

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

In the Matter of:

NEWPORT-MESA UNIFIED SCHOOL
DISTRICT,

Petitioner,

v.

STUDENT,

Respondent.

OAH CASE NO. N 2007070539

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 December 10-11, 2007.

Attorney Adam J. Newman of the law firm of Atkinson, Andelson, Loya, Ruud & Romo represented the Newport-Mesa Unified School District (District). Diana Casato, the District's Special Education Director, was present throughout the hearing.

Student's mother (Mother) represented Student. Also attending on December 10, 2007 and the afternoon of December 11, 2007 were Student's great grandmother and great aunt.

The District called Melissa M. Hurd; James Counts; David Cavanaugh; Harriet Hasson; Jill Jacobs; Susan Morabito; Jane Martin-LaCroix; Tracy Scofield; Laura Rydell as witnesses. Student called Mother and Rose-Marie Davis as witnesses.

The District filed its request for due process hearing on July 17, 2007. The matter

was submitted on December 11, 2007. The parties agreed to waive the 45 day time limit and the ALJ agreed to issue his decision no later than January 15, 2008.

ISSUE

Does the District's offer of placement and services made at the May 31, 2007 Individualized Education Program (IEP) team meeting constitute a free appropriate public education (FAPE) for the 2007-2008 school year?

CONTENTIONS OF THE PARTIES

The District contends that its offer of services and to place Student in a special day class (SDC) at the Victoria Elementary School made at the May 31, 2007 IEP team meeting constitutes a FAPE in the least restrictive environment for the 2007-2008 school year. The District further contends the proposed IEP was designed to meet Student's unique needs based on a comprehensive and thorough assessment, which established Student's present levels of performance, and through collaboration between District personnel and Student's current service providers from his non-public school, the Speech and Language Development Center (SLDC).

Student contends that his unique needs require a more restrictive environment, like SLDC, where there is a constant routine and structure. Student further contends that a change in placement to a less restrictive environment, as the proposed SDC, will cause regression and behavior problems which will have a negative effect on Student's educational progress. Additionally, Student asserts that the auditory services offered by the District are insufficient to meet his unique needs.

FACTUAL FINDINGS

1. Student was born on May 24, 1998, and has resided within the District since October 2006. Prior to moving to the District in October 2006, Student became eligible for

special education in April 2001 under the category of Developmental Delay. In June 2003, Student's eligibility category was changed to Deaf/Hard of Hearing. He is currently eligible for special education services under the categories of Autistic-Like Behaviors, Mental Retardation, Emotional Disturbance, Speech and Language Impaired, and Deaf/Hard of Hearing. Student has been utilizing hearing aides in each ear and a FM receiver system to aid in hearing.

2. For the past six and a half years, Student has been attending a non-public school, SLDC in Buena Park. He has been assigned to a class taught by James Counts. Since April 17, 2007, Student has been in transition between SLDC and a SDC at the Victoria Elementary School, a District school. Student attends a portion of the day at the SDC and then is transported to SLDC to finish the remainder of the school day.

STUDENT'S UNIQUE NEEDS

3. Under the Individuals with Disabilities Education Act (IDEA) and case law, the District's proposed program must (1) be designed to meet Student's unique needs, (2) be reasonably calculated to provide Student with some educational benefit, (3) comport with the Student's IEP, and (4) be provided in the least restrictive environment (LRE). An IEP is not judged in hindsight but at what was objectively reasonable at the time it was drafted.

4. In order to understand Student's unique needs, the District conducted a triennial assessment in December 2006, comprising a Multidisciplinary Psycho-Educational Report (MPER) and an Occupational Therapy Report.¹ The MPER was authored by Melissa Hurd, a District school psychologist. Both District and SLDC staff contributed. The Occupational Therapy Report was prepared by Student's occupational therapist at SLDC,

¹ The Occupational Therapy report was dated January 20, 2007. The MPER was dated January 26, 2007.

Michelle Radmore, Occupational Therapist Registered/Licensed.

