



Special Education Hearing Office

ORDERS AND DECISIONS DATABASE SEARCH

Record Detail

General Case Information

Case Year:	1997
Case Number:	894
Petitioner:	Student
Respondent:	CAPISTRANO UNIFIED SCHOOL DISTRICT
Name of Document:	DECISION

Hearing Officer Information

Type of Case:	Decision Only
Type of Disability:	Deafness
Issue:	Designated Instruction and ServicesNon Public SchoolPlacementRelated ServicesReimbursement and Funding
Topic:	

Assistant Calendar Clerk Information

California Children's Services:	0
Public School District:	30-66464 Capistrano USD
Mental Health Agency:	
SELPA:	

COE:

Issues Findings:**Body of Text:**

This matter convened for hearing on August 26 and 27, October 7, 8, 9, 14, 15, and 16, and November 12, 13, 14, 17, 18, 19, and 20, 1997, in San Juan Capistrano and Laguna Niguel, California, before Hearing Officer Keltie Jones of the Special Education Hearing Office (Hearing Office) located at McGeorge School of Law in Sacramento, California.

Petitioner was represented at the hearing by attorney Joan Honeycutt. Petitioner's mother, MOTHER, was present for all days of the hearing. Also present at the hearing at various times on Petitioner's behalf were his father, FATHER, and Corinne Parker, Ms. Honeycutt's legal assistant and a child advocate.

Respondent Capistrano Unified School District (District) was represented at the hearing by attorneys Ivette Peña and Bridget Flanagan of Breon, O'Donnell, Miller, Brown & Dannis. Doreen Lohnes, director of special education, and Bob White, director of the South Orange County Special Education Local Plan Area (SELPA), were also present at various times on the District's behalf.

Respondent presented its case first and called the following witnesses to testify: Cynthia Frazee, Sharon Broderick, Maria Abramson, Linda Puckett, James Blinn, Carolyn Rowland, Carl Kirchner, Dennis Davino, Lisa DeLany, Robert White, Doreen Lohnes, Jennifer Gorgone, Cheryl Ruszat, Pamela Contreras, and Sarmila Mitra.

Petitioner called the following witnesses to testify: Carol Atkins, Ruth Hiland, Gail Koenke-DeVaere, MOTHER, FATHER, Corinne Parker, Todd Houser, FATHER OF STUDENT 2, Jon Levy, Kimber Dornbush, Suzanne Craik, and Debbie Evans-Warkentien.

Oral and documentary evidence was received and closing arguments were submitted on January 2, 1998. The record was closed and the matter submitted for decision.

ISSUES PRESENTED FOR HEARING

1. Did Respondent provide a free appropriate public education (FAPE) for Petitioner from June 30, 1997 to the present?
2. What is currently an appropriate program and placement for Petitioner?
3. Is Petitioner entitled to compensatory services as a remedy for Respondent's

failure to provide services since June 30, 1997, in accordance with his March 3, 1997 IFSP and the March 20, 1997 Settlement Agreement? (Footnote 1)

POSITIONS OF THE PARTIES

Since June 30, 1997, the District has offered STUDENT placement in a deaf and hard of hearing (DHH) special day class at Crown Valley Elementary School. The class is attended by both hearing and DHH preschoolers, and is taught by a Montessori-certified DHH-credentialed teacher (DHH teacher) and a program aide fluent in Signing Exact English (SEE)(Footnote 2). In addition, the District is offering five hours per week of speech and language therapy by Lisa DeLany, audiological services up to one hour per week to monitor equipment and up to one hour per month for consultation by Maria Abramson, 1 ½ hours per week of sign language classes, parent education classes, and a twenty-day extended school year program at Crown Valley. The District asserts that this placement and related services provide a FAPE for STUDENT.

The Petitioner asserts that the Crown Valley class is not appropriate because it does not meet most of his needs. The Petitioner proposes the Rancho Viejo School, a private Montessori preschool designed to serve both hearing and DHH students, with five hours per week of speech therapy by Ruth Hiland and fifteen minutes per day of audiological services by Carol Atkins as an appropriate program that can serve all his needs. The Petitioner is also seeking more than 1 ½ hours per week of sign language classes for his parents, sign language classes for his siblings, and child care during the adult sign classes.

BACKGROUND FACTS

STUDENT is a three-and-a-half-year-old boy diagnosed at the age of ten months with profound bilateral sensorineural hearing loss, or profound deafness. STUDENT began receiving special education services at the end of June 1995, just before his first birthday. As an infant, STUDENT received speech and language services at home. During the summer of 1995, STUDENT received his first set of hearing aids. Over the next few months, several different types of hearing aids were used, with little to no improvement in STUDENT's ability to perceive sound. During that time, STUDENT received speech and language therapy from the District once a week and private speech therapy from Ruth Hiland twice a week.

In early 1996, MOTHER and MOTHER OF STUDENT 1, the parent of another deaf toddler, began looking into the programs offered for deaf toddlers and preschoolers. They observed the District's program at R.H. Dana Exceptional Needs Facility, which served children with a wide variety of disabilities, and the program offered at Taft School by the Santa Ana School District, which served deaf children. The PARENTS and the PARENTS OF STUDENT 1 began to ask why the District did not have a program similar to Taft's. In February 1996, the PARENTS agreed to place STUDENT at the R.H. Dana program because they were told it was the only program the District had. (Testimony of MOTHER, FATHER.) At the same time, Ruth Hiland began a "Language in Motion" program designed to serve STUDENT and STUDENT

1. STUDENT attended R.H. Dana two days a week for 1 ½ hours each day and participated in Ms. Hiland's program two days a week. STUDENT attended R.H. Dana through April 11, 1996, even though the District did not provide a DHH teacher or a signing aide as promised. During April 1996, STUDENT began evaluation at the House Ear Institute to determine if he was a good candidate for a cochlear implant.(Footnote 3)

In May 1996, the PARENTS refused to sign an individual family services plan (IFSP) that continued STUDENT's placement at R.H. Dana. At the same time, MOTHER and MOTHER OF STUDENT 1 were actively pursuing the development of a program for DHH preschoolers in the District. During a meeting with District and SELPA representatives to discuss establishing a new program, they asked if the children could be served at Broderick Montessori, a local preschool. In June 1996, the District agreed to pay for STUDENT to attend Broderick Montessori three days per week while the parents paid for the other two days. The District also agreed to provide a DHH teacher to help the preschool staff on the three days for which the District was paying and to provide a signing aide for the other two days. STUDENT attended Broderick for five days a week from June 24 through the end of August. In September, he could attend only two days a week because Broderick was full on the other days.

