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

In the Matter of: STUDENT, Petitioner. vs. KERN HIGH SCHOOL DISTRICT, Respondent.	OAH CASE NO. N 2005070832

DECISION

Peter Paul Castillo, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), Special Education Division, State of California, heard this matter on December 5, 6, 7, and 8, 2005, in Bakersfield, California.

Attorney Donalee Hoffman represented the Student. Petitioner was present at the hearing on December 5, 2005, the morning of December 6, 2005, and the afternoon of December 7, 2005. On May 4, 2005, Student's Mother transferred her educational rights concerning the Student to Student's Sister. Both the Mother and the Sister were present during portions of the hearing, along with Student's Father.

Stacy L. Inman, Attorney at Law, represented Kern High School District (District) at the hearing. John Ferguson, the District's administrator of special education, was present on behalf of the District.

Petitioner and the District submitted written closing arguments on December 30, 2005, upon which the record was closed and the matter submitted.

ISSUES

In the Due Process Complaint, and at hearing, Petitioner raised five issues, as follows:[1]

1. Petitioner alleges that the District failed to provide Student a Free Appropriate Public Education (FAPE) during the 2004-2005 school year. Petitioner contends that the District failed to convene an Individualized Education Program (IEP) meeting warranted by Student's lack of progress, lack of school attendance, change of placement, and the District failed to provide Student with Designated Instructional Services (DIS).

2. The District failed to comply with the Individuals with Disabilities Education Act (IDEA) by failing to ensure Student's parent's attendance and participation in the IEP meetings on February 12, 2004, November 30, 2004 and February 9, 2005.

3. The District did not provide Student with FAPE for the 2004-2005 school year by not providing Student with an appropriate IEP. Petitioner contends that the District did not follow applicable federal and state laws in developing the February 9, 2005 IEP because the District used a pre-typed IEP. Petitioner also contends that the February 9, 2005 IEP failed to adequately represent Student's strengths. Additionally, Petitioner asserts that this IEP was vague with no scientific data or documentation to support the teachers' comments. Finally, Petitioner contends that the IEP contained inappropriate goals and benchmarks for Student in Reading Comprehension I, Language

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[1] OAH issued an Order on August 4, 2005 that dismissed Allegation #1, subdivision 2(a) in Petitioner's Due Process Complaint.

Arts, Daily Living, Math, Vocational Education I and II, and the Transition Partnership Plan (TPP).

4. The District did not provide Student with FAPE for the 2004-2005 school year by not providing Student with an appropriate IEP. Petitioner contends that the District did not follow applicable federal and state laws in developing the November 30, 2004 IEP because the IEP did not have an identifier page. Petitioner also contends that the February 9, 2005 IEP did not have an adequate summary of Student's strengths.

5. The District did not provide Student with FAPE for the 2004-2005 school year by not providing Student with an appropriate IEP. Petitioner contends that the District did not follow applicable federal and state laws in developing the February 12, 2004 IEP because the District used a pre-typed IEP. Petitioner also contends that the February 12, 2004 IEP failed to adequately represent Student's strengths. Additionally, Petitioner asserts that this IEP was vague with no scientific data or documentation to support the teachers' comments. Finally, Petitioner contends that the IEP contains inappropriate goals and benchmarks for Student in Reading Comprehension I, Daily Living, Math, and Vocational Education II.

As proposed resolutions for all issues, Petitioner requests independent assessments for Student, and a transfer to another school within the District. Petitioner requests that the District provide Student with DIS services, including speech, occupational therapy, Adaptive Physical Education, behavior intervention and assistive technology. Petitioner proposes that District provide Student with a one-on-one aide, door-to-door transportation with an aide, and a certificate of attendance until the age of 22 to receive an education.

FACTUAL FINDINGS

1. Student is a special education student who resides within the boundaries of the District. Student is currently 17-years-old and in the 11th grade and eligible for

special education with a designation of mental retardation. Both Student and Student's Mother are clients of Kern Regional Center.

2. On or about January 8, 2004, the Mother enrolled Student at East Bakersfield High School (EBHS). Previously, Student attended Centennial High School (CHS), another District school, where Student received special education services. The District convened IEP meetings on February 12, 2004, November 30, 2004 and February 9, 2005, in which the Mother was not in attendance. Except between September 27, 2004 and October 11, 2004, when Student was not enrolled at EBHS, Student attended EBHS until April 26, 2005, when the Mother removed Student from EBHS.

