

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of :

LOS ANGELES UNIFIED SCHOOL
DISTRICT,

v.

PARENT, ON BEHALF OF STUDENT.

OAH No. 2008030616

DECISION

Administrative Law Judge Judith L. Pasewark, Office of Administrative Hearings, State of California (OAH), heard this matter on May 20 through 22, 2008.

Devora Navera, Esq., represented Los Angeles Unified School District (District). Victoria McKendall and Sharon Snyder attended on behalf of the District.

Student's mother (Mother) represented Student (Student).

The District filed its Request for Due Process Hearing on March 14, 2008. On April 11, 2008, OAH continued the initially scheduled hearing dates in the matter. The Due Process Hearing took place on May 20 through 22, 2008. The parties submitted the matter for decision after oral closing arguments on May 22, 2008.

ISSUE

The sole issue raised in the District's Request for Due Process Hearing is whether the District's offer of placement and services developed at the June 7, June 18, November 16, and December 12, 2007 Individualized Educational Program (IEP) team meetings constitutes a free appropriate public education (FAPE).

CONTENTIONS

The District contends that its final offer of placement and services contained in the December 12, 2007 IEP represents a FAPE. The District contends that the discussions and recommendations made in the IEP meetings between June 7 and December 12, 2007, were not formal offers of placement and services because assessments, observations and applications to NPS placements had yet to be completed. The District requests that the final offer of placement and services contained in the December 12, 2007 IEP be deemed a FAPE.

Mother contends that the District's December 12, 2007 offer does not constitute a FAPE as several of Mother's concerns were deleted from the final IEP. Specifically, Mother contends that the proposed transition plan from home school to classroom did not follow the recommendations of the Lovaas Institute for Early Intervention (Lovaas) which had been discussed at the earlier IEP meetings. Further, although Mother agreed with the language and speech (LAS) goals, she did not believe that the offer of 90, non-specified minutes per week of service would be adequate for Student. Lastly, and most importantly, Mother contends that the District's offer did not guarantee a female aide for Student.

FACTUAL FINDINGS

Jurisdiction:

1. Student is a 13-year-old girl who resides within the District. Student qualifies for special education services based upon autistic-like behavior. At the time of the June 7, 2007 IEP, Student had been home schooled and had never attended school in a classroom setting.

The District's Offer of Placement and Services:

2. The District made its final offer of placement and services at the December 12, 2007 IEP meeting. The District's offer for the 2007-2008 school year, including the extended school year (ESY) 2008, through Student's next annual IEP due by November 16, 2008, provided for placement at Sunrise Non-Public School (Sunrise NPS). The Sunrise NPS placement is a full-day therapeutic special day program with a special education teacher and at least one classroom aide. The program involves a small, highly structured and closely supervised educational setting. The IEP team, including Mother, agreed that Sunrise NPS represented the least restrictive environment (LRE) for Student because services necessary to meet her unique needs were not available on a public school campus.

3. The District also offered Student the following related services to be delivered as part of Student's integral program at Sunrise NPS:

a. LAS services one to five times a week, for a total of 90 minutes per week, consisting of no more than 60 minutes per week of direct pull-out services, along with collaborative services.

b. Adaptive Physical Education (APE) delivered as specially designed physical education at Sunrise NPS.

c. Transportation reimbursement for Mother's transporting of Student to and from Sunrise NPS.

4. In order to support Student's transition from home to the school program, the District offered a transition plan which included the services of Additional Adult Assistance (AAA) for a block of up to 78 hours, or up to 390 minutes per day at Sunrise NPS to address and support Student's behavioral, academic and transitional needs. In the event Student required more than three months of AAA support, another IEP meeting would be convened to amend the IEP and extend AAA service. Sunrise, as a NPS, would provide all behavioral interventions and support services within its program. The District, however, offered an additional eight hours of transition support (BID) to be provided by Lovaas in consultation with Sunrise NPS and Mother.

Factual Stipulations:

5. At the end of the first day of hearing, the parties reached several factual stipulations which were recited into the record as follows:

a. There are no contentions regarding Student's assessments. The District assessed Student in all areas of suspected disability.

b. The District provided Student with assessments in the areas of Occupational Therapy (OT), APE, Facilitated Communication, and LAS. The District administered all assessments properly, and used appropriate tests and measures in each assessment.

c. There are no contentions regarding Student's present levels of performance (PLOP). Student's PLOP as contained in the IEP represent an accurate picture of Student's abilities and deficits.

d. With the exception of the frequency of services in LAS, there are no contentions regarding Student's goals and objectives. All goals created by the IEP team which are contained in the IEP are appropriate for Student.

e. There are no contentions regarding the IEP meetings. All necessary and appropriate parties attended the IEP meetings. Mother fully participated in each IEP meeting.

f. There are no contentions regarding placement or LRE. The District's offer of placement at Sunrise NPS, in a full day, therapeutic special day program with a special education teacher and at least one classroom aide, represents an appropriate placement in the LRE.