On July 24 and August 20, 1996, District and SELPA representatives met with parents of DHH children and Debra Evans-Warkentien, a friend of MOTHER OF STUDENT 1 who was starting a Montessori preschool. The parents advocated the development of a program modeled after TRIPOD in Burbank, which consisted of co-enrollment of DHH and hearing students in a Montessori preschool class taught by a DHH teacher and a Montessori credentialed teacher. All involved seemed to be enthusiastic about developing such a program in south Orange County, and the District and SELPA staff began to explore a partnership with Ms. Evans-Warkentien's planned Rancho Viejo School. MOTHER OF STUDENT 1, Ms. Evans-Warkentien, and Carolyn Rowland, a SELPA employee and DHH teacher, began to look for a site for the school. At one point, the District offered a portable that could be moved to the Bergeson Elementary School campus. Ms. Evans-Warkentien rejected that offer because it would cost about \$13,000 to move the portable and she believed it would be a costly temporary solution. Because it was taking so long to find a site and because the children could not be served full time at Broderick, Ms. Evans-Warkentien obtained a home day-care license and started the Rancho Viejo School in her home at the beginning of October 1996 with Ms. Sarmila Mitra, a Montessori-certified teacher. The District provided Ms. Rowland and Dennis Davino, a program aide and fluent SEE signer, to provide special education services to the DHH children.

On October 4, 1996, STUDENT received his cochlear implant. Due to the recovery time from the implant surgery, STUDENT did not start attending the Rancho Viejo School until October 21, at which time he attended Rancho Viejo three days a week and Broderick two days a week. Ms. Rowland and Mr. Davino served STUDENT at both schools, so this schedule was not ideal. As of November 4, STUDENT began attending Rancho Viejo five days a week. With

his cochlear implant, STUDENT became able to perceive sound, but he required intensive auditory habilitation to teach him how to understand the sounds he perceived.

Discussions between the SELPA and Ms. Evans-Warkentien about developing a cooperative program continued. However, disagreements between the parties began to emerge. The SELPA did not want to provide any financial support for the school, other than providing a DHH teacher and a signing aide. Ms. Evans-Warkentien expected at least partial tuition support for the DHH children attending the school. The site search continued, and Ms. Rowland began to express concerns to the District and SELPA about the operation of the school in the home. Ms. Rowland was enrolled in a Montessori certification program and was performing her internship at Rancho Viejo under Ms. Mitra's supervision. As part of her course, Ms. Rowland obtained the permission of PARENTS OF STUDENT 2 to conduct a developmental case study of STUDENT 2, another DHH child attending Rancho Viejo. Ms. Rowland also kept a journal in which she wrote her observations of, and her frustrations with, the development of the Rancho Viejo program.

The delay in officially establishing a cooperative program, and other issues, prompted the PARENTS to file a request for a due process hearing with the Office of Administrative Hearings on February 21, 1997. On March 3, 1997, the PARENTS had an IFSP meeting at which the level of STUDENT's speech and language therapy was increased to five one-hour sessions per week, in accordance with the strong recommendation the PARENTS received from the House Ear Institute. The PARENTS also requested that a speech therapist familiar with preschoolers with cochlear implants be assigned to STUDENT. At that same meeting, the District indicated its intention to provide a DHH preschool program at a District school site starting in June 1997. On March 26, 1997, the PARENTS notified the District that, because the District had not provided a speech therapist familiar with children with cochlear implants, Ms. Hiland would be invoicing the District for the services she provided to STUDENT.

On March 20, 1997, the PARENTS and the District settled the due process matter. The District agreed to reimburse Ms. Evans-Warkentien for certain costs and to continue providing services to STUDENT at Rancho Viejo through June 30, 1997. This settlement occurred at the commencement of a due process hearing for STUDENT 2. At some point during the settlement meetings, the PARENTS OF STUDENT 2 or the PARENTS OF STUDENT 1 picked up a file belonging to the District that contained Ms. Rowland's journal. The PARENTS OF STUDENT 2, the PARENTS OF STUDENT 1, and Ms. Honeycutt, their attorney, discovered and read portions of the journal during dinner that night. The parents were very upset by the tone of the journal and the fact that Ms. Rowland had shared information from her case study on STUDENT 2 with the District's representatives without sharing it with the PARENTS OF STUDENT 2. On March 23, 1997, the PARENTS OF STUDENT 2 withdrew their consent to allow Ms. Rowland do a case study on STUDENT 2. On April 7, 1997, Ms. Evans-Warkentien, on behalf of the parents of the DHH children at Rancho Viejo, requested that Ms. Rowland no

longer be assigned to Rancho Viejo. Doreen Lohnes asked each set of parents to confirm that they wanted Ms. Rowland removed from the program. The PARENTS responded that, although they did not ask for Ms. Rowland to be removed, they did believe that she had committed an unethical breach of confidentiality. Ms. Rowland did not return to Rancho Viejo, and the District did not provide a substitute DHH teacher.

From April through June, Mr. Davino was the only District employee working full time at Rancho Viejo. Ms. Linda Puckett, a District employee, visited three days a week to provide speech therapy to STUDENT 2. Ms. Hiland, the private speech therapist, was present on a daily basis to provide speech therapy to STUDENT and STUDENT 1. On June 6 and June 13, 1997, the District convened a transition IEP for STUDENT, who was turning three years old on June 30. At that meeting, the District presented a formal proposal for placing STUDENT at a District-operated DHH, Montessori preschool at Crown Valley Elementary School taught by Ms. Rowland and a signing aide. The preschool would have hearing and DHH children co-enrolled. The District also offered one hour of individual speech therapy five times a week, audiological services of up to one hour per week to check equipment functioning and one hour per month for consultation with parents and teachers, two hours per month of parent education, one and one-half hours per week of sign language classes, and extended school year services. After discussion and modification, the PARENTS agreed that the goals and objectives set forth in District exhibit 18a were appropriate for STUDENT. However, the parents did not agree with the placement being offered and did not sign the IEP. The PARENTS did not agree to place STUDENT at Crown Valley. They also requested a sibling signing class and child care during the signing and parent education classes.

From almost the beginning, STUDENT had difficulties with his implant. From November 1996 through June 1997, STUDENT had eight different headpieces. His microprocessor was also working sporadically, leaving him "off the air," or not receiving a sound signal, for a great deal of time. Ms. Hiland and the PARENTS were very concerned about these problems and communicated with Advanced Bionics about them. The technicians at Advanced Bionics recommended close monitoring of the status of the implant, and Ms. Hiland began doing listening checks with STUDENT every fifteen minutes. In July 1997, audiologist Carol Atkins began visiting Rancho Viejo two hours per week to check the functioning of the DHH children's equipment and to consult with the staff and parents.

On June 20, 1997, the District removed Mr. Davino from the Rancho Viejo program and assigned him to the Crown Valley program. The District provided Ms. Renee Burgayo as a signing aide in Mr. Davino's place from June 23 to June 30, but had still not replaced Ms. Rowland. On June 24, 1997, the District notified the PARENTS that it would be providing services to STUDENT at Crown Valley commencing on July 1. On that same day, Ms. Honeycutt, on behalf of STUDENT, requested a due process hearing and moved for stay put. On July 9, 1997, the Hearing Office ordered the District to continue providing a signing aide knowledgeable in SEE for STUDENT. On August 6, 1997, the Hearing Office issued an order clarifying that the District must provide the

services set forth in the IFSP of March 3, 1997, and the settlement agreement of March 20, 1997. The District stated in a letter to Ms. Honeycutt dated August 11, 1997, that it would provide a signing aide beginning on that date. In a letter dated August 15, 1997, the District offered to make a signing aide available as of August 21, 1997, if the parents agreed to certain terms set forth in the letter. (Dist. Exh. 37, 38.) The District did not provide a new signing aide until August 21, 1997, and did not provide a credentialed DHH teacher until November 12, 1997. The District assigned Pamela Contreras to be the signing aide. However, there was some confusion regarding her duties. Ms. Contreras understood that she was to be an interpreter only, not an aide who would be more involved in the class. Ms. Contreras' position was clarified in early October, and she began helping in the class, as well as signing.