5. In the Occupational Therapy (OT) assessment, Ms. Radmore administered the Berry-Buktenica Developmental Test of Visual Motor Integration (VMI), Bruininks-Oseretsky Test of Motor Proficiency, Second Edition (BOT-2), and the Print Tool. In the VMI, Student scored at an age equivalency of five years, six months with an age equivalency of four years, six months as to visual perception and four years as to visual motor integration. He had similar scores on the BOT-2 which measures motor skills. On the Print Tool, Student was only able to create the letters A, B, C, D, E, F, K, O, S, and X. He was able to create the letters J and Z backwards. As to numbers, he could create only 1, 4, 5, 6 and 8 plus 3 and 9 backwards. Ms. Radmore concluded that Student "demonstrates difficulties with sensory processing, sensory modulation, and poor fine motor control." She recommended that Student continue to receive two hours of OT per week with one half hour provided in a clinical-based setting using sensory integration and one half-hour of classroom consultation.

6. The MPER contained contributions by Ms. Hurd; Mr. Counts; Laurel Freeman, District school nurse; Joy Lucy, SLDC speech and language pathologist; Dr. Jill Jacobs, District audiologist; Dr. Rose-Marie Davis, SLDC audiologist; and Mother. The assessment consisted of a review of Student's educational records, a review of Student's health records, classroom observations, clinical observations, interviews and testing. The administered tests were in the areas of intellectual functioning (Wechsler Intelligence Scale for Children-Fourth Edition (WISC-IV) and the Test of Nonverbal Intelligence (TONI-3), academic performance (Brigance Inventory of Early Development-2), behavioral/social-emotional functioning (Behavior Assessment Scales for Children, Second Edition (BASC-2), adaptive behavior functioning (Adaptive Behavior Assessment System-Second Edition (ABAS-II), Scales of Independent Behavior-Revised (SIB-R), and the Childhood Autism Rating Scale (CARS), language functioning (Receptive One-Word Picture Vocabulary Test- Revised

(ROWPVT-R) and the Expressive One-Word Picture Vocabulary Test-Revised (EOWPVT-R)), and visual and fine motor functioning (The Development Test of Visual Motor Integration, Fourth Edition). Additionally, Dr. Davis conducted a hearing exam.

7. Student scored below the first percentile in the EOWPVT-R and at the third percentile in the ROWPVT-R, indicating that he "displays reduced intelligibility or an inability to use the speech mechanism that significantly interferes with communication and attracts adverse attention."

8. CARS is a rating scale based upon responses from Student's teacher, Mr. Counts, and Mother. Mr. Counts's responses indicated that Student was in the mildly autistic range, while Mother's responses indicated that he was in the severely autistic range. Additionally, Student's medical history showed that he had been diagnosed to be within the Autistic Spectrum Disorder in October 2006 by his physician.

9. Student ranked in the 0.1 percentile in the WISC-IV which placed him in the mentally deficient range. The ABAS-II showed that Student's adaptive behavior was in the extremely low range of functioning.

10. The hearing exam was conducted by Dr. Davis which revealed a moderate to severe hearing loss. Student's hearing loss affects his use and understanding of spoken language as well as his adaptive behavior for age-appropriate functioning.

11. In behavioral/social-emotional functioning, Student was found to be in a clinically significant depression. He also demonstrated very serious asocial maladaptive behaviors at home including anger and violence. But at school, Student demonstrated marginally serious externalizing maladaptive behaviors, which includes disruptive behavior, destructiveness to property, and hurting others.

12. The MPER recommends that Student be found to be eligible for special education under the categories of Autistic-Like Behaviors, Mental Retardation, Emotional Disturbance, Speech-Language Impairment, and Deaf/Hard of Hearing.

THE JANUARY 26, 2007 AND MARCH 30, 2007 IEP MEETINGS

13. On January 26, 2007, the IEP team convened to review the triennial assessment. The team adopted the MPER recommendation as to Student's special education eligibility categories. The team also decided to continue services being provided by SLDC, and the team determined that Student was ready to transition into the Victoria SDC class of Ms. Scofield.