On July 18, 2005, Petitioner filed a request for a due process hearing on Student's behalf, and assigned OAH Case No. N2005070832. On October 28, 2005, OAH held a Prehearing Conference that clarified Petitioner's Complaint and Proposed Resolution.

PARENTAL NOTIFICATION OF IEP MEETINGS

3. The District provided parental notification of IEP meetings by first class mail. If the parent fails to respond to the notice, the District follows up with a phone call. The District mailed notice of each of the above-mentioned IEP meetings and followed each notice with a phone call to the Mother. While Petitioner claimed that the District gave the notices to Student for delivery, and that no follow up phone calls were made, that was not proven. Rather, the evidence established that the Mother did not obtain an answering machine until after the February 9, 2005 IEP meeting, contrary to her testimony at the hearing. Additionally, the Mother's testimony that she lacked knowledge of the IEP meetings was contradicted by her other testimony that she had prior notice of the February 12, 2004 and February 9, 2005 IEP meetings.

The District staff did not know and had no reason to know that the Mother was not mentally capable of responding to the IEP notices and getting to EBHS on her own for the IEP meetings. When the Mother went to EBHS to enroll Student, she did not ask

District staff for additional assistance, either from the front office staff, or from James Hoyle, special education program specialist at EBHS, who met her that day. The Mother did not explain at hearing why she did not contact the District about attending the February 2005 IEP meeting when she was not able to obtain transportation from the Regional Center. On another occasion, the Mother was able to independently arrange transportation to EBHS to discuss other students 'jumping' Student and to disenroll Student. The Mother's appearance and demeanor while testifying did not give any indication that she requires the requested additional assistance to be notified and to attend IEP meetings.

The District did provide Student a copy of the IEPs to give to the Mother. The IEPs include the Mother's signature confirming that she received a copy of the IEPs and consented to the implementation of the IEPs. The District did not have a reason to doubt the authenticity of the Mother's signature. Since the Mother, according to her testimony, attended IEP meetings in the past at other school districts, she should have recognized the IEP document and contacted EBHS if she had any questions.

STUDENT'S STRENGTHS AND INTERESTS

4. Regarding the identification of Student's strengths and interests described in the February 12, 2004 and February 9, 2005 IEPs, the District adequately described them. Student did participate in discussions about world news as part of the class curriculum and played videogames, as observed by Student's teachers, Jeffrey Crosby and Anthony Bernardin. Student was among the highest functioning students in their classes and assisted other students when he completed the in-class assignment before the others. Student told the District's school psychologist on January 13, 2003, that he liked to use his Playstation video game at home (Respondent's exhibit 12, Bates p. 57), and the District disciplined Student on or about April 26, 2004, for disrupting class with his videogame (Student's exhibit I, p. I-7). In the 2004-2005 school year, Mr. Bernardin

brought an "X-Box" videogame to school for the students to play on Fridays as a reward and Student enjoyed and was good at playing this videogame. Finally, Mr. Crosby did attempt to get additional information from the Mother as to Student's strengths, but was not able to reach her by telephone before the IEP meetings.

USE OF PRE-TYPED IEP

5. Mr. Crosby, as part of his duties as Student's case carrier (manager) at EBHS, prepared Student's February 12, 2004 and February 9, 2005 IEPs on his school computer. Mr. Crosby brought the pre-typed IEPs to the meetings for himself and other team members. The IEP team members used the pre-typed IEP to facilitate their discussions. However, the District had a computer in the IEP meetings that Mr. Crosby could use to make changes to the IEP based on the discussions in the IEP meeting. The IEP team fully discussed the IEPs that Mr. Crosby prepared, and had the ability to make any changes to the IEP if needed.

STUDENT ABSENCES

6. The District operates Ruggenberg Career Center (RCC) to provide special education students with vocational and daily living skills. Student's February 12, 2004 IEP indicates that Student was to attend RCC in his junior year (2004-2005 school year) for three to four periods, and EBHS one to two periods of special day classes and one to two periods of general education instruction. Student began to attend RCC for the first five periods on August 30, 2004. The District provided transportation from EBHS to RCC and back. RCC had a policy that if a student had five absences from RCC in a quarter that RCC would drop the student from the RCC program.

