

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

WESTMINSTER SCHOOL DISTRICT.

OAH CASE NO. 2012060818

DECISION

Administrative Law Judge (ALJ) Robert F. Helfand, from the Office of Administrative Hearings (OAH), State of California, heard this matter in Huntington Beach, California, on October 16 and 17, 2012.

Student's grandmother (Grandmother), acting as an advocate, represented Parents on behalf of Student (Student). Student's father (Father) and mother (Mother) were present at the hearing. Student's parents (Parents) were assisted by Tony Tran, a certified interpreter.

Karen Van Dijk, Attorney at Law, represented the Westminster School District (District). Leisa Winston, District Assistant Superintendent; Reagan Lopez, District Administrator for Student Services; and Dr. Crystal Bejerano, of the West Orange County Consortium for Special Education (WOCCSE) also attended.

At the hearing, the ALJ received oral and documentary evidence. The following witnesses testified at the hearing: Father, Mother, Grandmother, Michelle Garcia, Ellen Fitzsimmons, Megan Clark, Helen Li, Diana Padilla, Thuy Tran and Leisa Winston.

At the request of the parties, the record remained open for the submission of written closing and rebuttal arguments. The parties filed their closing briefs on October 26, 2012 when the matter was submitted.

ISSUES¹

- (a) Whether the change in location from Sequoia School to the Finley School, which is Student's home school, for the kindergarten SUCSESS class denied Student a free appropriate public education?
- (b) Whether the District committed a procedural violation by failing to have in attendance at the May 16, 2012 individualized education program (IEP) meeting all required IEP team members which resulted in Student's parents not being able to meaningfully participate in the IEP decision making process and in Student being deprived of educational benefit?
- (c) Whether the District committed a procedural violation by revising Student's IEP in May 16, 2012, without prior written notice?

Student's proposed resolution is that OAH issue an order finding that Student be placed in the SUCSESS class at Sequoia School for the 2012-2013 school year.

FACTUAL FINDINGS

1. Student is a five-year-old boy who resides with his parents and older brother, who is also autistic, within the geographical boundaries of the

¹ The issues are those alleged in Student's second amended complaint dated August 22, 2012.

District and the attendance zone for the Finley Elementary School (Finley). Student has been eligible for special education since August 27, 2010.

2. Student received services through the Regional Center of Orange County including their early start program which was located at the District's Land Elementary School (Land). Student was referred by the Regional Center to the District as Student was turning three years of age.

3. After the District conducted its initial assessments, an IEP team meeting was held where Student was found eligible under the category of autistic-like behaviors. He was placed in a District special day class for autistic children known as the SUCSESS class² at the Sequoia Elementary School (Sequoia). The IEP document noted that Student's "assigned home residence school" was Finley.³

4. The SUCSESS program is designed to maximize learning for children with autism. The SUCSESS classrooms are specially designed to minimize distractions; are highly structured; and incorporate behavioral interventions, social skills, color coding and visual schedules. SUCSESS program staff are trained in behavior support and intervention, Applied Behavior Analysis, and Discrete Trial Therapy, all of which are incorporated in the program. The program also utilizes the Picture Exchange Communication System (PECS) and TEACCH (Treatment and Education of Autistic and Related Communication-Handicapped Children) methods. The program is designed to operate with a staff ratio of two-

² SUCSESS is an acronym for Systematic Utilization of Comprehensive Strategies for Ensuring Student Success.

³ The District did not have SUCSESS classes at Finley.

to-one. Teachers go through training including the SUCSESS Academy run by WOCCE, the special education local planning area of which the District is part.

PRE-KINDERGARTEN

5. Student attended the Pre-Kindergarten SUCSESS class taught by Diana Padilla. Ms. Padilla has a master's degree in special education and a credential in early childhood special education. From 2005 through 2009, she was an early start teacher at the Intervention Center for Early Childhood in Santa Ana, California. Since 2007, she has implemented home based programs for children up to three years of age who have developmental disabilities or delays. Since 2009, Ms. Padilla has been a special day class teacher with the District. She was Student's teacher for the 2010-2011 and 2011-2012 school years. During the 2010-2011 school year, Ms. Padilla went on maternity leave from March 24, 2011, to the end of that school year.

6. When Student first arrived in her class from Land, Ms. Padilla did not note any transition problems. During his entire time in her class, Student never demonstrated any behavioral or transitioning problems.

