

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

In the Matter of:

POWAY UNIFIED SCHOOL DISTRICT ,

Petitioner,

vs.

STUDENT,

Respondent;

OAH CASE NO. N 2005090003

STUDENT,

Petitioner,

vs.

POWAY UNIFIED SCHOOL DISTRICT,

Respondent.

OAH CASE NO. N 2005090004
(Consolidated Cases)

DECISION

Alan R. Alvord, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on September 21, October 6, October 7 and October 11, 2005 in Poway, California.

Mother and Father represented Student. Also present assisting Student was Lindsey Stewart.

Justin Shinnfield, Esq. and Sundee Johnson, Esq., Atkinson, Andelson, Loya, Ruud & Romo, P.C. appeared for Poway Unified School District (district).

The administrative record was opened and documentary evidence and testimony were taken. The record was held open for additional documents and to allow the parties to submit written closing briefs. Closing briefs were received and the matter was submitted on November 4, 2005.

ISSUES

1. Did the District properly assess Student in the 2003-2004 school year?
2. Did the District properly assess Student in the 2004-2005 school year?
3. Did the District offer Student a Free Appropriate Public Education (FAPE) in the least restrictive environment for the 2004-2005 school year?
4. Did the District deny Student a FAPE in either the 2003-2004 or 2004-2005 school years by using only one criterion for assessment?
5. Did the District deny Student a FAPE in either the 2003-2004 or 2004-2005 school year by not offering the least restrictive environment?
6. Did the District deny Student a FAPE by excluding his parents from the IEP process?
7. Did the District deny Student a FAPE by delaying, then withholding from his parents, the district-contracted independent educational evaluation?
8. Is the District required to reimburse Student's parents for educational expenses?

FACTUAL FINDINGS

PROCEDURAL BACKGROUND

1. The District filed its due process request on March 21, 2005 after Student's parents refused to sign the IEP document the district and parents had developed. Student filed his due process request on April 4, 2005. The two cases were consolidated for hearing.

STUDENT'S BACKGROUND

2. Student is a 10th grader in the district. He qualifies for special education services with a classification of "other health impaired" based on a diagnosis of attention deficit disorder/attention deficit hyperactivity disorder (ADD/ADHD). The records indicate that Student suffered a head injury playing with his older brother when he was 18 months old. This resulted in intense crying, breath holding and seizure activity. No treatment was indicated at the time. In 2002, Student was seen by a neurologist, who performed an electro encephalogram, which showed some abnormal brain waves consistent with a seizure disorder. There is a suspicion that Student may experience the "absence" type of seizure.

3. Student attended Kindergarten through fifth grade in the district. He repeated fifth grade and completed sixth grade at a private school. When he transferred back to the district, his parents strongly felt he should skip seventh grade and they enrolled him in eighth grade.

PREVIOUS ASSESSMENTS

4. Student was previously assessed in 1998, 2000 and 2001. The 1998 assessment showed a verbal score of 93, performance score of 93 and full scale score of 92 on the Wechsler Intelligence Scale for Children (WISC-III), Bender standard score of 92, Motor-free Visual Perceptual Test (MVPT) perceptual quotient of 109, Diagnostic Achievement Battery, 2nd Edition (DAB-2) of 106 in reading and 93 in written language, and a Woodcock Johnson of 101 in reading and 92 in written language. These assessments showed average abilities.

5. The 2000 assessment showed verbal, performance and full scale scores on the WISC-III of 101, 87 and 94 respectively, Bender score of 83, Wide Range Assessment of Memory and Learning (WRAML) verbal memory, visual memory, learning index and

general memory of 87, 95, 93 and 90 respectively, DAB-2 scores of 94 in reading, 112 in math and 78 in written language, Wechsler Individual Achievement Test (WIAT) scores of 92 in reading, 94 in math and 75 in writing.

