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

In the Matter of: STUDENT, Petitioner, v. SAN DIEGO UNIFIED SCHOOL DISTRICT, Respondent.	OAH CASE NO. N2005100882

DECISION

Administrative Law Judge (ALJ) Darrell L. Lepkowsky, Office of Administrative Hearings (OAH), Special Education Division, State of California, heard this matter on July 17, 18, 19, 20 and 21, 2006, in San Diego, California.

Petitioner Student was represented by his Mother, who was present for each day of the hearing. Student did not attend the hearing.

Respondent San Diego Unified School District (District) was represented by attorney Deborah L. Ungar, of Miller Brown & Dannis. Colleen Harmon, a diagnostic resource teacher for the District's Transition Resources for Adult Community Education (TRACE) program, attended most of the hearing on behalf of the District. During Ms. Harmon's brief absences, Dr. Robert Morris, the Director for TRACE, attended the hearing on behalf of the District.

Student, through his Mother, filed a request for a due process hearing on or about May 10, 2005, with the Special Education Hearing Office (SEHO), alleging numerous violations of Student's rights under the Individuals with Disabilities Education Act (IDEA). On July 1, 2005, OAH replaced SEHO as the agency responsible for adjudicating special education disputes. This case was given the OAH number captioned above.

At the due process hearing, oral and documentary evidence were received. At the conclusion of the hearing, the parties' request to file post-hearing briefs was granted. Both the Student's and the District's post-hearing briefs were timely filed by facsimile on July 31,

2006. Student's brief was marked as petitioner's exhibit KK and the District's brief was marked as respondent's exhibit 35. The record was closed and the matter was deemed submitted as of July 31, 2006.

ISSUES[1]

1. Did the District's offer of placement to Student at its TRACE program, rather than at the Training, Education and Research Institute (TERI, Inc.) program in Oceanside, California, deny Student a free and appropriate public education (FAPE)?

2. Did the District deny Student a FAPE by failing to provide him with direct related services in occupational therapy, speech and language therapy, and music therapy?[2]

3. Did the District fail to implement Student's Individual Education Program (IEP) of February 3, 2005, and therefore fail to offer him a FAPE, by:

    A. Supplying staff at the TRACE program who were afraid to work with Student and who, therefore, did not work toward his IEP goals?

    B. Leaving Student unattended and unoccupied and, therefore, failing to work toward Student's IEP goals?

    C. Confining Student to a specific area in his TRACE classroom?

    D. Failing to enroll Student in classes at the Educational Cultural Center (ECC)?

    E. Requiring Student to wear protective gloves, which were not identified in his Behavior Support Plan (BSP)?

4. Did the District fail to offer Student a FAPE by providing him with the Go-Talk communication device rather than a more sophisticated communication device as necessary assistive technology?

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[1] For purposes of clarity and organization, the ALJ has reorganized Student's issues as identified in Petitioner's due process hearing request and the Prehearing Conference Order.

[2] The allegations that the District failed to provide occupational therapy, speech and language therapy, and music therapy to Student were not specifically included in the original due process complaint filed by Student. The District, however, consented to include these issues in the instant proceedings. The District also wished to expand the issues to include the propriety of its offer of placement in Student's IEP of June 2005. However, neither the District nor Student filed a request for due process on the issue of the IEP of June 2005. Student declined to stipulate to litigate those issues at this proceeding. Therefore, only the issues indicated above are addressed in this Decision. See, Title 20 United States Code section 1415, subsection (f)(3)(B), and Education Code section 56502, subsection (i).

5. If Student prevails on any or all of Issues 1 through 4 above, is he entitled to the following relief:

   A. Two years of compensatory education, in a program to be approved by Student's Mother, including occupational therapy, speech and language therapy, and music therapy?

   B. Two one-on-one aides, trained in assaultive behavior intervention, for a period of two years?

CONTENTIONS OF THE PARTIES

Student contends that the District should have agreed to place him at the TERI program in Oceanside, California, where he is already receiving respite care on Saturdays, because he is comfortable with the program and does not exhibit negative behaviors. In contrast, Student had periodic episodes of assaultive behavior at the District's TRACE program. Student, therefore, asserts that the TRACE program was inappropriate and did not provide him with a FAPE. Student further asserts that his unique needs required that his IEP include related services for occupational therapy, speech and language therapy, and music therapy and that the failure to offer him those services denied him a FAPE.

Student further maintains that the District failed to implement his IEP of February 3, 2005, because his one-to-one aide left him unattended for long periods of time and because he was confined to one area of his TRACE classroom. Student also contends that his IEP was not implemented because the staff at TRACE was afraid of him and was therefore unable to implement the goals and objectives in his IEP. Student also maintains that his IEP was not fully implemented because TRACE staff did not enroll him at elective classes (such as art) at the ECC. Additionally, Student contends that the staff at TRACE improperly required him to wear protective gloves in response to his assaultive behavior although the wearing of gloves was not included in his BSP. Student contends that this failure amounted to a procedural violation of his rights. Finally, Student asserts that he was denied a FAPE when the District did not provide him with an appropriate assistive technology device to enhance his ability to communicate. He asserts that the communication books used by the District and the communication device he was provided were not sophisticated enough to meet his unique needs.

Student, therefore, contends that he is entitled to two years of additional education to be provided by the District to compensate him for the failure to properly implement his IEP and for the District's failure to provide him with an appropriate program with corresponding appropriate related services. Student also contends that his unique needs require that the two years of compensatory education include the provision of two one-on-one aides to accompany him at school.

The District responds that it offered Student a FAPE and implemented his IEP according to the law. With regard to the program at TERI, the District asserts that it is not an appropriate placement for Student because it is located in Oceanside, outside his community of residence, and therefore could not prepare him for his life as an adult once he was too old for District-provided programs. With regard to the provision of occupational therapy, speech and language therapy, and music therapy, the District maintains that Student failed to prove that he was entitled to those services in order to be provided a FAPE.

The District further contends that its staff was never afraid of Student, despite his occasional instances of aggression. Rather, all staff responded appropriately to the aggressive behaviors and continued to assist Student in participating fully in the TRACE program. The District contends that if Student did spend time in the second room at the TRACE classroom, it was his choice to do so in order to have some "quiet time" away from the noise of the other students. The District also contends that Student was never left fully unattended and that there is no showing that its treatment of Student in the TRACE program denied him a FAPE. The District also contends that it was not required to assure Student's enrollment in classes at the ECC pursuant to his IEP, and that it did assist Student's enrollment there when it was able to do so.

