



Special Education Hearing Office

ORDERS AND DECISIONS DATABASE SEARCH

Record Detail

General Case Information

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| Case Year: | 1997 |
| Case Number: | 1581 |
| Petitioner: | EUREKA UNION SCHOOL DISTRICT and PLACER COUNTY OFFICE OF EDUCATION (crosslisted with case SN 1383-97) |
| Respondent: | STUDENT |
| Name of Document: | DECISION |

Hearing Officer Information

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|----------------------------|---|
| Type of Case: | Decision Only |
| Type of Disability: | Hearing Impaired |
| Issue: | Designated Instruction and Services Placement Reimbursement and Funding |
| Topic: | |

Assistant Calendar Clerk Information

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|--|------------------------------|
| California Children's Services: | 0 |
| Public School District: | 31-66829 Eureka Union ESD |
| Mental Health Agency: | |
| SELPA: | |

COE:**3.110314E+6**
Placer County**Issues Findings:****Body of Text:**

This matter was heard before Mark Paxson, Hearing Officer, California Special Education Hearing Office, McGeorge School of Law, in Granite Bay, California, on January 20, 21, and 22, 1998.

Petitioner STUDENT was represented by attorney Geralyn Clancy. Also present on Petitioner's behalf were his parents, FATHER and MOTHER. Respondents Eureka Union School District (District) and Placer County Office of Education (COE) were represented by attorney Linda Rhoads Parks. Also present on behalf of the Respondents were Susan Wiese, coordinator of special education for the District, and Lila Wood, special education administrator for COE.

Oral and documentary evidence was received. The record was left open for the parties to submit written closing arguments. The parties submitted closing arguments, the record was closed, and the matter was submitted for decision.

ISSUES

- (1) Did Respondents fail to provide STUDENT with a free appropriate public education during the 1996-97 school year?
- (2) Did Respondents fail to propose a free appropriate public education for STUDENT for the 1997-98 school year?
- (3) Is CCHAT an appropriate program for STUDENT?
- (4) Is Petitioner entitled to reimbursement for costs associated with placement at CCHAT since October 1997 and for continued enrollment through extended summer 1998?

BACKGROUND FACTS

STUDENT is a three-year-old boy(Footnote 1) with a severe hearing loss. During spring 1997, STUDENT's hearing loss was discovered by doctors with Kaiser Permanente Hospital. During summer 1997, STUDENT was fitted with one set of hearing aids in June and with another set in August 1997. The set of hearing aids STUDENT received in August are programmable hearing aids which produce more natural sound quality and are more flexible than standard hearing aids. STUDENT's aided hearing is almost equal to the hearing of a nonhearing impaired child. (Testimony of Kim Eskeldson) With the aids in place, STUDENT can hear all sounds except "f," "s," and "th."

At the beginning of April 1997, after a doctor's appointment at which STUDENT's hearing loss was diagnosed, STUDENT's mother, MOTHER,

contacted the District to find out what services were available. MOTHER was referred to Janet Borba, a speech and language therapist. After several attempts to contact Ms. Borba, MOTHER was able to reach her on April 25, 1997. At that time, Ms. Borba referred her to Margaret Dolan, a speech and language therapist employed by the District, and MOTHER met with Ms. Dolan on May 2, 1997. (Testimony of MOTHER)

On April 25, 1997, Joann Boettcher, a speech-language pathologist with Kaiser Permanente, conducted a pediatric speech-language evaluation of STUDENT. Ms. Boettcher concluded that STUDENT had mildly delayed language expression and unclear speech and good ability to compensate for his hearing impairment. Ms. Boettcher also determined that STUDENT was "tongue-tied," which had some effect on his poor speech sound production. Ms. Boettcher recommended that STUDENT receive speech therapy and that his parents be educated regarding language stimulation and the effect STUDENT's hearing impairment has on his language and speech.

