

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SAN JACINTO UNIFIED SCHOOL
DISTRICT,

v.

PARENTS on behalf of STUDENT.

OAH CASE NO. 2008020225

DECISION

Administrative Law Judge (ALJ) Peter Paul Castillo, Office of Administrative Hearings (OAH), State of California, heard this matter on May 29, 2008, at the offices of the San Jacinto Unified School District (District), in San Jacinto, California.

Attorney Laurie A. LaFoe appeared on behalf of the District. Eric Mora, the District's Director of Special Education, and Greg Alexander, the District's Coordinator of Special Education, attended the hearing.

Parents represented Student. Student did not attend the hearing.

The District filed a request for a due process hearing on February 7, 2008. The matter was continued on February 29, 2008. At the close of the hearing on May 29, 2008, the parties requested the opportunity to file written closing argument. That request was granted. OAH received the District's written closing argument on June 10, 2008, and Student's on June 11, 2008. The matter was deemed submitted on June 11, 2008.

ISSUE

Does the District's offer of placement and services in the December 3, 2007 Individualized Education Program (IEP) provide Student with a Free Appropriate Public Education (FAPE) in the least restrictive environment (LRE)?

CONTENTIONS OF THE PARTIES

The District asserts that its December 3, 2007 IEP offer of placement and services is reasonably calculated to provide Student with some educational benefit in the LRE. The District seeks to modify Student's present placement, which is solely home-hospital instruction. The District requests that Student attend a regular education high school for two periods a day, with a continuation of home-hospital instruction, to start Student's transition to full time attendance at a regular education high school for the 2008-2009 school year (SY). The District contends that it properly determined and considered Student's educational needs and physical limitations in developing the proposed IEP. The District asserts that Student can attend a regular education high school with accommodations that address his unique needs related to his disability, such as additional time between classes, shorter writing assignments and additional breaks.

Student contends that he cannot be safely educated in a public high school due to his disability, as he cannot safely walk to his classes due to his impaired mobility and risk of death if he falls and hits his head. Student also objects to the District's occupational therapy assessment for not adequately exploring Student's difficulty in writing and fatigue caused by his disability, and the District not offering sufficient accommodations to meet Student's unique needs. Student asserts that he continues to require home-hospital instruction.

FACTUAL FINDINGS

Jurisdictional Facts

1. Student was born on May 7, 1992. At the time of the hearing, Student resided within the District boundaries with his Parents, was in the tenth grade and received educational services at home. Student has cerebral palsy and is eligible for special education services under the categories of other health impaired and orthopedically impaired.

2. Student has limited mobility on his left side as he walks with a limp and has very limited use of his left arm and hand. Student does not use orthotics or bracing to walk. Student has a slight build and is only five feet tall, which is related to his cerebral palsy. Student has a history of seizures, which are presently under control with medication; he has not had a seizure for over two years.

3. The District instituted home-hospital instruction in March 2005 after Student had surgery related to his cerebral palsy. The District continued to provide home instruction during SY 2006-2007 due to Student's seizure disorder and need for medication management. The District continues to provide Student with home-hospital instruction.

District's Offer

4. Ryan Chatfield was Student's home-hospital instructor during the SY 2005-2006 and SY 2006-2007. Mr. Chatfield is a middle school resource specialist teacher with the District, and instructed Student in his home four to five days a week, five hours a week. Towards the end of SY 2006-2007, Mr. Chatfield recommended to the District that Student return to a general education setting. The District requested that Parents agree to an assessment plan for a comprehensive triennial assessment because the District had not conducted a comprehensive assessment since Student started home-hospital instruction. The District conducted psychoeducational, occupational therapy and speech and language assessments.¹ On December 3, 2007, the IEP team convened to discuss the assessment findings and any changes to Student's IEP.

5. At the December 3, 2007 IEP meeting, the District proposed for the remainder of SY 2007-2008 that Student attend San Jacinto High School (SJHS), his home school, for two periods a day to start his transition to full time attendance at SJHS. The District would continue to provide Student with home-hospital instruction, the amount not identified in the IEP document. The District also offered 50 minutes a week of counseling to assist Student with any anxiety he might have attending high school after a two and a half year absence. While not stated in the IEP document, the District verbally offered to place Student in general education classes. At the end of the school year, the District proposed to hold another IEP meeting to review if Student was ready to attend SJHS full time.

