

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

In the Matter of:

CHULA VISTA ELEMENTARY SCHOOL
DISTRICT,

Petitioner,

v.

STUDENT,

Respondent.

OAH CASE NO. N 2007040557

DECISION

This matter was heard before Administrative Law Judge Roy W. Hewitt, Office of Administrative Hearings, Special Education Division, at Chula Vista, California on June 13, 2007.

Justin R. Shinnefield, Esq., represented the Chula Vista Elementary School District (District).

Student's representative, her mother, was properly noticed of the date, time and place of hearing and she failed to appear.

The District filed its request for due process hearing on April 20, 2007. The matter was continued on April 30, 2007. Oral and documentary evidence was received and the matter was submitted on June 13, 2007.

ISSUES

1. Has the District evaluated Student in all areas of suspected disability?
2. Has the District offered Student a free, appropriate public education (FAPE) for the 2007-2008 school year?

3. Should Student's currently proposed Individualized Education Program (IEP) be implemented for the 2007-2008 school year?

FACTUAL FINDINGS

1. Student, whose date of birth is September 4, 2000, is a six-year-old female who is eligible for special education services under the category of autistic-like behaviors.

2. On May 3, 2006, just before Student turned six, her mother (Mother) completed a Preschool Intake Form (the initial referral form) in preparation for Student's enrollment in Muller Elementary School, a school located in the District. Student's disability was determined to be autism.

3. On May 3, 2006, the District completed a "Notice of Proposed Action and/or Referral for Special Education Evaluation." The District indicated that Student should be evaluated in the following areas: Health, Motor Skills (fine and gross), Speech and Language, Cognitive Functioning, Adaptive Behavior, Social/Emotional, Academic Performance, Processing Skills (auditory, visual and tactile/kinesthetic), and Sensory Processing and Integration. The District also initiated contact with Mother to develop an Evaluation Plan.

4. There were some difficulties getting Mother's input in order to develop an Evaluation Plan; however, on July 7, 2006, Mother signed an Evaluation Plan. The July 7, 2006 Evaluation Plan provided for complete assessments of Student in all areas of suspected disabilities.

5. The assessments of Student in all areas of suspected disabilities were completed. After assessment results were received, the District sent Mother a notice that an IEP meeting would be convened on September 13, 2006.

6. Mother and Student's advocate participated in the September 13, 2006 IEP meeting along with other, appropriate members of the IEP team. The team agreed that Student was eligible for special education services due to autism. As noted in the IEP, "[Student's] diagnosis of autism impacts her ability to access the general education curriculum and standards without services, support, individualization, and accommodations to her educational program." Because of time constraints the IEP team agreed to reconvene on another date to continue the IEP meeting. Consequently, the continued IEP meeting was scheduled for October 31, 2006. During the October 31, 2006 IEP meeting Mother requested copies of all protocols for the assessment tools used to assess Student. Accordingly, the IEP was continued to November 15, 2006. During this meeting, Mother asked to review examples of tests administered to Student during the assessment process and to be provided a copy of the "Brigance manual." Again, the IEP meeting needed to be continued so that Mother could receive and review the requested information.

7. The IEP meeting reconvened on December 7, 2006. Further revisions to the IEP draft were requested by Mother so the IEP meeting was again continued until January 9, 2007. At this meeting Mother “expressed concerns regarding the process” and requested some additional goals be set for Student. The IEP meeting had to again be continued to address Mother’s additional concerns. On January 16, 2007, the IEP meeting reconvened. Again, due to the time taken to answer Mother’s numerous questions and concerns the IEP meeting had to be rescheduled for January 23, 2007.

8. On January 22, 2007, Mother left a voice-mail with the District indicating that she would not be able to attend the continued IEP scheduled for the next morning. Therefore, the IEP meeting was rescheduled for January 31, 2007.

9. On January 29, 2007, Mother notified the District that she would not be able to attend the January 31, 2007 IEP meeting. The District provided Mother with three potential future dates (two in February and one on March 6, 2007) and asked that she pick the date best suited to her schedule. The District diligently followed up on their request that Mother pick a suitable IEP meeting date. No response was forthcoming so, due to the passage of time, the District was forced to reconvene Student’s IEP meeting on March 6, 2007.

