

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

In the Matter of:

ROSEDALE UNION SCHOOL DISTRICT,

Petitioner,

v.

STUDENT,

Respondent.

OAH CASE NO. N 2006110518

DECISION

Administrative Law Judge (ALJ) Glynda B. Gomez, Office of Administrative Hearings, Special Education Division (OAH), heard the above-captioned matter in Bakersfield, California on May 15-17, 2007, and May 22, 2007.

Rosedale Union School District (District) was represented by Stacy L. Inman, Esq. of Schools Legal Service. Dr. Thomas Ewing, Director of Pupil Services was present on May 15, 16 and 22, 2007. Danielle Hester, School Psychologist, was present on May 17 and 22, 2007.

Student (Student) was not present. Student was represented by Gregory A. Muir, Esq. of The Law Offices of Young Wooldridge, LLP. Student's mother and father (Parents) were present each day of the hearing.

The District's Due Process Hearing Request was filed on November 22, 2006. An Amended Due Process Hearing Request was filed on May 4, 2007. Testimony and documentary evidence were received. The record remained open until June 15, 2007, for the submission of closing briefs. On June 15, 2007, the parties filed their respective closing briefs. The record was closed on June 15, 2007.

ISSUE

Has the Rosedale Union School District (District) offered Student a free appropriate public education (FAPE) for the 2007-2008 school year (August 20, 2007, to April 24, 2008) in the individualized education program (IEP) dated April 24, 2007?

CONTENTIONS OF THE PARTIES

District contends that the April 24, 2007 IEP offers Student a FAPE. District further contends that Student's current placement is not appropriate and was only intended to be temporary.¹ District contends that Student's goals and objectives will best be met in a Kern County Superintendent of Schools (KCSS) severely handicapped class located on the Almondale Elementary School campus in the District.

Student contends that the April 24, 2007 IEP does not provide a FAPE because it places Student in a KCSS Special Day Class (SDC) for the severely handicapped which is not the least restrictive environment (LRE) for Student, who is currently placed in a District learning center in her neighborhood school. Parents contend that Student should remain with her three siblings in the neighborhood school.

FACTUAL FINDINGS

Jurisdiction

1. Student is a seven-year-old special education student born March 29, 2000, residing within the boundaries of the District. She will be in the second grade for the 2007-2008 school year.

Background

2. Student is eligible for special education services under the primary category of mental retardation with speech and language impairment as a secondary category of eligibility. Student attended kindergarten in the Panama Buena Vista Union School District (PBVUSD) at McAuliffe School. Student was in a kindergarten special day class (SDC) for the severely handicapped with mainstreaming in a general education kindergarten class for recess and lunch for a total of 50 minutes per day. She also received speech and language services from a speech pathologist twice a week for 20 minutes. The kindergarten SDC was a newly formed program consisting of students that were selected to participate based upon the similarities of their IEPs, functional levels and academic needs. Based upon assessment results and observations, PBVSD opined that Student was mildly mentally retarded with language and speech impairment. PBVSD determined Student's unique needs were in the

¹ District referred to the placement as an "Administrative placement."

areas of cognitive/general abilities, adaptive behavior/self-help, motor/perceptual, oral communication/language, pre-academic/academic and pre-vocational/vocational areas.

3. In August of 2006, Student's family moved into the Rosedale Union School District (District) and Student transferred to the District. Student's mother provided Student's records and the PBVSD IEP to the District before the start of the school year and immediately upon moving into the District. Both Districts are within the Kern County Consortium Special Education Local Plan Area (SELPA). Student is in the first grade and currently placed in the learning center (CLC) at Centennial Elementary School (Centennial). Student is mainstreamed into the general education first grade classroom for morning activities, assemblies, story time, library, recess and occasionally for physical education, and receives speech and language services twice a week for twenty minutes per session.

Initial District Placement Offer

4. When a school district's program is designed to address a student's unique educational needs, is reasonably calculated to provide some educational benefit, and comports with the IEP, a FAPE has been offered.

