

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

In the Matter of:

STUDENT,

Petitioner,

v.

COMPTON UNIFIED SCHOOL DIS-
TRICT,

Respondent.

OAH CASE NO. N2006010083

DECISION

Dennis C. Brue, Administrative Law Judge, Office of Administrative Hearings, (OAH), Special Education Division, State of California, heard this matter on May 23-25, 2006, in Compton, California.

Attorney David Grey represented Petitioner (Student). Student's mother (Parent) was present throughout the hearing.

Respondent Compton Unified School District (District) was represented by attorney Daniel L. Gonzalez.

Student's Due Process Hearing Request was filed on December 30, 2005. Oral and documentary evidence were received. At the hearing's conclusion, the parties were given until June 18, 2006, to file closing briefs. The briefs were received timely and the record was closed on that date.

ISSUES¹

1. For the 2005-2006 school year, did the District fail to offer a free and appropriate public education (FAPE) by failing to assess Student for²:
 - A. occupational disability;
 - B. other areas of suspected disability?
2. For the 2004-2005 school year, did the District fail to offer a FAPE by:
 - A. failing to provide a Resource Specialist Program (RSP) class as mandated by the May 11, 2004 individualized education program (IEP);
 - B. failing to conduct a 30 day IEP review;
 - C. failing to conduct an annual IEP?
3. Did the District fail to offer a FAPE for 2005-2006 by failing to draft appropriate and measurable IEP goals and objectives?
4. Did the District deny Student procedural protections by failing to provide all school records requested?

¹ For purposes of clarity and organization, the ALJ has reorganized Student's issues as identified in the due process hearing request as clarified at the telephonic prehearing conference.

² At the due process hearing, Student raised an issue regarding District's failure to provide an Independent Educational Evaluation (IEE). The District objected, as this issue neither appears in the due process request or in the subsequent prehearing conference order. The matter was taken under submission. Student, as moving party, is limited to advancing issues expressly raised in the due process request or in the prehearing conference order. (34 CFR 300.52 (c), (2), (iv) and Ed. Code § 56502, subd. (c), (1), (C) and (i)). The ALJ rules the IEE outside the scope of this hearing; sustains District's objection; and will not further address the IEE.

5. Whether compensatory education, services, and placement are required to compensate Petitioner for the District's failure to provide FAPE.

CONTENTIONS OF PARTIES

Student alleges a denial of FAPE because the District failed to assess him in all areas of suspected disability, and failed to craft adequate IEP goals for his areas of need. Student contends the IEP goals and objectives/benchmarks are not measurable or specific. They do not conform to his grade level or address his deficits. Student contends that District's failures are so severe and pervasive, only placement in a nonpublic school (NPS) such as Summit View School, Culver City, California, can provide Student with a FAPE.

District contends its IEP goals and objectives appropriately address Student's needs and that Student can receive a FAPE without NPS placement.

FACTUAL FINDINGS

JURISDICTION

1. Student is thirteen years old and eligible for attendance in an eighth grade Special Day Class (SDC) in the District. He resides within the District's boundaries and attends Willowbrook Middle School.

FACTUAL BACKGROUND

2. Prior to enrolling in the District, Student attended school in the ABC Unified School District (ABC) at Carver Elementary School. In May of 2004, while in 5th grade at ABC, Student was assessed for special educational services based upon a referral from his Student Study Team.

3. The assessment determined that Student was functioning within the average range in verbal areas and overall intelligence. He was within the low average range for performance skills. Student's overall Test of Auditory Perception Skills-Revised (TAPS-R) score suggested an auditory perception processing disorder.

4. ABC found Student eligible for special education services under the "specific learning disability" classification and provided several educational accommodations including a Resource Specialist Program (RSP) class.

5. Student enrolled in the District in April 2005. While he was initially placed in an RSP class, soon thereafter³ the RSP teacher took a leave of absence and was not replaced. Student did not attend summer school.

