

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

In the Matter of:

OCEAN VIEW SCHOOL DISTRICT AND WEST
ORANGE COUNTY CONSORTIUM
FOR SPECIAL EDUCATION,

Petitioners,

v.

STUDENT,

Respondent.

OAH CASE NO. N 2007090177

DECISION

Administrative Law Judge Robert F. Helfand, Office of Administrative Hearings, Special Education Division (OAH), State of California, heard this matter in Laguna Hills, California on January 14, 2008, and at Huntington Beach, California on January 15, 2008.

Attorney Andrew V. Arczynski represented the Ocean View School District (Ocean View) and the West Orange County Consortium for Special Education (WOCCSE). Elizabeth Williams, Ocean View's Special Education Director, and Robyn Moses, Program Director from WOCCSE, were present throughout the hearing.

No one made an appearance on behalf of Student at the hearing.

The District called Robyn Moses; Bonnie Friedman; Ann Carr; Julie Fortner; Janet Halliday; Michelle Anderson; Lauren Franke, Psy. D.; Matt Boyd; and Patricia Merry as witnesses.

The District filed its request for due process hearing on September 7, 2007. The matter was submitted on January 22, 2008. The District agreed to waive the 45 day time limit and the ALJ agreed to issue his decision no later than February 15, 2008.

PROCEDURAL MATTERS

On January 3, 2008, Student, through his counsel of record, Stefan R. Hanson, filed a Prehearing Conference Statement (Statement). In the Statement, Student stated that the issue to be heard is: Do the components of Student's Individualized Education Program (IEP) of May 2, 2007, to which Student's parents have not consented, offer Student a free and appropriate public education? Student then listed the following portions of the May 2, 2007 IEP which were consented to by Student's parents in a September 12, 2007 letter as follows:

- (1) Student's continued eligibility for special education under the category of autism;
- (2) Speech and language services from May 2, 2007 through May 2, 2008, provided the District provider deliver the service at Student's home;
- (3) Adapted physical education services;
- (4) Occupational therapy services; and
- (5) The annual goals.

Mr. Hanson participated in the Prehearing Conference.

On the first day of the hearing, Attorney Hanson notified the ALJ by telephone message that the Student would not appear at the hearing. At approximately 9:40 a.m. during a conference call with the ALJ and Counsel for Ocean View and WOCCSE (collectively referred to as "the District"), Mr. Hanson stated that he was not authorized to appear at the hearing, and that no one would appear on behalf of Student.

ISSUE

Does the May 2, 2007 Individualized Education Program (IEP) offer Student a free appropriate public education (FAPE) for the 2007-2008 school year?

FACTUAL FINDINGS

1. Student is an eight-year-old boy, born on June 2, 1999, and resides within the boundaries of Ocean View with his parents.¹ Student is eligible for special education services under the category of autistic-like behaviors.

2. Student has attended the Hope View School (Hope View) since the 2005-2006 school year when he was in a regular kindergarten class with special education support. The support services provided to Student consisted of a shadow aide trained in Applied Behavioral Analysis (ABA), occupational therapy, speech and language therapy, adapted physical education, inclusion/autism support, and psychological counseling. A nonpublic agency, Autism Partnership (AP), provided the ABA trained aide and social skills training. In school year 2006-2007, Student attended a regular first grade class with the same special education support services. At the time of the IEP in issue, Student was in the first grade. Presently, Student is in a regular second grade class with special education support.

IDENTIFICATION OF STUDENT'S UNIQUE NEEDS

3. In order to provide a FAPE to a child, a school district must provide a program of special education and related services that meets the child's unique needs and is reasonably calculated to provide some educational benefit.

4. In order to understand Student's unique needs, the District conducted a

¹ Ocean View is part of WOCCSE, a special education local planning area.

triennial assessment in November 2005.