The District's sign language classes, which were offered on a weekly basis during the school year, were offered four times during the summer of 1997. FATHER attended the first two classes and concluded that they were a waste of his time because they were simply review classes that covered skills he had already acquired. MOTHER could not attend the classes because there was no child care provided. In the fall, the sign classes resumed on a weekly basis, but were only one hour long. The PARENTS attempted to bring their children with them to the sign class, but found that they were too disruptive.

In September, SISTER, STUDENT's older sister who has a hearing loss, also began attending Rancho Viejo. At the beginning of September, Ms. Evans-Warkentien hired Jennifer Gorgone, a credentialed DHH teacher. Ms. Gorgone worked at Rancho Viejo for about two weeks; she left the program due to her dissatisfaction with the implementation of the Montessori curriculum and the location of the program in a home rather than a school. By this time, Ms. Evans-Warkentien had located a new site for the school and construction had begun. Due to various delays, Rancho Viejo did not move to its new site until January 20, 1998.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Did Respondent provide a free appropriate public education (FAPE) for Petitioner from June 30, 1997, to the present?

Under both state and federal law, students with disabilities have the right to a free appropriate public education (FAPE). 20 U.S.C. § 1400 et seq.; California Education Code §§ 56000 et seq. Pursuant to 20 U.S.C. § 1402(8), "free appropriate public education" means special education and related services that conform with the student's individualized education program. "Special education" is defined as "specially designed instruction, at no cost to the parent or guardian, to meet the unique needs of a child with a disability ..." 20 U.S.C. § 1402(25).

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. The Court stated that "the

'basic floor of opportunity' provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the child." 458 U.S. 176, 200.

Taken together, the IDEA and the Rowley Court's interpretation of the IDEA provide the following three factors for analyzing whether the placement the District offered for STUDENT from June 30, 1997, forward provided a FAPE:

- (a) whether the placement was designed to meet STUDENT's unique needs;
- (b) whether the placement was designed to provide educational benefit to STUDENT; and
- (c) whether the placement conformed to STUDENT's IEP.(Footnote 4)

In determining whether the District has offered a FAPE, one must focus on the adequacy of the District's program. Gregory K. v. Longview School District, (9th Cir. 1987) 811 F.2d 1307, 1314. If the District's program reflects the child's needs, provides some benefit, and comports with the IEP, the District has offered a FAPE, even if the parents prefer another program and even if the parents' preferred program would result in greater educational benefit. The District has offered a placement for STUDENT that includes the following elements:

1. The Crown Valley Montessori preschool class co-enrolled with DHH and hearing children, taught by a DHH teacher and a signing aide in total communication using both voice and SEE sign.
2. Five one-hour speech therapy sessions per week provided by Lisa DeLany. (Footnote 5)
3. Audiological services provided by Maria Abramson up to one hour per week to monitor equipment functioning and up to one hour per month to consult with parents and teachers.
4. Two hours per month of parent education.
5. One and one-half hours per week of sign language classes.
6. A twenty-day extended school year program.(Footnote 6)

(A) Was the placement offered by the District designed to meet STUDENT's unique needs?

In the closing brief, the Petitioner identified twenty-two separate needs that must be met. The Hearing Officer shall determine whether each of these needs is, indeed, a unique need that the District's placement must meet. If it is a need that must be met, the Hearing Officer shall determine whether the District's placement meets it.

1. "An acoustically appropriate facility."

It was undisputed that acoustically appropriate rooms are important to children with cochlear implants; therefore, this is one of STUDENT's unique needs. The Petitioner asserts that the Crown Valley program is not acoustically appropriate because the classroom is only partially carpeted, it has large windows without window coverings, it is located next to the kindergarten playground, and it has

a sound field amplification system that broadcasts Ms. Rowland's voice through four speakers located around the room. The District asserts that there are no acoustic problems with the Crown Valley room.

Carl Kirchner, the founder and director of the TRIPOD program upon which both Crown Valley and Rancho Viejo are modeled, testified that, although the room does have large windows, the acoustics in the Crown Valley classroom are not a problem. Audiologist Maria Abramson testified that the use of a sound-field amplification system is appropriate with children with cochlear implants. Audiologist Carol Atkins agreed with this opinion, testifying using a sound field amplification system ensures that the instruction signal is louder than background noise. Ms. Atkins did not express any concerns about using such a system with children with cochlear implants. With respect to the issue of noise from the kindergarten playground, the preschoolers have their recess with the kindergartners, so any noise from the playground would not disrupt the class.

The Hearing Officer finds that there is no evidence that there are acoustic problems with the Crown Valley classroom. Moreover, the professionals testifying at the hearing agreed that use of a sound field amplification system is an appropriate measure to ensure that the DHH children hear the teacher's instructions above any background noise. Therefore, the Hearing Officer finds that the District's placement meets STUDENT's need for an acoustically appropriate facility.

2. "Available staff who are knowledgeable about, and trained to monitor and maintain, STUDENT's cochlear implant."

The evidence established that STUDENT has had significant technical difficulties with his implant, resulting in long periods of time when he was "off the air." (Testimony of MOTHER, Ms. Hiland; Pet. Exh. 142.) It is undisputed that STUDENT needs to have his implant working to be able to perceive any sound at all. Therefore, the Hearing Officer finds that STUDENT's needs include staff who are trained and able to monitor his implant and perform basic troubleshooting when problems arise, including ensuring that the various external components and wires are functioning.

Petitioner asserts that Ms. Rowland, Ms. DeLany, and Ms. Abramson do not have the experience necessary to properly monitor and maintain STUDENT's cochlear implant. Ms. Rowland's experience with the Clarion cochlear implant is limited to her five months of experience with STUDENT and STUDENT 1 at Rancho Viejo, although she had prior experience with children with other brands of implants. Ms. Rowland testified that she went to the House Institute with the PARENTS for STUDENT's initial mapping (Footnote 7) and that she knew how to ensure that the external units were clean and dry and that the batteries were charged. Mr. Davino also visited the House Institute with STUDENT and testified that he had been trained to do the Ling sound check to make sure STUDENT can hear. Ms. Atkins testified that staff can be trained in about an hour to do equipment checks. The other professionals who would be consulted with regarding the functioning of STUDENT's implant in the Crown

Valley class are Ms. DeLany and Ms. Abramson. These professionals would also be expected to troubleshoot if the implant was not functioning properly. Ms. DeLany has worked with many preschoolers, but none had cochlear implants. She has worked with older children with cochlear implants, but has no experience with the Clarion implant. Ms. Abramson testified that she has not had any experience with children under 3 ½ with implants and has not been trained in working with the Clarion implant, but she has worked with other brands of implants.

The Hearing Officer finds that Ms. Rowland and Mr. Davino have sufficient experience and could be trained to do the basic functional monitoring that would be expected from the classroom teacher. The Hearing Officer also finds that the professionals with whom the teachers would consult in the event of problems, Ms. DeLany and Ms. Abramson, have the basic knowledge necessary to serve STUDENT and should be able to learn how to monitor and operate his implant. The service providers working with STUDENT at Rancho Viejo may have more experience, but the District is not obligated to provide the best services available. Although the Petitioner asserts that the Clarion implant is different from other brands, there was no evidence that a person with experience with other implants would not be able to learn how to work with the Clarion.

