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

STUDENT, Petitioner. vs. COLTON JOINT UNIFIED SCHOOL DISTRICT, Respondent.	OAH CASE NO. N 2005080436

DECISION

Administrative Law Judge (ALJ), Trevor Skarda, Office of Administrative Hearings (OAH), Special Education Division, State of California, heard this matter on November 29 and 30, and December 1 and 6, 2005, in Colton, California.

Petitioner (Student) was represented at the hearing by his parent, Mother. Student did not attend.

Respondent, Colton Joint Unified School District (District), was represented by Gail Lindberg, program manager for the East Valley Special Education Local Plan Area (SELPA). Also present on behalf of the District was Diane D'Agostino, Director of Pupil Personnel Services for the District.

Student's only witness was his Mother.[1]

The District called the following witnesses: Bryan Bennecke, District school psychologist; Jennifer Burr, District speech therapist; Gayle Wray, occupational therapist employed by the SELPA; Francisca LaFranco, special day class teacher at Abraham Lincoln

[1] The Prehearing Conference Order states that Student intended to call multiple witnesses at the hearing and to "present affidavits or declarations, or letters from the student's treating psychiatrist, Dr. William Murdoch, and a special education teacher from Loma Linda University." Student's Mother failed to call any witnesses – other than herself – and she presented no such affidavits, declarations or letters at the hearing.

Elementary School in the District; Sara Starbuck Jackson, a regular education teacher in the District; Janice Morrison, a District curriculum program specialist; Susan Lake, records technician at Bloomington High School; and Diane D'Agostino.

On August 15, 2005, Student filed a request for a due process hearing with OAH. On September 20, 2005, OAH issued a Notice of Hearing and Mediation scheduling the due process hearing for October 7, 2005.

On October 4, 2005, the parties participated in a telephonic conference before ALJ Michael A. Scarlett. Judge Scarlett continued the October 7, 2005 hearing date to November 15, 2005. Judge Scarlett also ordered the parties to participate in a prehearing conference on October 24, 2005. On October 24, ALJ Vincent Nafarrete conducted a prehearing conference at the Inland Regional Center in San Bernardino, California. ALJ Nafarrete issued a prehearing conference order dated October 26, 2005.

On November 15, 2005, ALJ Trevor Skarda convened the hearing in San Bernardino, California. Student's mother initially failed to appear, and Judge Skarda convened a telephonic conference and ordered her to appear in person at the hearing. She appeared in person shortly thereafter and requested a continuance. Judge Skarda continued the hearing to November 29, 2005, based upon a showing of good cause. OAH subsequently issued a notice of hearing scheduling the hearing for November 29, 30, December 1, and 2, 2005.[2]

Sworn testimony and documentary evidence were received at the hearing on November 29 and 30, and December 1 and 6, 2005. Upon receipt of the written closing briefs, the last of which was received by the ALJ on December 24, 2005, the matter was submitted for decision.

ISSUES[3]

1. Did the Colton Joint Unified School District deny Student a Free and Appropriate Public Education (FAPE) from December 13, 2004, through December 13, 2005, by developing an IEP on December 13, 2004 that was inappropriate because:

A. the annual goals and short-term objectives were inappropriate;

B. Ms. LaFranco's special day class at Abraham Lincoln Elementary School was inappropriate;

C. the IEP lacked a behavior intervention plan (BIP);

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[2] Student's Mother subsequently requested a continuance of the final hearing date (December 2, 2005) because she had a previously-scheduled court appearance. Judge Skarda granted the continuance, and the Hearing reconvened and concluded on December 6, 2005.

[3] Student's hearing issues were clarified over several hours on the first day of hearing. They have been reorganized for purposes of clarity.

D. the "mainstreaming" was inappropriate and therefore Student's program was not the least restrictive environment (LRE);

E. the occupational therapy services were insufficient;

F. the speech and language consultation services were insufficient;

G. the IEP lacked Adapted Physical Education (APE) services;

H. the accommodations and/or modifications were insufficient?

2. Did the Colton Joint Unified School District deny Student a FAPE when it refused to place him at the Almansor Center Day School, or in the alternative, a comparable placement, at the June 23, 2005 addendum IEP team meeting?