Around the third or fourth week of the first quarter, RCC dropped Student due to attendance problems. Student returned to EBHS and the District provided him an educational schedule similar to the one that he had at the end of his sophomore year.

At the start of the second quarter, November 8, 2004, Student returned to RCC. At least once, Student called Linda Harnett, a special education teacher at RCC, to be picked up as he had missed the bus to RCC. If the RCC van was passing by EBHS on the way to a job site, RCC would pick up Student. RCC dropped Student, again due to absences, from its program, and Student returned to EBHS.

After RCC dropped Student the second time, the District convened an IEP meeting on November 30, 2004 to discuss Student's placement for the periods that Student was to attend RCC. The November 30, 2004 Addendum provides that Student was to attend three to four periods of special day classes/transition program plan for the vocational education that Student was supposed to receive at RCC. The Addendum does not list the courses Student was to attend at EBHS. Student was to return to RCC when eligible. The District placed Student in two special education classes and a general education class, in addition to the one special education and one general education that Student was taking. To replace the vocational and daily living skills that RCC provided, the District folded the objectives identified in the February 12, 2004 IEP into Mr. Bernardin's and Mr. Crosby's classes. The Addendum does not state how the District planned to provide the vocational education that RCC was to provide Student. Student did not meet the Vocational Education II goals and objectives identified in the February 12, 2004 IEP due to his non-attendance at RCC.

By the November 30, 2004 IEP meeting, Student's absences were serious enough to require the District to call the Mother to discuss this issue. The IEP team discussed Student's absences. However, the Addendum does not reflect these discussions or the District's plan for Student's return to RCC.

STUDENT'S INDEPENDENT AND DAILY LIVING SKILLS

7. The Mother and Sister stated that Student does not have the ability to independently perform tasks of daily living, such as brushing his teeth, buttoning

clothing and personal hygiene, and does not have the fine motor skills to manipulate small items. They further testified that Student could not independently take a bus to school, make a sandwich, wash his clothes, or shop for food. While Student does have some difficulties in performing daily living skills, Student's family underestimates Student's abilities.

The District teachers taught Student daily living skills and Student could perform tasks that Student's family contends that Student cannot perform. Ms. Harnett credibly testified that she saw Student manipulate small items, which Mr. Bernardin corroborated with his observation of Student disassembling and assembling his remote control car. Mr. Bernardin told Student to button his shirt completely one day as only the top button was buttoned, and which Student did with no problem. Based on his observations, Mr. Crosby opined that Student was capable of learning the daily living skills identified in the IEPs.

STUDENT'S READING AND MATH COMPREHENSION

8. At hearing, Petitioner had Student attempt to read the titles of several simple children's books, which Student could not do. However, such a demonstration does not refute the day-to-day observations of Student's teachers who testified and were more credible regarding Student's reading abilities as documented on the IEPs. The validity of an in- hearing demonstration is suspect, as the demonstration itself is not scientifically based. The same is true as to Student's math skills as the teachers observations are entitled to more weight because they were based on the teachers' observations over time versus a staged in- hearing demonstration. Finally, the District's assessment of Student's abilities were corroborated by the fact that Student passed the Math portion of the California High School Exit Exam (CAHSEE) in March 2005 and the English and Language Arts portions in February 2004.

DIS AND OTHER STUDENT SERVICES AND STUDENT SAFETY

9. The District did not offer Student any DIS services in any IEP at issue. The February 28, 2003 IEP, which was in effect when Student transferred to EBHS, did not provide for DIS services. Petitioner did not identify at hearing any DIS services that Student requires to meet his educational or behavioral needs.

10. Petitioner did not establish evidence that Student required assistive technology, or low incident services. Petitioner failed to establish that Student's placement was not the least restrictive placement, or that Student was not safe at EBHS. As to parental notification of benchmark completion, the District complied with this requirement as Mr. Crosby attempted to contact the Mother to convey whether Student had completed a benchmark. Concerning the IEPs' baseline or current levels and scientific data or information, Petitioner did not prove that the baseline and current levels established by Mr. Crosby were not accurate. Also, Petitioner did not prove that because Mr. Crosby and Mr. Bernardin destroyed their written documentation at the end of the school year, that their observations were not accurate. Mr. Crosby and Mr. Bernardin credibly testified as to their observations of Student, and the information in the IEPs accurately reflected their observations.