On May 2, 1997, Ms. Dolan met with FATHER and MOTHER. A referral for special education was signed, along with an assessment plan. STUDENT's parents agreed with Ms. Dolan that the assessment should be delayed until the severity of STUDENT's hearing loss had been identified and he had been fitted with hearing aids. (Testimony of MOTHER) On June 4, 1997, Steve Nolan, an audiologist with Kaiser, completed a hearing test and was able to conclusively identify the severity of STUDENT's hearing loss. STUDENT was subsequently referred to Sutter Hospital, and on June 12, 1997, Kim Eskeldson, an audiologist with Sutter, confirmed Mr. Nolan's results.

During this time, MOTHER also spoke with Ms. Dolan several times. MOTHER asked Ms. Dolan what services STUDENT could receive pending completion of the District's assessment. Ms. Dolan indicated that there were speech and language services available during the summer. STUDENT's parents and Ms. Dolan agreed to enroll him in speech and language during the summer. STUDENT attended five speech and language sessions between June 19 and July 10, 1997, provided by Lynn Murphy. Although each session was supposed to last 30 minutes, according to MOTHER, Ms. Murphy arrived 5-10 minutes late for each session and also took up therapy time setting up.

On August 23, and September 2, 1997, STUDENT was evaluated by Vicki Marks, a speech and language pathologist with the District's infant program. Ms. Marks administered several tests, including the Receptive One-Word Picture Vocabulary Test (ROWPVT) and the Expressive One-Word Picture Vocabulary Test-Revised (EOWPVT-R). STUDENT scored in the first percentile on both tests. Two other tests, the Arizona Articulation Proficiency Scale and the Preschool Language Scale, were attempted but not completed because STUDENT lacked the ability to attend to the tasks included on the tests. Ms. Marks concluded that

STUDENT's skill levels in expressive communication, conceptual development and expressive vocabulary were significantly delayed and warrant intervention. His receptive language was also significantly delayed. His overall

intelligibility was poor due to difficulty producing age-appropriate phonemes and because of frequent consonant deletions.

Ms. Marks recommended that therapy target “additional information in receptive and expressive language.”

On September 12, 1997, an IEP team was convened to determine STUDENT’s eligibility for special education and found STUDENT eligible on the basis of his hearing impairment. The team was unable to decide on an appropriate placement. The team met on October 1, 1997, and again was unable to agree on a placement for STUDENT.

On September 18, 1997, Kim Eskeldson, STUDENT’s audiologist with the Sutter Hearing and Speech Centers, submitted a letter to Respondents, which stated in part that

STUDENT demonstrates good speech and language skills for his degree of hearing loss. An auditory-oral educational program with speech therapy would help STUDENT maximize use of his excellent aided responses and residual hearing. It is critical that STUDENT maximize his potential to be an oral communicator by developing good speech and language skills during this period of language development.

On October 6, 1997, Christina Dumars, a speech and language pathologist with Children’s Choice for Hearing and Talking Center (CCHAT), conducted a speech and language assessment of STUDENT at the District’s request. Ms. Dumars summarized her results as follows:

STUDENT demonstrates delays in articulation, receptive and expressive language abilities related to a significant hearing loss. During this session, STUDENT clearly demonstrated his ability to make use of auditory information without relying on visual cues from the speaker to facilitate auditory processing. It is recommended that STUDENT be placed in an auditory/oral program with daily individualized speech therapy for continued gains in speech/language and auditory skills.

On October 7, 1997, Ms. Eskeldson recommended that STUDENT use an FM auditory trainer to assist his hearing in the classroom. (Petitioner’s Exhibit p. 124) According to Ms. Eskeldson, an FM auditory trainer would help STUDENT more clearly understand his teacher’s voice in the classroom by broadcasting the speech signal directly to his receiver. The FM auditory trainer helps minimize background noise and overcomes poor classroom acoustics.

On October 8, 1997, STUDENT’s IEP team met again. During this meeting, the IEP team developed goals and objectives addressing sound detections both in the classroom and natural settings. Other goals addressed word and sentence discrimination, ability to follow directions, and the use of an FM receiver for optimum reception of educational material. Respondents’ representatives on the IEP team recommended placement at Ophir School in a deaf/hard of hearing (DHOH) class with the provision of speech and language and aural

rehabilitation services. The speech and language services would be provided for 30-45 minutes on a daily basis, while the aural rehabilitation services would be provided 30 minutes twice per week. Respondents also offered to reimburse STUDENT's parents for transportation costs to STUDENT's afterschool day care. The DHOH class proposed by Respondents is a total communication class which combines sign language and oral language to communicate with the students. STUDENT's parents continued to request placement at CCHAT.