5. On August 21, 2006, Centennial psychologist Danielle Hester (Hester) and special education teacher Gayle Taylor (Taylor) prepared a transfer form for Student with an administrative placement that approximated the PBVSD IEP as closely as possible within the limits of the Rosedale School District's programs. Parents consented to the placement. It provided for 40 minutes of speech and language per week and 1070 minutes of time per week in the CLC learning center. The remainder of the school day was to be spent in a general education first grade class. Student continued her work on the kindergarten goals set forth in the PBVSD IEP. Those goals were:

- (1) To improve verbal skills using the sounds t, d, p, and b and to produce CVC sounds.
- (2) To improve receptive language, complete tasks with little adult supervision.
- (3) State her name and age, six sets of quantitative concepts and know community signs consistently.
- (4) Verbalize toileting needs.
- (5) Trace her name on a piece of paper and copy shapes.
- (6) Identify covers of book and title page, recognize upper and lower case letters and match all the consonant and short vowel sound to appropriate letters.
- (7) Count, match and recognize numbers to 10 and match quantities to five.

6. District does not have its own SDC for the severely handicapped children and must obtain Kern County Superintendent of Schools (KCSS) acquiescence to offer placement in a KCSS SDC classrooms. Accordingly, District could not provide Student with an initial placement in an SDC for severely handicapped students without KCSS involvement and approval.

7. KCSS has three elementary school SDC classes for the severely handicapped on District campuses. Although the classes are in District facilities they are administered by KCSS and staffed by KCSS. The kindergarten/first grade combination class is housed at Van Horne elementary school (Van Horne). The second and third grade combination class is located at Almondale and the fourth, fifth and sixth grade combination class is located at Centennial.

8. On September 18, 2006, October 17, 2006, and November 18, 2006, a series of IEP team meetings were held wherein Student's assessments and a permanent placement were discussed. Parents were surprised that the proposed permanent placement was not in the CLC at Centennial. Parents mistakenly believed that the administrative placement was the permanent placement for Student. The IEP team discussed and offered a change of placement from CLC to the KCSS SDC for severely handicapped students for the 2006-2007 first grade school year. The kindergarten/first grade combination class was located at Van Horne. Student's parents visited Van Horne, but refused to consent to placement there because they believed the students' classroom behaviors were disruptive and the children in the classroom were lower-functioning than Student. Parents were concerned about Student regressing and mimicking the lower-functioning and disruptive behavior of other children. Parents gave examples of instances when Student mimicked disruptive behaviors she saw in extracurricular activities designed for children with special needs.

9. Parents wanted Student to remain at Centennial with her three siblings and believed that she had made progress in the CLC. They believed Student's placement in the KCSS SDC for severely handicapped children would be detrimental to her because she functioned on the mid to higher end of the spectrum of students in the classroom.

10. Pursuant to a mediation agreement, Student completed the 2006-2007 school year in the CLC under the provisions of the administrative placement and a new IEP meeting was held on April 24, 2007.

2007-2008 School Year

Identification of Unique Needs

11. In September of 2006, Student was assessed by Hester² using the Universal Non-verbal Intelligence Test (UNIT). The UNIT is a comprehensive assessment of general intelligence ability (IQ) and is designed to measure a broad range of memory and reasoning

² Hester is a licensed school psychologist. She received her license in May of 2006. She obtained a Master of Science in School Psychology from California State University, Fresno in May of 2006. She received a Bachelor of Arts in Psychology from California State University at Fresno in August of 2003. Hester has a certificate in Applied Behavioral Analysis, a Behavior Intervention Case Manager Certificate, National Certification in School Psychology, and a Professional Clear Pupil Personnel Services Credential. Her first and only position as a school psychologist has been with the District. She completed a 1200 hour internship and 500 hour practicum study before obtaining her school psychologist license.

ability. The UNIT was used because Student's expressive language was almost unintelligible to the assessor. Student received a standard score of 71 on the full scale intelligence quotient (FSIQ) which is well below average for her age. The score was consistent with the assessments previously conducted by the PBVSD indicating mild mental retardation.

12. In September of 2006, the Adaptive Behavior Assessment System for Children-Second Edition (ABAS-II) was completed by the general education teachers Janet Bianco and Shawna Gray, Student's mother, and a special education instructional assistant for Student. ABAS-II rating scales indicate Student's overall adaptive functioning was within the significantly below average range.

