

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

TORRANCE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2008040111

DECISION

Administrative Law Judge Eileen M. Cohn, Office of Administrative Hearings (OAH), State of California, heard this matter at Torrance Unified School District (District), Torrance, California, on July 8 and July 14, 2008.

Mother represented Petitioner (Student). Student did not attend. Eric Cordetta, an interpreter of Tagalog, was available to assist Mother throughout the hearing.

Sharon A. Watt, Attorney at Law, of Filarsky & Watt represented Respondent District. District representatives Aaron Benton, Director, Special Education, and Sharon Azmon, Program Specialist, attended the hearing.

Student filed a Request for Due Process Hearing (Complaint) on April 1, 2008, and a continuance was granted on April 29, 2008. At the hearing sworn testimony was presented and documentary evidence was admitted. After the parties presented closing arguments on July 14, 2008, the matter was submitted and the record was closed.¹

¹ On July 14, 2008, the ALJ informed the parties that she would not consider any documents filed with OAH after the matter was submitted and the record closed. Mother filed a document with OAH that same day, but after the hearing concluded and the record closed. Accordingly, that late-filed document was not admitted into evidence or considered as closing argument.

ISSUES²

1. Was Student denied a free and appropriate public education (FAPE) during the 2006-2007 school year and extended school year due to District's failure to implement the February 2007 IEP by failing to provide him a home hospital teaching program?
2. Was Student denied a FAPE due to District's failure to appropriately place Student in a general math class and provide him with grade level math instruction for the 2007-2008 school year?

FACTUAL FINDINGS

1. Student, born June 20, 1991, lives with Mother and his sister within the District's jurisdictional boundaries. Student was a general education pupil until February 20, 2007, when Student was made eligible for special education under the categories of specific learning disability and emotional disturbance.
2. Student had a traumatic childhood, emotionally and physically. Student was a passenger in a head-on automobile accident in 2000. In 2004 Student was involved in another automobile accident. This time Student was hit by a car while riding a bicycle without a helmet. After this last accident, Student complained of back and head pain. His grades also declined.
3. Student entered Torrance High School (Torrance) as a ninth grade general education pupil in fall 2005. On December 15, 2005, Mother executed a written request for Student to be taught at home through the District's home hospital teaching program (the "home hospital program"). As part of the home hospital program, instruction is provided at home and outside the school setting, five hours per week. The home hospital program is available to all pupils and is not restricted to the special education program.
4. Mr. Bill Tokuba, the Assistant Principal of Torrance, was responsible for approving Student's participation in the home-hospital program as a general education pupil. To qualify for Torrance's home-hospital program, a medical doctor must verify that Student has a medical condition that restricts him to his home or hospital. Mr. Tokuba reviews the

² The issues were identified in the prehearing conference order; issue one was modified to more accurately reflect Student's sole basis for claiming that District did not provide him a FAPE. District filed a motion to dismiss certain claims prior to the prehearing conference. The ALJ conducted and recorded the prehearing conference on June 30, 2008. During the prehearing conference the ALJ reviewed Student's claims with the parties and granted District's motion as to certain claims the ALJ determined were not cognizable or relevant to a determination of whether Student received a free and appropriate public education (FAPE). The following claims in Student's complaint were dismissed: forgery (complaint one); truancy (complaints two and four, and proposed resolution three); inability to attend an IEP meeting and hospitalization (proposed resolution three); wrongful access to medical records (complaint four); and poor treatment (complaint four and proposed resolution five).

medical doctor's recommendation to make sure that it is supported by a diagnosis and a medical rationale.

5. When Mr. Tokuba questions the doctor's rationale, he refers the form to the school nurse for additional investigation. The school nurse investigates the request by contacting the medical doctor and reviewing student's medical records. The school nurse can not speak with the Student's medical doctor, or obtain medical records without parent's written authorization.