3. Was the Colton Joint Unified School District required to convene another addendum IEP team meeting after June 23, 2005?

4. Was Student's primary disability autism and/or mental retardation?

FACTUAL FINDINGS

Jurisdictional Matters

1. Student is an 11-year-old student who, during the time period at issue herein, has been eligible for special education services under the category of specific learning disability (SLD).[4] During the 2004-2005 and 2005-2006 school years, Student resided within the boundaries of the District. Since the end of January 2005, Student has received home/hospital instruction pursuant to a physician's note.

Procedural Background

2. Student sought to raise issues related to whether the District had denied Student a prospective Free and Appropriate Public Education (FAPE) after December 2005. Mother testified, and it was not disputed, that Student's annual IEP team meeting was due to convene in mid-December of 2005. Because Student's annual IEP team meeting had not yet convened, the ALJ found that issues of prospective FAPE were not yet ripe.

3. On the second day of hearing, the parties indicated that the California Department of Education (CDE) had issued a compliance complaint report dated August 8, 2005. The report found that the District had failed to provide Student with necessary occupational therapy (as well as other services) during all or part of the time that he was

[4] Previously, Student was eligible under the category of autism.

receiving home/hospital instruction. The report requires the District to convene an IEP team meeting "to discuss and determine compensatory [occupational therapy] … that reflects the amount of educational services [that Student] missed from December 13, 2004 [through August 8, 2005]." The report also requires the District to submit a copy of the IEP to CDE as proof of correction. At the hearing, the parties requested that the ALJ determine the appropriate amount of compensatory occupational therapy services that Student should receive, and the ALJ initially agreed to make such a determination.[5] However, upon reflection, the ALJ declines to issue any such order – OAH lacks the authority to interpret or enforce a CDE compliance complaint order. (See Cal. Code Regs., tit. 5, § 4670, subd. (a).)

4. From August 2004 through January 2005, Student attended a special day class (SDC) at Colton Joint Unified School District's Abraham Lincoln Elementary School (Lincoln) taught by Francisca LaFranco.

5. During the fall of 2004, the District conducted and completed Student's triennial evaluation. The parties did not dispute that the triennial evaluation assessed Student in all areas of disability or that the triennial evaluation was conducted by appropriately qualified and trained District and SELPA personnel.

6. On December 13, 2004, the District convened an IEP team meeting to review Student's triennial evaluation and to develop Student's annual IEP. Mother was present at the IEP meeting and was accompanied by an educational advocate. The IEP team developed an IEP to be implemented from December 13, 2004, through December 13, 2005. Mother signed the IEP and agreed to its implementation.[6] The IEP was implemented from mid-December 2004 through the end of January 2005.

7. On January 25, 2005, Student's parents presented to the District a physician's note requesting that the District provide Student with "home/hospital" services through June 30, 2005, due to "medication adjustment for autistic spectrum [and mental retardation]." Student never returned to Ms. LaFranco's SDC class after that date.

8. On June 6, 2005, Student's mother obtained a second physician's note and presented it to the District. The second note states "continue home & hospital study for 6 months or until appropriate non-public school placement until [sic] December 6, 2005."

Credibility of Student's Witness

9. While Mother was a passionate witness whose primary concern is the welfare of her son, her testimony was unreliable because it frequently contradicted her prior testimony. For example, Mother testified that Student's annual reading goal related to

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[5] The Parties had not convened the ordered IEP team meeting as of the last day of hearing.