10. Mother was properly noticed of the date, time and place of the IEP meeting on March 6, 2007; however, she did not attend. It seemed to the District that as the time for Student’s enrollment in school came closer Mother’s participation became less and less. There had been nine IEP meetings scheduled and the initial IEP process had lasted from September of 2006 until March of 2007 without completion. The delays in completing the initial IEP meeting were precipitated by Mother’s last minute schedule changes and, ultimately by her complete lack of participation in the process. Accordingly, the District had no choice but to complete the IEP process and petition for the instant hearing to implement the IEP.

11. Student’s September 13, 2006 IEP is based on appropriate and complete assessments of Student in all areas of suspected disabilities.

12. As a result of the assessments, the IEP team appropriately identified Student’s unique needs. They are as follows:

Behavior (Self Regulation/Coping, Following Directions);
Language Arts (Letter Recognition, Letter Naming, Phonemic Awareness, Reading Comprehension); Math (Number Identification, One-to-One correspondence); Social Skills; Speech and Language (Expressive Language, Language Processing, Nonverbal/Pragmatics); and Written language/Fine Motor (numbers, letter formation).

13. The annual goals and objectives established in the September 13, 2006 IEP are designed to meet Student's unique needs. They are as follows:

Goal 1 – Letter Recognition, when presented with the uppercase letters of the alphabet, Student will be able to recognize all letters with 100 percent accuracy in nine out of ten trials as measured by daily data collection;

Goal 2 – Letter Recognition, when presented with the lowercase letters of the alphabet, Student will be able to recognize all letters with 100 percent accuracy in nine out of ten trials as measured by daily data collection;

Goal 3 – Letter Naming, when presented with the uppercase letters of the alphabet, Student will be able to name all letters with 100 percent accuracy in nine out of ten trials as measured by daily data collection;

Goal 4 – Letter Naming, when presented with the lowercase letters of the alphabet, Student will be able to name all letters with 100 percent accuracy in nine out of ten trials as measured by daily data collection;

Goal 5 – Language Processing/Following Direction, Student will follow at least ten one-step verbal directions within a community/natural setting with no more than one partial physical prompt on nine out of ten trials as demonstrated by data collection;

Goal 6 – Mathematics, Student will receptively identify and expressively name numbers one through twenty (presented randomly) with 100 percent accuracy in nine out of ten trials;

Goal 7 – Social Skills, Student will respond to a greeting from a familiar adult (male and/or female) with a verbal response and eye contact within five seconds when the adult is in a standing position with natural personal space on nine out of ten trials;

Goal 8 – Pragmatic/Expressive Language, Student will be able to verbally identify three wants and needs within a highly structured setting (2-3 peer role models and one adult), using visual tactile prompts as needed with 100 percent accuracy on nine out of ten consecutive trials;

Goal 9 – Language Processing, Student will verbally give two reasons why two items in a pair are alike or different for 15 different pairs (with visual prompts/pictures, as needed) with 100 percent accuracy on nine out of ten consecutive trial days;

Goal 10 – Nonverbal Communication, Student will respond appropriately to 15 nonverbal gestures/requests with 100 percent accuracy on nine of ten consecutive trials;

Goal 11 – Expressive Language, Student will verbalize four to five word phrases to describe an item/event across a minimum of three settings, using a picture sentence strip as needed, with visual/tactile prompting as needed with 100 percent accuracy on nine out of ten consecutive trials;

Goal 12 – Social Skills, Student will be able to demonstrate turn taking in a highly structured environment (one adult and one peer) during a non-competitive game/activity for a total of ten turns with no more than three visual cues with 100 percent accuracy on nine out of ten consecutive trials;

Goal 13 – Social Skills/Pretend Play, Student will be able to demonstrate pretend play in a highly structured one-on-one setting (variety of adults) for a period of fifteen minutes using toys/manipulatives (such as small dolls, bears, vehicles, animals, etc.) with 100 percent accuracy on nine out of ten trials;

Goal 14 – Social Skills, Student will be able to participate in six board games/card games in a highly structured one-on-one (variety of adults) setting with no more than two visual/verbal/tactile prompts per game and demonstrate mastery of the game(s) on three consecutive trials;

Goal 15 – Mathematics, when given a field of twenty objects and the written numeral prompt(s) and told when pointing to the numeral “show me this many,” Student will match quantity to the numeral with 80 percent accuracy on three consecutive occasions;

Goal 16 – Writing Letters, Student will be able to write the alphabet in upper and lower case letters with two to three verbal/visual cues on four consecutive trials with 80 percent accuracy;

Goal 17 – Writing Numbers, Student will be able to write the numbers one through twenty with proper number formation, line orientation, and sizing, on four consecutive trials with 80 percent accuracy; and

Goal 18 – Behavior/Coping Skills, when Student is anxious or frustrated, instead of pinching herself, falling to the floor, or punching herself, Student will ask for a break or for help and reduce her negative behaviors by 50 percent as measured by data collection.

