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

In the Matter of: STUDENT, Petitioner, v. SAN JOSE UNIFIED SCHOOL DISTRICT, Respondent.	OAH CASE NO. N2005120400

DECISION

Petitioner filed a Due Process Complaint Notice on January 26, 2004. Administrative Law Judge (ALJ), Gary A. Geren, Office of Administrative Hearings (OAH), Special Education Division, State of California, heard this matter on October 17-20, and 23-24, 2006, in San Jose, California.

Kathryn Dobel, Attorney at Law, represented Petitioner (Student).

Peter Sturges, Attorney at Law, Atkinson, Andelson, Loya, Ruud and Romo, represented the San Jose Unified School District (District).

The record remained open until the parties filed their written briefs on November 15, 2006. The briefs were added to the record. The matter was submitted for a decision to be issued on or before December 26, 2006.

ISSUES[1]

1. Did District provide a Free and Appropriate Public Education (FAPE) to Student during Kindergarten (2000-2001) and the following extended school year (ESY)?

[1] On the first day of hearing, the parties were ordered to provide the ALJ with an outline of the issues they intended to present at hearing. The outlines of issues were submitted by counsel and added to the record. For the sake of clarity, the issues outlined by the parties are re-organized under this heading, as well as the heading, "Parties Contentions."

2. Did District provide a FAPE to Student during first grade (2001-2002) and the following ESY?

3. Did District provide a FAPE to Student during second grade (2002-2003) and the following ESY?

4. Did District provide a FAPE to Student during third grade (2003-2004) and the following ESY?

5. Should District reimburse Student's parents (Parents) for costs they incurred in obtaining educational and related services for Student?

PARTIES' CONTENTIONS

Kindergarten and ESY

Student contends District did not provide him with the following:

1. (A) A research-based instructional program;

(B) Instruction, planning, or oversight, by a qualified special education provider;

(C) A sufficiently individualized special education program (IEP);

(D) Reports to Parents of his progress;

(E) ESY special education services;

(F) Information to Parents about the full continuum of ESY services available;

(G) Five and-one-half weeks of one hour, daily, structured, sequential, multi-sensory instruction in reading, similar to what he received at The Reading Clinic (TRC), a non-public service provider;

(H) Student contends that because the above was not provided, he did not make meaningful educational progress, and was therefore, recommended for retention. Student alleges that without the services provided by TRC during the summer, he would have been retained. Accordingly, Student's Parents seek reimbursement of $2,400 for monies paid to TRC.

District refutes Student's contentions, alleging it provided services required under Student's IEP, performed appropriate assessments, and provided qualified teachers. District alleges Student made educational progress, the services provided by TRC were insufficient

to meet Student's global needs and that special education ESY services were not offered because District did not believe Student's academic progress might regress.

First Grade and ESY

Student contends District did not provide him with the following:

2. (A) A research-based instructional program;

(B) A District representative with appropriate authority to speak on its behalf at IEP meetings;

(C) Instruction, planning, or oversight, by a qualified special education provider;

(D) Adequate training for the Resource Specialist (RS) in a research-based method necessary to meet his needs;

(E) Evaluations in all areas of suspected disability;

(F) A sufficiently individualized special education program;

(G) Reports to Parents of his progress;

(H) Amendment to his IEP goals in a timely manner;

(I) Specific and measurable IEP goals;

(J) High expectations for his progress;

(K) ESY special education services;

(L) Information to Parents regarding the full continuum of ESY services;

(M) A program to address his anxiety;

(N) Student contends that because the above was not provided, he did not make meaningful educational progress, and was therefore, at risk for retention. Parents seek reimbursement of $5,640 for monies they paid to TRC; and

(O) Dr. Cheryl Bowers conducted a nueropsychoeducational assessment of Student. Student alleges District failed to amend his IEP to reflect Dr. Bower's recommendations. Parents seek reimbursement of $3,000 for monies paid to her.

District refutes Student's contentions, alleging it provided services required under his IEP, performed appropriate assessments, and provided qualified teachers. District alleges Student made educational progress, the services provided by TRC were insufficient to meet Student's global needs, and special education ESY services were not offered because District did not believe Student's academic progress might regress.