The District, moreover, asserts that its brief requirement that Student use protective gloves was based upon recommendations from Student's prior school placement and was not an issue that was required to have been included in Student's BSP in order for his IEP to be correctly implemented. The District alternatively argues that if the issue of glove use should have been included in the BSP, the failure to do so did not deny a FAPE to Student. Finally, with regard to assistive technology, the District contends that it provided appropriate devices to Student to aid him with his communication needs.

The District, therefore, asserts that Student is not entitled to any compensatory education or any other relief requested since he has failed to prove any of the allegations of his due process request.

Based upon the documentary and testimonial evidence of the parties, as elaborated below, it is found that the District did not fail to implement Student's IEP and did not deny him a FAPE. The evidence does not support a finding that enrollment at TERI, rather than at TRACE, was necessary to afford Student a FAPE. The evidence also does not support a finding that Student required direct related services of occupational therapy, speech and language therapy, or music therapy, in order to receive a FAPE. Furthermore, the evidence does not support Student's contention that his IEP was not implemented because TRACE staff was afraid to work with him or because the District failed to enroll Student in elective classes at the ECC. Nor does the evidence support Student's contention that he was unwillingly confined to one area of his TRACE classroom or that he was left unattended for so many times that he was denied a FAPE. Finally, although it is found that the decision to require Student to wear protective gloves should have been discussed with the IEP team and included in Student's BSP, it is found that the failure to do so was a de minimus violation of the Individuals with Disabilities Education Act (IDEA) and did not deny Student a FAPE or

prevent his Mother from participating in the IEP process. Therefore, it is found that Student did not prevail on any of the issues raised and is not entitled to any of the relief he has requested.

FACTUAL FINDINGS

Jurisdictional Matters

1. Student was born on July 29, 1984. At the time of the hearing, he was twenty-one years old. Since he did not graduate from high school, Student was entitled to special education services from the District until the age of twenty-two. Student "aged out" of the District's special education program shortly after the hearing began in this matter. There is no dispute that Student resided within in the geographical boundaries of the District or that he was eligible for special education and related services during the time in question.

Events Leading to Student's IEP of February 3, 2005

2. For many years, Student received special education and related services at the Stein Center, a non-public school located in central San Diego County. The services were paid for by the District. Student's eligibility for special education services is based upon a diagnosis of autism.[3] Due to issues unrelated to the instant proceedings, Student became dissatisfied with aspects of his program and filed a due process complaint with SEHO to correct what he alleged were violations of his rights at Stein. The District and Student entered into a mediation agreement to resolve the allegations concerning Student's Stein placement.

3. In the mediation agreement, which is dated December 14, 2004, the District and Student agreed that Student would change his placement from Stein to the District's TRACE program. No specific date was given for Student's transfer; rather, the parties agreed to hold an IEP meeting for the purposes of changing Student's placement to TRACE. The District also agreed to provide Student with a one-to-one assistant for the first 30 days of his placement at TRACE to help Student with the transition between the programs. The agreement indicated that the IEP team would thereafter review the need for continued one-to-one services for Student.

4. For reasons not relevant to the instant case, Stein gave notice that it was terminating its agreement to accept Student into its program prior to Student's transfer to TRACE. An IEP team meeting was held in response to Stein's decision, as well as pursuant to the mediation agreement, on January 13, 2005, and on February 3, 2005. The final IEP,

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[3] A triennial psychoeducational assessment of Student was conducted in October 2004, by Dr. Bruce Dake, a psychologist employed by the District. In his report, dated October 8, and October 21, 2004, Dr. Dake finds Student's functioning falls within the "profound deficit" range in all domains which were assessed. As an example, Student's highest level of adaptive behavior was in his Daily Living Skills, which were found to be at an age equivalent of three years, ten months.

which was fully agreed to by Student's Mother, was executed at the IEP meeting of February 3, 2005. Shortly thereafter, on approximately February 15, 2005, Student transferred to the District's TRACE program.

Placement of Student in the District's TRACE Program

5. A student with exceptional needs has a legal right, under both federal and state law, to receive a free and appropriate public education which meets his or her unique needs and is designed to provide the student with some educational benefit. If those needs cannot be met through modifications to the general education program, the school district must provide special education and related services designed to assist the student in obtaining access to, and receiving a benefit from, his or her education. The district is only required, under federal and California state law, to provide a basic floor of opportunity to the student. The school district is neither required to maximize the student's potential nor even guarantee that the student will succeed in the program. Finally, there is no requirement that parental preferences be implemented, as long as the student's IEP is reasonably calculated to provide some educational benefits.

6. The District's TRACE program was designed for students aged 18 to 22 who remained entitled to special education services because they were unable to graduate from high school with a diploma. As described by Colleen Harmon, one of TRACE's diagnostic resource teachers, the program is designed to be community-based rather than classroom-based. The District found that retaining these older students on high school campuses was not beneficial to them since they were not being educated among peers and since they were not learning anything concrete that could transition to their lives as adults once they aged out of special education at age 22.

7. The TRACE program is designed for those students who need the most support and who, therefore, will most likely be a client of an adult program through a local regional center when the student ages out of special education. The program generally has 12 to 15 students at each location, with one special education teacher and three special education technicians assigned to each group. The ratio of professionals to students (three or four students to each professional) is designed to emulate the ratio found in the adult programs to which the students might ultimately transfer at age 22.

8. In order to facilitate the integration of the students into their surrounding communities, the TRACE program is held all over San Diego County at various facilities, including parks, storefronts, or, as in the case of Student's program, in rented space at the local community college. The location of the programs changes from year to year, based upon the residency of the students in the program. For the first three years (for students aged approximately 18 to 21), TRACE focuses on a variety of recreational, vocational, and community activities. Community activities focus on such things as going to the post office to mail letters, buying groceries at local markets, and taking the bus. Recreational activities include swimming at the local YMCA and participation in musical activities at Balboa Park's World Beat Center. Vocational activities are sought through local businesses such as grocery

stores, where students might stock shelves, or other businesses where students might be taught clean-up duties. The ultimate goal of TRACE was described by Ms. Harmon as teaching the students self-advocacy and as much independence as their unique circumstances would permit. To reach these goals, the student is placed at a TRACE program in the community in which he or she lives, or would be living, so that they will be familiar with the businesses and bus routes as well as with recreational opportunities in their own neighborhoods.

