

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS on behalf of STUDENT,

v.

ESCONDIDO UNION HIGH SCHOOL

DISTRICT.

OAH CASE NO. 2009030297

DECISION

Administrative Law Judge Robert F. Helfand, Office of Administrative Hearings, Special Education Division (OAH), State of California, heard this matter in Escondido, California on May 5, 6, and 7, 2009. Oral closing arguments were held telephonically on May 8, 2009.

Student was represented by attorney Eric B. Freedus. Student's father (Father) was present throughout the hearing. Student also attended the hearing on May 5 through 7, 2009.

Escondido Union High School District (District) was represented by attorney Ricardo J. Soto. Susan Davis, Director of Special Education, was also present during the hearing.

Parents filed their request for due process hearing on March 5, 2009. The matter was submitted on May 8, 2009. The parties have stipulated that the decision by OAH is due on June 15, 2009.

The following witnesses testified during the hearing: Susan Davis, Connie Absher, Patricia Phillips, Mike Hardie, Pam Walker, Fred Marasco, Student's mother (Mother), Student, Father, Matt Gonzales, Brady Clay, Maria Sanchez, and Ken Walker.

ISSUE¹

Did the District deny Student a free appropriate public education (FAPE), from March 5, 2007 through September 20, 2007, by failing to fulfill its child find obligations in violation of the Individuals with Disabilities Education Act (IDEA)?

PROPOSED RESOLUTION

Parent's proposed resolution is that Parents be reimbursed for the cost of Student's nonpublic school placement from June 23, 2007 through September 20, 2007, when Student became eligible for special education services.

CONTENTIONS OF THE PARTIES

Student contends that during the time period March 5, 2007, until September 20, 2007, when Student was found eligible for special education, the District failed in its child find obligations under the IDEA when it failed to specifically identify Student as being eligible for special education and related services under the category of Emotionally Disturbed by March 5, 2007. Student therefore asserts that her parents are entitled to reimbursement for all costs they incurred for her residential placement.

The District responds that it did not fail to meet its legal obligations to Student as there was no reason for it to believe that Student had a disability during the 2006-2007 school year.

¹ The issues have been re-framed for the purposes of this decision.

FACTUAL FINDINGS

JURISDICTIONAL FACTS

1. Student was born on March 21, 1990, and resides with her family within the District. On September 20, 2007, Student was made eligible for special education services under the eligibility category of emotional disturbance. Student attended Escondido High School starting in school year 2004-2005 through school year 2006-2007. She attended a nonpublic school, Provo Canyon School (Provo) from June 23, 2007 through February 23, 2008. Student received her high school diploma in June 2008 from the District.

THE 2004-2005 AND 2005-2006 SCHOOL YEARS

2. Student entered her freshman year at Escondido High School (EHS) during school year 2004-2005. She earned a grade point average (GPA) of 4.50 during her first semester and a second semester GPA of 4.33 while taking Beginning Dance, Biology, English, Geometry, Physical Education, and World Cultures. All of Student's academic courses were Honors courses. She was also the captain of the school's freshman team in the Academic League.²

3. During her sophomore year, Student took Honors Algebra II, Advanced Placement (AP) European History, AP Psychology, AP Chemistry, Honors English, and Spanish I. AP students are considered the best students and are the most competitive and dedicated. AP courses are college level and AP students are treated as college students by the teachers; i.e., they are permitted to exit the classroom without

² The Academic League is an association of high school teams which compete in a question-and-answer match testing scholastic knowledge. The season would begin around the first of February and end at the end of March.

permission to go to the rest room. Student's GPA was 4.33 for the first semester and 3.83 for the second. Student was a competitive student who strived to enter Harvard University. She also developed close relationships with many of her teachers and a school counselor, Pam Walker,³ because of her friendliness and bubbly demeanor. She continued to participate in the Academic League on the school's Junior Varsity (JV) team.

