

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

STUDENT,

Petitioner,

OAH CASE NO.: N 2005070522

v.

DOWNEY UNIFIED SCHOOL DISTRICT,

Respondent.

DECISION

This matter was heard on July 28, 2005, and October 5-7, 2005, in Downey, California, by Chris Ruiz, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California.

Petitioner Student<sup>1</sup> (Petitioner or Student) was represented by Bruce Bothwell, Esq.

Also present were Mother and Father, Petitioner's mother and father (Mom and Dad).

Respondent Downey Unified School District (Respondent or District) was represented by Eric Bathen, Esq. Also present was Kent Halbmaier, Director of Special Education.

Oral and documentary evidence was presented. On October 7, 2005, testimony was concluded and the matter was scheduled for briefing. Closing briefs were due by October 18, 2005, and rebuttal briefs were due by October 25, 2005. Those briefs were received and were marked for identification along with the parties' opening briefs as follows: Petitioner's opening brief (Exhibit C-4); Petitioner's final brief (Exhibit C-5); Petitioner's rebuttal brief (Exhibit C-6); Petitioner's copies of cases and decisions submitted with his rebuttal brief

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<sup>1</sup> Petitioner's name is not used so as to protect his privacy and that of his family.

(Exhibit C-7); Respondent's opening brief (Exhibit 39); Respondent's closing brief (Exhibit 40); and Respondent's rebuttal brief (Exhibit 41).

Thereafter, additional correspondence was received from the parties as follows:

1. Letter from Eric Bathen, Esq., dated October 26, 2005, marked for identification as Exhibit 42, wherein counsel objected to Petitioner's rebuttal brief. The rebuttal briefs were limited to 10 pages. Petitioner's brief was 10 pages. However, Petitioner also submitted copies of a court order and a prior decision issued by the Special Education Hearing Office. As such, Respondent objected to Petitioner's submissions as having violated the 10 page limit. The objection is overruled because the provision of the copies is a courtesy to the ALJ, rather than an attempt to circumvent the 10-page limit.

2. Letter from Bruce Bothwell, Esq., dated October 28, 2005, and marked for identification as Exhibit C8. In that letter, counsel responded to Mr. Bathen's October 26, 2005, letter and also objected to Respondent's rebuttal brief as violating the 10 page limit because it was single spaced. Respondent's opening brief was double-spaced; whereas, Respondent's closing and rebuttal briefs were single spaced. Traditionally, briefs are double-spaced. However, for due process concerns, and because the ALJ did not specifically order the briefs to be double-spaced, Petitioner's objection is overruled. Petitioner's letter also raised an additional objection as to a reference made by Respondent in its rebuttal brief. That objection is overruled because no formal evidentiary basis for the objection is stated and because it is phrased as an argument rather than as an objection.

3. Letter from Eric Bathen, Esq., dated October 28, 2005, and marked for identification as Exhibit 43.

4. Letter from Bruce Bothwell, Esq., dated November 14, 2005, marked for identification as Exhibit C9, regarding the United States Supreme Court's recent decision in *Schaffer v Weast* (November 14, 2005, No. 04-698) \_\_\_\_\_ U.S.\_\_\_\_\_.

5. Letter from Eric Bathen, Esq., dated November 15, 2005, marked for identification as Exhibit 44, regarding the *Schaffer* decision wherein he requests reopening the record for additional argument.

6. Letter from Bruce Bothwell, Esq., dated November 15, 2005, marked for identification as Exhibit C10, wherein he objects and opposes Respondent's request to reopen the record.

On November 16, 2005, the ALJ ordered the parties to meet and confer regarding Respondent's request to reopen the record and scheduled a telephonic conference on November 21, 2005 at 1:30 p.m. The ALJ's e-mail order was marked for identification as Exhibit ALJ-1.

On November 21, 2005, a telephonic conference was held. ALJ Chris Ruiz presided and attorneys Eric Bathen and Bruce Bothwell appeared. After having met and conferred on November 18, 2005, Respondent's counsel agreed to withdraw his request to reopen the record. The matter was submitted for decision on November 21, 2005.