The November 2005 Triennial Assessment

5. The District's triennial assessment consisted of an Occupational Therapy Report (OTR), a Multidisciplinary Team Report (MTR), and a Functional Behavior Assessment (FBA). The Multidisciplinary team comprised Janet Halliday, school psychologist; Laurie Spears, resource specialist; Bonnie Friedman, speech/language specialist; Patty Mulcahy, OTR/L, a WOCCSE occupational therapist; Jen Hwang, adapted physical education specialist; and Eileen Mori, school nurse. The MTR included a review of Student's school records; interviews and consultations with Hope View educational staff and Autism Partnership staff; clinical observations; a review of Student's health records and developmental history; language sample; and standardized tests. The standard tests administered were the Wechsler Preschool and Primary Scale of Intelligence-Third Edition; Beery-Buktenica Developmental Test of Visual Perception; Beery VMI Developmental Test of Visual Perception; Beery VMI Developmental of Motor Coordination; Behavior Assessment System for Children (BASC-2), the parental and teacher rating scales; Scales of Independent Behavior-Revised; Woodcock-Johnson III Test of Achievement; Wide Range Achievement Test 3; Comprehensive Assessment of Spoken Language; and the Clinical Evaluation of Language Fundamentals-4 Pragmatics Profile.

6. The MTR evaluated Student in the areas of intellectual functioning, academics, social/emotional, and communications. The findings were as follows:

- (a) Student was in the low average to average range in intellectual functioning and in the high average to superior range academically. Student was in the range between superior and very superior in written language, and he was in the high average to superior range in mathematics. Student's reading scores fell within the very superior range.
- (b) Visual-perceptual processing/sensory-motor processing testing was conducted

by Ms. Halliday. Student's motor skills were age appropriate. In visual perceptual processing/sensory motor processing, Student was in the low average range for visual motor integration; average, although slow, in visual perception; and low average in motor coordination. Student's gross motor development was average.

- (c) The BASC-2 was utilized to measure aspects of Student's social-emotional functioning. Student's mother (Mother) and his kindergarten teacher, Audra Kuns, completed rating scales. In Mother's ratings, Student demonstrated aggression and withdrawal in the clinically significant range; and he was in the at risk range for hyperactivity, conduct problems, atypicality, attention problems, adaptability, leadership, and social skills. In the teacher ratings, Student was in the at-risk range for atypicality and withdrawal, and just outside the at-risk range for aggression. He scored in the average range for adaptability.
- (d) As to communications, Student was in the low average to high average range for language abilities. He was age appropriate in semantics, syntax, grammar, and articulation. He has a significant deficit in the areas of pragmatics. Although Student has knowledge of the appropriate use of language in elementary social contexts, he does not correctly interpret nonverbal cues or read social situations.

7. The OTR was conducted by Ms. Mulcahy on November 11, 2005. Student's quality of movement in hand skills was inconsistent although "he possesses the necessary components needed to perform age appropriate fine motor skills." Ms. Mulcahy opined that Student's "successes in his classroom environment is not based on his skills, but on his willingness to engage and respond appropriately." She recommended that occupational therapy be continued as determined by the IEP team.

8. A FBA was conducted by Ms. Halliday and Ms. Kuns with input from AP in November 2005. Based upon teacher observations, the BASC-2 completed by Ms. Kuns, and a review of documentation made by AP, Student's problem behaviors were identified

as grabbing items from other children, and pushing, hitting, or other physical actions towards peers which could result in injury. These behaviors appeared during less structured activities, change of routine, more crowded environment and when Student was stressed from previous events and appeared to be designed to maintain sameness or gain peer attention. A proposed Behavior Support Plan (BSP) was drafted based upon the FBA. The proposed BSP contained interventions and strategies to utilize in order to reduce the problem behaviors. Student's parents did not consent to the implementation of the BSP at the 2005 and 2006 IEP team meetings.

School Performance

9. In school year 2005-2006, Student attended the kindergarten class of Ms. Kuns. Student was at grade level academically in all areas, and made progress throughout the year in social interactions with peers on the playground. During school year 2006-2007, Student was in the first grade class of Julie Fortner.² Student was hard working and did not pose a behavior problem in her class. He was on grade level academically in all areas. He was able to work well independently and complied with class rules and improved throughout the year in keeping on-task. Student's main area of concern was his relating to peers and to stay on-task during class. Student had an ABA trained shadow aide in class to assist him in academics, being attentive, and to assist in social situations with his peers. Student also continued to receive occupational therapy, adaptive physical education, speech and language therapy, and social skills training. AP provided the shadow aide and ABA services to Student.

² Ms. Fortner has been teaching first grade in Ocean View for five years. She was Student's teacher until February 28, 2007, when she went on maternity leave.