6. On December 15, 2005, Mother signed a form entitled "Home Teaching Request." This form notified Mother that the District would not provide home teaching services until it received a completed physician's form. District required Mother to sign the physician recommendation form to confirm her request for the home hospital program. By signing the form Mother also authorized Torrance to contact the physician in order to clarify the information to be used "in determining optimal placement for successful academic, social and medical progression." That same day chiropractor Arthur H. Malkin, D.C., (Dr. Malkin), signed the form entitled "Physician Recommendation for Home Hospital Program." In the preface to the physician's section of the form, Torrance defined home hospital teaching as "teaching for students with a temporary disability, i.e., students recovering from an accident, recent hospitalization, emotional/mental condition or short-term physical injury/illness."

7. Dr. Malkin diagnosed Student with a cervical sprain and sharp spasm. He recommended home teaching because Student suffered from sharp neck and shoulder pain as a result of his bike accident in 2004. Dr. Malkin prepared a letter setting forth Student's orthopedic problems where he indicated that Student was in "constant pain" from his bike accident. He also recommended that Student see an orthopedic surgeon. In the section of the form requesting his transition plan, the chiropractor indicated that Student has been in pain for two years and was having a difficult time. He anticipated that Student would be able to return to school in six to eight weeks.

8. Mother supported her request for the home hospital program with a letter prepared by Student's orthopedic surgeon, M. Jay Jazayeri, M.D., Diplomate, American Board of Orthopaedic Surgery and Fellow, American Academy of Orthopaedic Surgeons. In a letter dated January 17, 2006, Dr. Jazayeri stated that he had examined Student on December 28, 2005 and treated him for injuries from an automobile accident. The doctor further indicated that tests would be scheduled to further diagnose Student. "In the interim," Dr. Jazayeri recommended that home studies be continued pending the completion of tests. Mother had fulfilled the eligibility requirements of the home hospital program by having a medical doctor's endorsement.

9. On January 25, 2006, Assistant Principal Tokuba approved the home hospital program. Student participated in the home hospital program from January 26, 2006, through June 22, 2006, completing his second semester of ninth grade in the home hospital program.

No evidence was presented as to why the home hospital program continued beyond the eight weeks recommended by Student's chiropractor.

10. On July 5, 2006, with the assistance of Student's social worker, Mother requested that Student be assessed to determine if he was eligible for special education and related services. The referral specified District's obligations to provide an assessment plan and to provide a timely IEP team meeting after Mother executed the assessment plan.

11. In August 2006 Student enrolled in Torrance as a tenth grade general education student. Student was no longer enrolled in the home hospital program and was expected to participate in his general education program at Torrance.

12. District invited Mother to a meeting on September 13, 2006, to develop the assessment plan. On September 13, 2006, Mother contacted Ms. Amy Schumacher (Ms. Schumacher), the school psychologist, by telephone and informed her that she could not attend the meeting that day. In that same conversation, Mother and Ms. Schumacher agreed to reschedule the meeting for September 20, 2006, seven days later. On September 20, 2006, Mother came to District's offices and executed the assessment plan. District and Mother agreed to psychoeducational and health assessments as part of the assessment plan. District also requested that Mother execute a form entitled "Parent Notification of School Referral." Before Mother executed the form, Ms. Schumacher affixed a handwritten notation on the form indicating that Mother waived the ten-day notice for the assessment plan meeting held that day. Mother executed the form acknowledging the waiver of time and receipt of the form.

13. Mother claimed that Ms. Schumacher forged her signature on the form. At the hearing, Ms. Schumacher refuted Mother's accusation. She identified her handwriting and described in detail where Mother was standing when she executed the assessment plan and the form. Numerous documents were admitted into evidence with Mother's uncontested signature. Mother's signature on this form was virtually identical to other signatures she did not contest, including her signature on the assessment plan signed at the same time. Mother admitted that she requested the assessment and was not contesting District's assessment plan or assessment. Mother may have believed that she didn't sign the form, but her testimony was not credible when contrasted to Ms. Schumacher's clear recollection of the document and events. Mother demonstrated that her version of events was not reliable. Her focus on Ms. Schumacher's purported wrongdoing on a nonessential issue further eroded her overall credibility.

14. On October 10, 2006, and again on November 6, 2006, District mailed Mother a notice to attend an initial IEP team meeting on November 16, 2006. On November 7, 2006, Mother signed the notice indicating that she would attend, but she later cancelled the meeting. Mother cancelled three subsequent scheduled meeting dates.