11. Even though Student testified, Petitioner offered no admissible evidence that other students at EBHS had 'jumped' Student or that Student was not safe at EBHS.

STUDENT'S ABSENCES

12. Student had a great number of absences in the 2004-2005 school year, and Student, with the assistance of another person, disenrolled himself from EBHS on September 27, 2004. The District was aware of Student's attendance problems as Mr. Crosby and Mr. Hoyle both attempted to contact the Mother to discuss this issue. The Mother went to EBHS on or about October 11, 2004, to re-enroll Student and spoke

with Mr. Hoyle about Student being absent from school. Due to Student's excessive absences, the District referred Student to its STEP program in an attempt to improve Student's attendance. The District's records indicate that on November 15, 2003, the District held a parental meeting with the dean, and a conference with the student attendance review team on December 3, 2004.[2] Mr. Hoyle stated that a student's lack of attendance is a reason to call an IEP meeting, and agreed that the District's records showed many absences for Student.

Although Student missed a large part of the 2004-2005 school year and RCC dropped Student due to his absences, the November 30, 2004 IEP does not state that the IEP team discussed Student's attendance, even though Mr. Hoyle stated that the IEP team discussed this issue. The February 9, 2005 IEP does not document that the IEP team discussed Student's absences, even though Mr. Hoyle stated that the team did discuss this matter.[3] The November 30, 2004 or February 9, 2005 IEPs do not discuss whether Student's attendance problems were related to his designated disability or possibly another eligible disability, and what steps, if any, were needed to improve Student's attendance to ensure that Student met the goals and objective established in the IEPs.

[2] Neither party introduced evidence as to these two events, or whether these meetings took place.

[3] After the February 9, 2005 IEP, the Student returned to RCC for the fourth quarter, which began April 4, 2005. However, the Student's absences continued up until the time that the Student's mother removed the Student from EBHS.

LEGAL CONCLUSIONS

APPLICABLE LAW

1. Petitioner has the burden of proof as to the issues designated in Issues, paragraphs 1 through 5 of this Decision. (*Schaffer v. Weast* (2005) 126 U.S. 528 [163 L.Ed.2d 387].)

2. Under both State law and the federal Individuals with Disabilities Education Act (IDEA), students with disabilities have the right to a Free Appropriate Public Education (FAPE). (20 U.S.C. § 1400 et seq.[4]; Cal. Ed. Code § 56000 et seq.) 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 Individualized Education Program (IEP). (§ 1401(a)(9).) "Special education" is defined as specially designed instruction, at no cost to parents, to meet the unique needs of the student. (§ 1401(a)(29).)

California law defines special education as instruction designed to meet the unique needs of individuals with exceptional needs coupled with related services as needed to enable the student to benefit fully from instruction. (Cal. Ed. Code § 56031.) The term "related services" includes transportation and other developmental, corrective, and supportive services as may be required to assist a child to benefit from special education. (§ 1401(26).)

3. In *Board of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley* (1982) 458 U.S. 176, 200, 102 S.Ct. 3034, the United States Supreme Court addressed the level of instruction and services that must be provided to a student with disabilities to

[4] All statutory citations are to Title 20 United States Code, unless otherwise noted.

satisfy the requirement of the IDEA. The Court determined that a student's IEP must be reasonably calculated to provide the student with some educational benefit, but that the IDEA does not require school districts to provide special education students with the best education available or to provide instruction or services that maximize a student's abilities. (*Id.* at 198-200.) The Court stated that school districts are required to provide only a "basic floor of opportunity" that consists of access to specialized instructional and related services, which are individually designed to provide educational benefit to the student. (*Id.* at 201.)

4. To determine whether the District offered Student a FAPE for the 2003-2004 and 2004-2005 school years, the focus is on the adequacy of the placement the District actually offered to Student, rather than on the placement preferred by the parent. (*Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1307, 1314.)

5. To constitute a FAPE as required by the IDEA and *Rowley*, the District must design its offer to meet Student's unique needs and be reasonably calculated to provide Student with some educational benefit. Although not the focus of the dispute here, additional requirements are that the District's offer must conform to the IEP, must place Student in the least restrictive environment (LRE), and must provide Student with access to the general education curriculum. (See, § 1412(a) (5)(A); 34 C.F.R. §§ 300.347(a), 300.550(b); Cal. Ed. Code § 56031.)