6. The IEP document did not contain any proposed accommodations, although the District's team members discussed at the IEP meeting accommodations to meet Student's unique needs regarding his limited mobility and fatigue related to his cerebral palsy. The District also offered academic goals in the areas of reading comprehension, written expression, spelling, math computation and social emotional. Parents consented to the District's proposed goals. Parents did not consent to the District's placement offer because they believed that Student would not be safe at SJHS due to his disability, and stated that they would not agree to any offer that placed Student at SJHS.

Mobility and Occupation Therapy Needs

7. Gail Harris conducted the District's occupational therapy assessment, and reported her findings at the IEP meeting. Ms. Harris was qualified to conduct the assessment. Ms. Harris' assessment consisted of a review of Student's educational file and teacher and parent interviews. Ms. Harris also conducted formal assessments and clinical observations at Student's home. Ms. Harris administered the Beery Visual Motor Integration (VMI) Test of Visual Perception, VMI Developmental Test of Motor Coordination, and Assessment of Fine Motor Development and Handwriting Skills. Ms. Harris' assessment was the first time she worked with Student. Based on her assessment, Ms. Harris determined

¹ The District's speech and language assessment and Student's speech and language needs are not at issue.

that Student did not require occupational therapy services to make adequate educational progress. Student did not contest whether he required occupational therapy services. Rather, Student asserted that Ms. Harris' assessment did not properly identify his occupational therapy and safety deficits related to problems with his mobility and problems with handwriting. Additionally, Student asserted that the District failed to adequately address safety concerns raised by Parents at the IEP meeting.

8. Mr. Chatfield and Bill Powell,² Student's home-hospital instructors for SY 2007-2008, both reported to Ms. Harris that Student required additional time to complete assignments. Mr. Chatfield noted that Student tired easily at times and often needed breaks every 30 to 45 minutes, even though the daily instruction lasted for only one to one and a half hours. Mr. Powell observed that Student had low muscle tone and appeared weak. Mr. Powell gave Student additional time to complete written assignments and reduced the length of some written assignments as accommodations for Student's impairments.³ Judy Morgan, who conducted the speech and language assessment, stated at the IEP meeting that Student fatigued during her assessment. Ms. Harris recommended that the accommodations of reduced writing assignment length and extended time to complete work that Mr. Chatfield and Mr. Powell provided be continued and specified on the IEP.

9. Student had no difficulties regarding visual perception and visual motor coordination, as reflected by his scores in the average range on the VMI Test of Visual Perception and VMI Test of Motor Coordination. Student's handwriting was legible, but he required additional time to complete written tasks. Ms. Harris proposed accommodations to reduce the length of Student's writing assignments and additional time to complete assignments. Ms. Harris failed to document in her assessment that Student had trouble positioning his paper while writing due to his inability to use his left arm and hand. Parents raised this issue at the IEP meeting and Ms. Harris admitted that she failed to include that information in her assessment. The District IEP team members discussed possible accommodations to address problems Student had with writing, such as shorter writing assignments and additional time on assignments and tests. However, in the proposed IEP offer, the District did not include the accommodations that it would provide to address Student's unique occupational therapy needs.

10. Parents raised concerns at the IEP meeting about Student's safety regarding his ability to get around the campus. The District expected Student to walk to his classes on a high school campus of approximately 2100 students. Parents expressed concerns about another pupil knocking Student over while walking to class, and Student hitting his head, which could cause death. Parents did not present any medical evidence at the IEP meeting or at hearing that Student could suffer a severe brain injury with a simple fall, or the risk of head trauma due to his mobility and balance problems. The only medical documents from

² Mr. Powell is a special education teacher at SJHS.

³ Student wants to complete his assignments by handwriting and refuses to use a computer or other assistive technology service.

Student's doctors simply recommended continued home-hospital instruction. Parents also expressed concern about Student having a seizure at school. However, Student has not suffered a seizure in over two years. Finally, Parents stated that they worried about gang activity on campus, and that the school has history of student fights that require police intervention. However, the gang issue did not relate to Student's qualifying disabilities because this concern applies to all students.