For these reasons, the Hearing Officer finds that the District placement meets STUDENT's need for monitoring of his implant, so long as the staff receive training in how to work with the Clarion implant.

3. "An educational environment where STUDENT's primary mode of communication, SEE, is used throughout the day by STUDENT's peers and school staff."

There is no dispute that STUDENT needs a class in which SEE is used by both his peers and the staff. (Testimony of Ms. Frazee, Mr. Blinn, Ms. Atkins, Ms. Hiland.) The Petitioner asserts that, although Ms. Rowland and Mr. Davino use SEE throughout the day at Crown Valley, the children who would be STUDENT's peers do not.

As of November 1997, the Crown Valley class consisted of seven hearing children and two DHH children. One DHH child is the four-year-old son of Ms. Contreras, who worked at Rancho Viejo as a signing aide. Ms. Contreras testified that her son signs in SEE and that his sign skills are comparable to STUDENT's. Ms. Contreras stated that she had no concerns about her son's ability to communicate with his peers at Crown Valley. The other DHH child is almost three. She had no language as of June 1997, but has made progress in learning SEE since then. (Testimony of Ms. Rowland, Mr. Davino.) Significantly, one child in the class is the hearing child of deaf parents and communicates primarily in sign, using English word order but not all of the markers and endings of SEE. Ms. Rowland and Mr. Davino sign constantly to both the hearing and the DHH children and have structured sign language lessons a few times per week. Mr. Davino testified in October 1997 that the hearing children at Crown Valley have better sign skills than the hearing

children at the Rancho Viejo program had after a similar amount of time in the program.

While the ideal situation for STUDENT would be to have both DHH and hearing peers who can sign as well as or better than he, it is very difficult, at his age, to find such a group. Moreover, the District is not obligated to create such an ideal situation. Rather, it must provide a basic floor of opportunity. The Hearing Officer finds that, as of November 1997, there are DHH peers at Crown Valley who sign in SEE, and that the hearing peers in the program are developing SEE skills that will enable them to communicate with STUDENT. Therefore, the Hearing Officer finds that the District's placement meets this need.

4. "Systematic presentation of language, listening, auditory and speaking skills."

The Petitioner does not dispute that the District's placement meets this need.

5. "Auditory habilitation to learn that sounds have meaning and function."

The Petitioner does not dispute that the District's placement meets this need.

6. "Ongoing communication between the audiologist and speech and language specialist providing direct services in speech and language development and auditory habilitation."

It is undisputed that the audiologist and speech and language specialist working with STUDENT need to communicate about his program and needs. (Testimony of Ms. Frazee, Ms. Hiland, Ms. Atkins.) It is the amount of time required for these consultations and direct services that is in dispute. Ms. Atkins testified that STUDENT needs fifteen minutes per day of audiological services for both direct and consultative services. However, she also testified that STUDENT is doing well with the level of services he receives from her now, which amounts to approximately twelve minutes two times per week (Ms. Atkins comes to Rancho Viejo two hours per week to serve five DHH children).

The District is proposing that STUDENT receive up to one hour per week of audiological services to monitor equipment functioning and up to one hour per month for consultation with the parents and teachers. If both maximums were reached, STUDENT would be receiving the equivalent of almost fifteen minutes of audiological services per school day. However, without any minimums specified, STUDENT could be receiving no audiological services at all from the District, as occurred from February to October 1997. The Hearing Officer notes that, although audiologist Ms. Abramson was supposed to be providing audiological services to STUDENT since his implant, her contact with the family and his teachers has been sporadic at best, and was nonexistent from February through October 1997, other than a brief evaluation. During that period of time, STUDENT was having significant problems with his implant during school hours, and Ms. Abramson was not checking with his family or

the school staff to see if her services were needed. Moreover, much of the information she has provided to the family has been in the form of brief, superficial “contact sheets” that were not tailored to serve STUDENT’s unique needs and provided information that this well-informed family had already obtained on their own. (Testimony of MOTHER; Pet. Exh. 161, 163.) In the May 1997 evaluation, Ms. Abramson recommended audiologic consultation with the classroom teacher, but there was no evidence that she has ever done that with STUDENT’s teachers. (Resp. Exh. 15.)

The Petitioner asserts that because Ms. Abramson visits Crown Valley only once per week the District’s program does not provide appropriate levels of audiological services or an opportunity for the audiologist and the speech and language specialist to consult. However, Ms. Abramson testified that she could adjust her schedule to serve STUDENT at Crown Valley, if the PARENTS choose to enroll him there.

The Hearing Officer finds that the Crown Valley class does provide an appropriate opportunity for the audiologist and speech and language specialist to communicate. The Hearing Officer also finds that the maximum levels of audiological services offered by the District are appropriate, but, based upon the extensive difficulties he has had with his implant, STUDENT needs a minimum of two contacts per week from an audiologist in the class. Therefore, the level of audiological services offered by the District does not meet STUDENT’s needs because there is no minimum level of services specified.

7. “An environment in which the physical limitations imposed by STUDENT’s cochlear implant are addressed.”

There is no dispute that STUDENT has some physical limitations because of his cochlear implant. STUDENT must be protected from magnetic fields and static electricity because they can erase the programming in his microprocessor. Therefore, STUDENT cannot use a computer screen that does not have a static guard, go down a plastic slide, or use other plastic equipment. The Petitioner asserts that the District’s placement does not accommodate his physical limitations because the Crown Valley playground has a plastic slide, and the classroom is equipped with plastic chairs. The District employees testified that they researched removing the plastic slide, but that it is part of a larger play structure built by a company that is no longer in business. It was not clear whether the District had abandoned the idea of removing that slide.

Protecting STUDENT’s cochlear implant is a serious issue. If his implant is not functioning, he cannot receive a sound signal. The testimony clearly established that the static electricity generated by going down a plastic slide could wipe out the programming in his processor, requiring it to be re-mapped before STUDENT could receive a sound signal again. While STUDENT may be able to regulate himself when he gets older and understands the importance of not going down certain types of slides, it is not realistic to expect a three-year-old to do so. The plastic slide at issue is part of a large play structure, and STUDENT would have to be excluded from using that structure entirely to ensure that he does not go down the slide. Even with supervision, the number

of children on the playground at a time (the preschoolers and the kindergartners) make it likely that STUDENT could elude the adults and use the slide. Therefore, the Hearing Officer finds that so long as the plastic slide remains in place on the Crown Valley kindergarten playground and the plastic chairs remain in the classroom, the District's placement does not meet STUDENT's need to be in an environment that addresses the physical limitations of his implant.

8. "An educational program which provides for the enrollment and education of hearing children side-by-side with those who are deaf or hard of hearing."