9. The last year of the TRACE program is called the "Point of Transition." It was begun as part of a grant received by the District approximately ten years ago to design a program which would facilitate the transition of the students from high school to the adult programs. The goal of the Point of Transition program is to find an adult program which is appropriate for the student, sometimes through trial and error, and have the student begin to participate in the adult program while still technically enrolled in high school at the District. The ultimate goal is for the last day the student spends at high school to be exactly like the first day of participation in the adult program, without any interruption of service or change in provider. The only difference is that funding has changed from the District to the Regional Center, all of which has been arranged prior to the student's departure from high school so that the student experiences no change in his or her daily life, no lack of structure, and no abrupt change in the people with whom he or she has been dealing with on a daily basis.

10. Neither the TRACE program nor its Point of Transition component, are "readiness" models. That is, there are no prerequisites for participation in the programs, no specific level of competency or communication skills that are necessary, and no specific behavior patterns which would automatically prevent a student from being accepted to the programs. However, in spite of being informed about the programs, how they work, and what the goals of the programs were, Student's Mother refused to permit Student to enter the Point of Transition program because she did not think Student was "ready" for it.[4]

11. The staff at TRACE ensured that Student was working on his goals and objectives and responded appropriately to his decreasing episodes of assaultive behavior. Although Student was not participating in the Point of Transition program, his participation in the general TRACE program included working on his communication skills, learning to use the bus and buy groceries, participating in recreational activities, and participating in various vocational activities. The skills Student was learning through the vocational programs included various clean-up activities (which included following directions) and learning, to the extent possible for him, to navigate his community and access its resources.

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[4] The District had suggested the Easter Seals adult program as the most appropriate for Student since it included a program specifically designed for adult clients with behavior issues. The District's interest in acquainting Student's Mother with the Easter Seals program and the benefits it offered her son extended to the District's providing a substitute to take Student's Mother's place at work so that she could spend a day reviewing the program on site. Student's Mother did not acquiesce to Student's participation in the Easter Seals Point of Transition program until a couple of weeks prior to the hearing in this case, which was only a couple of weeks before he aged out of the District's programs.

12. Student offered no evidence that the TRACE program did not provide him with some educational benefit. To the contrary, all evidence indicated that the TRACE program provided Student with the necessary means to transition from life as a student to life as an adult, with all necessary supports to learn to adapt to the less-structured adult programs and to life in his community. The evidence also indicated that TRACE staff worked with Student on his goals and objectives and that he was making progress toward those goals.

13. Furthermore, there was no evidence that any program offered at TERI would have been appropriate for Student. The only proffered evidence regarding TERI concerned the Saturday recreational program which Student attended as part of respite for his Mother, presumably paid for through the county Regional Center. No evidence was offered concerning the weekly educational programs available at TERI, how TERI would have met Student's unique needs or how TERI would have implemented his IEP goals and objectives. Nor was any evidence offered on how the TERI program would prepare Student to transition from high school to a community-based adult program. Most telling, the evidence offered by the District's professionals indicates that placement at TERI would be more detrimental than positive for Student based on its location many miles from the community in which Student lives. Placement at TERI would have prevented Student from learning bus routes in his community, learning how to navigate local grocery stores and post offices, and learning to use local recreational centers. Student would not have attained any degree of comfort or familiarity with any of these community-based services had he been placed at TERI.

14. Nor is Student's argument persuasive that his lack of assaultive behavior episodes while at the TERI in contrast to his once or twice a month episodes at TRACE somehow indicates that TRACE did not provide a FAPE to him. First, it is of little value to compare Student's behavior during purely recreational activities on Saturdays with his behavior while at a structured "school" program given the vast dissimilarities in the programs. Second, the fact that Student engaged in brief assaultive behaviors, lasting for perhaps ten minutes (including de-escalation time) once or twice a month does not provide evidence that he was not benefiting from his education at TRACE or that his IEP was not being implemented there. The evidence is all to the contrary.

15. Student has therefore failed to establish that his placement in the District's TRACE program denied him a FAPE.

Lack of Direct Speech and Language Therapy, Occupational Therapy, and Music Therapy Services

16. In order to provide a legally adequate FAPE, an IEP must address the unique needs of the student. This requires that school districts include, as part of the education program offered to a student with special education needs, any supplementary, or related, services, necessary for the child to access his or her education. The term "related services" (designated instruction and services (DIS) in California) includes transportation and other

developmental, corrective, and supportive services as may be required to assist a child to benefit from education.

17. Neither Student's IEP in effect as of the hearing (dated February 3, 2005) nor his previous IEP include provisions for related services in the areas of occupational therapy, speech and language therapy, or music therapy. Disagreeing with the conclusions of the District's professionals (as well as those of the professionals at Stein, the NPS where Student was previously enrolled), Student's Mother requested that further assessments be conducted of Student by independent evaluators, at District expense. This request was made sometime after October 14, 2004. The District agreed to fund independent evaluations in the areas of occupational therapy and speech and language therapy.

18. A speech and language assessment of Student was subsequently conducted by Kaiser Permanente Hospital. It did not include formal testing. The assessment was based solely on observation of Student, review of his prior evaluations, and an interview with his Mother. The evaluator recommended further assessments in the area of augmentative (or assistive) communication devices. She also recommended some one-on-one speech therapy. However, since no observation was done outside the Kaiser setting and no present input was received from Student's teachers, since the assessment report contains only a cursory recommendation without analysis or rationale for the recommendation, and since the assessor did not testify at the hearing, her recommendation has little value in determining whether direct speech and language therapy was necessary for Student to access his education or benefit from it.

19. In contrast, the District's speech and language pathologists credibly testified that Student, given his age and the educational program in which he was enrolled, would not benefit from direct speech and language therapy. The testimony of Deborah Clemm, a speech and language pathologist who has worked with Student for approximately ten years, established that the intensive one-to-one speech and language therapy previously provided to Student, was no longer necessary or appropriate. The purpose of Student's education at his age was to transition him into the community and to focus on increasing his ability to communicate with members of the community. Providing direct services would require pulling him out of his community-based program and thus would hinder, rather than assist, Student's ability to practice those community communication skills.