## ISSUES PRESENTED

1. For the period of October 26, 2004, to the anticipated annual Individual Education Program (IEP) of October 26, 2005, did the District offer Petitioner a free appropriate public education (FAPE) in the least restrictive environment?

2. Should the District be ordered to fund one hour per week of individual speech and language therapy (ST) and one hour per month of consultation through a nonpublic agency?

3. Are Petitioner's parents entitled to be reimbursed for the cost of tuition for the Calvary Chapel School (Calvary), tutoring, and applied behavioral analysis therapy (BT)?
4. Should the District be ordered to fund a BT program supervised by a nonpublic agency?
5. Is Petitioner entitled to compensatory educational services?

## FACTUAL FINDINGS

### HISTORICAL BACKGROUND

1. Student is now a seven year old boy (Date of Birth: July 24, 1998). He resides within the jurisdictional boundaries of the District. Student has never been enrolled in a District school. He has been, and currently is, enrolled in Calvary Chapel Christian school (Calvary). Student has a medical diagnosis of autism. Student receives BT services from First Steps, a nonpublic agency.
2. On October 26, 2004, an initial Individual Education Program (IEP) team met and determined that Student has a qualifying condition of autistic-like behaviors and meets the criteria of California Code of Regulations, title 5, section 3030, subdivision (g). However, the IEP team determined that Student was not eligible for special education services under Education Code section 56026, subdivision (b), because he was making appropriate academic progress in his general education classroom at Calvary. On February 8, 2005, Petitioner requested a due process hearing in writing.

### PRIOR MEDICAL HISTORY OF STUDENT

3. On February 23, 2004, when Student was approximately five and one-half years old, he was evaluated by a Kaiser Hospital multi-disciplinary team that determined he fit the pattern for a diagnosis of Autism. (Ex. 11, p.8.) Among several recommendations, the Kaiser team referred Petitioner to the South Central Los Angeles

Regional Center (SCLARC) for determination of eligibility and case management services. The Kaiser team also recommended an evaluation by the public school, an IEP by the public school, and a reevaluation of his language skills. The Kaiser report was admitted as administrative hearsay, but it supplements and explains the IEP team's determination that Student has a qualifying condition of Autism. (Ex. 3, p. 6.)

4. SCLARC referred Student to psychologist Dr. Lisa Doi for a comprehensive evaluation, which was performed by Dr. Doi on March 23, 2004. (Ex. 10.) Dr. Doi also concluded that Student had a diagnosis of Autistic disorder. Dr. Doi recommended, among other suggestions, therapy to enhance Student's conversational skills and a social skills training group. Dr. Doi reported that Student's score in the borderline range of the WPPSI- III test that measures overall cognitive ability "are considered to be an underestimate of Student's level of ability, given parental report that he could have performed somewhat better, as well as some apparent language processing difficulties." (Ex. 10, p.5.) In the areas of adaptive behavior, he demonstrated functioning in the mild-deficit range in communication skills, daily living skills, and socialization abilities and demonstrated borderline abilities in the motor skills area. Dr. Doi's report was admitted as administrative hearsay, but it supplements and explains the IEP team's determination that Student has a qualifying condition of Autism.

#### STUDENT'S PROGRESS AT TIME OF ASSESSMENTS

5. Student was in first grade when the October 2004 IEP team meeting was held. The evidence established that Student was able to progress educationally while he attended first grade at Calvary until just after the October 2004 IEP was held. Until November 2004, Student's first grade class had two teachers. Ms. Draper was Student's teacher and her assistant was Ms. Morales. However in mid-November 2004, Ms. Morales was no longer in the classroom. In November 2004, because Mrs. Draper was the sole teacher and no longer had sufficient time to devote to Student, Student began

having increasing problems in the classroom and regressed. The District assessed Student at a time when he was making satisfactory educational progress in October of 2004 and prior to Student's regression.