Second Grade and ESY

Student contends that District failed to provide him with the following:

3 (A) A research-based instructional program;

(B) A person with sufficient authority to speak on behalf of District at IEP meetings;

(C) Instruction, planning, and oversight, by qualified personnel;

(D) Assessments in all areas of suspected disability;

(E) Adequate training of his RSP teacher;

(F) A sufficiently individualized Resource Specialist Program (RSP);

(G) Reports to Parents of his progress;

(H) Amendment of goals in a timely manner;

(I) Sufficiently measurable goals;

(J) Sufficiently high expectations for Student's progress;

(K) ESY special education services;

(L) Information to Parents regarding the full continuum of ESY services available;

(M) Student contends that because the above was not provided, Student failed to make meaningful progress;

(N) Parents were forced to hire an educational consultant to draft appropriate goals; and

(O) Parents should be reimbursed for their costs incurred at TRC in the sum of $6,145.

District refutes these contentions alleging it provided services required under the IEP, made every effort to comply with Parents' demands, provided an appropriately licensed RSP teacher, provided appropriate goals and services and assented to Parent's request to consider a Special Day Class (SDC) placement. District alleges that Student made academic progress, the services provided by TRC were insufficient to meet Student's global needs, and special education ESY services were not offered because District did not believe Student's educational progress might regress.

Third Grade

Student contends that District failed to provide him with the following:

4. (A) A researched-based instructional program;

(B) Instruction, planning, and oversight, by qualified personnel;

(C) Specific baseline data or goals to determine his present levels of performance;

(D) A sufficiently individualized RSP;

(E) Adequately trained staff in the RSP;

(F) Reports to Parents of his progress;

(G) Consideration of spelling as an appropriate RS subject;

(H) A program to develop Student's self-esteem and set sufficiently high expectations;

(I) Sufficient information to Parents regarding the full continuum of ESY services available;

(J) Assessments in all areas of suspected disability;

(K) Student contends that because the above was not provided, Student failed to make meaningful progress; and

(L) Parents should be reimbursed for costs of TRC in the sum of $6,304.58, including costs for Kristin Powell, TRC's Director, in assisting Parents in the IEP process.

District refutes these contentions, alleging it provided services required under Student's IEP, complied with Parents' demands, provided an appropriately licensed RSP teacher, and completed all appropriate assessments. District contends Student made academic progress and that Student's progress was not solely attributable to TRC. District contends that based on Student's triennial assessment, he was no longer eligible to receive

special education and related services, however, District continued to provide them as a further accommodation to meet his educational needs.

FACTUAL FINDINGS

Jurisdiction

Student is a boy. He was born on August 16, 1995, and resides with his Parents within District's jurisdiction.

Kindergarten

1. On March 1, 2001, Student's kindergarten teacher advised Parents that she believed he should be tested to determine if he had any learning disabilities. On March 13, 2001, Diny Jansen, a District educational psychologist, contacted Parents and described the assessment process to them. Parents consented to have Student assessed in the areas of academic achievement, motor development, cognitive development, and hearing and vision abilities. Assessments in these areas were completed. The assessment results were discussed at an IEP team meeting on May 1, 2001. Ms. Jansen advised Parents that Student had a significant problem with phonemic awareness; she attributed this problem to a disorder with his auditory processing. Student's auditory processing disorder resulted in a severe discrepancy between his academic achievement and intellectual ability. The IEP team concluded Student was qualified to receive special education and related services as a student with a Specific Learning Disability (SLD). The IEP team recommended that Student receive one hour-per-day of instruction at the RSP in reading, writing, and math. He received services for the balance of the school year (a five and one-half-week period).

2. Student established he was denied a FAPE during this period. District completed comprehensive and thorough assessments that accurately identified Student's disability; however, it did not provide him with a reading program to intensely address his phonemic awareness problem. Student needed a structured, sequential, multi-sensory reading program. District provided a reading program that was developed by an RSP aide who worked with Student on general education reading worksheets she obtained from Student's general education teacher. The special education teacher assigned to oversee Student's special education curriculum did not actively participate in the development and administration of the program.

3. Student's special education reading program was, in fact, an extension of his general education program; it did not include an appropriate method aimed at addressing his particular problem and, therefore, did not address his unique needs.

ESY Following Kindergarten

4. At the conclusion of kindergarten, Student's teacher recommended that he be retained, generally because of his lack of educational proficiency.

5. District offered Student an opportunity to attend a general education ESY program, with no special education services provided. District did not offer special education services because it believed his time in special education was of too limited a period to conclude that he might regress. The evidence does not support District's contention.