Transition Plan:

6. The District convened the June 7, 2007 IEP meeting primarily to re-evaluate Student's eligibility and discuss appropriate placements, as Student had been home schooled and had never attended school in a classroom setting. The IEP team discussed placement options and decided to reconvene after observation of the proposed special day class (SDC) autism program at Burroughs Middle School.

7. Student has always been home schooled and received home instruction from Lovaas until March 2007. In contemplation of Student's entry into a public school program, Mother obtained a transition recommendation from Lovaas which she shared with the IEP team on June 18, 2007. Lovaas recommended that Student continue to receive 35-40 hours per week of intensive applied behavioral analysis (ABA) intervention across environments, (both home and school) provided and supervised by an ABA specialist. Lovaas recommended that Student should begin attending school for short periods of time, e.g., one to two hours per day, during a portion of the day when she can be most successful, e.g., snack time and recess. An instructor from Student's home program should facilitate independence by providing the classroom teacher with feedback and strategies with which to address Student's behavioral needs. The Lovaas recommendation, as Mother confirmed, was based upon the supposition that Student would be transitioning into a public school setting and not a NPS.

8. When the IEP team reconvened on June 18, 2007, it was agreed that the Burroughs program would not be an appropriate placement for Student due to safety issues. All parties agreed that Student's autism and low adaptive skills in the areas of communication, daily living skills, social and motor skills, made functioning in the world extremely difficult for Student. Student's impulsivity, inability to make good choices, and poor judgment placed her at risk and presented as a safety issue. As a result, the IEP team determined that the District's offer of placement should be a NPS. The IEP team again decided to reconvene following the identification of an appropriate NPS site, and the completion of the interview/intake process at the selected NPS. The IEP noted that in order to be accepted at a NPS, Student and the parent must interview, and Student must meet the admission criteria or the school.

9. Given the need for a further IEP meeting to solidify the NPS placement, the IEP team, recommended that pending full placement at an NPS, Student's prior home program resume. The IEP team recommendation could not be initiated as Student had aged out of her Lovaas program. Further, a home program was not recommended as the District's offer of placement.

10. The IEP team reconvened on November 16, 2007. At that time the District made an offer of placement at Sunrise NPS. Sunrise is certified as an NPS and specializes in educating children with autistic like behaviors. The curriculum is both individualized and community based. Its methodology is based on ABA techniques. The IEP team crafted a transition plan which was tailored to Student's placement at Sunrise NPS. The offer included the provision of AAA support to be provided at Sunrise NPS in order to support Student's transition from her home program to the school program. The IEP team determined that Student would gradually transition into the classroom setting. Student's level of behavior and academic progress would be closely monitored and adjusted by the Sunrise staff by allowing frequent breaks, providing small group instruction, and implementing appropriate behavior strategies. As stated by Stacey Goldston, the District's NPS Specialist, the selection of the Sunrise special day program and its staff's sensitivity to autism related behaviors, made them well equipped to handle Student's transition to a classroom setting. Mother objected and requested that the gradual transition plan recommended by Lovaas, and previously supported by the IEP team, be instituted.

11. In response to Mother's strong feelings regarding the Lovaas recommendation, when the IEP team convened for its final meeting on December 12, 2007, the team expanded the November 16, 2007 transition plan to include an additional 8 hours of behavioral intervention consultation (BID) to be provided by Lovaas to Sunrise NPS and Mother.

LAS Services:

12. Mother expressed concern that Student's LAS skills had declined since the termination of the Lovaas therapy in March 2007. Mother believes that the District's refusal to provide more LAS services would directly impact on Student's ability to succeed in any educational setting.

13. On November 13, 2007, the District completed a LAS assessment to identify Student's present levels of performance in the area of LAS. Sarah Trickett¹ administered Student's assessment.