#### THE OCTOBER 2004 IEP MEETING

6. On October 26, 2004 Student's initial IEP meeting was held at Ward Elementary School. (Ex. 3.) In attendance were Student's Mom, speech and language pathologist Elizabeth Phelps, occupational therapist Pamela Kramer, psychologist Patricia Ladjevic, Program Specialist Barbara Tucker, and Ray Guilleaume, interim Special Education Local Plan Area Director. Student's private school teacher, Ms. Draper, was not invited to the IEP. The District also did not invite a District general education teacher even though Student was currently attending a private regular education classroom. (Ex. 4.)

7. Ms. Draper should have been invited to the IEP. She was Student's teacher and knew his performance in the classroom better than anyone. Ms. Draper could have shared her concerns, or lack of concerns, about Student's classroom performance at the IEP meeting. She was the person most familiar with Student's ability to work independently, pay attention, and engage in conversation with adults and peers. The District assessors had spoken with Ms. Draper during their assessments and she told them that Student had been making progress in first grade. The District contends that even if Ms. Draper had attended the IEP she would have only indicated that Student was doing fine in class. This is exactly the reason that she should have been invited to the IEP. If she had indicated at the IEP what the District contends she would have, then many of the issues now before the ALJ would have been resolved at the IEP. Further, Ms. Draper was clear in her testimony: Student, while doing much better in first grade than the prior year, also needed much one-to-one attention and still had communication problems.

8. On the IEP report, under the heading "Disabling Condition" the "Autism" box is checked. However, the IEP team determined that although Student demonstrated autistic characteristics, he was benefiting from his educational placement and his early academic skills were progressing appropriately. Therefore, the District did not offer Student any special education services. In order to determine if the IEP team's determination was correct, the assessments upon which it relied must be examined, as well as those assessments obtained by Student's parents.

#### ASSESSMENTS OF STUDENT

9. In response to Mom's written request for an evaluation, the District prepared an assessment plan and sent it to the parents. (Ex. 5.) The parents consented to the plan on July 24, 2004, and the District received the signed consent form on August 16, 2004. (Ex. 6.) A District psychologist, a District speech and language pathologist, and a District occupational therapist all performed assessments of Student. Thereafter, when the District offered Student no special education services, Student's parents obtained additional assessments.

#### SPEECH AND LANGUAGE PATHOLOGY ASSESSMENTS

10. On September 16, 2004, and October 22, 2004, the District's speech and language pathologist, Elizabeth Phelps, performed a language and speech assessment. (Ex. 8.) Ms. Phelps determined that Student demonstrated age-appropriate abilities in voice and fluency, average abilities in the area of semantics and syntax/morphology, and a mild/moderate delay in articulation. She also reported that his weakest area was in pragmatics or social communication and she recommended training in socializing with his peers.

11. a. Mrs. Phelps initially testified that Student needs some speech services that can be provided as a modification to his regular education program and not as a

special education service. However, at a meeting before the IEP, Ms. Phelps met with Mr. Halbmier and Ms. Ladjedvic, the District's assessing psychologist. At that meeting, it was decided that services for Student would be different because Student was in private school.

b. Ms. Phelps also testified that Student has a mild to moderate delay in articulation. Student does not use social greetings or engage in conversation. Student needs a speech and language goal. She testified that a speech and language therapist could consult with Student's teachers in utilizing social stories, but that small group speech and language therapy is also required to implement social stories. Based on Ms. Phelps own testimony, Student required speech and language therapy at the time of the October 2004 IEP. However, no speech and language services were offered to Student. Ms. Phelps could not recall if she discussed the necessity of these services at the IEP meeting. The IEP team did not develop a goal or offer services similar to a public school plan because Student was in private school.

12. On December 17, 2004, and January 16, 2005, Jane Haddad, a speech and language pathologist, evaluated Student at the request of Student's parents. Ms. Haddad also testified at hearing. Ms. Haddad recommended one hour per week of individual speech therapy and one hour per month of consultation with Student's parents and/or teachers. Ms. Haddad's evaluation was performed within approximately two months of when the IEP team met. Her opinion is entitled to greater weight than Ms. Phelps' opinion because she appeared credible during her testimony and her testimony was consistent with her report. Ms. Phelps' testimony was inconsistent with the report she prepared.

