

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

DEL MAR UNION SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT

OAH Case No. 2015010798

DECISION

On January 23, 2015, the Del Mar Union School District filed a request for a due process hearing with the Office of Administrative Hearings, naming Student's parent on behalf of Student. OAH granted a continuance for good cause on February 13, 2015.

Administrative Law Judge Caroline A. Zuk heard this matter in Del Mar, California, on May 19 and 20, 2015.

Sundee M. Johnson, Attorney at Law, represented District. Cara L. Schukoske, District's Director of Pupil Services, was present for the entire hearing.

Parent represented Student for the entire hearing. On May 20, 2015, Student's maternal grandparent assisted Parent, and Student was present for a portion of the hearing during the morning.

At the conclusion of the hearing, the matter was continued to June 4, 2015, at the parties' request to file written closing briefs. The record was closed on June 4, 2015, when the parties filed closing briefs, and the matter was submitted for decision.

ISSUE

Did District's 30-day administrative placement, as reflected in District's November 25, 2014 correspondence, offer Student nursing services comparable to his previously approved and implemented IEP?¹

SUMMARY OF DECISION

District contends that its 30-day interim offer of nursing services was comparable to Student's previous IEP, because of the intensive level of trained staff available to monitor Student's seizures and implement Student's Seizure Action Plan.

Student contends that District's interim offer of nursing services was not comparable to his previous IEP, because his previous IEP recommended a full-time, one-to-one nurse throughout his school day. Student contends that his seizures are life-threatening, and that he will not be safe at school without a full-time nurse, specifically dedicated to him.

This Decision holds that District offered Student comparable nursing services, because of the intensive, one-to-one, adult-to-student ratio available in the proposed special day class for Student, including a full-time nurse assigned to the entire class, and a full-time, one-to-one aide assigned to Student.

FACTUAL FINDINGS

1. Student is an 8-year-old third grader who is eligible for special education and related services under the primary eligibility of autism and the secondary eligibility of speech or language impairment. Student is non-verbal and suffers from epilepsy.
2. In October 2014, Student transferred into the Del Mar Union School District from the San Marcos Unified School District. Both districts operate special education programs under a Special Education Local Plan Area called the North Coast Consortium for Special Education.
3. On October 24, 2014, Parent carefully completed and delivered District's registration packet, which included detailed information on Student's health conditions, allergies, and medications. Parent described Student's health conditions as autism, epilepsy, pica, non-verbal, sleep apnea, anxiety and asthma, and that Student's regular, continuing, and long-term medications were "Depakote, 125 mg sprinkle caps, 5 caps AM, 5 caps PM" and

¹All other issues in District's complaint were withdrawn on May 20, 2015, the second day of hearing, because Parent stipulated on the record that the only disputed issue was the District's offer of comparable nursing services.

“diastat 10 mg rectal for seizures over 4 minutes.” Parent also informed District that Student’s seizures started at age four, and were manifested as grand mal, petite mal, and febrile seizures, with his last episode on October 20, 2014. Parent also informed District that Student was allergic to sulfa, and required a proair-nebulizer at school for his asthma.

4. On November 6, 2014, District received a Physician’s Statement, dated November 4, 2014, and a Seizure Action Plan, dated November 5, 2014. The Physician’s Statement confirmed the information provided by Parent regarding the administration of Diastat. The Seizure Action Plan confirmed that Student suffered from convulsive and non-convulsive seizures. The frequency of convulsive seizures was two times per month, lasting between five to 10 minutes. No frequency was provided for the non-convulsive seizures; they were described as “staring” and “eye-fluttering.” The Seizure Action Plan confirmed the dosages for Diastat and Depakote, and characterized Diastat as an emergency medication. The Seizure Emergency Protocol in the Seizure Action Plan was typical for the protocol implemented by District. It required the District to “Contact school nurse,” “Notify parent or emergency contact,” and “Administer emergency medications as indicated below,” which was the Diastat for a seizure lasting more than 4 minutes.