14. Ms. Scofield's SDC comprises 11 students with two instructional aides located on an elementary school campus (grades one through five) with approximately 360 students.² The SDC students attend a general education music class and also have contact with nondisabled children during recess and at lunch. The teacher has established a structured routine designed to meet the needs of autistic children. Ms. Scofield stresses socialization by setting aside a period daily for social skills training, including manners, and an additional period for communication skills. Ms. Scofield works collaboratively with service providers to include work on each student's specific goals inside the classroom.

15. On March 30, 2007, the IEP team reconvened. Attending were Tracy Scofield, a District SDC teacher; Ms. Rydell; Ms. Hurd; Dr. Jacobs; Mr. Counts; Jane Martin-LaCroix, District occupational therapist; Judy Laakos, Victoria Elementary School principal; Susan Morabito, District speech and language therapist; Cheryl Becker, a representative of the Orange County Regional Center; Harriet Hasson, vice principal of the elementary and junior high school section at SLDC; Student's great aunt and Mother. Ms. Hasson reported that Student was ready to begin a transition to the public school setting as he was stable at SLDC and deserves a chance to grow in a lesser restrictive environment. Ms. Scofield reported on her observations of Student at SLDC and that she believed that he would fit into her SDC class at Victoria. She also opined that Student was ready to begin

² SLDC is of similar size.

generalizing the skills that he had learned at SLDC in a new classroom setting. The District proposed that Student begin a partial transition to the Victoria SDC commencing on April 17, 2007, after Spring Break, for one hour per day at Victoria and then the remainder of the day at SLDC in Mr. Counts' class. Student's time at Victoria would be gradually increased with a goal that Student would fully transition into Ms. Scofield's SDC. Mr. Counts agreed to visit the SDC with Student prior to the start date. The IEP team approved the District's offer unanimously, and Mother consented to the IEP.

THE TRANSITION FROM APRIL 17, 2007 THROUGH MAY 31, 2007

16. Following the end of Spring Break on April 17, 2007, Student began attending the SDC for one hour per day and then the District bused him to SLDC for the remainder of the school day. Because Student did so well, Student's time at the SDC was extended to two hours after two weeks. Student arrived by bus at approximately 8:00 always with a smile. Student exhibited no significant behavior problems at the SDC. Student appeared to fit in with the class. He inquired as to what the class was doing after he left and even asked to stay longer at the SDC. Student arrived at SLDC at approximately 11:00 and was always in a good mood, had no significant behavior problems in his class, and would jump into class activities upon arrival. Mother indicated that she saw an increase in Student's behavior problems at home, and that he would refuse to go to the SDC each morning though he would get on the bus with prompting.

THE MAY 31, 2007 ANNUAL IEP TEAM MEETING

17. On May 31, 2007, the IEP team reconvened for the annual IEP meeting. Attending on behalf of the District were Ms. Hurd; Ms. Martin-LaCroix; Ms. Laakso; Ms. Scofield; Ms. Rydell; Candy Barela, a District administrator; Jenny Hart, the school psychologist at Victoria; and Ms. Morabito. Attending on behalf of SLDC were Mr. Counts; Ms. Radmore; Ms. Hasson; and Ms. Lucy. Also attending were Mother; Student's great aunt;

and Pam Martinez, a representative of the Orange County Regional Center. The team reviewed Student's performance on the prior year's goals. The team felt that Student had met nine out of his 22 goals and made progress on the others. SLDC staff felt that (1) Student failed to meet his speech and language goals because he required more cuing than expected and that his behaviors interfered with his progress at times; (2) Student requires more visual and verbal cuing in the classroom than expected; and (3) that the occupational therapy goals were set "a bit too high." Both SLDC staff and District personnel felt that Student was ready to fully transition into the public school setting. Mother expressed concerns that Student was not ready to fully transition into the public school setting because of bad behaviors at home.

THE DISTRICT'S OFFER

18. The IEP team adopted the following offer which included the remainder of the 2006-2007 school year, Extended School Year (ESY), and the 2007-2008 school year. The District's offer is as follows:

(A) May 31, 2007 through June 7, 2007

- (1) Student will complete the final stage of transition from SLDC to the SDC by having Student attend the SDC at Victoria beyond two hours per day and then attend SLDC;
- (2) Student will receive individual speech and language therapy provided by SLDC two times per week for 30 minutes per session;
- (3) SLDC will provide Student individual audiological services twice per week for a total of 30 minutes;³
- (4) SLDC will provide Student individual counseling one 60 minute session per week;
- (5) Student will receive individual collaborative occupational therapy one time per

³ Audiology services at SLDC include auditory processing training.

week for 60 minutes provided by SLDC;

(6) Student will participate in group occupational therapy once per week for 60 minutes provided by SLDC; and

(7) The District will provide Student transportation from his home to Victoria, then to SLDC, and then to his childcare location.