6. Student did not receive special education services or testing accommodations for the remaining three months of the school year before summer break. District did not initiate a 30 day IEP review after Student's transfer, or hold an annual IEP review during the two months prior to summer break. On June 23, 2005, Parent filed a compliance complaint with the California Department of Education regarding the District's failure to implement the previous IEP or develop a new IEP.⁴

7. District convened an IEP meeting on August 29, 2005, but did not complete Student's IEP. Parent requested and received a program change from RSP to a SDC taught by Jean-Claude Jones. It was determined Student had lost 50 hours of special education services. As a result, District offered and Student agreed to 50 hours of compensatory one to one reading tutoring.

³ Neither Student nor District was able to provide a date when the RSP services were terminated.

⁴ On September 9, 2005, the Department of Education found the District out of compliance on all issues raised and ordered corrective actions to be taken in the form of an IEP meeting, compensatory services and any additional services deemed necessary

8. Student was assessed beginning on September 9, 2005, and over the following three weeks. The tests were performed by Alphonso Davis, School Psychologist.⁵ As part of the assessment process, Mr. Davis reviewed the prior May 2004 IEP and observed Student in his SDC.

9. After performing the assessment⁶, Mr. Davis compiled his recommendations and presented them to the IEP team. This meeting was attended by Mr. Davis, Parent and her advocate, and six teachers.

OCTOBER 26, 2005 IEP - STUDENT'S UNIQUE NEEDS

10. Student's academic ability at the time he was tested was substantially below grade level. Student showed deficits in spelling (3.6 grade level), written expression (3.9 grade level), letter-word identification (4.6 grade level), and reading comprehension (5.1 grade level). Mathematically, Student achieved his highest testing scores, though he still tested below grade level: mathematics computation (5.1 grade level) and math concepts/applications (6.8 grade level).

The IEP noted Student's pre-vocational skills were severely deficient as Student, then age 12, did not know his address, telephone number, or names of emergency contacts.

⁵ Mr. Davis possesses a B.A., Business Administration, an M.S., Educational Counseling, and has been credentialed as a school psychologist since 1999.

⁶ The psycho-educational assessment included the Beery-Bucktenica Developmental Test of Visual- Motor Integration; Test of Auditory-Perceptual Skills-Revised: Test of Visual-Perceptual Skills-Revised; test of Auditory Reasoning and Processing Skills; Naglieri Nonverbal Ability Test; Woodcock-Johnson Achievement Test-III, Kaufman Test; Attention – Deficit/Hyperactivity Disorder Test; Burks' Behavior Rating Scales; Conners' Teacher rating Scale-Revised, and Conners' Parent Rating Scale Revised.

IEP GOALS AND OBJECTIVES

11. The October 2005 IEP contains goals and short term objectives/benchmarks in the areas of writing and grammar, reading decoding and blending, math, key boarding skills, attendance and tardiness.

12. Student's annual goal in writing/grammar is to be able to write at least six sentences creating a paragraph using simple, compound, complex and compound-complex sentences scoring 45 out of 50 on the writing rubric.

13. Student's annual goal in reading is to be able to decode and blend 40 words given at a lower 4th grade level.

14. Student's annual goal in math is to be able to complete ten mixed fractions, ten single step decimal multiplication problems and ten simple percentage problems. Student's annual goal in vocational key boarding skills will involve adequate practice while using the Mavis Beacon Typing program.

15. Student's annual goal in attendance and tardiness will require Student to attend school 162 academic days out 180, with minimal tardiness.

16. For every goal there were benchmarks set at three month intervals, with Student tasked to achieve a five percent increase in performance at each benchmark.

17. Student's allegation that the IEP goals did not conform to his grade level is not well made. Student currently educationally operates at a fourth grade level. Student cannot learn at an eighth grade level until he masters the subject matter of the intervening three grades.

