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

In the matter of: STUDENT, Petitioner, v. LOS ANGELES UNIFIED SCHOOL DISTRICT, Respondent.	OAH CASE NO. N 2006120552

DECISION

Administrative Law Judge Robert F. Helfand, Office of Administrative Hearings, Special Education Division (OAH), State of California, heard this matter in Los Angeles, California on March 19, 20 and 26, 2007.

Petitioner (Student) was represented by Student's mother (Mother). Student's father (Father) was also present on March 19, 2007. Student did not attend the hearing.

Respondent Los Angeles Unified School District (District) was represented by attorney Sophie C. Agopian. Diana Massaria, Due Process Specialist for the District, was also present.

On December 15, 2006, Student filed a request for due process hearing. On January 26, 2007, OAH continued the initial due process hearing set in this matter. The record of this due process hearing was opened on March 19, 2007. Testimony was taken March 19, 20, and 26. Closing arguments were filed on April 2, 2007, and a rebuttal brief was filed and the matter submitted on April 5, 2007.

ISSUES[1]

1. Did the District fail to offer Student a free, appropriate public education (FAPE) for the 2006-2007 school year at the December 14, 2006 Individualized Education Program (IEP) meeting by failing to meet Student's unique needs by failing to offer one hour per week of speech and language services through a nonpublic agency (NPA)?

2. Did the District deny Student a FAPE for the 2006-2007 school year by failing to consider at the December 14, 2006 IEP meeting an Independent Educational Evaluation (IEE) obtained by Student's parents?

3. Did the District deny Student a FAPE for the 2006-2007 school year by failing to provide Student's parents a list of independent assessors acceptable to the District?

CONTENTIONS OF THE PARTIES

Student contends that he was denied a FAPE for the 2006-2007 school year when the District failed to continue offering speech and language services by Miller & Standel, a NPA, at the November 14, 2006, and December 14, 2006 IEP meetings. Student further contends that the District denied Student a FAPE through violations of the IDEA when it refused to consider at the December 14, 2006 IEP meeting an IEE by a speech pathologist obtained by Student's parents, and did not provide parents with a list of speech pathologists who were acceptable to the District to conduct an IEE.

The District contends that the speech and language services offered at the November 14, 2006, and December 14, 2006 IEP meetings constituted a FAPE for Student, and that it appropriately considered the IEE submitted by parents at the December 14, 2006 IEP meeting. The District also contends that it did not have an obligation to provide parents a list of IEE assessors because parents never requested an IEE from the District nor did the parents request a list of speech pathologists from the District.

FACTUAL FINDINGS

Background Information

1. Student is an eight-year-old boy who resides in the District. Student presently is a student in the second grade at Lockhurst Elementary School. Student is eligible for special education under the disability category of autism.[2]

[1] The issues have been re-framed for the purposes of this decision.

2. Student contends that the District's offer of services at the November 14, 2006, and December 14, 2006 IEP meetings did not constitute a FAPE because Student was not offered speech and language therapy services by his NPA provider. A school district must adequately address all the unique needs of a student eligible for special education by offering an IEP that is reasonably calculated to afford the student some educational benefit. In order to determine Student's present unique needs with respect to speech and language therapy service, it is necessary to review his needs and services received since the 2004-2005 school year.

3. Student began exhibiting speech problems at the age of two. At three, Student was diagnosed as autistic. Student has long experienced, and continues to experience, difficulties in engaging in conversations with peers and adults beyond two or three exchanges, retelling stories and sequencing (placing events in proper order), and he lacks the language skills necessary to engage in normal social discourse.

4. During the 2003-2004 school year, Student attended a preschool mixed program at Haynes Elementary School. During the 2004-2005 school year, Student attended a general education kindergarten. Student's progress reports indicated that he was "proficient" in all subject areas.

5. On April 29, 2004, Abby Wanamaker, a District speech and language pathologist (SLP), conducted a speech and language assessment of Student. Ms. Wanamaker administered the Preschool Language Scale-4 (PLS-4) standardized test, did observations, reviewed a report from Student's teacher, conducted a records review, and took 37 samples of spontaneous utterances of Student. Ms. Wanamaker concluded that Student had a moderate delay in receptive language, a severe delay in expressive language, and a major deficit in integrative language skills which resulted in Student having difficulty in expressing himself in a logical manner.[3]

The May 23, 2005 IEP Meeting and the 2005-2006 school year

6. Student's IEP for the 2004-2005 school year did not include NPA speech services. Student filed a due process request and was awarded NPA speech services

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[2] Autism is a developmental disorder of neurobiological origin that affects how children learn to be social beings, to take care of themselves, and to participate in the community. Autism affects the child's ability to communicate ideas and feelings, to use his or her imagination, and to establish relations with others. (See *Amanda J. v. Clark County School District* (9th Cir. 2001) 267 F.3d 877, 883.)

