

**STATE OF NEVADA
DEPARTMENT OF EDUCATION**

In the Matter of

STUDENT¹, by and through his Parent,

Appellant,

MARY H.B. GELFMAN
STATE REVIEW OFFICER

vs.

CLARK COUNTY SCHOOL DISTRICT,

Appellee

November 17, 2009

Representing Parents:
Marianne Lanuti, Esq.
194 Inverary Court
Henderson, NV 89074

Representing School District:
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Clark County School District
5100 West Sahara Avenue
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¹ Personally identifiable information is attached as Appendix A to this decision and must be removed for public distribution.

Procedural Background

This action arises under the Individuals with Disabilities Education Improvement Act (IDEIA), 20 U.S.C. §1400 *et seq.* and Nevada Administrative Code (NAC), Chapter 388, specifically 34 C.F.R. § 300.514 (b) (2) and NAC 388.315. It is an appeal of the decision of the Impartial Hearing Officer (IHO), issued September 7, 2009, after a hearing held on August 17, 18, 19, 20, 21 and 28, 2009. Parents' Attorney, on behalf of Student by and through his Parents, filed an appeal of the IHO's decision on September 28, 2009, received at the Nevada Department of Education (NDE) on the same day (NDE File). Parents will henceforth be referred to, interchangeably, as Appellant or Parents. The School District will be referred to, interchangeably, as School District or Appellee. Exhibits will be referred to as: Parents' (admitted below) Exhibits P-90, 95, 104, 170-174, 185, 187, 190a, 195, 197a and b, 198, 216, 219, 222, 225-245, 253, 257-279, 281-327, 349-370, 400-452; School District (admitted below) Exhibits, D-1, 4-29, 31-50, 54-87, 89-148, 164-175, 181-195, 195A, 196-219, 222-236, 244-272, 283, 285-333, 338-340, 353-358, 378-379, 393,400, 404, 407-413, 420, 425, 433, 444-454, 458-463, 469, 473-486, 491-500, 512-715; Impartial Hearing Officer File, H-1 through H-13; Nevada State Department of Education Exhibits, NDE File (unnumbered); and State Review Officer, SRO File .

The SRO was appointed by NDE on September 29, 2009 (SRO-1), and the record from below was received by the SRO on September 30, 2009. (SRO-2) The SRO scheduled a status conference by conference telephone call for October 9, 2009 (SRO-3) and the SRO provided the Parties with a summary memorandum of that conference on October 9, 2009. (SRO-4) At the status conference and as summarized in this memo, in addition to clarifying the issues on appeal, the Parties agreed that no additional evidence would be offered, and that briefs would be submitted. To allow for submission of briefs the Parties requested an extension of the decision date from October 28, 2009, to November 27, 2009: the SRO granted the extension. The date for submission of briefs was October 30, 2009. Following a second conference call on October 26, that date was extended to November 2 because October 30 is a state holiday in Nevada. (SRO-5) Briefs from both parties were timely received. (SRO-6)

Summary of the Case

The Student was four years old at the time of the hearing and is now five years old. He received services from an early childhood program and at age three was identified as eligible for special education as Multiply Impaired and Health Impaired. He had been diagnosed with Angelman Syndrome, a genetic disability characterized by severe intellectual disability, seizure disorder, motor dysfunction, absent or minimal expressive speech and happy demeanor. The Student also had difficulty with eating because of gastroesophageal reflux disorder, requiring a careful feeding routine. (Findings of Fact #6, #19; Exhibits P-95, 222, 253, 257-267)

An initial eligibility meeting was held on October 11, 2007, and at an Individualized Education Program (IEP) meeting on November 16, 2007, the Student's IEP was finalized. It included many of the suggestions from the professionals consulted by the Parents, but did not include assignment of a one-to-one paraprofessional dedicated only to the Student, all day, or specific Applied Behavioral Analysis (ABA) services, both requested by Parents and supported by various professionals they had consulted.

The Student was enrolled in the School District's pre-school special education program with many individualized services in February, 2008. At an IEP meeting held on February 7, 2008, the Team planned for ABA training for the pre-school classroom staff and assigned one paraprofessional with ABA experience to the classroom. The Student's initial program consisted of attending the morning program, and soon he was also attending the afternoon program, while the other students attended either morning or afternoon.