7. Father testified that he believed Student had problems during the time Ms. Padilla left on maternity leave in spring 2011. He claimed that Student felt stressed, refused to eat, and did not engage in play. The Progress Report for June 27, 2011, by Judy Bruland, the teacher who replaced Ms. Padilla, noted that Student had met or was making progress on all IEP goals. Ms. Bruland did not report nor note that Student had any problems transitioning to her replacing Ms. Padilla. At the annual IEP on June 3, 2011, Student's parents did not raise any issue as to transitioning to the new teacher nor Student's alleged change in behavior. Ms. Padilla did not note any changes in Student in this regard during school year 2011-2012.

8. Michelle Garcia is the District autism specialist. She has a B.A. in liberal studies and is currently enrolled in a master's program in special education with an emphasis in Applied Behavioral Analysis. She has credentials in mild to moderate and moderate to severe disabilities. In 2000 through 2003, Ms. Garcia was an instructional assistant for special education with the Irvine Unified School District. From 2004 to 2008, she was a special education specialist with the District; and since 2008, she has been the inclusion and Autism specialist for the District. As part of her duties, Ms. Garcia supervises the District's autism programs including SUCSESS. Ms. Garcia noted that Student has transitioned to new school sites with new teachers and service providers for the extended school year (ESY) without any problems in 2011 and 2012. When the new school year commenced, Student also had no problems transitioning to his regular classroom.

DISTRICT DECISION TO OPEN A SUCSESS KINDERGARTEN CLASS AT FINLEY

9. In spring 2012, the District decided to re-organize its special day classes with the goal of attempting to locate all such classes to other schools which would permit children to attend schools close to their home school, permit less time transporting students, and align the schools to the middle schools where the students would attend after elementary school. This allows the students to be educated with children in their neighborhoods, to continue with the same peers through middle school, and to prevent a concentration of special education classes on a few campuses. Only two elementary schools had SUCSESS classes in the kindergarten –second grade (K-2)—Sequoia and Schmitt. In the 2011-2012 school year, Sequoia was the location for a total of seven SDC classes.

10. Beginning in March 2012, the District conferred with the elementary school principals for their input. The District decided to move one of the K-2

SUSCESS classes from Sequoia to Finley and set up a new class at Schmitt. On May 11, 2012, the District forwarded letters to the parents of any student who may be affected by the re-alignment. Student received such a letter dated May 13, 2012 with a copy in his parents' native language of Vietnamese.

11. In the beginning of May 2012, Parents and Grandmother heard that the District would be adding a K-2 SUCSESS class at Finley. Grandmother then contacted Ellen Fitzsimmons, a District program specialist, about concerns the family had that Student may be transferred to another school for kindergarten. Ms. Fitzsimmons informed her that a K-2 SUSCESS class would be located at Finley and as to the benefits of Student attending his home school. On May 8, 2012, Leisa Winston, then the District administrator for student services who supervised special education for the District, contacted Grandmother by telephone. Ms. Winston explained the decision and that the decision was based upon student needs. They also discussed Grandmother's concerns regarding the change in schools including the qualifications of the teacher and possible transition problems for Student. One of the concerns voiced was that Sequoia was closer to Student's house than Finley.⁴ Grandmother was informed that Parents could apply for an intra-district transfer to permit Student to remain at Sequoia.

12. On May 10, 2012, Parents filed with the District an open enrollment request to have Student attend the SUSCESS class at Sequoia stating that Student was "well adjusted" to the program and that autistic children are adverse to

⁴ The parties stipulated at the hearing that the mileage, as determined by MapQuest, between Student's home and Finley was six-tenths of a mile while the distance from the home to Sequoia was eight tenths of a mile.

making changes. On June 4, 2012, Student's open enrollment request was denied as there was no space available at the Sequoia SUCSESS class.

THE MAY 16, 2012 IEP ANNUAL MEETING

13. On May 16, 2012, Student's annual IEP team meeting was held. In attendance were Mother, Father, and Grandmother on behalf of Student. District attendees were Ms. Fitzsimmons, the Administrative designee; Megan Clark, school psychologist; Elaine Mizuo, general education teacher; Helen Li, District speech language pathologist (SLP) who provided speech services to Student; Diane Padilla, Student's then special education teacher; and Ms. Garcia.