#### OCCUPATIONAL THERAPY ASSESSMENT

13. On September 21, 2004, and September 24, 2004, the District's licensed occupational therapist Pamela Kramer assessed Student. (Ex. 7.) Ms. Kramer determined



that Student does not need occupational therapy to benefit from his educational placement. She found that Student demonstrates several areas of relative strength that were supporting his school performance at the time. Student also presented with delays in gross and fine motor skills. Ms. Kramer determined that these delays were not hindering Student's ability to participate on the playground, to access the general school environment safely and efficiently, or to perform self-help tasks in the school setting, as Ms. Draper did not report such concerns.

14. Ms. Kramer observed Student in his classroom at Calvary Chapel for approximately one hour. After her observation, she spoke with Ms. Draper who reported that Student was recently making progress in the classroom. Formal occupational therapy was determined to be unnecessary at the time. The ALJ finds that Ms. Kramer's opinion is credible based on the facts and circumstances that existed at the time of her evaluation.

#### PSYCHOLOGICAL ASSESSMENTS

15. On October 21, 2004, the District's psychologist, Tricia Ladjevic, issued a report regarding her evaluation of Student. The psychoeducational assessment performed by Mrs. Ladjevic included the Wechsler Individual Achievement Test – Second Edition (WIAT- II), Leiter International Performance Scale – Revised (Leiter-R), review of reports by Kaiser multidisciplinary team and by Dr. Doi, Developmental Test of Visual-Motor Integration (VMI), Behavior Assessment System for Children – Teacher Report (BASC), Childhood Autism Rating Scale (CARS) (completed with parental input), teacher interviews, and observations.

16. In her report (Ex. 9), Ms. Ladjevic noted that according to the Leiter-R test, Student's reasoning abilities fell within average range. Student's academic performance, according to the results from the WIAT-II, was commensurate with his cognition. Ms. Ladjevic found that there appeared to be a processing deficit within Student's visual

processing, but no significant discrepancies between his ability and academic achievement were apparent at that time. Ms. Ladjevic also administered the Leiter-R test. That test is an appropriate test to administer to a child with autistic-like characteristics because it tests nonverbal cognitive abilities. The Leiter-R test is an instrument free from verbal instructions, and thus any speech and language deficits do not impede the cognitive testing. The fact that Ms. Ladjevic chose the Leiter-R test is significant in that it evidences her belief that Student had a speech and language deficit and supports Ms. Haddad's conclusion as discussed above.

17. During her school observation, Mrs. Ladjevic interviewed Ms. Draper regarding Student's behavior and performance in school. Ms. Draper reported that Student had made much progress over the past year. For example, Ms. Draper reported that last year Student "never talked", but presently he was participating more and even raised his hand to answer questions addressed to the class as a whole. (Ex. 9 p.2.) Ms. Ladjevic found that that Student was high functioning and was demonstrating success within his current educational environment. (Ex. 9 p.4.)

18. Based on her comprehensive evaluation, Mrs. Ladjevic determined that Student's particular learning style could be met solely within the general education classroom because his academic achievement is commensurate with his intellectual abilities. (Ex. 9 p.7.) She provided specific recommendations for modification within the general education classroom such as extra time for completion of written tasks.

19. Student's parents obtained an evaluation from Dr. Robin Morris, a child psychologist. Dr. Morris recommended that Student have a shadow aide "during his morning academic time as well as his recess." (Ex. "Y", p. 19.) Dr. Morris did also recommend Student's participation in a social skills group as well as one hour per day of tutoring.

20. Dr. Morris' opinion regarding an aide is supported by the testimony of Ms. Draper. While Student was doing well in class at the time of the IEP, he required much one- to-one attention from his Ms. Draper and Ms. Morales. The District should have recognized that Calvary was essentially providing a one-to-one aide for at least part of Student's school day. This special education service should have been offered to Student at the IEP or, at least, a discussion should have taken place at the IEP meeting regarding how Student's general education experience at a public school would address this need.