OCCUPATIONAL THERAPY REQUEST

18. The last page of the IEP was a typewritten statement enumerating Parent's educational concerns regarding Student. Regarding assessments, it reads: "Due to concerns stated in the psycho-educational report, I would like to have an occupational therapy

assessment conducted to see if his fine motor issues can be addressed." Parent also requested NPS placement, which Student did not receive.

19. Despite the written request, District never assessed Student regarding occupational therapy.

20. On October 27, 2005, Parent removed Student from school, ostensibly due to physical assaults on Student's brother by classmates. Student has been home schooled ever since.

WRITTEN SCHOOL RECORD REQUEST

21. Student, through his counsel, requested his educational records via a letter dated March 8, 2006. In the following two months, Student's counsel sent seven more letters⁷ requesting further compliance by the District regarding Student's test results, school work and assessors' notes.

22. District never fully complied with Student's document requests.

23. Student, through his counsel, requested speech and language, psycho-educational, and occupational therapy assessments via a letter dated March 30, 2006. In the following two months, two additional letters were sent reiterating Student's requests for further assessments.

24. District never provided the assessments requested nor made a due process hearing requests to support its decision not to assess.

STUDENT'S SDC CLASS

25. Student's SDC teacher, Jean-Claude Jones, currently has 13 special education students in class. Mr. Jones has one special education aide and shares duties with another SDC teacher. Mr. Jones's students receive six hours of instruction daily. His class is cur-

⁷ District did not allege any failure to receive any of the letters sent by Student's attorney. Therefore "notice" is not an issue.

rently reading John Steinbeck's *Of Mice and Men* and recently finished the *Diary of Anne Frank*.

26. Mr. Jones recalls that when Student attended class, he generally arrived approximately 35 minutes late to class. Student was receiving grades of As and Bs when he was removed from school by his mother.

27. Mr. Jones explained that Student's disabilities place him outside California Content Standards regarding testing scores. If and when Student met the current IEP goals, those goals would be changed and moved closer to Student's grade level in another IEP. Mr. Jones stated that Student's mother's demand that Student be currently taught at eighth grade level was unrealistic as Student first had to be gradually brought to grade level. Parent's belief that Student's educational deficits could be eradicated in a single year is neither realistic in Mr. Jones's view.

28. Alma Caumeran⁸ is Student's Lindamood-Bell reading instructor. She is continuing to tutor Student at home. According to her log sheet, since August of 2005, Ms. Caumeran has provided Student 22 hours of instruction. Student has increased his reading level at least one grade level with her tutoring, which is supporting evidence that Student is achieving educational progress.

WITNESS CREDIBILITY

29. Parent complained that Student was given few quizzes or tests, and little or no homework. She alleges Student's grades were kept artificially high without him actually learning anything and that the District merely rewrote the previous 2004 ABC IEP.

⁸ Ms. Caumeran possesses a B.A., Sociology, an M.S. Human & Family Resource Management, an M.S., Special Education and six hours of Lindamood-Bell instruction, Seeing Stars for Symbol Imagery, Visualizing & Verbalizing for Language Comprehension, and On Cloud Nine-Math. There was an allegation that Ms. Caumeran was not qualified to give Lindamood-Bell instruction. This allegation was unsupported by the evidence.

30. This last allegation is unsupported by the evidence as the District's IEP was substantially more comprehensive than ABC's, because the District was being observed by the Department of Education at the time the IEP was drafted. The District performed many additional assessment tests, including those for visual processing deficits. That both IEPs reflect similar results indicates that Student actually has the deficits noted.

31. Parent has laudably high expectations for Student, such as college attendance. In pursuit of these expectations, Parent is adamant that the District bring Student to grade level within the current academic school year or at least provide a timetable as to when Student will reach grade level. Parent has not demanded a similar timetable from Summit View.

32. During the two months Student was enrolled in school in late 2005, Student was routinely over a half an hour late for school. Parent worked as a night shift dispatcher in Long Beach and left work barely a half hour before school started. She had to travel home, collect Student and drop off his sister at school. Then she would take Student to Willowbrook. While Student lives within walking distance of school, Parent will not let Student walk to school as she considers the neighborhood dangerous.