6. Student established special education services were required to continue through the summer in order to prevent regression. Student asserts that this is particularly true in light of his limited ability to recoup information, once learned. Student established his learning disability made it difficult for him to memorize educational materials, particularly reading materials, as well as to repeat simple tasks. For example, each morning he struggled to adhere to the classroom's regimen prior to students sitting at their desks. Such tasks included removing his books from his backpack, storing his backpack and jacket, and seating himself at his desk in an orderly fashion. Student's problems in completing such tasks were consistent with what Parents observed and reported to District. Ms. Jansen's report notes that Student "had difficulty retaining information."

7. In sum, because of Student's "significant difficulties in the area of phonological awareness" (Ms. Jansen's report), coupled with his memory problems, Student established an interruption in his educational programming (summer recess) *may* have led to regression. (Legal Conclusion 9). District's failure to consider, discuss, and offer ESY special education services at the May 1, 2001 IEP, in light of what it knew about Student's disability, resulted in a denial of a FAPE.

8. During the early summer, Parents obtained educational services from TRC where Student was provided a structured, systematic, reading program that began to redress his phonological awareness problem.[2] Student established, principally through the testimony of TRC Director Powell and Mother, that Student received pointed instruction in a program specifically tailored to address his phonemic awareness problem. Student made significant progress in his reading ability as a result of TRC's methodical and multi-sensory approach.

[2] Student was instructed in the Lindamood-Bell Processes (LMBP), a multi-sensory reading program. During this six-week period, Student completed the Lindamood Phonemic Sequencing (LiPS) component of the LMBP. Coincidentally, Student's completion of LiPS was a prerequisite to receiving instruction District attempted to implement during Student's second grade year.

9. Following Student's completion of the six-week program, his kindergarten teacher retested him. Based on the results, she reversed her opinion regarding Student's retention, and concluded that he should advance. Student established TRC's program not only prevented Student's regression, but also allowed him to advance (something District's five and-one-half-week program failed to do). Student's progress between the end of the regular school year, and his retesting, was solely attributable to the instruction he received at the Reading Clinic, as that was the only source of instruction during that time. Accordingly, reimbursement to Parents by District for costs they incurred obtaining Student's instruction at TRC is appropriate.

10. Student prevailed on contentions 1C, E, F, and H, and as a consequence, Parent's are entitled to reimbursement in the sum $2,400. Having obtained the relief requested, Student's remaining issues are not addressed.

First Grade

11. Student's IEP was set forth in an IEP Addendum, dated September 27, 2005. The IEP Addendum was a comprehensive and thorough document that accurately addressed all of Student's unique needs. It contained appropriate goals and objectives, three in both math and reading. Student's special education was to take place in the RSP room; RSP staff was to develop his curriculum and to provide instruction. Had the IEP Addendum been properly implemented, it would have conferred a FAPE. District, however, delegated the responsibility to develop and implement Student's special education program to a novice teacher who was unqualified to do so. Accordingly, a FAPE was not provided.

12. Aileen Magpantay was Student's special education teacher. She was new to the District, in her first year teaching in the United States. She taught under the licensure provided by a "Pre-Intern" certificate. She did not testify in this matter, as she had returned to the Philippines prior to hearing. Her declaration was admitted into evidence; it showed her course of study was in occupational therapy, a discipline that would not have provided her with adequate training to choose an appropriate reading program for Student. There is no dispute regarding Ms. Magpantay's dedication to teaching and her compassion for students. Rather, the crux of the dispute giving rise to this issue (and generally to this matter) stems from whether District provided Ms. Magpantay with adequate training and support, to enable her to address Student's phonological awareness problem. As discussed below, it did not.

13. By the beginning of Student's first grade year, Parents were educated about the nature of Student's disability, as well as the educational programs and methodologies generally available to redress it. Accordingly, when Parents first met with Ms. Magpantay, they asked a series of detailed questions regarding which method she intended to use. In response to Parent's questions, Ms. Magpantay stated she did not differentiate in her teaching methodologies according to her students' differing learning disabilities. She also advised Parents that she did not know much about "specific learning disabilities." Parents' testimony regarding this conversation, as corroborated by notes Mother took at or near the time the

conversation took place, provided persuasive evidence. Parents testified candidly and consistently, with credible demeanors.