(B) June 8, 2007 through June 22, 2007⁴

(1) Student will attend the SDC at Victoria full time and the District would provide all services to Student;

(2) Student will receive individual and/or group speech and language therapy twice per week for 30 minutes each session plus an additional session may be provided in the classroom;

(3) Individual audiological services will be provided by the District audiologist one time per week for 15 minutes plus the SDC teacher, Ms. Scofield, will be trained in hearing aide maintenance;

(4) The school psychologist will conduct an individual counseling session with Student one time per week for 30 minutes for transition purposes;

(5) Student will receive individual collaborative occupational therapy one time per week for 30 minutes;

(6) Student will also receive individual occupational therapy for 45 minutes per week at the Paularino Elementary School Occupational Therapy Clinic; and

(7) District will provide transportation from home to Victoria and then to after school care at Paularino.

(C) July 2, 2007 through July 30, 2007 (ESY)⁵

⁴ June 22, 2007 marked the end of the 2006-2007 school year.

⁵ The ESY program is located at Kaiser Elementary School and is designed for a

- (1) Student will attend the SDC for four hours per day;
 - (2) Student will receive individual speech and language services once per week for 30 minutes;
 - (3) Individual audiological services will be provided twice per month for 15 minutes each session;
 - (4) Student will receive individual collaborative occupational therapy one time per week for 20 minutes;
 - (5) Student will also receive individual occupational therapy for 30 minutes per week;
 - (6) The District will provide transportation.
- (D) September 4, 2007 through May 31, 2008 (2007-2008 school year)
- (1) Student will attend the SDC at Victoria full time and receive all services from the District;
 - (2) Student will receive individual and/or group speech and language therapy twice per week for 30 minutes per session plus an additional session may be provided in the classroom;
 - (3) Individual audiological services will be provided one time per week for 15 minutes;
 - (4) Student will be given individual collaborative occupational therapy once per week for 30 minutes;
 - (5) Student will also be given individual occupational therapy for 45 minutes per week at the Paularino clinic; and
 - (6) The District will provide transportation.

review of skills and to prevent regression.

WHETHER THE IEP PROVIDES FAPE

19. For an IEP to constitute a FAPE, it must (1) be designed to meet the unique needs of the student, (2) be reasonably calculated to provide the student with some educational benefit, (3) comport with the student'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 viewed based on what was objectively reasonable at the time the IEP was drafted and not in hindsight.

20. The District contends that the IEP proposed on May 31, 2007 offers Student a FAPE in the least restrictive environment. Student contends that the District's offer fails to offer him a FAPE in that he requires placement in an environment with a constant routine and rigid structure as provided at SLDC, and that removing him from SLDC may cause Student to suffer regression. Additionally, Student asserts that the auditory services being offered by the District are insufficient to meet his unique needs. Thus, the only disputes between the parties involve Student's placement full-time in the SDC at Victoria and the appropriateness of the proposed auditory services.

PLACEMENT AT THE VICTORIA SDC

21. Student's teacher at SLDC, Mr. Counts, has been a special education teacher in the elementary school section of SLDC for 14 years and Student's teacher for two and a half years. Mr. Counts has worked closely with Student and has developed a close relationship with him. At the time that Student entered Mr. Counts's class, he had the social skills of a two to three year old. Student has made a drastic improvement academically, socially and behaviorally to where he presently has the social skills of a five to six year old and his behavior is not disruptive to the class. Student's improvement is such that Mr. Counts believes that Student can not make meaningful progress at SLDC