33. To summarize Parent's testimony, Student attended Willowbrook for less than five months total. During this time, Student, through no fault of his own, was habitually late and at age 12, started school unable to recite his own address and telephone number.

34. Lee-Anne Gray, Psy.D.,⁹ testified as Student's expert witness. She has a private practice and is also employed as a supervising psychologist by the Help Group,¹⁰ which runs the Summit View School, Student's NPS choice. Dr. Gray evaluated both of

⁹ Dr. Gray possesses a B.A. in Experimental Psychology, an M.A. in Physiological Psychology, and a Ph.D., Psychology of Individuals, Families and Children.

¹⁰ The Help Group is the largest nonprofit organization in the U.S. serving special needs children. The Help Group runs seven day schools, including the Summit View School.

Student's IEPs, performed some of her own assessments, and interviewed Student and Parent.

35. Dr. Gray was particularly critical of the District's IEP, claiming the assessment results were "presented" but not interpreted. She found the District's educational accommodations to be generic and superficial, lacking any specificity regarding speech and language. She had a very high opinion of the Summit View School.

AREAS OF SUSPECTED DISABILITY

Alleged Visual Processing Deficit

36. Dr. Gray took issue with the District's interpretation of the Test of Visual-Perceptual Skills, Revised (TVPS). The test charts nine areas of a subject's visual perceptual functioning. Student performed well on eight of the nine subparts of the test. The ninth test regarded visual closure,¹¹ and Student tested in the 16th percentile, which was his lowest visual subtest score. Dr. Gray states this single subtest result is evidence of a suspected visual processing deficit. She recommended additional assessment with a behavioral optometrist.

37. In the Psychological Educational Assessment Report, school psychologist Alphonso Davis described Student's test results as exhibiting "significant strength in his visual perceptual processing skills," which is a position antithetical to that of Student's expert.

38. As the District actually tested Student's visual processing, this is a disagreement as to the interpretation of the testing results, not an issue of failure to test. A review of Student's auditory subtest scores indicates he scored below the 50th percentile rank on

¹¹ Visual closure is the ability to recognize an object from partial or limited stimuli or to form a "gestalt." The child with a difficulty in this area is unable to perceive "whole-part" relationships in partially visible stimuli. Thus, the child may have problems in forming gestalt, that is, recognizing objects when they are partly hidden.

five of the seven tests. On the remaining two subtests, Student scored in the 50th and 68th percentiles respectively.¹² Student has been deemed as having an auditory processing deficit based upon low test results across the entire subtest set. Here, Dr. Gray is claiming a “suspected” disability based upon one low subtest score, as opposed to the other eight above-average scores. One low subtest score is scant evidence of a processing disorder and insufficient to meet Student’s burden of proof regarding this issue, especially since Student was actually tested for a visual processing deficit.

Additional Auditory Processing Testing

39. The District’s IEP identifies Student as having an audio processing deficit. This is corroborated by the earlier 2005 ABC IEP and Dr. Gray’s testimony. However, Dr. Gray indicates that she personally would have performed two additional audio processing tests. She was not forthcoming as to why these additional tests would be necessary, as there is no disagreement as to whether Student has an auditory processing deficit, or how such additional testing would have resulted in a change in Student’s IEP or special educational services. Dr. Gray is taking the District to task for not administering assessments that apparently would not alter the IEP.

40. Dr. Gray also testified that she personally administered some assessments, but never stated what tests were given or what their results were. If the results had been favorable to Student’s position, Dr. Gray surely would have testified so. This weighs heavily upon her objectivity and credibility.

¹²Student’s Auditory-Perceptual Skills-Revised subtest percentile rankings are as follows: Auditory Number Memory- Forward 9 percent, Auditory Number Memory- Backward 10 percent, Auditory Sentence Memory 47 percent, Auditory Word Memory 34 percent, Auditory Interpretation of Directions 25 percent, Auditory Word Discrimination 50 percent, and Auditory Processing 68 percent.