14. Prior to meeting with Ms. Magpantay, District told Parents that the choice of methodology used to teach special education students was, as a matter of District's policy, left to the discretion of special education teachers. Ms. Magpantay, through no fault of her own, lacked the ability to select and implement a suitable reading program for Student, in that she lacked the formal training and practical experience necessary to address Student's "significant difficulties in the area of phonological awareness" (Ms. Jansen's report). Ms. Magpantay provided Student with reading services in a small group that was, again, an extension of his general education curriculum, using general education materials. As a consequence, Student did not receive appropriately individualized services specifically aimed at addressing his unique needs.

15. Parents agreed to the September 27, 2005 IEP Addendum, with the following reservation, "[Parent's] request more resources and training in Orton-Gillingham methods [for Ms. Magpantay]."[3] Ms. Magpantay also expressed her desire to receive more training on how to best teach Student to read. Despite these requests, District did not provide appropriate training to, or oversight of, Ms. Magpantay.

16. Throughout the first grade, Student continued to receive services from TRC in the LiPS and Great Leaps programs. He attended TRC two hours-per-week, where he received one-to-one instruction. Ms. Powell established the instruction provided to Student at TRC was systematic and multi-sensory and that Student was required to master well-defined milestones before progressing to the next segment of the program. Student's progress was well-chronicled and showed Student's participation at TRC allowed him to make steady, hard earned, progress both there, and at school.

17. District contends Student's educational progress established it provided a FAPE. The weight of the evidence established Student's progress was attributable to the instruction he received at TRC, not in the RSP.

18. Parents also request reimbursement for costs incurred in retaining the services of Cheryl. Bowers, Ph.D. Dr. Bowers performed a comprehensive nueropsychoeducational assessment of Student. Her findings, however, did not materially differ from those of Ms. Jansen, and would not have resulted in an educational plan significantly different from that which Student received at TRC and school. Student did not establish that reimbursement for Dr. Bower's services is appropriate.

[3] Orton-Gillingham is a multi-sensory approach to teaching students with reading disabilities. It is a well-established, research-based methodology, on which other, modern reading programs are based.

ESY Following First Grade

19. Student makes the same contentions regarding his need for ESY services, as set forth above. Student also contends he needed ESY because of the following described events: On June 13, 2002, an IEP meeting was held where Parents requested Student receive ESY services. At that meeting, Parents were told by District's Program Specialist, Ms. Delphia Edwards, that District did not offer special education services during the summer, with the exception of placing severely disabled students in a SDC. Thus, District offered Student two choices: ESY services in a general education setting or in a SDC with severely handicapped students. Neither of these was appropriate for Student, who needed continued instruction in a reading program to address his phonemic awareness problem. Student remained at risk for regressing from his educational progress. In light of District's failure to offer appropriate ESY services, Parents' request to be reimbursed for costs they incurred at TRC during this time. Parents' request is appropriate.

20. Student prevailed on contentions 2C, D, F, K, L, and N. Student did not prevail on contention 2O. Parents are entitled to reimbursement in the sum of $5,640. Having obtained the relief requested, Student's remaining contentions are not addressed.

Second Grade

21. Student's educational program was set forth in an IEP dated June 13, 2002. It contained appropriate, well-defined, and measurable goals and objectives. The IEP contained nine goals in each area of reading, writing, and mathematics, for a total of 27. Had the IEP been properly implemented, it would have provided Student with a FAPE. For reasons similar to those discussed above, the IEP was not implemented in a manner which would have provided Student with some educational benefit. Ms. Magpantay was only marginally more qualified than in the prior year, again because District failed to train her.

22. Parents agreed to the IEP with the following reservations, "[Student] needs ESY services and we are concerned that the instructional methods are not specified and should directly address his learning disability." In sum, Parents remained concerned about the methodology Ms. Magpantay used in the RSP.

23. District contends that by this time, Ms. Magpantay had received sufficient training to enable her to implement a meaningful special education program. District established that at some point during Student's second grade year, Ms. Magpantay received training in The Barton Reading and Spelling System (The Barton System, TBS). It was established that Ms. Magpantay used her money to purchase TBS, and attempted to teach Student with it. The exact nature of her TBS training, and more importantly, whether it rendered her qualified to develop Student's reading program, was not established by District. TBS requires that before a student begins participation in the system, a baseline of his or her abilities be established. TBS recommends students receive one-to-one instruction, and requires accurate reporting of students' progress. These things were not done with Student.

