

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPECIAL EDUCATION DIVISION  
STATE OF CALIFORNIA

In the Matter of:

LANCASTER SCHOOL DISTRICT,

Petitioner,

v.

STUDENT,

Respondent.

OAH CASE NO. N2007020068

DECISION

Administrative Law Judge (ALJ) Stella L. Owens-Murrell, Office of Administrative Hearings (OAH), Special Education Division, heard the above-captioned matter in Lancaster, California on March 2, 2007.

Petitioner Lancaster School District (District) was represented by Kathleen R. LaMay, of Schools Legal Service. Ms. Janis Rivera, Director of student services, also appeared on behalf of the District.

Respondent Student (Student) was not represented at the hearing nor did Student's parent (Mother) appear on Student's behalf.

District's due process complaint notice was filed on February 1, 2007. The District waived mediation and requested the case proceed directly to due process hearing.

OAH served Student notice of due process and mediation on February 2, 2007. Student did not respond or file a notice of representation.

The ALJ opened the record on March 2, 2007, and received District's witness testimony and documentary evidence. The hearing concluded the same day. The record remained open to permit the District to submit written closing argument on or before

March 9, 2007. The record was closed and the matter submitted for decision on March 9, 2007.

## ISSUES

1. Does Student meet eligibility requirements as a child with a disability under the category of specific learning disability for the receipt of special education and related services from District for the 2006-2007 school year?

2. Is District entitled to an Order permitting District to exit Student from District's special education program and discontinue provision of special education and related services to Student?

## CONTENTIONS OF THE PARTIES

Student was previously found eligible for special education under the category of specific learning disability (SLD) based upon both visual and auditory processing disorders while enrolled in the Los Angeles Unified School District (LAUSD). District contends that a subsequent reassessment showed that Student was no longer eligible for special education as a child with a SLD or under any other disability category under the Individuals with Disabilities in Education Improvement Act (IDEIA). Parent disagreed with the eligibility determination and refused to consent to the Individualized Education Program (IEP) in which the District recommended that Student be exited from the special education program.

## FACTUAL FINDINGS

### BACKGROUND

1. Student is 11 years old and lives with her mother within the boundaries of the District.

2. Student initially attended elementary school in the LAUSD. During the

2003-2004 school year, LAUSD determined student to be eligible for special education as a child with a specific learning disability (SLD) based on an auditory processing and visual processing disorder. Pursuant to the IEP dated September 9, 2003, Student received designated instructional services (DIS) counseling services for 30 minutes, twice per month, and resource consultation under a collaboration model in general education once a month.

3. Student then transferred into the District and attended Crossroads Alternative School (Crossroads) for her last trimester in elementary school in the 2005-2006 school year.<sup>1</sup> She attended Endeavor Middle School (Endeavor) for the first and second trimesters of the sixth grade in the 2006-2007 school year. Shortly after enrolling at Endeavor, Student was charged with committing an expellable offense and was transferred back to Crossroads in October 2006 where she is currently enrolled.

4. District conducted a triennial assessment in the 2006-2007 school year while Student attended Endeavor, as part of a psychoeducational multidisciplinary assessment<sup>2</sup> (multidisciplinary assessment) requested by Student's mother, to determine

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<sup>1</sup> The District's Multidisciplinary Assessment background information indicated that Student was referred to Crossroads from Nancy Cory. Based upon discipline records from Nancy Cory, Student was engaged in behaviors such as pushing and kicking other students, and other forms of defiant and disrespectful behaviors. Student received counseling by school psychologists and outside counseling was discussed with Student's mother. While at Crossroads, Student's behaviors and her grades improved, and she was enrolled at the general education campus at Endeavor Middle School in August 2006

<sup>2</sup> California law refers to the term "assessment" of a student (Ed. Code, § 56320) while federal law refers to the "evaluation" of a student (20 U.S.C. § 1414(a)). The terms

if Student was eligible for special education services as a child with an emotional disturbance (ED). The District decided to reassess Student's eligibility under SLD, and District agreed to assess Student for eligibility as a child with other health impairments (OHI) because of indications of "possible organizational and attention problems" or attention deficit hyperactivity disorder (ADHD).