[6] Mother disagreed with one aspect of the IEP. The IEP states that Student's primary disability is "specific learning disability" (SLD). The IEP states that Mother requested that the IEP designate Student's primary disability as either "autism" or "other health impaired" (OHI).

reading "sight words" was inappropriate. She then testified as to the number of "sight words" Student could read as of December 13, 2004. Later she admitted that she did not know what the phrase "sight word" means. Mother also testified that Student made academic progress while receiving home/hospital instruction (during which time Mother was Student's primary teacher). Mother subsequently testified that Student had made no progress while receiving home/hospital instruction.[7]

10. Mother's testimony was also unreliable, and consequently was afforded little weight by the ALJ, because she lacked even a basic understanding of many of the issues about which she testified. For example, one of Student's "annual" goals was that Student would be able to read 100 sight words by December 2005. Mother testified that the goal was too ambitious and therefore inappropriate. She explained that it was inappropriate because Student could not read 100 sight words as of December 2004; she estimated that he could read approximately 50 at that time. Mother did not understand that an annual goal represents *expected progress* in one year's time.

The Appropriateness of Student's Annual Goals and Short-term Objectives

11. It was not disputed that Student had (and continues to have) unique needs in the areas of reading, writing, mathematics, pragmatic speech, adaptive skills (such as telling time), remaining on task, vestibular processing, self-regulation, and gravitational security.

12. To be appropriate, annual goals and short-term objectives must address all of a pupil's unique areas of need that result from his or her disability. (See 34 C.F.R. § 300.347.) The December 13, 2005 IEP contains annual goals and short-term objectives that address all of Student's undisputed unique needs. It includes goals and short-term objectives that address spelling, reading comprehension, reading fluency, addition and subtraction, telling time, writing sentences with correct spacing, punctuation and capitalization, remaining "on task" during class, pragmatic language, vestibular processing, self regulation skills, and gravitational insecurity. All members of the IEP team, including Mother, as well as her educational advocate, agreed that the goals were appropriate. Accordingly, Student's annual goals and short-term objectives were appropriate.

Ms. LaFranco's Special Day Class at Abraham Lincoln Elementary School

13. Student attended Ms. LaFranco's special day class at Lincoln from the August 2004 through the triennial/annual IEP team meeting that convened on December 13, 2004. The IEP team, including Mother and her educational advocate, agreed that Student should remain in Ms. LaFranco's SDC for another year. Student continued to attend Ms. LaFranco's class until the end of January 2005.

[7] The June 23, 2005 addendum IEP reflects that Mother believed Student had actually *regressed* during the period in which he received home/hospital instruction.

14. Ms. LaFranco's SDC at Lincoln was an appropriate placement for Student from December 2004 through December 2005. Student made adequate progress towards achievement of his annual goals and short-term objectives while attending Ms. LaFranco's SDC from August 2004 through December 2004. There was no evidence that Student would not have continued to make adequate educational progress after December 2004.

Student's Need for a Behavior Intervention Plan

15. Student's December 13, 2004 IEP does lack a "behavior intervention plan" (BIP). Although Student contends that one was required, Mother presented no expert testimony or other credible evidence that Student's behavior during school impeded his ability to learn or impeded the learning of others. Likewise, Mother presented no evidence that Student exhibited a "serious behavior problem" at school.

16. In contrast, the testimony of Ms. LaFranco, as well as that of School Psychologist Bryan Bennecke, established that Student did not exhibit behaviors that interfered with his learning or with the learning of others at school to the extent that he required a behavior intervention plan. Ms. LaFranco explained that, while Student engaged in some inappropriate behaviors, including for example, twisting paper in the shape of a hook, Student would cease such behaviors when prompted. Student did not require a BIP to receive a FAPE.

Least Restrictive Environment/Mainstreaming

17. Student's December 13, 2004 IEP states that Student was to be educated with his typically developing, non-disabled peers ("mainstreamed") each day for one class period. The academic subject taught during that period alternated between social studies and science. Pursuant to the IEP, Student also participated in lunch, recess, assemblies and band with typically developing, non-disabled peers.

18. Student provided no evidence that more mainstreaming was appropriate, or even possible, given Student's comprehensive special education needs.

19. The testimony of Sara Starbuck Jackson, a regular education teacher in whose class Student was mainstreamed, and that of Ms. Francisco, established that Student was educated with his typically developing, non-disabled peers to the maximum extent appropriate. Student's program was provided in the LRE.