11. Ms. Harris' assessment contained no information about Student's ability to walk to his classes since the assessment focused only on Student's occupational therapy needs within a classroom setting. Ms. Harris stated at the IEP meeting that, based on her observations, Student could safely get around the school campus due to his good balance and mobility. Mr. Powell was not at the IEP meeting during the IEP team's discussion of Student's ability to physically access the campus. At hearing, Mr. Powell testified that Student could get around campus with some accommodations, such as needing additional time between classes, and that Student might have problems getting through the crowds at school due to his size and impaired mobility. Mr. Powell also expressed that Student might at first need assistance going to classes because he may not be socially ready because he was home schooled the last two and a half years. Mr. Powell's recommendations are reasonable since he has good knowledge of Student's unique needs by working with Student daily and is familiar with the SJHS campus.

12. The District did not consider safety issues related to Student's qualifying disabilities, other health impairment and orthopedic impairment, because the District failed to address safety concerns in the IEP regarding Student's ability to get around the school campus. Further, Ms. Harris' occupational therapy assessment did not address Student's ability to get around a school campus. While the IEP team members discussed issues regarding Student's difficulty navigating through a crowded school due to his small size and impaired mobility, the IEP did not include any accommodations to address this safety concern. Additionally, the District did not obtain information from Mr. Powell regarding Student's needs upon Student's return to a general education campus. Therefore, the District did not offer Student a FAPE because it did not adequately provide for Student's safety to attend SJHS caused by his cerebral palsy and impaired mobility.

13. Regarding Student's occupational therapy needs related to Student's handwriting and fatigue, the District's IEP offer failed to adequately address his unique needs related to his inability to write as quickly as his peers and fatigue caused by walking to classes and working in class. Both Mr. Chatfield and Mr. Powell stated that they needed to modify Student's assignments due to the difficulty in writing caused by Student's disability. Additionally, Student's disability caused him to tire more easily and require breaks in his instruction. Mr. Chatfield and Mr. Powell both stated that they needed to give Student breaks due to him getting fatigued. Ms. Harris' assessment proposed accommodations to address Student's unique needs in these areas. However, the District's December 3, 2007 offer did not include any proposed accommodations to meet Student's unique needs.

14. The District did not dispute that Student has unique needs related to his qualifying disabilities that it must accommodate for Student to receive a FAPE. While the District IEP team members discussed a myriad of possible accommodations at the December 3, 2007 IEP meeting, the District's offer did not include any proposed accommodations to address Student's unique needs related to his impaired mobility, problems with handwriting, fatigue and safety deficits. Therefore, the District's December 3, 2007 IEP was not designed to meet Student's unique needs or reasonably calculated to provide Student with some educational benefit.

Psychoeducational Assessment and Student's Educational Abilities

15. Neither party argues that Student has not made adequate educational progress with the home-hospital instruction. The District asserts that Student can make adequate educational at SJHS, which is LRE for Student. Student contends because he is making adequate educational progress at home that no reason exists to move him to a general education campus where he would not get the same level of individualized instruction.

16. Brent M. Cooper conducted the District's psychoeducational assessment. Mr. Cooper is a licensed educational psychologist. Mr. Cooper conducted his assessment in Student's home, which consisted of parent, teacher and student interviews, record review, and administering various test instruments to measure Student's academic abilities and any processing disorders. Mr. Cooper did not testify at the hearing.

17. Mr. Cooper administered the Wechsler Intelligence Scale for Children, Fourth Edition (WISC-IV), to measure Student's intellectual abilities. Student had a full-scale intelligence quotient (IQ) score of 70, which is the borderline of classifying Student as mentally retarded. However, Mr. Cooper stated in his report and at the IEP meeting that Student's IQ score was lower than his actual abilities due to his disability that prevented him from properly completing timed tasks.

18. Mr. Cooper informed the IEP team that Student is able to learn new information and grasp concepts, but required additional time due to an auditory processing deficit. Mr. Cooper administered the Test of Auditory Perceptual Skills, Third Edition (TAPS-3), to measure Student's ability to remember and process auditory information. Student's scores on the TAPS-3 revealed that Student's overall auditory perceptual skills were in the low average range. Student displayed weaknesses in the areas of auditory memory, auditory reasoning, phonological blending and phonological segmentation. Student displayed strengths with his visual processing on the Motor-Free Visual Perception Test, Third Edition, as he was in the average range. Student's weakness in the area of auditory processing and strength in visual processing were replicated on the Wide Range Assessment of Memory and Learning, Second Edition.