6. Nancy Markel, Ph.D., performed an independent neuropsychological evaluation in November, 2001 showing a full scale score of 104 on the WISC-III, scores of 92 in reading, 99 in math and 89 in writing on the Woodcock Johnson III Achievement Test, a standard score of 85 on the Gray Oral Reading Tests, 3rd Edition (GORT-3), visual and motor scores on the Developmental Test of Visual-Motor Integration (VMI-4) of 93 and 79 respectively, NEPSY scores of 82 (attention/executive function), 93 (language), 95 (sensory- motor), 85 (visual-spatial) and 91 (memory), California Verbal Learning Test (CVL-T) score for total recall within the average range. Dr. Markel concluded Student had average intelligence, but recommended a developmental vision evaluation. Dr. Markel also recommended evaluation of a possible auditory processing disorder. She found problems in visual motor integration and weakness in spelling, reading comprehension and processing speed. Dr. Markel expressed her concern that Student's abnormal brain electrical activity contributed to his educational difficulties. The district followed Dr. Markel's recommendations and they were part of the basis for the ultimate decision regarding Student's qualification for special education services.

7. In addition to these assessments, in June 2003 Mitchel D. Perlman, Ph.D., reviewed the history and assessments and wrote a letter recommending additional seizure studies and consideration of anti-convulsant medication. Dr. Perlman's letter and attached summary highlights areas of concern, but does not make any academic recommendations.

2003 ASSESSMENT AND IEP

8. The district again assessed Student in September, 2003 when he was in 8th grade. The school psychologist observed Student in class and used the following

instruments to assess Student: Woodcock Johnson III Cognitive Abilities (WJ-IIIc), WRAML, Bender- Gestalt Test (BGT), VMI-4, Test of Auditory-Perceptual Skills – Upper Level (TAPS-UL), Test of Visual-Perceptual Skills – Upper Level (TVPS-UL) and a series of Achenbach Behavior Checklists from Student, his Mother and three teachers. In addition, the psychologist reviewed all of the previous assessments. These tests showed Student generally functioned in the average to below average range with areas of need in memory, visual discrimination and attention to tasks. The school psychologist did not find Student qualified for special education based on this assessment, but deferred final decision until after receipt of the medical evaluation from the school nurse. The school nurse's report confirmed a diagnosis of ADHD and, together with the information on the abnormal EEG, led the district to qualify Student for special education services under the diagnostic category of "other health impaired." The district also performed a speech and language assessment which found Student demonstrated age appropriate skills. The district's assessment was appropriate for Student in all areas of suspected disability at the time it was performed.

9. After assessments were performed, an Individualized Education Plan (IEP) meeting was held on October 1, 2003. The district determined Student was qualified for special education and offered him a placement in general education classes with pull-out support from the resource specialist for one period once per week. The IEP team also noted that they would continue to monitor Student and increase this support time if necessary. Mother consented to this offer and signed the IEP document.

10. Later in the 2003-2004 school year the district performed an assistive technology assessment and an occupational therapy assessment at the request of the parents. As a result of the assistive technology assessment, the district recommended Student use an Alphasmart keyboarding tool and other techniques to encourage writing. In January, 2004 the district obtained an independent Occupational Therapy

Educational Evaluation. No occupational therapy services were indicated by the assessment, but the suggestion was made for a one-time consultation to develop sensory suggestions for maintaining attention in the classroom. Student's P.E. teacher provided an assessment of his gross motor, fine motor and hand-eye coordination, indicating his function was average to above average. These additional assessments were appropriate for Student in all areas of suspected disability.

11. On June 2, 2004 an IEP meeting took place to discuss the transition from middle school to high school. The IEP document states special education services placement of 25 percent were to be given to Student. This percentage translates to one special education class per week. His parents agreed to the placement and service recommendations but refused to sign the IEP document because they objected to the additional goals and objectives stated in the IEP document.

2004-2005 SCHOOL YEAR

12. Student's parents requested and were granted an inter-district transfer from Student's high school of residence to another high school. Student began attending that high school on August 26, 2004. Student was enrolled in the school's Learning Strategies class for one period per day.

13. The Learning Strategies class at Student's high school is a special education program in which Students diagnosed with learning disabilities or as "other health impaired" attend the class and receive academic support in the form of tutoring, time to complete assignments and specific academic skills training. There is a low ratio of Students to teachers and Students can get individualized help.