4. During the second semester of her sophomore year, Student started sliding into a depressed state and began consuming alcohol secretly. Student began to lose interest in the Academic League and would rarely attend practices. Patricia Phillips, the JV team faculty coach and Student's freshman English teacher, noted that she started acting "silly" during the rare times she attended practice. Though she did well scholastically, Student fell one grade level to a "B" in AP European History, Chemistry, and Spanish I.

FIRST SUICIDE ATTEMPT

5. On July 1, 2006, Student's depression worsened and she attempted suicide by ingesting over-the-counter medication. She was hospitalized at Sharp Mesa Vista Hospital from July 2 through 11, 2006. At discharge, Student was released to out-patient care and placed on psychotropic medication. Student was diagnosed as suffering from major depressive and anxiety disorders.

NOTIFICATION TO SCHOOL COUNSELOR

6. Student contends that the District should have known of Student's precarious emotional state prior to the commencement of the 2006-2007 school year when Mother informed Walker, of the July 2006 attempted suicide, resulting

³ Student was actually assigned to a different counselor, Connie Absher.

hospitalization, and current treatment prior to the commencement of the 2006-2007 school year. The District maintains that it was unaware of Student's emotional difficulties as Mother only stated a desire that Student take a lighter academic load to reduce stress.

7. Prior to the start of Student's junior year, Student's parents (Parents) became concerned about the academic stress that she was under because of the number of AP courses she was taking in light of her attempted suicide and related psychological problems. Because of Student's relationship with Walker, Mother telephoned Walker to see if she would assist in getting Student to agree to lighten her load by taking college prep courses in lieu of many of the rigorous AP classes.

8. Mother testified that she contacted Walker in August 2006 because of Walker's close relationship with Student, who Walker was assisting in her preparations to attend Harvard. Mother informed Walker of Student's attempted suicide and subsequent hospitalization and treatment as well as the fact that Student was currently taking psychotropic medication. Mother asked that Walker help convince Student to take a lesser academic load to reduce Student's anxiety and stress over academics. She also requested that Walker contact teachers, monitor Student at school and keep Parents informed of any "red flags" which might emerge. Mother states that Walker agreed. Mother estimated that the telephone conversation lasted approximately 30 minutes.

9. Walker testified that she had a friendly, casual relationship with Student. She estimates that they had infrequent casual visits during Student's freshman and sophomore years, which totaled less than 10. Walker recalls two brief telephone conversations with Mother which dealt with Student taking a lesser academic load because Student was overloaded. Later, she did admit that the reason that Mother phoned her, rather than Student's assigned counselor, Connie Absher, was because of

Walker's close relationship to Student. Walker failed to recall any details of the conversations, but believes she told Mother that either Mother or Student should inform the assigned counselor who could make the desired changes to Student's junior year schedule. Absher testified that Walker never informed her of the conversation with Mother; and that she did not know Student had attempted suicide, was under the care of a psychologist, or taking psychotropic medications.

10. Student corroborated Mother's testimony. She was informed by Mother that she intended to call Walker. Student knew that Mother was calling Walker because she was a mentor of Student's whom she would often visit. Student was informed by Mother that she had spoken to Walker. During the first month of school year 2006-2007, Student visited with Walker where Student informed her that she had been hospitalized over the summer, was under the care of a psychologist and psychiatrist, and was currently taking psychotropic medication. Walker inquired about the reason for the hospitalization which Student avoided because the experience was still raw.

11. On June 26, 2007, Parents' educational consultant, Fred Marasco, delivered a letter to Susan Davis, District's special education director. Marasco wrote that "[i]n the fall of 2006, before the school year began, [Mother] contacted a counselor at her [Student's] school named Mrs. Walker. She told Mrs. Walker of the suicide attempts [sic] and indicated there were other acting out problems."