15. On February 20, 2007, the initial IEP team meeting was held. All necessary members of the IEP team were present. The meeting was attended by Student, Ms.

Schumacher, Ryan Burnett (Mr. Burnett), Student's special education math teacher and case manager, and an administrator. An interpreter was available to Mother throughout the meeting.

16. Ms. Schumacher's psychoeducational assessment of Student was reviewed. Mr. Burnett administered the Wechsler Intelligence Scale for Children – Fourth Edition (WISC-IV) to assess Student's cognitive functioning. His perceptual reasoning was considered the most accurate representation of his cognitive functioning and his standard score in that was in the average range. His standard scores in the working memory index and the processing speed index were well below average, in the sixth and second percentile, respectively. Mr. Burnett administered the Woodcock Johnson Test of Achievement – Third Edition (WJ-III) to measure Student's academic achievement. Student's standard scores were in the well below average range on standardized tests measuring his math reasoning and math calculation skills. Comparing the WISC-IV and the WJ-III scores, Student evidenced a severe discrepancy between his cognitive ability and his academic performance in math reasoning and math calculation. Student's visual perceptual skills were assessed with the Test of Visual Perceptual Skills (non-motor). Significant visual processing deficits were indicated in most visual areas, especially memory tasks. Given his visual processing deficit and the severe discrepancy between his ability and achievement in math, Ms. Schumacher concluded that Student was eligible for special education under the category of specific learning disability (SLD).

17. Mother's concerns were considered in Ms. Schumacher's psychoeducational assessment. Ms. Schumacher provided Mother a questionnaire to complete with health and other background information about Student. Mother's responses to the questionnaire were also supplied to the nurse and incorporated in the health services report prepared as part of Student's assessment. On October 6, 2006, Mother completed the parent questionnaire. Mother circled the following words to describe Student: sad, moody, quiet, prefers to be alone, and friendly. Mother also completed the Achenbach Child Behavior checklist where she indicated clinically significant elevations in the areas of anxious-depressed behaviors, withdrawn-depressed behaviors, social problems and somatic complaints. She noted borderline clinically significant elevations in the areas of thought problems and attention problems. Consistent with her responses in the questionnaire and the checklist, Mother testified that Student suffered from depression and anxiety, that he spent hours in his room, and often was awake through the night. She testified that she could not get him out of bed in the morning; she tried to get the apartment manager to permanently remove the door in his room so that she could check on what he was doing. Student's educational records indicated that he had a traumatic childhood.

18. Ms. Schumacher memorialized her observations of Student in her psychoeducational assessment report. Student disclosed that he liked all school activities with the exception of his keyboarding class. He stated that his favorite subject was English and his hardest subject was math. He mentioned by name a few students inside and outside of school that he considered friends. Student expressed his love of music and told Ms. Schumacher that he enjoyed playing in the band. Student played several musical instruments

including the alto sax, the trumpet, the flute and the bassoon. He indicated that he would like to be a music teacher or a piano tuner. He denied feelings of sadness or nervousness, other than feeling nervous about his school performance. He claimed that his attendance problems were due to his head and back injuries, as well as sleep difficulties.

19. Ms. Schumacher interviewed Student's teachers. Teachers' reports and school records established that Student was absent from school the majority of time prior to the February 20, 2007 IEP team meeting. His teachers noted that when he was in school he was a quiet, hard working student with a great attitude. He had failed all of his classes due to his poor attendance and incomplete work. His English teacher noted that "no one can succeed in a college-bound English class without attending."

20. Ms. Schumacher also identified a "secondary" and "provisional" eligibility of emotional disturbance. She interviewed Student and had him complete the Reynolds Adolescent Depression Scale (Reynolds) and the Children's Depression Inventory. Student's responses to Reynolds revealed a borderline clinically significant elevation in the area of somatic complaints. Student indicated that most of the time he had trouble sleeping, felt tired and sick and had stomach aches, and that he frequently felt sad and worried about school. In her report, Ms. Schumacher noted that these feelings "are overwhelming for Student and impact his ability to attend and participate in school activities." Both Student and Mother indicated that when he is not at school he is at home, frequently in bed. Based upon the reports of Student and Mother, Dr. Schumacher concluded that Student met the criteria for "provisional" eligibility under the category of emotional disturbance due to Student's tendency to develop physical symptoms and fears associated with personal or school problems which has been long term, to a marked degree and which has significantly impacted his educational performance at this time. She could not make a conclusive determination because she was not able to speak with Student's health care practitioners, including a psychologist. Student reported to the nurse that he had been seeing a psychologist for ten years. However, at the time of Ms. Schumacher's report he had not been receiving counseling. Mother represented that it was being reinstated that week.