14. Ms. Trickett administered the Goldman Fristoe Test of Articulation-Second Edition (GFTA-2). Student presented with more articulation errors than the mean for girls her age; however, the errors made on the formal assessment were not consistent, and Student did not make the same errors in conversational or echolalic speech. Ms. Trickett concluded that Student's articulation errors did not adversely affect her overall intelligibility.

15. Ms. Trickett attempted to administer the Oral and Written Language Scales (OWLS) and the Expressive One-Word Picture Vocabulary Test (EOWPVT); however, Student was unable to complete the assessments due to confusion in the tasks at hand. As

¹ Ms. Trickett is a speech and language pathologist (SLP) employed by Progressus Therapy, which is contracted to provide LAS assessments and services in the District. Ms. Trickett is a licensed SLP and has substantial experience assessing students and participating in IEP meetings.

example, Student would repeat the directions given to her rather than follow them. Ms. Trickett determined that Student demonstrated moderate receptive and expressive language delays characterized by difficulty following directions, identifying and utilizing age appropriate vocabulary and creating age-appropriate syntax. Further Student needed maximum cues and prompts in most modes of communication. Pragmatically, Student demonstrated many weaknesses, including an inability to role play, sequence her actions, maintain a conversation or initiate a conversation.

16. Based upon the assessment results and Student's current abilities, the IEP team determined that Student required a LAS program designed to access functional language. As a result, the IEP team crafted two LAS goals. The first goal required that student utilize her expressive and receptive language within a pragmatic environment by increasing the appropriate use of conversational strategies with appropriate visual support with minimal to fading cues, facial expressions and gestures while sharing ideas. The second goal required Student to utilize visual supports to increase her language comprehension, length of utterance, and communicative interactions with fading cues. Mother considered both of these goals appropriate for Student.

17. At the final December 12, 2007 IEP meeting, the IEP team determined that in order for Student to access her education and accomplish her goals, she would require LAS services one to five times a week, for a total of 90 minutes per week, consisting of no more than 60 minutes per week of direct pull-out services, along with collaborative services involving the special education teacher and aides. Ms. Trickett noted that although additional LAS time may have been discussed at the June 2007 IEP meetings, Sunrise NPS had yet to be selected as Student's placement. The Sunrise NPS autism program is language intensive with language embedded in the curriculum. Students receive constant LAS assistance throughout the day. As a result, Student actually receives more than 90 minutes per week of LAS services. Further, by leaving the exact amount of time flexible (one to five times a week of pull-out services), the Sunrise's SLP could determine the amount of time Student would actually need for each LAS session, or how much direct service Student could tolerate per session. While Ms. Trickett agreed with Mother that additional LAS services would benefit Student, she indicated that there is a difference between what benefits Student and what Student needs to access her education. The LAS goals are appropriate and the amount of time allocated to Student's LAS services is sufficient for Student to access her education in a speech embedded program such as provided by Sunrise NPS.

Gender of Aides:

18. Mother and the District provided similar descriptions of Student. The District's assessments indicated that Student falls within the low range of general adaptive functioning in comparison with her peers. Student's self-help skills are delayed and she still has issues relating to toileting and hygiene. The District also reported that Student has difficulty expressing herself as well as being understood by others.

19. Mother added that Student is very affectionate and loving. She likes to hug and sit on laps. Mother is concerned that Student is very compliant and will do whatever someone asks of her. Student is unaware of what is happening in her immediate surroundings and has been known to wander off or “go with strangers.” All of these concerns were fundamental in offering placement the more secure placement of a NPS.

20. Once Sunrise NPS was offered as Student’s placement at the November 16, 2007 IEP, Mother finally understood that the Lovaas transition plan would not be offered as part of Student’s IEP. Mother had not questioned the gender of the Lovaas aides, because, to date, all of Student’s aides had been female. Discussions of the AAA transition plan, initially did not indicate the gender of the aide. Mother strongly voiced her requirement that Student’s AAA be female. Mother emphasized her concerns that Student unintentionally acts inappropriately. At age 13, she has no personal sexual awareness. She still exhibits genital self-stimulatory behaviors. Given that Student is extremely compliant and responds to strangers, Mother was terrified of placing Student alone with a male aide. Mother understands that Student will always be at risk; however, she refuses to put Student in a situation where she may be unnecessarily vulnerable. The IEP team added the following to the November 16, 2007 IEP: “It is recommended that one-to-one assistance be a female to assist with communication, navigation during school day, and with personal hygiene issues.” The IEP team continued the IEP meeting to confirm the availability of a female aide.