12. Davis did not dispute the assertion that Walker was informed of Student's suicide attempt at a June 26, 2007, meeting with Marasco and Parents. At the initial Individualized Education Program (IEP) meeting on September 20, 2007, no one from the District disputed the claim made in the Marasco letter, which was repeated at the IEP meeting, that Mother informed Walker of Student's suicide attempt in the summer of 2006.

13. The ALJ finds that Walker was notified by Mother and aware of Student's 2006 suicide attempt, her subsequent psychological treatment, and her being on psychotropic medication. In making this determination, the ALJ finds that Walker's testimony is not credible. Walker appeared nervous throughout her testimony and her scant recollection of the conversation with Mother seemed to demonstrate that she was being evasive. Her attempt to downplay the extent of her relationship with Student was impeached by her own admission that Mother called her because she did have a close relationship with Student. It is also unreasonable to believe that a parent, who is very concerned with the welfare of her child who had recently attempted suicide, would seek assistance from a school counselor and not inform the counselor for the basis of her concerns. The District never attempted to rebut the contents of the Marasco letter at the IEP meeting. Walker did not refute Student's testimony that shortly thereafter, Student told Walker of her experiences including her hospitalization, subsequent and ongoing treatment and her use of psychotropic medication. Thus, Walker is charged with knowledge of Student's psychological problems, which should have alerted her that Student was experiencing emotional difficulties.

DISTRICT'S CHILD FIND PROCEDURES

14. Under both federal and state statutes and regulations, school districts are required to locate, identify, and assess all children with disabilities who reside within the district. This requirement is commonly referred to as the "child find" obligation, and it extends even to children who are successfully completing each grade level. With respect to a specific child, a district's obligation arises when there is reason to suspect a disability and reason to suspect that special education services may be needed to address that disability. The initial inquiry is whether the district should refer the child for an assessment, not whether the child will ultimately qualify for services. The duty to

locate and identify a child who may need special education services rests with the district, not with the child's parents.

15. District guidelines require that when certified school personnel "recognizes an 'at risk' student, it is the responsibility of that person to refer that student to the Student Intervention Team."⁴ The term "at risk" is defined as: "Students who may have emotional, academic or behavioral problems that may interfere with success."⁵ The SST reviews the situation, determines what interventions are needed to assist the student within general education, or refers the student to the Special Education Department for evaluation of eligibility for special education services.

16. In practice, teachers are to notify a student's assigned counselor when they suspect that the student may be "at risk." Counselors also receive copies of all disciplinary referrals to the Assistant Principal, six week progress reports, and "D-F" letters.⁶ When the counselor determines that a student is "at risk," the counselor should then contact parents, interview the student, and, if appropriate, call for a SST meeting.

⁴ District Administrative Regulation AR6164.4 (Exhibit S-35). During the hearing, all District personnel testified that the Student Intervention Team is now referred to as the "Student Support Team" (SST).

⁵ Glossary of Terms in the Counselors' Handbook (Exhibit S-43)

⁶ Progress reports are issued on the sixth and twelfth weeks of each semester showing a student's current grades. "D-F" letters are computer notices sent to parents whenever a student's grade level is a "D" or "F."

STUDENT'S JUNIOR YEAR

17. In response to Mother's request that Student have a reduced school load, nothing was done. In fact, Student started her junior year with an even more rigorous schedule comprising four AP courses- Language Composition, Spanish, Statistics, and U.S. History.⁷ She also took Future Teaching in the first semester, where she tutored other students in Spanish. At the end of the first semester, Student maintained a 4.0 GPA with grades of A in AP Language Composition, B in AP Spanish, C in AP Statistics, A in Future Teaching, and a B in AP U.S. History. In Statistics, Student earned a B+ in the initial six week period and a B in the second six week period before receiving a final grade of C.

18. Because of the number of class period absences (14), the school's attendance clerk, Maria Sanchez, phoned Mother. After Sanchez found out that Mother had not been excusing these absences, she arranged a password with Mother so that Sanchez could be certain she was speaking to Mother and not Student. Sanchez never reported this to either Student's assigned counselor or the Assistant Principal.