20. Traci Masi is a speech and language pathologist who is currently assigned to the District's TRACE program. Her testimony established that the District provided consultative speech and language services to Student through the TRACE program although not specifically required by Student's IEP. The consultative services are provided to all TRACE students and are part of the TRACE program. As with the other students, Ms. Masi reviewed Student's education files, observed him many times at the TRACE program in the community and at the TRACE "classroom", and consulted with Student's TRACE teacher at least twice a month. Her consultations with Student's teacher included discussing appropriate communication methods for Student, assuring that his IEP was being implemented with regard to speech and communication needs, discussing the types of

prompts Student needed in order to direct him to communication materials, and reviewing and interpreting Student's natural ways of communicating.

21. Ms. Masi's testimony established that consultative speech and language services were the most appropriate for Student given his age and his education program. The ultimate goal was to enable Student to communicate with everyone, not just with his speech and language therapist, which is what would have occurred in a direct services delivery model. The consultative model used by Ms. Masi to teach all Student's educational providers to prompt him in the same manner and to focus on responding to Student's communication needs, permitted him to access his education and to benefit from it. There is no evidence that direct speech and language services were necessary or required to provide Student with a FAPE.

22. Although the District agreed to fund an independent occupational therapy assessment of Student, by the date of this hearing (which was over a year and half after being given permission to attain the assessment), Student's Mother still had not found an occupational therapist who would conduct the assessment. She was told, and the District's professionals confirmed, that occupational therapy assessments are not conducted of people who are as old as is Student. Rather, it is an assessment tool used for younger students. The inability of Student to even obtain an occupational therapy assessment supports the District's position that direct occupational therapy services were not appropriate for Student given his age and the educational program in which he was enrolled.[5]

23. Two of the District's occupational therapists testified at hearing. Both offered persuasive testimony that Student did not exhibit sensory processing needs that required direct occupational therapy services. The testimony of Anne Milledge and Holly Eck established that Student was able to regulate his movements throughout the day and therefore was functioning appropriately in the community. Student was able to self-regulate even in situations where noise was louder than usual, such as at the World Beat Center where loud drums, ringing bells, and participation by over a hundred students at a time, dominated the environment.

24. Although not specifically included in Student's IEP, he was provided consultative occupational services as were all students in the TRACE program. There is no evidence that Student was unable to participate in the community-based educational program offered by TRACE because he was not given direct occupational services. Rather, the evidence supports the District's position that Student was able to self-regulate sufficiently enough to access, and benefit from, his education.

25. Student also alleges that he should have been provided with direct music therapy services. Music therapy is used in the special education setting to assist a student in

[5] In spite of Student's age, the District offered to have one of its other occupational therapists, who had not previously assessed Student, conduct the assessment requested by Student's Mother. However, Student's Mother declined the District's offer.

attaining non-musical educational goals. It is used as a motivator to increase learning potential. An assessment is conducted to determine if a given student requires music therapy in order to achieve his or her educational goals.

26. Student was given a music therapy assessment on July 7, 2004. The assessment was conducted at Coast Music Therapy by Jeremy Jensen, who has a Masters Degree in music therapy. Coast Music is a non-public agency with which the District contracted to obtain the music therapy assessment. The goals of the assessment were to determine four criteria: a) whether Student needed additional support in meeting his IEP goals; b) whether Student's goals could be functionally presented through music; c) whether music was a primary motivator or learning avenue for Student; and d) whether Student needed specialization for music activities.

27. Based upon the results of the assessment, Student does not require direct music therapy in order to benefit from his education. Student met or was making steady progress toward his IEP goals and his aggressive behaviors were decreasing. Furthermore, as persuasively found by Mr. Jensen, direct music therapy would be less relevant to Student's education than an integrated approach such as group music activities and listening to music. The TRACE program provided the recommended approaches by providing Student with time to listen to music as well as by having him participate in the World Beat Center where Student could dance to music and play drums if he was inclined to do so. Student failed to offer any evidence that contradicted Mr. Jensen's assessment and recommendations. He has therefore failed to establish that music therapy was necessary for him to receive a FAPE.

Failure to Implement Student's IEP

28. A student with exceptional needs is legally entitled to a free and appropriate public education which conforms to the student's individual education program. Under state and federal law and federal precedent, one of the factors used in determining whether a school district substantively and procedurally provided a FAPE to a student is whether the services provided to the student conformed to his or her IEP as it was written. Therefore, a failure to implement any provision of the IEP may amount to a FAPE violation. Where a FAPE violation is procedural rather than substantive in nature, in order for a due process violation to be found the student must demonstrate one of three factors: that access to his or her educational program was impeded, that he or she was deprived educational benefits because of the procedural violation, or that his or her parents' opportunity to participate in the IEP process was hindered.

Fear of Student Hindering Implementation of His IEP

29. Student contends that his IEP was not implemented because staff at TRACE was afraid of him. There is no dispute that Student exhibited episodes of assaultive behavior where he would lash out at adults and either try to scratch them or hit them. The assaultive behavior would last for about a minute; Student would need about ten minutes to deescalate and calm down. Student had occasionally caused minor injury to staff when he scratched

them hard enough to draw blood or hit hard enough to bruise. Although his educators surmised that the episodes could be brought on when Student was tired or had lost interest in an activity, there were generally no specific triggers that caused the behavior and no warning signs from Student that he was about ready to lash out. However, the frequency of the behaviors was decreasing. Where they had previously occurred once or twice a month, by the time of the hearing, Student's episodes of assaultive behavior had not occurred for about two months.

30. There was no evidence at hearing, however, that indicated that the staff at TRACE was afraid of Student. His teachers, special education assistant and technician, and his related services therapists, each credibly testified that Student's behavior did not impede their ability to continue working with Student. While the lack of warning triggers caused some of them initially to be a bit apprehensive and, therefore, a bit cautious with Student, none were "afraid" of him to the extent that they diminished any levels of contact with him or decreased any services they provided to him. Rather, they relied on the training[6] they had been given to respond to aggressive behavior, consulted with TRACE psychologist Vanessa Peters for advice on how to respond to Student's behavior and on how to attempt to prevent the behavior, and used Student's Behavior Support Plan to try to prevent future episodes and to calm Student when a behavior did occur.

31. The testimony of these professionals indicated that each had a sincere desire to help educate Student and to assist him in achieving his educational goals. Had they felt truly fearful of Student, they could have suggested that he be referred to the District's Diagnostic Placement for Positive Change (DCPC), a program for students whose severe behavior problems have placed them in danger of being placed in a nonpublic school. The program was developed by the District to address students with severe behavior problems within the District's school system, rather than referring the students elsewhere to be treated and educated. Since Student's behaviors were infrequent and of short duration, and because they were not directed at other students and did not really interfere with Student's education, none of the TRACE staff believed that referral to the DCPC was warranted. It was apparent from their testimony at hearing, that each professional who testified genuinely liked Student and sincerely wanted him to do his best at school and make an easy transition to adulthood.

