hours of "overlap" time. In addition, the District's autism supervisors have substantial education and experience. The District's autism department structure also provides for supervision of the supervisors. Moreover, even if it were assumed that CUSP staff are better trained or supervised than District staff, that does not lead to the conclusion that District staff could not meet Student's educational needs.

50. In addition, the District's training program and staff qualifications are comparable with those cited in the National Research Council's book, "Educating Children with Autism." The Council noted that college students play "key roles" in the delivery service systems, that supervisory staff at the Young Autism Project at the University of California, Los Angeles, are required to have a master's degree in psychology and two or more years of experience with the intervention program, and that Denver Model was disseminated to four public schools by using a standardized teacher training approach that included a six-hour introductory workshop, a one-day visit to a new site to determine needs and resources, and a 40-hour training institute that had several components.

51. For all of these reasons, the District's IBI staff are appropriately educated,

trained, experienced, and supervised to provide IBI services designed to meet Student's unique needs and reasonably calculated to provide some educational benefit.

Training and Experience of the Head Start Teacher

52. Student asserts that the Head Start teachers were not sufficiently trained and experienced to provide him with some educational benefit.

53. Ms. Millner, the Head Start head teacher, had an Associate of Arts degree in Early Childhood Development, which included at least 60 units of child development classes. She had taken at least seven classes on special education, some of which covered autism, and had attended seminars and workshops, at least once a year for five years, some of which covered autism. Ms. Millner also had extensive experience in teaching and dealing with children from a variety of backgrounds and situations. For example, Ms. Millner had taught in the Head Start program for about 16 years, and had previously worked at a center for child development and battered women for about 10 years. Ms. Millner had taught more than 15 disabled pupils during her years of teaching, including at least five with autism. Those pupils had made progress in her class.

54. Student presented no evidence to dispute or impugn the credentials and experience of Ms. Millner, other than limited cross examination questions.

55. Ms. Millner had adequate and appropriate training and experience to provide some educational benefit to Student.

LEGAL CONCLUSIONS

FOUNDATIONAL LEGAL PRINCIPLES

1. Student has the burden of proving the essential elements of his special education claims. (*Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528, 163 L.Ed.2d 387].)

2. Pursuant to California special education law, the Individuals with Disabilities in Education Act (IDEA), and the Individuals with Disabilities in Education Improvement

Act of 2004 (IDEIA), 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. (20 U.S.C. §1400 et al.;⁸ Ed. Code, § 56000.) A FAPE is defined in pertinent part as special education and related services that are provided at public expense and under public supervision and direction, that meet the State's educational standards, and that conform to the student's IEP. (§ 1401(9); Cal. Code Regs., tit. 5, § 3001, subd. (o).) "Special education" is defined in pertinent part as specially designed instruction and related services, at no cost to parents, to meet the unique needs of a child with a disability. (§ 1401(29); Ed. Code, § 56031.) "Related services," known in California law as Designated Instruction and Services (DIS), means transportation and other developmental, corrective and supportive services that may be required to assist the child to benefit from special education. (§ 1401(22); Ed. Code, § 56363, subd. (a).)

DID THE DISTRICT FAIL TO PROVIDE STUDENT WITH A FAPE BY FAILING TO INVITE AN APPROPRIATE GE TEACHER TO THE IEP TEAM MEETINGS ON NOVEMBER 9 AND DECEMBER 7, 2006?

3. The first prong of the legal analysis in suits brought pursuant to the IDEA requires a determination whether the school system has complied with the procedures set forth in the IDEA. (*Bd. of Ed. of the Hendrick Hudson Sch. Dist v. Rowley* (1982) 458 U.S. 176, 200 [Rowley].) In *Rowley*, the United States Supreme Court recognized the importance of adherence to the procedural requirements of the IDEA. But procedural violations constitute a denial of FAPE only if the violations caused a loss of educational opportunity to the student or significantly infringed on the parents' right to participate in the IEP process. (*Rowley, supra*, 458 U.S. at pp. 206-207; *M.L. v. Federal Way Sch. Dist.* (9th

⁸ All statutory references are to the Individuals with Disabilities Education Act (IDEA), Title 20 of the United State Code, unless specifically noted otherwise.