It is not disputed that a co-enrollment program is appropriate for STUDENT. However, the Petitioner asserts that the District's placement is not an appropriate co-enrollment program because very little child-to-child interaction was seen on the video of the program (Dist. Exh. 44) or when the parties viewed the program site with the Hearing Officer. The Petitioner argues that either the program offered or the communication skills of the children must be lacking. The Hearing Officer finds that it is not fair to draw conclusions about the level of interaction among the children based only on the brief video segment and the even more brief observation. Both the taping of the video and the presence of several additional adults in the room made those circumstances less than typical. The testimony from those who work in the Crown Valley program on a regular basis established that the children communicate with each other normally, and that the hearing children are learning to sign and communicate with the DHH children, as discussed above. (Testimony of Ms. Rowland, Mr. Davino.) Therefore, the Hearing Officer finds that the District's placement meets STUDENT's need for a co-enrollment program.

9. "Opportunity for siblings to be part of the deaf student's educational environment."

Carl Kirchner testified that an important part of the TRIPOD program is that hearing siblings of DHH students are also allowed to attend the program. This policy allows the hearing siblings to learn how to communicate with the DHH child. Ms. Hiland and MOTHER testified that having SISTER participate in a total communication program with STUDENT has dramatically improved their relationship. SISTER can now communicate with STUDENT and can even interpret what he wants to their parents.

Although the evidence did establish that one of STUDENT's needs is to be able to communicate with his siblings, it did not establish that the need must be met by having them participate in the total communication environment. The District asserted that it serves this need by allowing children to attend the adult sign language classes. District staff also testified that Crown Valley Elementary School has adopted sign language as its second language and that teachers are beginning to use sign as part of the regular curriculum for the elementary school children. However, it was clear from the evidence that the District's sign language classes are designed for adults, not children. Moreover, MOTHER testified that STUDENT's older brother, BROTHER, attends Crown Valley and has never brought home any information about sign language being used or taught at the school. Therefore, the Hearing Officer finds that the District's

placement does not meet this need because it does not provide sibling sign language classes and there is no evidence that sign language is being used or taught in the regular education classes at Crown Valley.

10. "Co-teaching by regular education and deaf education teachers."

In the closing brief, the Petitioner argued that co-teaching is a need that must be met because the TRIPOD model involves regular education teachers with experience with non-deaf children. However, when asked to list STUDENT's needs, both Ms. Hiland and MOTHER identified a DHH teacher and a signing aide as being the essential staff. Neither indicated that they believed STUDENT also needed instruction from a regular education teacher. Therefore, the Hearing Officer finds that the evidence did not establish that co-teaching is one of STUDENT's special education needs that must be met by the District's placement.

11. "Deaf/Hard-of-Hearing adult role models."

Again, while having DHH adult role models available would be helpful to STUDENT, the evidence did not establish that it was one of his unique educational needs. In fact, although both the District and Rancho Viejo administrators expressed interest in having DHH adult role models involved in the programs, neither program has done so yet.

12. "All-day program."

The Petitioner does not dispute that the District's placement meets this need.

13. "Regular education Montessori curriculum."

The Petitioner does not dispute that the District's placement meets this need.

14. "Total communication environment."

There is no dispute that STUDENT needs a total communication environment in which both SEE and spoken English are used throughout the day. The Petitioner argues that the District placement provides only a partial total communication environment because not all the children in the program use SEE sign. For the same reasons set forth in number 3 above, the Hearing Officer finds that the District's placement meets this need.

15. "Both SEE sign and spoken English are used by all staff."

The Petitioner does not dispute that the District's placement meets this need.

16. "Sign language training for parents and extended family members."

California Education Code section 56441.2 provides that special education programs for children between the ages of three and five "shall include specially designed services to meet the unique needs of preschool children and

their families.” (emphasis added) The evidence established that STUDENT’s needs include sign language training for his parents and family members. The Petitioner asserts that the classes offered by the District are only one hour long and are not appropriate for children. The Petitioner also argued that the PARENTS need child care so that they will be able to attend the classes.

At STUDENT’s IEP, the District offered 1 ½ hours of sign language classes per week. The testimony at the hearing established that although the PARENTS object that even 1 ½ hours is not enough, the District is currently providing only one hour or less per week. Moreover, the testimony also established that the classes are taught at an adult level and are not appropriate for STUDENT’s siblings. MOTHER testified that she brought BROTHER, STUDENT’s older brother, to the intermediate class she attends. BROTHER was not able to focus for the entire hour on the intermediate level, adult-oriented instruction. BROTHER needs a beginner class, but could not attend that class without his parents. The PARENTS attempted to resolve their child care problems by bringing the children with them to the intermediate class, but having the younger children present during the class was distracting and disruptive. The PARENTS testified that in the past they attended sign language classes at Taft School in Santa Ana, where there were sibling sign classes and child care provided.

The District argued that children were welcome at the sign language classes, but there was no evidence that the classes would be designed to teach those children to sign. MOTHER testified that the children she observed in the beginner class were coloring rather than attending to the instruction. With respect to the child care issue, the District asserted that the child care program at Taft was provided on a volunteer basis by a parent group, not by the District. However, there was no testimony that the District has made any attempts to set up a similar volunteer child care program for its own sign classes.

The Hearing Officer finds that the sign language classes provided do not meet STUDENT’s needs. The classes provided are at least one-half hour shorter than specified in the IEP. Moreover, the classes do not provide appropriate sign instruction for STUDENT’s siblings. With respect to child care, the Petitioner has not presented any legal support for the proposition that the District must provide child care during the sign language classes. Therefore, the Hearing Officer finds that the District is not required to provide child care.(Footnote 8)

17. “Speech and auditory training are incorporated into the regular curriculum.”

Having speech and auditory training incorporated as part of the class is a component of the TRIPOD model, and there is no dispute that it should be a part of STUDENT’s program. The Petitioner asserts that speech and auditory training are not part of the Crown Valley curriculum based upon Ms. Rowland’s journal entries regarding including speech therapy in the classroom at Rancho Viejo and the fact that Ms. DeLany’s schedule does not allow her to consult with Ms. Rowland. However, Ms. DeLany uncontroverted testimony established that she works with the teacher to coordinate speech therapy activities with those of the class and that she currently provides speech therapy

in the class as part of the normal Montessori work time and other classroom activities. Therefore, the Hearing Officer finds that the class at Crown Valley incorporates speech and auditory training into the regular curriculum and meets STUDENT's need in that area.

18. "A safe environment."

A safe environment is not specifically a special education need that is unique to STUDENT; rather, it is a need for all preschoolers. The Petitioner asserts that Crown Valley is not a safe environment because there is only one exit from the class, there is no sprinkler system, and a large recycling dumpster is located next to the classroom. At the hearing, the PARENTS also expressed concerns that there were no flashing lights for the fire alarms, there was no emergency release bar on the exit door from the class, and the gate from the playground to a busy street was ajar. After the PARENTS testified about these concerns, the District installed a flashing fire alarm and an emergency release bar and fixed the gate. However, the Petitioner maintains that Crown Valley is still an unsafe environment.