Speech and Language Consultation

20. The District offered Student thirty minutes of speech and language consultation services per month in the December 13, 2004 IEP.

21. Student presented no expert testimony or other credible evidence that the speech and language consultation services offered by the District were insufficient to implement Student's pragmatic speech annual goal and short-term objectives.

22. The testimony of Jennifer Burr, speech and language therapist in the District established that thirty minutes of speech and language consultation services each month were sufficient to implement Student's pragmatic speech goals. Ms. Burr assessed Student in November 2004, and provided individual and group speech and language services to Student prior to December 2004. The District offered Student sufficient speech and language consultation services.

Occupational Therapy Services

23. The District offered Student forty-five minutes of occupational therapy (OT) each week in the December 13, 2004 IEP. The OT was to be provided at the sensory center in Redlands, California; transportation to and from the center was also offered.

24. Student presented no expert testimony or other credible evidence that the occupational therapy services offered by the District were insufficient to implement Student's vestibular processing, self-regulation, and gravitational security annual goals and short-term objectives.

25. The testimony of Gayle Wray, an occupational therapist employed by the SELPA, established that the services offered by the District were sufficient to meet Student's occupational therapy needs. Ms. Wray, a State licensed occupational therapist with over 16 years of experience, assessed Student in December 2004. She testified that the amount of time was sufficient to implement Student's occupational therapy annual goals and short-term objectives. The District offered Student sufficient occupational therapy services.

Adapted Physical Education (APE)

26. The District offered Student general physical education services in the December 13, 2004 IEP.

27. Student was assessed by the Diagnostic Center of Southern California in June, 2003. The Diagnostic Center's report states that Student would benefit from "an adapted physical education program because of his reduced level of fine and gross motor development."

28. Other than the Diagnostic Center report (prepared in June, 2003), Student presented no evidence to establish that Student required APE as of December 13, 2004. Student did not require APE.

Accommodations and Modifications

29. The December 13, 2004 IEP includes multiple modifications and accommodations. Although Mother argued at the hearing that the modifications and accommodations were inappropriate or insufficient, she failed to provide any persuasive evidence in support of that claim.

Almansor Center Day School

30. The District convened an addendum IEP team meeting on June 23, 2005, to discuss Student's placement. Student's parents requested that he be placed at the Almansor Center Day School, a State-certified nonpublic school located in South Pasadena, California. The District denied the parents' request because the December 2004 IEP placement and services remained appropriate. Because it is determined in Factual Findings 11 through 29 that the District offered Student a FAPE in the December 13, 2004 IEP, the District was not required to change his placement to Almansor Center Day School in June of 2005. The District did not deny Student a FAPE by refusing to change his placement at the June 23, 2005 addendum IEP team meeting.

Failure to Convene Another Addendum IEP Team Meeting After June 23, 2005 IEP Team Meeting

31. The June 23, 2005 addendum IEP team meeting was convened to discuss a parental request for a change of placement; as discussed above in Factual Finding 30, that request was denied. Student's annual IEP team meeting was not due to convene until mid-December of 2005. Student was not assessed in the interim period. The District was not obligated to convene still another addendum IEP team meeting to discuss parent's continuing request for a placement change.[8]

Student's Primary Disability/Mental Retardation

32. Student contends that his primary disability should have been designated as autism and/or mental retardation from December 13, 2004 to the present. Student does not dispute that he has remained eligible for special education and related services as a pupil with a "specific learning disability."

33. Student presented no evidence that he exhibited significantly below average general intellectual functioning existing concurrently with deficits in adaptive behavior and

[8] As previously discussed, the parties were ordered by CDE in the Compliance Complaint to convene an IEP team meeting for the purpose of determining an appropriate compensatory remedy. At issue in the present matter is whether the District was legally obligated to convene *another* addendum IEP team meeting – separate from the one ordered by CDE – to discuss the parent's continuing request to change Student's placement.

manifested during the developmental period.[9] (See Cal. Code Regs., tit. 5 § 3030, subd. (h).) Student was therefore not eligible under the category of mental retardation on and after December 13, 2004.