19. Student was a Spanish tutor in Future Teaching under Matt Gonzales, an EHS English teacher, during the first semester of her junior year. Gonzalez found Student to be bubbly and energetic and one of the best tutors. Student would often visit her boyfriend who was in the AVID program.⁸ Student switched to becoming a teacher's aide for the second semester which was graded on a pass-fail instead of an actual letter grade.

⁷ Because Spanish II was cancelled, Student studied Spanish over the summer to enter AP Spanish, which was the equivalent of Spanish IV.

⁸ AVID is a program to assist students to become college prepared.

20. As her junior year progressed, Student testified that she increased her consumption of alcohol from three days per week to daily. Student would take a bottle or two of Propel, a clear energy drink, and refill the bottles with vodka. She would continuously sip the vodka throughout the day. She would often go with a friend to the parking lot during lunch and they would drink vodka. She stopped associating with her regular friends and started hanging out with the "bad kids." Student would forge excuses for absences or appear in class for attendance and then leave to go to the restroom and not return. She had sexual encounters with her boyfriend on campus, several of which were observed by school staff where she was involved in heavy petting and once with some clothes removed.⁹ Student's February 27, 2007, progress report, after the initial six week period of the second semester, indicated that she was receiving a D- in AP Language Composition after the first six week period. Student stole the Progress Report and a follow-up D-F Letter from the family's mail. Student approached her teacher, Kay Lynn Schulz, who allowed her to do extra credit to bring her grade up. Student handed in essays which she copied from the internet. Student also plagiarized papers off the internet in U.S. History on a regular basis. After losing interest in Statistics, Student just stopped working during the middle of the second semester. She would sit in class drinking from her Propel bottle and reading a book. Student began having increasing migraines during this period. She worked for one month at Papa John's Pizza and quit because she felt stressed and it got in the way of her consuming alcohol.

⁹ Ken Walker, an Assistant Principal who was in charge of discipline at EHS, testified that these incidents should have been referred to him by staff. He stated that no such referrals were ever made. Student also testified to an incident where she left campus with a forty year old man and security permitted her to leave, which was against school rules. This incident was also not reported.

21. During the second semester of school year 2006-2007, Student earned a 2.50 GPA with an A in AP Language Composition (which Student attributed to plagiarizing on the internet), C in AP Spanish, Pass in Teacher Aide,¹⁰ C in AP U.S. History, and F in Statistics. Student continued to miss class periods as her absences increased to 14 through the month of March.

22. Brady Clay was Student's favorite teacher. Clay taught her AP Psychology during her sophomore year and found her to be his top student in a class of senior AP students. Clay also was her AP U.S. History teacher during her junior year. Clay expected Student to be at the top of the class, but he found her less competitive and not as crisp as she was during the prior year. During the second semester, he noticed a change in Student's attitude to such a degree that he sought out three friends of hers during a lunch period to inquire about her. One of the group informed Clay that the three no longer were close to Student who had changed and was now hanging out with a "bad" crowd. Student was also caught plagiarizing an essay when she and another student handed in the same paper. Clay gave each a zero but allowed them to submit a paper for half credit. Student failed to do so. Clay did not report any of these concerns to either the counselor or Assistant Principal. He had no knowledge of Student's past history of emotional difficulties. Clay admitted had he been aware of her history, Student's change of attitude, the cheating, her loss of friendship with formerly close friends, and her performance in his class would have raised a "red flag" and he would have notified the counselor.

23. Student had a close relationship with Patricia Phillips, her freshman English teacher and coach of the junior varsity Academic League team. Phillips described

¹⁰ Student became a teacher's aide for the second semester in lieu of Future Teaching.