32. Student has failed to establish that fear of him caused TRACE staff to fail to follow his IEP, to decrease any level of services to him, or to even change the staff's positive opinion or genuine concern for Student, his education, and his future.

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[6] TRACE staff received training in PRO-ACT, which is a professional response assault training program designed to enable professionals who work with potentially aggressive people to respond to the aggressions in a way that prevents further injury and assists the aggressive person in calming down.

Leaving Student Unattended or Confined in One Place

33. Student's allegation that he was left unattended or confined in one area is based upon his Mother's observations of Student when she occasionally went to the TRACE site at the ECC where she viewed him alone in an adjacent room. However, the fact that Student was in the adjacent room did not mean he was being unattended, ignored, confined involuntarily, or not being involved in his education.

34. The TRACE program to which Student was assigned had its "home base" at the Educational Cultural Complex of the San Diego Community College District, where TRACE rented a bungalow. Since the majority of the TRACE program time was spent in the community, student and staff were at the bungalow generally for less than two hours total a day.

35. The bungalow consisted of two rooms divided by a door and a hallway. The TRACE staff operated primarily out of the first room, which contained a white board for listing each day's schedule, the students' books, and a cabinet. The room tended to be noisy since it was the room at which the 12 to 15 students in the program and the four professional staff would congregate in the morning before they all left for their daily community program and in the afternoon when they returned from the community and were gathering their belongings before leaving for home. The second room contained desks and places to sit and had a much quieter atmosphere. The doors between the rooms were always open so that staff and students could move freely between the two.

36. Due to the noise level in the first room, Student, as well as other students in his Program, would voluntarily choose to go into the second room when they needed a calmer atmosphere. However, since staff was constantly moving between the two rooms and because the rooms were only separated by a door and a hallway, no one, including Student, was ever really alone or unattended while there. Moreover, there is no evidence that Student ever came to any harm when he went to the second room or lost any educational opportunities because he was there rather than in the main room at the bungalow. Nor is there any evidence that Student was left unattended while he was out in the community. Student has failed to establish that his IEP was not followed or his education impeded during the brief time he spent in the second room at the TRACE bungalow. Nor has he established that TRACE staff deliberately confined him to that room against his will.

37. Student also alleges that his one-to-one assistant was not with him 100 per cent of the time. However, the evidence does not support his contention that his aide spent significant time away from him, or support any inference that Student was somehow harmed or his educational opportunities diminished by his aide's brief absences. First, the mediation agreement in which the District agreed to provide Student with an assistant contemplates that the need for an assistant was short term and was only necessary to help Student in his transition between his NPS and the TRACE program. Second, Student's IEP of February 3, 2005, does not mention the need for an assistant or that the assistant would be continued. The District continued to provide the one-to-one assistant voluntarily and without being

legally obligated to do so. Third, the TRACE program was designed to mirror the community based adult programs to which some of the students, such as Student, would be transitioning at age 22. None of the adult programs provide a one-to-one aide. Rather, they are generally based on a ratio of three or four adult "clients" to one program director or aide. Student's insistence that a one-to-one aide be continued most hindered his ability to become more independent and more prepared for adult life. Finally, Student failed to establish that he was harmed or his education impeded because his assistant may have briefly gone to help other students or teachers.

Enrollment in Classes at the ECC

38. Student contends that he was denied a FAPE because the TRACE staff did not enroll him in classes at the ECC, which provide enrichment classes such as art. Student did not provide any evidence that ECC classes were a part of his IEP or necessary for him to receive a FAPE under the IDEA.

39. Student's IEP of February 3, 2005, specifically states that Student's Mother was informed that the ECC was not a part of the District. It is a separate program run by the San Diego Community College District and required separate enrollment by a student, independent of enrollment in TRACE. TRACE merely rented space from the ECC. Additionally, classes had enrollment caps, including a separate enrollment cap for TRACE students, which had already been met when Student started the TRACE program mid-semester in the latter half of February 2005. Student eventually enrolled in an art class at the ECC in the fall of 2005.

40. The ECC classes were purely for "enrichment" or "elective" purposes and enrollment in them was not required by Student's IEP. Student has therefore failed to establish that his delayed enrollment in an ECC class constituted a failure to implement his IEP or denied him the basic floor of educational opportunity required by the IDEA in order for Student to receive a FAPE.

Wearing Protective Gloves

41. If a student's behavior interferes with his or her ability to learn or interferes with the education of other students, an IEP team is required to consider the use of positive behavioral interventions and supports. If behavioral factors are considered by the IEP team and a determination is made that a student needs some type of intervention, service, or accommodation to address the behavior and to receive a FAPE, the student's IEP must include a statement to that effect.

42. There is no dispute that Student was prone to occasional, unexplained aggressive behavior where he would lash out at adults and either hit them or scratch them. To prevent injury to others, the staff at Stein, where Student was enrolled prior to the District's TRACE program, decided to have Student wear knit gloves when his fingernails were long enough to cause injury to others if he scratched them. Student's Mother objected

to Stein about the use of the gloves and the issue was addressed in Student's IEP dated June 14, 2004.[7] The IEP indicates that the Student's Mother would ensure that Student's nails were trimmed and that the gloves would only be used if Student was distressed and he chose to wear them.

43. However, the staff at Stein did not fully discontinue the use of the gloves. Greg Wall, Student's teacher at the TRACE program, credibly testified that he received a memorandum from Stein when Student transferred into the TRACE program which described how Stein used the knit gloves to prevent injury to anyone when Student unexpectedly scratched them. The staff at TRACE was aware that the gloves were not specified in Student's existing Behavioral Support Plan as a method to prevent or respond to his aggressions, but believed that since the gloves were not a restraint, intervention, or punishment, they were not required to discuss their use as part of the IEP process. They felt the gloves were necessary since Student often came to school without his fingernails trimmed.

44. Student's Mother became aware that Student was wearing the gloves when he returned home with them on. TRACE staff confirmed to her that Student was consistently wearing the gloves as a prophylactic measure to prevent injury should Student scratch anyone. Student's Mother was distressed because she felt the gloves were unsanitary, smelled bad, and their use was not part of Student's IEP or BSP. In a letter to the TRACE Director, dated April 26, 2005, Student's Mother indicated her displeasure with the use of the gloves and requested that TRACE immediately discontinue requiring Student to wear them, particularly since Student's aggressive behavior had decreased.