CCHAT is an auditory/oral program which relies entirely on oral communication designed to teach children with hearing impairments how to listen and communicate orally. CCHAT is a certified nonpublic school located in Sacramento. There are twenty-two students at CCHAT; five are nonhearing impaired. The school day starts with a 20-30 minute music period at 9:00 a.m. There are three different classes at CCHAT, with the students' placement based on their language level. CCHAT provides monthly parent training meetings as well as monthly "support group" meetings designed to focus on things that are happening at the school.

After the parties were unable to reach agreement regarding placement on October 8, 1997, STUDENT's parents unilaterally enrolled STUDENT at CCHAT. STUDENT's first day at CCHAT was October 14, 1997. STUDENT's program at CCHAT includes speech and language therapy for a minimum of 30 minutes per day and an educational program that lasts for three hours per day. STUDENT's speech and language therapy is provided on a pull-out, one-on-one basis. STUDENT was initially placed in the class for three-year-olds. However, after one day, CCHAT staff determined that his auditory and oral skills were much higher than those of the other children in that class and he was placed in a class with four- and five-year-olds who had comparable skills. STUDENT's class is taught by Janae Lallement with the assistance of an aide who shares her time with the other classes. STUDENT is the youngest student in Ms. Lallement's class.

On October 17, 1997, STUDENT's teacher at CCHAT, Janae Lallement, completed a language sample of STUDENT's utterances made on October 15 and 16, 1997. Ms. Lallement noted that "STUDENT eagerly and consistently repeated anything asked of him and also began to use his own language spontaneously..." The language sample indicated that STUDENT made 24 spontaneous statements during the two days. Most of the statements were two to three words in length.

On November 14, 1997, STUDENT was evaluated at his parents' request by Patricia Balthazor, speech pathologist. Ms. Balthazor observed that

STUDENT was able to produce t, d, n, l, g and k when given some tactile and proprioceptive training ... STUDENT engaged the examiner in several conversations about the Lion King, Winnie the Pooh, his parents, and chocolate chip cookies. STUDENT was observed using 5 - 7 word spontaneous sentences and questions. STUDENT is a bit difficult to understand as he speaks fairly softly. He also exhibits many articulation errors in his spontaneous speech.

Ms. Balthazor recommended that STUDENT remain in an educational setting “which sets high expectations on auditory skill development and speech acquisition.” Ms. Balthazor also recommended a heavy emphasis on aural habilitation and that speech drills be used to teach STUDENT sounds he is not yet producing correctly.

On December 17, 1997, Marie Lopez, speech therapist with CCHAT, evaluated STUDENT’s communication skills. Ms. Lopez administered the Grammatical Analysis of Elicited Language Pre-Sentence Level (GAEL-P), a language test normed on hearing impaired children ages 3 to 6 years of age. STUDENT’s comprehension skills compared with those of other hearing impaired children his age were at the 90th percentile; his ability to produce words and sentences on his own was at the 95th percentile; and his ability to imitate words and sentences was at the 100th percentile.

On December 18, 1997, Ms. Lallement completed another language sample of STUDENT. According to Ms. Lallement, STUDENT “knows the names of most of the children in his class and seems to enjoy his new friends. He communicates through the verbal mode 100% of the time.” The language sample taken by Ms. Lallement for December 17, 1997, indicated that STUDENT made over 100 spontaneous statements. Again, many were two to three words in length. However, there were also numerous statements that were longer and more complex than those he had made in the language sample of October 1997.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

(1) Did Respondents fail to provide STUDENT with a free appropriate public education during the 1996-97 school year?

STUDENT was not formally found eligible for special education services until his IEP team met on September 12, 1997. Petitioner contends, however, that Respondents were obligated to provide him with services prior to that date and that Respondents’ failure to do so during the 1996-97 school year and summer 1997 constitutes a violation of the requirements of special education law. Specifically, Petitioner contends that Respondents violated the child-find provisions of the Education Code; violated timelines relating to assessment and IEPs; and failed to provide STUDENT with appropriate services.