14. The IEP team reviewed Student's progress on the prior IEP annual goals and discussed Student's current present levels. The team adopted new goals and agreed that Student should attend the ESY SUCSESS class which was scheduled for Schmitt. For school year 2012-2013, the team agreed that Student should advance to the kindergarten SUCSESS class. Because one of the two SUCSESS classes from Sequoia was moved to Student's home school, the team recommended that Student be placed at the Finley class. Ms. Garcia explained that the Finley class would be identical to the K-2 SUCSESS classes which were at Sequoia the previous year. Student's family objected to the change in location as they were concerned that the program had not been established, that Student may be anxious in changing schools, and that Student had been progressing at Sequoia. District team members stated that Student did not demonstrate any transition problems which would prevent such a move. The IEP document contains notes as to the discussions at the IEP meeting including Parents' concerns.

THE RESOLUTION MEETING

15. On June 18, 2012, Parents filed a request for due process hearing with the OAH. The District, per Ms. Winston, sent a five page letter to Parents (with a copy in Vietnamese) detailing an explanation of the District's proposed action and to respond to each of the issues raised in Student's original complaint. The District forwarded a letter to Parents explaining the reasons for the District moving the SUCSESS class to Finley as well as why Student was selected to be placed in the class.

16. On July 2, 2012, a Resolution Session was held. Parents and Grandmother were in attendance as was Ms. Fitzsimmons, Ms. Winston, and Anne L. Delfosse, executive director of WOCCSE. Parents were informed that the Finley K-2 teacher would be Thuy Than, who had taught one of the two K-2 SUCSESS classes at Sequoia during 2011-2012. Parents and Grandmother expressed their concerns regarding Student's transitioning to a new school. District representatives discussed how the SUCSESS K-2 classes would be identical to each other and transition strategies which could be utilized for Student including a video prepared to introduce Finley to the new K-2 students.⁵ Parents were offered to have a meeting with Ms. Tran at Finley prior to the school year starting. Parents were also informed that providers, like the SLP, school psychologist and autism specialist, would be the same as those who worked with Student the prior year at Sequoia. Additionally, the District offered to hold an IEP for purposes of setting up a transition plan for Student and hand delivered a Notice of IEP Meeting for a meeting on July 10, 2012, at 9:30 a.m.

⁵ The video was shot from the viewpoint of the Student and was prepared by Ms. Garcia.

17. On July 6, 2012, Parents returned the form and stated that they would not attend because it would appear that they agreed with the WOCCE director and "parents are locked in stone."

THE FINLEY SUCSESS K-2 CLASS

18. The Finley K-2 SUCSESS class is taught by Ms. Tran who has a B.A. from California State University, Fullerton in 2011 as well as her multiple subjects teaching credential and special education moderate-severe teaching credential. From 2007-2010, she was an instructional aide for severely handicapped children with the Huntington Beach Union High School District. Since 2010, Ms. Tran has been a behavioral therapist with the Advancement for Behavioral & Educational Development & Intervention of Irvine. In 2011-2012, she taught the K-2 SUCSESS class at Sequoia. Ms. Tran testified that she has organized her classroom, with the assistance of Ms. Garcia, to ensure that it meets the SUCSESS standards of color coding, minimizing distraction, visual schedule, and PECS system with designated areas for individualized instruction. Ms. Tran stated that her new classroom is similar to her classroom at Sequoia the previous year. Her Finley class is operated in the same manner that her Sequoia class had been. Her testimony was corroborated by Ms. Garcia and Ms. Li, who both also indicated that her Finley class is virtually identical to the 2011-2012 as well as the current Sequoia K-2 SUCSESS class at Sequoia.

WHETHER STUDENT WOULD HAVE TRANSITION PROBLEMS TRANSFERRING TO FINLEY

19. Ms. Clark has been a school psychologist since 2000. She has a B.A. from U.C.L.A. in psychology and a M.A. from Chapman University in education psychology. She holds credentials in educational specialist and pupil personnel

services in school psychology. Ms. Clark has been a guest lecturer at Chapman and Loyola Marymount Universities. During school year 2011-2012, Ms. Clark was familiar with Student as she provided in-class support to Student's SUCSESS class. Based on her familiarity with Student and his history of successful transitions, Ms. Clark opined that Student would not have problems transitioning to the Finley class. Additionally, Ms. Clark noted that Student's services would still be provided by the same personnel who had provided services the prior year at Sequoia.

