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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

C.B. AND AMIR BANIASAD.,

Plaintiff,

vs.

CAPISTRANO UNIFIED SCHOOL

DISTRICT,

Defendant.

Case No.: SACV 07-00632-CJC(ANx)

MEMORANDUM OF DECISION

I. INTRODUCTION

This is an administrative appeal from a decision by an Administrative Law Judge (“ALJ”) in the Office of Administrative Hearings (“OAH”). The ALJ determined that the Individualized Education Programs (“IEP”) offered by Defendant Capistrano Unified School District (“the District”) to Plaintiff C.B. for the 2003-2004, 2004-2005, 2005-2006, and 2006-2007 school years amounted to a Free Appropriate Public Education (“FAPE”), as required by the Individuals with Disabilities Education Act

1 (“IDEA”), 20 U.S.C. §§ 1400 *et seq.* Having reviewed the administrative record, this  
2 Court reaches the same conclusion.

## 3 4 **II. FACTUAL BACKGROUND**

5  
6 This case spans a four-year period, during which C.B. (“Student”) was in  
7 preschool through second grade. (Administrative Law Judge’s Op. at 5, Mar. 13, 2007  
8 (“ALJ Op.”).) Student entered preschool in September of 2003 at Malcolm Elementary,  
9 but withdrew after seven days. (ALJ Op. Factual Findings ¶ 5.) Student exhibited  
10 some behavioral problems during his seven days at Malcolm—including screaming,  
11 mouthing objects, and eloping from the group—and according to Student’s mother,  
12 these problems persisted after he left Malcolm and entered another preschool. (*Id.* ¶¶ 5-  
13 6.) In April 2004, Student’s mother returned with Student to Malcolm to request an  
14 assessment from the District, but Student did not re-enroll. (*Id.* ¶ 7.) During the spring  
15 and summer of 2004, the District held a meeting with the Student Study Team (“SST”),  
16 the District referred Student for an assessment, and Student was evaluated by District’s  
17 speech and language pathologist, occupational therapist, and psychologist. (*Id.* ¶¶ 7-12,  
18 15.)

19  
20 In July of 2004, the District held Student’s initial IEP. (*Id.* ¶ 21.) And in  
21 November of 2004, the District completed its behavior assessment, Functional Adaptive  
22 Analysis (“FAA”). (*Id.* ¶ 31.) After the FAA was completed, the District used this  
23 analysis to identify Student’s maladaptive behaviors and prepare a Behavioral  
24 Intervention Plan (“BIP”). (*Id.* ¶ 31.) Specifically, the District sought to curb  
25 Student’s maladaptive behaviors that stemmed from autism, such as screaming, hitting  
26 other students, and not responding to instructions through the use of speech and  
27 occupational therapy and behavioral modification strategies. (*Id.* ¶ 31-32.)  
28

1 In February of 2005, the District held an IEP meeting to review the BIP and  
2 Student's progress. (*Id.* ¶ 41.) Two more meetings were held in April 2005. (*Id.* ¶¶  
3 42-46.) Finally, in May 2005, the District conducted Student's annual IEP meeting.  
4 (*Id.* ¶¶ 47-48.) At this meeting the District suggested, based on Student's progress, that  
5 he should be placed in an autism-specific kindergarten class. (*Id.* ¶¶ 47-48.) The  
6 parents did not consent to Student's new placement, however, and Student remained in  
7 the same class he attended during the 2004-2005 school year. (*Id.* ¶¶ 47-48.)

8  
9 After the 2005-2006 school year began, Student's parents removed him from  
10 public school. (*Id.* ¶¶ 73.) The District continued to hold IEP meetings and offer  
11 placement and services for Student for the remainder of the 2005-2006 school year as  
12 well as the 2006-2007 school year. (*Id.* ¶¶ 54-88.)

13  
14 Student's parents filed a request for a due process hearing on October 5, 2005.  
15 (*Id.* at 1.) On February 13, 2007, the ALJ issued his opinion, finding that the District  
16 was required to reimburse Student for costs associated with an independent assessment  
17 his parents requested, but the District prevailed on all other issues dealing with the  
18 provision of FAPE to Student. (*Id.* at 45)

### 19 20 **III. STANDARD OF REVIEW**

21  
22 “When a party challenges the outcome of an IDEA due process hearing, the  
23 reviewing court receives the administrative record, hears any additional evidence, and,  
24 ‘basing its decision on the preponderance of the evidence, shall grant such relief as the  
25 court determines is appropriate.’ ” *R.B. ex rel F.B. v. Napa Valley Unified Sch. Dist.*,  
26 496 F.3d 932, 937 (9th Cir. 2007) (quoting 20 U.S.C. § 1415(i)(2)(B)). In reviewing  
27 the administrative record, courts are to give “due weight” to the state administrative  
28 proceedings. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester Cty. v.*