Student's Primary Disability/Autism

34. As previously discussed, Student was assessed by the Diagnostic Center of Southern California in June of 2003. The Diagnostic Center report states, in pertinent part, that "it seems reasonable to view [Student] as a child who has pervasive developmental disorder associated with some type of brain injury during pregnancy or the neonatal period." The report also states that Student "has many symptoms of Autistic Spectrum Disorder, but also has the characteristics which we typically do not expect in these types of children."

35. Other than the Diagnostic Center report, Student presented no expert testimony or other credible evidence to establish that Student was eligible for special education and related services as a pupil with autism on and after December 13, 2005.

36. In contrast, the District established through expert testimony that Student was not eligible under the category of autism on and after December 13, 2004. The testimony of Brian Bennecke, the District psychologist who evaluated Student in the fall of 2004 as part of Student's triennial evaluation, established that Student did not exhibit the requisite combination of autistic-like behaviors at school. For example, there was no evidence that Student was unable to use oral language for appropriate communication. Similarly, there was no evidence that Student had a history of extreme withdrawal or relating to people inappropriately and continued impairment in social interaction from infancy through early childhood. And while Student engaged in some odd and repetitive behavior (paper twisting, for example) such behaviors were not sufficient to diagnose Student with autism. (See Cal. Code Regs., tit. 5, § 3030, subd. (g).) Accordingly, Student was not eligible for special education and related services, on or after December 13, 2004, due to autism.

LEGAL CONCLUSIONS

Applicable Law

1. Pursuant to California special education law, the Individuals with Disabilities in Education Act (IDEA) and, effective July 1, 2005, the Individuals with Disabilities in Education Improvement Act (IDEIA), children with disabilities have the right to a FAPE that emphasizes special education and related services designed to meet their unique needs and to prepare them for employment and independent living. (Cal. Ed. Code § 56000.) FAPE consists of special education and related services that are available to the student at no charge to the parent or guardian, meet the State educational standards, include an appropriate school education in the State involved, and conform to the child's IEP. (20 U.S.C. § 1401(8)(IDEA

[9] Indeed, in the December 2004 IEP, Mother stated that she believed Student's primary disability should be identified as "other health impaired" or autistic, not mental retardation.

1997); 20 U.S.C. § 1402(9)(IDEIA 2004).) "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(25)(1997 IDEA); 20 U.S.C. § 1402(29) (2004 IDEIA).)

2. Likewise, California law defines special education as instruction designed to meet the unique needs of individuals with exceptional needs coupled with related services as needed to enable the student to benefit fully from instruction. (Cal. Ed. Code § 56031.) 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).) California Education Code section 56363, subdivision (a), similarly provides that 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."

3. In *Board of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley* (1982) 458 U.S. 176, 200, 102 S.C. 3034, 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.)

4. The Supreme Court in *Rowley*, supra, 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 impede the child's right to a FAPE, cause a deprivation of educational benefits, or significantly impede the parents' opportunity to participate in the decision making process regarding the provision of FAPE. (20 U.S.C. § 1415(f)(3)(E)(ii); see *W.G. v. Board of Trustees of Target Range School District No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.)

5. A school district is also required to provide the Student with a program which educates him in the least restrictive environment (LRE), with removal from the regular education environment occurring only when the nature or severity of her disabilities is such that education in regular classes with the use of supplementary aids and services can not be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); Cal. Ed. Code § 56031.)

6. The Ninth Circuit Court of Appeal has endorsed the "snapshot" rule, explaining that the actions of the school 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 *Fuhrman v. East Hanover Bd. Of Education* (3rd Cir.

1993) 993 F.2d 1031, 1041.) However, the "snapshot" rule does not eliminate a school district's obligation to revise a student's educational program if it becomes apparent over the course of the school year that the student is not receiving any educational benefit. (*Id.*)

7. Student alleges that the Colton Joint Unified School District failed to offer and/or provide him with a substantive FAPE; Student does not allege that the District committed procedural violations which procedurally denied him a FAPE during the relevant time period. To determine whether the District offered Student a FAPE, the analysis must focus on the adequacy of the district's proposed program. (*Gregory K. v. Longview School District* (9thCir. 1987) 811 F.2d 1314.) If the school district's program was designed to address 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 Student's parents preferred another program and even if his parents' preferred program would have resulted in greater educational benefit.