Nursing Services in Student’s Previous November 15, 2013 IEP

5. Student’s last agreed upon and implemented IEP at the time of his transfer into District was a 25 page, annual IEP, dated November 15, 2013, developed by Student’s former IEP team at La Costa Meadows Elementary School in San Marcos Unified School District.

6. Student’s November 15, 2013 IEP described his nursing services in a grid entitled “Aids, Services, Program Accommodations/Modifications and/or Supports.” The description stated: “nurse to monitor seizures and administer diastat if necessary.” The services were to be provided “daily,” at the “school site” and “throughout the school year.”

7. The detailed November 15, 2013 IEP did not clearly state whether Student had a full-time, one-to-one nurse, specifically dedicated to him.

8. Towards the end of the 2013-2014 school year (Second Grade), Parent requested an IEP meeting to discuss her concerns regarding Dependable Nursing, LLC, a private company used by the San Marcos Unified School District to provide nursing services to Student at La Costa Meadows. The San Marcos Unified School District convened an IEP meeting on June 5, 2014 to discuss Student’s nursing services, his transition to an upper grade classroom in Education Specialist Kellyn Swenson’s special day classroom, and possible assessments to consider at the beginning of the 2014-2015 school year (Third Grade). The June 5, 2014 Amendment did not clarify whether the November 15, 2013 IEP had recommended a full-time, one-to-one nurse for Student.

9. Based on District’s Director of Pupil Services Cara Schokoske’s extensive experience reviewing the same IEP form for North Coast Consortium school districts in

Del Mar Union School District and San Dieguito Union High School District, if a child needed one-to-one nursing services, then it would be explicitly stated in the IEP as “one-to-one nurse” in the grid entitled “Aids, Services, Program Accommodations/ Modifications and/or Supports.” Since the grid did not explicitly state a “one-to-one” nurse, and there were no other explicit references to a one-to-one nurse in the November 15, 2013, and June 5, 2014 IEP’s, Ms. Schokoske was confident that the IEP did not recommend one-to-one nursing services for Student.

10. Linda Hagerty, a Program Specialist for North Coast Consortium for Special Education, who was primarily responsible for gathering information on Student’s previous program on behalf of District, interpreted the grid the same way as Ms. Schokoske for the same reason.

11. Parent was adamant that the November 15, 2013 IEP recommended a full-time, one-to-one nurse, even though the grid did not explicitly state “one-to-one.” Parent was extremely frustrated that District staff relied on their interpretation of the IEP rather than first-hand information regarding her child’s previous nursing services.

12. In late October and early November 2014, Ms. Hagerty tried to obtain first-hand information regarding Student’s nursing services by contacting North County Consortium Program Specialist Laurie Leigh, who attended the November 15, 2013 IEP team meeting. However, Ms. Leigh stated that she was no longer assigned to San Marcos Unified School District, and recommended that Ms. Hagerty contact Ms. Swenson at La Costa Meadows. Ms. Swenson was not Student’s teacher during the 2013-2014 school year, but was expected to be his teacher for the 2014-2015 school year if Student had remained in his former district. Ms. Swenson participated in the development of Student’s June 5, 2014 IEP regarding his transition to her special day class for third through fifth graders. Ms. Swenson informed Ms. Hagerty that Student had one-to-one nursing services but it was Ms. Swenson’s impression that it was because no other student in the classroom required nursing services.

13. At hearing, Parent offered credible evidence that Student’s November 15, 2013 IEP recommended one-to-one nursing services, and the weight of the evidence established that Student had a full-time, one-to-one nurse assigned to him at La Costa Meadows. During the 2013-2014 school year, Parent observed Student three times in his special day class at La Costa Meadows. Parent observed Student receiving one-to-one care from a nurse from Dependable, who assisted with feeding, toileting, and charting. According to Parent, the nurse was being used primarily as an aide. During the 2013-2014 school year, Student’s grandmother transported Student to school. At hearing, Grandmother testified that Student was not allowed to attend his special day class until a nurse from Dependable arrived at school to care for him. Grandmother recalled several times when Student and she waited in her vehicle, sometimes for up to an hour, because the Dependable nurse was late.