24. Ms. Magpantay's TBS instructor was June Campbell, a District employed expert in the system. Ms. Campbell never observed Ms. Magpantay in a classroom. Accordingly, her testimony regarding the appropriateness of TBS to meet Student's unique needs, as well as Ms. Magpantay's qualifications to use it, carried limited weight.

25. On October 4, 2002, at Parents' request, another IEP was held. Parents again expressed concerns about Ms. Magpantay's teaching methods, stating, "[Student] needs ESY services and we want the specific instructional methods to be spelled out and to address his learning disability." This request was followed-up in a letter Parents sent to District on October 24, 2002, asking for an additional IEP team meeting. This letter generally reflected Parent's concern regarding the nature of the services Student received in the RSP. District scheduled an IEP meeting that took place on November 12, 2002. Parents' notes memorializing what was discussed at the meeting, as well as their testimony on the point, established that Parents' concerns were not being addressed by District. District failed to have a representative with the necessary authority to speak on behalf of District (a person identified at previous meetings as a "Program Specialist") attend the November 12, 2002 meeting. Accordingly, Parents' questions and concerns went unanswered. District represented that it would provide answers after the meeting, which it generally failed to do. By not securing the attendance of necessary members of the IEP team at the meeting, and by not providing adequate answers to Parents' legitimate questions, District denied Parents the opportunity to meaningfully participate in the IEP process, thus denying Student a FAPE.

26. Parents continued to pay for Student to receive services at TRC in LiPS. TRC also added Great Leaps, Visualizing and Verbalizing, and Seeing Stars, programs in reading, spelling, and math, as Student's disability was also affecting these areas as well.[4] In January 2003, TRC issued Student's test results on the Gray Oral Reading Test (GORT) as follows: reading rate (50th percentile), reading accuracy (91st percentile), and reading comprehension (84th percentile). District questioned the validity of TRC's testing; however, Student's results on the Standardized Testing and Reporting examinations, administered by District, confirmed he made educational progress. For example, in reading, Student answered 84 percent of the questions correctly. Student established his progress was because of the instruction he received at TRC, not at the RSP. Accordingly, Parents' request for reimbursement for the costs they incurred at TRC is appropriate.

ESY Following Second Grade

27. On March 7, 2003, District recommended that Student should be retained. On May 12, 2003, Student's general education teacher confirmed District's recommendation. IEP documents relating to a meeting held on June 2, 2003, indicate Ms. Magpantay believed Student had organizational and self-starting issues. District did not offer special education ESY services to Student because it did not fear that he would regress. This conclusion was in error.

[4] District agrees that by the second grade, Student's processing disorder was seriously impacting his ability to accurately perform mathematical tasks.

28. Despite Student's recent progress, he was being recommended for retention because he continued to suffer from the effects of his disability. Parents were justified in continuing to obtain services during the summer at TRC, as Student was provided with necessary services District refused to offer. Parents' request to be reimbursed for TRC's services is appropriate.

29. Student prevailed on contentions 3B, C, E, F, K, L, and O. Parents are entitled to reimbursement in the sum of $6,145. Having obtained the relief requested, Student's remaining issues are not addressed.

Third Grade

30. Student's educational plan was set forth in an IEP document dated June 16, 2003. Student agrees that the goals and objectives contained in this plan were appropriate. Student contends, however, that they were not properly implemented. Student's contention is well founded.

31. Student's special education teacher (until April of that school year) was Sharon Prior. During this time, Ms. Campbell instructed Ms. Prior on the TBS and provided TBS materials to Ms. Prior. On two occasions, she observed Ms. Prior in the RSP teaching reading to Student in a small group (approximately five students).

32. Student established Ms. Prior's attempt to teach Student under TBS did not provide him with a FAPE. Ms. Prior was not sufficiently trained in TBS at the beginning of Student's school year, receiving training after the school year started, and it is unclear at what point she completed sufficient training to teach TBS. After Ms. Prior left her assignment in April, Student's special education instruction was provided by a series of substitutes, and on some occasions, he had no special instruction teacher assigned. District did not provide a special education program to Student that was comparable to the successful instruction he received at TRC where he received methodical, consistent, and individualized instruction. Accordingly, Parents request to be reimbursed by District for costs incurred in obtaining services from TRC is appropriate.