THE 2004-2005 IEPs AND THE DISPUTE ABOUT LEARNING STRATEGIES

14. An IEP meeting was held on September 29, 2004. This was the first IEP meeting for Student at the high school. Mother stated during the meeting that she was

not aware of the purpose of the meeting. The team informed her it was Student's annual review. Mother stated she thought it was only to review his placement. His general education teacher reviewed his classroom performance. It was reported that he was not turning in his homework. His parents had informed the teacher that he was doing the homework but not turning it in to the teacher. The teacher noted that Student's work is appropriate when it is completed. Mother expressed concerns about Student's memory problems impacting his success. Mother requested a sample of the standard used in Student's math class¹, and the teacher agreed to provide it. They also discussed his placement and performance in math. The team reviewed Student's progress toward his previous goals and noted he did not meet his processing speed goal. They also discussed Student's difficulties using the Alphasmart. The team agreed to follow up for further consultation with the Alphasmart technician. Mother informed the district at this meeting Student was receiving outside tutoring at The Tutoring Club and she was going to seek reimbursement from the district. She was given information about how to seek reimbursement. The IEP was not completed at this meeting due to time constraints and another meeting was set for October 21, 2004.

15. At the October 21, 2004, meeting, before the district personnel could begin the review process, Mother provided a list of "parent concerns" and an "agenda" regarding Student's progress in school and his placement in the Learning Strategies class. She was concerned that he was failing. She notified the district (again) that she had unilaterally placed Student at The Tutoring Club and would seek reimbursement

¹ The Alphasmart is a small keyboard that students can use for note-taking during class.

form the district. She also stated she did not think the Learning Strategies class was an appropriate placement for Student. She asserted that Student was failing and the Learning Strategies class was not providing appropriate academic support. She was invited to observe a Learning Strategies class. Later, after she observed the class on two different occasions, Mother began to assert that the Learning Strategies class was merely a "parking lot" for special education Students and that the class provided no academic benefit to Student. In October, 2004, after only two months of school, Student stopped consistently attending the Learning Strategies class. Student's parents consented to his not attending this class. District personnel addressed many of Mother's concerns raised in the IEP meeting, including an agreement by one of the teachers to provide copies of the overheads used in class so Student could use them as a study guide. At this meeting, the team also discussed Student's gross motor and fine motor skills. The district personnel believed Student's motor skills were age appropriate and did not show significant delays. Mother asserted Student had motor delays.

16. Mother's testimony at the administrative hearing regarding the October 21, 2004 IEP meeting was significant. She went to the meeting extremely concerned over Student's progress and wanting the district to do something immediately to help Student. She was unwilling to allow the IEP process to go forward following the usual order of items for discussion because she felt that was not in Student's best interests. She testified that every time she tried to talk about solutions, the district personnel wanted to get back to their agenda. Mother felt that the district personnel were not listening and not considering her input. The evidence shows the district personnel did listen to Mother and consider her input. The district did not accept her assertion of control over the agenda and the personnel recognized their duty to complete the steps in the IEP process. While the district IEP team did not agree with everything Mother

suggested or asserted, they did implement a number of her suggestions and concerns in the IEP document.

17. In October, 2004 the relationship between Mother and the school personnel began to deteriorate. She continued to assert that the district was not providing appropriate services for Student. The district continued to attempt to follow its process for completing the IEP. The IEP was not completed at the October 21, 2004 meeting. Additional IEP meetings took place on November 16, December 2, December 17 and January 12, 2005.

18. Mother attended the IEP meeting on November 16, 2004. The team reviewed the goals and objectives of the IEP. Mother objected to the fact that the resource specialist had drafted the then-present levels of performance and goals before the meetings. She asserted that the present levels and goals should be drafted at the meetings. Drafting portions of the IEP document in advance of the meetings is standard district practice. The pre- drafting is intended to provide an agenda for discussion at the meeting and to save time. Mother seemed to be of the impression that the district was trying to force goals on her child without discussing them. The evidence shows the district did in fact discuss the goals at length and adjusted many of the goals and added new ones at Mrs. D's suggestion. For example, a goal was established for Student to write a three paragraph persuasive essay with 80 percent accuracy in 4 of 5 trials. Mother wanted the accuracy to be 100 percent in 5 out of 5 trials. District personnel suggested that this type of standard was not appropriate, but agreed to insert it in the IEP. Discussion of the goals continued at the meeting on December 2, 2004. The IEP was still not finished and the meeting continued.