19. Mr. Chatfield taught Student using the general education curriculum for the eighth and ninth grades, and gave him grade level homework. Student made adequate educational progress during SY 2005-2006 and SY 2006-2007. Mr. Powell continued the

same instruction for SY 2007-2008 using tenth grade curriculum and Student continued to make adequate educational progress. Student took the California High School Exit Exam (CAHSEE) for the first time in March 2008, and nearly passed both the math and English language portions of the CAHSEE.

20. While Student has made educational progress with home-hospital instruction, both Mr. Chatfield and Mr. Powell stated that Student would benefit from instruction in a classroom setting. Student would have the advantage of an instructor who specialized in a particular subject for a longer period, instead of the home-hospital instructor having to teach Student all subjects in five hours a week. Additionally, Student would benefit from interacting with his peers on class projects and listening to the classroom instructor's answers to his peer's questions.

21. Mr. Cooper informed the IEP team members that Student required classroom accommodations due to his disabilities and auditory processing disorder. Mr. Powell concurred. Mr. Cooper recommended that Student receive specialized instruction provided in smaller classes. However, the District's IEP team did not discuss which type of classes Student would attend, regular education, resource or special day classes. Further, the District's offer did not state the type of class Student would attend. Finally, the District did not address Student's auditory processing deficit in developing its IEP offer because it proffered no accommodations or strategies to address this unique need.

22. At the IEP meeting, Parents expressed that Student had anxiety about returning to a regular education campus, which Mr. Cooper concurred at the IEP meeting and Mr. Powell at hearing. The District offered to provide Student with counseling by a school psychologist, one day a week, fifty minutes a session, to address Student's anxiety. Parents, Mr. Chatfield and Mr. Powell did not observe Student displaying behaviors that would prevent him from attending a regular education campus. Student's anxiety was not so severe that he could not attend a regular education campus with adequate supports, such as counseling.

23. Mr. Chatfield and Mr. Powell were credible that Student could make adequate educational progress at SJHS based on their working with Student and knowledge of his abilities and limitations. At the IEP meeting, the District team members discussed Mr. Cooper's assessment recommendations that Student attend smaller classes to address his auditory processing deficits, and possible accommodations. However, the District failed to include in its IEP offer specifics about how it would address Student's auditory processing deficits or why it was not including the accommodations recommended by its own assessor, Mr. Cooper. Additionally, the District's offer failed to state the type of class Student would attend even though the District team members discussed Mr. Cooper's recommendation that Student attend smaller classes. Therefore, the District's offer failed to adequately address Student's auditory processing deficits raised in Mr. Cooper's assessment, or explain how the District could address Student's unique need in a typical general education classroom.

APPLICABLE LAW AND LEGAL CONCLUSIONS

Burden of Proof

1. The District, as the party seeking relief, has the burden of proof and bears the burden of persuasion by the preponderance of the evidence. (*Schaeffer v. Weast* (2005) 546 U.S. 49, 62 [126 S.Ct. 528].)

The General Principles of the IDEA

2. Under both the federal Individuals with Disabilities Education Act (IDEA) and state law, students with disabilities have the right to a FAPE. (20 U.S.C. § 1400; Ed. Code, § 56000.)⁴ A FAPE means special education and related services that are available to the student at no charge to the parent or guardian, that meet the state educational standards, and that conform to the student's IEP. (20 U.S.C. § 1401(9).) A child with a disability has the right to a FAPE under the IDEA and California law. (20 U.S.C. § 1412(a)(1)(A); Ed. Code, § 56000.)

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176 [102 S.Ct. 3034] (hereafter *Rowley*), 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. (*Rowley, 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 that are individually designed to provide educational benefit to the student. (*Rowley, Id.* at p. 201.)

4. California's definition of special education includes both specially designed instruction to meet the unique needs of individuals with exceptional needs and related services to enable them to benefit from such specially designed instruction. (Ed. Code, § 56031). Related services may be referred to as designated instruction and services (DIS). (Ed. Code, § 56363, subd. (a).)

5. An IEP is evaluated in light of information available to the IEP team at the time it was developed; it is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) "An IEP is a snapshot, not a retrospective." (*Id.* at p. 1149, citing *Fuhrmann v. East Hanover Bd. of Education* (3d Cir. 1993) 993 F.2d 1031, 1041.) An IEP must be evaluated in terms of what was objectively reasonable when it was developed. (*Ibid.*)

⁴ All statutory citations to the Education Code are to California law, unless otherwise noted.