6. The adequacy of an IEP is not determined by reviewing the IEP in hindsight. The adequacy of an IEP is determined by reviewing the IEP's goals and goal achieving methods at the time the plan was implemented and determining whether these methods were reasonably calculated to confer Student with a meaningful educational benefit. (*Adams v. Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)

7. *Rowley* also recognized the importance of adherence to the procedural requirements of the IDEA as part of the FAPE analysis. Pursuant to Section 1415,

subdivision (f)(3)(E)(ii), of IDEA, for a procedural violation to deny the student FAPE the procedural violation must either: 1) impede the student's right to FAPE; 2) significantly impede a parent's opportunity to participate in the education decision making process; or 3) cause a deprivation of educational benefits.

Determination of Issues

ATTENDANCE OF STUDENT'S PARENT AT IEP MEETINGS

8. Petitioner contends that the District did not do enough to secure the attendance of the Mother at Student's IEP meetings and violated Title 34 Code of Federal Regulations section 300.345 and California Education Code section 56341.5. The 1999 discussion of the adoption of Title 34 Code of Federal Regulations section 300.345(d) indicates that a district need only make a reasonable effort to secure a parent's attendance.

> The regulation makes it clear that paragraphs (d)(1) through (d)(3) of this section are examples of what a public agency "may do" to maintain a record of its attempts to arrange a mutually agreed on time and place for conducting an IEP meeting. Public agencies are not required to go to the parent's place of employment to attempt to seek the parents' involvement in their child's IEP; and it is expected that a public agency would pursue that option very judiciously. However, there may be situations in which the agency believes that it is important to do so because it is otherwise unable to contact the parent. Implementation of this specific provision is left to the discretion of each public agency. In any case in which the agency is unable to contact

> the parents or otherwise ensure their participation, § 300.345(d) sets out options that the agency may elect to follow.
>
> (64 Federal Register 12406, 12587 (March 12, 1999).)

As noted in Factual Finding 3 above, the District followed its normal procedures in attempting to secure the Mother's attendance at Student's IEP meetings, and the Mother testified that she had notice of the February 2004 and 2005 IEP meetings. Additionally, the District did not know and could not reasonable be expected to know that the Mother was not mentally capable of responding to the District's IEP meeting notifications. Thus, the District made legally adequate attempts to notify the Mother of the IEP meetings.

Petitioner challenged the District's failure to produce written documentation of its attempts to contact the Mother, as required by Title 34 Code of Federal Regulations section 300.345(d). The District's failure to produce the required documentation constitutes a procedural violation of IDEA. However, Petitioner did not establish that this deficiency denied Student FAPE. (Section 1415(f) (3) (E) (ii).) The District complied with the applicable laws in following its normal procedures to inform the Mother of the IEP meetings and its failure to produce the required documentation did not seriously infringe on the Mother's participation in the IEP process. (See, *Shapiro by & through Shapiro v. Paradise Valley Unified Sch. Dist. No. 69* (9th Cir. 2003) 317 F.3d 1072, 1079; "Procedural flaws do not automatically require a finding of a denial of a FAPE. However, procedural inadequacies that result in the loss of educational opportunity, or seriously infringe the parents' opportunity to participate in the IEP formulation process, clearly result in the denial of a FAPE.")

FAILURE TO CONVENE IEP DURING THE 2004-2005 SCHOOL YEAR

9. The District did convene a timely IEP meeting to discuss Student's lack of educational progress, Student's placement and lack of attendance. The only lack of educational progress for Student concerned the Vocational Training II portion of the February 12, 2004 IEP. The IEP had Student learn these skills at RCC. This issue overlaps with Student's lack of attendance and change in placement as Student no longer attended RCC. The District convened a timely IEP meeting on November 30, 2004, to discuss RCC dropping Student due to lack of attendance and how to meet Student's IEP goals that RCC was to provide. Between the November 30, 2004 and February 9, 2005 IEP meetings, Student's absences did not warrant an additional IEP meeting.

ADEQUACY OF FEBRUARY 12, 2004 IEP

10. Petitioner challenged the February 12, 2004 IEP because the District brought to the IEP meeting a pre-typed IEP, but did not cite to any legal authority that prohibits a district from drafting an IEP prior to the meeting. Petitioner did not present evidence that the District failed to meaningfully participate in the IEP process by merely bringing a pre-typed IEP, to which the District had the ability to make any changes necessary during the meeting.

11. Petitioner did not prove that the District improperly developed Student's strengths and Student's interests and preferences or that this information was not accurate. The District did properly attempt to notify the Mother about the February 12, 2004 IEP meeting. Mr. Crosby attempted to contact the Mother by telephone before this meeting to obtain information as to Student's strengths and interests. Proof of Student's interests in playing videogames can be found by Student's own statement to Dr. Clark in the January 14, 2003 evaluation report in which Student states, "at home, he likes to use his play station video game." (Exhibit 12, p.57.)

12. The IEP accurately reflected Student's present level of performance. Mr. Crosby established how he obtained this information through his testing of Student in the areas of math, reading and writing. Mr. Crosby's and Mr. Bernardin's observations of Student during class in the IEP adequately reflected Student's abilities at the time of the February 12, 2004 IEP.

As to Student's independent living skills, Petitioner did not establish that the District's narrative that Student has adequate independent living skills was vague and not supported by the evidence at the time of the February 12, 2004 IEP as the Petitioner's evidence concerned problems that Student had after this IEP meeting.

13. Petitioner asserts that the District does not have scientific documentation or data to support the teachers' comments in the IEP. However, Petitioner did not cite to any statutory or regulatory authority that the "Classroom Teacher Invitation/Notification of Meeting" has to be based on scientific data or documentation. In addition, Petitioner did not establish that the comments were vague or did not accurately reflect Student's level of performance at the time of the February 12, 2004 IEP.

ADEQUACY OF NOVEMBER 30, 2004 IEP ADDENDUM

14. IDEA requires that when Student no longer attended RCC, and returned to EBHS for the entire school day that the District had to amend the February 12, 2004 since there had been a change in placement. (*Mewborn v. Government of the District of Columbia* (D.D.C. 2005) 360 F.Supp.2d 138, 143-144.) The November 30, 2004 IEP Addendum does not identify the reasons why Student is not eligible to attend RCC and how Student will become eligible again to attend RCC in the future. The District removed Student from RCC due to Student's absences and decided that it could meet Student's vocational education requirement at EBHS. However, the Addendum does not document the District's plan to provide Student at EBHS the vocational education that RCC was to provide.

The District referred Student to its STEP program due to Student's excessive absences, but the IEP does not mention this fact. The Addendum does not document Student's absences, even though Mr. Crosby and Mr. Hoyle expressed concern about the impact of the absences on Student's education. Finally, the District did not document what steps, if any, the District needed to take to ensure that when Student returned to RCC that Student would actually attend RCC and not be dropped again.

The District's failure to include information about providing Student vocational education at EBHS, and dropping Student from RCC due to his absences, denied the Mother a meaningful ability to participate in Student's education. The Mother did not have the information needed to ask what was needed to ensure that Student could succeed at RCC because of the piecemeal manner in which the District updated the February 12, 2004 IEP with the November 30, 2004 IEP Addendum. (*Mewborn v. Government of the District of Columbia* (D.D.C. 2005) 360 F.Supp.2d 138, 144.)

ADEQUACY OF FEBRUARY 9, 2005 IEP

15. Petitioner challenges the adequacy of the District's February 9, 2005 IEP on the same grounds as Petitioner's challenge to the February 12, 2004 IEP. The fact that the District brought a pre-typed IEP to this meeting does not mean that the District did not meaningfully participate in the IEP process. The District made appropriate attempts to notify the Mother to secure her attendance, as noted in Factual Finding 3, and properly documented Student's strengths and interests, as noted in Factual Finding 4. Petitioner did not cite to any legal authority to support the contention that the comments on the Teacher Invitation/Notification of Meeting needed to be supported by scientific data by not citing to any legal authority to support this contention. As to Student's vocational skills, Ms. Hartnett's observations of Student corroborated Mr. Crosby's and Mr. Bernardin's observations as to Student's ability to manipulate items,

follow instructions and to work well with others. Mr. Hartnett's testimony that Student called her to ask for a ride to the job site when he missed the bus to RCC from EBHS indicates that Student has more independent living abilities than the Mother and the Sister contend.

16. Petitioner did not prove the goals and benchmarks for Reading Comprehension I, Language Arts, Daily Living, Math, Vocational Education I and II, and the Transition Partnership Plan (TPP) were not appropriate for Student. The District established Student's skills and abilities in all these areas through the testimony of Mr. Crosby, Mr. Bernardin and Ms. Hartnett. The fact that these witnesses did not have written documentation does not outweigh their assessment of Student that they obtained from working directly with Student. Other than the self-serving testimony of the Mother, Sister and Father, Petitioner did not have any independent evidence to support their position that the District overestimated Student's abilities. The fact that Student passed two portions of CAHSEE confirms Student's abilities in math and reading. The goals and objectives drafted by Mr. Crosby were reasonably calculated to confer Student with a meaningful educational benefit, and supported by the evidence at the time the District drafted the IEP.

17. The District failed to document how to ensure Student's continued educational progress considering his continued absences. Only one of the teachers' comments, Jenepher Lapp, piano class, mentions the impact of Student's absences on his education, even though Mr. Crosby testified that Student could have made more education progress if he attended class more. The IEP planned for Student to return to RCC. Because RCC dropped Student due to his absences, the IEP team should have documented this issue and determined what course of action, if any, was needed to ensure Student's attendance at RCC. The IEP states that the District was to ensure that it did not release Student to a person not on his emergency card, but does not mention

the discussion the IEP team had about Student's absences. The District's failure to document its discussion of Student's absences on the IEP denied the Mother a meaningful opportunity to participate in the decision making process because of the impact of Student's absences on his educational progress.

18. Petitioner did not establish that Student required assisted technology or low incident services, that Student's placement was not in the least restrictive setting, or was unsafe or that the instructional setting is contradicted by the TPP. Petitioner did not introduce any evidence that the District contacted Student's regional center worker without permission, or that the District needed permission. Finally, the District provided the Mother with a copy of the IEP.

PROPOSED RESOLUTIONS

19. Petitioner requests that Student be transferred out of EBHS based on a concern as to Student's safety and the attitude of the EBHS special education staff. However, Petitioner did not demonstrate that Student was not safe at EBHS. The fact that Student, with the assistance of an unknown person, disenrolled himself does not automatically create a safety issue, but rather an attendance issue. Mr. Crosby, Mr. Bernardin and Mr. Hoyle demonstrated that they cared about Student's education and were capable of meeting his educational needs. The issue whether the District acted properly as to the Mother's request to transfer Student when she disenrolled Student on April 26, 2005, is not an issued raised in the Due Process Complaint, and therefore is not to be decided in this Decision. (Cal. Ed. Code § 56502(i).)

20. As to Student requiring any independent assessments, Petitioner did not introduce any evidence about what assessments, if any, Student requires.[5] Petitioner did not establish that Student requires any DIS services. While Student does have attendance problems, Petitioner did not establish that Student requires a one-on-one aide and door-to- door transportation.

ORDER

1. Within 30 days of this order, the District shall convene an IEP meeting, which may be combined with Student's annual meeting if that is to be scheduled during the same time period.

   A. At this IEP meeting, the team members shall discuss Student's school absences and whether Student's absences affect Student's ability to receive some educational benefit from Student's IEP. If Student's absences impact Student's ability to receive some educational benefit, the District shall develop an appropriate program to meet Student's educational and behavioral needs.

   B. At this IEP meeting, the District shall update Student's vocational education plan to ensure that Student meets the goals and objectives identified in the February 12, 2004 and February 9, 2005 IEPs within one year.

PREVAILING PARTY

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

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[5] Before hearing, Petitioner did not make a request to the District for an independent educational assessment, nor did Petitioner obtain such an assessment and seek reimbursement from the District. (Cal. Ed. Code § 56329(b).)

1. Petitioner prevailed on Issues 3 and 4 solely as to the District's failure to document concerns the District had as to Student's attendance, and on Issue 4 for the IEP being vague. As to all other allegations in Issues 3 and 4, the District prevailed.
2. The District prevailed on Issue 1, 2 and 5.

RIGHT TO APPEAL THIS DECISION

The parties to this case may appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within 90 days of receipt of this Decision. (Ed. Code § 56505(k).)

Dated: January 27, 2006

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings
Special Education Division