Student's Unique Needs

10. Due to his autism, Student's unique needs are to learn to pay attention and stay on-task in the classroom, to learn social skills in dealing with his peers, and to learn to control his behavior when frustrated.

THE IEP TEAM MEETING OF MAY 2, 2007

11. On May 2, 2007, the IEP convened its annual meeting. Attending from the District were Robyn Mosses, Program Director from WOCCSE; Ms. Mulcahy; Ms. Friedman; Nicole Rios, Student's then first grade teacher;³ Ann Carr, Autism/Inclusion Support specialist from Ocean View; B. Leippin, Student's adapted physical education teacher; Susan Kemp, Ed.D., Ocean View administrative representative; Holly Minear, interim special education coordinator from Ocean View; and Michelle Anderson, WOCCSE Autism Program Specialist. Andrea Wicks and Sigal Erez Ben-Haim attended from AP. Student's parents were also in attendance. The team found that Student demonstrated strengths in reading and writing as well as an ability to work well independently. He exhibited weakness in areas of social skills and social communications. Student's behavior was a problem area which required interventions on a regular basis especially during less structured times, changes of routine, and while interacting with peers.

12. Based upon the FBA conducted in November 2005 and consultation with Student's first grade teachers, Ms. Fortner and Ms. Rios, a BSP was proposed. The BSP identified Student's problem areas as when he wants or lacks attention from peers or when he desires to obtain an object which may be used by a peer during play. Student displays grabbing items, pushing, hitting, or other such physical activities which may cause physical harm to others. The BSP lists a number of strategies to avoid the problem behaviors such

³ Ms. Rios became Student's first grade teacher when Ms. Fortner left on maternity leave.

as utilizing a chart for selecting specific games or dismissing small groups rather than the whole class for recess, prompts to assist Student in crowded situations, and use of a visual structure to help him organize during less structured time periods (i.e., work sheet or preferred book or activity). Strategies to be utilized include a clip chart, self monitoring system, teaching of stress management techniques, using social stories, role plays, and reinforcement through teacher comments, and social skills training.

13. The IEP team adopted 13 goals with baselines.⁴ These goals and their baselines are as follows:⁵

- (1) Social Cognition-Joint Attention. The baseline established is that Student fails to pick up on social cues. [An example is when one is engaged in speaking to another whose attention is drawn to something else; Student will not notice and continue talking.] The goal is that Student will give joint attention to the other's diversion and make a relevant comment within 10 seconds in four out of five trials as measured by the teacher, staff, or speech/language pathologist.
- (2) Social Cognition-Perspective Taking. The baseline is that during a conversation, Student demonstrates a lack of executive functioning abilities in the area of perspective taking as he frequently fails to respond to comments by another without prompting. When prompted, he generally demonstrates awareness of what was said by asking appropriate questions. Student's goal is to show interest in the other person to a conversation by asking appropriate questions in response to what was said in three of five trials measured by data collected.
- (3) Social Skills-Perspective Taking. Student's baseline is that when given a picture book without words, he is able to look at the pictures and tell a story; but he

⁴ These goals and baselines have been consented to by Student.

⁵ The numbering corresponds to the number listed on the May 2, 2007 IEP.

misses several details and fails to interpret the story with complete accuracy.

Student's goal is to pay attention to visual details, such as facial expressions, and interpret the story with 90 percent accuracy in four out of five trials as measured by charted records.

- (4) Social Activity Engagement. Student loses patience and interest when playing board or card games with two or three peers which leads to being distracted and failing to keep track of the progress of the game. Student's goal is to maintain interest in such situations and demonstrate appropriate social behavior for 20 minutes with minimal prompting in four out of five tests as measured by charted records.
- (5) Social Reasoning Skills. The baseline is that when presented with brief verbal descriptions of social scenarios, Student exhibits difficulty paying attention to details or hints given and answers questions about the social situation with 50 percent accuracy. Student's goal is that when he is presented with brief social scenarios, he will demonstrate reasoning skills by paying attention to the information and answer questions in four out of five trials as measured by the speech language pathologist's charted records.
- (6) Social Awareness/Non-Verbal Communication. Student does not consistently respond to non-verbal cues by adjusting his behavior. The goal is for Student to respond to non-verbal cues of his peers in a variety of instructional/social settings in an age appropriate manner 80 percent of the time as measured by teacher collected data and observation.
- (7) Social Communication/Multi-Party Conversation/Multi-Tasking. Student has difficulty in joining in and sustaining conversation in small group conversations, especially when involved in another activity simultaneously. Typically, he will attempt to join in by asking a question that is not related to the topic. Student's

goal is to participate in on-going dialogue/conversation in a small group activity 80 percent of opportunities presented as measured by teacher collected data.