21. The school nurse prepared a health services report for the IEP team meeting. The health report memorialized information obtained from a questionnaire filled out by Mother, school health files, and the nurse's personal interaction with Student during a health screening. Student suffered from asthma which was triggered by stress, dust, cats, pollen and exercise. Student had allergies that are also triggered by dust cats and pollen. Student used an inhaler and took medication daily to control his asthma and allergies. Student reported having headaches of up to two times a day, six times a week. He indicated that the headaches came from the right side of his head and were triggered by hunger, fatigue and stress. Student reported to the nurse that he suffered from back pain; he is overweight and has scoliosis. Student reported that he experiences nightmares. Student made numerous references to a head injury he sustained in his bicycle-automobile accident. In her report, the nurse expressed concern with the absence of medical documentation to support any residual effects Student's bicycle-automobile accident. The nurse's chief concern was that Student "was not functioning at an acceptable level for his stated health [and that] there was no

medical evaluation from qualified physician specialists that would support his current absence behavior.” The nurse had requested Mother to obtain a complete physical exam for Student by a qualified physician. At the time of the IEP team meeting Mother did not provide any evidence that she complied with the nurse’s request.

22. Ms. Schumacher’s psychoeducational assessment could not address all areas of suspected disability, particularly, other health impaired (OHI), or an orthopedic impairment, because she did not have access to Student’s medical records or health care practitioners. Ms. Schumacher was aware that Student had previously been on temporary home hospital instruction. She knew from previous chiropractic reports and from Mother and Student that he complained of ongoing physical problems, including back and head pain. Mother reported that Student suffered from scoliosis, “metabolic disorder” and obesity. However, as indicated in the nurse’s report Ms. Schumacher never received any detailed medical information confirming that he had a disabling medical condition.

23. At the time Ms. Schumacher was preparing the assessment she requested Mother to execute a form release authorizing District to obtain Student’s medical, mental health and pharmacological records. The form was entitled “Authorization for Use and/or Disclosure of Information.” The form provided for the release of private health information and expressly indicated that when it is released to a public agency is protected as a pupil record under the Family Educational Rights and Privacy Act (FERPA). The form provided that the information was going to be used only for educational assessment and planning. Ms. Schumacher placed District’s return address in the space marked for the individual or organization receiving information. The box indicating the individual or organization receiving information was left blank for Mother to fill in with the names of Student’s doctors and deliver the forms to them. Ms. Schumacher placed a note on top of the box reminding mother to fill in the name and address of Student’s pediatrician or M.D. Mother was asked to sign another copy of the form so that District could disclose its educational records of Student to Student’s pediatrician and doctors. District provided the address of Torrance in the box indicating which party was disclosing information.

24. Mother never signed the form. At the hearing Mother accused Ms. Schumacher of writing the name of Student’s psychologist in the box indicating the individual or organization receiving information. Mother claimed that she went to Student’s doctor and gave him the form to fill out but he told her the form was for Student’s psychologist. However, Ms. Schumacher did not place the name and address of Student’s therapist in the box.

25. The IEP team followed Ms. Schumacher’s recommendations and determined that Student was eligible for special education and related services under the category of SLD and the secondary category of ED. Mother testified she heard the ED category, and did not know that he was eligible as SLD.

26. Ms. Schumacher made a series of recommendations to the IEP team, but deferred to the IEP team to determine the most appropriate and least restrictive educational

placement. She recommended that the IEP team consider various learning approaches to address Student's unique needs such as "learning through doing" approach to enhance his ability to learn and retain information; teaching new material with a combination of auditory information and visual aides; encouraging Student to use conceptual learning skills and visual reasoning skills by exposing him to a variety of direct and indirect experiences through books, pictures, interest centers and magazines; providing opportunities for oral expression, individual attention and additional explanations; frequent reinforcement exercises; peer and teacher support for note taking; visual study skills training and providing organizers and time lines or calendars so that he adheres to deadlines. She recommended that the IEP team consider designated instructional service (DIS) counseling for Student.