14. During the November 15, 2013, and June 5, 2014 IEP team meetings, Parent expressed her concerns regarding Dependable’s nursing services. The November 15, 2013

IEP team meeting notes reflect Parent's concern about "the nurse arriving late in the morning," and the assignment of "three nurses this year." Toward the end of the 2013-2014 school year, Parent requested another IEP meeting to discuss her on-going concerns about Dependable's nursing services. Parent and Grandmother attended the June 5, 2014 IEP meeting where Parent requested that San Marcos Unified School District use a different nursing company for Student's nursing services. The IEP team notes state that Student was "very high energy so much so that [Student] needs a nurse as well as another adult." The IEP team also discussed the possibility of conducting a "Special Circumstances Instructional Aide" assessment in the Fall of 2014 to determine if Student needed a one-to-one aide in addition to a nurse. The June 5, 2014 IEP meeting notes state that the "team discussed the nurse that [Student] has now, the mother [l]ikes the present nurse but she does not like the nursing company. So the Program Specialist will discuss the nursing organization with [the] District."

15. At hearing, Parent provided a copy of Dependable's "Home Health Certification and Plan of Care," which certified the provision of services between October 7, 2013 and December 8, 2013. The document states in relevant part:

[Licensed Vocational Nurse] level of care to be funded by San Marcos Unified School District for 7.25 hours daily, 6.25 hours on early release day per agency staff availability and [Patient Care Giver] request. Patient care giver is responsible for all skilled care when Dependable Nursing skilled nurse is not present.

Dependable's certification corroborated Parent's credible testimony that Student had his own nurse, and Grandmother's credible testimony that Student was not allowed to start school until the Dependable nurse arrived at La Costa Meadows. If there was any doubt regarding the provision of one-to-one nursing services for Student, Dependable's certification on its face clearly indicates that San Marcos Unified School District was funding a nurse for Student. Taken together, the weight of the evidence established that Student had one-to-one nursing services prior to his enrollment in District.

16. At hearing, District contended that it had never received a copy of Dependable's certification and, therefore, it could not be charged with knowledge of it. However, District was obligated to take reasonable steps to promptly obtain Student's pupil records, and any other records relating to the provision of special education and related services to Student. District possessed and relied upon the June 5, 2014 IEP Amendment, which clearly referred to a "nursing company" and "nursing organization." It was District's, not Student's responsibility, to obtain relevant records from San Marcos Unified School District regarding Student's nursing services, including any contractual arrangements between San Marcos Unified School District and a private nursing company.

District's October 28, 2014 Offer of Comparable Nursing Services

17. Upon receipt of Parent's registration packet on October 24, 2014, District promptly took several steps to interpret the provision of nursing services on Student's November 15, 2013 IEP, and understand Student's then-current health needs. District relied on Ms. Hagerty to gather information regarding Student's last agreed upon and implemented IEP, and communicate District's offer of comparable nursing services to Parent.

18. Ms. Hagerty reviewed the medical information contained in the registration packet, discussed above, reviewed Student's November 15, 2013, and June 5, 2014 IEP's, using the SELPA's on-line program, and consulted with District Nurse Lori Smiley. Student's November 15, 2013 IEP contained minimal information on Student's medical conditions. The health section of the IEP simply states that Student was diagnosed with epilepsy, and had experienced seizures at school in the past. It also reflected Parent's report that Student had pica, which was characterized as Student's persistent and compulsive craving to eat nonfood items. The June 5, 2014 IEP Amendment did not provide specific information about Student's medical conditions.

19. Based on the information then-available to District, on October 28, 2014 Ms. Hagerty spoke with Parent on the telephone, and described District's offer of nursing services that District believed were comparable to Student's nursing services at San Marcos Unified School District. District's oral offer on October 28, 2014 was memorialized in District's November 25, 2014 certified correspondence to Parent, which states:

Regarding supplementary aids and services, the District will provide nursing services to monitor seizures and administer Diastat, if necessary. The classroom [Student] will be attending at Carmel Del Mar is staffed with a full-time nurse. The District will also provide 1:1 instructional aide support for [Student] throughout his school day. The District will make arrangements for appropriate staff (i.e., an L[icensed] V[ocational] N[urse]) to monitor seizures and administer Diastat, if necessary, on District-provided transportation, if you elect to use that service for [Student].