5. The triennial assessment was conducted between August and September 2006 by Endeavor School Psychologist, Ms. Rosemary Napoleon. Ms. Napoleon prepared the District's Multidisciplinary Assessment Report dated September 15, 2006.

6. District convened a triennial IEP team meeting on October 9, 2006, to discuss the multidisciplinary assessment report and results. Student, Student's Advocate, her mother, her grandmother, and her therapist attended the IEP team meeting. Janis Rivera, Director of special education; Rosemary Napoleon, school psychologist; Nedra Banton, resource specialist; and J. Schimonelli, Student' home room teacher at Endeavor, attended the IEP team meeting for the District. The purpose of the meeting was to address, among other things, Student's eligibility for special education. The IEP team discussed the multidisciplinary assessment report. The District IEP team members considered Student's test results in auditory processing skills, visual perception, academic achievement, and social/emotional functioning and agreed with the conclusions reached in the assessment that Student no longer demonstrated a processing disorder and that she was capable of being academically successful in a general education curriculum without program modifications or supports. The District IEP team members agreed Student was not eligible for special education. The District IEP team members recommended Student be exited from the special education program.

7. Student's mother disagreed with the eligibility determination and did not

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consent to the IEP. District expelled Student from Endeavor and she began attending Crossroads sometime on or about November 10, 2006. Because Student's mother refused to consent to the IEP Student has continued to receive special education services provided in the September 29, 2003 IEP in the form of resource consultation once per month in the form of collaboration general education, and DIS counseling twice per month for 30 minutes a session.

#### DOES STUDENT MEET THE ELIGIBILITY CRITERIA AS A CHILD WITH A SPECIFIC LEARNING DISABILITY?

8. District contends that the assessment results establish that Student is no longer eligible for special education and related services under the category of SLD.

9. A child is eligible for special education under the category of "specific learning disability" if: 1) the student has a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an impaired ability to speak, listen, think, read, write, spell, or do mathematical calculations, and; 2) based on a comparison of "a systematic assessment of intellectual functioning" and standardized achievement test," has a severe discrepancy between intellectual ability and achievement.

10. There are two current methods for determining whether a child has an SLD: the "severe discrepancy" method and the response to intervention (RTI) method.<sup>3</sup> The severe discrepancy method of determining SLD looks at whether a severe discrepancy exists between the child's intellectual ability and his or her achievement. There are two factors to consider in determining whether a child has an SLD under this method: 1)

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<sup>3</sup> There is no evidence that District used RTI, accordingly, that methodology is not addressed in the decision, and there is insufficient evidence to suggest that Student would be eligible under this methodology

Does a severe discrepancy exist; and 2) Does a child have a disorder in one of the basic psychological processes (such as auditory or visual processing). If the answer to both questions is "yes," the child is considered to have an SLD. A determination must then be made regarding whether, as a result of that SLD, the child needs special education.

11. An alternative "severe discrepancy" method requires an evaluation of Student's educational circumstances. If standardized tests do not reveal a severe discrepancy between intellectual ability and achievement, a severe discrepancy may still be found to exist as a result of a disorder in a basic psychological process based on: 1) data obtained from standardized assessment instruments; 2) information provided by the parent; 3) information provided by the student's present teacher; 4) evidence of the student's performance in the regular and/or special education classroom obtained from observations, work samples, and group test scores; 5) consideration of the pupil's age, particularly for young children; and 6) any additional relevant information.

#### THE MULTIDISCIPLINARY ASSESSMENT RESULTS

12. Ms. Napoleon conducted all the tests included in Student's multidisciplinary assessment, except for the Woodcock-Johnson Tests of Achievement-III (WJ-III), which was performed by an examiner named Petty<sup>4</sup>, while Student was attending Crossroads in the 2005-2006 school year. Ms. Napoleon also reviewed the initial LAUSD assessment, Student's records and files, and conducted interviews and observations.