45. Based upon the written request of Student's Mother, TRACE staff discontinued Student's use of the gloves. The staff continued to be concerned about the possibility of Student injuring someone when he scratched and the fact that his fingernails were not always trimmed, so they raised the issue in a proposed BSP dated June May 25, 2005, and brought the issue up at one of Student's IEP meetings. The BSP proposed that staff would either file Student's nails or send him home if they were not trimmed. It further proposed that Student's hands would be covered with some sort of "age-appropriate" protective covering if he continued to come to school with untrimmed nails. The proposed BSP was never approved by Student's Mother. Therefore, TRACE staff has never re-instituted the use of gloves on Student's hands.

46. The use of the gloves should have been discussed with, and approved by, the full IEP team before they were used as a response to Student's behavior issues. However, Student does not contend that the use of the gloves impeded his access to his education or denied him any educational benefit. There is, in fact, no evidence that wearing the gloves interfered at all with Student's education or caused him emotional distress or to be ridiculed by other students. Additionally, once Student's Mother voiced her objections to the use of the gloves, the District's staff at the TRACE program immediately discontinued their use,

[7] No one from the TRACE program was present at this IEP.

formally brought up the issue at Student's IEP meetings, included possible use in a proposed BSP, and never re-implemented the use of the gloves since Student's Mother continued to object. Therefore, Student has also failed to establish that his Mother's ability to participate in his IEP process was impeded or frustrated. The failure to initially include the issue of the use of gloves in Student's BSP or IEP thus is a de minimus procedural violation of the IDEA which does not rise to the level of a denial of a FAPE.

Assistive Technology

47. A school district must provide any assistive technology device that is required to provide a FAPE to a child with a disability. An assistive technology device is any item that is used to increase, maintain or improve the functional capabilities of a child with a disability. Such devices can be as simple as adapted pencil to enable a student to write better, or as intricate as the latest computer technology. In Student's case, the issue is what type of communication devices were necessary in order for him to access his education and receive at least minimal benefit from it given Student's inability to verbalize his needs, desires, or emotions.

48. Student's IEP states that his efforts to communicate would be assisted by the use of communication books.[8] In response to his concerns for additional communication methods, given that Student's spontaneous use of communication books had decreased, the District also provided Student with assistive technology in the form of a "Go-Talk" device, which had pictures with buttons on them that, when pressed, would verbally say the word depicted in the picture. Student contends that the Go-Talk was not an appropriate device for him.

49. Student obtained an independent assessment from the San Diego State University Communication Clinic Assistive Device Assessment Program. The assessment was conducted by two students in the program who were studying for their Masters degrees. Their recommendation was that Student use a communication device that had a static display, had a field of 12 pictures that were at least three quarters of an inch big, and had voice output capability with five to seven levels addressing a variety of environments to which Student might travel. The specific recommendations were either for devices called the advocate or the Seven Level Communication Builder. While the Clinic supervisor testified at hearing, she did not participate in the assessment. Neither of the actual assessors testified at the hearing.

50. The staff at TRACE determined that the Go-Talk device, which had a possibility of four different levels with a field of nine pictures in each level, was appropriate

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[8] The use of a "communication book" was sometimes erroneously described as the use of the Picture Exchange Communication System (PECS) which requires a student to give a picture of something to his teacher who will exchange the picture for that item or action. Student here primarily used a communication book which contained pictures of items or emotions (such as "mad") to which the Student would point when he wanted something or did not want to do something.

for Student. Traci Masi, the speech and language pathologist for TRACE, credibly testified that the Go-Talk was appropriate for Student because it was portable, lightweight, and contained two-inch picture buttons that were easier to see for both Student and for people with whom he might be communicating. There was no evidence that Student could select from a field of 12 pictures and therefore the nine pictures of the Go-Talk were more representative of Student's present capabilities. Ms. Masi noted that the assessment conducted by San Diego State did not include introducing Student to either of the devices that were recommended. She credibly testified that it was not proper to recommend a device to which a student had not previously been introduced or tested on because there was no evidence that the student would be able to use the device or respond well to it. This could result in frustration for the student.

51. Student failed to establish that use of the Go-Talk device rather than one of the other devices recommended by his assessors, denied him a FAPE. The Go-Talk provided by the District met Student's present capabilities and needs and allowed him to access his education. Student further failed to establish that he was not progressing in his speech and language goals or that the other devices were necessary in order to for him to progress in his goals. Student has therefore failed to establish that the assistive technology provided to him was inappropriate or somehow failed to allow him to benefit from his education.

LEGAL CONCLUSIONS[9]

APPLICABLE LAW

The General Principles of the IDEA

1. Under both the federal IDEA and state law, students with disabilities have the right to a free appropriate public education. (20 U.S.C. § 1400; Ed. Code, § 56000.) The term "free appropriate public education" means special education and related services that are available to the student at no charge to the parent or guardian, that meet the State educational standards, and that conform to the student's individualized education program. (20 U.S.C. § 1401(8).) "Special education" is defined as specially designed instruction to meet the unique needs of the student. (20 U.S.C. § 1401(25); Ed. Code, § 56031.)

2 The congressional mandate to provide a FAPE to children includes both a procedural and a substantive component. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 205 (*Rowley)*, the United States Supreme Court utilizes a two-prong test to determine if a school district has complied with the IDEA. First, the district is required to comply with statutory procedures. Second, the IEP is examined to determine if it is reasonably calculated to enable the student to receive

[9] Student filed his request for due process hearing on May 10, 2005. Therefore, unless otherwise noted, citations to 20 United States Code are to statutes in effect prior to July 1, 2005, and citations to the Education Code are to statutes in effect prior to October 7, 2005.

some educational benefit. *Rowley* does not require that an IEP be designed to maximize a student's potential. (See also *W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1483 (hereafter *W.G. v. Bd. of Trustees*).)

3. To determine whether a school district substantively offered FAPE to a student, the adequacy of the school district's proposed program must be determined. (*Gregory K. v. Longview School District* (9th Cir. 1987) 811 F. 2d 1307, 1314.) Under *Rowley* and state and federal statutes, the standard for determining whether a district's provision of services substantively and procedurally provided a FAPE involves four factors: (1) the services must be designed to meet the student's unique needs; (2) the services must be reasonably designed to provide some educational benefit; (3) the services must conform to the IEP as written; and, (4) the program offered must be designed to provide the student with the foregoing in the least restrictive environment. While this requires a school district to provide a disabled child with meaningful access to education, it does not mean that the school district is required to guarantee successful results. (*Walczak v. Florida Union Free School District* (2d Cir. 1998) 142 F.3d 119, 133.)