Because of the Student's multiple and severe disabilities, his Parents continued seeking further evaluations and enrolled him in a research group with other children with Angelman Syndrome. His difficulties with walking and his seizure disorder led his Parents to request a one-to-one paraprofessional to be within two feet of the Student at all times: this request was repeated at every subsequent meeting and in several letters. The teacher and various members of the School District's administration responded that in the small classroom with several adults present at all times, they believed that they were providing a safe environment for the

Student. As the Student progressed in school, he began to walk more steadily, and learned a few basic skills.

Whenever the Student was injured at home, his Parents immediately notified the school. When he chewed his cheek or lips or ground his teeth, the School notified the Parents and tried various interventions to eliminate what they considered self-stimulating behavior that happened at home and in school.

An IEP meeting held on April 21 and May 19, 2008, heard reports that the Student had made some progress:

he was now able to sit for approximately twenty minutes without a seat belt during feeding; he could choose between food and drink; he sat with classmates for Circle Time with assistance from a staff member; he had begun to scoot forward in the toy car adding to his ability to scoot backward; he was walking independently around the classroom and the school campus although he required frequent adult assistance (holding his hand) because he would wander off; he was able to independently transition to and from the floor as well as pick up objects from the floor and he was able to get into and out of classroom furniture independently and required minimal assistance to get out of his stroller. (Exhibit D-0246)

The May 19, 2008, IEP meeting also added Mental Retardation to the prior special education eligibility categories of Multiple Impairments and Health Impairment. (Finding of Fact #36, Exhibits D-0145 through D-0147)

A multidisciplinary evaluation obtained by the Parents at Touro University in August, 2008, noted "substantial overlap between autistic symptomology and Angelman Syndrome". This evaluation confirmed that the Student was not on the autism spectrum, and recommended ABA.

During the school year 2008-2009, the Parents became increasingly concerned about Student's safety in the afternoon program, asking that they be notified whenever a paraprofessional would not be present, so that the Student could be kept at home: school staff members responded that it wasn't always possible to know ahead of time when a staff member would be absent. Parent's request to be allowed to assist in the classroom was

denied. The Student was withdrawn from the afternoon class when he did not have a one-to-one paraprofessional at all times, and eventually was withdrawn from school. In late January, 2009, the Parents implemented an at-home ABA program with professional support from the Lovaas Center. The private ABA and Speech/Language providers reported that the Student was making significant progress.

The hearing below was requested by the Parents to contest the School District's refusal to provide a one-to-one paraprofessional for the Student all day and to place the Student in an Autism Class, where he could receive intensive ABA services. They also requested reimbursement for the private ABA services they had been providing. The School District responded that they believed that Student was safe with the adults present in the pre-school classroom and that Autism Classrooms were limited to children diagnosed with Autism.

(Summary based on review of the transcripts of the six day hearing and the decision of the IHO, which includes a meticulous chronological history of the case.)

Issues on Appeal

1. Were the IEP and placement offered by the School District appropriate to the Student's special education needs in the least restrictive environment?
2. Were the Parents prevented from meaningful participation in IEP meetings in November, 2007 and September, 2008?
3. Did the IEP Team consider medical and behavioral material concerning the Student provided by the Parents?
4. Did the IEP Team fail to consider the unique needs of the Student as required by the IDEIA with regard to his eligibility of Angelman Syndrome?
5. Did the IEP confer meaningful educational progress and provide educational benefit to the Student?
6. Was the Student provided with appropriate supplementary supports and services, including implementation of appropriate behavioral supports?
7. Did the Student require a one-to-one aide in order to benefit from special education or for safety reasons?
8. Were positive behavioral supports composed of individual interventions implemented, to foster positive changes in behavior, observed across all environments?

9. Was the Student placed in a medically safe environment that protected him from bodily harm and injury?

Findings of Fact

This decision sets forth the SRO's Summary, Findings of Fact and Conclusions of Law. The Findings of Fact and Conclusions of Law set forth herein, with deference to the IHO's decision below and certain exhibits and witness testimony cited are not meant to exclude other supported evidence on the record. To the extent that the Procedural Summary, Summary of the Case, and Findings of Fact actually represent Conclusions of Law, they should be so considered, and *vice versa*. For reference, see *SAS Institute, Inc. v. S & H Computer Systems, Inc.*, 605 F.Supp. 816 (M.D. Tenn. 1985) and *Bonnie Ann F. v. Calallen Independent School District*, 835 F.Supp. 340, 20 IDELR 736 (S.D. Tex. 1993).