27. Student was not attending school at the time of Ms. Schumacher's assessment report. To encourage better school attendance, and knowing that he previously had home hospital service, she recommended that the IEP team consider home hospital services in conjunction with campus classes that Student enjoyed like music and band, to slowly integrate Student back to campus. Ms. Schumacher did not consider home hospital instruction to be otherwise appropriate in the absence of a verified medical condition. She thought Student should be attending Torrance. Student functioned well in his classes when he attended. Ms. Schumacher considered Student to be bright and capable. She was impressed with his range of musical interests. He played several instruments, had acquired a piano and was learning how to tune it. He was studying to get his ham radio operating license and he had learned how to incubate chicks.

28. Two of Ms. Schumacher's recommendations were directed to Mother. She "encouraged" Mother to follow up with outside counseling and with a pediatrician to address medical concerns and Student's somatic complaints. Ms. Schumacher was concerned with Student's unresolved medical history. She saw a clear distinction in his performance before and after the time of his reported bicycle accident. His handwriting had changed and his performance at school declined. Mother had failed to follow-up after the accident with a recommended magnetic resonance imaging (MRI) brain study.

29. After considering Ms. Schumacher's assessment and determining that Student was eligible for special education, the IEP team developed three annual goals to address his unique needs. The IEP team developed two goals to address Student's deficits in math reasoning and math calculation. His math reasoning goal provided that Student would be able to determine when and how to break down a math problem requiring single and multi-step solutions into simpler parts. His math calculation goal provided that Student would be able to solve problems generated by the teacher using algebraic expressions with at least one unknown variable maintaining 80 percent accuracy.

30. The IEP team developed one goal to address Student's extremely poor attendance. The IEP team acknowledged that his poor attendance was related to "his overwhelming feelings of anxiety resulting in physical symptoms and fears associated with personal and school problems." The annual goal provided that Student "would be able to identify appropriate coping strategies and behaviors to deal with his fears and frustrations

related to school and/or personal problems and utilize those strategies 90 percent of the time, resulting in improved attendance at school and school programs outside the home at least 5 periods a day.” The six month goal provided that Student would develop coping strategies 75 percent of the time, resulting in attendance at school or school programs at least three periods a day. The DIS counselor would assist Student with the goal.

31. The IEP team set forth the following offer of services in the IEP team document. One class period per day, five days per week, of specialized academic instruction in a group general education class in a regular classroom at the public school; one class period per week of group resource specialist services (RSP) at home; and two thirty-minute sessions month of Group DIS counseling services. The IEP document contained errors. The math class was a special day class for math, not a general education class. The RSP group services were to be provided five days a week at Torrance, not one day a week at home. The RSP group services were provided to support Student in math. Student would be provided group DIS counseling services to work on his attendance goals. In total, Student would spend 84 percent of his time in the regular education environment and 16 percent of his time outside regular education.

32. Mr. Burnett, Torrance’s special education math teacher and Student’s case manager, attended the IEP. He administered the standardized achievement tests which were part of Ms. Schumacher’s psychoeducational assessment. Mr. Burnett testified credibly at the hearing. He confirmed that Student was placed in a special day math class at the IEP team meeting. He explained that generally pupils progress from an SDC to general education math after taking a transition class. Mother did not dispute Student’s math class placement during the 2006-2007 school year. Mother understood Student was enrolled in special education math because she wanted him to transfer back to general education in 2007-2008

33. The IEP team discussed placement. Student was expected to attend all his classes and to receive resource support at Torrance. He would be part of the RSP program. As indicated in the IEP, the “IEP team agree[d] [that the] RSP program [is the] best fit for [Student].” Mother claims that she didn’t understand RSP. At the hearing she asked the ALJ what RSP meant, and even though the ALJ advised Mother to ask the District witnesses, she never did. Mother admitted that her only objective at the IEP meeting was to secure home hospital for her son. Mother was not interested in the IEP team’s recommendations for services and supports at Torrance.