13. Ms. Napoleon holds a Bachelor of Arts degree in Early Childhood Education, a master's degree in psychology and a Pupil Personnel credential. She was

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<sup>4</sup> Petty did not testify concerning the administration of the WJ-III, however, the test results are accorded the appropriate weight because District's school psychologists Ms. Napoleon and Ms. Ede-Levine interpreted the data.

experienced in conducting assessments for special education and had conducted assessments throughout the District.

14. The assessments and test scores were reviewed and approved by supervising school psychologist Ms. Theresa Ede-Levine. Ms. Ede-Levine has a Bachelor of Arts degree in psychology, a Master of Science degree in school psychology, and has been employed by District as a supervising school psychologist from 1998 to the present. She had conducted more than one thousand assessments since 1998.

15. The following tests were included in the assessment: Test of Auditory-Processing Skills-3 (TAPS); Motor-Free Visual Perception Test- Third Edition (MVPT-3); WJ-III ; Kovac's Children Depression Inventory (CDI); Behavior Assessment System for Children, Second Edition-Parent Rating Scale (BASC-2); Behavior Assessment System for Children, Second Edition-Self Report (BASC-2); Behavior Assessment System for Children, Second Edition-Teacher Rating Scales (BASC-2); Scale of Assessing Emotional Disturbance (SAED); Reynolds's Child Manifestation Anxiety Scale (RCMAS); Childhood Depression Index Scale (CDI); and the Conners' Rating Scale-Revised Long Version (CTRS-R).

16. Ms. Napoleon administered the TAPS-3, which is designed to measure the ability to perceive and process auditory stimuli and to test auditory thinking and reasoning, and the MVPT-3, designed to test for visual processing disorders. The TAPS-3 tests yielded a cohesion score of 80 and the MVPT-3 test yielded a standard score of 90. Ms. Napoleon concluded the scores showed that Student's auditory reasoning and comprehension skills (cohesion) fell within the low average range and Student's visual perceptual skills fell within the average range. Ms. Napoleon noted further that contrary to Student's prior scores, the current scores were commensurate with her overall cognitive functioning, and Student did not have either an auditory processing or a visual processing disorder.

17. The WJ-III was administered on June 21, 2006, to test Student's academic knowledge and levels of academic achievement. The norms for the test were based on

grade 5.9 because Student was in the fifth grade, and Student was 11 years and three months of age at the time of the test. Student scored in the average range for her grade level in the following clusters: broad math-103 (the average range is 100-107); broad written language- 99 (the average range is 96-102); basic reading skills-97(the average range is 95-99); math calculation skills-107 (the average range is 102-111); written expression-110 (the average range is 105-116); academic skills-93 (the average range is 91-95); academic applications-96 (the average range is 93-98.)

18. Form A of the following WJ-III subtests were also administered and yielded the following standard scores: Letter-Word Identification-95 (the average range is 92-97); calculation-99 (the average range is 94-103); math fluency-117 (the average range is 114- 120); spelling-90 (the average range is 87-94); writing fluency-118 (the average range is 112-124); passage comprehension-94 (the average range is 90-99); applied problems-99 (the average range is 96-102); writing samples-89 (the average range is 80-98); and Word Attack- 99 (the average range is 96-102.)

19. Ms. Napoleon reviewed the WJ-III test scores along with supervising school psychologist, Theresa Ede-Levine<sup>5</sup>, and consulted with Endeavor’s Resource Specialist Teacher, Nedra Banton<sup>6</sup>, and concluded that when compared with age appropriate peers

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<sup>5</sup> Ms. Ede-Levine, supervising school psychologist testified as District’s expert. She testified credibly on all aspects of the multidisciplinary assessment. In her opinion Student did not meet eligibility criteria as a student with SLD or any other disability and did not qualify for special education.

<sup>6</sup> Ms. Banton holds a Bachelor of Science degree in Education, a Master’s Degree in communication, credentials, and certifications in Missouri and California in special education. She has more than 28 years of experience in special education. Ms. Banton testified that she provided resource services to Student on a collaborative model,



Student's performance fell within the average range of achievement in all areas of academics including basic reading skills, mathematics, math calculation skills, written language, and written expression. Ms. Banton opined that to qualify for SLD, Student's WJ-III scores would have to fall within the delayed range or significantly low range or in the 70s, which would show a discrepancy between her intellectual abilities and academic achievement.