[3] Student's PLS-4 total score placed him one and a half standard deviations below the mean for his age. Student was in the seventh percentile for auditory comprehension which placed him at an age equivalency of four years two months (14 months below his age of five years four months). Student scored in the first percentile for expressive communication with an age equivalency of three years one month (27 months below his age). The test results indicated that Student possessed a "moderate delay" in receptive language and a "severe delay" in expressive language. As to the spontaneous language samples, Ms. Wanamaker estimated that Student was functioning at an age appropriate level.

following a due process hearing. At the annual IEP meeting on May 23, 2005, the IEP team recommended that Student receive pull-out speech therapy services twice weekly for a total of one hour per week at school. Student was also to receive compensatory NPA services for not receiving such services from December 7, 2004, through the date of the meeting per the 2004 due process award. The IEP included in its goals that Student be able to retell a curriculum based story in proper sequence at 70 percent accuracy in four to five opportunities, and Student would be able to maintain a conversation on topic over four to five conversation turns at 80 percent accuracy in four to five opportunities. The IEP placed Student in a general education first grade class. Parents objected to the IEP because of the failure to offer NPA speech services which Parents contended were necessary based on the report of the special education teacher and the absence of any report demonstrating that Student had made significant improvement in his speech and language goals.

7. On June 28, 2005, Student filed a Due Process complaint, and the parties signed a settlement agreement on September 14, 2005. The agreement provided that the District fund 27 hours of compensatory NPA speech services[4] to be completed by June 2006, conduct a social-emotional assessment by the school psychologist prior to the next IEP meeting, and fund one hour per week for 40 weeks of NPA speech services to be completed by June 30, 2006. The parties agreed that these services would not be considered "stay put" under federal and state laws.

8. Student attended a general education second grade class. Student's progress reports indicated that he was "proficient" in all subject areas, but Student continued to experience problems in conversing with peers and adults as well as properly retelling curriculum based stories.

9. At a December 14, 2005, an implementation IEP meeting, the IEP team received the results of a social-emotional assessment from the school psychologist, Christine Wall-Robison. The assessment indicated that Student was having difficulty interacting with his peers in a socially appropriate manner. The IEP team amended the May 2005 IEP to add social skills training through counseling sessions with the school psychologist once per week for 30 minutes per session. The IEP added a pupil counseling goal that Student "will engage in conversation with peers on a sustained topic of interest using appropriate eye contact, turn taking and listening skills in 3/4 opportunities."[5] The IEP notes reiterated that Student was to receive 40 hours plus 27 compensatory hours of NPA speech and language services. The

[4] The compensatory hours were given due to a delay in the start of the NPA speech services from December 10, 2004, through July 14, 2005.

[5] Ms. Robison testified that this goal was related to one of the goals for the NPA speech provider which called for Student to "be able to maintain a given topic over 3-4 conversational turns with 70% accuracy in 4/5 opportunities."

IEP also required that the school psychologist communicate on a regular basis with the NPA speech provider regarding pragmatic language development.[6]

The May 2, 2006 IEP Meeting and Fall 2006

10. On May 2, 2006, the IEP team met to approve an IEP for the 2006-2007 school year. Student was reported to be meeting the curriculum standards in the classroom although his reading fluency was "slightly below benchmark," and he was having difficulty with math. Student continued to experience difficulty in interacting with peers though he had reached his pragmatic language goals. Because of transitioning problems, pull-out speech sessions were discontinued. The IEP team also continued the same pupil counseling goals and added a receptive language goal that Student "will follow up to three routine directions from the teacher related to classroom work, with 75% accuracy, 4/5 opportunities, with one prompt or repetition." The District's offer of FAPE placed Student in a general education second grade class with language/speech consultation by the school SLP with the general education teacher and resource specialist twice per month for 30 minutes. The IEP team did not include NPA speech services in its offer of FAPE, although Student was permitted to utilize the compensatory hours of NPA services (approximately 23 hours) which had not been used under the September 14, 2005 settlement agreement. A speech and language assessment would be conducted following the end of the compensatory NPA services to determine Student's level of performance and his need for further services. Parents consented to the IEP.

