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

In the Matter of: STUDENT, Petitioner, v. TEMECULA VALLEY UNIFIED SCHOOL DISTRICT. Respondent.	OAH No. N 2005070197

DECISION

Darrell L. Lepkowsky, Administrative Law Judge, Office of Administrative Hearings (OAH), Special Education Division, State of California, heard this matter on June 12, 13, 14, 15 and 16, 2006, in Temecula, California.

Ralph O. Lewis, Esq., of the Law Offices of Ralph O. Lewis, represented Petitioner and Student (Student). Student's mother (Mother) was also present during each day of the hearing. Student did not appear.

Laurie LaFoe, Esq., of Lozano Smith, represented the Temecula Valley Unified School District (District). Ann Huntington, the District's Director of Special Education, was also present for the majority of the hearing. Suzanne Juhl, a program specialist for the District, was present to represent the District during Ms. Huntington's brief absences.

Student, through his attorney, filed a request for a due process hearing on or about June 27, 2005, with the Special Education Hearing Office (SEHO), alleging numerous violations of Student's rights under the IDEA. On July 1, 2005, OAH replaced SEHO as the

agency responsible for adjudicating special education disputes. This case was given the OAH number captioned above.

At the due process hearing, oral and documentary evidence were received.[1] Student also moved to quash two subpoenas duces tecum issued by the District, one to Dr. Rudolf Brotuco for Student's medical records and another to the Center for Autism and Related Disorders (CARD) for the records it maintained on Student. CARD produced the records to the District before the hearing commenced; therefore, the motion to quash the subpoena to it was deemed moot. The motion to quash the subpoena to Dr. Brutoco was granted.[2]

At the conclusion of the hearing, the parties' request to file post-hearing briefs was granted. Both the Student's and the District's post-hearing briefs were timely filed by facsimile on July 7, 2006. Student's brief was marked as petitioner's exhibit 90 and the District's brief was marked as respondent's exhibit 70. The record was closed and the matter was deemed submitted as of July 7, 2006. A decision on the matter is due by August 17, 2006

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[1] Respondent filed several motions for continuance and/or dismissal of the case between the filing of the due process request and the date the hearing started. To the extent relevant to the case, they are discussed below.

[2] The subpoena served on Dr. Brutoco violated California Code of Regulations, title 5, section 5082, and Code of Civil Procedure, section 1985, et seq.

ISSUES[3]

1. Was Student voluntarily (or unilaterally) placed in private school in the fall of 1998?

   A. If Student was not a voluntarily-placed private school Student, did the District commit substantive and/or procedural violations of the Individuals with Disabilities Education Act (IDEA) by failing to assess Student, failing to conduct triennial assessments, failing to hold annual individualized education program (IEP) meetings, and failing to offer Student a public school placement for school years 2002-2003, 2003-2004, 2004-2005, and 2005-2006?

   B. Did the District deny Student a free appropriate public education (FAPE) for the 2002-2003, 2003-2004, and 2004-2005 school years, by failing to fulfill its child find obligations to seek and serve disabled children attending private schools who reside within the District?[4]

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[3] Student's issues for hearing have been reorganized, based upon the evidence offered at hearing and the arguments made in the parties' post-hearing closing arguments, for purposes of clarity.

[4] The District argues for the first time in its post-hearing closing brief, that Student did not raise the specific issue of "child find" in his request for due process hearing. However, some of the issues raised by Student, when more clearly defined, amount to an allegation that the District failed in its child find obligations for the years in question. Furthermore, the District specifically addressed the issue, offering both testimonial and documentary evidence in support of its contention that it did comply with its legal child find obligations. The fact that the District offered documentary evidence that addressed its child find obligations (respondent's exhibit 61) as part of its evidence binder, which was presented to the parties at the start of the hearing, indicates that the District was aware that the child find obligation was at issue and would be addressed. Respondent has thus

2. Did the District improperly fail to assess Student upon his request for an IEP evaluation made in writing to the District on January 28, 2005?

3. Did the District improperly fail to assess Student during school year 2005-2006?

4. If the District committed any substantive and/or procedural violations of the IDEA, are Student's parents entitled to reimbursement for expenses they incurred for:

A. The cost of Student's private school tuition, beginning with the 2002- 2003 school year?

B. Services received from the Center for Autism and Related Disorders (CARD)?

C. Assessments contracted and paid for by Student's parents?

D. Services and assessments performed by Dr. Melanie Lenington?

E. Speech and Language services privately financed by Student's parents?

5. Is Student entitled to compensatory education if the District is found to have committed any substantive and/or procedural violations of the Student's rights under the IDEA?

6. Should Student's primary eligibility for special education be designated as autism?

CONTENTIONS OF THE PARTIES

Student contends that he left the District for a private school placement in the fall of 1998 because he was not being properly served by the special education program provided to him by the District. He contends that he should have been diagnosed as autistic rather than as speech and language impaired and provided with a program to address his autism. Student thus contends that he was not a voluntarily or unilaterally placed private school student. Although Student left the District in the fall of 1998,

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suffered no prejudice by the fact that child find was litigated at hearing and will be addressed in this Decision.

approximately seven years before filing the instant due process request, he appears to contend that the District's obligations to him as a non-unilaterally placed private school student continued throughout the years prior to his filing for a due process hearing, and that the District therefore should have been assessing him and providing him with an IEP during this time. Student does admit that any compensation owed to him, should the District be found to have violated any of his rights under the IDEA, would be available only as far back as the three years prior to the filing of the due process request.

Student also contends that if he is found to have been a unilaterally-placed private school student, the District failed in its overall child find (or "search and serve") obligations to him when it failed to discover that he was a child with special education needs who was attending a private school. He also contends that the District failed to respond to his Mother's request for services, made by telephone to the District sometime in 2002 and again in 2003. Student further contends that the District failed to properly assess him when he made a formal, written request for assessment in January 2005. Finally, Student contends that the District has failed to assess him during school year 2005-2006, even after the District proposed, and his parents signed, an assessment plan. As compensation for the District's failure to assess him and to offer him a FAPE since approximately July 2002, Student alleges that he is entitled to compensatory education and that his parents are entitled to reimbursement for costs they incurred in providing Student with assessments and services he needed as a special education student.

The District contends that Student was appropriately designated as speech and language impaired in his IEPs of 1997 and 1998 and that he received a FAPE from the District during the years he was enrolled there. Student's decision to transfer to a private school was therefore a voluntary and unilateral one and the District thus was not legally obligated to assess Student or offer him a FAPE after he decided to terminate his enrollment in the District. Furthermore, the District contends that the issue of whether

Student was a voluntarily-placed private school student is barred by the applicable statute of limitations.

The District further contends that it met all its legal search and serve obligations to Student, as well as to private school students in general, that Student never specifically requested that the District assess Student prior to January 28, 2005, and that it was Student's actions which prevented him from being assessed by the District after he made the request rather than any failure by the District to meet its legal obligations. Therefore, the District is not liable to Student for compensatory education, or liable to his parents for reimbursement of any of their expenses associated with Student's outside assessments or services. Finally, the District submits that the issue of Student's eligibility category for special education services is not ripe since, as of the time of the hearing, he had not been fully assessed and no IEP meeting had taken place at which the issue could be addressed.

Based upon the documentary and testimonial evidence of the parties, as elaborated below, it is found that the District did not deny a FAPE to Student and that he was voluntarily and unilaterally placed in private school by his Parents. It is further found that the District did not fail to fulfill its child find obligations during the time period in question or fail to properly assess Student in the 2005-2006 school year. However, it is also found that the District failed to properly assess Student subsequent to his request for an IEP evaluation on January 28, 2005, entitling Student to some of the monetary remedy he seeks in his due process request. Lastly, it is found that the issue of which eligibility category is now appropriate for Student is not yet ripe for adjudication.

FACTUAL FINDINGS

1. Student was born on April 24, 1994. He has resided within the boundaries of the District since birth. As of the time of the instant hearing, Student was twelve years old and was being home-schooled in part and receiving Applied Behavioral Analysis services from CARD.

2. Student's parents began noticing his lack of developmental progress when he was about 18 months old. He was eventually assessed to determine if he had any disabilities, first by Children's Hospital and then through Riverside County. Student began receiving services through the Riverside County Office of Education Early Start Infant Circle Program before he was three years old. He was under an Individualized Family Service Plan since at least 1996, in which his eligibility for services was based on speech and language deficits. Student's parents participated in the development of this plan and signed their agreement to it. A multidisciplinary assessment was also conducted for Student in January, 1997. The assessment noted mild delays in Student's cognitive, motor, social, and self-help skills as well as generalized hypotonia[5] which was determined to affect Student's oral-motor and speech development. The assessment team recommended that Student receive intensive speech and language therapy services through the local school district and recommended that Student would benefit from placement in a preschool class. Student also began receiving medical care from Dr. Rudolf Brutoco, a developmental pediatritian, sometime in 1996, and has been under Dr. Brutoco's care since that time. He sees Student approximately one time a month. Student has been prescribed medication by Dr. Brutoco at various times over the years, continuing to the date of the hearing.[6]

3. An IEP team meeting was first held for Student by the District on May 8, 1997. The team noted that Student exhibited receptive and expressive language delays

[5] Hypotonia is a condition in which there is a diminution or loss of muscular tonicity, resulting in stretching of the muscles beyond their normal limits.

[6] Dr. Brutoco did not testify at the hearing and no one else testified concerning the nature of the medications taken by Student or how they impact on or interact with his disabilities. The District has requested numerous times that it be provided with Student's medical records; Student has declined to provide them (see discussion concerning Student's delay tactics, post.)

which required small-group instruction for Student. Student was placed in a preschool special day class (SDC) and given related services in the area of speech and language (on a collaborative and consultative basis two times a week) and in adapted physical education (on a consultative basis) to address his muscle tone problems. The IEP included five goals for Student, along with corresponding objectives. Student's parents indicated on the IEP that they received notification of their rights. They also agreed to the IEP as written. His parents were also providing Student with additional, private speech therapy and were supplementing the District preschool class with additional hours in a private, general education preschool. The IEP was based upon the assessments done of Student at the time, the services he had previously been provided, and the IEP team's input.

4. Gail Cantu, one of the District's speech and language pathologists, administered a speech and language assessment to Student on May 14, 1998, as part of a progress report on Student's speech and language development. Her progress report noted that Student had demonstrated progress toward meeting his communication goals and objectives. The report noted that Student's vocabulary and length and complexity of language use had increased. Student's comprehension of multi-step directives had also increased. Since Student's speech intelligibility remained poor, Ms. Cantu recommended continued emphasis on Student's communication goals.

5. Student's Parents were not happy with the District preschool or Student's progress. Although Student's Mother testified that she indicated her unhappiness to Student's preschool teacher and told her that Student's Parents intended to transfer Student to a private school, Mother's testimony was not credible. Neither parent reduced any of their concerns to writing or discussed their concerns with any District administrators, nor did they indicate any concern to the IEP team when it reconvened for Student's annual IEP on June 24, 1998. Additionally, if either parent had the intention to remove Student from the District and place him in a private school as of the date of this

IEP, such was not communicated to any of the District employees either at the IEP or by written notification to the District either before or after the IEP meeting.

6. The IEP for June 24, 1998, noted that Student had met the objectives of four of his five goals; he had not met the goals with regard to improving his articulation. In all other areas, the IEP indicates that Student had shown improvement from the previous year's IEP. The most significant deficit noted by the IEP was in Student's expressive language, which affected his overall learning ability. The IEP noted Student's present levels of performance, noted his progressive toward previous goals and created new goals. The IEP also included changes in the provision of the related service of Speech and Language therapy, this time providing Student with direct therapy 20 times a trimester, rather than just collaborative and consultative services as had been the case in the previous year's IEP.

7. The IEP dated June 24, 1998, was approved by Student's Parents. Student's Parents also received notification of their rights as parents at the IEP. The notification includes a description of the parents' and student's right to a due process hearing should they disagree with the District's identification, assessment, IEP or placement offered to the student. Student did not file a due process request concerning any dispute with the District until he filed the instant request on June 27, 2005.

8. Although they signed the IEP and did not express any disagreement with it, Student's Parents made the decision to remove him from the District's preschool and place him full-time at the private general education preschool Student had been attending to supplement the District's program. Student remained there for approximately a year. Other than the fact that this preschool was a general education school, no evidence was presented at the hearing concerning the academic program of that school or concerning any special education services provided to Student while he was in attendance there. Nor was any evidence presented concerning any progress, or lack thereof, which Student made at that private preschool. The following year, when Student began kindergarten, his Parents enrolled him at Calvary Chapel School, a Christian parochial school in Murrieta,

California, which is near Temecula. Student remained at Calvary Chapel until the end of fourth grade (school year 2004-2005.) Between approximately October 1999, and January 2001, Student received private speech and language therapy outside of the school setting from JoAnne Abrassart. The therapy was arranged for and financed by Student's Parents.

9. Deborah Votaw, Student's kindergarten teacher from Calvary Chapel, observed that Student had various problems focusing on his work and with controlling outbursts during the year she taught him. Student had difficulty with eye contact, was easily distracted, could not take more than two directions at a time, would talk about issues irrelevant to a conversation, and required more individual attention from Ms. Votaw than she had to give her other 22 or so students. Student continued to have difficulty with his expressive speech. However, giving him more individual attention was the only modification Ms. Votaw made in her classroom to accommodate Student, who, Ms. Votaw felt, could function in a regular education class as long as he had a little additional support. Ms. Votaw was never made aware of the fact that Student had attended public school and that he had had an IEP. She recommended to Student's Parents that further testing be done of Student and that his Parents contact the public school district. As a private school teacher, Ms. Votaw was aware that she could refer children with special needs to the local public school districts, and had previously recommended to other parents that they contact the public school if a student needed additional supports.

10. Student's Mother testified that she telephoned the District in 2002 and again in 2003 to ask about services available for Student because of his special needs and was told that her son was not eligible for services because he was a private school student. However, Student's Mother's testimony on this issue was not persuasive. Her testimony, even on direct examination, was disjointed and often confused as to actions she may or may not have taken and as to dates of the actions. Student's Mother did not know to whom she spoke at the District, nor did she follow up the conversation with a letter to the District. She did not ask to speak to a special education administrator or to an

administrator at her local District school or to anyone else in authority. Student's Mother did not request that an IEP meeting be held, did not request that an assessment be conducted for Student, did not inform the person who answered the phone that her son had previously been a student in the District or that he had an IEP, and did not inform the District that Student had previously been found to have a disability. The testimony of Student's Mother as to this issue was therefore found to be unreliable and given little weight by the Administrative Law Judge.

11. The District has a search and serve/child find system in place in conjunction with the Riverside County Special Education Local Plan Area (SELPA), of which the District is a member. As part of its child find program, the District advertises the programs available to children with special needs by publishing the program in local newspapers and in District school offices, by mailing copies of the program announcement to local private schools as well as by contacting the private schools through the Special Education Director, and by sending information to the homes of children already enrolled in the District. The Calvary Chapel School teachers were aware of special education programs available in the public schools and had recommended that some of their students avail themselves of the programs.

12. Student progressed through the grades at Calvary Chapel until he reached the fifth grade in school year 2004-2005.[7] He was assigned to Shannon Johnson's (nee Hanson) fifth grade class. Student entered fifth grade with strong reading skills and had done well previously in science and in mathematics but his progress in mathematics slowed when Student began to learn long division. Student would often neglect to turn in

[7] Student's first, second, third, and fourth grade teachers did not testify at the hearing. The only information concerning Student's progress through those grades was testimony given by his fifth grade teacher as to her conversations about Student with his fourth grade teacher.

assignments, was easily distracted and frustrated, and would "shut down" and reject offers of assistance. Student had a difficult time socializing and tended to keep to himself and would not play with other children at recess. His writing skills were also deficient. In sum, Student was not only failing to progress at the beginning of fifth grade but he also showed signs that his academic, social and motor skills were deteriorating as were his articulation skills.

13. At some point at the end of Student's year in fourth grade or at the beginning of Student's fifth-grade year, Calvary Chapel School began having doubts that it had the ability to continue providing educational services to Student. This was communicated to Student's Parents. Concerned about their son's progress, and the possibility that he might be dismissed from Calvary Chapel School, Student's Parents discussed the problem with Dr. Brutoco. Dr. Brutoco researched various sources and eventually recommended that Student's Parents contact Dr. Melanie Lenington, a licensed clinical psychologist and occupational therapist who, among other things, specializes in assessing and treating children with autism and other related disorders.

14. Over a period of nine days, beginning on September 23, 2004, and terminating on November 1, 2004, Dr. Lenington conducted an intensive assessment of Student. Her conclusion was that Student is autistic. She also found that Student still had fine motor difficulties (such as his difficulty in using a pencil), and had continued difficulties with receptive and expressive speech (including processing difficulties), and with social skills. Dr. Lenington's recommendation was that Student needed one-to-one support and intensive behavioral treatment that would focus on developing Student's language, social, self-help, and play skills. Significantly, Dr. Lenington recommended that Student's Parents contact their public school district to obtain assessments from the district as well as to convene an IEP. Dr. Lenington felt that Student, like many high-functioning autistic children, hit a wall when he reached fourth or fifth grade and was no longer able to keep up with the class because of his processing difficulties as well as his

other deficits.[8] Dr. Lenington's report was not provided to the District until after Student filed his request for a due process hearing in this matter.

15. Dr. Lenington also referred Student to CARD. She further recommended that Student be accompanied by aides at school, whether he was enrolled in public school or continued at Calvary Chapel. At some point at the end of 2004, or the beginning of 2005, Student's Parents contacted CARD. Ultimately, CARD provided training to Student's teacher and classroom aide(s) at Calvary Chapel, as well as a one-to-one classroom aide in his classroom at Calvary Chapel who was trained to assist autistic children. Student also began receiving direct CARD services. As a result of the CARD services, its training of Student's teacher and aides, and the provision of a one-to-one aide, there was a significant and positive change in Student's ability to progress in class. He began turning in assignments, became more aware of the feelings of his fellow students and of his teachers, and his academics and social skills improved. The CARD services permitted Student to function in the class. Had Student not received the CARD services, he would not have been able to complete his fifth grade year at Calvary Chapel School. Additionally, Calvary Chapel would have dismissed Student from school because its staff was not able, alone, to provide Student the support he needed in order to access and progress in his school curriculum. Student's Parents financed the costs of the CARD programs and training. They spent approximately $4000.00 per month on CARD services; it is unclear how much was paid specifically for the one-to-one aide, how much for direct CARD services, and how much for training the Calvary Chapel staff. In addition, Student's Parents paid his tuition at Calvary Chapel School, in the amount of $335.00 per month.

[8] Ms. Abrassart voiced the same opinion that Student may of "hit a wall" in fourth or fifth grade where his social environment and academics were impacted. She also stated that she was surprised at the diagnosis of autism; Ms. Abrassart believed that Student had severe speech deficits that needed to be addressed.

16. As recommended by Dr. Lenington, Student's Parents contacted the District. Student's Mother telephoned the District's special education office on January 28, 2005, to request a copy of Student's school records and to request an assessment[9] . They were informed that the requests should be directed to the principal of Student's neighborhood school. Student's Parents confirmed their oral request by letter faxed to both the principal at Temecula Valley Elementary School and to a clerical employee at the District's special education department offices. There is no dispute that the letter was received by the District.

17. In their letters dated January 28, 2005, Student's Parents did not inform the District that Student had previously been found eligible for special education services or that he had previously had an IEP from the District. Their letters also did not state the dates Student had attended school in the District. This impeded the District's ability to locate Student's records. Given the passage of time (almost seven years between the time Student last attended a District school and the date of the request for assessment and copies of Student's records) the District was initially unable to locate Student's records as they were not on the District's computer system and had been archived. The records were ultimately manually retrieved from the District's archives and eventually provided to Student.[10]

18. Pursuant to Student's request for an assessment, sometime before February 14, 2005, the District sent an invitation to Student's Parents for them to attend a "Student

[9] The letter Student's Parents wrote to the District specifically asked for an "IEP evaluation."

[10] None of the witnesses were clear as to the exact date that the District finally located Student's records or the exact date when the records were provided to Student's parents. However, it appears that Student's parents did receive them, at least partially, within about a month of their request.

Study Team" (SST) meeting on March 2, 2005. An invitation was also extended to the principal and fifth grade teacher at Calvary Chapel School. Student's Parents directed Calvary Chapel School not to attend any meetings with the District or to provide it with any information pertaining to Student. By letter to the District, Student's Parents declined the invitation to the SST, but stated that they were available to attend an IEP meeting as they previously requested.

19. Based upon the refusal of Student's Parents to provide Student's private school records to the District, Student's Parents' refusal to allow access to Student's private educational providers, and their refusal to attend the SST meeting, the District declined to move forward with the educational assessments of Student requested by his Parents. In its letter of March 3, 2005, the District took the position that it was unaware of any areas of suspected disabilities for Student and that it could not conduct the assessments without further information regarding Student. Student's Parents were invited to reconsider attending an SST meeting.

20. There was no further communication between Student and the District until Student filed his request for a due process hearing on June 27, 2005. In response to the due process filing, the District filed a motion to dismiss or continue the proceedings, alleging that they had not had an opportunity to assess Student and, therefore, the due process issues were not ripe for adjudication. The motion was granted, and OAH ordered Student to permit the District to assess him. The District presented an assessment plan to Student, which was formulated by Special Education Director Ann Huntington, on or about July 14, 2005. Student's Mother signed the assessment plan but failed to mark a box indicating whether she agreed to the plan or disagreed with it and was not giving her permission for the assessments to be conducted. Additionally, Student never responded to the District's request for dates he would be available for assessment. The District also provided 12 proposed dates for assessment. The District advised that it anticipated full assessment of Student to take eight to ten days for anywhere from one-and-a-half to

three hours per day. The estimate of eight to ten days included four days of school and home observations and a day of parent interviews.

21 Student declined to make himself available as requested by the District, taking the position that the order from OAH only required that he be available for one day of testing. The District therefore filed another motion with OAH to clarify its earlier order. On December 1, 2005, OAH granted the District's motion and ordered Student to make himself available to the District for assessments as necessary to reasonably complete the assessments. Thereafter, the District wrote to Student proposing some 14 dates to conduct the assessments, beginning on January 10, 2006. The delay was occasioned by the District's two-week winter break the second half of December. The District also requested all contact information for Student's outside assessors, service providers, teachers and doctors, as well as releases of information to enable the District to exchange information with these outside providers. The District also requested copies of all of Student's report cards, outside assessments and reports, all information compiled on Student by CARD, and all other educational and medical information not previously provided to the District.

22. In response to the District's proposed assessment dates, Student stated that he could not be assessed on more than two consecutive dates and needed transportation to the assessment sites due to his Mother's inability to drive. The District complied with the requests and set up an assessment schedule, to begin after the District's winter break, for numerous dates in January and February, 2006, with the assessments to take place at Student's home due to his lack of transportation. The District again requested all the information concerning Student that it had previously requested but not received.

23. The District's assessors needed all of Student's educational and medical information in order to properly assess him. Additionally, a vision assessment of Student conducted by the District's nurse on January 17, 2006, indicated Student possibly had a vision impairment in his right eye which could invalidate further assessments. The District suggested an assessment by an ophthalmologist, at District expense. In the months that

followed, the District attempted to set up assessment dates with Student's Parents and to obtain previously-requested releases and information. As of the date of the instant due process hearing, assessments in all areas other than occupational therapy (OT) had been completed. The OT assessor had scheduled the assessment at the time and place requested by Student and had waited about forty-five minutes for Student before leaving. Student arrived about fifty minutes late. Student did not notify the assessor that he would be late.

24. Although the assessments were not complete, on April 24, 2006, the District sent a letter to Student inviting his Parents and him to attend an IEP meeting for Student. Three dates in early May 2006, were proposed to him. Student responded that he was not available on the proposed dates and, in fact, was not available at any time for approximately the following eight weeks, until at least June 21, 2006. Student gave the District no explanation for his unavailability during those eight weeks. The dates proposed by Student to hold the IEP meeting were after the school year had ended and after Leslie Archer, the school psychologist who had conducted an assessment of Student, was going to begin a leave of absence. In response to Student's statement of unavailability for the proposed dates, the District suggested an additional eight possible meeting dates in May or June 2006, to accommodate the needs and schedule of Student and his Parents. The dates were not accepted by Student. As of the date of the instant hearing, no IEP meeting had been scheduled or held.

25 From the autumn of 1998, when he enrolled in a private preschool, until the date of the instant hearing, Student has never been re-enrolled in any public school and has never given any indication, verbally or in writing, of any intention to re-enroll in public school. As of the date of the hearing, the District had not been provided with a copy of Student's medical records or with a current authorization for release of information to obtain and exchange information with Student's medical doctor.

APPLICABLE LAW[11]

THE GENERAL PRINCIPLES OF THE IDEA

1. 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. (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(8).) "Special education" is defined as specially designed instruction to meet the unique needs of the student. (20 U.S.C. § 1401(25); Ed. Code, § 56031.)

2. The congressional mandate to provide a FAPE to children includes both a procedural and a substantive component. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 205, the United States Supreme Court utilized a two-prong test to determine if a school district had complied with the IDEA. First, the district was required to comply with statutory procedures. Second, the IEP was examined to determine if it was reasonably calculated to enable the student to receive some educational benefit. *Rowley* does not require that an IEP be designed to maximize a student's potential. (See also *W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1483.)

3. To determine whether a school district substantively offered FAPE to a student, the adequacy of the school district's proposed program must be determined. (*Gregory K. v. Longview School District* (9th Cir. 1987) 811 F. 2d 1307, 1314.) Under *Rowley*

[11] Student filed his request for due process hearing on June 27, 2005. Therefore, unless otherwise noted, citations to 20 United States Code are to statutes in effect prior to July 1, 2005, and citations to the Education Code are to statutes in effect prior to October 7, 2005.

and state and federal statutes, the standard for determining whether a district's provision of services substantively and procedurally provided a FAPE involves four factors: (1) the services must be designed to meet the student's unique needs; (2) the services must be reasonably designed to provide some educational benefit; (3) the services must conform to the IEP as written; and, (4) the program offered must be designed to provide the student with the foregoing in the least restrictive environment. While this requires a school district to provide a disabled child with meaningful access to education, it does not mean that the school district is required to guarantee successful results. (*Walczak v. Florida Union Free School District* (2d Cir. 1998) 142 F.3d 119, 133.)

4. The IDEA also requires that a due process decision be based upon substantive grounds when determining whether the child received a FAPE unless a procedural violation impedes the child's right to a FAPE, significantly impedes the parent's opportunity to participate in the decision making process regarding the provision of a FAPE to the parent's child, or caused a deprivation of educational benefits. (20 U.S.C. §1415(f)(3)(E); Ed. Code, § 56505, subd. (j); *Board of Education of the Hendrick Hudson Central School Dist.* v. *Rowley*, *supra,* 458 U.S. at 206-07; see also *Amanda J.* v. *Clark County School Dist.*, 267 F.3d 877 (9th Cir. 2001).) Procedural violations which do not result in a loss of educational opportunity or which do not constitute a serious infringement of parents' opportunity to participate in the IEP formulation process are insufficient to support a finding that a pupil has been denied a free appropriate public education. (*W.G.* v. *Board of Trustees of Target Range School Dist. No. 23*, 960 F.2d 1479, 1482 (9th Cir. 1992).)

REQUIREMENTS OF AN IEP

5. An IEP must include in a statement of the child's present levels of educational performance, a statement of measurable annual goals; a statement of the special education and related services and supplementary aids and services to be

provided; and a statement of how the child's progress toward the annual goals will be measured. (20 U.S.C. § 1414(d)(1)(A)(i), (ii), (iii) and (viii)(I); 34 C.F.R. § 300.347(a)(1), (2), (3) and (7)(i); Ed. Code, § 56345, subd. (a)(1), (2), (3) and (9).)

6. An IEP is evaluated in light of information available at the time it was developed; it is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)[12] "An IEP is a snapshot, not a retrospective." (*Id.* at p. 1149, citing *Fuhrmann v. East Hanover Bd. of Education* (3rd Cir. 1993) 993 F.2d 1031, 1041.) It must be evaluated in terms of what was objectively reasonable when the IEP was developed. (*Ibid.*) The focus is on the placement offered by the school district, not on the alternative preferred by the parents. (*Gregory K. v. Longview School Dist*, *supra*, 811 F.2d at p. 1314.)

STATUTE OF LIMITATIONS

7. The IDEA of 1997 does not contain its own statute of limitations. However, California implements the IDEA through its special education programs laws. (Ed.Code §§ 56000 et.seq.; *Miller v. San Mateo-Foster City Unified Sch. District* (N.D. Cal. 2004) 318 F.Supp.2d 851, 860.) Under California law, Education Code section 56505, subdivision (l), presently establishes a three-year statute of limitations for requesting a due process hearing. Under this section, any request for a due process hearing must be filed "within three years from the date the party initiating the request knew or had reason to know the facts underlying the basis of the request." (Ed.Code § 56505, subd.(l).) The reference to

[12] Although Adams involved an Individual Family Service Plan and not an IEP, the Ninth Circuit Court of Appeals applied the analysis in Adams to other issues concerning an IEP (Christopher S. v. Stanislaus County Off. of Education (9th Cir. 2004) 384 F.3d 1205, 1212), and District Courts within the Ninth Circuit have adopted its analysis of this issue for an IEP (Pitchford v. Salem-Keizer School Dist. No. 24J (D. Or. 2001) 155 F.Supp.2d 1213, 1236).

"knowledge of facts" requires that the plaintiffs must have known or reasonably should have known the facts underlying the supposed learning disability and their IDEA rights. (*Miller v. San Mateo-Foster City Unified Sch. District, supra,* 318 F.Supp.2d at 861 (citing *Jolly v. Eli Lilly & Co.*, (1988) 44 Cal.3d 1103).

PRIVATE SCHOOL PLACEMENT

8. The IDEA limits the circumstances in which parents who have unilaterally placed their child in a private school can seek reimbursement for that placement. A local educational agency is not required to pay for the cost of education, including special education and related services, unless a court or hearing officer finds that the agency (or district) did not make a FAPE available to the student. A request for reimbursement for private school costs may be reduced or denied if, 1) the parents failed to inform the IEP team at the most recent IEP meeting that they had concerns about the team's proposed placement, were rejecting that placement, and intended to enroll their child in a private school at public expense; or 2) the student's parents failed to give prior written notice at least 10 business days in advance to the district or local agency of their intent to remove their child from public school. Reimbursement can also be denied upon a judicial finding that the parents' actions were unreasonable. (*Greenland Sch. Dist. v. Amy N.* (1st Cir. 2004) 358 F.3d 150, 157; 20 U.S.C. § 1412(a)(10)(C)(i), (ii), and (iii).)

9. Additionally, a student is only entitled to reimbursement of private school tuition if it is determined that the placement at the private school was appropriate for the student. Although the placement does not have to meet the standard of a public school's offer of FAPE, it must still address the student's needs and provide educational benefit to him or her. (*Florence County School Dist. v. Carter* (1993) 510 U.S. 7, 13; *Parents of Student W. ex rel. Student v. Puyallup School Dist. No. 3* (9th Cir. 1994) 31 F.3d 1489; *Alamo Heights Independent Sch. Dist. v. State Bd. of Education* (5th Cir. 1986) 790 F.2d 1153, 1161; 34 C.F.R. § 300.403.)

A SCHOOL DISTRICT'S CHILD FIND OBLIGATIONS

10. A district is responsible for identifying, locating, and evaluating all children with disabilities within its boundaries who attend private (including parochial) schools and who are in need of special education and related services. (20 U.S.C. §§ 1412(a)(3)(A); 1415(a)(10) (A)(ii); 34 C.F.R. §§ 300.125(a)(i); 300.451(a); Ed. Code, §§ 56300, 56301, subd. (a).) These are commonly referred to as a district's "child find" or "seek and serve" obligations. Child find activities undertaken for children attending private schools must be comparable to activities undertaken for children attending public schools. (34 C.F.R. § 300.451(a).) A due process hearing may be requested if a district fails to fulfill its child find obligations. (20 U.S.C. § 1415(f); 34 C.F.R. § 300.457(b); Ed. Code, § 56501, subd. (a)(1).)

11. California law imposes additional requirements. Each SELPA must have written policies and procedures for use by its constituent agencies for a continuous child-find system. (Ed. Code, § 56301, subd. (c).) Parents must receive written notice of their rights under special education law and the procedure for initiating a referral for assessment to identify students who are eligible for special education services. (*Ibid.*) Parents shall be given copies of their rights and procedural safeguards upon initial referral for assessment, notice of an IEP meeting or reassessment, or filing a complaint, request for pre-hearing mediation, or a request for a due process hearing. (*Ibid.*)

12. In addition to the requirements for a continuous child-find system, a district has child-find responsibilities for specific children. 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 services may be needed to address that disability. (*Dept. of Education, State of Hawaii v. 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 qualified for services. (Ibid.)

13. A school district's responsibility for providing a student with a FAPE is limited. Specifically, students who were offered a FAPE by their local educational agency but are placed instead in private schools by their parents as a matter of educational preference have no individual entitlement to any special education and related services. (34 C.F.R. § 300.454(a)(l); see also *Cefalu v. East Baton Rouge Parish Sch. Bd*. (5th Cir. 1997) 117 F.3d 231, 233; *K.R. v. Anderson Community Sch. Corp*. (7th Cir. 1997) 125 F.3d 1017, 1019, *Fowler v. Unified Sch. Dist*. No. 259, (10th Cir. 1997) 128 F.3d 1431.) Rather, school districts are required only to expend a proportionate amount of federal funds on these children as a group. (20 U.S.C. § 1412(a)(10)(A)(i); Ed. Code, § 56173.) Special education due process procedures are not available to resolve disagreements with the districts' use of proportional federal funds or with service plans. (34 C.F.R. § 300.457.)

DUTY TO ASSESS

14. A school district is required to reassess a child if conditions warrant reassessment or if the child's parent or teacher requests a reassessment. (20 U.S.C. § 1414(a)(2)(A). If a child is referred for assessment, the school district is obligated to develop a proposed assessment plan within 15 calendar days of the referral for assessment, unless the parent agrees in writing to an extension (Ed. Code, §56043, subd. (a)), and shall attach a copy of the notice of parent's rights to the assessment plan (Ed. Code, §56321, subd. (a)). A parent shall have at least 15 calendar days from the receipt of the proposed assessment plan to arrive at a decision whether to consent to the assessment plan. (Ed Code, §56403, subd. (b).) An IEP required as a result of an assessment of a student must be developed within a total time not to exceed 50 calendar days from the date the school district received the parent's written consent to assessment, unless the parent agrees to extend these timeframes in writing. (Ed. Code, § 56043, subd. (d)(1).)

15. If parents want their child to receive special education and related services, they are required to allow a local educational agency to assess their child. (*Gregory K. v.*

Longview School Dist., (9th Cir. 1987) 811 F.2d 1307, 1315.) Before a school system becomes liable for a special education placement of a student, it is entitled to up-to-date evaluative data and may insist on evaluation by qualified personnel it finds satisfactory. (*Lorraine Dubois v. Connecticut State Board of Education, et al.* (2nd Cir. 1984) 727 F.2d 44, 48.) A local educational agency is not required to rely solely on an independent evaluation and must be allowed to reassess a student itself – there is no exception to this rule. (*Wesley Andress v. Cleveland Independent School District* (5th Cir. 1995) 64 F.3d 176, 178.)

16. The relevant timeframes for conducting an evaluation shall not apply to a local educational agency if the parent of a child repeatedly fails or refuses to produce the child for the evaluation.[13]

REQUIREMENTS FOR AN INDEPENDENT EDUCATIONAL EVALUATION (IEE)

17. A parent is entitled to obtain an IEE of a child. (20 U.S.C. § 1415(b)(1).) An IEE is an evaluation conducted by a qualified examiner not employed by the school district responsible for the child's education. (34 C.F.R. § 300.502(a)(3)(i).) A parent has the right to an IEE at public expense if the parent disagrees with an evaluation obtained by a school district. (34 C.F.R. § 300.502(b)(1); Ed. Code, § 56329, subd. (b).) When a parent requests an IEE at public expense, the school district must either initiate a due process hearing to show that its evaluation is appropriate, or provide the IEE at public expense. (34 C.F.R. § 300.502(b)(2); Ed. Code, § 56329, subd. (c).) An IEE obtained at private expense must be considered by the district in any decision concerning a FAPE for the child. (34 C.F.R. § 300.502(c)(1); Ed. Code, § 56329, subd. (c).)

[13] This provision was added to the reenactment of the IDEA in 2004, effective as of July 1, 2005. It applies to this case for all causes of action relating to assessments which were performed, or were failed to be performed, as of July 1, 2005.

ENTITLEMENT TO REIMBURSEMENT AND/OR COMPENSATORY EDUCATION

18. Parents may be entitled to appropriate relief, including reimbursement for the costs of placement or services that they have independently obtained for their child, when the school district has failed to provide a FAPE and the private placement or services are determined to be proper under the IDEA and are reasonably calculated to provide educational benefit to the child. (*School Committee of the Town of Burlington v. Department of Education* (1985) 471 U.S. 359, 369 [105 S. Ct. 1996, 85 L.Ed.2d 385]; *Student W. v. Puyallup School District* (9th Cir. 1994) 31 F. 3d 1489, 1496.)

19. Court decisions subsequent to *Burlington* have also extended relief in the form of compensatory education to students who have been denied a FAPE. (See, e.g., *Lester H. v. K. Gilhool and the Chester Upland School District* (3rd Cir. 1990) 916 F. 2d 865; *Miener v. State of Missouri* (8th Cir. 1986) 800 F.2d 749.) Compensatory education is an equitable remedy. There is no obligation to provide day-for-day or hour-for-hour compensation. "Appropriate relief is relief designed to ensure that the Student is appropriately educated within the meaning of the IDEA." (*Student W. v. Puyallup School District, supra,* 31 F.3d at p. 1497.)

BURDEN OF PROOF

20. A petitioner has the burden of proving at an administrative hearing the essential elements of his or her claim. (*Schaffer v. Weast* (2005) 546 U.S. [126 S. Ct. 528, 163 L.Ed 2d 387].)

LEGAL CONCLUSIONS

WAS STUDENT VOLUNTARILY AND UNILATERALLY PLACED IN PRIVATE SCHOOL IN THE FALL OF 1998? IF NOT, DID THE DISTRICT VIOLATE ANY OF STUDENT'S PROCEDURAL OR SUBSTANTIVE RIGHTS UNDER THE IDEA?

19. Yes, Student was a voluntarily and unilaterally placed private school student. Therefore, the District did not commit any procedural or substantive violations of the IDEA by failing to assess Student, hold IEP meetings, or offer him a FAPE, at any time between the fall of 1998 and January 28, 2005. First, Student is procedurally barred from asserting that he is not a unilaterally-placed private school student. Based upon Factual Findings 5, 7 and 8, and Applicable Law paragraphs 8 and 9, Student failed to either notify the IEP team at the last IEP meeting before removal from the public school that he had concerns about the placement offered to him or the services provided, or to give the District written notice at least 10 business days in advance of his intent to leave the public school placement. Additionally, based upon Factual Finding 8 and Applicable Law paragraph 9, Student has failed to provide any evidence that his placement at the private, general education preschool in approximately September, 1998, was appropriate. Student's assertion that the evidence shows that his placement at Calvary Chapel School was appropriate, is irrelevant to the issue of whether his removal to another private school at least a year earlier was appropriate.

20. Additionally, based upon Factual Finding 7 and Applicable Law paragraph 7, Student's allegations with regard to his IEP of 1998 as well as his decision to withdraw from the District preschool and to enroll in private school, are barred by the applicable statute of limitations. Student's Parents were advised numerous times of their rights, as evidenced by the IEPs of 1997 and 1998 and their signature(s) on those documents as well as on the specific notification of rights given to them. The assertion by Student's Mother that she was not aware that she could file a due process request at the time of Student's

removal to private school is not supported by the evidence. Student's parents simply chose not to exercise their rights during the applicable statute of limitations.

21. Furthermore, based upon Factual Findings 2, 3, 4 and 6, and Applicable Law paragraphs 1 through 6 and 20, Student has failed to meet his burden to prove that the District substantively failed to provide a FAPE to him in 1997 and 1998. The IEPs developed for Student contained his present levels of performance, contained appropriate goals with appropriate benchmarks, and offered Student appropriate related services to address his unique needs as they were identified at the time. Moreover, Student showed progress in his goals from his first IEP of May 1997 to the second IEP in June 1998. There was no evidence that the District should have been under notice that Student had not been properly assessed. Nor is there any evidence in support of Student's assertion that his IEP was improper or that he did not progress at all during the year he attended a District special education preschool. Student has therefore substantively failed to prove that the District failed to provide him a FAPE, which would have justified his unilateral placement in a private school.

22. Student also appears to make the argument that if a District fails to provide a Student with a FAPE, the decision to remove to a private school is a continuing violation. Therefore, by his argument, if failure to provide a FAPE is determined, the District would have a continuing obligation to assess the Student, hold IEP meetings, and offer a FAPE, for which reimbursement or compensation would be available to the Student during the time not barred by the statute of limitations. Student offers no statutory or other legal basis in support of this argument. Indeed, the case law appears to be contrary to such a finding. A similar contention was made, and rejected, in *Miller v. San Mateo-Foster City Unified Sch. District, supra,* 318 F.Supp.2d 851.

DID THE DISTRICT FAIL TO FULFILL ITS CHILD FIND OBLIGATIONS TO STUDENT IN SCHOOL YEARS 2002-2003, 2003-2004, AND 2004-2005?

23. No, it did not. Based on Factual Findings 9, 10, and 11 and Applicable Law paragraphs 10 through 13, the District had a continuous child find system that fulfilled its general child find obligations. There is no evidence that the District's child find activities for children attending private schools was not comparable to activities for children attending public schools. Based upon Factual Finding 10 and Applicable Law paragraphs 10 through 13, the District did not have reason to suspect that Student was a child with a disability, or that special education services may be needed. Prior to January 28, 2005, Student's Parents never requested that the District assess Student for special education services and never notified the District that Student was a child with a disability who had previously been under an IEP with the District. The District never received any information that should have triggered any child find obligations toward Student.

24. Based on Legal Conclusions paragraph 23, the District fulfilled its child find obligations to seek and serve disabled children attending private schools who reside within the District during all times at issue in this case. Based upon Legal Conclusions 23 and 24, and Applicable Law paragraphs 10 through 13, the District did not deny Student a FAPE during school years 2002-2003 and 2003-2004, and from fall of 2004 through January 28, 2005, by failing to fulfill its child find obligations to seek and serve disabled children attending private schools who reside within the District.

DID THE DISTRICT IMPROPERLY FAIL TO ASSESS STUDENT UPON HIS REQUEST FOR AN IEP EVALUATION MADE IN WRITING TO THE DISTRICT ON JANUARY 28, 2005?

25. Yes, it did. Based upon Factual Findings 16 through 20, and Applicable Law paragraph 14, absent a parent's agreement to extend dates, the District was under an obligation to prepare a proposed assessment within 15 days of receiving the referral for assessment from Student and to develop an IEP within 50 of receiving the parents' written

consent to the assessment plan. Based upon Applicable Law paragraph 4, the District's failure to follow these procedural requirements constitute a violation of the IDEA. The failure to propose an assessment plan to Student and the corresponding failure to assess him following his request for an assessment impeded Student's access to a FAPE and deprived him of educational benefits to which he is entitled as a student who had already been found eligible for special education services. Furthermore, there is no dispute that Student continues to be eligible for special education services although his primary eligibility category may still be in contention.

The District's contention that it was not under an obligation to hold an IEP meeting because Student did not have a "current" IEP is not supported by federal or state statues or the case law, and, therefore, is not persuasive. The concept of a student study team (or SST) meeting, which was the only type of meeting the District initially offered to hold, appears to have been created by school districts as a mechanism that may result in referrals of general education students to special education for assessment. (See, e.g., *Kurios A. v. Compton Unified School District* (September 27, 2005), OAH Case Nos. N2005070151 and N2005070129.) However, in this case, the District was on notice that Student had previously been found eligible for special education services by the time it found his archived school records. There was no reason to continue to deny an IEP meeting to Student. Even more important, there was no reason to refuse to assess Student within the statutory time frames once the request for assessment was made. Neither the federal IDEA nor the California statutes make any reference to the necessity for holding an IEP meeting *before* an assessment is complete. To the contrary, the statutes contemplate that an IEP will be held *subsequent* to the completion of the assessment process in order that all information be reviewed and considered in making IEP decisions.

DID THE DISTRICT IMPROPERLY FAIL TO ASSESS STUDENT DURING SCHOOL YEAR 2005-2006?

26. No, it did not. Based upon Factual Findings 20 through 24, and Applicable Law paragraphs 15 and 16, the District did not improperly fail to assess Student subsequent to approximately July 14, 2005. The time period between that date and the date of the instant hearing is replete with instances of procrastination and actions on behalf of Student's parents which impeded the attempt to assess Student. These include 1) Student's parents' failure to check off the appropriate box on the District's proposed assessment plan indicating if they agreed or disagreed with the plan; 2) Student's insistence that all assessments be done on only one day, which obliged the District to file a motion with OAH to clarify its previous order that Student make himself for assessments; 3) Student's insistence, without medical support, that assessments could only be done on two consecutive dates; 4) the canceling and rescheduling of dates; 5) the failure to provide the District with Student's medical records and/or authorization to speak with Student's doctor, despite OAH's order to provide all relevant records; and 6) Student's refusal to agree to a date for an IEP meeting despite being given an eight-week window of time, and his insistence that the IEP meeting be held during the District's summer vacation. Once the District proposed an assessment plan, there is no evidence that it deliberately impeded the process or sought to delay assessment of Student. Student is therefore not entitled to any reimbursement of expenses or compensatory education, or any other remedy, for the 2005-2006 school year.

IS STUDENT ENTITLED TO ANY COMPENSATORY EDUCATION OR REIMBURSEMENT OF EXPENSES BASED UPON THE DISTRICT'S FAILURE TO ASSESS HIM BETWEEN APPROXIMATELY FEBRUARY 28, 2005, AND APPROXIMATELY JULY 14, 2005?

27. Yes, he is. Based upon Factual Findings 15, 18, 19, 20 and 25, and Applicable Law paragraphs 3, 4, 18 and 19, Student is entitled to some form of equitable compensation. The failure to assess Student after his request for assessment on January

28, 2005, impeded his access to a FAPE and deprived him of educational benefits. Since there is no dispute that Student is eligible for special education services, had he been assessed, he would have been again found eligible and been provided with services. [14] Furthermore, the evidence offered by Student is persuasive that the services and supports he received from CARD, which were privately funded by his parents, offered him an educational benefit and permitted him to access the curriculum at Calvary Chapel School, which would not have been possible absent those services and supports.[15] Therefore, it is found that Student is entitled to reimbursement of his CARD expenses and his tuition at Calvary Chapel School, for the time period between April 13, 2005 and July 29, 2005.[16]

[14] Student's refusal to allow his private school teacher and administrators to attend the proposed SST meeting does not alter this analysis. The District was still obligated to propose an assessment plan to Student. That they were able to do so without the participation of the private school staff is evidenced by the assessment plan proposed in July, 2005, without the input of Student's private school educators. The lack of information may have impacted the ability of the District to propose complete assessments, but it did not absolve them of the duty to do so.

[15] It is irrelevant that Student's primary eligibility for special education services may still be at issue. The District is required to assess student in all areas of suspected disability and provide services to address all deficits, not just Student's primary area of eligibility.

[16] The timeframe for finding the District in violation of Student's right to a FAPE has been calculated by adding 65 days to January 28, 2005, the date Student requested the District to assess him. This includes 15 days for the time permitted to a district to assess a student upon his or her request, and 50 days from the date a district receives a signed assessment plan from a student's parents, pursuant to the Education Code in effect during the pertinent time, for a district to develop an IEP. The date on which the District's obligation to reimburse Student ends has been calculated by adding 15 days (the statutory

28. However, based upon Factual Findings 5, 6, 7, and 8, and Applicable Law paragraphs 7 and 17, Student is not entitled to reimbursement for any outside assessments he obtained. The only assessments conducted by the District were done prior to June 1998. The statute of limitations bars any contention that the assessments obtained by Student's parents were in response to inappropriate assessments obtained by the District. Nor was the District under any notice that Student disagreed with its assessments prior to Student's decision to obtain his own. Furthermore, prior to the time Student was privately assessed, he had not requested assessment from the District and therefore Student had not been assessed by it. Thus, there were no assessments with which Student could disagree. There is no basis for Student's contention that he is entitled to reimbursement for his privately-obtained assessments.

SHOULD STUDENT'S PRIMARY ELIGIBILITY FOR SPECIAL EDUCATION BE DESIGNATED AS AUTISM?

29. Based upon Factual Findings 23 and 24 and Applicable Law paragraphs 3 through 6, the ALJ declines to rule on this issue as it is not ripe for adjudication.

PREVAILING PARTIES

Education Code section 56507, subdivision (d), requires a decision to indicate the extent to which each party prevailed on each issue heard and decided. The parties prevailed as follows:

1. The District prevailed as to all allegations of issue 1, including both subparts (a) and (b).

2. The Student prevailed as to issue 2.

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period given to a student's parents to approve or disapprove a proposed assessment plan) to July 14, 2005, the date the District offered a plan to Student. (Ed. Code, § 56403, subd. (b).)

3. The District prevailed as to issue 3.

4. The Student prevailed as to issue 4 to the extent that he is entitled to reimbursement of CARD expenses and tuition at Calvary Chapel School from April 13, 2005, until July 29, 2005.

5. The District prevailed on the issue of whether Student is entitled to compensatory education or reimbursement for any educational expenses or CARD expenses for Student during the 2005-2006 school year.

6. The ALJ declines to rule on issue 6 as it is not ripe for adjudication.

ORDER

1. Within 30 days of this receipt of this Order, Student's Parents shall provide invoices from CARD to the District for all direct CARD services provided to Student, training of Calvary Chapel School staff, provision of a one-to-one aide for Student at Calvary Chapel School, and tuition paid to Calvary Chapel School, for the period April 13, 2005 to July 29, 2005, inclusive.

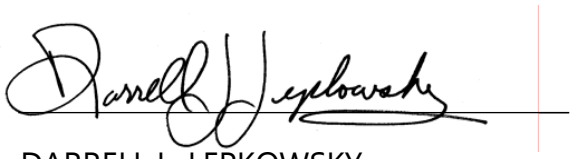
2. Within 30 days of receipt of the invoices from CARD, the District shall reimburse Student's Parents for the expenses they funded as described in paragraph 1 of this Order.

3. All other relief requested by Student is denied.

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 days of receipt of this decision. (Ed. Code, § 56505, subd. (k).)

Dated: August 11, 2006



DARRELL L. LEPKOWSKY

Administrative Law Judge

Office of Administrative Hearings