34. Mother testified that she understood the placement to be home hospital. Mr. Burnett testified that home hospital was raised by Mother after the IEP team discussed eligibility, services and placement at Torrance. A District representative prepared the handwritten IEP team narrative included in the IEP. Mr. Burnett’s recollection was consistent with the IEP narrative. The narrative noted that attendance was recorded, assessment results presented, eligibility indicated, and an agreement that the “best fit” RSP program reached. As part of Student’s package of services in Torrance’s RSP program, classroom accommodations were reviewed, a transition plan developed and, goals and

objectives discussed. After the IEP team concluded its discussion of eligibility, services and placement, the Parent's rights booklet was distributed. At that point Mother requested home hospital instruction. The reference to home hospital instruction was at the end of the IEP team narrative and provided that "IEP contingent on [Student's enrollment in home hospital program (reassess at the end of the year)]." Mr. Burnett testified that District made it clear that home hospital was not part of their offer and that if Mother wanted the services she would have to submit the necessary forms.

35. Mother and Student signed the IEP as participating members. Mother and Student also signed that they agreed with the substantive provisions of the IEP. Mother maintained that she only saw the signature page at the time she signed and did not see the rest of the IEP. One complete copy of the IEP team document was mailed to her and one complete copy of the IEP document was handed to Student.

36. On February 22, 2007, two days after the IEP team meeting, Mother and Student signed a contract with the School Attendance Review Board (SARB). The contract required student to attend school daily, each period, and on time; and to attend Torrance until the home hospital program was in place.

37. The SARB contract required Mother to execute the home hospital release form and bring the home hospital form to a doctor to sign. Mother never provided District with the required forms. Instead, on February 23, 2008, Mother supplied District with a note excusing Student's absences from January 26 through February 22, 2007. Student's doctor supplied two dated certificates with the doctor's stamped signature verifying that Student could return to school either the next day or three days after the date the certificate was issued. At hearing, Mother admitted that she disagreed with the doctor's conclusions. Mother didn't believe Student was well enough to return to school.

38. Mother never supplied a signed home hospital form from a medical doctor or psychologist during the 2006-2007 school year. Mother testified that she went to the doctor with the forms indicating that her son was emotionally disturbed. He said he was not the appropriate person to sign the forms. Her referred Mother to the "800" number for mental health services. Instead of signing the forms, on March 9, 2007, he drafted a short letter indicating that he had seen Student, for various medical problems, performed tests, made referrals, and applied treatments. "In the meantime as had already been done, patient can continue with home studies."

39. Mother made an appointment with a psychologist. On May 15, 2007, Mother called Ms. Schumacher to ask her whether a psychologist could sign the form. Ms. Schumacher confirmed that a psychologist could sign the form, but that she still required a medical doctor to sign off "(which is required)." Mother admitted at the hearing that the psychologist would not sign the form.

40. Mother also claimed that she authorized Ms. Schumacher to speak with Student's doctors. Mother provided a letter to Ms. Schumacher on March 29, 2007, over one

month after the IEP team meeting, authorizing Ms. Schumacher to speak with Student's doctor on the condition that Ms. Schumacher communicate with the doctor only when Mother was present. Ms. Schumacher attempted to call Mother three times without success to arrange the telephone call. Ms. Schumacher never received Mother's authorization to communicate with Student's doctor or psychologist.

41. On September 13, 2007, Mother and Student attended a conference with representatives of District including: Student's case manager, Ms. Schumacher, and Mr. Tokubo. Mother expressed her belief that the math class was too easy and that she wanted Student to return to general education math. Ms. Fowler, Student's case manager, advised her that District would re-evaluate Student's performance and placement later in the semester.

42. On December 12, 2007, Student and Mother met again with members of the IEP team meeting to discuss Student's progress in his classes. Mr. Burnett, Student's math teacher, confirmed that the math class was too easy for him and that his math skills were good enough for a general education class. The IEP team proposed changing his math class to general education at the conclusion of the fall semester. District mailed Mother an IEP team amendment page dated December 17, 2007, for her to sign which would change the SDC Alg. 1 class to general education at the beginning of the second semester. Mother never signed the amendment.