20. Ms. Padilla, Student's pre-kindergarten teacher for the prior two years, also opined that Student did not have transition problems both during the school year as well as during ESY.

OTHER CONSIDERATION

21. Parents picked up Student at least 15 minutes early on a daily basis so as to permit them to also pick up his brother, who was in a SUCSESS class at the Johnson Middle School (Johnson). Johnson is located immediately adjacent to Finley. This would permit Parents to pick up both of their sons without requiring Student to be picked up early and miss valuable instruction time.

LEGAL CONCLUSIONS

BURDEN OF PROOF

1. In a special education administrative due process proceeding, the party seeking relief has the burden of proving the essential elements of his claim. (*Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528, 163 L.Ed.2d 387].) In this case, Student has the burden of proof.

JURISDICTION

2. A child with a disability has the right to a free appropriate public education (FAPE) under the Individuals with Disabilities Education Act (IDEA or Act) and California law. (20 U.S.C. § 1412(a)(1)(A); Ed. Code, § 56000.) The Individuals with Disabilities Education Improvement Act of 2004 (IDEIA), effective July 1, 2005, amended and reauthorized the IDEA. The California Education Code was amended, effective October 7, 2005, in response to the IDEIA. The primary goal of the IDEA is to “ensure that all children with disabilities have available to them a free appropriate public education that emphasizes public education and related services.” (20 U.S.C. § 1400(d)(1)(A); see *J.L. v. Mercer Island School Dist.* (9th Cir. 2009) 592 F.3d 938, 947.)

3. Under special education law, the parent of a disabled child has the right to present an administrative complaint with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE. (20 U.S.C. § 1415(b)(6)(A); 34 C.F.R. § 300.507(a)(2006)⁶; Ed. Code, § 56501, subd. (a)(1)-(4).)

DEFINITION OF A FAPE

4. A FAPE is defined 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. (20 U.S.C. §1401(9); Cal. Code Regs., tit. 5, § 3001, subd. (p).) Special education is defined as specially designed instruction and services (DIS), provided at no cost

⁶ All references to the Code of Federal Regulations are to the 2006 version.

to parents, that meets the unique needs of a child with a disability and permits him or her to benefit from instruction. (20 U.S.C. § 1401(29); Ed. Code, § 56031.) Special education related services include transportation, and developmental, corrective, and supportive services, such as mental health counseling services, that may be required to assist the child with a disability to benefit from special education. (20 U.S.C. § 1401(26); Ed. Code, § 56363.)

5. “Language and speech development and remediation” are considered to be a DIS. (Ed. Code, § 56363, subd. (b)(1); Cal. Code of Regs., tit. 5, § 3051.1.) Behavior intervention is also considered a DIS. (Ed. Code, §§ 56520 et seq.; Cal. Code of Regs., tit. 5, § 3052.)

6. There are two parts to the legal analysis of whether a local educational agency (LEA), such as a school district, offered a student a FAPE. The first question is whether the LEA has complied with the procedures set forth in the IDEA. (*Board of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley* (1982) 458 U.S. 176, 206-207 [102 S.Ct. 3034].) The second question is whether the IEP developed through those procedures was substantively appropriate. (*Id.* at p. 207.)

PROCEDURAL VIOLATIONS

7. Procedural flaws do not automatically require a finding of a denial of FAPE. A procedural violation does not constitute a denial of FAPE unless the procedural inadequacy (a) impeded the child’s right to a FAPE; (b) significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of FAPE; or (c) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(i) & (ii); Ed. Code, § 56505, subd. (f)(2)(A)-(C); *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1483-1484 (*Target Range*.)

DETERMINATION OF APPROPRIATENESS OF AN IEP

8. An IEP is an educational package that must target all of a student's unique educational needs, whether academic or non-academic. (*Lenn v. Portland School Committee* (1st Cir. 1993) 998 F.2d 1083, 1089.) The term "unique educational needs" is broadly construed and includes 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 [citing J.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2106].) A disabled child's IEP must be tailored to the unique educational needs of that particular child, who, by reason of disability, needs special education and related services. (*Ibid.*)

9. Here there is no dispute that the IEP offers Student a FAPE. The only dispute is whether requiring Student attend Finley prevents him from having a FAPE.