Background Facts provided by the IHO are adopted as stated in the decision of September 7, 2009. Some of those Facts are cited here, with comments related to the appeal.

Attendance

In testimony at the hearing a paraprofessional who assisted the teacher all day in the Student's pre-school program in 2008-2009 commented on his school attendance. She reported that he was scheduled to attend four days a week and that he had been removed from school "several times" during the school year. (Tr. p. 275) The attendance record for that year (Exhibit D-516) shows that the Student was enrolled for a total of 133 days, and attended the morning session on 84 of those days and the afternoon session on 35 of those days.

Student's instability when standing and walking, and frequent seizures

Student's instability when standing or walking and frequent seizures were concerns for both the Parents and school staff members. In the September 26, 2008, Present Levels of Academic Achievement and Functional Performance, the following report was provided:

Based on the data obtained from classroom observations dated February 19 through March 14 [2008] these factors were considered. [The Student] is able to function independently throughout his daily routine with minimal assistance. He needs

physical prompts and, hand over hand assistance as well as assistance walking on uneven surfaces (play ground). These observations included gross motor, fine motor and social interactions. Sitting on chair [,] sitting on floor [,] walking in classroom [,] walking in hallways [,] walking on playground [,] playing with items at table [,] playing with items on floor [,] standing up from chair [,] standing up from floor [,] getting on/off bus [,] playground [and] interaction with peers. (Exhibit P-104)

Testimony regarding the Student's need for assistance with walking, standing and sitting was balanced by reports of his gradual improvement in mobility. A member of the School District's Low Incidence Team described the Student's mobility as "wobbly". A semantic issue was revealed in testimony describing the Student as "plopping" into his chair. Was this a controlled "fall" or an uncontrolled "fall", as observed and reported by another staff member? An examination of the transcript shows one school staff member reporting "falls" while another reports "plopping". An independent evaluating neuropsychologist also reported Student's unique procedure for sitting down, mentioning that the braces that he wore on his legs made it difficult for him to bend his knees. (see IHO's Finding of Fact #68; Tr. pp. 284-286, 351, 356-362, 365, 367, 369-370, 623, 626-632, 636-369, 984, 986, 1048-1053, 1130, 1244) The staff members who worked with the Student also received training from the School Nurse in procedures to be followed when the Student had a seizure.

Applied Behavior Analysis

Several of the experts cited in the hearing below mentioned that some children with Angelman Syndrome demonstrated symptoms also reported in children on the Autism Spectrum. An article published on April 15, 2009, reported some success with the use of ABA with three young children with diagnoses of Angelman Syndrome, and earlier drafts of this article were also submitted in evidence by the Parents. (Exhibit P-409-419) The record of the hearing includes fifty-one daily documentations for the 2008-2009 school year for walking, sat down in chair, stayed seated, arose from sitting, played with water, bowel movement, sign of seizures; bumped himself or others, jerky movements, grinding teeth, chewed on object, laughter episode, kept hands to self, kept feet to self, finished snack and finished lunch. Almost all daily records included extensive comments. (Exhibits D-565-0637) Some reports included responses from Parent. There were also Session Data Sheets for ABA instruction on seventeen dates during the 2008-2009 school year (some other sheets were not dated). This material confirms that Discreet Trial Training,

a fundamental ABA technique, was being used regularly with the Student in the pre-school classroom. (Exhibits D-0638-681)

Classroom staffing and the Student's safety

In considering the Parents' requests for a one-to-one paraprofessional with the Student at all times in school, it is important to know how many adults were in the classroom and how much of the Student's day is one-to-one individualized instruction. From February, 2008, through the end of that school year, the Student participated in Circle with one-to-one assistance and received almost all instruction and related services in one-to-one, Discreet Trial fashion. It appears from the record that during the 2008-2009 school year the morning sessions included six students and a teacher and two teacher's assistants. The afternoon sessions included five students and a teacher and two teacher's assistants. (Finding of Fact #83) In addition, two Speech/Language Pathologists, an Occupational Therapist and a Physical Therapist were in the classroom frequently, at least one every day. The room was reported to be "small" and organized to include few barriers. The School District's Behavior Mentor observed the Student in his pre-school classroom and reported that he "... received one to one attention from either the teacher or an aide as he participated in all of the classroom routine". (Finding of Fact #31) ABA is, by definition, provided one-to-one. The pre-school class Teacher and the School Principal testified under oath that the Student is "always engaged" and never left to his own devices.