13. The Assessment, Evaluation and Programming System for Infants and Children-Second Edition (AEPS-II) is a curriculum-based measurement tool designed for use by school staff and parents to assess and evaluate a child's skills and abilities. The AEPS-II was designed to gather appropriate information to aid in the development of goals and objectives for students with disabilities. Information is gathered through the use of a Family Report completed by parents and a Child Observation Data Recording Form filled out by school staff and through direct testing. The information derived from the AEPS, in September of 2006, indicated that Student's overall adaptive functioning was significantly below average.

14. In four sessions from September 5, 2006, to September 14, 2006, Speech and Language Pathologist Susan Walker, administered the Goldman-Fristoe Test of Articulation -2 (GFTOA2), the Preschool Language Scale-4 (PLS-4), obtained a spontaneous speech sample, and conducted an oral-facial examination. Student had normal voice quality for her age and gender. There were no disorders of pitch, prosody or volume noted. Student demonstrated fluent speech. Walker conducted an oral facial examination. All structures and movement were observed to be within normal limits; however, Student demonstrated difficulty in tasks that required more coordination than others. She was unable to move her tongue from side to side within her mouth, but was able to make the movement with the tongue protruded. Student was unable to participate in certain exercises or produce sounds upon command.

15. The Goldman-Fristoe Test of Articulation provides a means of assessing a child's articulation of sounds. Results from the test were used with the Kahn-Lewis phonological evaluation to determine Student's pattern of sound errors. Student had the following deficiencies noted in speech: final consonant deletion, consonant sequences, velars, liquid deletion, stridency deletion and initial consonant deletion. Walker determined that Student's speech was only ten percent intelligible to unfamiliar listeners. Walker opined that Student had profound delay in phonological skills.

16. The Preschool Language Scale-4 (PLS-4) is used to assess receptive and expressive language skills and evaluate the relative ability of infants and young children. The PLS-4 also assesses behaviors considered to be language precursors. Student received a

standard score of 50 in total language on the test which equates to an age equivalent of two years and ten months. Student was only able to participate in the assessment for limited amounts of time and required frequent breaks due to inability to remain on task. Student has a severe language delay. Her communications skills were typical of children two to three years old. She was six and a half years old at the time of examination.

17. At Parents' request, further assessments were conducted. The Woodcock-Johnson Test of Cognitive Abilities (WJ-III COG) was administered in October 2006. The WJ-III COG provides a verbal ability score, thinking ability score, cognitive efficiency score, and a general intelligence ability (GIA) score. Student received a GIA standard score of 50, verbal ability standard score of 55, thinking ability standard score of 62 and a cognitive efficiency standard score of 53, all of which were significantly below average. As Hester noted in her report, the scores may not be reflective of Student's ability because the test requires extensive use of expressive language. Student's speech/language impairment may have artificially depressed her scores.

18. Also in October 2006, Taylor administered the Woodcock Johnson Tests of Achievement-Third Edition (WJ-III TA) an achievement test. Taylor has 24 years of experience as a special education teacher and holds a special education teaching credential. Student scored significantly below average in basic reading skills and math reasoning and in the low average range for reading comprehension. Although the math calculation and written expression portion of the tests were administered, no standard scores were calculated for Student due to her age and poor performance on the tests.

19. In October 2006, The Dynamic Indicators of Basic Early Literacy Skills (DIBELS) was administered to Student by Taylor. The DIBELS consists of short probes designed to assess four different pre-reading skills. These areas are initial sound fluency, phoneme segmentation fluency, nonsense word fluency and oral fluency. The DIBELS assessment indicated that Student was at-risk for reading deficits and needed instruction to identify letter names, individual phonemes, and to sound out segments of words.

20. Taylor also assessed Student using the Kindergarten Assessment of Proficiency Standards (KAPS) which is a test developed by the District to assess kindergartners' skills in areas directly related to the state proficiency standards for kindergartners. The KAPS does not yield a standard score. On the KAPS, Student mastered only six of the 37 measured skills.

21. In November 2006, Taylor administered the Revised Brigance Diagnostic Inventory of Early Development (Brigance), designed for children below the developmental level of seven. The Brigance scores indicate that her general knowledge and comprehension are at the three year-old level and her general speech and language development is typical of two and a half to three and a half year-old children. Her basic math is below the three year-old level. She did not demonstrate consistent response in the areas of readiness, basic reading, or manuscript writing, so no rating was given.

22. After review of the assessments, the IEP team determined that Student had unique needs in the areas of communication, reading, math, written language and adaptive behavior. Parents agreed that Student has unique needs in those areas.