19. On December 17, 2004, Student's parents did not attend the IEP meeting. They had notified the school shortly before the meeting of a scheduling conflict. The team met briefly and had a report from a classroom teacher, but ended the meeting

because they wanted to ensure parental involvement. Because the parents were not present, the team scheduled another meeting for January 12, 2005. The parents notified school personnel in advance of this meeting that they were refusing to attend any further IEP meetings. The IEP team completed the IEP document. It was sent to the parents for signature. Student's parents refused to sign the IEP document. The district therefore filed its petition in this case.

20. Student did not consistently attend the Learning Strategies class from October 2004 until late April, 2005. Student's parents consented to his absence from Learning Strategies. At each of the IEP meetings, the district personnel continued to emphasize the importance of Student's attendance at the Learning Strategies class. In late April, 2005, Student was at risk of receiving failing grades in some of his classes. He began attending Learning Strategies more consistently. His resource specialist and other teachers devoted extra time to assisting Student make up work and prepare to meet his academic standards. This effort was successful for Student. His grades improved.

21. In June, 2005, Student was again at risk of failing due to incomplete work. An IEP meeting was held June 3, 2005, at the parents' request. The parents questioned Student's grades on his transcript. Student had an incomplete that turned in to an "F" because the records showed he had not checked-in for tutoring sessions as required by the school's remediation policy. Student told his parents he had tried to check in and was not allowed to do so. Mother requested that the grade be changed. The district personnel informed her that changing grades was not part of the IEP process. She was given information on the grade- challenge process and a meeting was scheduled with the vice principal to discuss the grade issue. On June 7, 2005, the vice principal met with the parents. The school allowed Student to enter into an "academic contract" which extended the deadline for his work, gave him a schedule of deadlines and allowed him to submit the work late. This type of contract was available to all Students at the school;

it was not a special education service. Student completed the work and did not fail this class.

22. Student's parents contend the district was not authorized to implement the Learning Strategies class at the beginning of the 2004-2004 school year. The district contends this class is an appropriate implementation of the October 1, 2003, IEP, which the Mother signed, and the June 2, 2004, IEP, in which the Mother consented to services and placement. The district is correct. It was appropriate for the district to begin the Student's 2004-2005 school year with the academic support of the Learning Strategies class pending completion of a new IEP.

23. Student's parents also contend the Learning Strategies class was not an appropriate placement for Student and that the district's insistence on Learning Strategies denied Student a FAPE in the least restrictive environment. The district contends the Learning Strategies class and other services, supports and accommodations in the IEP constitute an offer of FAPE which the parents have rejected. The Learning Strategies class was an appropriate special education service for Student. In fact, the evidence is clear that Student did better in school when he attended Learning Strategies.

24. The evidence shows that very early in the school year, Student's parents made a decision that the Learning Strategies class was not appropriate. They allowed Student to miss this class and unilaterally placed him in an independent tutoring program. The evidence also shows that Student continued to struggle academically under his parents' unilateral plan. When Student was at risk of failing, he began attending Learning Strategies again and the school personnel expended extra effort to help him succeed. These efforts, on the part of Student, his parents and the school personnel, are to be commended.

ALLEGED PROCEDURAL VIOLATIONS

25. Student's parents allege they were not given a copy of the IEP document ahead of time, were not given copies of the document being drafted in the interim between IEP meetings and were not provided the goals before the meetings. Student's parents have not presented any authority which requires a district to provide copies of the IEP document in advance of the IEP meeting. The evidence does not support the conclusion Student was denied a FAPE based on these process-related issues.

26. Student's parents also contend they were not allowed to participate in the IEP process and that their input was ignored. The evidence supports the opposite conclusion. The district went to great lengths to allow Student's parents to be included in and participate in the process. The fact that the district did not agree with every one of the parents' demands does not mean the parents' input was not considered.

27. Student's parents also allege the report from Dr. Markel was withheld from them. There was insufficient evidence to conclude the district withheld the report from the parents. Dr. Markel performed her neuropsychological evaluation in November 2001, but her report (which is not dated) incorporates information from a neurological assessment in February 2002. If delivery of this report to the parents was delayed, there is insufficient evidence that any delay resulted in a denial of FAPE.