20. The multidisciplinary assessment also took into account Student's academic grades and performance as of the time of the assessment. Student's academic performance improved while she attended the trimester at Crossroads in the 2005-2006 school year, where she was placed in a general education class and received passing grades and no suspensions. Student was transitioned into Endeavor in a general education class in August 2006. Student's general education subjects consisted of math, science, language arts, and social sciences and P.E. Student received passing grades in all of her academic subjects at Endeavor, except social sciences.

21. Mr. J. Schimonelli, a teacher for more than 25 years, was Student's sixth grade home room teacher at Endeavor. He taught citizenship, math, science, and language arts. Mr. Schimonelli found Student was capable of adjusting to the school and to his classes. Student was in Mr. Schimonelli's class for approximately six to eight weeks. While Student was in his class, Mr. Schimonelli observed that Student did her assignments for the most part, worked hard and was average to a little below average in ability. She was an active participant in class, a good oral reader, and she did fairly well

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meaning that she maintained direct contact with Student's teachers in her general education classes to monitor Student's progress. Based upon her classroom observations, Student did not need special education services nor did she need supports or modifications to her curriculum to access her educational environment.

on her work, even though at times she failed to turn in her assignments. Overall, she had the ability to perform academically. Student's first trimester progress report showed that Mr. Schimonelli gave Student a C grade in home room/citizenship and science, and a D grade in language arts and P.E. Mr. Schimonelli attributed Student's lower grades to her failure to turn in required homework assignments and not a deficit in Student's intellectual abilities. Mr. Schimonelli believed that Student performed adequately in the present academic environment and did not need a modified curriculum or other supports to meet academic requirements.

22. Student received instruction in math and social sciences from Mrs. Patterson. Student's first trimester progress report showed that Mrs. Patterson gave Student a C in math and an F in social sciences. Ms. Banton observed Student in Mr. Schimonelli's and Ms. Patterson's classrooms. She also interviewed both teachers. Ms. Patterson reported to her that Student liked math and performed sufficiently to earn a grade of C. However, Student did not like social sciences, and failed to turn in all of her homework assignments, which contributed to Student's failing grade.

23. According to Ms. Banton, even though Student received an F grade in Social Sciences, if Student had a specific learning disability, one would expect to see a lower score in basic reading skills and written expression. Ms. Banton opined that in this case, Student's reading skills and written expression scores were in the average range demonstrating Student could successfully process information. These results were also consistent with the results of the TAPS-3 and MVPT-3 test scores.

24. The uncontroverted evidence established that Student's failing grade in the first trimester progress report at Endeavor was due primarily to Student's difficulties with completing and turning in her homework assignments.

## DOES A SEVERE DISCREPANCY EXIST BETWEEN STUDENT'S INTELLECTUAL ABILITY AND ACHIEVEMENT?

25. As set forth in Factual Findings 16-24 the evidence establishes that Student scored consistently in the average range for all academic areas of the WJ-III and does not meet the first prong of the severe discrepancy test. The assessments adequately established no "severe discrepancy" exists between Student's intellectual ability and her academic achievement based upon the results of the standardized tests.

## IS THERE A DISORDER IN ONE OF THE BASIC PSYCHOLOGICAL PROCESSES?

26. The second prong of the "severe discrepancy" test cannot be met here either. As set forth in Factual Findings 10 and 16, the assessment found that contrary to Student's prior assessment scores, the current scores were commensurate with her overall cognitive functioning and Student did not have either an auditory processing or a visual processing disorder or a qualifying diagnosis of a disorder in a psychological process.