ISSUE (A): THE CHANGE IN LOCATION FROM SEQUOIA SCHOOL TO THE FINLEY SCHOOL, WHICH IS STUDENT'S HOME SCHOOL, FOR THE KINDERGARTEN SUCSESS CLASS DID NOT DENY STUDENT A FAPE.

10. Student contends that the District is denying him a FAPE because of his being transferred to the new SUCSESS class at Finley. Student alleges that attending a new school will be disruptive as autistic children have trouble transitioning in general, that Student has had transition problems in the past, and that the Finley program was "not established." The District counters that it is required to place Student in the school closest to his home, he has had no history of transition problems, the District has offered to design a transition plan for Student, and the Finley SUCSESS program is identical to the program at Sequoia.

11. A local education agency is required to ensure that a disabled child's educational placement is determined at least annually, is based on the

child's IEP, and "[i]s as close as possible to the child's home." (34 C.F.R. § 300.16 (b) (1)-(3).) Section 300.116(c) of Title 34 of the Code of Federal Regulations states: "Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled." (See also Ed. Code § 56342, subd. (b).)

12. The District did not deprive Student of a FAPE by placing him at Finley. Here, Student's IEP requires that he attend a K-2 SUCSESS class with related services. The Finley SUCSESS class is identical to the class at Sequoia, and Student will receive the same related services (and from the same providers). Finley is Student's assigned school and is closer to his home than Sequoia. Student has never exhibited any transitional problems as he has transitioned from Land to Sequoia when entering the District's preschool program and for the past two ESY sessions when not only was he physically at a new school but had different teachers and providers. He also exhibited no problems transitioning back to Sequoia from his ESY placements. Additionally, Student would receive a new teacher even had he remained placed at Sequoia as he was promoted to the K-2 class.⁷ Thus, Student failed to meet his burden that he required some placement other than at the school he would have attended if nondisabled. (Factual Findings 4-20.)

⁷ As to Student's being denied an intra-district transfer to Sequoia, this was not an issue under the IDEA. Even so, IT SHOULD be noted that the reason for denial was that the Sequoia K-2 SUCSESS class was impacted as it had met the designed maximum enrollment.

ISSUE (B): THE DISTRICT DID NOT COMMIT A PROCEDURAL VIOLATION BY FAILING TO HAVE IN ATTENDANCE AT THE MAY 16, 2012 IEP MEETING ALL REQUIRED IEP TEAM MEMBERS.

13. Student contends that the District committed a procedural violation of the IDEA by not having in attendance a representative of the Finley school at the May 16, 2012 IEP meeting. Student contends that the absence of a Finley representative prevented Parents from fully participating in the IEP decision-making process.⁸ The District contends that the required IEP team members were in attendance.

14. The IDEA and California education law require certain individuals to be in attendance at every IEP team meeting. In particular, the IEP team must include: (a) the parents of the child with a disability; (b) not less than one regular education teacher of the child, if the child is or may be participating in the regular education environment; (c) not less than one special education teacher, or where appropriate, not less than one special education provider of the child; (d) a representative of the school district who is knowledgeable about the availability of the resources of the district, is qualified to provide or supervise the provision of special education services and is knowledgeable about the general education curriculum; (e) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described above; (f) at the discretion of the parent or the district, other individuals who have knowledge or special expertise regarding the child, including related services personnel as

⁸ Student did not contend at the hearing that he was denied any educational benefit as a result of this alleged violation.

appropriate; and (g) whenever appropriate, the child with a disability. (20 U.S.C. § 1414 (d)(1)(B); Ed. Code, § 56341, subd. (b)(1)-(7).)

15. Special education law places a premium on parental participation in the IEP process. Parents must have the opportunity “to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(1).) In this regard, an educational agency must ensure that one or both of the parents of a child with a disability is present at each IEP team meeting. (34 C.F.R. § 300.322(a); Ed. Code, §§ 56341.5, subd. (a), 56342.5.) The United States Supreme Court has recognized that parental participation in the development of an IEP is the cornerstone of the IDEA. (*Winkleman v. Parma City School Dist.* (2007) 550 U.S. 516, 524 [127 S.Ct. 1994, 167 L.Ed.2d 904]). Parental participation in the IEP process is also considered “(A)mong the most important procedural safeguards.” (*Amanda J. v. Clark County Schools* (9th Cir. 2001) 267 F.3d 877, 882.)

