

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

In the Matter of:

SAN RAMON VALLEY UNIFIED  
SCHOOL DISTRICT,

Petitioner.

vs.

STUDENT,

Student.

OAH CASE NO. N 2005071023

**DECISION**

Administrative Law Judge M. Amanda Behe, State of California Office of Administrative Hearings, heard this matter in Danville, California on September 13, 14, 15, 16, and October 20 and 21, 2005.

The San Ramon Valley Unified School District was represented by Dora Dome, Esq., Miller, Brown & Dannis.

The Student was represented by Eileen Matteucci, Esq.

The record remained open for the filing of closing briefs. On November 21, 2004, the Closing Briefs on behalf of the Student and the District were received electronically. The record was closed and the matter submitted.

**ISSUES**

1. Has the District offered and/or provided the Student a free appropriate public education (FAPE) in the least restrictive environment for the 2005-06 school year?

2. Has the District offered and/or provided the Student a FAPE in the least restrictive environment for the 2005 extended school year (ESY) and extended-extended school year (EESY)?

#### FACTUAL FINDINGS

1. The parties stipulated that in the areas of occupational therapy and speech and language services the Student's May 4, 2005 individualized education program (IEP) was appropriate, including the related goals and objectives.

2. The Student was born on April 3, 1996. He has been diagnosed with autism and is eligible for special education and related services pursuant to IDEA and California Education Code section 56000 et seq. The Father described his son as moderately to severely autistic with limited speech, limited cognitive capabilities, and serious perseverative behaviors which require redirection. The Student lives at home with his Father and older sister. His Mother passed away in the fall of 2004.

3. The Student has been receiving special education services for more than six years. In the 2003-04 and 2004-05 school years he attended a special day class at Twin Creeks Elementary School.

Jonica McPhail<sup>1</sup> has been a District inclusion support specialist since June 28, 2005. Her responsibilities include supervision of 1:1 aides, development of IEPs, data collection, working with general education teachers, and teaching. Ms. McPhail has extensive experience teaching autistic children, and was the Student's teacher from the beginning of summer school 2003 through June 2005.

Ms. McPhail described the Student as a great and affectionate young man with educational delays and the behavioral concerns of tantrums, self-stimulating, and escape behaviors. He has become more receptive to working with adults and trying new things, has learned through repetition, and has become more interactive with other students.

4. On a date not established by the record, and independent of the District, the Student's parents secured behavioral services from Synergistic Interventions (SI). SI was operated by Kim Stokes and Vicki Wells, and has a non-public agency (NPA) certification from the State Department of Education.

Ms. Stokes is a massage therapist with a high school diploma. Ms. Wells has a Master's in special education. SI offered a program which they developed and named "Integrated Touch Movement" (ITM). ITM is based on some massage techniques, and is not

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<sup>1</sup> In 1993 Ms. McPhail obtained her bachelor's degree in general education. She holds clear credentials in general and special education, and is enrolled in the master's program at St. Mary's College. From 1994-2001 she taught severely handicapped students with challenging behaviors at the Spectrum Center for Educational Development. At the District she taught a special day class for severely handicapped students at Twin Creeks School from 2001-04.

apparently peer-reviewed or used in the behavioral services profession. As of 2003 SI was providing behavioral services to the Student at home and his 1:1 classroom aides through a Master Contract with the District.

5. On July 2, 2003, the Parents and the District entered into a settlement agreement resolving disputes dating from June 2000 to July 2003 regarding the Student's educational program, services, assessments and reimbursements. At the time of the agreement his 1:1 classroom aide was provided by SI, which also provided consultation and in-home behavioral services. The settlement agreement provided for transition from a SI aide to a District aide, and development of a criteria-based transition plan which would be reviewed at the October 2003 IEP meeting. A transition plan team meeting, with the Student's teachers, service providers and SI in attendance<sup>2</sup>, was noted in the agreement.

The Parents were concerned that the transition plan include criteria to assess the Student's behavior so as to prevent regression. The Father's testimony at hearing reflected reasonable fears that significant changes in program design and staff would adversely affect the Student.

6. The Father acknowledged that he has never seen any SI behavioral goals for the Student, and SI has never identified the goals for the in-home or school program. As of the date of hearing, three years after SI started providing behavioral services at home and school, the Father did not know if the Student had one or twenty behavioral goals. He knew only some SI activities for his son, such as social interactions, but not the related goals.