21. Although Dr. Morris recommended a part-time classroom aide in Student's first grade classroom at Calvary Chapel, Ms. Brownfield of FirstSteps now recommends a general education second grade classroom with, at least initially, a full-time one-on-one aide. Ms. Brownfield's recommendation for more aide time than that recommended by Dr. Morris is supported by the testimony of Ms. Draper that Student significantly regressed during the course of the year, specifically after Dr. Morris' observation and report. Dr. Morris observed Student prior to Ms. Morales departure for maternity leave, and Ms. Draper testified that trying to teach Student became more difficult thereafter.

22. In her initial recommendations, Dr. Morris did not recommend the implementation of a BT program, but she did support such a program in her testimony at hearing. It would be inequitable to order the District to provide, fund, or reimburse Student's parents for BT because it was not at issue at or around the time of the October 2004 IEP meeting. BT therapy only became an issue after Student's regression and after the IEP. Student's present need for BT should be immediately addressed by an IEP team.

#### STUDENT'S PRESENT STATUS

23. While the October 2004 IEP team's decisions must be reviewed by determining if it acted reasonably based on the information available to it at the time of the IEP meeting, more than one year has passed since that date. As such it is appropriate to include a discussion of Student's present status.

24. Student presently exhibits delays in social interaction, social use of language, imaginary play and attention. In terms of his classroom performance, Student has difficulty working independently, paying attention, and needs frequent prompting and redirection. Many times, Student requires one-on-one assistance in order to follow the classroom routine.

#### PARENTS' INTENT TO REMAIN AT PRIVATE SCHOOL

25. The District contends that Mom was solely interested in services the District could provide in the private school at public expense. It was established that Student's Mom liked Calvary and would have likely kept Student enrolled at that school. However, she was open to the idea of enrolling Student in a public school and this is evidenced by the fact that she took the time and effort to go through the IEP process. Mom's choice to keep Student at Calvary once the District found Student not eligible for special education services, even if he enrolled at a public school, (Ex. 3, p.4) was not unexpected as Student had been attending that school and was comfortable with the school personnel and the other students.

26. Since the IEP meeting of October 26, 2004, Student's parents have incurred educational costs on Student's behalf in terms of private school tuition and related costs and BT therapy. (Ex. E3.) Student's parents incurred tutoring costs in the amount of \$850. Whether or not these expenses are recoverable will be discussed below.

#### EVENTS FOLLOWING OCTOBER 2004 IEP

27. The private school service plan drafted at the IEP meeting on October 26, 2004, was never signed. The District received a letter dated February 8, 2005 from the Student's attorney requesting a due process hearing. (Ex. B2.) The District was informed by letter dated on July 12, 2005 that the parents had enrolled Student in a BT program and were seeking reimbursement from the District. (Ex. 28.) The District responded by

letter, dated July 15, 2005, and sent an Invitation to Participate in an IEP team meeting to the parents. (Ex. 29.) No further assessments or IEP's have taken place.

28. The ALJ reviewed all of the evidence before rendering his decision. Any evidence specifically not discussed was deemed insufficient to establish the fact or legal principle for which it was offered.

## LEGAL CONCLUSIONS AND DISCUSSION

1. Pursuant to the Individuals with Disabilities Education Act (IDEA) and State special education law, children with disabilities have the right to a FAPE that emphasizes special education and related services designed to meet their unique needs and to prepare them for employment and independent living. (California Education Code<sup>2</sup> § 56000.) FAPE consists of special education and related services that are available to the student at no charge to the parent or guardian, meet the State educational standards, and conform to the child's IEP.

2. "Special education" is defined as specially designed instruction, provided at no cost to parents, that meets the unique needs of the child. (Code § 56031.) "Related services" means transportation and other developmental, corrective, and supportive services as may be required to assist a child to benefit from special education. State law refers to related services as "designated instruction and services" (DIS) and provides that DIS services shall be provided "when the instruction and services are necessary for the pupil to benefit educationally from his or her instructional program." (Code § 56363, subdivision (a).)