43. Mother did not submit the required papers for home hospital instruction until one year later, in March 2008. At that time District accepted a letter from Student's chiropractor, Dr. Malkin, where he indicated that he reviewed Student's medical records, confirmed his chronic back pain, and requested home hospital services. Dr. Malkin attached the medical doctor's letter from March 8, 2007, and also a record of Student's examination of February 28, 2008, by a physician from Orthopedic Hospital Outpatient Clinic. At Dr. Malkin's request Mother's signed an authorization he provided to her so that Student's physician could release medical information about Student to him.

CONCLUSIONS OF LAW

Burden Of Proof

1. The petitioning party has the burden of persuasion. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].) Therefore, Student has the burden of persuasion.

Issue One

2. Mother contends that District offered a home hospital placement at the February 20, 2007, IEP team meeting and that it failed to provide the home hospital instruction as promised. District maintains that home hospital instruction was not part of its initial offer, but that it intended to provide it only if Mother secured the required forms.

Based upon the following Legal Conclusions and Factual Findings, Mother failed to meet her burden of proof that District failed to provide Student a FAPE by not providing home hospital services in 2007.

3. Under both California law and the IDEA, a child is eligible for special education if the child needs special education and related services by reasons of mental retardation, hearing impairments, speech or language impairments, visual impairments, emotional disturbance, orthopedic impairments, autism (or autistic-like behaviors), traumatic brain injury, other health impairments, or specific learning disabilities. (20 U.S.C. § 1401 (3)(A)(i) & (ii); Cal. Code Regs., tit. 5, § 3030.)

4. In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (See *Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1307, 1314.) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefits to the pupil. (*Ibid.*) For a school district's offer of special education services to a disabled pupil to constitute a FAPE under the IDEA, a school district's offer of educational services and/or placement must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the pupil with some educational benefit in the least restrictive environment. (*Ibid.*) Whether a student was denied a FAPE is determined by looking to what was reasonable at the time, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrman v. East Hanover Bd. of Education* (3d Cir. 1993) 993 F.2d 1031, 1041.)

5. For Mother's option of home hospital instruction to be appropriate, it must be the least restrictive environment. Federal and state law requires school districts to provide a program in the least restrictive environment to each special education student. (See 34 C.F.R. §§ 300.114, et seq.) A special education pupil 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 and 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).) 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.)

6. Placement at home is one of the most restrictive placement options. The continuum of program options includes, but is not limited to: regular education; resource specialist programs; designated instruction and services; special classes; nonpublic, nonsectarian schools; state special schools; specially designed instruction in settings other than classrooms; itinerant instruction in settings other than classrooms; and instruction using telecommunication, instruction in the home or instructions in hospitals or institutions. (Ed. Code, § 56361.)

7. Before placing a pupil on home instruction, the IEP team must be assured that Student has a medical or psychological condition that prevents him from receiving special

education and related services in a less restrictive environment. When recommending placement for home instruction, the individualized education program team shall have in the assessment information a medical report from the attending physician and surgeon or the report of the psychologist, as appropriate, stating the diagnosed condition and certifying the severity of the condition prevents the pupil from attending a less restrictive placement. The report shall include a projected calendar date for the pupils to return to school. (Ed Code 3051.4, subd. (d).)

8. In matters alleging procedural violations, a denial of FAPE may only be shown if the procedural violations impeded the child's right to FAPE, significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of FAPE, or caused a deprivation of educational benefits. (34 C.F.R. § 300.513(a); Ed. Code, § 56505, subd. (f)(2); see also *W.G. v. Board of Trustees of Target Range School District No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484 (*Target Range*).) A parent has meaningfully participated in the development of an IEP when he or she is informed of the child's problems, attends the IEP meeting, expresses disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann v. East Hanover Bd. of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1036 [parent who has 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].)