Student as one of the best students she ever had and as a “genius.” Student often visited Phillips. During the second semester of her junior year, Student offered to clean and organize Phillips’ desk. Phillips kept change and cash in her desk. After Student left, Phillips realized that the money in her desk was missing. Phillips dispatched another teacher to ask Student if she had taken the money. Student then returned a bag of change she had taken from the desk. Phillips then had the same teacher again confront Student to return the cash. Though Phillips testified that the amount taken was about four dollars, Student admitted that she had taken approximately \$40 in cash. The next day, Phillips saw Student who acted as if it was “no big deal.” Phillips did not make a referral to the Assistant Principal or notify Student’s counselor. Phillips was unaware of Student’s emotional difficulties.

24. Mike Hardie was Student’s AP Statistics teacher. Hardie estimated that he taught only 20 AP students that year. Hardie would only report students to the office or call their parents if the student was disruptive in class. Student started her junior year with a B+ during the first six week period of the school year. Her grade was a B after 12 weeks, but she ended the first semester with a C. He found her to be an “ok” student who was quiet and able to do the work. He did observe that though cheerful, Student did not associate with others in the class. Hardie admitted that it is rare that an AP student would get an F in his class. During the second semester, Student had a C- through the first six week period. Her grade fell to an F in the second six week period. After the second progress report period in mid-April 2007, Hardie spoke to Student about her falling grades, and she told him that she no longer wanted to do this anymore. She would attend class and sit in the back of the room and read an unrelated book. Hardie had never experienced an AP student refusing to work. Since Student was not disrupting the class, he did not notify Parents or her counselor although this was a very uncommon occurrence for an AP student. Hardie was unaware of the definition of

"at risk." He also had never been informed that Student was under the care of a psychologist and psychiatrist nor her previous suicide attempt. Even so, Hardie should have reported Student's shut-down to her assigned counselor.

25. By mid-April, 2007, the District knew or had reason to suspect that Student may be emotionally disturbed. Student exhibited inappropriate types of behavior or feelings under normal circumstances in several situations and demonstrated a general pervasive mood of unhappiness or depression. These characteristics had been over a long period of time, and were to a marked degree which was adversely affecting her academic performance. This is based on the fact that Student was known by the District to have made a prior suicide attempt during the prior summer, was under the care of a psychologist and psychiatrist, was on psychotropic medication, had been caught in sexually compromised situations on campus, had an unusual rate of absences, had committed a theft from a teacher with whom Student had a close relationship, her academic performance was falling, she no longer associated with her friends, and she had given up trying in her math class. All of these factors show a child 'at risk" who should have been referred for a special education evaluation.

SECOND SUICIDE ATTEMPT AND PLACEMENT AT PROVO CANYON SCHOOL

26. On June 13, 2007, Student was admitted to Sharp Mesa Vista Hospital after informing her parents that she wanted to commit suicide by drinking Clorox. Student was diagnosed with bipolar I disorder, mixed phase with psychosis and a generalized anxiety disorder. She was hospitalized in the psychiatric unit until June 22, 2007 when she went to Provo Canyon School (Provo), a residential treatment facility in Provo, Utah. Student was taken to Provo by car by her mother, who was assisted by Student's grandmother.

27. On June 26, 2007, Parents and Marasco met with Davis and informed her of Student's admission to Provo. Davis prepared an assessment plan and a referral

package for San Diego County Mental Health (CMH). There is no evidence that Parents received their IDEA rights at this time.¹¹ Evaluations were prepared by both CMH and the District and presented at an IEP meeting on September 20, 2007. Provo also submitted a psychological assessment of Student.¹² The IEP team found Student eligible for special education under the eligibility category of emotional disturbance and placed her at Provo, where she remained until February 23, 2008.

REIMBURSEMENT CLAIM

28. Student claims that her parents are entitled to reimbursement of the cost of transporting her to Provo, costs incurred in her placement at Provo from June 22, 2007 through September 20, 2007, when the District found her eligible for special education.