8. The Student has the burden of proving at an administrative hearing the essential elements of his claim. (*Schaffer v Weast* (2005) 126 S.Ct. 528, 163 L.Ed 2d 387.) However, regardless of the applicable burden of proof, or any presumptions regarding the appropriateness of an IEP, as discussed below, the District established that it complied with the IDEA, and offered a FAPE to Student, during the applicable period.

9. Under the IDEA, a child qualifies for special education if he is mentally retarded, and if, by reason of that disability, he needs special education and related services. (20 U.S.C. § 1401(3)(A)(i)(ii).) State special education law defines a pupil as eligible for special education under the category of mental retardation when the "pupil has significantly below average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affect a pupil's educational performance." (Cal. Code Regs. tit. 5, § 3030(h); see also 34 C.F.R. § 300.7(c)(6).)

10. For purposes of special education eligibility, the term "autism" is defined in federal regulations as: "a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences." (34 C.F.R. § 300.7(c)(1)(i).)

11. State law incorporates the above-referenced federal definition of autism and contains a provision regarding behaviors related to autism. Section 3030 of Title 5 of the California Code of Regulations includes a list of conditions, referred to in the regulation as "impairments," that may qualify a pupil as an individual with exceptional needs entitled to special education. The "impairment" of "autistic-like behaviors" is described in section 3030(g), which states:

A pupil exhibits any combination of the following autistic-like behaviors, to include but not limited to:

(a) An inability to use oral language for appropriate communication;
(b) A history of extreme withdrawal or relating to people inappropriately and continued impairment in social interaction from infancy through early childhood;
(c) An obsession to maintain sameness;

(d) Extreme preoccupation with objects or inappropriate use of objects or both;
(e) Extreme resistance to controls;

(f) Displays peculiar motoric mannerisms and motility patterns;

(g) Self-stimulating, ritualistic behavior.

12. The Student contends that in order to address his behavioral needs, the December 13, 2004 IEP should have included a "behavior intervention plan." In the case of a child whose behavior impedes his or her learning or that of others, the IEP team must consider appropriate strategies, including positive behavioral interventions, strategies, and supports to address that behavior. (Ed. Code § 56341.1; 34 C.F.R. § 300.346.)

13. In certain instances, the law requires a school district to utilize a "behavior intervention plan" (BIP) developed and implemented pursuant to the strict requirements of California Education Code section 56520 et seq., which is commonly known as the Hughes Bill. The Hughes Bill and its requirements only apply when a student exhibits a "serious behavior problem" that significantly interferes with the implementation of the goals and objectives of the individual's IEP. (Cal. Code Regs. tit. 5, § 3001(f).) The regulations define a "serious behavior problem" as "behaviors which are self-injurious, assaultive, or cause serious property damage and other severe behavior problems that are pervasive and maladaptive for which instruction/behavioral approaches specified in the student's IEP are found to be ineffective." (Cal. Code Regs. tit. 5, § 3001(aa).)

14. California Education Code section 56343 states that districts must convene an Individualized Education Program (IEP) team meeting if:

(a) A pupil has received an initial formal assessment. The team may meet when a pupil receives any subsequent formal assessment;

(b) The pupil demonstrates a lack of anticipated progress;

(c) The parent or teacher requests a meeting to develop, review, or revise the individualized education program;

(d) At least annually, to review the pupil's progress, the individualized education program, including whether the annual goals for the pupil are being achieved, and the appropriateness of placement, and to make any necessary revisions. The individualized education program team conducting the annual review shall consist of those persons specified in subdivision (b) of Section 56341. Other individuals may participate in the annual review if they possess expertise or knowledge essential for the review.