20. During the October 28, 2014 phone call, Parent informed Ms. Hagerty that Student had a one-to-one nurse at San Marcos Unified School District, and that he needed his own full-time nurse to monitor his seizures to keep him safe at school. Parent was extremely fearful that Student's life was at risk if he was not monitored by a full-time, one-to-one nurse. Parent expressed her strong disagreement to District's offer, and did not send Student to Carmel del Mar, because she had no confidence that Student would be safe there.

21. When District proposed its offer of nursing services to Student on October 28, 2014, there was an intensive level of daily, full-time supervision by trained staff in Katie Golding's moderate to severe special day class at Carmel Del Mar. There were eight students enrolled in Ms. Golding's classroom, but one student attended general education. For the seven remaining students, there were seven adults to provide supervision, including

Ms. Golding, one full-time nurse, and five full-time instructional assistants. This one-to-one adult ratio remained the same during the 2014-2015 school year through the date of the hearing. If Student had attended Ms. Golding's class, he would have been assigned his own instructional assistant, thereby maintaining the intensive, one-to-one, adult-to-student ratio.

22. In addition to the full-time nurse assigned to Ms. Golding's class, District Nurse Lori Smiley was assigned to Carmel Del Mar during the 2014-2015 school year. On days when Ms. Smiley was not on campus, there was a health technician in the health office for the full day, who worked under Ms. Smiley's direct supervision.

23. The staff in Student's proposed special day class at Carmel Del Mar was trained on how to monitor seizures and implement seizure action plans. Ms. Golding has received first aid training outside of District, and participates in annual training with District's nursing staff on implementing seizure action plans and administering Diastat. Ms. Golding has assisted in the administration of Diastat two times during the 2013-2014 school year, and one time during the 2014-2015 school year. Ms. Golding has taught students with medical conditions who require assistance with g-tube feedings, and administration of medication. She has taught three students with seizure disorders, and knows how to observe for signs of a seizure and monitor a child after a seizure. Ms. Golding consults with Ms. Smiley at the beginning of the school year to review a child's seizure action plan, which is reviewed again at the child's annual IEP meeting. The classroom aides receive training two times per year on how to recognize the signs of seizures, and implement seizure action plans. If a child has a seizure, the instructional aides know how to alert the nurse, retrieve the Diastat box, and time the length of the seizure. The classroom nurse has administered Diastat numerous times. The instructional aides, as well as the teacher and nurse, know how to protect a child's body from injury during a seizure by lowering the child to the ground and supporting the child's head. The staff was trained in following mandatory emergency procedures for contacting 911 as ordered in a child's seizure action plan.

24. Of the seven students who remained in the special day class, only three required nursing services from the nurse. Of those three students, two required daily nursing services and one required nursing services to administer Diastat as needed. During the 2014-2015 school year, the nurse assigned to Ms. Golding's classroom administered Diastat to one student on one occasion with assistance from Ms. Golding.

25. During the 2014-2015 school year, there were no instances where two students in Ms. Golding's classroom simultaneously needed emergency support from staff. All of the adults in Ms. Golding's classroom carry a walkie-talkie to communicate during emergencies. The classroom nurse remains with the students in Ms. Golding's class for the school day, except for a daily, five-minute assignment during lunchtime where she leaves the classroom to assist another student with the administration of insulin. If there were a health emergency in Ms. Golding's classroom when the nurse was performing this other task, then the staff would page the nurse, and send a staff member to find her. The Carmel Del Mar campus is condensed, and it takes less than one minute to travel between the lunchroom and the

classroom, and approximately one minute to travel between the office and playground.