The Hearing Officer finds that Crown Valley is a safe environment for a preschool program. No location is perfectly safe, particularly where preschoolers are concerned. Close adult supervision is the key to preventing accidents. The recycling dumpster may appeal to a young boy who likes to climb, but it is located at the end and slightly back from the front of the building, and the children would not be walking or playing directly in front of it. The Hearing Officer is confident that having 2-4 adults for a group of 9-10 children provides sufficient supervision to prevent the children from wandering away from the playground or class to climb on the dumpster. With respect to any fire hazards, the Petitioner has not cited any violations of safety code requirements that would designate the classroom as unsafe. The class is small and there are sufficient adults in attendance to assist the children in exiting, either through a door or a window, in the event of an emergency. Although the Hearing Officer is concerned that the District did not notice or consider it necessary to change the other safety problems identified by the PARENTS until they were brought up in the hearing, as it exists now, Crown Valley meets STUDENT's need for a safe environment.

19. "Restroom facilities close at hand."

It is undisputed that STUDENT is not yet toilet-trained, and is in fact slightly behind his age group in acquiring that skill. FATHER testified that when STUDENT indicates that he needs to use the bathroom, he must get to a bathroom within thirty seconds to avoid an accident. Therefore, the Hearing Officer finds that STUDENT needs to have readily accessible toilets close to his classroom.

The Crown Valley preschool class has no toilets in its building. To use the restroom, the children must travel, with an adult, across the kindergarten playground, into one of the kindergarten classrooms, and across that classroom to the toilets. In each of the two kindergarten rooms there are two toilets, one

for boys and one for girls. These four toilets are used by the kindergartners as well as the preschoolers. If these toilets are in use, the preschooler could travel further to the main office building to use the toilet there. Although the Crown Valley staff testified that there have been no problems with toileting, they also testified that all of the children in the class are toilet-trained.

The Hearing Officer finds that the District's placement does not meet STUDENT's toileting needs. The distance to the toilets from the class is too great, and there are not enough toilets to ensure that one will be available when STUDENT needs it.

20. "An educational program in which PARENTS are actively involved in a trusting relationship with the program staff and administrators."

Special education law specifically provides for the involvement of the parents in developing a child's special education program. However, it does not dictate that parents must have a good relationship with school district staff and administrators. The PARENTS have worked tirelessly to ensure that STUDENT obtains the services he needs and have demonstrated an ability to remain cordial in the face of conflict. In fact, without the PARENTS' urging, the District may not have developed a special preschool program to serve DHH children. The PARENTS may legitimately feel that the District staff have not been as responsive as they should have been, particularly in providing stay put services, as will be discussed below. However, the PARENTS' dissatisfaction with the District staff is not one of STUDENT's needs that must be addressed by his special education program.

21. "Teachers and other staff who are familiar with, and capable of meeting, STUDENT's personality and developmental needs of a preschool child such as STUDENT."

There was no evidence that STUDENT has unusual personality or developmental needs. In fact, the witnesses consistently testified that STUDENT is a happy, well-adjusted little boy, who needs special education services due only to his deafness, not to any academic or developmental deficits. Thus, this is not a unique need that the District must meet. (Footnote 10)

22. "Year-round program."

The District acknowledges that STUDENT is entitled to receive extended school year services, but asserts that the twenty-day program offered at Crown Valley is sufficient to meet his needs. The Petitioner asserts that STUDENT should have no more than a two-week break from special education services during the summer months.

Ms. Hiland testified that there is a critical window of opportunity for language learning during the first three years after a child receives a cochlear implant. During that time, the child must have intensive, continuing speech therapy and auditory habilitation without any significant breaks. The evidence also included

reports of STUDENT regressing in his speech and language skills when he had a break from his speech therapy. (Pet. Exh. 133.) The District witnesses who contradicted Ms. Hiland's recommendation testified that STUDENT did not need a year-round program because he had sign language support at home with his parents. (Testimony of Ms. Rowland, Mr. Davino.) However, the District did not put on any evidence to contradict Ms. Hiland's testimony about the unique needs of children who have recently received cochlear implants. The Hearing Officer finds that Ms. Hiland's opinion of STUDENT's needs is more compelling than that of the District witnesses. Ms. Hiland is the professional who has had the most consistent contact with STUDENT, as well as the one witness who has had the most extensive experience working with preschoolers with cochlear implants. Therefore, the Hearing Officer finds that STUDENT needs to receive speech therapy, including auditory habilitation, for the entire summer, with no more than a two-week break.

The evidence also established that STUDENT needs constant monitoring of his cochlear implant because if it is not working, he gets no sound signal at all. Thus, the Hearing Officer finds that STUDENT needs audiological services for the entire summer, with no more than a two-week break. The evidence did not establish, however, that STUDENT requires a full academic classroom program for that same time period.

The Hearing Officer finds that the District placement does not meet STUDENT's extended school year needs in that it does not provide for speech and language therapy and audiological services to continue through the summer with no more than a two-week break.

In summary, each of the elements of the program the District offered shall be examined below to determine the extent to which they meet STUDENT's needs:

- The Crown Valley Montessori preschool class co-enrolled with DHH and hearing children, taught by a DHH teacher and a signing aide in total communication using both voice and SEE sign: While the Crown Valley class meets STUDENT's needs described in numbers 1, 2, 3, 4, 5, 6, 8, 12, 13, 14, 15, 17, and 18. However, it does not meet two critical environmental needs described in numbers 7 and 19: it has a plastic slide and chairs and the toilets are too far away from the classroom. Neither of these inadequacies is permanent, however. The District should be able to replace the slide and chairs and provide temporary toilets next to the classroom until STUDENT is toilet-trained. Therefore, the Hearing Officer finds that, when the plastic slide and chairs are removed and appropriate toilet facilities are provided, the Crown Valley class will meet STUDENT's needs.
- Five one-hour speech therapy sessions per week provided by Lisa DeLany: There is no apparent dispute about the appropriateness of the level of speech therapy, but the parents did object to the indication on the IEP that the services would be provided through December 1997 only. Ms. Lohnes testified that the

date limitation was set so that the need for that level of services would be reviewed in December 1997. There was no evidence that STUDENT would need less speech therapy after December. In fact, Ms. Hiland's testimony established that he would continue to need intensive therapy for the first three years after receiving his implant and that he would need speech therapy throughout the summer. Therefore, the Hearing Officer finds that the level of speech therapy specified in the IEP meets STUDENT's needs, but the duration of the therapy does not.

- Audiological services provided by Maria Abramson up to one hour per week to monitor equipment functioning and up to one hour per month to consult with parents and teachers: The Hearing Officer finds that this service, as written, does not meet STUDENT's needs described in numbers 6 and 22 because it allows the District to avoid providing any audiological services at all, as has happened for extensive periods in the past.

- Two hours per month of parent education: Although the parents expressed some dissatisfaction with the vagueness of this service, there was no argument presented in the closing brief that it does not meet STUDENT's needs.

- One and one-half hours per week of sign language classes: Although this level of sign class may serve STUDENT's needs, the Hearing Officer finds that the sign language classes provided do not because they were one hour or less per week. Moreover, the sign language classes do not include sibling classes, and thus do not meet STUDENT's needs as described in numbers 9 and 16.

- A twenty-day extended school year program: The Hearing Officer finds that a twenty-day extended school year program is not sufficient to meet STUDENT's needs described in number 22. In addition to a twenty-day academic program, STUDENT needs speech and language therapy and audiological services to continue through the summer with no more than a two-week break.(Footnote 10)

(B) Was the District's placement designed to provide educational benefit to STUDENT?

