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

In the Matter of : STUDENT, Petitioner, vs. SEQUOIA UNION HIGH SCHOOL DISTRICT, Respondent.	Case No. N 2005070067

AMENDED DECISION[1]

This matter was heard before Marilyn A. Woollard, Administrative Law Judge (ALJ) for the Office of Administrative Hearings (OAH), Special Education Division, State of California, on July 14, 2005, in Redwood City, California.

Petitioner Student was represented at the hearing by his attorney, Michael Zatopa. Also present at the hearing on Student's behalf was his father, Father
Respondent Sequoia Union High School District (District) was represented at the hearing by its attorney, Deputy County Counsel Judith Holiber. Also present at the hearing on behalf of the District was its director of special education, Joyce Willett. [2]

Petitioner called the following witnesses: his father, clinical psychologist John Brentar, and clinical psychologist Dr. Blythe Anne Corbett. The District called its director of special education, Joyce Willett, as a witness.

Oral and documentary evidence was received. The record was then closed and the matter was submitted for decision on July 14, 2005.

[1] This Decision is amended to provide the correct citation for the right to appeal. In all other respects, the Decision is unchanged.
[2] At the outset of the hearing, Student's attorney Mr. Zatopa and Ms. Holiber, who represented Respondent Redwood City Elementary School District (RCESD), advised the ALJ that all issues relating to Respondent RCESD had been settled. The ALJ then dismissed Redwood City Elementary School District as a party to this matter.

ISSUES

I. Did the District's offer to place Student at the Stanbridge Academy, a day program, constitute a free appropriate public education (FAPE) for the 2005-2006 school year, or was an offer of residential placement required?

II. If the District failed to offer Student a FAPE, must it convene an individualized education program (IEP) team meeting to offer him a residential placement for the 2005-2006 school year?

FINDINGS OF FACT

Historical Background

1. Student is a sixteen year old student who is currently eligible for special education and related services as student with autism.[3] Student has had a history of delayed speech, mild cerebral palsy, right hemiparesis (weakness), and Tourette's syndrome. Student has never received educational services from the District. For the past two school years beginning in September 2003, Student has attended The Pathways School (hereafter, Pathways), a residential, nonpublic school located in Norristown, Pennsylvania. This placement has been funded in part by the Golden Gate Regional Center (GGRC).

2. In March 2002, Student was evaluated at the Children's Health Council by educational specialist Janet Rulifson, and by clinical psychologist, Dr. John Brentar, to plan an appropriate high school placement for him. From his assessment, Dr. Brentar confirmed that Student met the diagnostic criteria for autistic disorder. Dr. Brentar also determined that Student's cognitive abilities were in the low-average range overall, without significant discrepancy between his verbal and performance domains, and that he was susceptible to anxiety particularly in unstructured situations.

3. On November 25, 2002, a neuropsychological evaluation of Student was conducted by assistant clinical professor Blythe A. Corbett, Ph.D., at the M.I.N.D. Institute

[3] The basis for Student's eligibility for special education and related services has shifted over the years. As a preschooler, Student was initially determined to be eligible based upon a pervasive developmental disability, not otherwise specified (PDD-NOS). Joint Exhibit at 16. In middle school, Student was classified as a student with an emotional disturbance (ED), as well as a specific learning disability. Testimony of Father, Joint Ex. at 14. At his October 2001 triennial review, Student's primary ED eligibility was expanded to include an "other health disability" to address his Tourette's Syndrome. Following his assessment by the Children's Health Council and the M.I.N.D. Institute, Student's eligibility was changed to autism, based upon his autistic disorder, which Dr. Corbett testified is his current diagnosis. Joint Ex. at 14.

of the University of California at Davis. Dr. Corbett gave Student a primary diagnosis of autistic disorder and a secondary diagnosis of Tourette's disorder.

4. On June 12, 2003, GGRC denied Student eligibility for its services, based upon the finding of its examiner that he did not meet the diagnostic criteria for autistic disorder, cerebral palsy, epilepsy, or mental retardation. Thereafter, Student's attorney, Mr. Zatopa, requested that Student's eligibility for regional center services be reevaluated in light of his November 2002 diagnosis of autism by the M.I.N.D. Institute.