41. Student did not meet his burden of proving that the District failed to assess for other areas of suspected disability.

CRITIQUE OF IEP GOALS AND OBJECTIVES

42. Dr. Gray characterized the writing goals as being too advanced for Student to meet, and the District's reading goals to be too rudimentary to challenge Student.

43. These are meritless allegations. IEP goals and objectives must be reviewed and altered in relation to the pupil's achievements or lack thereof. (Title 20 United States Code § 1414, and Ed. Code § 56380.) Therefore, if Student met his IEP goals, they would be changed to reflect his increased abilities. Alternatively, if Student failed to meet the goals, they would be reduced to provide less challenging benchmarks. In either event, the goals and benchmarks can only be judged in relation to Student's performance. In this instance, Student was removed from school the day after the IEP was signed, which renders any measurement of the IEP's goal and objectives impossible.

44. Dr. Gray's credibility regarding this issue was weakened by her noticeable advocacy of the Summit View School and program. As a result, Student failed to meet his burden of proving that the District's IEP goals and objectives were inappropriate to meet the student's unique needs.

LEGAL CONCLUSIONS

APPLICABLE LAW

1. Before any action is taken with respect to the initial placement of an individual with exceptional needs, an assessment of the pupil's educational needs shall be conducted. (Ed. Code § 56320.) Thereafter, special education students must be reassessed every three years or more frequently, if conditions warrant, or if the pupil's parent or teacher requests a new assessment and that a new IEP be developed. (Ed. Code § 56381.) The student must be assessed in all areas related to his or her suspected disability, and no single procedure may be used as the sole criterion for determining whether the student has

a disability or an appropriate educational program for the student. (20 U.S.C. § 1414 (a)(2), (3); Ed. Code § 56320, subd. (e), (f).) Tests and assessment materials must be administered by trained personnel in conformance with the instructions provided by the producer of such tests. (20 U.S.C. § 1414(a)(2), (3); Ed. Code § 56320, subd. (a), (b).)

2. Assessments must be conducted by individuals who are both “knowledgeable of the student’s disability” and “competent to perform the assessment, as determined by the school district, county office, or special education local plan area.” (Ed. Code §§ 56320, subd. (g), 56322; see 20 U.S.C. § 1414(b)(3)(B)(ii).) A psychological assessment must be performed by a credentialed school psychologist. (Ed. Code § 56324.) Tests and assessment materials must be validated for the specific purpose for which they are used; must be selected and administered so as not to be racially, culturally or sexually discriminatory; and must be provided and administered in the student’s primary language or other mode of communication unless this is clearly not feasible. (20 U.S.C. § 1414(a) (2), (3); Ed. Code § 56320, subd. (a), (b).)

3. When a parent disagrees with an assessment obtained by the public educational agency, the parent has the right to an independent educational evaluation (IEE) from qualified specialists at public expense unless the educational agency is able to demonstrate at a due process hearing that its assessment was appropriate. (Ed. Code § 56329, subd. (b).)

4. A school district shall develop a proposed assessment plan within 15 calendar days of 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).) A school district cannot conduct an assessment until it obtains the written consent of the parent prior to the assessment (unless the school district prevails in a due process hearing relating to the assessment); assessment may begin immediately upon receipt of the consent. (Ed. Code

§56321, subd. (c).) Thereafter, a school district must develop an individualized education program required as a result of an assessment no later than 50 calendar days from the date of receipt of the parent's written consent to assessment, unless the parent agrees in writing to an extension. (Ed. Code §56043, subd. (d).)