November 16, 2007 IEP, implemented in February, 2008

The direct special education services to be provided in a specialized pre-school class are listed on the record of the November 16, 2008 IEP meeting:

Communication	150 minutes per week
Cognitive Readiness	100 minutes per week
Fine Motor Skills	100 minutes per week
Gross Motor Skills	100 minute per week
Self Help	50 minutes per week
Behavior/Social Skills	100 minutes per week (Exhibit D-0212)

Direct related services to be provided:

Speech/Language Therapy	60 minutes per week
Occupational Therapy	45 minutes per week
Physical Therapy	30 minutes per week (Exhibit D-0217)

Consultative related services – working with other service providers in the classroom to insure consistency:

School Nurse Services	15 minutes per week
Physical Therapy	15 minutes per week
Occupational Therapy	after two months, 15 minutes per week Initially, 30 minutes per week; after two months, 15 minutes per week

(Exhibit D-0217)

Accommodations and Modifications – Supplementary Aids and Services

	Frequency/Services	Location/Services
Medical Alert for Seizures to be shared with teachers and care givers	During School	School Site
Parents are asked to keep the Teacher and the [School] Nurse updated on [Student's] health status, medications, and treatments; establish a form of home communication	Parent/Teacher Determination	Home & School
Would Benefit from the use of Sensory Activities	When data is obtained	School Site
Provide a structured & routine environment [with] close adult supervision for safety at all times	During class	Classroom
OT/PT will provide any necessary equipment	During School	Classroom
[Student] requires adult assistance/close Supervision in order to participate & benefit from all activities	At all times	School site
He has reflux, is on medication, continues to throw up & needs oral care (rinse mouth etc.)	As Needed	School site
Requires frequent repetition of instruction	As needed	School site
Give drink 2 sips at a time, until throat is cleared of liquid, due to choking risk	As needed	School site
Snack needs to be with one on one supervision with proper positioning	As needed	School site
Monitor progress, reconvene after eight weeks of intervention to discuss IEP	As needed	School site

IEP Team recommends that Nurse meets with teaching staff during first 2 weeks of school (Exhibit D-0217B, 0218) 15 Minutes School site

Conclusions of Law and Discussion

Pursuant to NAC §388.315, a state review officer shall examine the entire record for the hearing; ensure that the procedures at the hearing were consistent with the requirements of due process; seek any additional evidence necessary; afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing officer; and make an independent decision. The decisions in the cases of *Carlisle Area School District v. Scott P.*, 62 F.3d 520, 22 IDELR 1017 (3rd Cir. 1995), and *Amanda J. v. Clark County School District*, 267 F.3rd 877, 35 IDELR 65 (9th Cir. 2001), provide further guidance concerning deference by the reviewing officer to the hearing officer's determinations of credibility of witnesses, and due weight to be given the hearing officer's decision. The case of *Clyde K. v. Puyallup School*, 35 F.3d 1396, 21 IDELR 664 (9th Cir. 1994), speaks to the burden of proof in special education appeals: while the Appellant bears the burden of proof because it is the party that has challenged the administrative decision, the School District/Appellee bears the burden of proof concerning compliance with the IDEA.

The standard for review in special education appeals was established in the case of *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 553 IDELR 656 (U.S. 1982). First, were the procedural requirements of the IDEA complied with? Second, were the IEP and placement reasonably calculated to provide educational benefit?

Parents correctly state that the fundamental issue in this case is a placement decision by the School district, and placement decisions must meet standards provided at 34 C.F.R. §300.116. The School District denied the Student access to an intensive ABA program that the Parents believed was available only in an "Autism Class", and stated that enrollment in such classes was limited to children with diagnoses of autism. However, the School District did offer ABA services to the Student within the pre-school classroom. ABA is by its nature a one-to-one service model. Since the ABA services provided to the Student were provided

by an ABA-trained school staff member, Student was not denied ABA services, although the amount of ABA service provided may have been less than the Parents desired. The November 16, 2007, IEP meeting record shows a plan to follow the IEP and then to meet again in eight weeks, to revise the IEP if appropriate. The IHO below cites two cases that address the issue of consideration of Parent concerns in IEP meetings:

While the school district must allow for meaningful parental participation, the parent does not have a veto power over any provision of the IEP, *Ms. S. v. Vashon Island School District*, 39 IDELR 154 (9th Cir. 2003).

... procedural requirements and access to a hearing [are available] when consensus at the IEP Team level is not achieved, *Doe by Gonzalez v. Maher*, 557 IDELR 553 (9th Cir. 1986)

The School District's position that a diagnosis of Autism is required before a student may be assigned to ABA services in the Autism Class or in a home-based program violates both the spirit and the letter of the IDEIA. Once a student with disabilities is found eligible for any specific service, the IEP Team must consider where that service will be provided. In this case, ABA would be provided in the pre-school classroom, and both the services and the location could be reviewed after eight weeks.

When an issue in a special education hearing is whether a parental placement of a child in a private school should be reimbursed by the school district, the case of *Burlington School Committee v. Massachusetts Department of Education*, 471 U.S. 359, 556:389 EHLR (U.S. 1985) established the legal analysis under IDEA. If the hearing officer finds that the IEP and placement provided by the public school system are not appropriate to a student's special education needs, and if the parent unilaterally places the student in a private school that provides services appropriate to those special education needs, then the hearing officer may order equitable reimbursement by the public school district to the parent for the placement. In the case of *Florence County School District Four v. Carter*, 501 U.S. 7, 20 IDELR 532 (U.S. 1993), the Supreme Court affirmed the *Burlington* analysis and added a ruling that a private school placement that met the student's special education needs could be reimbursed even if the private school was not approved by the state department of education for publically-funded special education placements. The Ninth Circuit also provides guidance for analysis of the School District's program (*Gregory K. v. Longview School District*, 811

F.2d 1307, EHLR 558:284 (9th Cir. 1987) and *Adams v. State of Oregon*, 31 IDELR ¶130 (9th Cir. 1999))

In this case, the School District was offering an appropriate program, limited by the Student's frequent absences and eventual removal from school. The documentation of the ABA program entered on the record confirms that data was kept on the services provided, and that the Student made some measurable progress.

The safety issues raised by the Parents and the School District's responses suggest that the actual arrangements in the classroom and the way that the Student was closely supervised at all times were not adequately explained, and that perhaps a classroom visit followed by discussion with the staff members who worked directly with the Student might have reassured the Parents.

Procedural violations may have no specific impact on the IEP offered a child with disabilities or the educational placement of that child. However, if a procedural violation does impact on the IEP or placement, or interfere with the parents' rights to meaningful participation in the IEP process, the first *Rowley* test fails. The standards for parent participation in IEP Team meetings are set forth at 34 C.F.R. § 300.322 and §300.501 (b). Parents claim that they were prevented from meaningful participation in IEP meetings in November 2007 and September 2008. The records of those meetings describe full participation, although the Team did not agree to all of the Parents' requests.

- The record for the November 16, 2007, IEP meeting shows both Parents present, with their Educational Advocate and their private Speech/Language Pathologist. The purpose of this meeting is given as "Revision to IEP Dated 10/11/2007." The Present Levels of Academic Achievement and Functional Performance cite Doctor Orders and Parent Reports. The October 11, 2007 eligibility meeting record includes eight pages of assessment results, including both evaluations performed/attempted to be performed by school staff members, parent communication interview and medical records provided by Parents. The October 11, 2007, IEP record includes a statement of Parent Educational Concerns:

Safety (his & others), Bus safety, mobility to walk better with narrow gait, wants him to use stairs, feeding, functional play.

Imitation skills, pointing, oral motor, adult supervision. (Exhibit D-0191)

The November 16, 2007, IEP record adds Parental Concerns:

Safety, therapy times, program options, full day, wants ABA, wants 1:1 aid.

While the IEP Team did not grant everything that the Parents requested, the record confirms that there was give and take at this and all meetings. There were subsequent meetings on February 7, April 23, and May 19, 2008. The Student attended an Extended School Year program during the summer of 2008.

- The September 26, 2008, IEP Team meeting again discussed the Student's behavior and Parental concerns. The record also establishes that Parents were present and accompanied by their Attorney at this IEP meeting.

The Student's first annual review included meetings held on September 26, October 10, and November 3 and 21, 2008. When the IEP Team convened on November 21, 2008, Parents had notified the School District a few days prior to that date that they would be unable to participate because the Student would be having a 24-hour medical test to evaluate seizure activity. The Team re-convened with Parents and their Advocate in attendance on December 5, 2008. The School District had cited a "deadline" that required holding the November 21, 2008, annual review IEP meeting and it is not clear from the record whether the Parents requested a postponement. However, the December 5 meeting provided the Parents with an opportunity to participate. (Exhibits D-0289 through D-0303, D-0305 through 0308, D-0312 through D-0314, D-0324, D-0326 through D-0327, D-0331 through D-0332)

The School District made two procedural errors: stating that the ABA services in the Autism Class and home-based ABA services were available only to children with diagnoses of Autism, and convening the November 21, 2008, IEP meeting without the Parents present. The IEP Team can determine the location in which any IEP services are to be provided, and the Autism Class may not have been suitable for the Student. However, the IEP Team must consider any request for services and respond based on the individual student's needs. While there may have been a "deadline" for the Student's November 2008 annual review, documentation of the reason for postponement, in order to insure the Parents' opportunity to

participate, should have been considered. In the case of denial of access to the Autism Class, the Student received ABA services in the pre-school classroom, and a review of the IEP after eight weeks was planned. In the case of holding the November 21, 2008, IEP meeting without the Parents, the December 5 IEP meeting probably cured that error. The greatest harm in both cases was that the School District's actions contributed to the Parents' decreasing trust in school staff. It must be noted that both Parents attended all the other IEP Team meetings.

The IHO made extensive findings concerning the credibility of witnesses and testimony that appeared to be in conflict. Nothing in the documentary evidence or the transcripts of the six hearing sessions casts doubt on her conclusions in these significant areas. The Parents' concerns about safety were natural and they simply did not believe that Student could be safe in school without one adult specifically assigned to watch and support him all day. The School's reluctance to allow Parent to assist in the classroom added to their fears: Mother testified that she needed to see what was happening in the classroom and to understand the services being provided. (Tr. pp. 1359-1362, 1367) Although the Student presented as an extremely fragile child, unsteady on his feet, subject to frequent seizures, initially unable to respond to simple directions, and often choking and vomiting when fed, he made progress in the pre-school classroom. He learned to sit in the circle, to come to teachers and other staff members, to request food and liquids, and to walk more steadily.

The IDEIA requires that children with disabilities be provided with the services they require in order to benefit from special education. The use of ABA with children with Angelman Syndrome is a new intervention: the first paper introducing results from a very small group had not been published when Parents heard about it. It was natural for them to inquire about this, or any service that might help their son. The IDEIA regulations clearly require that students with disabilities receive whatever educational programming and related services they need, based on each student's particular needs (34 C.F.R. §300.324). The dispute over ABA starts with the question of whether the Student would benefit from ABA services. The School District responded to the Parents' request by placing an paraprofessional trained and experienced in ABA techniques in the pre-school classroom and initiating a program of Discreet Trial Training, with data recorded from October 2008 to March 2009, when the Student was withdrawn from school. (Exhibits D-0565 through D-0681)

After removing the Student from the afternoon class, the Parents started an intensive ABA program with services and training from the Lovaas Center. The “ABA dispute” is actually a dispute over WHERE the services should be provided and the INTENSITY of the program of services to be provided. The School District staff members who stated that ABA services were only available for students with a diagnosis of autism spoke in violation of 34 C.F.R. § 300.320, which requires that IEPs include whatever services a student needs, and in possible ignorance of the ABA services being provided to this Student in the pre-school classroom. Planned review of the IEP after eight weeks, prior to the annual review, would have been an opportunity to increase ABA services if the Team, including the Parents, agreed that the Student was making progress with ABA. Student’s dwindling attendance and eventual removal from school interrupted this plan.

The Student did fall occasionally at school, and it is possible that he did not appear to be injured. No one on the school staff removed his shirt the day that his parents observed scrapes on his back after school. While Parents have a natural opportunity to examine a child when he is being bathed, the school staff would examine any student only when they observed either an accident that might have resulted in an injury, or when a student was behaving as though he or she was injured. This would be difficult with the Student, whose disabilities are balanced by his cheerful demeanor. The Student’s grinding of his teeth and chewing of his cheek were concerns that the school staff addressed whenever they observed these behaviors.

Neither Party addressed the issue of Parents’ request for reimbursement for their home-based ABA program. Since the program and placement provided by the School District has been found to be appropriate to the Student’s special education needs, no reimbursement shall be provided.

Decision

1. The School District convened the IEP Team to consider the Student’s special education needs and to develop and modify his IEP on October 11 and November 16, 2007; February 7, April 21, May 19, November 21, and December 5, 2008; and January 9, February 13, and March 20, 2009. Services were increased in response to the Parents’ requests. The IEP was

revised several times, incorporating suggestions from Parents and from a variety of professionals who had sent letters recommending various aspects of the Student's school program. Three evaluators had specifically ruled out any autism spectrum disorder. Only one of the outside professionals had observed the Student in his classroom. The reason for the requested placement was to obtain an intensive ABA program. The School District did provide a paraprofessional trained in ABA for the Student and provided ABA training for the teacher and another paraprofessional. The record of the hearing includes a behavior log that demonstrates both Discreet Trial Training and improvement in Student's behavior in school. The Appellee prevails on Issue #1.

2. The record of the hearing below establishes that Parents were present and accompanied by their Advocate and their private Speech/Language Pathologist at the November 16, 2007 IEP meeting. The record also establishes that Parents were present and accompanied by their Attorney at the IEP meeting on September 26, 2008. They were provided with opportunities to participate in both IEP meetings. The Appellee prevails on Issue #2.

3. The Parents provided many documents from medical and behavioral professionals outside the school system. The IEP records and the IHO's decision below confirm that all these documents were considered by the Team, several at more than one meeting. The Appellee prevails on Issue #3

4. The IEP Team correctly identified the Student as Multiply Impaired and, Health Impaired, and later added Mental Retardation after considering medical documentation provided by the Parents and their own evaluations by school staff members. The Present Levels sections of IEP Team records included extensive details of his Angelman Syndrome diagnosis. The Appellee prevails on Issue #4.

5. The testimony of the Teacher and other specialists confirmed progress and the data sheets included in the record of the hearing below confirm progress. However, the Student's attendance during the 2008-2009 school year, when he was enrolled for 133 days, was 84 days in the morning class and 35 days in the afternoon class. The Appellee prevails on Issue #5.

6. The Student was provided with appropriate supplementary supports and services, including implementation of appropriate behavioral supports as documented by the school staff. The Appellee prevails on Issue #6.

7. Issues numbered 7 and 9 concern the Parents' perception of safety for their son in the pre-school classroom. Testimony from the school staff working in that classroom and several School District administrators and consultants established that the Student was closely supervised at all times. The Appellee prevails on Issue #7.

8. The record describes positive behavioral supports provided to the Student and Student's progress in classroom behavior. There is limited evidence of behavioral improvements across all environments. The Appellee prevails on Issue #8.

9. The School District made a great effort to keep the Student safe in school. The specific instances that were troubling to the Parents were investigated thoroughly. School staff members testified under oath and were deemed credible by the IHO. His placement was medically safe. The Appellee prevails on Issue #9.

10. The School District is not responsible for funding the home ABA program provided by Parents after they removed the Student from an appropriate program in the School District's pre-school classroom.

Since the Appellee has prevailed on all issues in dispute, the IHO's decision below is UPHELD.

Order

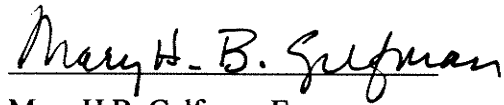
The IEP and Placement provided to the Student by the School District provided the Student with a free appropriate public education in the least restrictive environment. The IEP Team shall convene as soon as possible after receipt of this decision to consider whether changes need to be made in the Student's IEP and/or placement upon his return to school. Private service providers currently working with the Student shall be invited to participate in the IEP Team meeting. Particular attention should be placed on providing the Parents with reasonable opportunity to observe the classroom and meet with school staff members who

work directly with the Student. In determining ABA services to be provided to Student, consideration should be given to using a place with minimal distractions.

Notice of Appeal Rights

Any party aggrieved by this Decision has the right to bring a civil action within thirty (30) days of the receipt of this Decision, pursuant to 20 U.S.C. § 1415 (i) (2) and NAC §388.315 (3).

Dated this 17th Day of November, 2009



Mary H.B. Gelfman, Esq.

State Review Officer