- (8) Self-Stimulatory Behaviors/Play Repertoire/Social Interaction. Although Student is able to engage in a variety of age-related activities without the presence of self-stimulatory behavior for extended periods of time (20 minutes), he does have difficulty refraining from self-stimulation while engaged in several activities involving preferred materials or toys. The goal is for Student, during self-directed activities, to sustain appropriate engagement for up to 15 minutes without the presence of self-stimulatory/preservative behavior 80 percent of opportunities presented.
- (9) Frustration Tolerance/Flexibility/Self-Stimulatory Behavior/Cooperative Social Behavior. Flexibility in play continues to be challenging for Student in group settings especially involving novel materials/activities and decreased structure. The goal is for Student to engage in an activity for a period of time and to respond to interruptions and/or suggestions to vary the activity in an age appropriate manner 80 percent of opportunities without disruptive behaviors as measured by teacher data.
- (10) Attention Seeking/Social Discrimination. The baseline is that Student attempts to gain the attention of peers at inappropriate times using less appropriate means (e.g., poking, noises, off-topic comments). The goal is for Student to respond in an age appropriate manner after not getting a desired reaction from a peer 80 percent of the opportunities as measured by teacher collected data.
- (11) Attending/Classroom Participation. Student has trouble staying on task for more than five minutes. The goal is for Student to stay on task for 15 minutes without the presence of interfering behaviors or the need for staff redirection 80 percent of the opportunities presented.

- (12) Problem Solving/Critical Thinking/Increased Independence. When Student does not have an immediate solution to a problem, he gives up and asks for help without attempting to reach the solution himself, especially in social situations. The goal for Student is that, in structured settings, to confront a situation involving a problem requiring a solution, come up with a solution and attempt to carry out his plan 80 percent of the opportunities presented as measured by teacher collected data.
- (13) Self-Awareness/Regulation/Increased Independence. Student has learned to recognize his emotional state during structured instructional sessions using a visual meter and to identify appropriate responses appropriate to the emotion; but he has difficulty admitting what he is feeling outside of positive emotions and is not able to adjust his behavior without staff assistance. The goal is for Student in 80 percent of opportunities presented to to identify, adjust his behavioral/emotional state and engage in appropriate behavior and responses to the situation as measured by teacher collected data.

The District's Offer

14. The District's offer of FAPE made at the May 2, 2007 IEP meeting called for Student to continue to be placed in a general education classroom for the 2007 extended school year (ESY) and 2007-2008 school year. The District offered the following designated instruction and services (DIS) during the 2007 ESY and the 2007-2008 school year: a one-to-one aide, speech and language therapy, occupational therapy, adapted physical education, ABA services, social skills training, and consultation.

2007 ESY AND ADDITIONAL SUMMER SERVICES

- (A) For the 2007 ESY, which ran from June 21, 2007 through July 19, 2007, Student would receive an ABA group class for two 120 minute sessions per week; two 30

minute speech and language sessions; and six one hour ABA supervision consultation sessions. Additionally, Student would be placed in an ABA social skills group class for two 120 minute sessions weekly from July 30, 2007 through August 23, 2007.

2007-2008 SCHOOL YEAR

- (B) The proposed speech and language DIS services consisted of two 30 minute group sessions per week. The services would be provided by a District speech and language therapist during the school day, and Student would be pulled from his general education classroom to attend the sessions. The speech and language program stresses pragmatics, which deals with social language and the appropriate use of language during social interaction. These sessions would address Student's social skills goals.
- (C) The proposed occupational therapy services would consist of eight one hour sessions provided by District staff in the classroom. The APE services consist of three 30 minute sessions per year by District staff to consult with Student's teacher and ABA supervisor regarding Student's playground skills.
- (D) ABA social skills individual and group instruction were proposed for four 60 minute sessions per week consisting of two hours during the instructional day and two one hour sessions per week after school hours. The group comprises three to five students who range from one year younger than Student to one year older. All group members have needs similar to Student. There is an adult facilitator and an adult assistant in charge of the group. This service would be provided utilizing District personnel instead of AP staff. Student's speech and language therapy will be coordinated with the social skills group since both work on similar goals.
- (E) A District shadow aide, trained in ABA, would be available daily during the