5. Pursuant to California special education law, the Individuals with Disabilities in Education Act (IDEA) and, effective July 1, 2005, the Individuals with Disabilities in Education Improvement Act (IDEIA), children with disabilities have the right to a FAPE that emphasizes special education and related services designed to meet their unique needs and to prepare them for employment and independent living. (Ed. Code § 56000.) FAPE consists of special education and related services that are available to the student at no charge to the parent or guardian, meet the State educational standards, include an appropriate school education in the State involved, and conform to the child's IEP. (20 U.S.C. § 1401(8) (IDEA 1997); 20 U.S.C. § 1402(9) (IDEIA 2004).) "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(25) (IDEA 1997); 20 U.S.C. § 1402(29) (IDEIA 2004).)

6. Likewise, 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. (Ed. Code § 56031.) The term "related services" includes transportation and such developmental, corrective, and other supportive services as may be required to assist a child to benefit from special education. (20 U.S.C. § 1401(22) (IDEA 1997); 20 U.S.C. § 1402(26) (IDEIA 2004).) In California, related services may be referred to as designated instruction and services (DIS). (Ed. Code § 56363, subd. (a).)

7. Pursuant to California special education law, a school district is obligated to provide special education services as delineated in a student's IEP. (Ed. Code § 56043, subd. (g)(1), and Cal. Code Regs., tit.5, § 3040.)

8. In the event of a student's transfer to another school district, the

student is entitled to the continuation of all previous special education services and a review and development of a new IEP within 30 days of the transfer. (Ed. Code § 56325, subd. (a).)

9. Federal and State law impose an affirmative duty on school districts to minimally review and revise special education IEP's annually. In instances where a change in circumstances occurs, school districts are tasked to review/revise IEP's on an "as appropriate" basis. (Title 20 United States Code § 1414, and Ed. Code § 56380.)

10. In *Board of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley* (1982) 458 U.S. 176, 200, 102 S.C. 3034, the United States Supreme Court addressed the level of instruction and services that must be provided to a student with disabilities to 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 pp.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 p.201.)

11. To determine whether the District offered Petitioner a FAPE, the analysis must focus on the adequacy of each district's proposed program. (*Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1314.) If the school district's program was designed to address Petitioner's unique educational needs, was reasonably calculated to provide him some educational benefit, and comported with his IEP, then the District provided a FAPE, even if Petitioner's parents preferred another program and even if his parents' preferred program would have resulted in greater educational benefit. School districts are also required to provide each special education student with a program in the least restrictive environment, with removal from the regular education environment occurring only when

the nature or severity of the student's disabilities is such that education in regular classes with the use of supplementary aids and services could not be achieved satisfactorily. (20 U.S.C. § 1412 (a) (5) (A); Ed. Code § 56031.)

12. A school district must provide "a basic floor of opportunity . . . [consisting] of access to specialized instruction and related services which are individually designed to provide educational benefit to the [child with a disability]." (*Bd. of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201.) The IDEA requires neither that a school district provide the best education to a child with a disability, nor that it provide an education that maximizes the child's potential. (*Bd. of Education of the Hendrick Hudson Central School Dist. v. Rowley, supra*, 458 U.S. at pp. 197, 200; *Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.)

13. Procedural safeguards for students with disabilities mandate prior written notice to the child's parents when a change to that child's educational placement is contemplated, or a refusal to initiate or change the identification, evaluation, and educational placement of a child or the provisions of FAPE to a child. This notice must explain the changes and document relevant factors relating to the action proposed. (20 USC 1415(b) (3).)

14. Not every procedural flaw constitutes a denial of a FAPE. Procedural flaws must result in the loss of educational opportunity to the student, or seriously infringe on the parent's participation in the IEP process, to constitute a denial of a FAPE. (*Board of Education of the Hendrick Hudson Central School District v. Rowley, supra*, 458 U.S. at 206-07; see also *Amanda J. v. Clark County School District*, 267 F.3d 877 (9th Cir. 2001).) However, 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 District No. 23*, 960 F.2d 1479, 1482 (9th Cir. 1992).)

15. A parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way. *Furman v. East Hanover Bd. Of Education* (3rd Cir. 1993) 993 F.2d 1031, 1036.