11. Student is assigned to the second grade class of Ms. Elizabeth Kahen for the 2006-2007 school year. Student is struggling to keep pace academically as he is below grade level in language fluency and math. At the beginning of the school year, Student's behavior and distractability interfered with his classroom performance. Student appeared frustrated during transitioning and change as well as easily distracted. Student's progress report for the first period showed that he was "below proficient" in reading and math and "proficient" in all other areas. Student scored "below median" on Open Court tests. Ms. Kahen testified that she had never spoken to the school SLP, Aldona Butkys, as required by the May 2006 IEP. Also, Ms. Kahen could not recall Ms. Butkys ever visiting the classroom to observe Student.

12. In September 2006, Parents received a Special Education Assessment Plan requesting consent to conduct a speech and language assessment utilizing standardized tests to be administered by a SLP.[7] On October 2, 2006, Mother returned the form indicating that she did not consent to the Assessment Plan and elected to submit an independent evaluation report to the IEP team for consideration at the next IEP meeting.

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[6] Ms. Robison and Hope Robertshaw, the NPA employed speech pathologist, testified that no such communications ever occurred.

[7] The form did not list specifically which standardized test or tests would actually be utilized in the assessment.

The NPA Speech therapist's progress report

13. On November 9, 2006, Ms. Robertshaw, an SLP from Miller & Standel, submitted a two page written progress report (Robertshaw report). Ms. Robertshaw reported that Student had met and exceeded his NPA speech goals. Ms. Robertshaw noted that Student continued to have difficulty sequencing, telling a curriculum based story or activities of daily living without the use of picture support and cues, and using past tense and regular/irregular verbs. She also stated that Student still required moderate cues to maintain a topic over five to six turns in a conversation if the topic did not interest Student. Ms. Robertshaw recommended that the IEP team continue NPA speech services and amend the May 2006 IEP to add three new goals: (A) Student will be able to tell a curriculum based story and describe activities of daily living with 80 percent accuracy given minimal cues in four to five opportunities; (B) Student will be able to use the past tense regular/irregular verbs at the conversational level with 80 percent accuracy given minimal cues; and (C) Student will be able to maintain a given topic over five to six conversational turns with 80 percent accuracy in four to five opportunities.

November 14, 2006 IEP Meeting

14. On November 14, 2006, the IEP team met to develop an amendment to the May 2006 IEP. Ms. Robison, the school psychologist, was not in attendance. The IEP document noted that Student had not met his pupil counseling goal, which was similar to the NPA speech goals, and also had not met his receptive language goal. Ms. Kahan reported that Student's performance in academic areas was delayed a half year compared to his peers. Notes to the IEP document state that the IEP team had intended to conduct a speech and language assessment which had not been done. The notes fail to reflect the parents' intent to submit an independent evaluation from an SLP. The document also states that the IEP team utilized an "informal assessment" by Ms. Butkys which was based on reports by Student's general education and resource teachers, classroom observations, and the Robertshaw report. The notes fail to mention that the NPA SLP recommended that Student was in need of further services and that new goals should be adopted. Based on the recommendation of the school SLP, Aldona Butkys (see Factual Finding 15),[8] the IEP team did not recommend continuation of the NPA provided services. The IEP team also adopted a Behavior Support Plan (BSP) to deal with Student's behavior problems.[9] Thus, the May 2006 IEP was amended to include the BSP and did not include speech and language services. Therefore, Student would not receive any speech therapy services.

15. Aldona Butkys has been a licensed speech language pathologist since 1998. She received a B.A. in Business Administration and a M.A. in Communicative Disorders from California State University, Los Angeles. She possesses a Certificate of Clinical

[8] The IEP team failed to consider Ms. Robertshaw's recommendation that Student still required further speech services and that new goals should be established.

[9] Ms. Kahan, Student's teacher, and Joanne Yamaki, Student's assigned Resource Specialist, testified that Student's behavior and transition problems have greatly improved since the adoption of the BSP.