23. Student's present levels of performance were identified at the April 24, 2007 IEP. As of April 24, 2007, Student inconsistently identified three sets of qualitative concepts and recognized her name in a group of names. Student did not correctly identify her name in a group when other words began with "k" and was not able to identify numbers "1" to "10." Student traced her name, recognized 16 to 18 of 52 letters, recognized 18 to 23 sounds out of 52, counted to six and matched quantities to four. The speech pathologist noted that Student's conversational speech was intelligible about ten percent of the time when content was unknown. She has experienced slow progress in articulation and language. Student was unable to complete first grade curriculum in the general education classroom and her communication skills continued to be a weakness. Student still needed adult prompts to carry out daily activities.

Goals

24. From the review of the present levels of performance and identification of Student's unique needs, the following goals were written at the April 24, 2007 IEP team meeting:

(1) By April 2008, when given up to 10 objects, Student will count, recognize, represent, name and order the number of objects with 90% accuracy in four of five trials as measured by teacher made tests and teacher charted data.

(2) By April 2008, Student will provide an item with her personal information (i.e. 3x5 card, id bracelet, etc.) when requested 100% of the time on four of five trials as measured by teacher made assessments.

(3) By April 2008, Student will write her first and last name with a model with nine out of eleven characters legible in four out of five trials as measured by teacher made assessments.

(4) By April 2008, Student will use her writing skills to communicate personal information by writing her phone number without a model with seven out seven numbers in four out of five trials as measured by teacher made assessments.

(5) By April 2008, Student will work in a small group activity and complete age appropriate activities with minimal adult prompting.

(6) By April 2008, Student will improve expressive language skills in four out of five trials with 80% accuracy as measured by therapist made assessments.

(7) By April 2008, Student will correctly product the following phonological patterns: final consonants, initial consonants, velars and plosives with 70% accuracy in single words as measured by therapist charts.

(8) By April 2008, Student will improve receptive language skills as measured by therapist made charts.

25. Each goal was accompanied by multiple short-term objectives for meeting the goal. Student's Parents had no objection to the adequacy of the goals and objectives and agreed with the goals and objectives presented in the April 24, 2007 IEP.

Placement and Services

26. The District IEP team members recommended placement of Student in the KCSS SDC combination second and third grade class for severely handicapped students at Almondale. The IEP also provided for transportation to and from school, extended school year (ESY) and speech and language services twice per week. The goals and services are not at issue. Parents' sole disagreement is with the placement at KCSS SDC. Parents' concern was that the proposed classroom placement in the KCSS SDC severely handicapped second and third grade combination class at Almondale was not appropriate and was not the LRE for Student. Parents do not believe the placement is appropriate and prefer that Student remain in the current placement. Parents were also concerned that, similar to the previously proposed Van Horne kindergarten/first grade KCSS SDC combination class, Student would be in the mid to higher level on the spectrum of functioning in the KCSS SDC Almondale class and would mimic lower-functioning behaviors. KCSS administrator Patricia McDowall (McDowall) credibly testified that the Student's behaviors and those of her classmates would be dealt with by a KCSS specialist, if needed. McDowall serves as the principal for the KCSS SDC programs and the coordinator for smaller district programs. She has 24 years of teaching experience and an administrative credential. Based upon her experience, McDowall opined that Parents' concerns could be dealt with by using classroom strategies and KCSS resources.

27. The KCSS SDC at Almondale will provide Student with a small structured classroom with a low adult to student ratio and individual attention, as needed, to address her unique needs and goals. She will continue to participate in a general education classroom and activities to the same extent that she currently participates. Importantly, she will finally have a class with age level peers where she can participate in the general curriculum and receive an educational benefit.

Least Restrictive Environment

28. In determining the least restrictive environment for a student, four factors must be considered. The four factors to be evaluated and balanced are the educational benefits of full-time placement in a regular classroom, the non-academic benefits of full-time placement in a regular classroom, the effect the presence of the child with a disability has on the teacher

and children in a regular classroom and the cost of placing the child with a disability full-time in a regular classroom.