5. In September 2003, Student began attending Pathways, a residential placement in Pennsylvania. On September 17, 2003, Student participated in a psychiatric admission evaluation at Pathways conducted by child and adolescent psychiatrist, John Franks.[4] From his evaluation, Dr. Franks diagnosed Student with autistic spectrum disorder (high functioning), obsessive-compulsive disorder, and Tourette's syndrome. Dr. Franks recommended that Student participate in structured residential support and supervision, medication monitoring, social skills group and individual psychotherapy to define and understand his basic emotions and how to use the language of emotions in appropriate social settings. Joint Ex. at 87. Dr. Franks did not testify at the due process hearing.

6. On July 21, 2004, GGRC executive director James Shorter advised Pathways that Student was an eligible GGRC consumer and that his placement at Pathways would be funded from July 5, 2004 through June 16, 2005. On October 8, 2004, Mr. Zatopa was advised by Mr. Shorter that GGRC funding for Student's placement at Pathways would terminate effective June 17, 2005, and that any reauthorization in GGRC's funding for Student's residential placement at Pathways "shall be contingent upon the family's demonstration that they have pursued funding from the public schools to the level of an independent hearing officer." (Joint Ex. at 43-44).

7. On April 7, 2005, Mr. Zatopa filed a request for a due process hearing on Student's behalf. One of the issues raised for hearing was whether Student requires a residential placement in order to receive a free appropriate public education (FAPE) for the 2005-2006 school year.[5]

8. On June 1, 2005, in preparation for his triennial review, District school psychologist Shelley Patnoe conducted a psycho-educational assessment of Student by interviewing Student and his father, reviewing educational records, and analyzing the results of rating scales. Student's father completed the Adaptive Behavior Assessment System II (ABAS II), and Student completed the Achenbach Youth Self Report and the Reynolds

[4] This report indicates that Student was admitted to Pathways on September 2002; however, it was signed by Dr. Frank on September 17, 2003. Student's father testified that he began attending Pathways in September 2003, at the time he would have begun ninth grade, and this testimony is supported by the IEP and the District's assessments. Joint Ex. at 7.

[5] This matter was placed off calendar at the parties' request from April 18, 2005 through June 17, 2005, when Mr. Zatopa requested that it be placed on calendar for hearing.

Adolescent Depression Scale – 2nd edition. The results of these rating scales indicated that Student had ongoing needs in adaptive behavior, particularly in social and practical living skills, that anxiety was an area of ongoing concern, and that his dysphoric mood scale was slightly elevated. From this assessment, Ms. Patnoe concluded that Student continued to have needs in the areas of social/interpersonal skills and adaptive functioning as reported by Pathways' staff. She also reported that Student was passing all of his classes at Pathways with a C+ or better.

9. On June 5, 2005, Student was assessed by District speech pathologist Susan Fan. During her fifty-minute session with him, Ms. Fan observed that Student engaged in predominately appropriate conversation, used good eye contact, spoke in full sentences, and asked appropriate questions about the special education program and students at a comprehensive high school. Ms. Fan observed some perseveration on the topic of what types of special education students attended Sequoia High School, and some anxiety when activities or tasks shifted. Ms. Fan administered the Test of Problem Solving (TOPS) – Adolescent Level, the Pragmatics Profile from the CELF-4, the Social/Emotional Skills Rating Scale – Student Form, and informally observed Student's voice, fluency and articulation skills. From her assessment, Ms. Fan concluded that Student demonstrated adequate language and speech skills. Specifically, she determined that Student had developed general social pragmatic skills to adequately hold a one-to-one conversation. She also concluded that Student required continuing improvement in skills relating to interpersonal relationships and affective skills with peers and adults to independently function in the community. According to Ms. Fan, these weakness were not attributable to any limited language skills by Student, but were social-cognitive deficits characteristic of individuals, like Student, who are diagnosed with high functioning autistic disorder.