STUDENT AND THE ALPHASMART

28. The Alphasmart device assists Students with disabilities by giving them an alternative method for taking notes in class. At the IEP meeting on September 29, 2004, it was reported that Student was not using the Alphasmart assistive technology device that the district had given him. There was some testimony from Mother and others that Student didn't like using the Alphasmart because he felt he stood out in the classroom. There was also testimony the device did not work properly and Student did not know

how to use it effectively. The assistive technology specialist for the district offered to provide a new Alphasmart unit and give Student additional training, but there is no evidence Student or his parents ever received additional training or ever sought a new Alphasmart. The evidence in this case supports the conclusion Student stopped using the Alphasmart and did not take advantage of the district's offers for additional support in its use.

BEHAVIOR SUPPORT PLAN

29. On January 12, 2005, as part of the IEP document, the district developed a Behavior Support Plan for Student which was designed to help Student with his difficulty completing assignments. The plan included attending the Learning Strategies class, attending school-wide tutoring sessions, maintaining (with monitoring) a daily planner and monitoring of the school's web-based Student academic information source known as Learning Point. This behaviors support plan was part of an appropriate offer of FAPE designed to help Student with his difficulty completing assignments.

DISTRICT DISCIPLINARY ACTIONS AGAINST STUDENT

30. During the time that Student had an incomplete in one of his classes, he was informed he would not be allowed to attend certain extra-curricular activities. This was based on a school policy. Mother asserted that Student was being punished for his disability. The evidence does not support this assertion. The disciplinary policy was applied to all Students. There is no evidence Student was singled out for disparate treatment. There is also no evidence the incomplete in Student's course was caused by his disability. It was caused by his failure to complete the course work.

GENERAL OBSERVATIONS

31. Mother and Father are caring and concerned parents who want the best for their children and are not afraid to be assertive in seeking what they feel is in their children's best interests. The district personnel who testified at the hearing are competent and caring professionals. Ideally, home and school resources should combine to create an environment in which Student can succeed. Unfortunately, the working relationship between Student's parents and the school personnel has been less than optimal for Student. Some of the district personnel suggest that Mother is unreasonably demanding and obstreperous during the IEP process. Mother asserts that the district personnel are dishonest, incompetent and uncaring. Such fault-based analysis is not properly part of this special education administrative hearing process. However, after listening to the parties over several days it appears that, for both sides, what is best for Student sometimes gets lost in the din of accusations and power struggles. As the relationship between the parents and the school deteriorated, the parents adopted an increasingly combative and accusatory style. The district personnel have not always been exemplary in their handling of the parents. The parties are encouraged, despite their differences, to attempt to work together for Student's benefit.

LEGAL CONCLUSIONS

1. 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. (20 U.S.C. § 1400 (2004); Ed. Code § 56000.) The term "free appropriate public education" means special education and related services that are available to the Student at no cost to the parents, that meet the State educational standards, and that conform to the Student's individualized education program. (20 U.S.C. § 1401(a)(9).) "Special education" is defined as specially designed instruction, at no cost to parents, to

meet the unique needs of the Student. (20 U.S.C. § 1401(a)(29).) 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. (20 U.S.C. § 1401 (a)(26).) Education Code § 56363, subdivision (a), similarly provides that designated instruction and services (DIS), California’s term for related services, shall be provided “when the instruction and services are necessary for the pupil to benefit educationally from his or her instructional program.”

2. Before a Student can be determined to be eligible for special education and related services and entitled to a FAPE, he or she must be assessed by the responsible educational agency. A referral for assessment means any written request for assessment made by a parent, teacher, or other service provider. (Ed. Code § 56029.) All referrals for special education and related services shall initiate the assessment process and must be documented. (Cal. Code Regs., tit. 5, § 3021, subd. (a).)

Once a Student is referred for an assessment and the parent provides written consent to the assessment plan, the District must assess the Student “in all areas related to the suspected disability....” (Ed. Code § 56320, subd. (f).) An IEP must be developed within 60 calendar days from the date of the parent’s written consent to the assessment plan. (Ed. Code § 56043, subd. (f).)

The assessments conducted must be discussed at the IEP team meeting. If the IEP team determines that a Student is eligible for special education as a child with a disability, the team must outline the placement and services to be provided to that Student in an IEP. (Cal. Ed. Code § 56329, subd. (a).)

3. In *Board of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 200 (1982), the United States Supreme Court addressed the level of instruction and services that must be provided to a Student with disabilities to satisfy the requirements of the IDEA. The Court 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. The Supreme Court in *Rowley* also recognized the importance of adherence to the procedural requirements of the IDEA. *Id.* at 205.