26. Ms. Schokoske credibly testified that District personnel were “very concerned” about safety, and would make any needed adjustment to Student’s nursing services through the normal IEP process. Ms. Hagerty and Ms. Smiley considered all of the information in the District’s possession, and believed that District’s offer of nursing services was comparable to those provided to Student pursuant to his November 15, 2013 IEP.

27. At hearing, Parent presented a letter, dated February 19, 2015, from Dean P. Sarco, M.D., a neurologist at Kaiser Permanente, Los Angeles Medical Center, who wrote that Student was “under [his] neurological care for severe epilepsy including dangerous drop seizures and frequent status epilepticus.” Dr. Sarco further wrote, “[g]iven the severity of his seizures, I am in support of having his one on one nurse reinstated for the time being.” Dr. Sarco did not testify at the hearing. District did not receive a copy of Dr. Sarco’s letter until April 20, 2015, when Parent included it as an exhibit to her request to continue the due process hearing.

28. At hearing, Ms. Smiley acknowledged that a seizure disorder can change at any time and can become more complex. However, the medical information received by District as of late October and early November 2014 did not reveal changes to Student’s seizure disorder, and did not recommend a one-to-one nurse at school.

29. Following Parent’s registration of Student on October 24, 2014, the parties did not develop a new IEP for Student. District attempted to convene an IEP team meeting on November 14 and 18, 2014 and December 2 and 4, 2014 to discuss its recommendation for comparable nursing services, as well as to conduct Student’s annual IEP team meeting. However, Parent was not available on the proposed dates and, therefore, District did not proceed with an IEP team meeting without Parent. District subsequently memorialized its offer of comparable nursing services in a certified letter, dated November 25, 2014, which was the same as District’s oral offer on October 28, 2014.

30. During the 2014-2015 school year, Student has not attended school in either San Marcos Unified School District or Del Mar Union School District. Student did not attend school at the beginning of the 2014-2015 school year in San Marcos, because of Parent’s concerns regarding a reliable nursing company had not yet been resolved, and she was in the process of moving from San Marcos to Del Mar. As discussed above, Student did not attend Carmel Del Mar after Parent completed the registration packet in October 2014, because Parent disagreed with District’s offer of comparable nursing services. Student has remained at home, receiving care from a full-time nurse funded through Regional Center.

LEGAL CONCLUSIONS

Introduction – Legal Framework under the IDEA²

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et seq.; 34 C.F.R. § 300.1 (2006) et seq.³; Ed. Code, § 56000, et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, which meet state educational standards, and conform to the child’s individualized education program. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) “Special education” is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) “Related services” are transportation and other developmental, corrective and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA’s procedures with the participation of parents and school personnel that describes the child’s needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that “the ‘basic floor of opportunity’ provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to” a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to “maximize the potential” of each special needs child “commensurate with the opportunity provided” to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated

² Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

³ All references to the Code of Federal Regulations are to the 2006 version.

to “confer some educational benefit” upon the child. (*Id.* at pp. 200, 203-204.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.].) Although sometimes described in Ninth Circuit cases as “educational benefit,” “some educational benefit” or “meaningful educational benefit,” all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 951, fn. 10.)

Issue: Whether District Offered Nursing Services that were Comparable to Student’s Previous Services

4. District contends that its 30-day interim offer of nursing services was comparable to Student’s previous IEP, because a full-time nurse was assigned to Student’s proposed special day class, and District also offered a full-time, trained, one-to-one instructional aide to support Student at school. Student contends that District’s interim offer of nursing services was not comparable to his previous IEP, because his previous IEP recommended a full-time, one-to-one nurse throughout his school day.

5. When a student who has an IEP transfers into a school district from another school district within the same state and within the same academic year, the school district shall provide the student with a FAPE, including services comparable to those described in the previously approved IEP, in consultation with the parents, for a period not to exceed 30 days. By the expiration of the 30-day period, the district shall adopt the previously approved IEP, or shall develop, adopt, and implement a new IEP that conforms to federal and state law. (Ed. Code, § 56325, subd. (a)(1).)