The Petitioner did not argue that the District's placement would not provide general educational benefit to STUDENT. In fact, the Crown Valley program is designed to provide him educational benefit. It has a Montessori curriculum that will meet his academic needs, and speech and language therapy that is incorporated into the classroom. Moreover, Ms. Rowland and Ms. DeLany testified that they could implement his IEP and work on all his goals and objectives in the Crown Valley program. The Hearing Officer finds that the failure of the District's program to meet some of STUDENT's physical needs or his need to have his siblings learn sign language does not negate the fact that STUDENT would acquire some educational benefit from the academic and speech and language program. As such, the District's placement meets the Rowley standard.

(C) Did the District's placement conform to STUDENT's IEP?

The District's placement, as written, conforms to all of the elements of STUDENT's IEP with which the parents agree. However, the sign language classes provided do not conform to the IEP.

Based on the above analysis, the Hearing Officer finds that the District did not fully provide a free appropriate public education to STUDENT from June 30, 1997, to the present because the Crown Valley program does not yet meet certain of STUDENT's physical needs, the level of audiological services provided was not appropriate, the length of the sign language classes was not appropriate, sibling sign language classes were not provided, and the extended school year program did not provide for speech and language therapy and audiological services to continue through the summer with no more than a two-week break.

2. What is an appropriate program and placement for Petitioner?

The Petitioner is seeking a finding that the appropriate placement for him is at the Rancho Viejo School, with speech and language services provided by Ms. Hiland and audiological services provided by Ms. Atkins. However, it is undisputed that Rancho Viejo School is not a certified nonpublic school pursuant to California Education Code section 56366.1. Therefore, pursuant to California Education Code section 56505.2, the Hearing Officer may not render a decision resulting in placement at Rancho Viejo School. Although the Supreme Court found in *Florence Co. School Dist. Four v. Carter*, (1993) 114 S.Ct. 361, that such lack of certification did not preclude reimbursement for services provided in the past, that decision does not allow an order for prospective placement at an uncertified school when state law prohibits such an order.(Footnote 11)

Moreover, the defects in the District's placement are easily remedied. If the District removes the plastic slide and chairs from the Crown Valley program and places temporary toilet facilities next to the classroom, the preschool class at Crown Valley will be appropriate for STUDENT. Additionally, the District's placement will be appropriate if the District modifies STUDENT's IEP to include the following related services at the levels specified:

- five hours per week of speech therapy by a speech and language specialist who is familiar with the needs of children with cochlear implants.
- at least two contacts per week in class with an audiologist with experience with cochlear implants. The upper limits on these services proposed by the District are appropriate.
- two hours per month of parent education.
- at least 1 ½ hours per week of sign language classes, including sign classes for both adults and children.

· extended school year services that include speech therapy and audiological services for the entire summer, with no more than a two-week break, as well as a twenty-day extended school year classroom program.

3. Is Petitioner entitled to compensatory services as a remedy for Respondent's failure to provide services since June 30, 1997, in accordance with his March 3, 1997, IFSP and the March 20, 1997, Settlement Agreement?

The Petitioner asserts that he is entitled to compensatory education services due to the District's failure to provide the services required by stay put. Specifically, the Petitioner identifies the following services that the District failed to provide:

- (a) No DHH teacher provided from April 1997 through November 12, 1997.
- (b) Parents have not received three hours of sign language classes per week, day care during the sign language classes, and sibling sign classes.
- (c) No audiological services provided after June 30, 1997.(Footnote 12)

The District argues that compensatory education is available as a remedy only if the District failed to provide the Petitioner with a FAPE and that the conduct of the parents on the issue of the DHH teacher must be considered in determining whether compensatory education is appropriate.

The Supreme Court in *Burlington School Committee v. Massachusetts Dept. of Education*, (1985) 471 U.S. 358, concluded that parents may be compensated for expenses they have incurred in educating their child when the school failed to provide an appropriate program. Court decisions subsequent to *Burlington* have extended relief in the form of compensatory education to students who have been denied a FAPE. (See, e.g., *Lester H. v. K. Gihool and the Chester Upland School District* (3d Cir. 1990) 916 F.2d 865, *Miener v. State of Missouri* (8th Cir. 1986) 800 F.2d 749.) Courts that have adopted compensatory education as a remedy to children whose rights to a FAPE have been violated by a school district have traditionally analyzed the issue in terms of whether the violations resulted in a loss to the child in skills or educational opportunity. Therefore, it must first be determined whether the District violated STUDENT's rights and then whether the violations resulted in any loss of skills or educational opportunity.

The Hearing Officer finds that the District violated stay put and STUDENT's right to receive a FAPE by failing to provide a DHH teacher from June 30 through November 12, 1997, and by failing to provide audiological services after June 30, 1997. It is undisputed that the District did not provide a DHH teacher at Rancho Viejo during from April through November 12, 1997. The District asserts that the parents must bear responsibility for this failure because they rejected Ms. Rowland, the one DHH teacher the District had available. While this may be true for the period from April 12 through June 30, 1997, it is not true after that period because Ms. Rowland was teaching at the District program and was not available to provide services at Rancho Viejo. In fact, as

early as March 1997 the District was planning to remove Ms. Rowland from Rancho Viejo in June to start a District DHH program. Therefore, her placement at Crown Valley in June was not simply a result of the parents' request to remove her. Although the District claimed that it could not find a DHH teacher, the testimony at the hearing established that other local publicly operated DHH programs successfully recruited and hired several DHH teachers during the same time period. (Testimony of John Levy.) Moreover, the PARENTS did not receive any audiological services from the District after June 30, 1997. The Hearing Officer finds that the one-page contact sheet Ms. Abramson sent the PARENTS in October 1997 did not rise to the level of audiological services.

With respect to the sign language classes, it is undisputed that since June 30, 1997, the parents have not received three hours per week of sign language classes, the District has not provided child care during the sign classes, and there have not been special sibling classes. The District asserts that the siblings are welcome to come to the beginning class. However, the parents are beyond the beginning class, and the children would not be able to attend that class alone. Moreover, the Hearing Officer is not convinced that having the siblings attend an adult signing class properly serves STUDENT's needs. However, the IFSP of March 3, 1997, which establishes the stay-put program, requires only that the District to provide up to three hours per week of sign language classes; it does not require the District to provide the maximum, nor does it provide for sibling signing classes or child care during the classes. Therefore, the Hearing Officer finds that the District has not failed to meet its stay-put obligation in this area, and STUDENT is not entitled to compensatory sign language classes.

One of the Petitioner's proposed remedies, reimbursement for audiological services provided by Carol Atkins, is more like a request for reimbursement than compensatory education. Ms. Atkins provided audiological services to STUDENT at a time when he was receiving no such services from the District, in spite of those services being listed in his IFSP and on his proposed IEP. Even though the parents had not agreed to the IEP, the District was obligated to provide the services listed on the IFSP pursuant to stay put. The District did not provide any audiological services to STUDENT after June 30, 1997, other than a one-page note from Ms. Abramson that the Hearing Officer cannot classify as audiological services. (Pet. Exh. 161.) Therefore, the parents are entitled to reimbursement for the services provided by Ms. Atkins from June 30, 1997, through the date of this decision.