29. The distance from Escondido to Provo is 685 miles.¹³ The Internal Revenue Service permitted a charge of 48.5 cents per mile during 2007. Thus, there is a total of \$663.97 incurred to transport Student to Provo and return.

30. Student failed to produce any receipts or offer any testimony as to the cost of lodging and meals incurred in transporting Student to Provo. Thus, Student has failed to meet her burden to prove the incidental costs of transporting Student

¹¹ The only evidence produced was a cover letter sent with the assessment plan, from Davis to Parents which indicates that the only enclosure is the "evaluation plan for your daughter."

¹² Jennifer Morrill, Ph. D., of Provo, diagnosed Student as having chronic major depressive disorder and a generalized anxiety disorder.

¹³ The ALJ takes official notice of this fact based on Google Maps.

31. Student has submitted invoices from Provo which demonstrate that costs incurred for Student to attend Provo equaled \$24,030.00.

LEGAL CONCLUSIONS

APPLICABLE LAW

1. The petitioner in a special education administrative hearing has the burden to prove his or her contentions at a due process hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49 [126 S. Ct. 528, 163 L.Ed.2d 387].) Accordingly, Student has the burden of proof as to all issues.

2. Under both the federal Individuals with Disabilities Education Act (IDEA) and state law, students with disabilities have the right to a free appropriate public education. (FAPE) (20 U.S.C. § 1400; Ed. Code, § 56000.) The term “free appropriate public education” means special education and related services that are available to the student at no charge to the parent or guardian, that meet the state educational standards, and that conform to the student’s individualized education program. (20 U.S.C. § 1401(9).) A child with a disability has the right to a FAPE under the IDEA and California law. (20 U.S.C. § 1412(a)(1)(A); Ed. Code, § 56000.) The Individuals with Disabilities Education Improvement Act of 2004 (IDEIA), effective July 1, 2005, amended and reauthorized the IDEA. The California Education Code was amended, effective October 7, 2005, in response to the IDEIA.

Special education is defined in pertinent part as specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); Ed. Code, § 56363.) Special education related services include in pertinent part psychological services as may be required to assist the child with a disability to benefit from special education. (20 U.S.C. § 1401(26); Ed. Code, § 56363.)

3. A child may be eligible for special education and related services under the category of emotional disturbance (ED) if the following conditions are met:

Because of a serious emotional disturbance, a pupil exhibits one or more of the following characteristics over a long period of time and to a marked degree, which adversely affect educational performance:

- (1) An inability to learn which cannot be explained by intellectual, sensory, or health factors.
- (2) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
- (3) Inappropriate types of behavior or feelings under normal circumstances exhibited in several situations.
- (4) A general pervasive mood of unhappiness or depression.
- (5) A tendency to develop physical symptoms or fears associated with personal or school problems. (Cal. Code Regs., tit. 5, § 3030, subd. (i).)

CHILD FIND

5. The IDEA and state law impose upon each school district the duty, under child find, to actively and systematically identify, locate, and assess all children with disabilities or exceptional needs who are in need of special education and related services. (20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a)(ii) (2206); Ed. Code, §§ 56300, 56301.) This obligation is known as "child find", and is expressly provided for in the IDEA at Title 20 United States Code section 1412(a)(3)(A). The child find obligation applies also to children who are suspected of being a child with a disability and in need of special education even though they may be advancing from grade level to grade level.

(34 C.F.R. § 300.111(c)(1) (2006).) "The purpose of the child-find evaluation is to provide access to special education." (*Fitzgerald v. Camdenton R-III Sch. Dist.* (8th Cir. 2006) 439 F.3d 773, 776.) A local education agency must have developed a practical method, and implemented that method, to determine which children with disabilities are currently in need of receiving special education and related services.