Cir. 2004) 394 F.3d 634, 646; *M.M. v. Sch. Dist. of Greenville County* (4th Cir. 2002) 303 F.3d 523, 534; *Amanda J. v. Clark County Sch. Dist.* (9th Cir. 2001) 267 F.3d 877, 892; see also *Van Duyn v. Baker Sch. Dist. 5J* (9th Cir. 2007) 502 F.3d 811, 820-822 [failure to implement an IEP must be material, which means of “more than a minor discrepancy,” in order to amount to a denial of FAPE.) A parent has meaningfully participated in the development of an IEP when he is informed of his child’s problems, attends the IEP meeting, expresses his disagreement regarding the IEP team’s conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann v. East Hanover Bd. of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1036 [parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way].)

4. State and federal law requires that the parents of a child with a disability be afforded an opportunity to participate in meetings with respect to the identification, assessment, educational placement and provision of a FAPE to the child. (Ed. Code, §§ 56304, 56342.5; 34 C.F.R. § 300.501(b).) Thus, parents are required members of the IEP team, which also includes at least one of the child’s general education teachers (if the child is or may be participating in the general education environment), at least one special education teacher or provider who provides special education to the child, a representative of the local education agency, an individual who can interpret the instructional implications of the assessments, other individuals who have knowledge or special expertise regarding the child (depending on the discretion of the parents or local education agency), and, whenever appropriate, the disabled child. (§ 1414(d)(1)(B)(i)-(vii); 34 C.F.R. § 300.321(a)(1)-(7); Ed. Code, § 56341, subd. (b); see also *R.B., by and through her Guardian Ad Litem, F.B. v. Napa Valley Unified Sch. Dist.* (9th Cir. 2007) 496 F.3d 932, 938-939.) Education Code section 56341.1 also requires the IEP team to consider, among other matters, the strengths of the pupil and the results of the initial assessment or most

recent assessment of the pupil. The IEP team must consider the concerns of the parents throughout the IEP process. (§ 1414(c)(1)(B), (d)(3)(A)(i), (d)(4)(A)(ii)(III); 34 C.F.R. §§ 300.305(a)(i), 300.324(a)(1)(ii), (b)(1)(ii)(C); Ed. Code, § 56341.1, subds. (a)(1), (d)(3), (e).)

5. Based on Factual Findings 2 through 6, and Legal Conclusions 1 through 4, Ms. Swinford fulfilled the role of GE teacher at both of the IEP team meetings. Ms. Swinford was aware of the District's preschool programs, and had often observed Head Start classrooms, because a portion of her District job responsibilities were to assist parents with the transition from regional center services to District services. As a result, Ms. Swinford was knowledgeable about the Head Start opportunities available in the District, and could share that information with the other members of the IEP team. Moreover, any technical procedural violation for failing to have present at the IEP team meeting a teacher from Student's private preschool, or a Head Start teacher, did not impede Student's right to a FAPE, significantly impede Parents' opportunity to participate in the decision-making process, or cause a deprivation of educational benefits. Parents attended and participated in both IEP team meetings, and decided to refuse the District's offer.

DID THE DISTRICT FAIL TO PROVIDE STUDENT WITH A FAPE BY FAILING TO OFFER AN APPROPRIATE TRANSITION PLAN?

6. Under the second prong of the *Rowley* test, the court must assess whether the IEP developed through those procedures was designed to meet the child's unique needs, reasonably calculated to enable the child to receive educational benefit, and comported with the child's IEP. (*Rowley, supra*, 458 U.S. at pp. 206-207.) This prong analyzes substantive appropriateness, specifically, the level of instruction and services that must be provided to a student with disabilities to satisfy the IDEA's requirements. The *Rowley* Court determined that a student's IEP must be designed to meet the student's unique needs, be reasonably calculated to provide the student with some

educational benefit, and comport with the student's IEP. (*Rowley, supra*, 458 U.S. at pp. 188-189, 200-201.) To determine whether the District offered Petitioner 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 1307, 1314.) A school district must offer a program that is reasonably calculated to provide more than a trivial or minimal level of progress. (*Amanda J., supra*, 267 F.3d at p. 890, citing *Hall v. Vance County Bd. Of Educ.* (4th Cir. 1985) 774 F.2d 629, 636.)