As for the other remedies sought for the failure to provide a DHH teacher, it must be determined whether STUDENT experienced some loss of skills or educational opportunity as a result of those violations. Compensatory education is designed to compensate students for loss, not to punish school districts. The evidence established that STUDENT is progressing well and has already accomplished many of his goals and objectives. (Testimony of MOTHER, Ms. Hiland.) This progress was made in the absence of a DHH teacher. However, although there was no DHH teacher available, the parents' private service provider, Ms. Hiland, acted in many ways as a DHH teacher. She was present in the class most of the morning and often conducted the morning circle.

Fortunately for STUDENT, Ms. Hiland filled the gap the District left by failing to provide a DHH teacher, and STUDENT did not suffer a loss because of that failure. In the absence of a demonstrated loss resulting from the District's violation, STUDENT is not entitled to receive compensatory education.

ORDER

1. Within twenty calendar days of the date of this decision, the District shall remove the plastic slide from the Crown Valley kindergarten playground and the plastic chairs from the Crown Valley classroom, shall install appropriate portable or comparable toilet facilities adjacent to the Crown Valley classroom, and shall ensure that the audiologist and speech therapist who will serve STUDENT receive training in monitoring and troubleshooting the Clarion cochlear implant.

2. Immediately upon complying with the provisions described in number 1, above, the District shall convene an IEP team meeting for STUDENT. The IEP developed at that meeting shall provide for the placement at the Crown Valley preschool SDC and include the following related services:

a. Audiological services provided in the class at least two times per week, with up to one hour per week for monitoring equipment functioning and up to one hour per month for consultation with parents and teachers.

b. Five one-hour individual sessions of speech and language therapy per week, to continue for the duration of the IEP.

c. At least 1 ½ hours of sign language classes per week for both parents and siblings.

d. Extended school year services consisting of a twenty-day academic program and speech and language therapy and audiological services to continue through the entire summer with no more than a two-week break.

e. Two hours per month of parent education.

3. Upon receipt of documentation establishing the cost of Ms. Atkins' services to STUDENT, the District shall reimburse the PARENTS for the amount paid for those services.

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:

Issue 1: To the extent that the Crown Valley SDC is substantively appropriate for STUDENT, the District prevailed on this issue. To the extent that the level of audiological services, sign language instruction, and extended school year services were found to be inappropriate, the Petitioner prevailed.

Issue 2: To the extent that the Crown Valley SDC is substantively appropriate for STUDENT, the District prevailed on this issue. To the extent that the level of audiological services, sign language instruction, and extended school year services were found to be inappropriate, the Petitioner prevailed.

Issue 3: The District substantially prevailed on this issue.

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).

Date: March 3, 1998
Keltie Jones, Hearing Officer
California Special Education Hearing Office

Footnotes:

FOOTNOTES: 1) Petitioner argued that Issues One and Three should involve the services and placements the District has provided since June 1995. However, the Hearing Officer limited these issues to services and placements provided since June 30, 1997, when Petitioner turned three years old, because the Hearing Office's jurisdiction is limited to services provided under the Part B of the IDEA, which requires services to children starting at age three. Petitioner also presented an issue requesting reimbursement for SEE signing assistance, but the parties resolved that issue on the first day of the hearing. 2) SEE is a form of signing in English that varies significantly from American Sign Language (ASL), which is recognized as a separate language because of its unique word order and tense formations. SEE uses many signs from ASL and also modifies those signs to make a separate sign for each word. For example, one sign in ASL means both "part" and "some," while SEE modifies that sign to make separate signs for those two words. In addition, SEE uses special signs for prefixes, markers, and endings that indicate plurals and verb tenses. Signs in SEE are presented in English word order, not ASL order. Some of the witnesses at the hearing referred to what is described above as "SEE-2," distinguishing it from Seeing Exact English, in which each phonemic element of a word has a sign. Because most of the witnesses referred to the language used by STUDENT as simply SEE, that term shall be used in this decision. 3) A cochlear implant is a device that is implanted inside the ear with an electrode array that is placed inside the cochlea. There is an exterior headpiece that is held in place by a magnet implanted behind the ear. The headpiece picks up sound and transmits it through a cord to a microprocessor carried on the body. The microprocessor encodes the sound into electrical impulses that are transmitted back to the headpiece. The headpiece then transmits the electrical impulses to the implant by an FM signal, and the implant stimulates the

auditory nerve through the cochlea with the electrical impulses. The result is that the brain perceives the electrical impulses as sound. 4) The Petitioner alleged that procedural violations of not presenting a full continuum of options and not providing appropriate written notice of the proposal to change STUDENT's placement to Crown Valley denied him a FAPE so that analysis of whether the District's placement is substantively appropriate is not necessary. The evidence did not establish these procedural violations. The IEP of June 13, 1997, indicates that a nonpublic school was considered as a placement option, and the District provided written notice of its intent to serve STUDENT at Crown Valley at that IEP. 5) On the last day of hearing, Ms. Lohnes testified that the District may be contracting with a different speech and language specialist, Ms. Tammi Galley, to provide speech therapy to STUDENT. Although Ms. Galley's resume was admitted into evidence, there was no testimony from Ms. Galley regarding her experience and skills, nor was it clear that the District would indeed be engaging Ms. Galley to provide services. Therefore, this decision will examine only the appropriateness of the services to be provided by Ms. DeLany. 6) The District requested a finding that any objections to this program that the parents did not raise at the IEP of June 13, 1997, were waived. The District provided no legal authority for the proposition that all objections to a program must be made at the IEP. In fact, many due process hearings involve disputes about services in IEPs to which the parents previously consented. Failing to make an objection at an IEP meeting, particularly when the parents do not sign the IEP, does not forever waive the objection. 7) Mapping involves programming the microprocessor to encode sound into electronic impulses. 8) In conformance with this decision, the District must provide sign language classes for the siblings. Providing those classes at the same time as the adult classes would help alleviate the PARENTS' child care difficulties. 9) The Hearing Officer recognizes that the PARENTS have some concerns regarding Ms. Rowland based upon the frustrations she voiced in her journal and her interactions and conflicts with other staff at Rancho Viejo. However, the Hearing Officer also urges the PARENTS to consider that there were many adults with strong personalities working in close quarters at Rancho Viejo. That environment likely generated conflicts that would not recur under different circumstances. Although there was evidence that Ms. Rowland had significant difficulty teaching STUDENT 2, there was no evidence that she had any difficulties with STUDENT. Moreover, the testimony regarding Ms. Rowland's performance at Crown Valley demonstrates that she is a good, caring teacher with a good rapport with her co-workers and students in that program. 10) The alleged needs described under numbers 10, 11, 20, and 21 were found not to be needs that the District must meet. 11) Although it is not necessary to evaluate the appropriateness of the Rancho Viejo School, the Hearing Officer notes that Ms. Evans-Warkentien has gone to considerable trouble and expense to provide an environment that is suitable for DHH children. The Hearing Officer hopes that the District and SELPA can put aside past conflicts and find a way to work with Ms. Evans-Warkentien to ensure that DHH children benefit from her efforts and get the services they need. 12) The Petitioner also asserted a right to compensatory education due to the District's failure to provide a sign language aide from June 30 through late August. However, the District has already agreed to pay for Ms. Hiland's services as a signing aide during this period of time, so this point is

moot.

[New Search](#)