21. As of the December 12, 2007 IEP meeting, the issue of a female aide had not been resolved to Mother’s satisfaction. Ms. Goldston indicated that the District attempted to be sensitive to Mother’s safety issues, however AAA service is not a “person,” it is “assistance.” It is up to the school to determine what support is appropriate. The District cannot dictate how a NPS provides its own staffing. The only control the District has over NPS staffing is the requirement that staff complete background checks. Ms. Goldston further emphasized that Sunrise NPS is part of the Help Group which also has programs for abused and neglected children. The school is sensitive to Mother’s concerns. Nevertheless, Ms. Goldston contacted Sunrise NPS to inquire about a female aide. The school administrator informed her that Sunrise could guarantee a female aide to assist Student with toileting and hygiene; however, she could not guarantee a female aide at all times. Although the Sunrise administrator believed that a female aide would be available at most times, the school had more male than female aides, and Student’s educational and behavioral plans could be provided by a male aide.²

22. The IEP team modified the final December 12, 2007 offer as follows: “Parent prefers that AAA be a female. Sunrise NPS will ensure that a female will assist Student using the restroom; however, throughout the school day program, Sunrise NPS may assign other staff as appropriate to meet her educational needs. Student is totally trusting and frequently complies with adult requests; however, due to the impact of her disability, Student has difficulty distinguishing appropriate and inappropriate requests, which may have adverse effects...She needs to be highly monitored throughout the school day.”

² Mother did not object to a male special education teacher or classroom aide.

Failure to Communicate:

23. Mother described Ms. Goldston's attitude towards the December 12, 2007 offer as "take it or leave it." In essence, the phrase accurately described the offer. In the event Mother could not accept the IEP as written, then Sunrise, as an NPS, would not accept Student, and the process of searching for another NPS would need to begin again. Mother indicated that she would sign in order to get Student in school by January 2008; however, she wanted to reserve further discussion on increasing the LAS services. Again, Ms. Goldston indicated the District had no control over the issue. If the goals were appropriate, the actual LAS services were determined by Sunrise NPS. Mother indicates she was not allowed to sign the IEP; however, she did not subsequently enroll Student at Sunrise NPS.

APPLICABLE LAW and LEGAL CONCLUSIONS

1. Under *Schaffer v. Weast* (2005) 546 U.S. 49, [126 S.Ct. 528], the party who files the request for due process has the burden of persuasion at the due process hearing. The District has the burden of persuasion in this matter.

2. A child with a disability has the right to a free appropriate public education (FAPE) under the Individuals with Disabilities Education Act (IDEA or the Act) and California law. (20 U.S.C. § 1412(a)(1)(A); Ed. Code, § 56000.) The Individuals with Disabilities Education Improvement Act of 2004 (IDEIA), effective July 1, 2005, amended and reauthorized the IDEA. The California Education Code was amended, effective October 7, 2005, in response to the IDEIA. Special education is defined as specially designed instruction provided at no cost to parents, calculated to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(a)(29); Ed. Code, § 56031.)

3. Under California law, "special education" is also defined as specially designed instruction, provided at no cost to parents, that meets the unique needs of the child. (Ed. Code, § 56031.) "Related services" include transportation and other developmental, corrective, and supportive services as may be required to assist a child to benefit from special education. DIS services shall be provided "when the instruction and services are necessary for the pupil to benefit educationally from his or her instructional program." (Ed. Code, § 56363, subd. (a).) Such services include transportation and other supportive services as may be required to assist a child with a disability to benefit from special education. (20 U.S.C. § 1401(a)(17); *Union School District v. B. Smith* (9th Cir. 1994) 15 F. 3d 1519, 1527.)

4. Before any action is taken with respect to an initial placement of an individual with exceptional needs in special education, the school district must assess the student in all areas of suspected disability. (20 U.S.C. § 1414(a)(1)(A); 34 C.F.R. § 300.532(f); Ed. Code, § 56320.) Reassessments of the student must be conducted if conditions warrant a reassessment or if the parent or teacher requests a reassessment. (20 U.S.C. § 1414(a)(2)(A); Ed. Code, § 56381, subd. (a).) Pursuant to the factual stipulations set forth

in Factual Findings 5(a) and (b), there are no contentions regarding Student's assessments. The District provided Student with assessments in the areas of Occupational Therapy (OT), Adaptive Physical Education (APE), Facilitated Communication and Language and Speech (LAS). The District assessed Student in all areas of suspected disability and administered all assessments properly, using qualified personnel and appropriate tests and measures in each assessment.