(A) Child Find

Both state and federal education law include provisions requiring educational agencies to take steps to find children within their jurisdiction who are eligible for special education services. Education Code § 56300 et seq; 34 CFR § 1412 (a)(3). These provisions require that educational agencies have in place policies and procedures designed to ensure that children with disabilities are identified, evaluated, and provided with educational services that meet their needs.

In the present case, Respondents presented evidence that they have outreach programs to local preschools, doctors, hospitals, and other service providers

designed to inform those providers of the educational services offered by Respondents. Furthermore, Respondents run occasional advertisements in local newspapers, sponsor information booths at local events, and offer training programs to various service providers, including day care providers. The requirements of child find do not appear to require that Respondents guarantee that each child within their jurisdiction will be located and served. Where, as in this case, outreach activities have been implemented designed to notify the community of services that Respondents have available for children with disabilities, Respondents have satisfied the child find provisions. The Hearing Officer notes that, upon learning that STUDENT had a hearing impairment, STUDENT's parents were immediately referred by their doctor to the District.

The evidence does not support a finding that STUDENT was denied an appropriate education as a result of any failure by Respondents to comply with the child find requirements of both state and federal law. Instead, based on the activities of Respondents, the Hearing Officer finds that Respondents have policies and procedures in effect which satisfy the child find requirements of both state and federal law.

(B) Timelines

The evidence establishes the following timeline:

April 9 MOTHER contacted the District to request services for STUDENT.

May 2 (23 days later) Written assessment plan developed and signed by parents.

June 6 (35 days later) Last day of 1997-97 school year

August 21 First day of school(Footnote 2)

August 23

and September 2 Assessment completed

September 12 First IEP meeting

October 8 Final IEP meeting

Education Code § 56321(a) provides that educational agencies must provide parents with a proposed assessment plan within 15 days of a referral for assessment, unless the parents agree, in writing, to an extension. Education Code § 56029 defines "referral for assessment" as "any written request for assessment to identify an individual with exceptional needs made by a parent, teacher, or other service provider." California Code of Regulations, Title 5, § 3021(a) further states that when "a verbal referral is made, staff of the school district, ... shall offer assistance to the individual in making a request in writing." While MOTHER did not make a written referral request on April 9, 1997, the District representative she spoke to created a written "Referral Form" dated April 9, 1997. (Petitioner's Exhibit, p. 40) Therefore, the Hearing Officer finds that a referral for assessment was made by Petitioner on April 9, 1997, and that Respondents were required to provide Petitioner with a proposed assessment plan within 15 days of that referral. As is evident from the timeline, Respondents did not present a proposed assessment plan to STUDENT's parents until 23 days after the initial referral was made.

Education Code § 56344 requires that an IEP meeting be convened within 50 days, “not counting days between the pupil’s regular school session,” of the parents’ written consent for assessment, unless the parents agree, in writing, to an extension. Even if Respondents had proposed an assessment plan within the 15 day time limit, resulting in an assessment plan signed by STUDENT’s parents no later than April 24, 1997, the 50-day requirement contained in § 56344 would not have expired by the end of the 1996-97 school year. With the 1996-97 school year ending on June 6, 1997, only 43 days would have elapsed. Therefore, Respondents did not violate the 50-day timeline when they did not complete an assessment by the end of the 1996-97 school year.

Special education law requires that special education services be provided following assessment and development of an IEP. Education Code § 56320 et seq. In the present case, Respondents were not required to complete and had not completed STUDENT’s assessment and convened an IEP team meeting before the end of the 1996-97 school year. Therefore, Respondents were not required to provide special education services either during the 1996-97 school year or during summer 1997.

Based on the foregoing, the Hearing Officer finds that Respondents complied with the assessment timelines during the 1996-97 school year. The Hearing Officer further finds that Respondents had no obligation to provide special educational services to STUDENT during the 1996-97 school year. In other words, Respondents did not fail to provide an appropriate education for STUDENT during the 1996-97 school year.

(2) Did Respondents fail to propose a free appropriate public education for STUDENT for the 1997-98 school year?