## DOES A "SEVERE DISCREPANCY" EXIST BASED ON STUDENT'S EDUCATIONAL CIRCUMSTANCES?

27. As set forth in Factual Findings 16-24, Student did not have the requisite disorder in one of the basic psychological processes. Because the first and second prongs of the severe discrepancy test were not met, the analysis should end here. However, District took the assessment a step further and evaluated Student's educational circumstances based on: 1) data obtained from standardized assessment instruments, which showed Student to be average in academic and intellectual abilities; 2) information provided by the parent in the assessment process; 3) information provided by the student's present teachers, Mr. Schimonelli and Ms. Patterson in that Student performed in the classroom and achieved passing grades in all but one of her

academic subjects at the same level as her peers; 4) evidence of Student’s performance in the regular and/or special education classroom obtained from observations, work samples, and group test scores as reviewed and observed by resource specialist Nedra Banton; 5) consideration of the pupil’s age was a factor in measuring Student’s performance on the assessment , but otherwise not a major factor in this case; and 6) The District considered additional relevant information that Student performed well in the general education classes and did not need modifications or supports to derive educational benefit.

28. The evidence established that no “severe discrepancy” exists based upon Student’s educational circumstances.

29. The District met its burden of showing Student was not eligible for special education as a child with a SLD.

OTHER AREAS OF SUSPECTED DISABILITY

ED ELIGIBILITY

30. The District contends that Student is not eligible for special education under any other category, specifically as a child with an emotional disturbance (ED) or other health impairments (OHI)<sup>7</sup>.

31. A student is eligible for special education as a child with emotional

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<sup>7</sup> District did not specifically frame an issue concerning Student’s eligibility under any other disability category; however, District did assess for suspected disability and presented expert testimony on the assessment and its findings, which included assessments in these disability categories. Accordingly the assessment findings are discussed in brief here. Moreover, since Student’s eligibility was not based on ED or OHI, it is unnecessary to reach the adequacy of the assessment findings and results.

disturbance if the child has an emotional disturbance and as a result of this condition manifests the following: 1) an inability to learn, which cannot be explained by intellectual, sensory or other 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; and 5) a tendency to develop physical symptoms or fears associated with personal or school problems.

32. As set forth in Factual Finding 15, the BASC-2 assessments were completed by Student's mother, Mr. Nunn, her previous teacher at Crossroads, and Student. The assessment was designed to measure adaptive behavior and problem behavior in children and adolescents. It contains teacher rating scales, parent rating scales and a self-report of personality completed by the student. The overall result showed that Student's social emotional areas such as depression, anxiety, withdrawal and social skills are age-appropriate and not a concern.

33. Student also completed the CDI, which explores negative mood and interpersonal problems, and the RCMAS, which explores physiological anxiety, worry, oversensitivity, concentration, and social concerns. This assessment also includes a Lie Scale, which can correlate inaccurate self-report. Based upon Student's answers, the assessments showed that Student is age-appropriate in all of these areas and no areas of concern were noted.

34. Finally, Mr. Nunn completed the SAED. This assessment reviews Student's ability to learn, relationship problems, inappropriate behaviors, unhappiness/depression, physical symptoms and fears and provides an overall SAED quotient. The assessment report quoted from the SAED manual that a SAED quotient of 120 or above "may indicate an extreme number of emotional or behavioral problems." Student's quotient fell at 112, which the assessment report concluded showed Student did not have significant social emotional needs. Based upon Mr. Nunn's observations, as reported in

the assessment and confirmed by District's expert Ms. Ede-Levine, Student demonstrated no clinically significant behaviors in the above areas.

35. As stated in Factual Finding 31-34, based upon the multidisciplinary assessment, Student's academic testing showed that she was able to learn and that she fell within the average range in all academic areas. The evidence further supports a finding that Student showed no clinically significant behaviors in the areas of moderate or extreme emotional behaviors associated with an emotional disturbance.

36. Based upon the multidisciplinary assessment results, Student did not meet eligibility criteria as a child with ED.

#### OTHER HEALTH IMPAIRED ELIGIBILITY

37. A student is eligible for special education as a child with other health impairments if the child has limited strength, vitality or alertness, due to chronic or acute health problems, including but not limited to a heart condition, cancer, leukemia, rheumatic fever, chronic kidney disease, cystic fibrosis, severe asthma, epilepsy, lead poisoning, diabetes, tuberculosis and other communicable infectious diseases, and haematological disorders such as sickle cell anemia and hemophilia, which adversely affects a pupil's educational performance.