school day in case Student requires assistance academically, behaviorally, or needs redirection to stay on-task. The aide would attempt not to intrude unless his services were needed to assist Student either behaviorally or academically. When Student does not need the aide's intervention, the aide would assist other pupils. The aide would be with Student except for when Student is participating in one-to-one or small group DIS. The use of the aide will fade as Student becomes more independent and his behavior improves. The IEP team will review whether aide service could be reduced in November 2007.⁶ There would be a three week period to allow transition from the AP employed aide to the District aide.

- (F) The program supervisor will monitor Student's progress, coordinate services, collect data kept by the aide and teacher, observe Student in various settings, and recommend changes to Student's program as circumstances require. Monthly meetings would bring together Student's team, including his parents, to review his progress, coordinate services so they complement each other, and to make changes in Student's program as needed. Additionally, there would be three 30 minute consultation sessions per year to include Student's parents, District autism/inclusion specialist and the classroom teacher.

WHETHER THE IEP PROVIDES FAPE

15. For an IEP to constitute a FAPE, it must (1) be designed to meet the unique needs of the child; (2) be reasonably calculated to provide the student with some educational benefit; (3) comport with the child's IEP; and (4) the district is required to provide a program in the least restrictive environment (LRE). A special education student should be educated with nondisabled peers to the maximum extent. The IEP is to be

⁶ Because the IEP was not adopted, this review has not taken place.

viewed based on what was objectively reasonable at the time the IEP was drafted and not in hindsight.

16. The District contends that the IEP proposed on May 2, 2007, offers Student a FAPE. Student is not contesting the following offered services: speech and language therapy, occupational therapy, and adaptive physical education. Student also is not contesting the goals adopted by the IEP team, which includes the baselines established. Since the baselines illustrate Student's present level of performance in each of the areas covered by the goals, Student is not contesting the findings of the IEP as to present levels of performance. Thus, the only areas of dispute are in the areas of Student's placement in a general education class at Hope View, and the shadow aide and other DIS offered in the IEP.

Placement in general education class at Hope View

17. Both federal and state law requires school districts to provide a program in the LRE to each special education pupil. This means that a special education student should be educated with nondisabled peers to the maximum extent appropriate and may be removed from the regular education environment when the nature and severity of the child's disabilities require it.

18. Student has attended general education classes in kindergarten and first grade with shadow aide support. Student has been at grade level in all areas academically at all times. In first grade, Ms. Fortner noted since Student's behavior improved as the school year progressed, his need for shadow aide support decreased. Student's present teacher, Patricia Merry, found Student at grade level when he entered second grade and he has continued to function at grade level and actively participate in the classroom. Student has not been disruptive to the class, although he does require redirection during less structured times. Since Student is able to be educated with his nondisabled peers and continues to benefit from placement in a general education class with support, the offered

placement at Hope View is appropriate and is the LRE.

DESIGNATED INSTRUCTION AND SERVICES

22. If the District's program was designed to address the child's unique educational needs, was reasonably calculated to provide some educational benefit, and comported with the IEP, then the District provided a FAPE, even if Student's parents preferred another program and even if the preferred program would have resulted in greater educational benefit.

23. ESY services must be provided to individuals whose handicaps are likely to continue indefinitely or for a prolonged period, and interruption of the child's education may cause regression.

24. Michelle Anderson would supervise Student's program and run his social skills training group. Ms. Anderson has known and worked with Student for three years. She was a contributor to Student's BSP. Since 2002, she has been a Program Specialist/Autism Specialist with WOCCSE. Ms. Anderson holds a B.S. in psychology/education and a M.S. in special education from the State University of New York at New Paltz. She holds California certification in multiple subjects, learning handicapped and educational administration. She was a regular education teacher from 1990-1993 in New York, and a special education teacher in the Westminster School District from 1993-1996. From 1996-2002, Ms. Anderson was the Coordinating Teacher of Autism/Inclusion programs at Westminster. She has attended numerous conferences involving special education and autism since 1996. Ms. Anderson noted that the BSP takes into consideration Student's learning style and behaviors as well class structure. Ms. Anderson opined that (1) the BSP is an effective support plan for Student, (2) that the IEP provides FAPE in that it is designed to meet Student's unique needs and is reasonably calculated to provide educational benefit to Student, (3) that the District's offer for the summer of 2007 also provides FAPE in that the program is designed to ensure that Student