1 *Rowley*, 458 U.S. 176, 206 (1982). Courts must be careful not to “substitute their own  
2 notions of sound educational policy for those of the school authorities which they  
3 review.” *Id.* Where the hearing officer’s findings are “ ‘thorough and careful,’ ” the  
4 court gives those findings “particular deference.” *R.B.*, 496 F.3d at 937 (quoting *Union*  
5 *Sch. Dist. v. Smith*, 15 F.3d 1519, 1524 (9th Cir. 1994)). A hearing officer’s findings  
6 will be treated as thorough and careful “when the officer participates in the questioning  
7 of witnesses and writes a decision ‘contain[ing] a complete factual background as well  
8 as a discrete analysis supporting the ultimate conclusions.’ ” *Id.* at 942 (quoting *Park v.*  
9 *Anaheim Union High Sch. Dist.*, 464 F.3d 1025, 1031 (9th Cir. 2006)).

10  
11 Here, the ALJ’s findings were thorough and careful, and thus entitled to  
12 particular deference. In his order, the ALJ set forth a detailed factual background and  
13 made extensive findings of fact. He identified all issues properly raised by Student in  
14 his request for a due process hearing and engaged in a careful analysis of each issue for  
15 each of the academic years in question. Thus, the Court will give the ALJ’s order  
16 particular deference. Such deference is especially appropriate in areas where the ALJ  
17 weighed conflicting evidence or witness testimony or characterized certain evidence  
18 presented by either Student or the District.

#### 19 20 **IV. LEGAL ANALYSIS**

21  
22 Plaintiff first argues that the District’s Functional Analysis Assessment (“FAA”)  
23 and Behavioral Intervention Plan (“BIP”) did not comply with statutory requirements.  
24 (Pl.’s Br. 35-71.) Specifically, Plaintiff argues that the FAA lacked the requisite  
25 specificity, and therefore could not effectively be used to analyze Student’s behavior.  
26 (*Id.*) With respect to the BIP, Plaintiff argues, that the District failed to have a  
27 behavioral intervention case manager (“BICM”) at its IEP meeting on November 24,  
28 2004, a BICM did not oversee the implementation of the BIP, the BIP also lacked

1 requisite specificity to be effectively implemented, and the BIP was not effectively  
2 implemented because proper records regarding Student’s progress were not kept. (*Id.*)  
3 The ALJ considered and correctly rejected each of these arguments when they were  
4 presented at the due process hearing. The ALJ correctly concluded that “any procedural  
5 error arising in the drafting of the FAA and BIP were harmless error.” (ALJ Op. Legal  
6 Conclusions ¶ 31.) The ALJ also correctly concluded that the FAA and BIP identified  
7 the “targeted behavior” and set behavioral goals based on a thoughtful analysis of these  
8 behaviors. (ALJ Op. Factual Findings ¶¶ 31-33, 36-38.) The ALJ also appropriately  
9 noted that when the IEP team met and discussed the FAA and goals, Student’s mother  
10 “agreed with the plan and consented to its implementation.” (*Id.* ¶ 33.)  
11

12 Second, Plaintiff argues that the District’s failure to comply with its “child find”  
13 obligations—the obligation to identify Student’s behavioral problems and provide an  
14 assessment—denied Student of FAPE during the 2003-2004 school year. (Pl.’s Br. 71-  
15 77.) Again, the ALJ rejected this argument. The ALJ found that after only 7 days at  
16 Malcolm, “the District was not on notice that Student had a disability that required an  
17 assessment until the mother requested the assessment in 2004.” (ALJ Op. Legal  
18 Conclusions ¶ 24.) And when the assessment was requested, the District conducted an  
19 assessment that was adequate under the circumstances. (*Id.* ¶ 25.) During the spring  
20 and summer of 2004, the District held a meeting with the Student Study Team (“SST”),  
21 the District referred Student for an assessment, and Student was evaluated by District’s  
22 speech and language pathologist, occupational therapist, and psychologist. (ALJ Op.  
23 Factual Findings ¶¶ 7-12, 15.) Despite Student’s limited English-language skills and  
24 behavioral problems, the District learned as much as it could from these assessments.  
25 (ALJ Op. Legal Conclusions ¶ 25.) The ALJ correctly found that the District met its  
26 obligations.  
27  
28

1 Third, Plaintiff argues that the District's failure to convene an IEP meeting for  
2 Student in May 2006 denied Student of FAPE. (Pl.'s Br. 77-79.) With respect to this  
3 argument, the ALJ correctly concluded that "Student failed to carry his burden of  
4 establishing that the District committed a procedural or substantive violation when the  
5 2006 annual IEP review was delayed . . . ." (ALJ Op. Legal Conclusions ¶ 55.) Student  
6 was no longer attending public school by May 2006, and the District's delay was  
7 attributable, at least in part, to difficulty in reaching Student's parents, who were  
8 unresponsive to District's meeting notices. (ALJ Op. Factual Finding ¶¶ 74-75.)  
9 Particularly, in light of the fact that the parents were "partially responsible for the  
10 delay," the fact that this meeting did not occur until December 2006 did not deny  
11 Student of FAPE. (ALJ Op. Legal Conclusions ¶ 55.)