6. California specifically obligates a district to actively and systematically to seek out "all individuals with exceptional needs." (Ed. Code, § 56300 et seq.) A district's child find obligation toward a specific child is triggered when there is reason to suspect a disability and reason to suspect that special education or related services may be needed to address that disability. (*Dept. of Education, State of Hawaii v. Cari Rae* (D. Hawaii 2001) 158 F. Supp. 2d 1190, 1194.) The threshold for suspecting that a child has a disability is relatively low. (*Id.*, at p. 1195.) A district's appropriate inquiry is whether the child should be referred for an evaluation, not whether the child actually qualifies for services. (*Ibid.*) The district must respond within a reasonable time after obtaining notice of the potential disability and need for services. (*Id.*, at p. 1193-1194.)

7. Once a child is identified as a child with a disability, "child find" provisions are no longer applicable: "Nothing in this title requires that children be classified by their disability so long as each child who has a disability [. . .] and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under this part." (20 U.S.C. § 1412(a)(3)(B); 34 C.F.R. § 300.111(d) (2006).)

8. A district's determinations regarding special education are based on what was objectively reasonable for the district to conclude given the information the district had at the time of making the determination. A district is not held to a standard based on "hindsight." (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)

DETERMINATION OF ISSUE

Did the District deny Student a free appropriate public education (FAPE), from March 5, 2007 through September 20, 2007, by failing to fulfill its child find obligations in violation of the Individuals with Disabilities Education Act (IDEA)?

9. As discussed in Factual Findings 2 through 27, the District had more than sufficient information within its possession by mid-April 2007, to suspect that Student might have been eligible for special education and related services under the category of ED. Student had made a suicide attempt in the preceding summer; was under the care of a psychologist and a psychiatrist; was taking psychotropic medication; had been engaging in inappropriate behavior (i.e., forging absence excuses, caught in compromising sexual situations on campus, stealing from a teacher, and cheating); refused to work in her math class, all of which resulted in falling grades. These factors together should have led school authorities to suspect that Student was undergoing an emotional disturbance and she should have been referred for an evaluation to determine if she was eligible for special education and related services under the category of ED.

REIMBURSEMENT

10. Parents may be entitled for the costs of placement or services they have procured for their child when the school district has failed to provide a FAPE, and the private placement or services were appropriate under the IDEA and replaced services that the school district failed to provide. (20 U.S.C. § 1412(a)(10)(C); 34 C.F.R. § 300.148(c) (2006); *School Committee of Burlington v. Department of Education* (1985) 471 U.S. 359, 369-371 [105 S. Ct. 1996, 85 L.ED.2d 385].) Parents may receive reimbursement for their unilateral placement if the placement met the child's needs and provided the child with educational benefit. However, the parents' unilateral placement is not required to meet

all requirements of the IDEA. (*Florence County School District Four v. Carter* (1993) 510 U.S. 7, 13-14 [114 S. Ct. 361, 126 L.Ed.2d 284].)

11. Reimbursement may be denied or reduced if at least 10 days prior to the private school enrollment the parents fail to give written notice to the district about their concerns, their intention to reject the district's placement and their intention to enroll the student in a private school at public expense. (20 U.S.C. § 1412(a)(10)(C)(bb); 34 C.F.R. § 300.148(d)(1)(ii) (2006).) The 10 day notice requirement is not applicable where the parents had not received notice (pursuant to 20 U.S.C. § 1415 (d), 34 C.F.R. § 300.504 (2006).) of the notice requirement.

12. As discussed above, Parents are entitled to reimbursement because of the District's child find failure. Since Parents did not receive their parental rights statement prior to Student's placement at Provo, they are not subject to the 10 day written notice requirement as discussed in Legal Conclusion 11. Pursuant to Factual Conclusions 28 through 31, Parents are entitled to be reimbursed a total of \$24,693.97.

ORDER

Within 45 days of the date of this decision, the District shall reimburse Parents the sum of \$24,693.97.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Student was the prevailing party.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by this Decision. Pursuant to Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within ninety (90) days of receipt.

Dated: June 8, 2009

ROBERT F. HELFAND
Administrative Law Judge
Office of Administrative Hearings