does not regress during the summer recess, and (4) that Student is able to transition from the AP aide to a new District aide. Ms. Anderson's opinion was highly persuasive in that Ms. Anderson was qualified to give her opinion based on her education and experience, and her knowledge of Student. Additionally, Ms. Anderson is highly qualified to provide social skills training and to supervise Student's program.

25. Matt Boyd has been designated by Ms. Anderson to become Student's shadow aide. Mr. Boyd is presently majoring in childhood development at Coastline Community College and intends to pursue a degree in this area. He has training in ABA including 12 hours of discrete trial training, 20 hours observing an aide work with a child, and 20 hours working as an aide under direct oversight. He has also been trained to implement a BSP and to collect data and attended in-service training sessions and conferences annually.⁷ Mr. Boyd has worked for seven years with children on the autism spectrum as an aide, of which four have been with Ocean View. These children ranged from preschoolers to fifth graders. Mr. Boyd is qualified to serve as Student's shadow aide and provide the ABA social skills services that Student requires.

26. Lauren Franke received her B.A. in speech and hearing disorders from the University of California, Santa Barbara, an M.A. in communicative disorders from California State University, Long Beach, and a Psy.D. in clinical psychology from Pepperdine University. She has been a speech pathologist since 1977 and a psychologist since 1990. Since 1995, Dr. Franke has been in private practice with 80-95 percent of her time involving autism. Approximately one-third of her practice is devoted to language development and psychological issues, and two-thirds to consulting and conducting training for school districts. Dr. Franke has given over 45 professional presentations regarding communication disorders and autism. Dr. Franke reviewed the MTR; the IEPs from May 2, 2006 and May 2,

⁷ AP has provided training for Ocean View and WOCCE staff including Mr. Boyd.

2007; conducted interviews of District staff including Ms. Anderson; and observed Student on January 11, 2008 in his classroom. During her observation, Dr. Franke had a hard time pointing Student out as a special needs child as he actively participated in activities and did not require any prompts or other interventions. Based on the above, Dr. Franke found that Student was making continued progress. She opined that the May 2, 2007 IEP provided Student with a FAPE as it addressed his unique needs by incorporating appropriate goals and appropriate types and levels of services and support to enable Student to meet his goals and progress. As to the 2007 ESY and summer program, Dr. Franke found that the District's offer of services was appropriate to ensue that Student's skills would not regress, and that it provided a FAPE to Student. Dr. Franke is qualified to offer her opinion and she was very credible.

27. Both Ms. Fortner and Ms. Merry testified that when the assigned shadow aide was not present, Student encountered no problems with a substitute aide. When he entered second grade at the beginning of the present school year, Student had no problems transitioning into the new class with a new teacher. Dr. Franke opined that that the District's plan to transition from the current AP aide to a District aide was appropriate. Based on the evidence, the District's aide transition plan is appropriate.

28. The evidence is clear that the May 2, 2007 IEP offers Student a FAPE as it is appropriate to meet Student's unique needs, reasonably calculated to provide Student with educational benefit, and is in the LRE.

LEGAL CONCLUSION

1. The petitioner in a special education administrative hearing has the burden to prove his or her contentions at a due process hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528, 163 L.Ed.2d 387].) Accordingly, the District has the burden of proof as to all issues.

2. Under the federal Individuals with Disabilities Act (IDEA) and companion

state law, a child with a disability has the right to a FAPE. (20 U.S.C. § 1412(a)(1)(A); Ed. Code, § 56000.) FAPE means special education and related services that are available to the student at no charge to the parents, that meet the state educational standards, and that conform to the student's IEP. (20 U.S.C. § 1401(9).) "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. (20 U.S.C. § 1401(29); Ed. Code, § 56031.) California's definition of special education includes both specially designed instruction to meet the unique needs of the student with exceptional needs and related services to enable a student to benefit from such specially designed instruction. (Ed. Code, § 56363.) "Related services" or "designated instruction and services" (DIS) means transportation and other developmental, corrective and support services, such as speech language pathology, as may be required to assist the child to benefit from special education. (20 U.S.C. § 1401(22); Ed. Code, § 56363, subd. (a).)