38. The CTRS-R was completed by Student's mother, her teachers, Mr. Nunn, Mr. Schimonelli and Ms. Patterson. As set forth in the multidisciplinary assessment report, the CTRS-R assesses and includes categories that directly tap into the Diagnostic and Statistical Manual of Mental Disorders IV (DSM IV) criteria for ADHD. The assessment report considered that Student had been diagnosed and treated for Oppositional Defiance Disorder by an independent psychologist, but that such a diagnosis did not establish Student was ADHD. Based upon the results of the CTRS-R, Student did not demonstrate significant symptoms associated with a suspected medical condition of ADHD.

39. The assessment concluded that Student did not meet the eligibility criteria as a child with a suspected or identified medical condition requiring special education or related services.

40. The assessment concluded that overall Student was continuing to progress academically.

41. The assessment further concluded that Student no longer met the eligibility criteria for special education services as a student with SLD, and that Student did not meet the eligibility criteria as a student with ED or OHI. The assessment recommended the IEP team consider Student be placed in general education with monitoring by Student Study Team to possibly implement behavior supports.

#### MAY THE DISTRICT EXIT STUDENT FROM SPECIAL EDUCATION?

42. A district is required to assess a child in all areas related to a suspected disability. A district is also required to reassess a child before exiting that child from special education (unless the child has graduated with a high school diploma or is past the maximum age for special education).

43. The uncontroverted evidence is that District reassessed Student concerning her eligibility for special education as a student with a SLD. District assessed Student for suspected disabilities as a student with ED and/or OHI. District appropriately determined Student did not meet eligibility criteria under these categories and was not eligible for special education.

44. Based upon Factual Findings 16-29, the evidence supports a finding that District may exit Student from special education.

#### STUDENT'S DEFAULT IN THE DUE PROCESS HEARING

45. OAH timely served Student's Mother Notice of Due Process Hearing and Mediation. OAH served a Notice of Due Process Hearing and Mediation on Student's

parent on February 2, 2007. Student's Mother did not respond to the notice nor did Student's Mother file a notice of representation.

46. A prehearing conference was scheduled to be held on February 26, 2007, at 10:00 a.m. District timely filed a prehearing conference statement. Student did not appear or file a prehearing conference statement. The ALJ continued the prehearing conference to Friday March 2, 2007, at 9:00 a.m. immediately preceding the due process hearing. The prehearing conference proceeded as scheduled. Student failed to appear. The issues were framed for hearing and the matter proceeded to hearing.

47. Student's failure to appear after notice of the due process proceedings constitutes a waiver of her right to contest District's eligibility determinations

## LEGAL CONCLUSIONS

### APPLICABLE LAW

1. District has the burden to prove that Student is not a child with a disability who qualifies for special education and related services under state or federal law in the eligibility category of specific learning disabilities. (*Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528].)

2. Under both state and federal law, students with disabilities have the right to a free appropriate public education. (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 cost to the parents, that meet the state educational standards, and that conform to the student's IEP. (20 U.S.C. § 1401(9).)

3. A district is required to assess a child in all areas related to a suspected disability, and no single procedure may be used as the sole criterion for determining whether the child has a disability or for determining an appropriate educational program for the child. (Ed. Code, § 56320.) A district is also required to reassess a child before exiting that child from special education (unless the child has graduated with a high



school diploma or is past the maximum age for special education). (Ed. Code, § 56381, subds. (h) & (i).)

4. A Student is eligible for special education if the student is a “child with a disability.” Federal law defines a “child with a disability” as a child with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities and “who, by reason thereof, needs special education and related services.” (20 U.S.C. § 1401(3) (A); 34 C.F.R. § 300.8(a)(1); Ed. Code, § 56026, subds. (a) & (b).)

Notwithstanding a determination that a child has one of the aforementioned disabilities, a child is not considered a “child with a disability” under the IDEA if it is determined that the child only needs a “related service and not special education.” (34 C.F.R. § 300.8(a)(2)(i).)