June 23, 2005 IEP and Offer of Placement at Stanbridge Academy

10. On June 23, 2005, the District convened an IEP team meeting to review its assessments by the school psychologist and speech/language therapist, and to offer special education and related services for the annual period that extends through June 24, 2006. The IEP team agreed that Student required a nonpublic school to benefit from his education; however, the IEP team members disagreed about whether or not Student required a residential placement to benefit from his education. Student's father asserted that Student required a residential placement due to his need for integrated services to address his social, transition, and academic needs. The District members of the IEP team concluded that Student did not require a residential placement to meet these needs.

11. For the 2005-2006 school year, the District IEP team members offered Student the following placement and services:

- placement at Stanbridge Academy, a local nonpublic day school,
- twice monthly speech and language consultation services,

- pre-vocational, vocational and transitional services that would include job skills development, job placement, job coaching, and travel skills, to be provided through the District's Workability Program, and

- a referral to county mental health for an evaluation for counseling services.

12. At the conclusion of the IEP meeting, Student's father indicated that he agreed with the offer of services outlined in the IEP "with the exception of school placement and need for integrated residential program."

Student's Unique Needs

13. The parties agree that Student has unique needs arising from his disabilities in four broad areas. First, Student has a unique need for an academic placement in a small, structured setting that provides an opportunity for individualized attention, particularly in the area of reading and math skills. Second, as a sixteen year old student, Student has a unique need for services to assist him in his transition from secondary school to independent living and employment after high school. Third, Student has a unique need for assistance in the development of functional life skills. Fourth, Student has a unique need for assistance in social skills usage and peer interaction. According to Dr. Brentar, Student presents with a fairly flat affect and has difficulty initiating conversations. He also has some impulse control issues that may affect his ability to form or maintain friendships and he requires assistance in hygiene and self dressing. (See generally, testimony of Dr. Brentar and Dr. Corbett; Children's Health Council assessment; assessment of school psychologist Ms. Patnoe, incorporating recommendations of M.I.N.D. Institute).

14. The only component of the District's offer challenged by Student is its offer of placement in a day school, rather than in a residential placement. For example, Student's father testified that he understood that the District's offer of services under its Workability Program was designed to address Student's unique transitional needs. This acknowledgement was corroborated by the District's director of special education, Joyce Willett, who testified that its Workability Program would be brought to Student at Stanbridge Academy. Her testimony further established that the Workability Program would entail subsidized employment with the assistance of job coaches, as well as travel training, and would also encompass the development of functional life and self help (i.e., dressing and hygiene) skills.

Testimony Regarding the Appropriateness of Stanbridge Academy

15. Stanbridge Academy is designed to serve and has successfully educated high functioning autistic students, as well as students with Tourette's syndrome and anxiety disorders. Testimony Michael K., Dr. Brentar, Joyce Willett, Joint Ex. at 20 - 38.

Stanbridge is a structured program with a small student-to-teacher ratio that offers individualized instruction according to each student's IEP in a manner designed to promote academic success. Several of Dr. Brentar's students have successfully transitioned from Stanbridge to college. Stanbridge includes development of social and functional skills as an integral part of its curriculum, and provides students with opportunities for socialization both at school and through outings in the community.

16. In his March 2002 psychological assessment of Student, Dr. Brentar determined that Student "exhibits the ability to function well in highly structured and predictable environments," and he recommended that "Student's educational and emotional needs are best addressed through a special day class." Dr. Brentar also specifically recommended a private school placement for Student at Stanbridge Academy in San Mateo.[6] Joint Ex. at 83.

Testimony Regarding the Need for Residential Placement for Educational Purposes

17. The testimony of Dr. Brentar and of Dr. Corbett established that Student does not currently require a residential placement to address his unique educational needs or to receive benefit from his educational program. Both Dr. Brentar and Dr. Corbett had initially determined that Student did not require a residential placement to benefit from his education at the time of their assessments in 2002. In addition, both Dr. Brentar and Dr. Corbett expressed their opinion that Student does not currently require a residential placement to benefit from his education for the 2005-2006 school year.