ESY Following Third Grade

33. District contends it lacked sufficient information to conclude Student may have regressed if he did not receive special education ESY services. Student needed ESY special education services during this time for the same reasons he required them previously. Parents' request to receive reimbursement for TRC's services is appropriate. Parents' request for reimbursement for Ms. Powell's costs to attend an IEP is appropriate. She provided critical information regarding Student's present levels of performance, and explained to the IEP team which methodologies worked for Student. This information was necessary for the IEP team to develop and implement a program that would provide Student a FAPE.

34. Student prevailed on contentions 4B, D, C, E, I, and L. Parents are entitled to reimbursement in the sum of $6, 304.58. Having obtained the relief requested, Student's remaining issues are not addressed.

Reimbursement

35. Parents' requests to receive reimbursement regarding TRC's services and the services of Ms. Powell at the IEP are appropriate. All other requests for reimbursement are denied.

LEGAL CONCLUSIONS

1. Under the IDEA and state law, children with disabilities have the right to a FAPE. (20 U.S.C. § 1400(d); Ed. Code § 56000.) FAPE means special education and related services that are available to the child at no charge to the parent or guardian, meet State educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(a)(9).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(a)(29).)

2. There are two parts to the legal analysis of a school district's compliance with the IDEA. First, the tribunal must determine whether the district has complied with the procedures set forth in the IDEA. (*Board of Educ. v. Rowley* (1982) 458 U.S. 176, 206-07.) Second, the tribunal must decide whether the IEP developed through those procedures was reasonably calculated to enable the child to receive educational benefit. (*Ibid*.)

3. In determining whether a district offered a student a FAPE, the proper focus is on the adequacy of the District's placement, not on any alternative proposal. (*Gregory K. v. Longview School Dist*. (9th Cir. 1987) 811 F.2d 1307, 1314.) As long as a school district provides a FAPE, methodology is left to the district's discretion. (*Rowley, supra*, 458 U.S. at p. 208.)

4. In *Rowley*, the Supreme Court held that the IDEA does not require school districts to provide to special education students the best education available, or to provide instruction or services that maximize a student's abilities. (*Rowley, supra*, at p. 198.) School districts are required to provide only a "basic floor of opportunity" that consists of access to specialized instruction and related services individually designed to provide educational benefit to the student. (*Id*. at p. 201.)

5. The relevance of a student's subsequent performance to the adequacy of his IEP is limited. In *Adams v. Oregon* (9th Cir. 1999) 195 F.3d 1141, parents who had supplemented their child's education with private tutoring challenged the adequacy of an Individual Family Service Plan (IFSP) (the equivalent of an IEP for infants and toddlers) on

the ground that the child's subsequent lack of progress in school demonstrated the inadequacy of the IFSP. The Ninth Circuit rejected that approach:

> We do not judge an IFSP in hindsight; rather, we look to the IFSP's goals and goal achieving methods at the time the plan was implemented and ask whether these methods were reasonably calculated to confer [student] with a meaningful benefit...(*Adams, supra*, 195 F.3d at p.1149.)

Quoting *Fuhrmann v. East Hanover Bd. of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1041, the *Adams* court observed:

> An [IEP] is a snapshot, not a retrospective.... [A]n IEP must take into account what was, and was not objectively reasonable when the snapshot was taken...(*Adams, supra*, 195 F.3d at 1149; see also, *Carlisle Area School v. Scott P*. (3d Cir. 1995) 62 F.3d 520, 530 ["Any lack of progress under a particular IEP ... does not render that IEP inappropriate."].)

6. In *Rowley*, the Court found that some educational benefit had been conferred on the student since she achieved passing marks and advanced from grade to grade. (*Rowley, supra*, 458 U.S. at pp.202-203.) However, the Court cautioned that it was not establishing any one test for measuring the adequacy of educational benefits conferred under an IEP. (*Rowley, supra*, 458 U.S. at pp. 202, 203 n.25.)