5. California law permits two methods for determining a specific learning disability: 1) the severe discrepancy method; and 2) the “response to intervention” (RTI) method. (Ed. Code, § 56337.) The severe discrepancy method is described in California Code of Regulations, title 5, section 3030, subdivision (j). Under that provision, a child has a specific learning disability if the child has a disorder in one or more basic processes (such as auditory or visual processing) and “has a severe discrepancy between intellectual ability and achievement in one or more of the academic areas specified in section 56337, subdivision (a) of the Education Code.”

6. A student is eligible for special education under the category of “specific learning disability” if: 1) the student has a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an impaired ability to speak, listen, think, read, write, spell, or do mathematical calculations, and; 2) based on a comparison of “a systematic assessment of intellectual functioning” and “standardized achievement test,” has a severe

discrepancy between intellectual ability and achievement. (34 C.F.R. § 300.8(c)(1)(i); Ed. Code, § 56337, subd. (a); Cal. Code Regs., tit. 5, § 3030. subd. (j).) If standardized tests do not reveal a severe discrepancy between intellectual ability and achievement, a severe discrepancy may still be found to exist as a result of a disorder in a basic psychological process based on: 1) data obtained from standardized assessment instruments; 2) information provided by the parent; 3) information provided by the pupil's present teacher; 4) evidence of the pupil's performance in the regular and/or special education classroom obtained from observations, work samples, and group test scores; 5) consideration of the pupil's age, particularly for young children; and 6) any additional relevant information. (Cal. Code Regs., tit 5, § 3030, subd. (j)(4)(C).) An IEP team may determine that a child has a specific learning disability if the "child does not achieve adequately for the child's age or to meet state-approved grade-level standards" in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, reading comprehension, mathematics calculation, and mathematics. (34 C.F.R. § 300.309(a)(1).)

7. Specific learning disability does not include "learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage." (34 C.F.R. § 300.8(c) (10) (ii); Ed. Code, § 56337, subd. (a).)

8. A student is eligible for special education as a child with emotional disturbance if the child has emotional disturbance and as a result of this condition manifests the following: 1) an inability to learn, which cannot be explained by intellectual, sensory or other 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; and 5) a tendency to develop physical symptoms or fears associated with personal or school problems. (34 C.F.R. § 300.5(b)(8);

Cal. Code Regs., tit. 5, § 3030, subd. (i)(1-5).)

9. A student is eligible for special education as a child with other health impairments if the child has limited strength, vitality or alertness, due to chronic or acute health problems, including but not limited to a heart condition, cancer, leukemia, rheumatic fever, chronic kidney disease, cystic fibrosis, severe asthma, , epilepsy, lead poisoning, diabetes, tuberculosis and other communicable infectious diseases, and hematological disorders such as sickle cell anemia and hemophilia, which adversely affects a pupil's educational performance. (Cal. Code Regs., tit. 5, § 3030(f); Ed. Code, § 5626, subd. (f).)

#### DETERMINATION OF ISSUES

1. Does Student meet eligibility requirements as a child with a disability under the category of specific learning disability for the receipt of special education and related services from District?

11. Based upon Factual Findings 1-29 and 31-43, and Legal Conclusions 3-9, Student did not meet eligibility requirements for special education as a student with a specific learning disability or any other disability.

2. Is District entitled to an Order permitting District to exit Student from District's special education program and discontinue provision of special education and related services to Student?

12. Based upon Factual Findings 6, and 16- 29, and Legal Conclusions 3 and 5-6, District reassessed Student to determine eligibility for special education. The assessments established Student was not eligible and District may exit Student from special education.

#### ORDER

1. Student is not eligible for special education.
2. District may exit Student from the special education program.

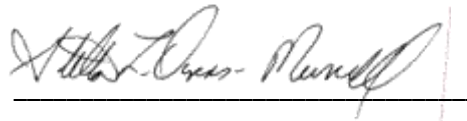
## PREVAILING PARTY

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. The District has prevailed on all issues.

## 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. (Ed. Code, § 56505, subd. (k).)

March 26, 2007



STELLA L. OWENS-MURELL,  
Administrative Law Judge  
Office of Administrative Hearings,  
Special Education Division