Competence (CCC) from the American Speech Hearing Association and a Clinical and Rehabilitation credential from the State of California. Ms. Butkys provided speech therapy to Student during the 2005-2006 school year and was supposed to provide consultative services to Student's current teacher twice monthly. At the May 2006 IEP meeting, she recommended conducting a language and speech assessment at the end of the compensatory NPA services to determine Student's present level and the need for further speech services. Because of the parents' failure to consent to the Assessment Plan presented in September 2006, she was only able to conduct an informal assessment. The informal assessment was based on teacher reports and classroom observations. Ms. Butkys's recommendation was to discontinue NPA speech services based on Student reaching his NPA goals and the absence of a comprehensive assessment demonstrating Student's level of performance and needs.

16. Ms. Butkyss' informal assessment was not valid as Ms. Butkys had never consulted with Student's teacher (Factual Finding 11), Ms. Butkys had not observed Student in the class (Factual Finding 11), and Ms. Butkys failed to consider the recommendation in the Robertshaw report that Student still required speech and language therapy and that new goals should be established (Factual Finding 14).

17. At the IEP meeting, Parents informed the IEP team of their intention to have an IEE for speech and language conducted. None of the IEP team explained where such an IEE could be obtained. At hearing, Ms. Butkys and Claudette Williams, the school vice principal, acknowledged that they did know if there was a written list of speech pathologists qualified to perform an IEE.

The IEE

18. Christie Sforzini is employed as a SLP with the Community Speech & Hearing Center of Tarzana (Community). Ms. Sforzini received a B.S. and M.S. in Communicative Disorders from California State University, Northridge. She received her CCC and is a California licensed speech-language pathologist. Ms. Sforzini has been licensed for seven years and has worked the entire time at Community. Student was referred to Community by his pediatrician and was evaluated on November 28, 2006, for one and a half hours. Student's parents provided information regarding Student's overall development and current level of skills. On the date of the evaluation, Student was two weeks shy of his eighth birthday. Student was given the Clinical Evaluation of Language Fundamentals 3d Edition (CELF-3). Student scored in the first percentile in the Receptive Language Subtest for sentence structure and the second percentile for Concepts and Directions and Word Classes. In the Expressive Language Subtest, Student scored in the third percentile in Formulating Sentences and in the second percentile for Word Structure and Recalling Sentences. Student's total score placed him one and a half standard deviations from the developmental norm and in the second percentile overall with an age equivalency of 5 years 11 months.[10]

[10] The results obtained by Ms. Sforzini are comparable to those obtained by Ms. Wanamaker in the 2004 assessment. Student continues to place one and a half standard deviations from the mean for his age, and Student's age equivalency is well below his age.

Ms. Sforzini noted in her report that Student, on the surface, has functional language skills to meet his wants and needs, but "his deficits in comprehension and expression can inhibit his academic performance as well as social relatedness." Ms. Sfozini diagnosed Student as presenting a receptive and expressive language disorder and atypical prosody and intonation patterns.[11] Ms. Sforzini opined that Student's atypical prosody and intonation may complicate his language processing ability and the ability to express himself effectively. Ms. Sforzini recommends that Student participate in speech and language services twice per week for six months to facilitate his comprehension and expression of increasingly complex language concepts. She also recommended that Student be placed in a social skills group and individual treatment to learn how to communicate socially because of Student's difficulties in social relatedness which may inhibit his academic progress. Ms. Sforzini recommended seven goals: Student will (A) use verb tenses with 80 percent accuracy; (B) identify and express comparative and superlative concepts using picture/object stimuli with 80 percent accuracy; (C) describe three salient attributes of items with 90 percent accuracy; (D) identify and express the concepts of "similar" and "different" using pictures/objects with 80 percent accuracy; (E) improve his comprehension and expression of abstract terms given minimal verbal cues to describe a picture or action; (F) improve subject-verb agreement to 80 percent accuracy given picture stimuli; and (G) engage in reciprocal commenting over four turns during a structured task while staying on topic.

Failure of District to Consider the IEE at the December 14, 2006 IEP Meeting

19. Student contends that the District committed a procedural violation of the IDEA by failing to consider the IEE submitted by parents. A parent is entitled to obtain an IEE of a child, and the IEP is required to consider the report. Procedural violations of the IDEA may constitute a denial of FAPE if the procedural violations result in the loss of the child's right to a FAPE, cause a deprivation of educational benefits, or significantly impede the parents' opportunity to participate in the IEP team decision-making process.