5. The IDEA imposes upon a school district the duty to conduct a meaningful IEP meeting with the appropriate parties. In order to fulfill the goal of parental participation in the IEP process, the school district is required to conduct, not just an IEP meeting, but a meaningful IEP meeting. (*W.G. v. Bd. Of Trustees* (9th Cir. 1992) 960 F.2d. 1479, 1485.) The IEP team must consider the concerns of the parents of enhancing their child's education throughout the child's education; however, a parent who has had an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way. (*Fuhrmann v. East Hanover Board of Education* (3d Cir. 1993) 993 F.2d 1031, 1036.) There are no contentions regarding the IEP meetings in this case. Pursuant to the factual stipulation set forth in Factual Finding 5(e), all necessary and appropriate parties attended the IEP meetings. Further, Mother fully participated in each IEP meeting.

6. An IEP is a written statement that includes a statement of the present performance of the student, a statement of measurable annual goals designed to meet the student's needs that result from the disability, a description of the manner in which progress of the student towards meeting the annual goals will be measured, the specific services to be provided, the extent to which the student can participate in regular educational programs, the projected initiation date and anticipated duration, and the procedures for determining whether the instructional objectives are achieved. (20 U.S.C. § 1414 (d)(1)(A)(II), (III); Ed. Code, § 56345, subd (a)(2), (3).) An IEP also includes a statement of the program modifications or supports for school personnel that will be provided to the student to allow the student to advance appropriately toward attaining the annual goals and be involved and make progress in the general education curriculum and to participate in extracurricular activities and other nonacademic activities. (Ed. Code, § 56345, subds. (a)(4)(A), (B).) There are no contentions regarding Student's present levels of performance (PLOP). Pursuant to the factual stipulation set forth in Factual Finding 5(c), Student's PLOP, as contained in the IEP, represent an accurate picture of Student's abilities and deficits. With the exception of the frequency of services in LAS, discussed further in Legal Conclusions 9 and 10, there are no contentions regarding Student's goals and objectives. Pursuant to the factual stipulation set forth in Factual Finding 5(d), all parties agreed that each goal crafted by the IEP team was appropriate for Student.

7. To the maximum extent appropriate, a child with a disability must be educated with children who are not disabled and in the least restrictive environment (LRE). (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2) (2006).) A child with a disability should be removed from the regular educational environment only when the nature or severity of the disability of the child is such that the education in regular classes with the use of

supplementary aids and services cannot be achieved satisfactorily. There are no contentions regarding placement at Sunrise NPS or least restrictive environment. Pursuant to the factual stipulation set forth in Factual Finding 5(f), the District's offer of placement at Sunrise NPS, in a full day, therapeutic special day program with a special education teacher and at least one classroom aide, represents an appropriate placement for Student in the LRE.

8. In *Board of Education of Hendrick Hudson Central School District, et. al. v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L. Ed.2d 690] (*Rowley*), the Supreme Court held that "the 'basic floor of opportunity' provided by the IDEA consists of access to specialized instruction and related services which are individually designed to provide educational benefit to a child with special needs." *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to "maximize the potential" of each special needs child "commensurate with the opportunity provided" to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is "sufficient to confer some educational benefit" upon the child. (*Id.* at pp. 200, 203-204.) The Court concluded that the standard for determining whether a local educational agency's provision of services substantively provided a FAPE involves a determination of three factors: (1) whether the services were designed to address the student's unique needs, (2) whether the services were calculated to provide educational benefit to the student, and (3) whether the services conformed to the IEP. (*Id.* at p.176; *Gregory K. v. Longview Sch. Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.)

9. Mother contends that the District's failure to provide Student with additional LAS services represents a substantive denial of FAPE. It is not disputed that Student's LAS skills have diminished since the termination of her Lovaas program. In response, the District provided a LAS assessment which assisted in identifying Student's LAS strengths and deficits. The IEP team determined that Student needed a program to access functional language. Mother has not challenged the IEP team's determination of Student's PLOP or the validity of the LAS goals created for Student. The LAS goals and services created for Student were designed to address these unique needs. (Factual Findings 12, 13, 14 and 16.)