socially because of the lack of consistent peer models. Mr. Counts has observed the SDC and Victoria as well as consulted with the SDC teacher, Ms. Scofield. Additionally, he escorted Student to the SDC on the first day of the transition. Mr. Counts was impressed with the way that the SDC pupils came over and welcomed Student, the organization of the class, the staff-student ratio, and the ability and rapport that the SDC teacher quickly developed with Student. Mr. Counts noted that the transition has gone well, in that Student arrives from Victoria happy, and has not engaged in any adverse behaviors at SLDC. Mr. Counts opined that Student was ready to begin full-time at the SDC as of the May 31, 2007 IEP meeting. Mr. Counts also testified that his opinion has not changed since Student continues to do well at both the SDC and SLDC since the beginning of the present school year. Mr. Counts believes that the placement at the SDC is appropriate since Student would have an opportunity to further his socialization skills at Victoria because he will have exposure to higher functioning peers and non-disabled children who would function as consistent peer models- an opportunity not available at SLDC. Mr. Counts was very credible, was qualified to offer his opinions, and he was the person most familiar with Student and his performance at school.

22. Ms. Hasson holds an M.Ed. in speech and hearing development from Northeastern University and has been employed at SLDC for 20 years. Since 1994, she has served as the vice principal of SLDC's elementary and junior high school section. Prior to 1994, Ms. Hasson was a special education teacher in the SLDC elementary school section. One of the purposes of SLDC is to be able to have its students make enough progress to be able to attend school in the least restrictive environment of a public school. Ms. Hasson described the collaboration between SLDC and the District as excellent. Ms. Hasson and the other SLDC staff on the IEP team all agreed that Student has reached a level where he needs to be challenged at a higher level than is available at SLDC in order for him progress. Student has reached the highest level that he could attain in the restrictive

environment at SLDC. Ms. Hasson opined that Student was ready, as of the May 31, 2007 IEP meeting, and continues to be ready, to attend the lesser restrictive environment at the SDC since his transition has gone so well. Ms. Hasson is qualified to offer her opinion which was unrefuted. Ms. Hasson's testimony was also corroborated by Mr. Cavanaugh, the director of counseling at SLDC.

23. Student arrives at Victoria at approximately 8:00 a.m. and appears to be happy. He almost always meets Ms. Scofield with a smile. Since starting in the SDC, Student has exhibited no significant behavior problems in the class and gets along with his peers. When there is an occasional "bump in the road," Ms. Scofield has been able to redirect Student by talking to him. Student is in the middle range of the SDC. Student is cooperative and is a participating member of the class. Ms. Scofield, a 14 year special education teacher at Victoria, is of the opinion that Student is ready to attend her class full-time and that he would receive educational benefit from her program. Student offered no evidence to rebut the testimony of Ms. Scofield.

24. District members of the IEP team-Ms. Hurd, Dr. Jacobs, Ms. Morabito, Ms. Martin-LaCroix, Ms. Scofield, and Ms. Rydell all were of the opinion that SDC was the appropriate placement for Student in that the SDC was a smaller class, Ms. Scofield is an experienced teacher who has long dealt with children with similar needs, and that Student would have an opportunity to make progress academically and socially as the SDC was at a higher functioning level than SLDC. The District members relied upon Student's triennial assessment, Student's present levels of performance, the input of the SLDC staff, and Student's smooth transition into Ms. Scofield's class in reaching their opinion.

25. The only evidence produced by Student was Mother's testimony that Student's behavior at home worsened during the transition, including the refusal to go to Victoria many mornings. Ms. Hasson indicated that it is not unusual for a child to do well at school and to have behavior problems at home. She also stated that based upon her

experience, there is no correlation between a child's refusals to go to school and how the child performs at school.

26. Both federal and state law requires that school districts provide a program in the "least restrictive environment" (LRE) to each special education student. 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. At SLDC, all students are low functioning and there is no opportunity for Student to have contact with nondisabled peers. Both Mr. Counts and Ms. Hasson, as well as the other IEP team members, emphasized that Student needs an opportunity to be with higher functioning peers and nondisabled children who would offer Student a chance to learn appropriate social skills and to communicate functionally. At Victoria, Student is in a class with higher functioning peers and would have opportunities to have contact with his nondisabled peers in music class, at recess and at lunch. Because of his disabilities, Student is unable to mainstream. Thus, the offered placement will permit interaction between Student and his nondisabled peers in a manner appropriate to his unique needs. The SDC constitutes the LRE for Student.