14. The services set forth in the September 13, 2006 IEP are reasonably calculated to provide Student with educational benefit. Those services include: Special Day Class five days per week for a total of 1460 minutes per week in a group setting; Individual Counseling and Guidance, one session per month for 30 minutes; Group Speech and Language, two sessions per week for 30 minutes per session; Consultation, two sessions per month for 30 minutes per session; Autism Support in a group setting, one session per week for 30 minutes per session; LSH Consultation, one session per month for 30 minutes per session; and Autism Team Consultation with the classroom teacher, from one to four sessions per month on a declining schedule for 30 minutes per session. Additionally, Student will be provided with supplementary support, if needed, in toileting, hand strengthening for writing, sensory strategies, visual schedule, positive behavior supports, access to a quiet independent work area, and an additional classroom support aide.

15. The services and supports set forth in the September 13, 2006 IEP will be provided in the least restrictive environment. Student will be enrolled in a Public Day School Special Day Class and will receive services in the regular education environment for 18 percent of the day and will receive services outside of the regular education environment for 82 percent of the day. Student will not participate in the regular education environment for academic instruction and instruction in goal areas because she requires individualized and small group instruction in order to make progress toward grade level standards. Within these environments Student will receive specially designed physical education.

LEGAL CONCLUSIONS

1. Under both state law and the federal Individuals with Disabilities Education Act (IDEA), students with disabilities have the right to a FAPE. (20 U.S.C. § 1400(d); Ed. 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 state educational standards, and that conform to the student’s IEP. (20 U.S.C. § 1401(9).)

2. In *Bd. of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley* (1982) 458 U.S. 176, 200 [102 S. Ct. 3034, 73 L.Ed.2d. 690], 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 that 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.) The Court also recognized the importance of adherence to the procedural requirements of the IDEA. (*Id.* at p. 205.) Thus, the analysis of whether a student has been provided a FAPE is twofold. It must be determined whether the procedural safeguards of the IDEA have been satisfied and whether the FAPE provided was substantively appropriate. (*Id.* at pp. 206-207.) 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; (2) have been reasonably calculated to provide student with some educational benefit, (3) have comported with his IEP; and (4) be provided in the least restrictive environment (LRE). (See also, *Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1307, 1314.)

Under the facts of the instant case, the only evidence presented during the hearing establish that Student’s proposed IEP meets the substantive requirements necessary to constitute a FAPE. The District established, through documentary and expert testimony, that Student was assessed in all areas of suspected disability, that the currently proposed IEP will meet Student’s unique needs, that the services set forth in the proposed IEP are reasonably calculated to provide Student with educational benefit, and that the services set forth in the proposed IEP will be provided in the least restrictive environment.

3. The District and the courts have an obligation to implement an appropriate IEP, even though a student's parents disagree with or, as in the present case, fail to sign the IEP, when implementation of the IEP is deemed to be in the best interests of the student. (See Ed. Code, § 56346(c); See also, *Murphy v. Timberline Regional School District* (1st Cir. 1994) 72 F.3d 1186, at pp. 1195-1196.) In the present case, the proposed IEP adequately addresses Student's unique needs and will provide her with a FAPE in the LRE; therefore, notwithstanding Student's mother's failure to sign the proposed IEP, it is deemed to be in the best interests of Student to immediately implement the proposed IEP.

ORDER

1. The District's offer of placement for the 2007-2008 school year was appropriate.
2. If Student wishes to attend a public school within the District, for the 2007-2008 school year, the placement shall be as provided for in the IEP dated September 13, 2006.

PREVAILING PARTY

California Education Code section 56507, subdivision (d) requires that the extent to which each party prevailed on each issue heard and decided must be indicated in the hearing decision. In the present case the District prevailed on all issues.

RIGHT TO APPEAL THIS DECISION

The parties have a 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. (Ed. Code, § 56505, subd. (k).)

Dated: July 26, 2007



ROY W. HEWITT
Administrative Law Judge
Special Education Division
Office of Administrative Hearings