20. On December 14, 2006, the IEP team reconvened. Present were Lockhurst vice prinicipal Ms. Williamson, Student's general education teacher Ms. Kahen, Student's resource teacher Ms. Yamaki, school SLP Ms. Butkys, school psychologist Ms. Robison, and Mother. The IEP team made no changes to the IEP amendment of November 14, 2006, and speech and language services were still not included in the current IEP.[12] The IEE prepared by Ms. Sforzini was not considered by the IEP team since the contents of the report and the test results were never discussed.[13]

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[11] Ms. Sforzini defined "prosody" as a speech and articulation disorder involving the flow of speech and intonation.

[12] The District has continued the NPA speech therapy following the December 14, 2006 IEP even though the offer of FAPE does not include such services. Thus, compensatory education services are not at issue in this matter.

[13] The IEP meeting notes contain a short summary of Ms. Sforzini's diagnosis. The notes to the IEP reflect that the only discussion of the Sforzini report was limited to a request by Mother to have the report attached to the IEP document. Mother and Ms. Yamaki also testified similarly.

21. The failure by the District to consider the Sforzini IEE led to the Student being denied a FAPE as the District failed to offer services to meet his unique needs (see Factual Finding 22), and the parents' right to participate in the IEP decision-making process being impeded.

Adequacy of the District's FAPE Offer

22. At hearing, Ms. Butkys rendered the opinion that the Sforzini report was incomplete in that Ms. Sforzini only utilized one standardized test,[14] only received background information from parents, failed to consult with Student's teachers, and failed to conduct classroom observations. Ms. Butkys felt that speech services were unnecessary since the seven goals recommended by Ms. Sforzini are incorporated in the second grade curriculum and Student was capable of achieving them without additional support. Ms. Butkys relied entirely on her "informal assessment" in concluding that additional NPA speech services are not required and that new goals need be adopted. Ms. Butkys failed to consider the standardized test results obtained by Ms. Sforzini, the recommendations in the Robertshaw report, Ms. Robison's report that Student had failed to meet his pupil counseling goal which was similar to the NPA speech goal, that the teacher reported that Student's academic level of performance was below his peers, and that he was below benchmark in math and reading. Because Ms. Butkys's "informal assessment" was not valid (see Factual Finding 16) and she failed to consider all data which was presented to the IEP team, her opinion that Student did not need further speech therapy is not persuasive.

23. Student claims that the District's December 14, 2006 offer does not constitute a FAPE because the offer failed to meet Student's unique needs in the area of speech by not offering further NPA speech therapy. The evidence supports Student's claim. The IEP team had sufficient information to conclude that Student requires speech and language therapy. The NPA SLP reported that Student continues to have difficulty sequencing and telling a curriculum based story or daily activities without prompting and requires cues to maintain a conversation over five to six turns. Student's standardized test results, as reported in the IEE, continues to show a one and a half standard deviation below the mean, that he is in below the seventh percentile, and shows an age equivalency of over two years below his actual age. The SLP, who authored the IEE, diagnosed Student with receptive and expressive language disorder and atypical prosody and intonation which may complicate his ability to process language and express himself effectively. The school psychologist reported that Student had failed to meet his pupil counseling goal related to the ability to carry on a conversation which was similar to his NPA speech goals. Student's Open Core Test results demonstrated that he is below benchmarks in reading, writing and math. Finally, Student's teacher reported that he was having trouble keeping up with the curriculum as his performance in academic areas was delayed half a year compared to his peers, and he was below benchmark in fluency which is impacting his reading comprehension. Thus, the District's offer does not constitute a FAPE since it fails to meet Student's unique needs.

[14] Ms. Butkys had previously relied on the findings of the Wanamaker report which only utilized a single standardized test.

District's Failure to Provide a List of Acceptable Assessors

24. A school district is obligated to provide to parents, who request an IEE, information where an IEE may be obtained when the IEE is to be done at public expense. Student contends that District's failure to provide a list of independent assessors acceptable to the District amounted to a procedural violation of the IDEA which caused a deprivation of a FAPE. Since the IEE was not conducted at public expense, the District had no obligation to provide to Student said information. Thus, there was no denial of FAPE because of the District's failure to provide this information.