18. In addition to their initial assessments of Student, both Dr. Brentar and Dr. Corbett reviewed Student's educational records and progress reports provided by Pathways. Joint Ex. at 85 through 200. From their review of these records, each of these witnesses concluded that Student's current educational needs remained substantially similar to those they identified in their respective assessments. In Dr. Brentar's opinion, Stanbridge is still an appropriate placement for Student, based upon his assessment of Student, his personal experience working with and evaluated students who have attended Stanbridge, and his review of Student's educational records from Pathways. In Dr. Corbett's opinion, Student does not require a residential placement because he is a high functioning student with autistic disorder who has an I.Q. in the solidly average range, good fine motor skills, "quite good" language skills, and many academic skills that are either age-appropriate or progressing appropriately. In Dr. Corbett's opinion, these factors demonstrate that Student could benefit from a non-residential placement.

19. Student's father testified that he believed a residential placement was necessary for Student because he requires the consistent support offered in a residential, "24-7" structure.

[6] While not recommending a residential placement, Dr. Brentar acknowledged that Student's parents, who are divorced, might wish to consider a boarding school placement and that Student had expressed an interest in such a placement if it would help him with friendships. Joint Ex. at 84.

20. There was no expert testimony that Student required a residential placement to benefit from his educational program.

Credibility of Witnesses

21. The testimony of both Dr. Brentar and Dr. Corbett is entitled to greater weigh than that of Student's father. Dr. Brentar is a clinical psychologist of considerable experience, whose accomplishments include postdoctoral work at Stanford University and several years of experience at the Children's Heath Council, including one year dedicated to the Council's special education assessment unit. Dr. Corbett has participated in a two-year post doctoral fellowship in pediatric neuropsychology, and was recruited to the M.I.N.D. Institute, initially as a staff psychologist. Dr. Corbett currently works at the M.I.N.D. Institute as an assistant clinical professor in the Department of Psychiatry, where she divides her time between clinical work (20 percent) and research (80 percent) with predominantly autistic children. In addition, each of these witnesses conducted a detailed assessment of Student -- Dr. Brentar in March of 2002 and Dr. Corbett in November of 2002-- and a detailed review of his educational and social progress records from Pathways.

CONCLUSIONS OF LAW

I. Did the District's offer to place Student at the Stanbridge Academy, a day program, constitute a free appropriate public education (FAPE) for the 2005-2006 school year, or was an offer of residential placement required?

Applicable Law

22. Under both State law and the federal Individuals with Disabilities Education Act (IDEA), students with disabilities have the right to a free appropriate public education (FAPE). 20 U.S.C. §1400 (2005); Education Code § 56000. The term "free appropriate public education" means special education and related services that are available to the student at no cost to the parents, that meet the State educational standards, and that conform to the student's individualized education program (IEP). 20 U.S.C. § 1401(9). "Special education" is defined as specially designed instruction, at no cost to parents, to meet the unique needs of the student. 20 U.S.C. § 1401(29). The term "related services" includes transportation and other developmental, corrective, and supportive services as may be required to assist a child to benefit from special education. 20 U.S.C. § 1401(26). Education Code § 56363 (a) similarly provides that designated instruction and services (DIS), California's term for related services, shall be provided "when the instruction and services are necessary for the pupil to benefit educationally from his or her instructional program." "If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child." 34 Code of Federal Regulations § 300.302.

23. In Board of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley, 458 U.S. 176, 200, 102 S.C. 3034 (1982), the United States Supreme Court addressed the level of instruction and services that must be provided to a student with disabilities to satisfy the requirement 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 that maximize a student's abilities. Id. at 198 - 200. The Court stated that school districts are required to provide only a "basic floor of opportunity" that consists of access to specialized instructional and related services which are individually designed to provide educational benefit to the student. Id. at 201. At the administrative hearing, the school district has the burden of proving that it has complied with the IDEA, including that it has offered an appropriate educational placement for the student. Clyde K. v. Puyallup Sch. Dist. No. 3, 35 F.3d 1396, 1398 (9th Cir. 1994).

24. To determine whether the District offered Student a free appropriate public education for the 2005-2006 school year, the focus is on the adequacy of the placement actually offered to him by the District at Stanbridge Academy, rather than on the residential placement at the Pathways School preferred by the parent. Gregory K. v. Longview School District, 811 F.2d 1314 (9th Cir. 1987).