29. According to the District IEP team members, Student needs a structured environment with supplementary aides and supports to access the general curriculum. She needs adult prompting and assistance, which can best be achieved in a classroom with a lower student to adult ratio. Although the CLC staff attempted to accommodate Student's needs, and she made some progress toward the goals in the PBVSD IEP which were carried over from her kindergarten class at PBVSD, she has not been able to access the general first grade curriculum in the CLC. Despite attempts to modify and supplement the curriculum, the CLC staff has not been able to provide Student with an appropriate curriculum.

30. Parents did not dispute the appropriateness of the level of mainstreaming in the general education class offered in the April 24, 2007 IEP. The mainstreaming is adequate and is similar in quantity and quality to that Student currently experiences at Centennial.

Educational and Non Academic Benefits of Placement

31. Here, full-time placement in a regular classroom is not contemplated. Parents and District are in agreement that full-time placement in a general education classroom is not appropriate or in the best interest of Student. Instead, the factors are utilized to distinguish between the perceived levels of restrictiveness of the CLC and the KCSS SDC.

32. At this time, Student does not have a classroom with regular classmates. The CLC is not a class in the traditional sense. Approximately twenty-five students circulate through the CLC throughout the day. Typically, the students work in groups of three to five with either Taylor or an instructional aide. Student is the only one that spends more than 50 percent of her day in the CLC. The CLC is designed to provide assistance to struggling students that are no more than one grade level behind in the general education curriculum. It is not designed as a regular classroom. Students return to their regular classroom after receiving focused instruction in a particular subject matter for a finite amount of time.

33. The KCSS SDC classroom at Almondale has approximately ten students with four instructional aides. The special education teacher in the classroom has a special education credential to work with students with moderate to severe disabilities and is trained to modify curriculum, provide structure and prompts needed by Student. Hester, the Centennial school psychologist, Shawna Gray and Janet Bianco, Student's general education teachers, Taylor, Centennial special education teacher/CLC teacher, Walker, the Centennial speech pathologist and KCSS administrator McDowall, all agree that the KCSS classroom at Almondale is an appropriate placement for Student.

34. Centennial and its CLC do not have a class that is appropriate for Student. Parents are legitimately concerned about Student mimicking lower-functioning behaviors of other children in the Almondale SDC for the severely handicapped. McDowall, administrator for KCSS, credibly testified that KCSS has specialists on staff to work with

Student and her classmates on behavior intervention should that be needed. McDowall conducted her own brief observation of Student, reviewed Student's assessment data and concluded that the KCSS SDC at Almondale was appropriate for Student.

35. Parents offered the testimony of expert witness Donald Asbridge (Asbridge), a licensed educational psychologist with extensive experience as a professor, school psychologist and consultant on Student's placement. Asbridge opined that the assessments conducted of Student were adequate, but that the interpretation of the data indicating that Student was moderately retarded was questionable. Asbridge was not familiar with the April 24, 2007 IEP, had not observed Student in any classroom and had not seen any of the KCSS SDC classrooms in years. While Asbridge's professional experience was extensive, his knowledge of this particular Student and the classroom placements under consideration was limited. Asbridge expressed concern that placement of Student in a KCSS SDC for the severely handicapped at this early stage of her academic career would be stigmatizing and limiting of her future development. On balance, the testimony of the District witnesses concerning appropriate placement of Student was more persuasive than that of Asbridge.

36. Student has made friends at Centennial and enjoys traveling to and from school with her three siblings. She has benefited from social opportunities and has gained some measure of independence and familiarity with Centennial, its students and its staff. While these benefits are noteworthy, the KCSS program offers Student an educational benefit in that she will be able to participate in the second grade curriculum with age level peers. Although she will not travel to and from school with her siblings, she will have nearly identical socialization and mainstreaming opportunities at Almondale.

Affect on Teachers and Other Students

37. Student participates in a team taught general education first grade class for small portions of the day. She has been unable and unwilling to participate in the general education classroom for sustained periods of time and frequently requests to return to the CLC shortly after joining the general education class. She has made friends in the class and in the CLC and has gained some independence and self-confidence there. All agree that Student is a pleasant and social child. Student is unable to remain in her seat and complete general curriculum work. Although she is a pleasant child, she is often unintentionally disruptive of the classroom and sometimes sleeps in the classroom. Recently, she has become independent in toileting activities, but still needs a regular schedule and prompting. Student's presence in the general education class sometimes adversely affects the teacher's ability to teach other students.