7. However, an IEP need not conform to a parent's wishes in order to be sufficient or appropriate. (*Shaw v. Dist. of Columbia* (D.D.C. 2002) 238 F.Supp.2d 127, 139 [IDEA does not provide for an "education . . . designed according to the parent's desires"], citing *Rowley, supra*, 458 U.S. at p. 207.) Nor does the IDEA 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. (*Rowley, supra*, 458 U.S. at pp. 198-200.) Rather, the Court held 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 p. 200.) Hence, if the school district's program met the substantive *Rowley* factors, then that district provided a FAPE, even if petitioner's parents preferred another program and even if his parents' preferred program would have resulted in greater educational benefit. (*Gregory K., supra*, 811 F.2d at p. 1314.)

8. When a pupil transfers from a nonpublic school into a GE class in a public school for any part of the school day, provision for the transition into the GE class program shall be included in the IEP. According to Education Code section 56345, subdivision (b)(4), the provision must include the following:

- (A) A description of the activities provided to integrate the pupil into the regular education program. The description shall indicate the nature of each activity,

and the time spent on the activity each day or week.

(B) A description of the activities provided to support the transition of pupils from the special education program into the regular education program.

9. As determined in Factual Findings 7 through 17, and Legal Conclusions 1, 2, and 6 through 8, the District's transition plan appropriately provided a weekly schedule of the activities that would be provided to integrate Student into the GE Head Start classroom with District-provided IBI services. The four weeks allotted by the District for the transition was more than adequate, in light of Student's ability to abruptly make substantial transitions, such as changing NPA ABA providers and preschools, without difficulties. Hence, the District's transition plan was appropriate.

DID THE DISTRICT FAIL TO PROVIDE STUDENT WITH A FAPE BY FAILING TO OFFER PLACEMENT IN THE LRE?

10. Federal and state law requires school districts to provide a program in the LRE to each special education student. (See 34 C.F.R. §§ 300.114, et. seq (2006).) A special education student must be educated with nondisabled peers "[t]o the maximum extent appropriate," and may be removed from the regular education environment only when the nature or severity of the student's disabilities is such that education in regular classes with the use of supplementary aids and services "cannot be achieved satisfactorily." (§ 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2)(i) & (ii).) A placement must foster maximum interaction between disabled students and their nondisabled peers "in a manner that is appropriate to the needs of both." (Ed. Code, § 56031.) The law demonstrates "a strong preference for 'mainstreaming' which rises to the level of a rebuttable presumption." (*Daniel R.R. v. State Bd. of Ed.* (9th Cir. 1989) 874 F.2d 1036, 1044-1045; see also § 1412 (a)(5)(A); *Rowley, supra*, 458 U.S. at p. 181 n.4; *Poolaw v. Bishop* (9th Cir. 1995) 67 F.3d 830, 834.) In *Sacramento City Unified School District v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1400-1402, the Ninth Circuit held that the determination of whether a particular

placement is the “least restrictive environment” for a particular child involves an analysis of four factors, including (1) the educational benefits to the child of placement full-time in a regular class; (2) the non-academic benefits to the child of such placement; (3) the effect the disabled child will have on the teacher and children in the regular class; and (4) the costs of educating the child in a regular classroom with appropriate services, as compared to the cost of educating the child in the district’s proposed setting.

11. Based on Factual Findings 18 through 24, and Legal Conclusions 1, 2, 6, and 10, Ms. Millner’s Head Start class was a GE classroom. In addition, none of the pupils in Ms. Millner’s GE Head Start preschool classroom were disabled. As a result, Ms. Millner’s class constituted the LRE.

DID THE DISTRICT FAIL TO PROVIDE STUDENT WITH A FAPE BY FAILING TO OFFER SUFFICIENT IBI SERVICES TO MEET STUDENT’S UNIQUE NEEDS?