4. The IDEA also requires that a due process decision be based upon substantive grounds when determining whether the child received a FAPE unless a procedural violation impedes the child's right to a FAPE, significantly impedes the parent's opportunity to participate in the decision making process regarding the provision of a FAPE to the parent's child, or caused a deprivation of educational benefits. (20 U.S.C. §1415(f)(3)(E); Ed. Code, § 56505, subd. (j); Rowley, supra, 458 U.S. at 206-07; see also Amanda J. v. Clark County School Dist. (9th Cir. 2001) 267 F.3d 877.) Procedural violations which do not result in a loss of educational opportunity or which do not constitute a serious infringement of parents' opportunity to participate in the IEP formulation process are insufficient to support a finding that a pupil has been denied a free appropriate public education. (W.G. v. Board of Trustees of Target Range School Dist. No. 2, supra, 960 F.2d at 1482)). The burden of establishing harm to the student rests on the plaintiff. (C.M. v. Board of Educ. of Union County Regional High School (3d Cir. 2005) 128 Fed. Appx. 876.)

5. The Ninth Circuit Court of Appeals has endorsed the "snapshot" rule, explaining that the actions of the school 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, citing Fuhrmann v. East Hanover Bd. of Education (3rd Cir. 1993) 993 F.2d 1031, 1041 (hereafter Fuhrman).)

Related Services

6. To provide a legally adequate FAPE, a school district is also required to provide supplementary, or related, services, necessary for the child to access his or her education. The term "related services" (DIS in California) includes transportation and other developmental, corrective, and supportive services as may be required to assist a child to benefit from education. (20 U.S.C. § 1401(22).) School districts are charged to develop and

propose school placements for children with disabilities in educational programs based on their unique assessed needs. (*Benjamin G. v. California Special Education Hearing Office* (2005) 131 Cal. App. 4th 875, 878.)

Parental Participation in the IEP Process

7. A parent is a required and vital member of the IEP team. (20 U.S.C. § 1414(d)(1)(B)(i); 34 C.F.R. §§ 300.344(a)(1); Ed. Code, §§ 56341, subd. (b)(1) [parents are members of IEP team].) The IEP team must consider the concerns of the parents for enhancing their child's education throughout the child's education. (20 U.S.C. §§ 1414(c)(1)(B) [during evaluations], (d)(3)(A)(i) [during development of IEP], (d)(4)(A)(ii)(III) [during revision of IEP]; 34 C.F.R. §§ 300.343(c)(2)(iii) [during IEP meetings], 300.346(a)(1)(i) [during development of IEP], (b) [during review and revision of IEP], 300.533 (a)(1)(i) [during evaluations]; Ed. Code, §§ 56341.1, subd. (a)(1) [during development of IEP], subd. (d)(3) [during revision of IEP], and subd. (e) [right to participate in IEP].)

8. A parent has meaningfully participated in the development of an IEP when the parent 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.) A parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way. (*Fuhrmann v. East Hanover Bd. of Education* (3rd Cir. 1993) 993 F.2d 1031, 1036.)

9. The IDEA does not require that parental preferences be implemented, as long as the IEP is reasonably calculated to provide some educational benefits. (*Blackmon v. Springfield R-XII School Dist.* (8th Cir. 1999) 198 F.3d 648, 658.)

Behavioral Supports

10. With regard to the issue of behavioral supports or interventions, an IEP team is required to consider the use of positive behavioral interventions and supports "in the case of a child whose behavior impedes his or her learning or that of others . . . . to address that behavior." (20 U.S.C. § 1414 (d)(3)(B)(i); see also 34 C.F.R. § 300.346(a)(2).) If the IEP team considers behavioral factors, and if the team determines that a child needs a particular service, "including an intervention, accommodation, or other program modification in order for the child to receive FAPE," the team must include a statement to that effect in the IEP. (34 C.F.R. § 300.346(c).)

Assistive Technology

11. A school district must provide any assistive technology device that is required to provide a FAPE to a child with a disability. (20 U.S.C. § 1412(a)(12)(B)(i); 34 C.F.R. § 300.308(a); Ed. Code, § 56341.1, subd. (b)(5).) An assistive technology device is any item

that is used to increase, maintain or improve the functional capabilities of a child with a disability. (20 U.S.C. § 1401(1).)

Appropriate Relief

12. Parents may be entitled to appropriate relief, including reimbursement for the costs of placement or services that they have independently obtained for their child, when the school district has failed to provide a FAPE. (*School Committee of the Town of Burlington v. Department of Education* (1985) 471 U.S. 359, 369 [105 S. Ct. 1996, 85 L.Ed.2d 385]; *Student W. v. Puyallup School District* (9th Cir. 1994) 31 F. 3d 1489, 1496.) Court decisions subsequent to *Burlington* have also extended relief in the form of compensatory education to students who have been denied a FAPE. (See, e.g., *Lester H. v. K. Gilhool and the Chester Upland School District* (3rd Cir. 1990) 916 F. 2d 865; *Miener v. State of Missouri* (8th Cir. 1986) 800 F.2d 749.)

Burden of Proof

13. Student, as the petitioner in this case, has the burden of proving at an administrative hearing the essential elements of his claims. (*Schaffer v Weast* (2005) 546 U.S. ____ [126 S.Ct. 528, 163 L.Ed 2d 387].) However, regardless of the applicable burden of proof, or any presumptions regarding the appropriateness of an IEP, as discussed below, the District established that it complied with the IDEA and concomitant state special education laws, that it did not fail to implement Student's IEP, and that the TRACE program offered Student a FAPE. The District also established that any procedural violations associated with the District's failure to initially address the issue of requiring Student to wear protective gloves was a de minimus procedural violation that did not impede Student's access to a FAPE or cause him loss of educational benefits and did not hinder Student's Mother's ability to participate in the IEP process.

DETERMINATION OF ISSUES

Issue 1: Did the District's offer of placement to Student at its TRACE program, rather than at the Training, Education and Research Institute (TERI, Inc.) program in Oceanside, California, deny Student a free and appropriate public education (FAPE)?