State and federal law require that students with disabilities receive a free appropriate public education. California Education Code § 56000 et seq. and the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 et seq. “Free appropriate public education” means special education and related services, provided at public expense, that conform with the student’s individualized education program. 20 U.S.C. § 1401(8). “Special education” is defined as specifically designed instruction designed to meet the unique needs of a disabled child. 20 U.S.C. § 1401(25).

In *Board of Education of the Hendrick Hudson Central School District, et al v. Rowley* (1982) 458 U.S. 175, EHLR 553:656, 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. The Court concluded that the IDEA does not require that a student be provided with the best available special education or services or that the services maximize each child’s potential. The Court stated that “the ‘basic floor of opportunity’ provided by the Act consists of access to specialist instruction and related services which are individually designed to provide educational benefit to the child.” 458 U.S. 175,200.

Taken together, the IDEA and *Rowley* provide three factors for analyzing

whether the Respondents' proposed placement is appropriate. Those three factors are as follows:

(A) Was the Respondents' placement designed to meet STUDENT's unique needs?

(B) Did the Respondents' placement conform to STUDENT's IEP?

(C) Did the Respondents' placement provide STUDENT with educational benefit?

(A) Was the Respondents' placement designed to meet STUDENT's unique needs?

STUDENT's audiologist, Ms. Eskeldson, testified that STUDENT's aided hearing is almost on par to the hearing of a nonhearing impaired child and that he has very good auditory and oral skills. Other witnesses, including his parents and CCHAT staff who work with him on a daily basis, also testified to the quality of STUDENT's auditory and oral skills. Furthermore, Ms. Dumars, the speech and language pathologist, who evaluated STUDENT in October 1997, determined that STUDENT was able to use auditory information without relying upon visual cues. The most compelling evidence of the quality of STUDENT's auditory and oral skills, is the fact that when STUDENT enrolled at CCHAT, he was placed in the class with the highest functioning students. STUDENT was placed with older students because his auditory and oral skills were so good. STUDENT's teacher at Lallement also prepared a language sample demonstrating that STUDENT had some oral language skills. Based on this evidence, the Hearing Officer finds that STUDENT's auditory and oral skills were at a level where he needed an educational program which will focus on development of his listening and auditory skills, and will emphasize the development of his oral communication skills.

STUDENT's unique needs do not include learning another communication modality. Education Code § 56001(b)(2) states that

It is essential that hard-of-hearing and deaf children, like all children, have an education in which their unique communication mode is respected, utilized, and developed to an appropriate level of proficiency.

In STUDENT's case, his unique communication mode is oral and auditory communication similar to that of a nonhearing impaired child.

Respondents' proposed placement does not meet these unique needs. The DHOH class at Ophir is a total communication class designed to simultaneously use oral language and sign language. The DHOH class is designed for a student who does not have the auditory and oral skills that STUDENT has. Placing STUDENT in the DHOH class would, in effect, deny the reality that STUDENT has hearing that is very close to normal hearing. STUDENT requires a program that recognizes his auditory and oral skills and focuses on developing those skills. The DHOH class would, instead, provide STUDENT instruction in sign language, a mode of communication the evidence establishes STUDENT does not need. (Footnote 3)

Ms. Lopez, the speech therapist at CCHAT who works with STUDENT on a daily basis, testified regarding four different sets of goals that different District and COE staff developed up to and during the IEP meeting on October 12, 1997. According to Ms. Lopez, many of those goals and objectives addressed auditory, oral, communication, and cognitive skills that STUDENT already possessed when he enrolled at CCHAT on October 14, 1997. Examples of such goals cited by Ms. Lopez include STUDENT being able to respond to his name; being able to detect consonants and vowels; and discriminating between songs and rhymes. Ms. Lopez testified that these goals were well beyond what STUDENT was capable of doing. The fact that District and COE personnel drafted goals and objectives addressing skills STUDENT already possessed suggests that those staffers did not have an accurate picture of STUDENT's abilities and skills. This fact raises additional questions regarding the appropriateness of the proposed placement for STUDENT and whether it was designed to meet his needs.