6. “To facilitate the transition for an individual with exceptional needs described in [Education Code section 56325] subdivision (a), the new school in which the individual with exceptional needs enrolls shall take reasonable steps to promptly obtain the pupil’s records, including the Individualized Education Program and supporting documents and any other records relating to the provision of special education and related services to the pupil, from the previous school in which the pupil was enrolled, pursuant to paragraph (2) of subsection (a) of Section 99.31 of Title 34 of the Code of Federal Regulations.” (Ed. Code § 56325, subd. (b)(1).)

7. The Ninth Circuit has held that the term “previously approved IEP” in Education Code section 56325, subdivision (a)(1) refers to the last IEP that was actually implemented. (*A.M. v. Monrovia Unified School Dist.* (9th Cir. 2010) 627 F.3d 773, 779.) Education Code section 56325, subdivision (a)(1) is modeled upon title 20 United States Code section 1414(d)(2)(C)(i)(1), which provides that when an exceptional needs student who “had an IEP that was in effect in the same State” transfers to and enrolls in a new school, the school shall provide services comparable to the “previously held IEP.” In enacting 34 Code of Federal Regulations part 300.323(e), the regulation that corresponds to

20 United States Code section 1414(d)(2)(C)(i)(I), the United States Department of Education declined to define the term “comparable services,” explaining that the department interpreted “comparable” as the plain meaning of the word, which is “similar” or “equivalent.” (71 Fed. Reg. 46,681 (August 14, 2006).)

8. As a preliminary matter, District’s contention that Student’s November 15, 2013 IEP did not recommend a one-to-one nurse was not supported by the evidence. Parent credibly testified that during the November 15, 2013 and June 5, 2014 IEP meetings, she expressed her concerns about San Marcos Unified School District’s delivery of one-to-one nursing services to Student by a private contractor, Dependable Nursing. Parent’s testimony was corroborated by Dependable’s certification, detailing San Marcos’s funding of a licensed vocational nurse for 7.25 hours per day, except for early release days. Student’s maternal grandmother credibly testified that when she drove Student to school, he needed to remain in her vehicle until the Dependable nurse arrived, because Student was not allowed to attend class unless he was supervised by his nurse from Dependable. Parent’s personal knowledge about Student’s nursing services, corroborated by Dependable’s own documentation, was more persuasive than District’s interpretation of the November 15, 2013 IEP.

9. However, the finding and conclusion that Student previously had a one-to-one nurse is not dispositive as to whether District offered comparable nursing services as part of its administrative placement, because the term “comparable services” does not mean identical services. Guidance from the U.S. Department of Education explains that “comparable” means “similar” or “equivalent.”

10. While Parent’s deep concerns regarding her child’s safety are understandable, the preponderance of the evidence established that District’s October 28 and November 25, 2014 offer of nursing services was comparable to those that Student received at La Costa Meadows based on the legal standards governing this dispute. Specifically, the small class size of Ms. Golding’s special day class; the one-to-one, adult-to-student ratio in Ms. Golding’s classroom; the assignment of a full-time nurse to the classroom; the assignment of a full-time, trained aide dedicated to Student; the teacher’s, classroom nurse’s and classroom aides’ annual training on seizure action plans; the then-existing, manageable nursing demands of the students in Ms. Golding’s class; Student’s then-current health needs; Parent’s admission that Student’s nurse was being used as an aide during the 2013-2014 school year; and Ms. Golding’s and Ms. Smiley’s persuasive opinion that Student’s health needs could be safely addressed in Ms. Golding’s classroom support a conclusion that District’s offer of nursing services was comparable to Student’s previous IEP. Accordingly, Student did not establish that District’s October 28 and November 25, 2014 offer of nursing services did not meet the legal requirement for an offer of comparable services.

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. District prevailed on the only issue heard and decided.

RIGHT TO APPEAL THIS DECISION

This is a final administrative Decision, and all parties are bound by this Decision. The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within 90 days of receipt of this Decision. A party may also bring a civil action in the United States District Court. (Ed. Code, § 56505, subd. (k).)

DATE: June 19, 2015

/s/

CAROLINE A. ZUK
Administrative Law Judge
Office of Administrative Hearings