38. In the CLC, Student usually works independently with the instructional aide or occasionally in a small group when some adaptation of activity can be made for a limited period of time. Student often utilizes a computerized program instead of interaction in small groups with other students. Student is not at the same level of cognitive function as the other children in the CLC and finds it difficult to participate in academic activities with them. She is very friendly and is able to participate to a degree socially. As with the general education

class, Student requires individual instruction and significant adult prompting which does sometimes adversely affect the teacher's ability to teach other students. Student is often taught by the teacher's aide while the teacher handles curriculum for the other students.

Cost

39. There is no evidence that cost is a factor in this case.

LEGAL CONCLUSIONS

Applicable Law

1. District has the burden of persuasion that its offer of placement is appropriate. (*Schaeffer v. Weast, Superintendent, Montgomery County Public Schools, et al., Weast* (2005) 546 U.S. 49, [126 S.Ct. 528, 163 L.Ed.2d 387].)

2. Under the federal Individuals with Disabilities Act (IDEA) and companion state law, students with disabilities have the right to a free and appropriate public education (FAPE). (20 U.S.C. § 1400 et seq.; Ed. Code, § 56000 et seq.) FAPE 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 plan (IEP). (20 U.S.C. § 1401(a)(9); Cal. Code Regs., tit. 5, § 3001, subd. (o).)

3. IDEA and state law require that, in order to provide FAPE, a school district must develop an IEP that is reasonably calculated to provide the child with an educational benefit. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 203 [102 S.Ct. 3034, 3049].) The IEP must contain specified information including a statement of the child's present levels of academic achievement and functional performance, and a statement of measurable annual goals. (20 U.S.C. § 1414((d)(1)(A)(i)(I), (II); Ed. Code, § 56345, subds. (a)(1) & (2).) The district must review the child's IEP at least once a year in order to determine whether or not the annual educational goals are being achieved, and make revisions if necessary. (20 U.S.C. § 1414(d)(4)(B)(i); Ed. Code, § 56341.1, subd. (d).)

4. A disabled child's IEP must be tailored to the unique education needs of that particular child who, by reason of disability, needs special education and related services. (*Heather v. State of Wisconsin* (1997) 125 F.3d 1045.) The term "unique educational needs" is to be broadly construed to include the student's academic, social, emotional, communicative, physical and vocational needs. (*Seattle Sch. Dist. No.1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500.)

5. The Supreme Court addressed the level of instruction and services that must be provided to a student with disabilities to satisfy the IDEA's requirements. The Court determined that a student's IEP must be designed to meet the unique needs of the student, be

reasonably calculated to provide the student with some educational benefit, and comport with the student's IEP. However, the Court determined 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. (*Rowley v. Board of Hendrick Hudson* (1982), 458 U.S. 176, 198 [102 S.Ct. 3034, 73 L.Ed.2d 690].) 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. 200.)

6. Under *Rowley, supra* at 179, a challenge to an IEP requires resolution of two issues: (1) whether the school district complied with the procedural requirements of IDEA, and (2) whether the challenged IEP was reasonably calculated to enable the child to receive educational benefits. If the school district's program was designed to address student's unique educational needs, was reasonably calculated to provide some educational benefit, and comported with the IEP, then the District provided a FAPE, even if student's parents preferred another program and even if his parents' preferred program would have resulted in greater educational benefit.

7. To determine whether a district offered a student a FAPE, the focus is on the adequacy of the placement the district actually offered, rather than on the placement preferred by the parent. (*Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1314.) In addition, federal and state law requires school districts to provide a program in the least restrictive environment (LRE) to each special education student. (See 34 C.F.R. § 300.114, et. seq. (2006).) A special education student must be educated with non disabled peers "to the maximum extent appropriate," and may be removed from the regular education environment only when the use of supplementary aids and services "cannot be achieved satisfactorily." (20 U.S.C. § 1412 (a)(5)(A); 34 C.F.R. § 300.114(a)(2)(i)(ii).) A placement must foster maximum interaction between disabled students and their nondisabled peers "in a manner that is appropriate to the needs of both." (Ed. Code, §56031.)