7. The Ninth Circuit refers to *Rowley*'s "some educational benefit" requirement simply as "educational benefit." (See, e.g., *M.L. v. Fed. Way Sch. Dist*. (2004) 394 F.3d 634, 645; *Ash v. Lake Oswego School Dist., No. 7J* (1992) 980 F.2d 585, 587-588.) Other circuits have interpreted "some educational benefit" to mean more than trivial or de minimis benefit. (See, e.g., *Houston Indep. Sch. Dist. v. Bobby R.* (5th Cir. 2000) 200 F.3d 341, 349.) The Third and Sixth circuits have required that the benefit be "meaningful." (See, e.g., *L.E. v. Ramsey Bd. of Educ.* (3d Cir. 2006) 435 F.3d 384, 395; *Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004) 392 F.3d 840, 862.)

8. A school district is required to provide a special education student with extended school year services (ESY) services when the student requires special education and related services in excess of the regular academic year or the IEP team has determined that the student needs ESY services. "Extended year" refers to the period of time between the close of one academic year and the beginning of the succeeding academic year. Students eligible for ESY include the following:

> Such individuals shall have handicaps which are likely to continue indefinitely or for a prolonged period, and interruption of the pupil's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would

otherwise be expected in view of his or her handicapping condition. (Cal. Code Regs. tit. 5, § 3043.)

9. Parents may be entitled to reimbursement for the costs of placement or services they have procured for their child when the school district has failed to provide a FAPE and the private placement or services were appropriate under the IDEA and replaced services that the school district failed to provide. (20 U.S.C. § 1412(a)(10)(C); *School Committee of the Town of Burlington v. Dept. of Education* (1985) 471 U.S. 359, 369-370; *Student W. v. Puyallup Sch. Dist.* (9th Cir. 1994) 31 F.3d 1489, 1496.) Parents may receive reimbursement for their unilateral placement if the placement met the child's needs and provided the child with educational benefit. However, the placement is not required to meet all requirements of the IDEA. For example, parents are not required to restrict their unilateral placement to the content of the child's IEP, need not provide a placement that is certified by the state, and need not provide a placement in the LRE. The placement still must have met the child's needs and provided educational benefit. (*Florence County Sch. Dist., Four v. Carter* (1993) 114 S.Ct. 361; *Alamo Heights Independent Sch. Dist. v. State Bd. of Education* (5th Cir. 1986) 790 F.2d 1153, 1161.)

10. Petitioner has the burden of proving the essential elements of his claim. (*Schaffer v. Weast* (2005) 546 U.S. 49, [126 S.Ct. 528, 163 L.Ed.2d 387].)

Determination of Issues

1. Student established District did not provide Student with FAPE during the last five and-one-half weeks of his kindergarten year; he received di minimus benefit from the services provided. (Factual Findings 1-3; Legal Conclusions 1-7 and 10). Because Student may have regressed over the summer recess, he was entitled to receive ESY services. (Factual Findings 4-10; Legal Conclusions 8-10)

2. Student established District did not provide Student with a FAPE during the first grade, he received di minimus benefit from the services provided. (Factual Findings 11-17; Legal Conclusions 1-7 and 10). Because Student may have regressed over the summer recess, he was entitled to receive ESY services. (Factual Findings 19-20; Legal Conclusions 8-10).

3. Student established that District did not provide Student with FAPE during second grade, he received di minimus benefit from the services provided. (Factual Findings 21-26; Legal Conclusions 1-7 and 10). Because Student may have regressed over the summer recess, he was entitled to receive ESY services. (Factual Findings 27-32; Legal Conclusions 8-10).

4. Student established that District did not provide Student with FAPE during third grade, he received di minimus benefit from the services provided. (Factual Findings 30-32; Legal Conclusions 1-7 and 10). Because Student may have regressed over the

summer recess, he was entitled to receive ESY services. (Factual Findings 33-34; Legal Conclusions 8-10).

5. Student's Parents are entitled to reimbursement for costs for they incurred in obtaining services on Student's behalf at TRC, and for Ms. Powell's participation in the IEP process. (Factual Findings 33-34; Legal Conclusion 9). Parents are not entitled to reimbursement for costs they incurred in obtaining services from Dr. Bowers. (Factual Finding 18; Legal Conclusion 9).

ORDER

For the foregoing reasons, Parents shall be reimbursed by District in the amount of $20,489.58, payable within 30 days of District's receipt of this decision.

PREVAILING PARTY

Student prevailed on all issues raised in this matter.

RIGHT TO APPEAL THIS DECISION

The parties to this case may 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).)

December 20, 2006.

GARY A. GEREN
Administrative Law Judge
Special Education Division
Office of Administrative Hearings