12  
13 Fourth, Plaintiff argues that the District did not conduct an appropriate  
14 occupational therapy ("OT") assessment and did not provide adequate occupational  
15 therapy services for Student. (Pl.'s Br. 79-87.) Plaintiff also argues that the District did  
16 not provide adequate speech, language, and behavioral services, resulting in the denial  
17 of FAPE. (Pl.'s Br. 87-95.) Again, the ALJ considered and rejected both of these  
18 arguments. With respect to the testing done by the District, the ALJ concluded that  
19 although Student's experts may have performed different tests, the assessments  
20 administered were adequate, and Student did not establish that a different test would  
21 have been more effective. (ALJ Op. Factual Finding ¶ 19.) Likewise, although  
22 Student's experts argued that Student required additional services and therapy, the OT  
23 and speech and language provided by the District as well as the specialized autism  
24 curriculum "were appropriate and sufficient to provide Student with a meaningful  
25 educational experience." (*Id.* ¶¶ 23-24.) Student was enrolled in a structured autism  
26 class, and Student received more than two hours per week of speech and language  
27 therapy and additional OT. (*Id.*) The ALJ correctly found that the District conducted  
28 an appropriate OT assessment and provided adequate occupational therapy services.

1  
2 Fifth, Plaintiff argues that ALJ erred in denying the reimbursement of travel  
3 expenses related to the independent assessment of Student. After the District evaluated  
4 Student, Student's parents sought an independent educational evaluation ("IEE"), as is  
5 their right to do. 34 C.F.R. § 300.502(b)(1). At the due process hearing, parents sought  
6 reimbursement for both the cost of the evaluation and the travel expenses. The ALJ  
7 correctly held that the Student's parents were entitled to reimbursement for the cost of  
8 the IEE, but not travel expenses associated with the expert chosen to perform the  
9 evaluation. *See id.*

10  
11 Sixth, Plaintiff argues that the IEPs in the spring of 2005 were inadequate and  
12 various procedural and substantive violations occurred during the 2005-2006 school  
13 year, thereby denying Student of FAPE. (Pl.'s Br. 95-116.) First, the ALJ correctly  
14 determined that each of the three IEP meetings conducted in the spring of 2005 either  
15 had no procedural or substantive violations or despite procedural deficiencies  
16 nonetheless were sufficient to allow parents' "opportunity to participate in Students'  
17 IEP development" and provided Student sufficient "educational opportunity." (ALJ  
18 Op. Factual Findings ¶ 48.) Second, the ALJ correctly determined that Student was not  
19 denied FAPE during the 2005-2006 school year. Student was provided sufficient OT  
20 and speech and language therapy; the BIP was not defective and it was effectively  
21 implemented as best the District could under the circumstances; and the District held an  
22 annual review IEP as soon as parents were willing to participate in one. (ALJ Op.  
23 Factual Findings ¶¶ 57, 69, 74-75.)

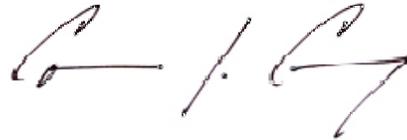
24  
25 Finally, Plaintiff argues that various procedural and substantive violations  
26 occurred during the 2006-2007 school year, thereby denying Student of FAPE. (Pl.'s  
27 Br. 122-32.) Student was not denied FAPE during the 2006-2007 school year.

1 Student's IEP offered him FAPE, providing him with "goals and objectives," based on  
2 measurable benchmarks.<sup>1</sup> (ALJ Op. Factual Findings ¶ 88.)

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4 **V. CONCLUSION**

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6 For the foregoing reasons, the decision of the ALJ is **AFFIRMED** in all respects.

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8 DATED: November 21, 2008



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10 **CORMAC J. CARNEY**  
11 **UNITED STATES DISTRICT JUDGE**

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27 <sup>1</sup> Plaintiff also argues that the ALJ erred with respect to its factual findings regarding the parties'  
28 conduct during the relevant time period at issue in the litigation. (Pl.'s Br. 132-38.) The ALJ's  
findings were supported by substantial evidence, and the ALJ was particularly well suited to weigh  
credibility of the witnesses and to assess the strength of the evidence presented at the due process  
hearing.