6. Student asserts that he cannot safely attend SJHS, and that the District did not adequately consider his unique safety needs in developing its IEP offer. A school district has the obligation to consider a student's safety related to a student's qualifying disability in creating and implementing student's educational program. However, a district need not address safety issues in a student's IEP that apply to all students. (*Lillbask v. Connecticut Dept. of Education* (2d Cir. 2005) 397 F.3d. 77, 93.)

7. The District did not have to address Student's safety concern about gang-related activities in the IEP because this concern applies to all students and not related to his qualifying disabilities. However, the District's OT assessment and IEP did not adequately address safety issues related to his qualifying disabilities, other health impairment and orthopedic impairment, related Student's ability to get around the school campus. While the District's IEP team members discussed issues regarding Student's difficulty navigating through a crowded school due to his small size and impaired mobility, the IEP did not include any accommodations to address this safety concern. Additionally, the District did not have information from Mr. Powell at the IEP regarding Student's safety. Therefore, the District did not offer Student a FAPE because it did not adequately provide for Student's safety to attend SJHS caused by his cerebral palsy and impaired mobility. (Factual Findings 10, 11, 12 and 14.)

8. The District's December 3, 2007 IEP also failed to adequately address Student's unique needs related to his inability to write as quickly as his peers and fatigue caused by walking to classes and working in class. Mr. Chatfield and Mr. Powell both modified Student's assignments due to the difficulty in writing caused by Student's disability, and gave Student additional breaks in instruction to address Student's fatigue. Ms. Harris' assessment proposed accommodations to address Student's unique needs in these areas. However, the District's December 3, 2007 offer did not include any proposed accommodations to meet Student's unique needs. (Factual Findings 8, 9, 13 and 14.)

9. Student did not establish that he could only make adequate educational progress through home-hospital instruction. However, the District's December 3, 2007 IEP failed to adequately consider Mr. Cooper's assessment recommendation for Student to attend smaller classes to address his processing deficits. (Factual Finding 21.) While the District team members discussed Student's unique needs and possibilities for accommodations to address Student's needs, the December 3, 2007 IEP did not offer specifics how the District would address Student's auditory processing deficits or why it was not including the accommodations recommended by its own assessor, Mr. Cooper. (Factual Findings 21, 22 and 23.)

10. The District did not dispute that Student has unique needs related to his qualifying disabilities that it must accommodate for Student to receive a FAPE. While the District IEP team members discussed a myriad of possible accommodations at the December 3, 2007 IEP meeting, the District's offer did not include any proposed accommodations to address Student's unique needs related to his impaired mobility, problems with handwriting, fatigue and auditory process deficits. Therefore, the District's

December 3, 2007 IEP was not designed to meet Student's unique needs or reasonably calculated to provide Student with some educational benefit.

Least Restrictive Environment

11. The District asserts that the least restrictive environment to educate Student is a general education campus. Student requested that the District continue to provide him with home-hospital instruction because he believes that he cannot safely attend a general education high school campus, and he has made adequate educational progress during the past three years of home-hospital instruction.

12. Federal and state law requires school districts to offer a program in the least restrictive environment for each special education student. (See 34 C.F.R. §§ 300.114, et. seq. (2006).) A special education student must be educated with nondisabled peers "[t]o the maximum extent appropriate," and may be removed from the regular education environment only when the nature or severity of the student's disabilities is such that education in regular classes with the use of supplementary aids and services "cannot be achieved satisfactorily." (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2)(i) & (ii) (2006).) A placement must foster maximum interaction between disabled students and their nondisabled peers "in a manner that is appropriate to the needs of both." (Ed. Code § 56031.) The law demonstrates "a strong preference for 'mainstreaming' which rises to the level of a rebuttable presumption." (*Daniel R.R. v. State Bd. of Ed.* (9th Cir. 1989) 874 F.2d 1036, 1044-1045; see also § 1412 (a)(5)(A); *Rowley, supra*, 458 U.S. at p. 181 n.4; *Poolaw v. Bishop* (9th Cir. 1995) 67 F.3d 830, 834.) In *Sacramento City Unified Sch. Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1400-1402, the Ninth Circuit held that the determination of whether a particular placement is the "least restrictive environment" for a particular child involves an analysis of four factors, including (1) the educational benefits to the child of placement full-time in a regular class; (2) the non-academic benefits to the child of such placement; (3) the effect the disabled child will have on the teacher and children in the regular class; and (4) the costs of educating the child in a regular classroom with appropriate services, as compared to the cost of educating the child in the district's proposed setting. However, the Supreme Court has noted that IDEA's use of the word "appropriate" reflects Congressional recognition "that some settings simply are not suitable environments for the participation of some handicapped children." (*Rowley, supra*, 458 U.S. at p. 197.)