12. Based on Factual Findings 25 through 33, and Legal Conclusions 1, 2, 6, and 7, the District’s offer of a total of 34 hours of IBI services per week was designed to meet Student’s unique needs, and was reasonably calculated to provide some educational benefit. The District’s offer was in accordance with the recommendation of the National Research Council. The August 2005 AP report noted that Student had made progress while receiving 25 hours of ABA services per week, and recommended that Student continue to receive that level of services. Subsequently, Student made progress with CUSP while receiving ABA services for only about 27 to 34 hours per week.

13. Based on Factual Findings 25 through 33, and Legal Conclusions 1, 2, 6, and 7, the District appropriately planned to hold future IEP addendum meetings to ensure that there was no interruption of IBI services to Student, and to ensure that the IBI services provided to Student were designed to meet his unique needs and were reasonably calculated to provide some educational benefit. The IEP specifically noted that an IEP addendum meeting would be held, prior to March 2, 2007, to determine Student’s

need for home IBI services based on progress reports and intervention data. The IEP also noted that an IEP addendum meeting would be held by June 14, 2007, the last day of the 2006-2007 SY, to determine school IBI services for the 2007-2008 SY.

DID THE DISTRICT FAIL TO PROVIDE STUDENT WITH A FAPE BY FAILING TO OFFER IBI SERVICES THAT WERE SCIENTIFICALLY BASED AND SUPPORTED BY PEER-REVIEWED RESEARCH?

14. Title 34 Code of Federal Regulations, section 300.320(a)(4), states IEPs shall include a statement of the special education and related services and supplementary aids and services, *based on peer-reviewed research to the extent practicable*. The language “to the extent practicable” regarding the use of peer-reviewed research does not forbid a district from using an educational program or service that is not peer-reviewed, where it is impracticable to provide such a program. As to “peer reviewed research,” the United States Department of Education’s commentary to the new federal regulations implementing the reauthorized IDEA stated, “We decline to require all IEP Team meetings to include a focused discussion on research-based methods or require public agencies to provide prior written notice when an IEP Team refuses to provide documentation of research-based methods, as we believe such requirements are unnecessary and would be overly burdensome.” (71 Fed.Reg. 46663 (August 14, 2006).) The United States Department of Education also noted, “[T]here is nothing in the Act to suggest that the failure of a public agency to provide services based on peer-reviewed research would automatically result in a denial of FAPE. The final decision about the special education and related services, and supplementary aids and services that are to be provided to a child must be made by the child’s IEP Team based on the child’s individual needs.” (71 Fed.Reg. 46665 (August 14, 2006).)

15. 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, supra*,

458 U.S. at p. 208.) "The *Rowley* standard recognizes that courts are ill-equipped to second-guess reasonable choices that school districts have made among appropriate instructional methods." (*T.B. v. Warwick Sch. Comm.* (1st Cir. 2004) 361 F.3d 80, 84, citing *Rowley, supra*, 458 U.S. at pp. 207-208, and *Roland M. v. Concord Sch. Comm.* (1st Cir. 1990) 910 F.2d 983, 992-993; *Adams v. Oregon* (9th Cir. 1999) 195 F.3d 1141, 1146-1150.) Hence, it is established that a school district has the right to select a program and/or service provider for a disabled pupil, as long as the program and/or provider is able to meet the pupil's needs; IDEA does not empower parents to make unilateral decisions about programs funded by the public. (See, *N.R. v. San Ramon Valley Unified Sch. Dist.* (N.D.Cal. 2007) 2007 U.S. Dist. Lexis 9135; *Slama ex rel. Slama v. Indep. Sch. Dist. No. 2580* (D. Minn. 2003) 259 F.Supp.2d 880, 885; *O'Dell v. Special Sch. Dist.* (E.D. Mo. 2007) 47 IDELR 216.) The most important issue is whether the proposed instructional method meets the pupil's needs and whether the pupil may make adequate educational progress. (*Deal v. Hamilton County Dept. of Educ.* (E.D.Tenn. 2006) 2006 U.S. Dist. LEXIS 27570, pp. 51-57; *Student v. Rocklin Unified School District* (OAH, May 25, 2007) 48 IDELR 234, 107 LRP 31811; see also § 1414(d)(1)(IV); 34 C.F.R. § 300.320; Ed. Code, § 56345, subd. (a)(4).)