3. Once a child is identified under the IDEA as handicapped, the local education agency must: identify the unique educational needs of that child by

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<sup>2</sup> All further references to "Code" are to the California Education Code.

appropriate assessment create annual goals and short-term benchmarks to meet those needs, and determine specific services to be provided. (Code § 56300 – § 56302 and 20 U.S.C § 1412.

4. In *Board of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley* (1982) 458 U.S. 176, the United States Supreme Court addressed the level of instruction and services that must be provided to a student with disabilities to satisfy the requirements of the IDEA. The Court determined that a student's IEP must be designed to meet the student'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 198-200.) The Court stated that school districts are required to provide only a basic floor of opportunity that consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the student. (*Id.* at 201.)

5. Federal special education law requires states to establish and maintain certain procedural safeguards to ensure that each student with a disability receives the FAPE to which he is entitled and that parents are involved in the formulation of the student's educational program. (*W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23*, (9th Cir. 1992) 960 F.2d 1479, 1483.)

6. The Supreme Court in *Rowley* also recognized the importance of adherence to the procedural requirements of the IDEA. However, procedural flaws do not automatically require a finding of a denial of a FAPE. (*Id.* at 1484.) Procedural violations may constitute a denial of FAPE if they result in the loss of educational opportunity to the student or seriously infringe on the parent's opportunity to participate in the IEP process.

7. Therefore, the inquiry in IDEA cases is twofold. The first question is whether the school district has complied with the procedures set forth in the IDEA. The second is

whether the IEP developed through the IDEA's procedures is reasonably calculated to enable the student to receive an educational benefit.

8. The U.S. Supreme court recent ruled that Petitioner has the burden of proving at an administrative hearing that the District's offered program is insufficient. (*Schaffer v Weast* (November 14, 2005, No. 04-698) \_\_\_U.S.\_\_\_\_.)

9. Petitioner alleges that the District failed to provide him with a FAPE both procedurally and substantively. To determine whether the District offered Petitioner a FAPE, the analysis must focus on the adequacy of the District's proposed program. If the District's program was designed to address Petitioner's unique educational needs, was reasonably calculated to provide him some educational benefit, and comported with his IEP, then District provided a FAPE, even if Petitioner's parents preferred another program and even if his parents' preferred program would have resulted in greater educational benefit. The District was also required to provide Petitioner with a program which educated him in the least restrictive environment, with removal from the regular education environment occurring only when the nature or severity of his disabilities was such that education in regular classes with the use of supplementary aids and services could not be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); Code § 56031.) Therefore, the program the District offered Petitioner must have met the following four requirements to have constituted a FAPE: (1) be designed to meet his educational needs; (2) be reasonably calculated to provide him some educational benefit; (3) be comported with his IEP; and (4) provided him an education in the least restrictive environment.

ISSUE NUMBER 1: FOR THE PERIOD OF OCTOBER 26, 2004 TO THE ANTICIPATED ANNUAL IEP OF OCTOBER 26, 2005, DID THE DISTRICT OFFER PETITIONER A FREE APPROPRIATE PUBLIC EDUCATION (FAPE) IN THE LEAST RESTRICTIVE ENVIRONMENT?

Failure to invite Student's private school teacher and a general education teacher to the October 2004 IEP

10. Student was procedurally denied a FAPE by (a) not having Mrs. Draper at the IEP and also by (b) not having a general education teacher at the IEP. *M.L. v. Federal Way School Dist.* (9th Circuit, 2004) 394 F.3d 634; *Shapiro v. Paradise Valley Unified School* (9th Circuit, 2003) 317 F.3d 1072. Both of these procedural failures were also substantive denials of a FAPE because they resulted in the loss of educational opportunity to the student and seriously infringed on the parent's opportunity to participate in the IEP process as set forth in Factual Findings 1-7.

Failure to offer a formal program with speech and language services

11. For the reasons stated in Factual Findings 2, 10, 11, 12, and 16, the District denied Student a FAPE by failing to offer him a formal public school program that included speech and language services. *Union School District v. Smith* (9th Circuit, 1994) 15 F. 3d 1519.