10. Mother further contends that the LAS services were insufficient because they did not devote any specific time to Student's articulation. Ms. Trickett administered the GFTA-2 which indicated that, although Student exhibited inconsistent articulation errors, those articulation errors did not adversely affect her intelligibility. Further, Sunrise NPS provides a language intensive program with speech embedded in other aspects of the daily curriculum. Mother presents a "more is better" argument. No doubt Student would benefit from additional LAS services. The IDEA, however, does not require that a student be provided with the best available education or services or that the services maximize each child's potential. The *Rowley* standard of the "basic floor of opportunity" of specialized instruction and related services only requires that the LAS program be individually designed to provide some educational benefit to Student. Ms. Trickett, who provided credible testimony regarding Student's LAS needs, found the proposed LAS services to be very appropriate to allow Student access to her education. Mother presented no information to

suggest otherwise. The LAS services contained in Student's IEP are appropriate. (Factual Findings 14 and 17.)

11. Mother contends that the District's failure to follow the Lovaas transition plan constitutes a substantive denial of FAPE, by ignoring Student's unique needs. It is undisputed that Student has never attended school. Both parties agree that Student's unique needs require that she be provided a gradual transition into the classroom setting. The District plan, using AAA assistance, while different from the Lovaas recommendation, also has much in common with it. Each plan provides for a gradual transition. Each plan proposes that Student be closely monitored by trained staff. The Lovaas recommendation, however, was made in anticipation of Student's placement in a public school SDC. It did not consider Student's placement at Sunrise NPS, a school which specializes in educating children with autistic-like behaviors. The IEP team's transition plan changed with the selection of the NPS, and takes into consideration the abilities of the Sunrise program and staff to handle Student's transition needs. Further, the differences between the transition plans are a matter of methodology. As long as a school district provides an appropriate education, methodology is left up to the district's discretion. (*Rowley, supra*, 458 U.S. at p. 208.) This rule is applied in situations involving disputes regarding choice among methodologies for educating children with autism. (See, e.g., *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141; *Pitchford v. Salem-Keizer School District*, (D. Ore. 2001) 155 F.Supp.2d 1213, 1230-32); *T. B. v. Warwick School Commission* (1st Cir. 2004) 361 F.3d 80, 84.) Courts are ill-equipped to second-guess reasonable choices that school districts have made among appropriate instructional methods. (*T.B., supra*, 361 F.3d at p. 84.) The transition plan contained in Student's IEP considered her unique needs, and is appropriately designed to provide her with educational benefit. (Factual Findings 6, 7, 8, 9, 10 and 11.)

12. Lastly, Mother contends that the District's failure to guarantee a female aide for Student constitutes a substantive denial of FAPE, as it fails to consider Student's unique needs and vulnerabilities. Without a doubt, all parties are sensitive to Student's unique needs. The IEP is replete with direct references to Student's trusting nature, compliance, and her inability to distinguish between appropriate and inappropriate requests. The District has continually attempted to accommodate Mother's concerns regarding Student's safety. Student, however, can only be cloistered for so long. Ultimately, Student needs to attend school and develop basic life skills. The selection of Sunrise NPS represents a conscious effort to provide Student with a safe and secure environment in which to learn. The school is physically secure, and has a highly structured and closely monitored program, which is conducted by trained special education professionals and staff. Further, the District obtained a guarantee that Student's bathroom and hygiene issues would be handled by a female aide. The District cannot control staffing issues at a NPS anymore than it can require the NPS to accept Student into its program. The District's control over the NPS staffing is limited to the requirements of Education Code section 44237, which provides that private school employees who have contact with students, submit to a criminal background investigation prior to employment. The District has shown that significant efforts have been made to ensure Student's safety in a school setting. That is all it is required to do. The District cannot bar a NPS employee of either gender from doing his or her job. Further, Mother has

not provided any evidence to suggest that an aide's gender represents an actual threat to Student. The District is not required to provide Student with a female aide. (Factual Findings 18, 19, 20, 21 and 22.)

ORDER

The relief sought by the District is granted. The District's offer of placement and services developed at the June 7, June 18, November 16, and December 12, 2007 IEP team meetings constitutes a free appropriate public education (FAPE).

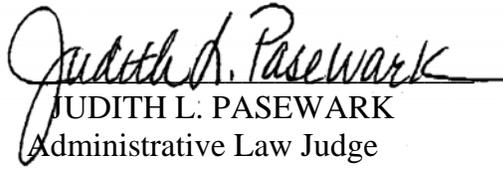
PREVAILING PARTY

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. The District has prevailed on the single issue presented in this case.

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 90 days of receipt of this Decision. (Ed. Code, §56505, subd. (k).)

Dated: June 4, 2008


JUDITH L. PASEWARK
Administrative Law Judge
Office of Administrative Hearings