Determination of Issues

Issue 1: FAPE in the Least Restrictive Environment (LRE) from December 2004 through December 2005

15. As discussed below in Legal Conclusions 16 through 23, the District offered Student a FAPE in the LRE for the period from December 2004 through December 2005.

Issue 1(A): The Annual Goals and Short-term Objectives

16. As determined in Factual Findings 11 and 12, Student failed to establish that Student's annual goals and short-term objectives were not designed to meet all of Student's unique areas of need. The District did not deny Student a FAPE by failing to draft appropriate annual goals and short-term objectives.

Issue 1(B): Ms. LaFranco's SDC at Abraham Lincoln Elementary School

17. As determined in Factual Findings 13 and 14, Ms. LaFranco's SDC at Abraham Lincoln was appropriate for Student. Accordingly, the District's offer of Ms. LaFranco's SDC did not deny Student a FAPE.

Issue 1(C): Behavioral Intervention Plan

18. As determined in Factual Findings 15 and 16 and Legal Conclusions 12 and 13, Student did not exhibit behaviors that impeded his learning or the learning of others, and Student did not exhibit serious behavior problems. Student did not require a BIP. The District's failure to develop a BIP for Student did not deny him a FAPE.

Issue 1(D): Least Restrictive Environment/Mainstreaming

19. As determined in Factual Findings 17, 18 and 19 and Legal Conclusion 5, Student was provided with appropriate mainstreaming opportunities. Accordingly, Student was educated in the least restrictive environment and was not denied a FAPE.

Issue 1(E): Occupational Therapy

20. Pursuant to Factual Findings 23, 24 and 25, the occupational therapy services offered to Student were sufficient and did not deny Student a FAPE.

Issue 1(F): Speech and Language Therapy

21. Pursuant to Factual Findings 20, 21 and 22, the speech and language therapy services offered to Student were sufficient and did not deny him a FAPE.

Issue 1(G): Adapted Physical Education

22. Pursuant to Factual Findings 26, 27 and 28 and Legal Conclusions 1, 2 and 8, the Student failed to establish that Student required adapted physical education services to benefit from his education as of December 13, 2004. The District did not deny Student a FAPE.

Issue 1(H): Accommodations and Modifications

23. Pursuant to Factual Finding 29 and Legal Conclusion 8, Student failed to establish that the accommodations and modifications offered in the December 13, 2004 IEP were inappropriate, and therefore, the District did not deny Student a FAPE.

Issue 2: Placement at Almansor Center Day School

24. It has been determined in Legal Conclusion 15, that the District offered Student a FAPE from December 2004 through December 2005. Accordingly, as determined in Legal Conclusion 7, the District was not obligated to place Student at Almansor Center Day School at the June 23, 2005 addendum IEP team meeting. (*Gregory K. v. Longview School District* (9thCir. 1987) 811 F.2d 1314.) Accordingly, the District did not deny Student a FAPE.

Issue 3: Failure to Convene Another Addendum IEP Team Meeting After June 23, 2005 Addendum IEP Team Meeting

25. Pursuant to Factual Finding 31 and Legal Conclusion 14, the District was not obligated to convene another addendum IEP team meeting to discuss the Student's proposed change of placement. Accordingly, the District did not deny Student a FAPE.

Issue 4: Student's Primary Disability

26. As determined in Factual Findings 32, 33, 34, 35 and 36 and Legal Conclusions 9, 10 and 11, the Student failed to establish that Student's primary disability on or after December 13, 2004, was either autism or mental retardation. Accordingly, the District did not deny Student a FAPE.

27. In light of the above factual findings and legal conclusions, all of Student's requests for relief are denied.

PREVAILING PARTY

28. 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. The following findings are made in accordance with this statute: *The District prevailed on all issues heard and decided.*

RIGHT TO APPEAL THIS DECISION

29. 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. (Ed. Code § 56505, subd. (k).)

IT IS SO ORDERED THIS 22nd DAY OF FEBRUARY 2006.

TREVOR SKARDA
Administrative Law Judge
Office of Administrative Hearings
Special Education Division