An IEP need not conform to a parent's wishes in order to be sufficient or appropriate. *Shaw v. District of Columbia* (D.C. 2002) 238 F.Supp.2d 127, 139 (stating that the IDEA does not provide for an "education . . . designed according to the parent's desires," citing *Rowley*, 458 U.S. 176, 207).

4. The burden of proof in an administrative hearing challenging an IEP under the Individuals with Disabilities in Education Act, 20 U.S.C. 1400 et. seq., is on the party seeking relief. *Schaffer v. Weast* (Nov. 14, 2005) 126 S. Ct. 528, 2005 U.S. Lexis 8554. In this case, the district has the burden of proving that it has offered Student a FAPE. Student has the burden of proving the issues raised in his petition.

DETERMINATION OF ISSUES AND PREVAILING PARTY

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

5. *Issue 1: Did the district properly assess Student in the 2003-2004 school year?* The district properly assessed Student in the 2003-2004 school year. Numerous previous assessments over several years did not show Student qualified for special education services. The district's assessment found Student to be qualified and covered all areas of suspected disability. At the parents' request, the district performed

additional appropriate assessments and adjusted services according to the results of those additional assessments. The district prevails on this issue.

6. *Issue 2: Did the district properly assess Student in the 2004-2005 school year?* The district properly assessed Student in the 2004-2005 school year. There was no basis to reject the assessments performed one year earlier, which included the entire history of assessments over several years. The district prevails on this issue.

7. *Issue 3: Did the district offer Student a FAPE in the least restrictive environment for the 2004-2005 school year?* The district met its burden of proof that it offered Student a FAPE in the 2004-2005 school year in the least restrictive environment. The Learning Strategies class was appropriate for Student's unique needs. While the parents offered their opinion that the Learning Strategies class was not appropriate, there was no opinion by a qualified educational professional supporting the parents' contention. There was also no qualified professional testimony identifying an appropriate alternative placement. The district prevails on this issue.

8. *Issue 4: Did the district deny Student a FAPE in either the 2003-2004 or 2004- 2005 school years by using only one criterion for assessment?* The evidence shows the district assessed Student using multiple appropriate instruments and multiple appropriate criteria. The district prevails on this issue.

9. *Issue 5: Did the district deny Student a FAPE in either the 2003-2004 or 2004- 2005 school years by not offering the least restrictive environment?* The district's placement of Student in both school years was appropriate for his unique needs. The district prevails on this issue.

10. *Issue 6: Did the district deny Student a FAPE by excluding his parents from the IEP process?* The evidence does not support the conclusion Student's parents were excluded from the IEP process. The evidence shows the district and the parents disagreed about what services were best for Student. On many occasions, the district

incorporated the parents' concerns into the IEP process. The district took the time to address the parents' concerns, which made the IEP meeting process more drawn-out than it usually was. The district incorporated the parents' concerns in the IEP document by modifying some of the goals. The district agreed to some additional assessments based on the parents' request. Before the January 12, 2005 IEP meeting, Student's parents notified the district that they were refusing to attend any more IEP meetings. The district's obligation at this point was to finish the IEP document and offer it to the parents for signature. The district fulfilled this obligation. The district prevailed on this issue.

11. *Issue 7: Did the district deny Student a FAPE by delaying then withholding from his parents the district-contracted independent educational evaluation?* There was evidence that the evaluation began in November 2001 and the report was issued sometime after February 2002. There was insufficient evidence to support the parents' allegation that the report was either unreasonably delayed or withheld from them. The district prevails on this issue.

12. *Issue 8: Is the district required to reimburse Student's parents for educational expenses?* Because the district has prevailed on Issues 1 through 7, there is no basis to award the compensatory expenses Student's parents have requested. The district prevails on this issue.

ORDER

The district's petition is sustained and its request for relief granted. The allegations of the Student's petition are not sustained and the request for relief 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. Education Code section 56505, subdivision (k).

Dated: January 17, 2006

A handwritten signature in black ink, appearing to be 'ALVORD', is written over a horizontal line.

ALAN R. ALVORD

Administrative Law Judge

Office of Administrative Hearings

Special Education Division