27. Student's placement at the Victoria SDC full-time was designed to meet his unique needs in that Student needs an environment that would permit him to advance academically in a more challenging environment, and he would have consistent peer models as the SDC class contained higher functioning peers and he would have access during the day to typically developing peers during recess, lunch and in music class.

AUDITORY SERVICES

28. At SLDC, Student received two 30 minute sessions of auditory services by the audiologist, Dr. Davis. One session was devoted to maintenance and checks on Student's hearing aides and FM receiver. The second 30 minute session consisted of auditory training

to assist Student in auditory processing.

29. The District's offer for auditory services was limited to a single session of 15 minutes per week by Dr. Jacobs, the District audiologist. The purpose of the session was to conduct hearing aid checks and for maintenance of Student's hearing aides and FM receiver. Ms. Scofield was also trained by Dr. Jacobs on hearing aid maintenance and how to check to ensure that the hearing aides were functioning properly. Dr. Jacobs is available if Student experiences any problems that Ms. Scofield is unable to handle regarding the operation of the hearing aides or FM system. The IEP also incorporates an auditory processing goal in speech and language. The goal was for Student to demonstrate the ability to synthesize two pieces of auditory information to provide the correct response from a field of three pictures in seven out of 10 trials given only one cue. The goal, which was written with input from Dr. Davis, is similar to the services being currently provided by Dr. Davis. Auditory training in auditory processing will be provided by the speech and language therapist, Ms. Morabito.

30. Dr. Davis was called to testify by Student. She has a B.A. in psychology from Duke University, an M.S. in hearing science from the University of North Carolina, and a Au.D. from the School of Health Sciences at the University of Arizona. Dr. Davis has been an audiologist at SLDC for 27 years and has worked with Student for five years. Dr. Davis collaborated with District staff in preparing Student's auditory processing goal which was made part of the speech and language goals. Dr. Davis opined that the auditory services offered by the District and the auditory processing goal were appropriate to meet Student's unique needs. Dr. Davis also believes that Student's auditory processing needs will be met during the time allotted for speech and language therapy.

31. The evidence was clear that the auditory services proposed are appropriate to meet Student's needs regarding his hearing assistance devices and the auditory training.

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 a student's IEP must 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 p. 201.) The Court stated 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. (*Ibid.*)

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. The Supreme Court established a two-prong analysis to determine whether a FAPE was provided to a student. (*Rowley, supra*, 458 U.S. at p. 200.) First, the court must determine whether the school system has complied with the procedures set forth in the IDEA. Here, there is no dispute that the District has not committed any procedural violations. The second prong of the *Rowley* test requires the court to assess whether the IEP was designed to meet the child's unique needs, reasonably calculated to enable the child to receive an educational benefit, and comported with the child's IEP. (*Capistrano Unified School District v. Wartenburg* (9th Cir. 1995) 59 F.3d 884, 893, citing *Rowley, supra*, 458 U.S. at pp. 188-189, 200-201.) The term "unique educational needs" is to be broadly construed to include the student's academic, social, emotional, communicative, physical and vocational needs. (*Seattle Sch. Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500.)

6. 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.)

7. 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.)

8. 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.)

9. As set forth in Factual Findings 1 through 31, the testimony of the District and SLDC witnesses shows their clear understanding of Student’s unique needs, and that they were unanimous in their testimony that the IEP of May 31, 2007, including the placement at the SDC and the services being offered were designed to meet those unique needs and are reasonably calculated to provide Student with educational benefit.

10. The evidence supports a finding that the District’s proposed IEP of May 31, 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 31, 2007, offered Student a free and appropriate public education.

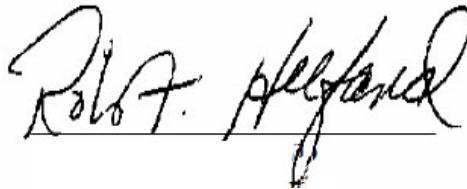
PREVAILING PARTY

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: January 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