ISSUE NO. 2: SHOULD THE DISTRICT BE ORDERED TO FUND ONE HOUR PER WEEK OF INDIVIDUAL SPEECH AND LANGUAGE THERAPY (ST) AND ONE HOUR PER MONTH OF CONSULTATION THROUGH A NONPUBLIC AGENCY?

12. For the reasons set forth in Factual Findings 10, 11, 12, and 16, Student required, and now requires, one hour per week of individual speech and language therapy and one hour per month of consultation through a nonpublic agency.



ISSUE NO. 3: ARE PETITIONER'S PARENTS ENTITLED TO BE REIMBURSED FOR THE COST OF TUITION FOR THE CALVARY CHAPEL SCHOOL (CALVARY), TUTORING, AND APPLIED BEHAVIORAL ANALYSIS THERAPY (BT)?

Tuition Expenses

13. For the reasons set forth in Factual Findings 1,2 and 6 - 22, Student's parents would have been entitled to be reimbursed for the cost of tuition at Calvary had that schooling offered a needed special education service(s) (e.g. speech therapy) different than what the District offered (i.e., a general education class with no services). Essentially, Student received a similar placement and education from Calvary as that he would have received from the District had he been enrolled in a District school. Insufficient evidence was presented that Student's general education private school tuition afforded him special education services. In fact, after November 2004, Calvary was no longer able to provide Student with one-to-one attention and Student did not do well in school during the time for which Student's parents seek reimbursement.

Tutoring and BT expenses

14. Evidence to establish tutoring expenses in the sum of \$850 was presented and the District should reimburse this expense as this is a special education service. As to the BT expenses incurred by Student's parents, those expenses are not reimbursable for the reasons stated in Factual Finding 22.

ISSUE NO. 4: SHOULD THE DISTRICT BE ORDERED TO FUND A BT PROGRAM SUPERVISED BY A NONPUBLIC AGENCY?

15. For the reasons set forth in Factual Finding 22 and Legal Conclusion 14, the District should not be ordered to fund a BT program supervised by a nonpublic agency at this time. An IEP team should immediately assess by Student's present condition(s) as soon as possible and the District should offer a formal plan to Student.

ISSUE NO. 5: IS PETITIONER ENTITLED TO COMPENSATORY EDUCATIONAL SERVICES?

16. As set forth in Factual Findings 10-12, Student should have been receiving ST since October 2004. Approximately 14 months have now passed. As such, in order to assist Student in his education, an increased amount of ST is warranted for a limited time.

ORDER

WHEREFORE the following order is made:

As the District failed to provide Petitioner a FAPE, he entitled to the following remedy:

1. The District is ordered to schedule and conduct an IEP team meeting within 40 days of the date of this decision in order to assess Student's present educational needs. Student's private school teacher and a District general education teacher shall be invited to the IEP. The invitation to Student's private school teacher shall be in writing and shall be sent via overnight mail no later than 14 days before the scheduled date of the IEP. At least one of Student's parents, or an advocate, or both, is/are ordered to attend the IEP meeting on Student's behalf.

2. The District is ordered to fund the following compensatory special education services until the end of the 2005-2006 school year in approximately June 31, 2006, or until the parties reach an earlier agreement based on the IEP process:

- a. The District is ordered to fund three hours per week of individual speech and language therapy and one hour per month of consultation through a nonpublic agency in order compensate Student for speech and language services he failed to receive in the past.
- b. The District is ordered to fund a one-to-one aide during Student's academic day and during recess in order compensate Student for services he failed to receive in the past.

3. The District is ordered to reimburse Student's parents in the sum of \$850 for tutoring expense.

### 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 following findings are made in accordance with this statute: Petitioner prevailed on Issues No. 1, 2, and 5. The District prevailed on Issues No 3 and 4.

### RIGHT TO APPEAL THIS DECISION

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

DATED: December 15, 2005.

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CHRISTOPHER J. RUIZ

Administrative Law Judge

Office of Administrative Hearings