The reality of the Respondents' proposed placement is that STUDENT's development could be detrimentally affected by exposure to the consistent use of sign language in the total communications class. Interaction with peers who rely on sign language could inhibit the development of STUDENT's auditory and oral skills and increase his reliance on sign language. The evidence clearly establishes that STUDENT does not need sign language to communicate with others. It could be argued that Respondents are meeting STUDENT's auditory and oral language needs through the speech and language and aural rehabilitation services. However, regardless of what other services Respondents are willing to provide to work on STUDENT's auditory and oral skills, the fact remains that the majority of STUDENT's education would take place in the total communications class, in an environment in which he will be receiving instruction in modes of communication which he does not need and which could interfere with his educational progress.

Based on the foregoing, the Hearing Officer finds that the proposed placement in the DHOH class at Ophir is not designed to meet STUDENT's unique needs because such a placement does not recognize the level of auditory and oral skills which he already possesses. Therefore, the DHOH class is not an appropriate placement for STUDENT. Given that Respondents have clearly proposed a placement that does not meet STUDENT's unique needs, this decision does not address the other two factors used in determining whether the placement proposed by Respondents is an appropriate placement.

(3) Is CCHAT an appropriate program for STUDENT?

Under the Rowley analysis, the Hearing Officer makes the following findings.

(A) Is CCHAT designed to meet STUDENT's unique needs?

Janae Lallement, STUDENT's teacher at CCHAT, testified that listening skills are incorporated throughout the school day and that various steps, such as covering her mouth or standing behind a student, are taken to remove visual

cues, thereby requiring the student to focus on listening. All of the students at CCHAT, including STUDENT, are expected to use their voices, and no sign language is used in the program. Marie Lopez, STUDENT's speech and language pathologist at CCHAT, testified that she addresses auditory skills, speech skills, supersegmentals (duration, pitch, intensity), articulation, and language skills during her daily sessions with STUDENT.

As already noted above, STUDENT's needs a program designed to focus on his auditory and oral skills. The evidence establishes that CCHAT offers an educational program that focuses on developing STUDENT's auditory and oral skills through the morning. CCHAT also provides STUDENT with daily speech therapy designed to enhance the work done during the educational portion of STUDENT's program. The Hearing Officer finds, therefore, that CCHAT is designed to meet STUDENT's unique needs.

There was some evidence presented that STUDENT needs an FM receiver in the classroom and need aural rehabilitation services. The Hearing Officer finds that these two services are unnecessary. An FM receiver would be necessary to allow STUDENT to better hear his teacher. There was no evidence presented that STUDENT has difficulty hearing his teacher in the classroom setting. Additionally, while Respondents proposed aural rehabilitation services for STUDENT, it is apparent that the CCHAT program is meeting STUDENT's auditory and oral needs through daily speech and language services and the classroom program. The evidence does not suggest that STUDENT needs aural rehabilitation to benefit from his education at CCHAT.

(B) Does placement at CCHAT conform to STUDENT's IEP?

In the present case, STUDENT's IEP consists of a placement that is not appropriately designed to meet his unique needs and goals and objectives that did not appropriately reflect STUDENT's functioning when they were drafted. Considering that the IEP developed by Respondents was not appropriate for STUDENT, it is unnecessary for his placement at CCHAT to conform to his IEP.

(C) Is CCHAT designed to provide STUDENT with educational benefit?

The evidence establishes that STUDENT has received significant benefit since enrolling at CCHAT. Ms. Lallement's language samples show a marked increase in STUDENT's use of language in STUDENT's first two months at CCHAT. Furthermore, the testimony of STUDENT's parents, MOTHER and FATHER, establish that STUDENT has made a significant amount of progress in his spontaneous speech, clarity of speech, willingness to use language, and overall communication skills. FATHER testified that STUDENT can carry on a conversation without any special accommodations. FATHER testified that he talks with STUDENT every day in the car while he drives STUDENT from CCHAT to his afternoon day care. As FATHER pointed out, these conversations take place in a noisy car with him seated in the front seat and STUDENT seated in the back seat. In other words, STUDENT is able to carry on a conversation with his father in a noisy car while his father has his back

turned to him. FATHER also testified that STUDENT can carry on a conversation with background noise, such as a TV; can hear and respond to an individual standing ten feet from; and can now carry on conversations with individuals who do not know him. Finally, Ms. Eskeldson, STUDENT's audiologist, also testified that by December 1997, STUDENT was using longer sentences, more intelligible speech, and verbalizing more abstract concepts. Ms. Lopez testified that STUDENT has met or substantially met most of the goals developed by CCHAT staff.