16. Subsequent case law has followed the *Rowley* principle in disputes regarding the choice among methodologies for educating children with autism. (See, e.g., *T.B., supra*, 361 F.3d at p. 84; *Adams, supra*, 195 F.3d at p. 1149; *Pitchford v. Salem-Keizer Sch. Dist.* (D.Or. 2001) 155 F. \Supp.2d 1213, 1230-32.) "Beyond the broad questions of a student's general capabilities and whether an educational plan identifies and addresses his or her basic needs, courts should be loathe to intrude very far into interstitial details or to become embroiled in captious disputes as to the precise efficacy of different instructional programs." (*Roland M., supra*, 910 F.2d at p. 992; see *Rowley, supra*, 458 U.S. at p. 202.) In *Adams*, the parents of a toddler with autism sought a one-to-one, 40 hour-per-week ABA/DTT program modeled after the research of Dr. Lovaas. The Ninth Circuit

Court of Appeals explained:

Neither the parties nor the hearing officer dispute the fact that the Lovaas program which Appellants desired is an excellent program. Indeed, during the course of proceedings before the hearing officer, many well-qualified experts touted the accomplishments of the Lovaas method. Nevertheless, there are many available programs which effectively help develop autistic children. See, e.g., E.R. Tab 9; Dawson & Osterling (reviewing eight effective model programs). IDEA and case law interpreting the statute do not require potential maximizing services. Instead the law requires only that the IFSP in place be reasonably calculated to confer a meaningful benefit on the child.

(*Adams, supra*, 195 F.3d at pp. 1149-1150, citing *Gregory K., supra*, 811 F.2d at p. 1314.)

17. Courts have consistently rejected the proposition that an ABA-only program is the only effective method of instruction for autistic students. (*Deal, supra*, 2006 U.S. Dist. LEXIS 27570 at pp. 51-57 [comprehensive summary of decisions discussing this issue].) The *Deal*/court held that the ALJ erred in assuming that there is only one appropriate methodology for educating autistic children, and further erred because the ALJ failed to consider the wealth of evidence provided at hearing that there is no one correct methodology for teaching autistic children. The court stated:

Many federal courts have struggled to address whether 'Lovaas style ABA' program is a necessary component of an appropriate program for autistic children under the IDEA. Some courts have found that a school district's program was

appropriate despite the parents' preference for a 'Lovass style ABA' program. Other courts have determined that the school district's proposed program was not appropriate and that the parents' proposed Lovass program was appropriate in contrast. However, this Court has not located any authority suggesting that a 'Lovass style ABA' program is the *only* appropriate program for young autistic children under the IDEA.

(*Id.* at p. 48, italics in original.) Instead, courts have found that the most important issue is whether the proposed instructional method meets the pupil's needs and whether the pupil may make adequate educational progress. (*Id.* at pp. 65-68.)

18. The U.S. Department of Education's comments and discussions regarding "peer-reviewed research" are instructive in determining the intended meaning of the phrase "peer-reviewed," within the context of the IDEIA:

Comment: A significant number of commenters recommended the regulations include a definition of "peer-reviewed research," as used in Sec. 300.320(a)(4). One commenter recommended that the definition of peer-reviewed research be consistent with the work of the National Research Council.

Discussion: "Peer-reviewed research" generally refers to research that is reviewed by qualified and independent reviewers to ensure that the quality of the information meets the standards of the field before the research is published. However, *there is no single definition of 'peer reviewed*

research' because the review process varies depending on the type of information to be reviewed. We believe it is beyond the scope of these regulations to include a specific definition of "peer-reviewed research" and the various processes used for peer reviews.

Changes: None.

Comment: Some commenters recommended revising Sec. 300.320(a)(4) to require special education and related services, and supplementary aids and services, to be based on 'evidenced-based practices' rather than 'peer-reviewed research.' A few commenters recommended revising Sec. 300.320(a)(4) to require special education and related services, and supplementary aids and services to be based on peer-reviewed research, evidenced-based practices, and emerging best practices. Many commenters recommended clarifying the meaning and intent of the phrase "to the extent practicable." One commenter recommended requiring all IEP Team meetings to include a focused discussion on research-based methods and to provide parents with prior written notice when the IEP Team refuses to provide documentation of research-based methods.