16. Under these guidelines, an educational agency must permit a child’s parents “meaningful participation” in the IEP process. (*Ms. S. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131-1132.) In order to fulfill the goal of parental participation in the IEP process, the school district is required to conduct, not just an IEP meeting, but also a meaningful IEP meeting. (*Target Range, supra*, 960 F.2d at p. 1485; *Fuhrman v. East Hanover Board of Education* (3rd Cir. 1993) 993 F.2d 1031, 1036.) A parent has meaningfully participated in the development of an IEP when she is informed of her child’s problems, attends the IEP meeting, expresses her 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, supra*, 993 F.2d at p. 1036.) Parents have an adequate

opportunity to participate in the IEP process when they are “present” at the IEP meeting. (34 C.F.R. § 300.322(a); Ed. Code, § 56341.5, subd. (a).) An adequate opportunity to participate can occur when parents engage in a discussion of the goals contained in the IEP. (*J.G. v. Briarcliff Manor Union Free School Dist.* (S.D.N.Y. 2010) 682 F.Supp.2d 387, 394.)

17. The IEP team members in attendance at the May 16, 2012 IEP meeting included Student’s parents (and grandmother), a regular education teacher, a program specialist (who was the administrative representative) who was familiar with the District’s autism programs, Student’s special education teacher, Student’s SLP, the school psychologist who consults with Student’s special education teacher, and the District’s autism specialist who not only worked with Student but who is the supervisor of the SUCSESS program. Both Ms. Garcia and Ms. Fitzsimmons were knowledgeable about the programs available to meet Student’s unique needs. Thus, the IEP team was properly constituted. (Factual Findings 13-14.)

18. Parents’ contention that they were unable to meaningfully participate in the IEP decision-making process is without merit. Parents were present and represented by Grandmother at the meeting. They had an opportunity to discuss and agree upon goals, present levels of performance, and next year’s program. They were able to discuss their concerns about Student attending the K-2 class at Finley. Thus, Parents had meaningful participation in the IEP decision process. (Factual Findings 13-14.)

ISSUE (C): THE DISTRICT DID NOT COMMIT A PROCEDURAL VIOLATION BY REVISING STUDENT'S IEP IN MAY 16, 2012, WITHOUT PRIOR WRITTEN NOTICE.

19. The IDEA contains a notice provision that requires an educational agency to provide "prior written notice" whenever the agency proposes or refuses to initiate or change "the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education." (20 U.S.C. § 1415(b)(3); see also 34 C.F.R. § 300.503(a); Ed. Code, § 56500.4, subd. (a).) The content that an appropriate prior written notice must contain includes (1) a description of the action proposed or refused by the agency, (2) an explanation for the action, and (3) a description of the assessment procedure or report which is the basis of the action. (34 C.F.R. § 300.503(a); Ed. Code, § 56500.4, subd. (b).) An IEP document can serve as prior written notice as long as the IEP contains the required content of appropriate notice. (71 Fed.Reg. 46691 (Aug. 14, 2006).) The procedures relating to prior written notice "are designed to ensure that the parents of a child with a disability are both notified of decisions affecting their child and given an opportunity to object to these decisions." (*C.H. v. Cape Henlopen School Dist.* (3rd Cir. 2010) 606 F.3d 59, 70.) When a violation of such procedures does not actually impair parental knowledge or participation in educational decisions, the violation is not a substantive harm under the IDEA. (*Ibid.*)

20. Here, Student contends that the District failed to provide his Parents with appropriate prior written notice of the decision to place him in the SUCSESS K-2 class at Finley. However, the May 16, 2012, IEP document more than adequately explained the action that the District proposed to take. Also, the District forwarded a letter to Parents on May 11, 2012, which stated that Student might be assigned to the SUCSESS program at Finley. This constitutes a prior

written notice of a potential placement change. Additionally, Student was aware of the potential to be assigned to the Finley class as evidenced by (1) Grandmother's telephone conversations with Ms. Fitzsimmons and Ms. Winston and (b) Parents filing of a request for an intradistrict transfer on May 10, 2012. Thus, the District did not commit a procedural violation. (Factual Findings 13-17.)

ORDER

Student's requests for relief are denied.

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 prevailed on all issues heard and decided in this case.

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 90 days of receipt.

Dated: November 1, 2012

/s/

ROBERT F. HELFAND

Administrative Law Judge

Office of Administrative Hearings