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the United States Supreme Court addressed the level of instruction and services that must be provided to a student with disabilities to meet the student's unique needs and satisfy the requirement of the IDEA. The Court determined that the IEP must be designed to meet the child's unique needs and be reasonably calculated to provide the student with some educational benefit, but that the IDEA does not require school districts to provide special education students with the best education available or to provide instruction or services that maximize a student's abilities. (*Id.* at pp. 188-201.) The term "unique needs" is to be broadly construed to include the child's academic, social, emotional, communicative, physical, and vocational needs. (*Seattle Sch. Dist. No. 1 v. B.S.* (9th Cir. 1987) 811 F.3d 1493, 1500.) School districts are required to provide only a "basic floor of opportunity" that consists of access to specialized instructional and related services that are individually designed to provide

educational benefit to the student. (*Rowley*, at p. 201.)

4. The IEP is the “centerpiece of the [IDEA’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. (*Honig v. Doe* (1988) 484 U.S. 305, 311 [108 S.Ct. 592, 98 L.Ed.2d 686]; 20 U.S.C. §§ 1401 (14), 1414 (d)(1)(A); Ed. Code, §§ 56032, 56345.) Each school district is required to initiate and conduct meetings for the purpose of developing, reviewing, and revising the IEP of each individual with exceptional needs. (Ed. Code, § 56340.)

5. To determine whether a district offered a student a FAPE, the analysis must focus on the adequacy of the district’s proposed program and not on the family’s preferred alternative. (*Gregory K. v. Longview Sch. Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314 (*Gregory K.*.) 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 *Rowley* Court held that school districts must 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 the child’s parents preferred another program and even if her parents’ preferred program would have resulted in greater educational benefit. (*Gregory K., supra*, 811 F.2d at p. 1314.)

6. The Ninth Circuit Court of Appeals has endorsed the “snapshot” rule, explaining that the actions of the District cannot be “judged exclusively in hindsight...an IEP must take into account what was, and what was not, objectively reasonable when the

snapshot was taken, that is, at the time the IEP was drafted." (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)

7. 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 LRE 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. However, the Supreme Court has noted that IDEA's use of the word "appropriate" reflects congressional recognition "that some settings simply are not suitable environments for the participation of some handicapped children." (*Rowley, supra*, 458 U.S. at p. 197.)

8. In addition to special education instruction and services during the regular school year, extended school year services shall be provided to a child with a handicap which is likely to continue indefinitely or for a prolonged period, and interruption of the child's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the child will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her handicapping condition. (Ed. Code, § 56345, subd. (b)(3); Cal. Code Regs., tit. 5, § 3043.)

9. As set forth in Factual Findings 1 through 28, the testimony of the District witnesses demonstrates their clear understanding of Student's unique needs, and that the May 2, 2007 IEP is designed to meet these unique needs and is reasonably calculated to provide Student with educational benefit.

10. The evidence supports a finding that the District's proposed IEP of May 2, 2007, offered Student a FAPE in the LRE appropriate to meet his unique needs.

ORDER

In accordance with the evidence presented at the due process hearing, the ALJ makes the following determination:

The District's proposed IEP of May 2, 2007, offered Student a free and appropriate public education.

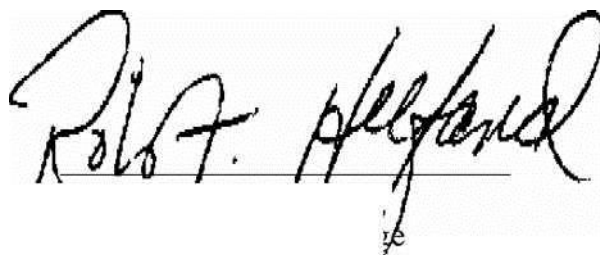
PREVAILING PARTY

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 District was the prevailing party.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by this Decision. Pursuant to Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within ninety (90) days of receipt.

Dated: February 14, 2008

A handwritten signature in black ink, reading "Robert F. Helfand", written over a horizontal line.

ROBERT F. HELFAND

Administrative Law Judge

Office of Administrative Hearings

Special Education Division