LEGAL CONCLUSIONS

Applicable Law

1. The petitioner in a special education administrative hearing has the burden to prove his or her contentions at a due process hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528, 163 L.Ed.2d 387].) Accordingly, Student has the burden of proof as to all issues.

2. A child with a disability has the right to a free appropriate public education (FAPE) under the Individuals with Disabilities Education Act (IDEA) and California law. (20 U.S.C. § 1412(a)(1)(A); Ed. Code, § 56000.) FAPE means special education and related services that are available to the student at no charge to the parents, that meet the state educational standards, and that conform to the student's IEP. (20 U.S.C. § 1401(9).)

3. Special education is defined in pertinent part as specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); Ed. Code, § 56363.) California's definition of special education includes both specially designed instruction to meet the unique needs of the student with exceptional needs and related services to enable a student to benefit from such specially designed instruction. (Ed. Code, § 56031.) "Related services" include developmental, corrective, and other support services, such as speech-language pathology, designed to enable a student with exceptional needs to receive a FAPE. (Ed. Code, § 56363, subd. (a).)

4. The IEP is the "centerpiece of the [IDEA's] education delivery system for disabled children" and consists of a detailed written statement that must be developed, reviewed, and revised for each child with a disability. (*Honig v. Doe* (1988) 484 U.S. 305, 311 [108 S.Ct. 592, 98 L.Ed.2d 686]; 20 U.S.C. § 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345.)

5. To determine whether a district offered a student a FAPE, the analysis must focus on the adequacy of the district's proposed program. (*Gregory K. v. Longview Sch. Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314) If the district's program was designed to address the student's unique educational needs, was reasonably calculated to provide him some

educational benefit, and comported with his IEP, then that district provided a FAPE, even if the student's parents preferred another program. A denial of FAPE can be found where the district fails to provide adequate support services so the child can benefit from the educational instruction being given. (*Katherine G. v. Kentfield School Dist.* (N.D. Cal. 2003) 261 F.Supp.2d 1159, 1171.)

6. 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 Ed. of Hendrick Hudson Central School Dist. v. Rowley (*1982) 458 U.S. 176, 206-07 [102 S.Ct. 3034, 73 L.Ed.2d 690].) Second, the tribunal must decide whether the IEP developed through those procedures was reasonably calculated to enable the child to receive special education benefit. (*Ibid*.)

7. In *Rowley, supra, 458 U.S.* at p. 200, the United States Supreme Court addressed the level of instruction and services that must be provided to a student with disabilities to satisfy the requirements of the IDEA. The Court determined that a student's IEP must be reasonably calculated to provide the student with some educational benefit, but that the IDEA does not require school districts to provide special education students with the best education available or to provide instruction or services to maximize a student's abilities. (*Id.* at pp. 198-200.) The Court stated that school districts are required to provide only a "basic floor of opportunity" that consists of access to specialized instructional and related services which are individually designed to provide educational benefit to the student. (*Id.* at p. 201.) An IEP need not conform to a parent's wishes in order to be sufficient or appropriate. (*Shaw v. Dist. of Colombia* (D.D.C. 2002) 238 F.Supp.2d 127, 139 [IDEA does not provide for an "education…designed according to the parent's desires."], citing *Rowley, supra*, 458 U.S. at p. 207.)

8. The Ninth Circuit Court of Appeals has endorsed the "snapshot" rule, explaining that the actions of the District cannot be "judged exclusively in hindsight…an IEP must take into account what was, and what was not, objectively reasonable when the snapshot was taken, that is, at the time the IEP was drafted." (*Adams v. State of Oregon* (9th Cir. 1999*)* 195 F. 3d 1141, 1149, citing *Fuhrmann v. East Hanover Bd. Of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1041.)

9. A parent is entitled to obtain an IEE of a child. (20 U.S.C. § 1415(b)(1).) An IEE is an evaluation conducted by a qualified examiner not employed by the school district. (34 C.F.R. § 300.502(a)(3)(i).) If the parent obtains an IEE, the school district is required to consider the assessment. (Ed. Code, § 56329, subd. (c).)