14. No, it did not. As discussed above in Applicable Law paragraphs 1 through 5, the District is required to provide each special education student with a free and appropriate public education, including related services, which conforms to the student's individualized education program, and which is reasonably calculated to provide some educational benefit to the student. The District is only required to provide a floor of opportunity to the student in which he or she is making more than minimal progress in the educational program; the District is not required to maximize the student's potential. The program offered to the student is viewed in light of the objective facts available to the District at the time the program was offered, not in hindsight. Based upon Factual Findings 5 through 14, inclusive,

Student has failed to establish that the TRACE program denied him a FAPE. As evidenced by Factual Findings 5 through 14, inclusive, and determined in Factual Finding 15, the TRACE program greatly exceeded the "floor of opportunity" minimal standard required by state and federal law to provide Student with a FAPE. There is no evidence that the TRACE program failed to meet any of Student's needs or that the TERI program would have met needs that were being disregarded by the TRACE program. The TRACE program provided a FAPE to Student. If any deficiencies occurred, they were based upon the Student's failure to fully participate in TRACE's Point of Transition component and were not due to any inherent deficiencies in the program offered to Student.

Issue 2: Did the District deny Student a FAPE by failing to provide him with direct related services in occupational therapy, speech and language therapy, and music therapy?

15. No, it did not. As discussed in Applicable Law paragraphs 6, a school district must provide appropriate related services to a special education student if the services are needed in order for the student to access his or her education. As discussed in Factual Findings 16 through 27, inclusive, Student has failed to establish that the District had a legal duty to provide him with direct related services for speech therapy, occupational therapy, or music therapy in order for him to access his education or to receive a benefit from it. Although those services may have benefited a younger student, the purpose of the TRACE program for young adults was to prepare them to transition to community-based adult programs by emulating those programs as much as possible. Student needed to learn to adapt to the unstructured environment of the adult programs, which never include any type of related services, either in direct or consultative form. The District, although not legally required to do so, provided consultative services to Student in the areas of occupational therapy, speech and language therapy, and music therapy, which were targeted toward helping Student prepare for his transition to adulthood. As determined in Factual Findings 21, 24, and 27, Student did not require direct services in any of these three areas in order to access his education and benefit from it.

Issue 3: Did the District fail to implement Student's Individual Education Program (IEP) of February 3, 2005, and therefore fail to offer him a FAPE, by supplying staff who was afraid of Student, leaving Student unattended or confined to one area of his classroom, failing to enroll Student in classes at the ECC, or requiring Student to wear protective gloves?

16. No, it did not. There is no evidence that the District failed to implement Student's IEP in a manner which denied him a FAPE. As discussed in Applicable Law paragraph 3, one of the four factors to be reviewed in determining if a school district's provision of services substantively and procedurally provided a FAPE to a student is whether the services conformed to the IEP as written. Another way of restating this requirement is whether the IEP was implemented as written. As established in Factual Findings 30, 31, and 32, Student has failed to establish that any of the staff at TRACE was so fearful of him that they failed to implement Student's IEP. To the contrary, the evidence showed that TRACE

staff genuinely liked Student and genuinely put whole-hearted effort into ensuring that he was participating in his education, was benefiting from it, and was preparing for his transition to adulthood. The evidence demonstrated that TRACE staff could have referred Student to the more-restrictive DCPC program if they truly feared his behaviors, but did not do so because they felt it was not necessary.

17. Nor did Student establish that TRACE failed to implement his IEP by leaving him unattended or confining him against his will to one location. As determined in Factual Findings 33 through 37, inclusive, the TRACE "home base" consisted of two classrooms, separated by a hallway and doors which were left open. The teachers and students, including Student, freely moved between the two. The second classroom was often utilized as a quiet retreat by Student when the noise level of the main classroom became overwhelming for him. There is no evidence that Student was left "unattended" since there was a constant movement of people between the two rooms. Additionally, the classrooms were only used for a short period of the day. The primary focus of the program and of the Student's day, was spent out in the community. The time Student spent in the second classroom did not impede his access to his education or result in a failure to implement any portion of his IEP.

18. Student did not establish that the failure to immediately enroll him in the extra classes offered at the ECC violated the requirements of his IEP or caused him to be denied a FAPE. As determined in Factual Findings 38, 39, and 40, Student's IEP specified that the ECC classes were independent of the District and required separate enrollment by the Student. Additionally, because Student enrolled in TRACE mid-semester, the ECC classes were already filled. Finally, Student failed to establish that enrollment in the classes at ECC were necessary in order for him to receive a FAPE.

19. Finally, Student established that the issue of requiring him to use gloves as a prophylactic method to prevent him from causing injury, should have been discussed among the IEP team and should have been included in his BSP. However, based upon Factual Findings 41 through 46, inclusive, and Applicable Law paragraphs 4, 7, 8, 9, and 10, Student has failed to establish that the failure to do so impeded his access to a FAPE, deprived him of educational benefits, or significantly impeded his Mother's rights to participate in the IEP decision-making process. The TRACE staff was immediately responsive to the concerns of Student's Mother and immediately ceased requiring Student to use the gloves upon her request. Therefore, any failure to initially include Student's Mother in the discussion concerning the use of the gloves was a de minimus procedural violation which did not rise to the level of a FAPE denial.

Issue 4: Did the District fail to offer Student a FAPE by providing him with the Go-Talk communication device rather than a more sophisticated communication device as necessary assistive technology?

20. No, the District's use of the Go-Talk instead of other recommended communication devices did not deny Student a FAPE. As determined in Factual Findings 47 through 51, inclusive, and Applicable Law paragraph 11, the Go-Talk was an appropriate

device to assist Student with his communication needs. There is no evidence that Student required another communication device in order to access his education or benefit from it.

Issue 5: If Student prevails on any or all of Issues 1 through 4 above, is he entitled to the following relief:

A. Two years of compensatory education, in a program to be approved by Student's Mother, including occupational therapy, speech and language therapy, and music therapy?

B. Two one-on-one aides, trained in assaultive behavior intervention, for a period of two years?

21. Student did not prevail on any part of Issues 1 through 4. Accordingly, Student is not entitled to any of the relief he seeks.

ORDER

In light of the above factual findings and legal conclusions, all of Student's requests for relief are denied.

PREVAILING PARTY

Pursuant to 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: The District prevailed on all issues heard and decided.

RIGHT TO APPEAL THIS DECISION

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

DATED: September 5, 2006

DARRELL L. LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings
Special Education Division