Based on Ms. Lallement's language samples and the testimony of STUDENT's parents, Ms. Eskeldson, and Ms. Lopez, the Hearing Officer finds that CCHAT has provided STUDENT with educational benefit and that it is probable the placement will continue to do so.

(4) Is Petitioner entitled to reimbursement for costs associated with placement at CCHAT since October 1997 and for continued enrollment through extended summer 1998?

Based on Respondents' failure to provide an appropriate placement for STUDENT and the appropriateness of STUDENT's program at CCHAT, the Hearing Officer finds that STUDENT is entitled to reimbursement for costs associated with CCHAT beginning on October 14, 1997, including transportation-related expenses. See *Burlington School Committee of the Town of Burlington v. Department of Education of Massachusetts*, 471 U.S. 358 (1985). The Hearing Officer further finds that Petitioner is entitled to continued placement at CCHAT for the duration of the 1997-98 school year.

However, there was no showing made, nor did Petitioner provide any argument in his closing brief, that STUDENT requires extended school year services. California Code of Regulations, Title 5, § 3043 provides that

extended school year services shall be provided for each individual with exceptional needs who has unique needs and requires special education and related services in excess of the regular academic year. Such individuals shall have handicaps which are likely to continue indefinitely or for a prolonged period, and interruption of the pupil's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her handicapping condition.

Section 3043 makes it clear that an individual eligible for special education is not also automatically eligible for extended school year services. Instead, § 3043 requires that for a child eligible for special education to also qualify for extended school year services, there must be an additional showing that the child, among other factors, have limited recoupment, and that there be a potential for regression due to the nature of the child's disability. As noted above, there has been no evidence presented in this case that STUDENT is such a child, nor has Petitioner made any such argument. Therefore, Petitioner's request for placement at CCHAT at Respondents' expense for the 1998

extended summer session is denied.

Based on the foregoing, the Hearing Officer finds that Petitioner is entitled to reimbursement from Respondents for all costs related to STUDENT's placement at CCHAT from the date of his enrollment through the date of this decision. Furthermore, Respondents shall, from the date of this decision through the end of the 1997-98 school year, fund Petitioner's program at CCHAT, including transportation and the speech and language therapy provided on a daily basis by CCHAT staff.

ORDER

(1) Upon presentation of proof, Eureka Unified School District and Placer County Office of Education shall reimburse STUDENT for all costs, including transportation, associated with his placement at CCHAT beginning on October 14, 1997 and extending through the date of this decision.

(2) Eureka Unified School District and Placer County Office of Education shall convene an IEP team meeting within 15 days of the date of this decision. The IEP team shall develop an IEP consistent with this decision, including placement at CCHAT through the end of the 1997-98 school year, transportation, and daily speech and language services provided by CCHAT. STUDENT's IEP team shall also develop appropriate goals and objectives for STUDENT that accurately reflect his current levels of functioning.

(3) Respondents shall fund Petitioner's program at CCHAT from the date of this decision through the end of the 1997-98 school year. Respondents shall be responsible for all costs related to STUDENT's placement at CCHAT, including transportation and the daily speech and language services provided by CCHAT.

PREVAILING PARTY ON EACH ISSUE

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

Petitioner prevailed on Issues #2, #3, and #4. Respondent prevailed on Issue #1.

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: March 12, 1998 _____
Mark Paxson, Hearing Officer
California Special Education Hearing Office

Footnotes:

FOOTNOTES: 1) STUDENT's birthday is on May 19. 2) The school year for Respondents' infant program began and ended on different dates. However, since Respondents did not offer the infant program for STUDENT, those dates are irrelevant. 3) To suggest that STUDENT needs to learn sign language and other modalities of communication comes very close to meaning that any child, whether hearing impaired or not, should learn those other modalities of communication as well.

[New Search](#)