10. Parents of children with disabilities are also provided procedural protections under the IDEA. (20 U.S.C. § 1400, et seq.) The Supreme Court in *Rowley* also recognized the importance of adherence to the procedural requirements of the IDEA. However, procedural flaws do not automatically require a finding of a denial of a FAPE. Procedural violations may constitute a denial of FAPE only if the procedural inadequacies result in the loss of the child's right to a FAPE, caused a deprivation of educational benefits, or

significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of FAPE. (20 U.S.C. §1415 (f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2); see *W.G. v. Board of Trustees of Target Range School District No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.) Mere technical violations will not render an IEP invalid. (*Amanda J. v. Clark County School District* (9th Cir. 2001) 267 F.3d 877, 892.)

11. Parents are required and vital members of the IEP team. (20 U.S.C. § 1414(d)(1)(B)(i); 35 C.F.R. § 300.344(a)(1); Ed. Code, § 56341, subd. (b)(1).) 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 assessments], (d)(3)(A)(i) [during development of the IEP], (d)(4)(A)(ii)(III) [during revision of an IEP]; Ed. Code, § 56341.1, subds. (a)(1) [during development of an IEP], (d)(3) [during revision of an IEP], & (e) [right to participate in an IEP].) The requirement that parents participate in the IEP process ensures that the best interest of the child will be protected, and acknowledges that parents have a unique perspective on their child's needs, since they generally observe their child in a variety of situations. (*Amanda J., supra*, 267 F.3d at p. 891.) Procedural violations that interfere with parental participation in the development of the IEP "undermine the very essence of the IDEA." (*Ibid* at p. 892.) In order to fulfill the goal of parental participation in the IEP process, the school district is required to conduct, not just an IEP meeting, but a meaningful IEP meeting. (*Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004*)* 392 F.3d 840, 857, citing *W.G., supra*, 960 F.2d at p. 1485.)

12. When a student's parents request an IEE at public expense, a school district is obligated to provide to the parents information where an IEE may be obtained. (34 C.F.R. § 300.502(a)(2).)[15]

Determination of Issues

Issue 1: Did the District fail to offer Student a FAPE at the December 14, 2006 IEP meeting by failing to offer one hour per week of speech and language services through a NPA?

13. Based on Factual Findings 1, 2, 3, 5, 9, 11, 13, 14, 15, 16, 18, 20, 22 and 23 and Legal Conclusions 1, 2, 3, 4, 5, 7, and 8, the District's offer for the 2006-2007 school year does not constitute a FAPE for Student since the omission of speech and language therapy in the IEP fails to meet Student's unique needs since Student is not provided with adequate support services and goals to enable him to benefit from the educational instruction that he is receiving. In order for there to be continuity in services, the speech and language therapy shall be given by the NPA SLP pursuant to the goals recommended in the Robertshaw report.

[15] Section 300.502(a)(2) also requires a school district to provide information to the student's parents about the agency's criteria applicable for IEEs when the IEE is done at public expense. Here, the IEE was not done at public expense.

Issue 2: Did the District deny Student a FAPE for the 2006-2007 school year by failing to consider the IEE obtained by parents at the December 14, 2006 IEP meeting?

14. Based on Factual Findings 18, 19, 20 and 21 and Legal Conclusions 1, 2, 3, 4, 6, 9, 10, and 11, the District committed a procedural violation of the IDEA which impeded Student's right to a FAPE and the parents' participation in the IEP process when the IEP team failed to consider the IEE completed by Ms. Sforzini, including her diagnosis, recommendations and test results, and instead relied solely on an invalid "informal assessment" by the school SLP.

Issue 3: Did the District deny Student a FAPE for the 2006-2007 school year by failing to provide parents with a list of independent assessors acceptable to the District to conduct an IEE?

15. Based on Factual Findings 17 and 24 and Legal Conclusions 1, 6, 10, 11 and 12, the District did not commit a procedural violation when it failed to provide parents information where an IEE can be obtained since the IEE was not to be conducted at public expense.

ORDER

The District shall provide NPA speech therapy services twice per week for 30 minutes per session for the 2006-2007 school year in accordance with the goals and objectives recommended by Ms. Robertshaw in her November 9, 2006 progress report.

PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that this decision indicate the extent to which each party prevailed on each issue heard and decided in this due process matter. Pursuant to this mandate, it is determined that Student prevailed on Issues 1 and 2, and the District prevailed on Issue 3.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by this Decision. Pursuant to Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within ninety (90) days of receipt.

Dated: May 7, 2007

ROBERT F. HELFAND
Administrative Law Judge
Office of Administrative Hearings
Special Education Division