13. Local educational agencies must ensure that a continuum of program options is available to meet the needs of individuals with exceptional needs for special education and related services. (Ed. Code, § 56360.) There is no requirement that every possible program available in a school district be addressed at an IEP meeting.

14. Regarding the first element, educational benefits, neither party disputes that Student can access the general education curriculum for his grade. Student asserts that due to his anxiety and safety concerns regarding attending a general education high school outweigh any educational benefit Student would obtain. However, Parents did not present adequate medical evidence that Student's health would be jeopardized if he attended SJHS. (Factual

Finding 10.) Additionally, while Student's expressed some anxiety about attending SJHS, neither Mr. Chatfield nor Mr. Powell, who had a good rapport with Student and spent a lot of time with him, indicated that Student's anxiety was so severe to prevent him from attending SJHS. Finally, the District's offer of weekly counseling was adequate to address Student's anxiety about attending SJHS.

15. Mr. Chatfield and Mr. Powell were convincing that Student would receive educational benefit from attending SJHS, more than just receiving his education through home-hospital instruction. (Factual Findings 20 and 22.) While Student made progress in all his subjects, his time with the home-hospital instructors was limited to five hours a week, in which the instructors had to cover all the subjects and answer any questions from Student. Student could obtain more benefit being in a classroom every day where he would have access to the instructor. Additionally, even with Student's auditory processing deficits, fatigue and slowness in writing due to his disability, his progress with home-hospital instruction shows that he can make adequate educational progress given proper supports and accommodations.

16. Regarding non-educational benefits from attending a general education school, Student would benefit from interacting with other students, instead of being educated in isolation. Student is friendly, gets along well with others, and has friends in the neighborhood. Both Mr. Chatfield and Mr. Powell agreed that Student could benefit from interacting with his peers in class, and that this would benefit his educational progress. (Factual Findings 20 and 22.) The fact that Student has friends outside of school does not negate the District's duty to attempt to foster personal interaction, and for Student not to be isolated due to his disability. Therefore, Student would receive significant non-educational benefits attending a general education school.

17. Concerning the third element, Student's impact on his classmates and teacher, Student is not disruptive and friendly with others. The only possible disruption is Student's seizures. However, according to Parents, these are under control with medication and Student has not had a seizure in over two years. Finally, regarding additional costs, neither party introduced evidence about the cost being prohibitive to educate Student at school.

18. Therefore, the evidence established that the least restrictive environment for Student is a general education campus because Student would receive more educational and non-educational benefits attending a general education high school than with home-hospital instruction.

Requirements of an IEP and Procedural Violations

19. The congressional mandate to provide a FAPE to children includes both a procedural and a substantive component. In *Rowley, supra*, 458 U.S. 176 at p. 205, the United States Supreme Court utilized a two-prong test to determine if a school district had complied with the IDEA. First, the district is required to comply with statutory procedures. Second, a court will examine the child's IEP to determine if it was reasonably calculated to

enable the student to receive some educational benefit. (See also, *W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1483.)

20. For a procedural violation to deny the student a FAPE, the procedural violation must either: 1) impede the student's right to FAPE; 2) significantly impede a parent's opportunity to participate in the education decision making process; or 3) cause a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); See also, *W.G. v. Board of Trustees of Target Range Sch. Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.)

21. The IEP is a written document for each child who needs special education and related services. The contents of the IEP are mandated by the IDEA. The IEP must include an assortment of information, including a statement of the child's present levels of academic achievement and functional performance. The IEP must also include a statement of measurable annual goals and objectives that are based upon the child's present levels of academic achievement and functional performance and a description of how the child's progress toward meeting the annual goals will be measured. Finally, the IEP must include when periodic reports of the child's progress will be issued to the parent, and a statement of the special education and related services to be provided to the child. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. §§ 300.320 and 300.324 (2006).)

22. In *Union Sch. Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1526), the court emphasized the importance of the formal offer requirement. The formal requirements of an IEP are not merely technical, and therefore should be enforced rigorously. The requirement of a formal, written offer creates a clear record that will do much to eliminate troublesome factual disputes many years later about when placements were offered, what placements were offered, and what additional educational assistance was offered to supplement a placement, if any. Furthermore, a formal, specific offer from a school district will greatly assist parents in presenting complaints with respect to any matter relating to the educational placement of the child.