The Father also acknowledged that SI has never provided the Student's IEP team with behavioral goals and that such information would be important for the team in carrying out its responsibilities. He believes that SI should have reported the Student's progress on current goals, assuming that goals existed.

7. Jeffie Muntifering<sup>3</sup> has been employed as a special education advocate since 2002, and was employed in that role for the Student in the 2003-04 and 2004-04 school years. She was aware that SI was the Student's in-home and school behavioral service provider during those periods. Ms. Muntifering acknowledged that NPAs such as SI must have goals and objectives to properly provide behavioral services. Moreover, the NPA, rather than the classroom teacher, is responsible for developing those goals and objectives. In her experience NPAs provide a designated behavior plan with specific components.

Ms. Muntifering acknowledged that in the entire time she has been the Student's advocate she has never seen behavioral goals or a behavioral plan from SI, and does not know if any ever existed. SI provided only one unsigned four-page narrative progress report

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<sup>2</sup> The Student's contention that the settlement agreement precluded the participation of anyone other than the listed individuals in transition team meetings was not supported by the express language of the document.

<sup>3</sup> Ms. Muntifering has a bachelor's degree in business administration, and previously worked as an accountant. She is the mother of a special needs child.

in the 2004-05 school year. It contained historical information but not a behavioral plan or goals and objectives. Ms. Muntifering does not recall ever discussing behavioral goals with the Father. During her brief observation of the Student's receipt of behavioral services from SI, the aide was not observed using any data sheets or other documents.

SI represented that it had behavioral data but Ms. Muntifering had never seen it, and did not know if it such data were ever generated. When shown data sheets submitted by SI in response to repeated District demands she testified that nothing in the graphs identifies antecedents to behavior, replacement behaviors, efforts to reinforce/alter behaviors, etc. Although in the interest of students such data should be available to the classroom teacher, Ms. Muntifering recalled SI refused to provide it unless additional payments were made.

As the Student's special education advocate Ms. Muntifering attended some, but not all, of the IEP team meetings in the 2003-04 and 2004-05 school years. She testified that, although the District had appropriate personnel present, reports were ready, and other formalities were met, that because the attorneys were present the sessions were not comfortable or a true forum for discussion of the Student's needs.

8. Karen Heilbronner<sup>4</sup> is the District's Assistant Director of Special Programs, and familiar with the Student's educational program. Ms. Heilbronner described numerous problems the District experienced with SI including billing for services which were not provided, and failing to provide required documentation, including personnel information regarding its staff, and progress reports regarding students. Due to concerns about fraudulent billing the District eventually refused to pay SI's invoices until questions were resolved. In June 2004 the District's Master Contract with SI was terminated because of billing irregularities.

9. In August 2004 the District hired Psychology Learning and You (PLAY) to consult with Ms. McPhail and the Student's IEP team. Anne Marie Gjetson<sup>5</sup>, co-director of PLAY, described that the firm provides behavioral consultation to districts and intensive in-home programs, including data collection and behavioral plans. PLAY also furnishes training for classroom aides and intervention strategies.

When a case is initiated, PLAY's behavioral consultants communicate with the teacher, take and analyze data, consider the IEP goals, formulate a continual maintenance plan, attend IEP meetings, and train 1:1 aides in the methodologies of the behavioral plan such as the level of reinforcement and activities.

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<sup>4</sup>Ms. Heilbronner began teaching in 1976, and holds multiple subject, learning handicapped, special education, and administrative credentials. She earned a masters degree in special education at St. Mary's College. Prior to her current position she was a special day class teacher, a resource specialist, and an assistant principal.

<sup>5</sup> Ms. Gjetson, co-director of PLAY, holds a MA in special education, and has worked as a special education director, in-class support services provider, and senior consultant at Spectrum. She is trained in Pivotal Response, a natural language format for children with autism, the Picture Exchange System, and other methodologies used with autistic children.

10. Although the District had cancelled the Master Contract, SI continued to provide services to District students after June 2004. SI provided services to the Student and was paid by the Father, who in turn received reimbursement from the District.

In the fall of 2004 the District experienced a number of incidents involving SI staff coming onto campuses without signing in, disregarding restrictions regarding cell phone use, and some inappropriate interactions with a principal and aides. The District's first letter to SI regarding the problem with cell phone usage did not resolve the problem and another letter was sent. The problems continued, and in consideration of its obligation to provide a secure campus the District required that SI provide 24-hour notice when one of its employees would be present on campus.

11. On October 18, 2004, shortly after the Student's mother passed away, an IEP meeting was convened to discuss transitioning the Student's entire program, which consisted of behavioral services at home and school and oversight of the 1:1 aide from SI to PLAY. At the meeting the Father, Ms. Muntifering, and District staff briefly discussed a proposed plan developed by PLAY, Ms. McPhail, and District behavior analysts Julie Burlingame and Angela O'Connor. About 20 minutes into the IEP meeting the Father refused to further participate unless the District provided its campus access policy in writing immediately, i.e., during the IEP team meeting.

At hearing the Father testified that he was angry and frustrated that SI had to advise the District in advance that an employee would be on campus, and that his son might need a SI behaviorist to come to the school immediately to address certain behaviors. He acknowledged that he demanded the issue be resolved in the IEP meeting before talking about the Student's program for the future. Although the Father was told he would get the requested information in writing, he left the IEP meeting because the information was not provided on the spot.

12. Because SI had never provided behavior goals for the Student's in-home or school program, none were available for the IEP team's use in the transition process. Ms. Muntifering recalled that at the December 16, 2004, IEP meeting she and the Father asked the District to make arrangements to pay SI to create behavioral goals so the transition process could proceed. The District refused to pay SI additional sums for behavioral goals which should have been in existence at that time.

Mary Jane McCoy<sup>6</sup> has been the District's Program Supervisor for Special Programs for three years; her job responsibilities include monitoring service providers. Ms. McCoy testified that the District would not separately pay SI for the goals, because as the behaviorist they were already supposed to have created and begun implementing behavioral goals.

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<sup>6</sup> Ms. McCoy earned her Bachelor of Science degree in elementary education at Indiana State, and a Master's at Purdue. At the California State University at Hayward she obtained learning handicapped, resource specialist, language arts and reading, Pupil Personnel Services, and counseling credentials.

At the December 16 meeting the IEP team agreed to a transition planning schedule. The Father provided a release which permitted PLAY to look at the Student's file and do in-home and school observations. PLAY completed seven observations and generated a behavioral report. Transition planning meetings were held on January 12 and 26, 2005, with the Student's current providers and PLAY. SI did not attend the second meeting, at which PLAY reviewed their report of classroom observations.

13. In response to the District canceling the Master Contract, SI filed a lawsuit against the District. SI and the District entered into a settlement agreement incorporating various terms including that as of February 2, 2005, SI would cease providing services in the District.

On January 28, 2005, the District advised the Father by letter that effective February 2, 2005, SI would no longer be available to provide services to the Student. The Father testified at hearing that the District should have continued to pay SI even if it believed SI was submitting fraudulent bills and was failing to provide progress reports.

On January 31, 2005, the Father wrote to the District that its settlement with SI violated his settlement agreement<sup>7</sup> and he withdrew consent for PLAY to come into the home to observe the Student.

14. On February 3, 2005, a transition meeting was held with Ms. McPhail, Ms. McCoy, a representative of PLAY, and other staff. SI did not attend. Ms. McPhail presented data from her classroom observations, such as the Student's time on task, and behavioral baselines and a draft transition plan were developed.

15. The transition planning schedule established at the December 16, 2004, IEP meeting provided for a meeting on February 10, 2005. On February 8, 2005, the Father wrote to Ms. McPhail that the scheduled meeting should not occur because he was a party to a federal lawsuit related to the settlement agreement the District had reached with SI. The District's attorney responded to the Father's attorney that IEP meetings, including the one related to the transition plan would proceed. The federal judge had expressly allowed the District to proceed with the transition planning process.

On February 10, 2005, the transition planning team discussed the proposed plan. Neither SI nor the Father attended. The proposed plan was mailed to the Father on February 10, 2005, and he did not provide a response.

16. The transition planning schedule established at the December 16, 2004, IEP meeting also provided that the Student's annual IEP discussion would continue on February 16, 2005. The Father attended, and stated that he refused to discuss transition because of the federal lawsuit seeking to enjoin the District from complying with the settlement agreement

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<sup>7</sup> See finding 5.

with SI. He orally withdrew his consent to have PLAY involved in any manner with the Student. The Father and Ms. Muntifering had input in the academic goals discussed during the meeting. The identified current levels of performance were established from the Student's progress reports, and Ms. McPhail agreed to incorporate changes requested by the Father and Ms. Muntifering.

On March 16, 2005, the IEP team met to finalize the Student's annual IEP and placement. The occupational therapy and academic goals were accepted. The Student's speech and language therapist and his private occupational therapist reviewed the goals and objectives in their respective areas which had been revised during the prior IEP meeting. Ms. McPhail reviewed the two mainstreaming goals established at the prior meeting. SI provided an oral comment about the Student's current behavior, and recommended that the supervision of the school and in-home program be set at two hours per week.

Despite repeated requests from the District to provide copies of the behavioral goals that it had been purportedly working on with the Student, SI never provided that information. Because SI had never provided behavior goals for the Student's in-home or school program none were available for the IEP team.

On March 21, 2005, the Father and other IEP team members were sent a notice reiterating the April 6, 2005, date of the next IEP team meeting. On April 5, 2005, the Father e-mailed the District's attorney again requesting that the District contract with SI to provide behavioral goals. In a later e-mail of the same date addressed to the IEP team he indicated that he wanted to postpone the next day's meeting because SI advised they had not been asked to create behavioral goals.

At hearing the Father acknowledged that SI had repeatedly been asked to create behavioral goals, and he was only concerned that SI receives an additional contract with the District for more money. He further admitted that both he and the District had already paid SI for behavioral services which necessarily included the creation of behavioral goals, and that he had never seen the goals for which he and the District had paid.

17. On April 6, 2005, the scheduled IEP team meeting took place. PLAY and Ms. McPhail presented proposed behavioral goals for the school and in-home program based upon the classroom data both had collected. The team also discussed functional living skills, and sample in-home behavioral goals which would need to be refined after an assessment of the Student's home program. The team also reviewed the last progress report submitted by SI in December 2004. The revisions to the speech and language goals and mainstreaming goals, which the Father had approved, were finalized.

Based on the discussions, and input from the Student's teachers, the team made a recommendation for the 2005-06 school year program and extended school year (ESY) summer program and extended-extended school year (EESY) program. The ESY program included a special day class with students who would later become his classmates, a 1:1 aide, ten hours of in-home program per week, and one hour of behavioral supervision per week.

The ESY teacher could access familiar curriculum materials and data sheets used in Ms. McPhail's class, and the 1:1 aides were already known to the Student from his then-current placement. The ESY program was akin to the Student's regular school year placement, with a like class size and peer group.

The proposed EESY program included fifteen hours of in-home behavioral program per week, with one hour per week of supervision, for the period from August 8 to 19, 2005. The increased hours of behavioral intervention would permit continued work on his goals and minimize regression during the short EESY period.

Ms. McCoy advised the Father of the IEP team's discussion by a letter dated April 8, 2005, and included particulars of the offered transition plan, 2005-06 school year program, and the ESY and EESY programs. An additional IEP meeting was proposed to discuss those topics with the Father.

18. In April 2005, the State of California Department of Education suspended SI's certification as a NPA. In June 2005 the certification was revoked. The District could not contract with or pay a firm which was not properly certified by the Department of Education.

19. On May 4, 2005, another IEP team meeting convened to hear the Father's input regarding the offered transition plan, 2005-06 school year program, and summer program. The Father again demanded that SI be provided a contract to create behavioral goals, and objected to the transition plan because SI had not been a party to it.

20. In light of the above history, and the Father's continuing refusal to work with PLAY and insistence on further remuneration for SI, the District determined that enough time had elapsed in an effort to achieve a transition plan and that further endeavors would be futile. The District further considered that from Ms. McPhail's and PLAY's observations and the skills of its behaviorists on staff, sufficient data had been amassed to provide behavioral services without a transition plan.

On June 27, 2005, the District sent the Father a program offer for the 2005-06 school year. The program offer was for placement at Twin Creeks in the 3-5 (upper level) special day class with occupational therapy and speech and language services as received during the 2004-05 school year. That placement had been discussed with the Father and Ms. Muntifering at the December 2004 IEP meeting, and neither had any objection. Ms. Muntifering acknowledged that the Father was satisfied with the Student's placement at Twin Creeks in Ms. McPhail's class.

Kevin Douglas, the teacher of the proposed upper level class, has a Bachelor's in psychology and is attending the multi-subject credential program at Chapman University. Three of his seven students in the special day class are on the autism spectrum; all are moderately to severely handicapped and function below grade level.

Mr. Douglas has taught the special day class for two and a half years, and he is assisted by one full-time and one part-time classroom aide, and three 1:1 aides in addition to that planned for the Student. In sum, the classroom would provide six adults for seven students. Mr. Douglas regularly consults with aides for consistency and has behaviorists and other resources available. The curriculum is diverse, and the entire class participates in music and science classes taught by regular education teachers. Mr. Douglas persuasively testified that the Student's goals and objectives could be implemented in his special day class.

The program offer of the upper level special day class would provide the Student with the small group setting, appropriate peers, and the behavioral support he needed in the least restricted environment. The program elements had been discussed in the ten IEP meetings held during the 2004-05 school year.

To accommodate the Father's refusal to work with PLAY the District's placement offer proposed behavioral services by District Behavior Analyst Jill Gershune<sup>8</sup>. Nicole Siep was identified as the Student's 1:1 aide; she had been assigned to the Student during the 2004-05 school year and assisted Ms. McPhail in the data collection. Ten hours per week of in-home behavioral services with two hours per week of supervision were proposed; those levels were identical to the services SI was providing. The Father testified that the Student was doing very well, particularly in interactions with others, and SI claimed orally and in its December 2004 progress report that the Student was making progress. In consequence, the proposed amount of service was appropriate.

On June 27, 2005, in relation to settlement negotiations in an unrelated federal case, the District proposed that the Student's behavioral services be provided at the CEIA Center, an intensive program for autistic children, rather than in his home. The CEIA Center has several behavioral specialists, and three students of the Student's age. The format is intensive Discrete Trial Training and TEECH programs with natural language paradigms for socialization, augmented communication devices, and individual and group work on goals. The District's proposal was prompted by discussion with Dr. Bryna Seigel, an expert on autism with the University of California.

21. It is unclear from the record whether the Father sincerely believed that the idiosyncratic ITM program offered by SI was a superior program for his son, or if he simply refused to consider any change. The Father described that the Student was receiving from his SI aide sensory strategies of "pressure, stroking" that permit him to "focus and respond better." He opined that his son needed the strategies on a daily basis, with the aides supervised by Vicki Wells.

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<sup>8</sup> Ms. Gershune earned a bachelor's degree in psychology from Michigan State University and a master's degree in social work from the University of Michigan. She worked with autistic students for seven years in Michigan as a school social worker, and created behavioral plans as a learning support consultant for the San Francisco Unified School District.

In any event, while the Father was insisting on retaining SI and demanding that the District pay SI more money, SI was displaying the lack of continuity about which he was concerned. From January to June 2005 SI assigned thirteen different aides to the Student. The Father acknowledged that he observed some regression at the end of the school year, but attributed that problem to the inadequacies of a particular aide. As Ms. McPhail's testimony established, despite the new and different aides the Student was maintaining his academic and behavioral progress and even making some gains.

22. The ESY began on June 28, 2005. Although the Father had indicated that the Student would attend, and returned related forms, the Student did not participate in the ESY program. The Father did not provide an explanation for refusing to permit the Student to participate in the offered ESY program.

## LEGAL CONCLUSIONS

1. Has the District offered and /or provided the student a free appropriate public education in the least restrictive environment for the 2005-06 school year?

Under the federal individuals with disabilities education act (IDEA) and state law, students with disabilities have the right to a free appropriate public education (FAPE). (20 U.S.C. §1400, et seq.; Ed. Code §56000 et seq.) The term "free appropriate public education" means special education and related services that are available to the student at no cost to the parents, that meet the State educational standards, and that conform to the student's individualized education program (IEP). (20 U.S.C. §1401(9).) "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(29).) 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 provides that designated instruction and services (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." (Ed. Code §56363, subd. (a).)

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. (*Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 198-200.) The Court stated that school districts are required to provide only a "basic floor of opportunity" that consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the student. (*Id.* at 201.)

States must establish and maintain certain procedural safeguards to ensure that each student with a disability receives the FAPE to which he is entitled and that parents are involved in the formulation of the student's educational program. (*W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1483).) Citing *Rowley*, the Court also recognized the importance of adherence to the procedural requirements of the IDEA, but indicated that procedural flaws do not automatically require a finding of a denial of a FAPE. (*Id.* at 1484.) Procedural violations may constitute a denial of FAPE if they result in the loss of educational opportunity to the student or seriously infringe on the parent's opportunity to participate in the IEP process. (*Id.*)

The IDEA requires that a due process decision be based upon substantive grounds when determining whether the child received a FAPE unless a procedural violation impedes the child's right to a FAPE, significantly impedes the parent's opportunity to participate in the decision making process regarding the provision of a FAPE to the parent's child, or caused a deprivation of educational benefits. (20 U.S.C. §1415(f)(3)(E).)

#### A. The Transition Plan; Procedural Requirements.

The July 2, 2003 settlement agreement provided the procedures to be used for a transition plan from SI to District staff. The Father may have been influenced by SI's owners, and was concerned regarding the affect of a different behavioral program on his son. For whatever reason, he attempted to thwart and delay the transition from SI to another provider of behavioral services. It might be expected that intelligent and well-meaning adults could create an appropriate transition plan in a matter of months. That did not occur here.

After years of being paid to provide behavioral services, SI refused to provide the goals and objectives it was purportedly implementing at school and at home. It is unclear whether they had such documentation and refused to provide it, in an effort to extort more money from the District, or if, as suggested by Ms. Muntifering's testimony, SI may never have developed goals and objectives. In such a case, there was no rational reason for the District to pay additional sums for that effort, particularly when SI's certification was revoked. Moreover, in light of SI's history there was no assurance that once paid they would provide the goals and objectives.

After four IEP meetings at which the Father demanded further contracts and money for SI, the District rationally decided that enough time had elapsed and creation of behavioral goals without SI was appropriate. The District initially offered PLAY as the new NPA to replace SI for in-home and classroom behavior support. The Father was adamant that he would not accept PLAY, so the District offered its own well-qualified behavioral analyst and 1:1 classroom aide. Despite the lack of information and cooperation from SI, the District worked with the IEP participants to develop appropriate behavioral goals and objectives. The District need only offer the required services; and it has the authority to select its own personnel and to cease using an NPA in favor of its own staff. The District acted properly in the effort to transition from SI to another provider of behavioral services.

The District complied with the required IEP procedures, and its ten meetings were reasonably calculated to gain the maximum input from the proper parties in developing a correct IEP. Although the Father chose to leave meetings early and not attend meetings in an effort to impose his will on the team, by the time of the June 2005 offer an IEP was proposed that provided educational benefits that could address the Student's unique needs. The District did not violate their procedural responsibilities in formulating and implementing the IEP for the 2005-2006 school year.

A preponderance of the evidence established that the District complied with the procedures set forth in the IDEA.

B. The Elements of a free appropriate public education.

On June 27, 2005, the District sent the Father a program offer for the 2005-06 school year for placement in the upper level special day class at Twin Creeks with occupational therapy and speech and language services as received during the 2004-05 school year. That offer was designed to meet the Student's unique needs, and reasonably calculated to provide him with some educational benefit. The program at Twin Creeks was a FAPE in the least restrictive environment, and was a placement that had satisfied his Father and special education advocate in the 2004-05 school year.

The District offered the Student a free appropriate public education in the least restrictive environment for the 2005-06 school year.

2. Has the District offered and/or provided the Student a FAPE in the least restrictive environment for the 2005 extended school year (ESY) and extended-extended school year (EESY)?

Pursuant to the April 6, 2005, scheduled IEP team meeting the District offered an extended school year (ESY) program which included a special day class with students who would later become his classmates, a 1:1 aide, ten hours of in-home program per week, and one hour of behavioral supervision per week. The ESY program was akin to the Student's regular school year placement, to which the Father voiced no objection, and would permit use of the same materials.

Pursuant to the April 6, 2005, scheduled IEP team meeting the District offered an extended-extended school year (EESY) program which included fifteen hours of in-home behavioral program per week, with one hour per week of supervision, to continue work on the Student's goals and minimize regression.

The two program offerings were akin to the Student's then-current placement, and designed to meet his unique needs, and reasonably calculated to provide him with some educational benefit. The programs were FAPE in the least restrictive environment, and the

ESY was like the placement that had satisfied his Father and special education advocate in the 2004-05 school year.

The District offered the Student a FAPE in the least restrictive environment for the 2005 extended school year and extended-extended school year.

#### ORDER

The District's request that their program offers for 2005-2006, 2005 ESY and 2005 EESY school years be deemed a FAPE is granted.

#### 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. The District prevailed on all issues heard and decided. To the extent that a procedural violation was found during the 2005-2006 school year, it did not rise to the level of a FAPE denial, and, therefore, the District has prevailed on any issue related to a procedural denial of FAPE.

#### 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 days of receipt of this decision. (Ed. Code §56505, subd. (k).)

Dated: February 27, 2006.



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M. AMANDA BEHE  
Administrative Law Judge  
Office of Administrative Hearings  
Special Education Division