9. District's February 20, 2007, offer was an offer of FAPE. Ms. Schumacher assessed Student and determined that he had a SLD in math. Without the benefit of Student's medical or mental health records, she made a "provisional" determination that Student was ED. The IEP team developed goals and objectives to address Student's math skills and to minimize his attendance issues. Based upon Ms. Schumacher's assessment, and the information available at the time, the IEP team offered the RSP program as the "best fit," which included a special day class in math with RSP and DIS support. Mother did not object to Student's eligibility or the proposed services. The IEP document did contain some mistakes. Home was listed as the location of one session a week of group RSP when the IEP team intended to provide group RSP five days per week at school. Nevertheless, in the context of the rest of the IEP document, it was still clear that academic instruction would occur at Torrance and group RSP could not be provided at home.

10. Based upon the information available to the IEP team, attendance at Torrance and participation in a math SDC with RSP and DIS support, constituted the least restrictive environment. Mother failed to provide the necessary releases or otherwise authorize Ms. Schumacher, the school nurse, or any other District representative to contact Student's medical and mental health care practitioners to ascertain whether the more restrictive environment of home hospital instruction was an appropriate placement. From her review of Student's behavior and performance when he attended school, Ms. Schumacher did not find that he required a more restrictive environment. She wanted him to be in school. Teachers reported that Student's principal problem was his absenteeism. Student was not a behavior problem and functioned well in his classes. If Student qualified for home hospital instruction Ms. Schumacher recommended that home hospital instruction

be combined with campus classes in preferred activities to encourage his integration on the regular education campus.

11. Mother failed to provide probative evidence from medical or mental health care practitioners that her preferred placement of home hospital instruction was the least restrictive environment for Student. Mother refused to allow District to corroborate her representations about Student's mental and physical challenges with Student's physical and mental healthcare practitioners. Mother wanted District to rely upon her representations in approving home hospital instruction. Mother's representations were not sufficient to support the more restrictive placement of home hospital instruction.

12. Mother's claim that the IEP team only offered Student placement in the home hospital program was not credible. The IEP team offered the RSP program at Torrance. Mother requested home hospital instruction. Mother knew that the IEP team was not going to provide her preferred, and more restrictive, placement of home hospital instruction without the required forms. Two days after the IEP team meeting, Mother and Student executed a contract with SARB where Student agreed to attend Torrance until home hospital instruction was approved. By signing the SARB contract, Mother committed that she would provide the required forms. Mother was well aware of what was required to secure home hospital instruction. Mother had provided the paperwork in the past and knew what was required. Ms. Schumacher informed Mother that she needed to obtain a medical doctor's authorization, but could obtain an additional authorization from a psychologist. Student's medical doctor refused to sign the home hospital form and wrote a short letter instead. Student's absence note indicated that his medical doctor thought he could return to school after a short absence. Mother admitted that she disagreed with Student's doctor that Student could return to school. She also admitted that Student's psychologist would not sign the home hospital form.

13. To the extent Mother contends that District violated her procedural rights at the February 20, 2007, IEP team meeting, her claim is without merit. At the hearing, Mother repeatedly stated that she did not understand special education or the IEP, or the terms that were used at the IEP meeting, including RSP. However, Mother was actively involved in the IEP process and had an opportunity to participate in the decision-making process. She requested a special education assessment. She pursued home hospital instruction at the IEP team meeting. An interpreter was available to her at the IEP. She was involved in the decision-making process as the IEP team agreed to provide home hospital instruction upon receipt of the correct forms. Student was not deprived of educational benefits as a result of any purported procedural violations. At the IEP team meeting, District offered Student a FAPE in the least restrictive environment. (Legal Conclusions 1, 3 through 8; Factual Findings 1 through 40, 43.)

Issue Two

14. Mother's contention that District failed to place Student in general education math class during the 2007-2008 school year is without foundation. District was impressed with Student's progress. It responded favorably to Mother's request to move him to general

education. It insisted on a transition period. At the end of that time, District determined that Student was ready to go to general education and sent Mother an authorization. Mother failed to sign the authorization to transition Student from special to general education math. Accordingly, the claimed deprivation of Student's right to an appropriate placement in the LRE did not occur. (Legal Conclusions 1, 3 through 4; Factual Findings 41 through 43.)

ORDER

Student's claims for relief are denied.

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. District prevailed on all issues decided 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 ninety days of receipt of this decision. (Ed. Code, § 56505, subd. (k).)

DATED: August 25, 2008



EILEEN M. COHN
Administrative Law Judge
Office of Administrative Hearings