23. In the *Union* case, the Ninth Circuit noted that one of the reasons for requiring a formal written offer is to provide parents with the opportunity to decide whether the offer of placement is appropriate and whether to accept the offer. Even if a district is convinced that a parent will not agree to the district's proposed IEP, the district must still hold the meeting and give the parent the opportunity to discuss the placement and services. A school district cannot escape its obligation to make a formal placement offer on the basis that the parents had previously "expressed unwillingness to accept that placement." (*Union Sch. Dist. v. Smith, supra*, 15 F.3d at p. 1526.)

24. In interpreting *Union*, California special education decisions have held that, when parents are determining whether to accept or reject a placement, the parents have the right to consider the entire offer. The reasons to impose this requirement is (1) to alert the parents of the need to consider seriously whether the proposed placement is appropriate under the IDEA; (2) to help the parents determine whether to oppose or accept the placement with supplemental services; and (3) to allow the district to be more prepared to introduce

sufficient relevant evidence at hearing regarding the appropriateness of the placement. (*Union Sch. Dist. v. Smith, supra*, 15 F.3d at p. 1526; *Student v. San Juan Unified Sch. Dist.* (SN02-02308) March 7, 2003.)

25. In the present case, an issue exists whether the District made an adequate offer of placement and services for Student for Parents to consider in the December 3, 2007 IEP regarding the proposed placement. Pursuant to Factual Finding 21, Mr. Cooper raised at the December 3, 2007 IEP meeting the issue whether Student required smaller classrooms to meet his unique needs. While the District's IEP team members discussed in depth Student's attendance at SJHS, the District's December 3, 2007 IEP offer that Student attend two classes a day for the remainder of SY 2007-2008 contained no information about the type of classes that Student would attend. (Factual Findings 21 and 23.) Without this information, Parents could not be expected to make a reasonable decision whether to accept the District's offer as Parents expressed concerns about Student's anxiety in returning to school, and being in a general education environment. The fact that Parents would not have accepted any District offer that included Student attending SJHS does not excuse the District from making a legally sufficient IEP offer of placement. Therefore, the District's December 3, 2007 IEP offer failed to meet the specificity requirements of *Union*.

26. As stated in Legal Conclusions 7 through 10 above, the District discussed numerous proposed accommodations to address Student's unique needs regarding his mobility impairment, fatigue, auditory processing deficits and writing in class. However, the District did not make any specific proposal at the IEP meeting regarding the accommodations it would provide Student to meet his unique needs to allow him to make adequate educational progress. (Ed. Code, § 56341.1, subd. (c).) The District informed Parents of possible accommodations at the IEP meeting to address Parents' concerns. However, the District did not state in its written IEP offer the accommodations that it proposed to provide Student with a FAPE. Without a specific offer, Parents could not be expected to adequately participate in the educational decision making process. Therefore, the District committed a procedural violation that denied Student a FAPE by failing to include in its IEP offer the accommodations it would provide to meet Student's unique needs.

27. The evidence established that Student could be educated at a regular education campus if the District provided Student with proper accommodations to meet his unique needs related to his cerebral palsy and slowly transitioned him after several years of home-hospital instruction. While the District discussed numerous accommodations to address Student's unique needs at the December 3, 2007 IEP meeting, it failed to include in its IEP offer any proposed accommodations. Additionally, the District's psychoeducational assessment indicated that Student had auditory processing deficits and recommended that Student attend small classes. However, the District team members did not discuss whether they were accepting those findings and recommendations. Additionally, the District's offer did not specify the type of classes Student would attend. Therefore, the District's December 3, 2007 IEP offer does not constitute an offer of FAPE because the District failed

to make an appropriate placement offer and provide adequate accommodations for the Student to receive a FAPE.

ORDER

The District's request that the IEP dated December 3, 2007, be determined an offer of FAPE to Student is denied.

PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that the hearing decision indicate the extent to which each party has prevailed on each issue heard and decided. Student prevailed on the only issue presented for decision.

RIGHT TO APPEAL THIS DECISION

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

DATED: June 25, 2008

A handwritten signature in black ink, appearing to read 'P. A. C. S.', is written over a horizontal line.

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings