



Special Education Hearing Office

ORDERS AND DECISIONS DATABASE SEARCH

Record Detail

General Case Information

Case Year:	1997
Case Number:	1382
Petitioner:	STUDENT
Respondent:	MORENO VALLEY UNIFIED SCHOOL DISTRICT
Name of Document:	DECISION

Hearing Officer Information

Type of Case:	Decision Only
Type of Disability:	Hearing Impaired Mentally Retardation
Issue:	Designated Instruction and Services
Topic:	

Assistant Calendar Clerk Information

California Children's Services:	0
Public School District:	33-67124 Moreno Valley USD
Mental Health Agency:	
SELPA:	
COE:	

Issues Findings:**Body of Text:**

This matter was heard before Mary L. Cote, Hearing Officer of the California Special Education Hearing Office, McGeorge School of Law, in Moreno Valley, California, on February 26 and 27, 1998. Petitioner STUDENT was represented at the hearing by attorney J.S. (Steven) Hermanson. Also present on behalf of STUDENT were his parents. Respondent Moreno Valley Unified School District was represented at the hearing by attorneys Jack B. Clarke and Maria Gutierrez. Also present on behalf of the District was Diana Wheeler, Ed.D., SELPA director.

Oral and documentary evidence was received. The case was closed following receipt of written closing briefs on March 16, 1998, and the matter was submitted for decision.

ISSUE

To receive a free, appropriate public education, must STUDENT's one-to-one aide services be provided by a single individual who is proficient in functional sign language?

BACKGROUND FACTS

Petitioner STUDENT is a fifteen-year-old student who attends Valley View High School. STUDENT is eligible for special education because of limited cognitive functioning and a profound hearing loss. When last assessed, in May of 1995, STUDENT was functioning at about the 18- to 24- month level with higher splinter skills. STUDENT has been in a number of different classes in the District and attended the California School for the Deaf, Riverside, for approximately two years. STUDENT currently is in a special day class taught by Margaret Strachan. The 10 students in the class are developmentally disabled. There are four aides assigned to the class. Two of the aides work full time and two provide the class with 1.5 hours of service daily. Additionally, STUDENT and one other student have one-to-one aides. STUDENT's individualized educational program (IEP) dated May 22, 1997, calls for placement in a special day class (SDC). The District provides related services of transportation, along with language, speech, and hearing consultation. The Riverside County Office of Education (COE) provides STUDENT with audiological and auditorially handicapped (AH) services. The IEP includes goals and objectives to improve STUDENT's self-help skills, receptive and expressive language skills, and his ability to follow directions and to stay on task. The transition IEP also includes additional goals regarding following safety directions and staying on task. (Petitioner's Exhibits 5 and 6.)

The current dispute arises out of concerns raised by STUDENT's parents regarding STUDENT's educational program. On October 14, 1997, the IEP team convened at the request of STUDENT's parents to discuss their concerns. Issues raised at that time by the parents included whether STUDENT required an aide, the appropriateness of the class in which STUDENT was placed, and

STUDENT's need to have an established daily routine. The parents' concerns persisted and, on October 27, 1998, the Hearing Office received a request for a due process hearing on behalf of STUDENT. Through mediation, the parties agreed to make a referral for a field assessment to the California Diagnostic Center, Southern California.

The IEP team reconvened on November 4, 1997. At that time, the parents requested that the District provide STUDENT with the services of a six-hour instructional assistant possessing the ability to sign. District members of the IEP team concurred with the parents that STUDENT required additional assistance from an aide. There was no agreement regarding the requisite signing skills for the aide or that the position should be filled by one person rather than two; however, since the IEP meeting, the District has provided STUDENT with one six-hour aide. The aide is filling the position as a substitute employee. (Petitioner's Exhibits 7 and 8.)

The Diagnostic Center conducted its field assessment of STUDENT on January 20 and 21, 1998. The assessment included a review of STUDENT's educational records, observation of STUDENT in his educational program, a one-to-one assessment by the Center's specialists, and informal discussions with STUDENT's classroom teacher, instructional assistant, Dr. Wheeler, and MOTHER. The team met for a formal exit meeting. At the time of the hearing, the written report had not been completed. (Notes from assessment are contained in Petitioner's Exhibit 13.)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Under both state and federal law, students with disabilities have the right to a free appropriate public education. Pursuant to 20 U.S.C. § 1401(8)(A)-(D), "free appropriate public education" means special education and related services that are provided at public expense, meet the standards of the State educational agency, and conform with the student's individualized educational program. "Special education" is defined as "specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability. . . ." 20 U.S.C. § 1401(25).

"Related services" include transportation, psychological services, speech and language therapy, occupational therapy, and other services as may be required to assist a child with a disability to benefit from special education. 20 U.S.C. § 1401(22). California Education Code § 56363(a) similarly provides that designated instruction and services (DIS), California's term for related services, shall be available when necessary for the student to "benefit educationally from his or her instructional program." Section 56363(a) further provides that instruction and services "shall be provided by the regular class teacher, the special class teacher, or the resource specialist if the teacher or specialist is competent to provide such instruction and services and the provision of such instruction and services by the teacher or specialist is feasible. If not, the appropriate designated instruction and services specialist shall provide such instruction and services."

In Board of Education of the Hendrick Hudson Central School District, et.al. V. Rowley (1982) 458 U.S. 176, the United States Supreme Court addressed the level of instruction and services that must be provided to a student with disabilities to satisfy the requirements of the IDEA (now the IDEA 1997). According to the Court, an IEP must be reasonably calculated to provide the student with some educational benefit. The school district is not required to provide the best possible education, to maximize the child's educational benefits, or to provide each disabled child with an equal educational opportunity "commensurate with the opportunities provided other children." The school district must only provide students with disabilities a "basic floor of opportunity." (Rowley, 458 at 207-208.)

Although there was some discussion at the beginning of the hearing as to whether STUDENT's IEP states that he is entitled to a one-to-one aide for six hours per day, the District has been providing an aide for six hours daily since November 1997. Mr. Christie testified that he authorized the services and the District indicated that it did not intend to modify the number of aide hours provided to STUDENT. Therefore, the only issue addressed in this hearing is whether STUDENT's one-to-one aide services must be provided by a single individual who is proficient in functional sign language. To address this issue, it is necessary to discuss STUDENT's unique and individual needs, particularly as they relate to his communication skills. The evidence establishes that STUDENT employs a number of methods to communicate. His repertoire of communication includes signing, natural gestures, and physically motoring a person to a place or to an object. STUDENT does not speak. He is also learning to use a picture exchange communication system (PECS). All of the witnesses agree that STUDENT's receptive signing vocabulary greatly exceeds his expressive signing vocabulary; however, estimates of the extent of his vocabulary varied.

STUDENT's mother, testified that her primary means of communicating with STUDENT is signing, which is the family's preference as a primary language for STUDENT. MOTHER stated that she speaks to STUDENT in sentences and he is able to respond appropriately to her. MOTHER estimated that STUDENT's receptive vocabulary is approximately 200 words. MOTHER testified that, as of June 1997, STUDENT expressively used about 20 signs. She testified that STUDENT's vocabulary is growing. (See District's Exhibit 9.)

MOTHER testified that signing is more universal and allows for greater range of communication than PECS. She also testified that when STUDENT understands, he is more cooperative and compliant. MOTHER related a recent incident to illustrate her point. She stated that one morning, STUDENT had one of his socks on backwards. He refused to allow her to change it until she signed that she was going to turn it around. He apparently did not understand what was going on and may have assumed that by her wanting to take off the sock, he would not be going out. MOTHER testified that a PECS would not have allowed for this type of communication. MOTHER testified that the ultimate goal for STUDENT is to be as independent as possible, given his disabilities. She stated that the ability to communicate in sign language promotes this goal.

MOTHER additionally testified that if STUDENT is not spoken to, he will "tune out."

Loren Longbrake, STUDENT's case manager from the Inland Regional Center, concurred with MOTHER's concern regarding STUDENT's tuning out. Ms. Longbrake testified that during her several visits to STUDENT's classroom, he appeared bored because he was not engaged in any activities. She observed that the teacher verbally told STUDENT to "stop that . . . sit down." Since Jacob cannot hear or read lips, it was unlikely he understood the command. Ms. Longbrake stated that a signing aide is necessary to allow STUDENT to participate in the classroom in a language he understands. It was Ms. Longbrake's understanding that STUDENT made progress in the past when he had a signing aide.

Don Belding, itinerant deaf and hard of hearing (DHH) teacher for the COE, was called to testify on behalf of STUDENT. Mr. Belding has been a consultant to STUDENT's teachers for the past five to six years and has attended STUDENT's IEP meetings. Mr. Belding described STUDENT's primary means of communication as "visual signing." He stated that STUDENT has a receptive language vocabulary of approximately 200 words, which falls below the preschool-age level.

The Diagnostic Center specialists who assessed STUDENT in January 1998 testified at the hearing. Christina Simonds, transition specialist, testified that STUDENT uses multiple modalities for communication. She observed STUDENT use signing, gestures, and physically "taking" an adult to some location or object. Ms. Simonds testified that STUDENT uses 20 to 30 signs spontaneously. She also observed STUDENT's mother sign a whole sentence to him. Ms. Simonds testified that STUDENT requires a communication system that includes natural gestures, PECS, and some signing. Bonnie Kraemer, diagnostic educational specialist, testified that a critical component of STUDENT's education is that his system of communication includes his current methods of communications which is augmented by a PECS program. Ms. Kraemer testified that due to STUDENT's minimal communication skills, an aide is necessary to engage STUDENT. Notes from their assessment described STUDENT's communication skills:

Receptively STUDENT appears to comprehend much of the world around him through a combination of sign language, natural gestures, contextual cues, and routines. He looks to others to provide information, as well as his environment. . . .Expressively, however, his means of communication is more limited. By report, STUDENT is able to use sign language to communicate his wants and needs. However, in less familiar environments with less familiar people, spontaneous signing is not frequently observedInstead, as a reliable means of expressive communication, STUDENT appears to use more natural gestures to communicate with others and/or he motors people (such as his instructional assistant) though the motions to get what he wants.

An important focus of STUDENT's educational program will be to augment his current means of expressive communication. This will help to make him a more

independent communicator and will help him to communicate his wants and needs more efficiently and effectively. A multi-modal method of communication is recommended. That is, it will be important that adults continue to reinforce and shape the signs and natural gestures he is currently using in his environment, as well as give him an additional means to communicate with others. The PECS system is beginning to be employed in the classroom and is an appropriate method to implement.

(Petitioner's Exhibit 13)

Shelly Rempe, principal of the California School for the Deaf, Riverside (CSDR), supervised the program STUDENT attended. She testified that STUDENT's enrollment at CSDR was terminated because he was not benefitting from sign language instruction and needed a one-to-one aide. Ms. Rempe testified that STUDENT's signing skills were very basic. He was able to sign two to three phrases at the most. Ms. Rempe testified that STUDENT's aide should know at least as many words as he knows receptively.

Ms. Strachan, STUDENT's classroom teacher, testified that she signs well enough to communicate with STUDENT. Ms. Strachan's signing vocabulary consists of between 25 and 30 words that she learned from a book or picked up while teaching a class with severely handicapped students. She also has a card file of signs to which she can refer. Ms. Strachan testified that STUDENT regularly signs apple, cracker, and three other words. Ms. Strachan testified that STUDENT has the ability to learn to sign. He recently learned the sign for "wheelchair." In her opinion, STUDENT's learning new signs is a matter of motivation. For example, because STUDENT likes to have a ride in the wheelchair, he learned to sign wheelchair, which enables him to request a ride. Ms. Strachan testified that classroom staff are working on the PECS with STUDENT approximately 30 minutes daily. One or two staff members are seated with STUDENT at a table. They teach him to exchange a picture for an item and reward him by immediately providing him with the item. Ms. Strachan testified that STUDENT's current aide, JoAnne Wilson, knows approximately 35 to 50 signs. Ms. Strachan testified that STUDENT will not usually stay on task by himself. Additional activities in the class with which STUDENT requires assistance from his aide include toileting, assembly tasks, and matching.

Randy Woolard was STUDENT's sign language interpreter and instructional assistant from November 1994 to April 1997. Ms. Woolard testified that STUDENT generally used one-word signs, whereas she signed sentences to him. Ms. Woolard described STUDENT's receptive skills as strong. As an example, Ms. Woolard testified that after signing to STUDENT "Your mother is here," he would look out the window for her.

The testimony of STUDENT's mother, his former aide, and the Diagnostic Center specialists establishes that signing is an important component of STUDENT's communication repertoire. The testimony of Ms. Rempe that STUDENT's minimal signing skills was one of the reasons he was dismissed from CSDR does not rebut that finding. Ms. Rempe worked with STUDENT

several years ago and under different circumstances. The evidence establishes that STUDENT's expressive signing vocabulary is limited; however, his receptive signing vocabulary is at least 200 words, which allows for practical communication with STUDENT. Moreover, STUDENT's ability to receptively understand signing facilitates his attending to and understanding of his environment. The testimony of MOTHER and others establishes that STUDENT also responds to signed commands. Numerous observations of STUDENT establish that, without appropriate communication, STUDENT will not attend or participate in classroom activities. The lack of attending may result in STUDENT's engaging in inappropriate behavior as well. While STUDENT employs PECS, gestures, and other means to communicate, the evidence establishes that signing is the single most effective means to communicate to him and, therefore, is an important component of his repertoire of communication skills. Signing also facilitates STUDENT's participation in his educational program. Therefore, the Hearing Officer concludes that to address STUDENT's unique and individual needs and to allow him to benefit from his education, STUDENT requires a communication program that incorporates signing, as well as, PECS, and natural gestures.

The District asserted at various times that STUDENT's low cognitive skills preclude his benefitting from or requiring an aide with other than minimal signing skills. Education Code § 56345(e) specifically requires that in determining an appropriate education for students who are deaf or hard-of-hearing, the IEP team must consider services and program options that provide the pupil with an equal opportunity for communication access. The IEP team must consider, among other things, the services necessary to ensure communication-accessible academic instruction, and "appropriate, direct, and ongoing language access to special education teachers and other specialists who are proficient in the pupil's primary language mode" (Education Code § 56345(e)(3) and (4).) These requirements appear to place special emphasis on the District's obligation to carefully consider the communication needs of students who fall within the deaf and hard-of-hearing population and to have some reasonable grounds for rejecting services to those students. The Hearing Officer finds that STUDENT's low cognitive skills do not relieve the District of its obligation to address his communication needs as a profoundly hard-of-hearing student. It was concluded that signing is an important means of communication for STUDENT. It is also noted that STUDENT's current teacher has a signing vocabulary of approximately 25 to 30 words, which is less than STUDENT's receptive signing vocabulary. There is no dispute that STUDENT requires the services of an aide to work one-to-one with him, to help him focus, and to facilitate STUDENT's participation in his educational program. The Hearing Officer concludes that STUDENT's communication needs require that his aide possess signing skills.

As to signing proficiency that an aide must possess, Mr. Belding testified that the aide must possess "average" signing skills that are at or above STUDENT's skill level. Mr. Belding's understanding is that STUDENT has a vocabulary of approximately 200 words. Ms. Woolard also testified that someone with "basic" signing skills could meet STUDENT's needs; however, she defined "basic" as a good student with a minimum of two semesters of signing classes. Ms.

Woolard also stated that the aide needs to know more signs than STUDENT; otherwise, his communication skills will not improve. Ann Vessey, program specialist, also testified that the aide should be more fluent in signing than STUDENT. She testified that the aide minimally requires a one-week intensive training in signing.

Ms. Simonds testified that a certified interpreter is unnecessary to meet STUDENT's needs. She testified that an appropriate aide is someone who is familiar with natural gestures and the Picture Exchange Communications System (PECS) and who possesses "some" signing ability. Ms. Kraemer testified that the aide needs to know the signs that STUDENT uses, the signs that he understands receptively, and have knowledge of what constitutes his total communication repertoire.

The witnesses consistently testified that the aide requires signing skills that are at or above STUDENT's skill level. The District asserted that an aide with a signing vocabulary of 50 words is sufficient to meet STUDENT's needs; however, as discussed above, STUDENT's receptive signing vocabulary is approximately 200 words. Therefore, the aide must possess basic signing skills, be able to effectively utilize STUDENT's receptive and expressive signing vocabulary, and be able to expand upon his current signing vocabulary, which is at least 200 words. The evidence did not establish that the aide must be certified or have a specific type of training or level of experience.

There was conflicting testimony on the issue of whether more than one person can fulfill the role of STUDENT's aide. MOTHER testified that STUDENT should have one aide to provide continuity. MOTHER stated that it takes STUDENT time to "warm up" to someone. Also, if there is more than one aide, they may use different forms of communication with STUDENT. MOTHER testified that it is also very important that expectations for STUDENT be consistent. For example, if he is expected to sign, then all of the persons working with him must require that he sign and they must also use the same sign.

STUDENT's difficulty adapting to unfamiliar persons was also noted by the Diagnostic Center specialists; however, Ms. Simonds testified that personnel issues were not addressed as part of the Center's assessment and she declined to express any opinion about the appropriate number of aides for STUDENT. Mr. Belding also was reluctant to express an opinion regarding the efficacy of one person versus more than one person providing the aide services to STUDENT. Mr. Belding's primary concern was that consistent symbols be used with STUDENT. Mr. Belding testified that the need for consistency may be difficult to maintain if several persons fill the aide position. He also testified that it may be difficult to locate an aide with appropriate signing skills who is willing to work for only three hours per day. It was Mr. Belding's experience that qualified sign language interpreters are in demand in the community.

Janet Hillard, District communications specialist, testified that STUDENT is more likely to progress if he works with one person with whom he knows and feels comfortable.

Ms. Rempe testified that there are two "schools of thought" regarding whether one or two aides is better. On the one hand, one aide offers consistency whereas multiple aides avoids the student becoming dependent on one individual. Ms. Rempe expressed no opinion regarding STUDENT's needs. Lawrence Christie, District special education coordinator, testified that in general, more than one person working with a child can be beneficial because it helps the student to move toward independence.

Ms. Vessey testified that STUDENT has the potential to become "really" dependent on one full-time aide. She observed this occur in the past. Ms. Vessey also testified that it is unnecessary to have one aide in order to provide STUDENT with a consistent program. She stated that the classroom staff can work together to ensure that STUDENT receives a consistent program. Ms. Vessey based her opinion on many observations of STUDENT over a number of years.

Toni Faulkner, language, hearing, and speech specialist, was in STUDENT's classroom on one day per week while he attended Palm Middle School. Ms. Faulkner testified that STUDENT's need for an aide can be met by two persons. She also had observed in the past that STUDENT could get dependent upon a single aide.

Two primary concerns emerged regarding whether STUDENT's needs can be met by more than one person filling the aide position. The first concern centers around STUDENT's need for consistency. Everyone seemed to agree that consistency is, in fact, important for STUDENT; however, the evidence is not persuasive that the need for consistency equates with STUDENT requiring only one aide. His educational program includes a number of different service providers, a teacher, and several other aides are in his classroom. The need for consistency must be addressed through a consistent routine and use of the same symbols for communication, whether they be signs or PECS. Moreover, several persons who have worked with STUDENT expressed concern about his ability to become dependent on a single individual. The goal for STUDENT is for him to become as independent as possible, given his significant disabilities. One of the components of independence is the ability to deal with different people in different environments. STUDENT is currently a teenager and needs to begin transitioning to the world that will exist for him outside of school. For these reasons, the Hearing Officer does not find that the need for consistency necessitates STUDENT's having one aide; however, if the District elects to have more than one person provide aide services to STUDENT, his need for consistency requires that they have regularly assigned times to work with him.

ORDER

(1) The District shall assign one or more persons to serve as a one-to-one aide to STUDENT. The aide or aides shall have regular assigned times to work with STUDENT.

(2) The person or persons assigned as STUDENT's one-to-one aide must

possess basic signing skills, be able to effectively utilize STUDENT's receptive and expressive signing vocabulary, and be able to expand upon his current signing vocabulary, which is at least 200 words.

(3) Within 20 calendar days of the date of this decision, the District shall convene an IEP meeting to conform STUDENT's IEP to this decision and to also reflect that he is entitled to six hours daily of the services of a one-to-one aide.

PREVAILING PARTY ON EACH ISSUE

Pursuant to Education Code § 56507(d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. The following findings are made in accordance with this statute: The parties prevailed equally on the issue heard and decided.

RIGHT TO APPEAL THIS DECISION

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

DATED: April 16, 1998 _____
Mary L. Cote, Hearing Officer
California Special Education
Hearing Office

Footnotes:

[New Search](#)