25. To constitute a FAPE as required by the IDEA and Rowley, the District's offer must meet the following substantive requirements: (1) have been designed to meet Student's unique needs; and (2) have been reasonably calculated to provide Student with some educational benefit.[7] As discussed below, the weight of the evidence persuasively establishes that the District's offer of placement in a day treatment program, rather than in a residential program, was designed to meet Student's unique needs and to provide him with some educational benefit.

Was the District's Offer Designed to Meet Student's Unique Needs?

26. As discussed in Paragraph 15 above, the District's offer of placement at Stanbridge Academy for the 2005-2006 school year was designed to meet Student's unique needs as described in Paragraph 13, in conjunction with the transitional/Workability Program services, speech and language services, and referral to county mental health, which are not contested by the parent.

27. No evidence supports a conclusion that Student requires a residential placement to benefit from his special educational program during the 2005-2006 school year.

[7] Because the school year has not yet begun, it is unnecessary to address the additional requirement that the services actually provided comport with those offered in the IEP. Further, while the Supreme Court in Rowley also recognized the importance of adherence to the procedural requirements of the IDEA (Id. at 205), it is unnecessary to address this portion of the FAPE analysis because Petitioner did not raise any alleged procedural violations.

Was the District's offer reasonably calculated to provide Student with some educational benefit?

28. The evidence outlined above not only demonstrates that the District's offer of placement at Stanbridge Academy for the 2005-2006 school year was designed to meet Student's unique needs, but also establishes that its offer was reasonably calculated to provide Student with some educational benefit. In addition to this evidence, the IEP team determined that Student's goals and objectives from Pathways continued to be appropriate for him and therefore adopted these goals as part of his June 23, 2005 IEP. Joint Ex. at 9. A review of these goals, which cover the broad areas of social, academic, and transition/career skills, demonstrates that the annual goals and objectives are reasonably calculated to provide Student some educational benefit.[8] Moreover, no evidence was produced at the hearing to indicate that these goals could not be appropriately implemented in the context of a full day program at Stanbridge Academy. By contrast, the testimony of special education director Ms. Willett established that Stanbridge staff has successfully implemented the IEPs of other District students.

29. Accordingly, the ALJ concludes that the District's offer of placement at Stanbridge Academy for the 2005-2006 school year was reasonably calculated to provide Student with some educational benefit in his areas of unique need.

30. From the foregoing, the ALJ concludes that the District has offered Student a FAPE for the 2005-2006 school year.

II. If the District failed to offer Student a FAPE, must it convene an individualized education program (IEP) team meeting to offer him a residential placement for the 2005-2006 school year?

31. Because the District has offered Student a FAPE for the 2005-2006 school year as discussed in Issue I, there is no basis for Student's proposed remedy. Accordingly, the ALJ concludes that there is no factual basis to order the IEP team to reconvene to offer him a residential placement for the 2005-2006 school year.

32. In summary, there was no evidence provided at the hearing to establish that Student requires placement in a residential setting for the 2005-2006 school year to benefit from his education. Rather, the weight of the evidence firmly established that the District's offer of placement at Stanbridge Academy nonpublic school, together with related services from the speech and language therapist and its Workability Project, was designed to meet

[8] These goals specifically include social skills (responding appropriately to peers, displaying age appropriate behavior with staff); academic skills (organizing educational materials and assignments; reading comprehension at a seventh grade level, including sequencing events, drawing inferences, identifying main idea and causal relations; using prewriting skills to develop and maintain topics in written assignments; identifying parts of speech from a vocabulary list and from reading assignments at a seventh grade level; solving a variety of math problems, including functional use of whole numbers and money in word problems), and vocational skills (staying on task, being tolerant towards others and exhibiting socially acceptable behavior). Joint Ex. at 193 - 200.

Student's unique educational needs and was reasonably calculated to provide him with some educational benefit. While a residential placement may indeed be appropriate for other reasons, it is not necessary for Student to receive a free appropriate public education under the IDEA or State special education law.

ORDER

33. Accordingly, Student's request for relief against the Sequoia Union High School District is denied.

PREVAILING PARTY

34. Pursuant to California Education Code § 56507(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

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

DATED: August 9, 2005

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MARILYN A. WOOLLARD
Administrative Law Judge
Special Education Division
Office of Administrative Hearings