Discussion: Section 300.320(a)(4) incorporates the language in section 614(d)(1)(A)(i)(IV) of the Act, which requires that special education and related services and supplementary aids and services be based on peer-reviewed research to the

extent practicable. The Act does not refer to 'evidenced-based practices' or 'emerging best practices' which are generally terms of art that may or may not be based on peer-reviewed research. Therefore, we decline to change Sec. 300.320(a)(4) in the manner suggested by the commenters. *The phrase 'to the extent practicable,' as used in this context, generally means that services and supports should be based on peer-reviewed research to the extent that it is possible, given the availability of peer-reviewed research.* We do not believe further clarification is necessary.

We decline to require all IEP Team meetings to include a focused discussion on research-based methods or require public agencies to provide prior written notice when an IEP Team refuses to provide documentation of research-based methods, as we believe such requirements are unnecessary and would be overly burdensome.

Changes: None.

Comment: One commenter recommended clear guidance on the responsibilities of States, school districts, and school personnel to provide special education and related services, and supplementary aids and services that are based on peer-reviewed research. One commenter requested clarification that the requirement for special education and related services, and supplementary aids and services to be based on peer-reviewed research does not mean that the service with

the greatest body of research is the service necessarily required for FAPE. Another commenter requested that the regulations clarify that the failure of a public agency to provide special education and related services, and supplementary aids and services based on peer-reviewed research, does not result in a denial of FAPE, and that the burden of proof is on the moving party when the denial of FAPE is at issue.

Discussion: Section 612(d)(1)(A)(i)(IV) of the Act requires special education and related services, and supplementary aids and services, to be based on peer-reviewed research to the extent practicable. *States, school districts, and school personnel must, therefore, select and use methods that research has shown to be effective, to the extent that methods based on peer-reviewed research are available. This does not mean that the service with the greatest body of research is the service necessarily required for a child to receive FAPE. Likewise, there is nothing in the Act to suggest that the failure of a public agency to provide services based on peer-reviewed research would automatically result in a denial of FAPE. The final decision about the special education and related services, and supplementary aids and services that are to be provided to a child must be made by the child's IEP Team based on the child's individual needs.*

With regard to the comment regarding the burden of proof

when the denial of FAPE is at issue, we have addressed this issue in the Analysis of Comments and Changes section for subpart E.

Changes: None.

Comment: Several commenters recommended including a construction clause in the regulations to clarify that no child should be denied special education and related services, or supplementary aids and services, based on a lack of available peer-reviewed research on a particular service to be provided.

Discussion: We do not believe that the recommended construction clause is necessary. *Special education and related services, and supplementary aids and services based on peer-reviewed research are only required 'to the extent practicable.'* *If no such research exists, the service may still be provided, if the IEP Team determines that such services are appropriate.* A child with a disability is entitled to the services that are in his or her IEP whether or not they are based on peer-reviewed research. The IEP Team, which includes the child's parent, determines the special education and related services, and supplementary aids and services that are needed by the child to receive FAPE.

Changes: None.

Comment: A few commenters recommended that the regulations clarify that the reference to 'peer-reviewed

research' does not require an IEP to include instructional methodologies. However, a few commenters recommended that the regulations require all elements of a program provided to a child, including program methodology, to be specified in the child's IEP.

Discussion: *There is nothing in the Act that requires an IEP to include specific instructional methodologies. Therefore, consistent with section 614(d)(1)(A)(ii)(I) of the Act, we cannot interpret section 614 of the Act to require that all elements of a program provided to a child be included in an IEP. The Department's longstanding position on including instructional methodologies in a child's IEP is that it is an IEP Team's decision. Therefore, if an IEP Team determines that specific instructional methods are necessary for the child to receive FAPE, the instructional methods may be addressed in the IEP.*

Changes: None.

Comment: A few commenters requested that the regulations require programs provided to a child with a disability to be research-based with demonstrated effectiveness in addressing the particular needs of a child.

Discussion: *While the Act clearly places an emphasis on practices that are based on scientific research, there is nothing in the Act that requires all programs provided to children with disabilities to be research-based with demonstrated*

effectiveness in addressing the particular needs of a child where not practicable. We do not believe the recommended change should be made because, ultimately, it is the child's IEP Team that determines the special education and related services that are needed by the child in order for the child to receive FAPE.

Changes: None. (Italics added).

19. As determined in Factual Findings 34 through 41, as well as Legal Conclusions 1, 2, 6, 7, and 14 through 18, at least three of the five components of the District's comprehensive IBI program, ABA using DTT, and PRT, have been subjected to peer-reviewed research. The other components, TEACCH, which uses PECS, are established and widely accepted methods of treatment. Four of the components were selected by the National Research Council in "Educating Children with Autism" as among the 10 comprehensive model programs. However, as noted by the National Research Council stated, "There is no outcome study published in a peer-reviewed journal that supports comparative statements of the superiority of one model or approach over another." The IDEIA does not mandate a particular methodology if the educational agency can establish that its chosen methodology is based on peer-reviewed research to the extent practical and that the methodology will allow the pupil to make an adequate education progress. For all these reasons, the District's comprehensive IBI program is based on peer-reviewed research to the extent practicable.

DID THE DISTRICT FAIL TO PROVIDE STUDENT WITH A FAPE BY FAILING TO SUFFICIENTLY TRAIN AND SUPERVISE IBI STAFF TO PROVIDE STUDENT WITH SOME EDUCATIONAL BENEFIT?

20. Based on Factual Findings 42 through 51, and Legal Conclusions 1, 2, 6, and

7, the District's IBI staff are appropriately educated, trained, experienced, and supervised to provide IBI services designed to meet Student's unique needs and reasonably calculated to provide some educational benefit. The District's IBI aides have completed an extensive testing and interviewing process prior to being hired. The District's IBI staff training program consists of six modules over the course of 50 hours: ABA/Autism and Behavior, DTT, PECS, TEACCH, Data Collection, PRT, and Confidentiality and Reporting Suspected Child Abuse. After an IBI aide completes the training, the aide spends 20 hours of "overlap" time with experienced staff before being able to provide direct services alone. In addition, the District's training program and staff qualifications are comparable with those cited in the National Research Council's book, "Educating Children with Autism." Of the District's current 42 IBI aides, 10 are working on a bachelor's degree, 11 have a bachelor's degree, four are working on a master's degree, two hold a master's degree, and two are working on a credential. All of the District's autism supervisors have nine or more years in the field, came from non-public schools, and hold a master's degree in the field. Two have moderate-to- severe teaching credentials, and two have BCBA certification.

DID THE DISTRICT FAIL TO PROVIDE STUDENT WITH A FAPE BY FAILING TO PROVIDE SUFFICIENTLY TRAINED AND EXPERIENCED HEAD START STAFF TO PROVIDE STUDENT WITH SOME EDUCATIONAL BENEFIT?

21. Based on Factual Findings 52 through 55, and Legal Conclusions 1, 2, 6, and 7, Ms. Millner had adequate and appropriate training and experience to provide some educational benefit to Student. Ms. Millner had an Associate of Arts degree in Early Childhood Development, which included at least 60 units of child development classes. She also had taken a number of classes on special education, and had regularly attended seminars and workshops for five years, some of which covered autism. Ms. Millner had over two decades of experience in teaching and dealing with children from a variety of

backgrounds and situations.

ORDER

Student's requests for relief are denied.

PREVAILING PARTY

Education Code section 56507, subdivision (d), requires a decision to indicate the extent to which each party prevailed on each issue heard and decided. The District prevailed on all issues in this matter.

RIGHT TO APPEAL THIS DECISION

The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within 90 days of receipt of this decision. (Ed. Code, § 56505, subd. (k).)

Dated: February 5, 2008

/s/

JOHN A. THAWLEY
Administrative Law Judge
Special Education Division
Office of Administrative Hearings