8. In *Sacramento City Unified School District v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1400-1402, the Ninth Circuit held that the determination of whether a particular placement is the "least restrictive environment" for a particular child involves an analysis of four factors, including (1) the education benefits to the child of placement full-time in a regular class; (2) the non-academic benefits to the child of such placement; (3) the effect the disabled child will have on the teacher and children in the regular class; and (4) the costs of educating the child in a regular classroom with appropriate services, as compared to the cost of educating the child in the district's proposed setting. However, the Supreme Court has noted that IDEA's use of the word "appropriate" reflects congressional recognition that some settings simply are not suitable environments for the participation of some handicapped children." (*Rowley, supra*, 458 U.S. at p. 197.)

9. Unless the IEP requires otherwise, a child with a disability must be educated in the school that he or she would attend if he or she were not disabled. (34 C.F.R. § 300.552(c).) Each child with a disability must participate with children who are not disabled

in nonacademic and extracurricular services and activities, such as meals, recess and clubs, to the maximum extent appropriate to the needs of the child. (34 C.F.R. § 300.553.) The child's placement must be in the least restrictive environment (LRE), based on the child's IEP, and as close as possible to the child's home (34 C.F.R. § 300.522(a)(2), (b)(2), (3).) When determining which placement is the LRE, consideration is given to any potential harmful effect on the child or on the quality of services he or she needs. (34 C.F.R. § 300.552(d).) California law incorporates these requirements. (Ed. Code, §§ 56031, 56342.)

10. The requirement that a child be placed in the least restrictive environment does not mean that disabled child must be placed, in every instance, in the neighborhood school that she would have attended if she had not been handicapped. (*Hudson by & Through Hudson v. Bloomfield Hills Pub. School* (E.D Mich 1995) 910 F. Supp. 1291, aff'd (6th Cir.1997) 108 F.3d 112, cert. denied (1997) 522 U.S. 822, 129 L.Ed.2d 37, 118 S.Ct. 78.) A School district's obligation to explore supplementary aids and services prior to removing child from regular classroom does not apply to the decision to remove a child from a neighborhood school and place him in a non-neighborhood school. (*Murray by & Through Murray v. Montrose County Sch. Dist. RE-1J* (10th Cir. 1995) 51 F. 3d 921, cert. denied (1995) 516 U.S. 909, 133 L.Ed.2d 198, 116 S.Ct. 278.)

Determination of Issues

Has the Rosedale Union School District offered Student a free appropriate public education (FAPE) for the 2007-2008 school year (August 20, 2007 to April 24, 2008) in the individualized education program (IEP) dated April 24, 2007?

1. Based upon Factual Findings 1 through 39 and Legal Conclusions 1 through 10, District did offer Student a FAPE for the 2007-2008 school year in the IEP dated April 24, 2007. The April 24, 2007 IEP offers Student a FAPE in the least restrictive environment for the 2007-2008 school year. When the preference for attendance at a neighborhood school conflicts with meeting the Student's unique needs, the needs must take precedence over the preference. While not the placement preferred by Parents, Student's IEP necessitates a change of location from Centennial, the neighborhood school, to Almondale. Almondale is approximately six miles from Student's home and provides the only appropriate placement for Student. The small additional distance, with District provided transportation, is not significant. Parents concerns about lower-functioning behaviors can be addressed by KCSS staff if needed. Unfortunately, the move to Almondale will have the unavoidable consequence of geographically separating Student from her siblings for a portion of the day. Student's mother has honest and legitimate concerns about wanting her children to remain in the same school and are not to be taken lightly. However, on balance, the placement in the KCSS SDC class at Almondale provides the FAPE required by law in the LRE. Placement in the KCSS SDC second and third grade combination class for the severely handicapped at Almondale with speech and language services and participation in a general education classroom as outlined in the April 24, 2007, is FAPE in the least restrictive environment for Student.

ORDER

District's IEP of April 24, 2007, offers Student a FAPE for the 2007-2008 school year.

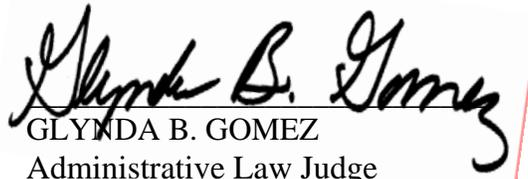
PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. District has prevailed on all issues.

RIGHT TO APPEAL THIS DECISION

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

DATED: July 16, 2007


GLYNDA B. GOMEZ
Administrative Law Judge
Office of Administrative Hearings
Special Education Division