16. A parent has the right to examine and receive copies of all school records of the child, within five days of the request, whether it is oral or written. (Ed. Code sections 56043 and 56504.)

17. Petitioner, as the party seeking relief, has the burden of proof. (*Schaeffer v. Weast* (2005) 546 U.S. ____; 126 S.Ct. 528, 163 L. Ed. 2d 387).

DETERMINATION OF ISSUES

ISSUE 1A: DID THE DISTRICT FAIL TO ASSESS STUDENT FOR OCCUPATIONAL THERAPY?

18. As determined in Factual Finding 21, Parent requested an occupational assessment on October 27, 2005. While she removed Student from school the following day, District was still obligated to act upon Parent's request pursuant to Legal Conclusions 3 and 4. As no actions were taken, District failed to meet its obligation to either assess Student or provide written notice to his parents of District's intent not to do so, which is a procedural violation.

19. No evidence of a loss of educational opportunity to Student or an infringement upon the Parents right to participate in the IEP formulation process was put forth. (Legal Conclusion 14.) As Student has the burden of proof, he did not prevail on this issue.

ISSUE 1B: DID THE DISTRICT FAIL TO ASSESS STUDENT IN OTHER AREAS OF SUSPECTED DISABILITY?

20. As determined by Factual Findings 11, 40 and 41, the District assessed Student in all areas of suspected disability. Therefore, pursuant to Legal Conclusion 1, no

denial of FAPE occurred. Student's dispute is one of interpretation regarding a singular subtest result, not whether he was actually assessed.

21. Consequently, Student did not meet his burden of proof regarding this issue. District is deemed to have assessed Student in all areas of suspected disability for the relevant time period.

ISSUE 2A: DID THE DISTRICT FAIL TO OFFER A FAPE BY FAILING TO PROVIDE A RSP CLASS AS MAN- DATED BY THE MAY 11, 2004 IEP?

22. As determined in Factual Findings 5 and 6, the District failed to provide the RSP class as mandated by the May 11, 2004 IEP for the last three months of the 2005 academic year. As per Legal Conclusions 7 and 8, this failure to provide services constitutes a denial of FAPE.

ISSUE 2B: DID THE DISTRICT FAIL TO OFFER A FAPE BY FAILING TO CONDUCT A 30 DAY REVIEW?

23. As determined in Factual Finding 6, the District committed a procedural violation when it failed to conduct a thirty day IEP review after Student's transfer to the district. As determined by Legal Conclusions 6 and 7, this failure to conduct a thirty day review constitutes a denial of FAPE.

ISSUE 2C: DID THE DISTRICT FAIL TO OFFER A FAPE BY FAILING TO CONDUCT AN ANNUAL IEP?

24. As determined in Factual Finding 6, the District failed to conduct an annual IEP. As per Legal Conclusion 9, this failure to conduct an annual IEP review constitutes a denial of FAPE.

ISSUE 3: DID THE DISTRICT FAIL TO OFFER A FAPE FOR 2005-2006 BY FAILING TO DRAFT APPROPRIATE AND MEASURABLE IEP GOALS AND OBJECTIVES?

25. As determined by Factual Findings 14 through 18, the District's IEP goals and objectives tracked Student's educational deficits and were geared to meet his individual educational needs. Pursuant to Factual Finding 20 and Legal Conclusions 5 and 6, each goal was accompanied by measurable and appropriate benchmarks.

26. Student did not meet his burden of proof regarding this issue; therefore the District is deemed to have offered a FAPE to Student regarding the IEP's goals and objectives.

ISSUE 4: DID THE DISTRICT FAIL TO PROVIDE STUDENT WITH A FAPE BY FAILING TO PROVIDE ALL SCHOOL RECORDS REQUESTED?

27. Pursuant to Factual Findings 25 and 26, the District failed to provide Student with all the school records requested. While this is a violation of Student rights under the Education Code, see Legal Conclusion 15, it does not rise to the level of a denial of FAPE. No evidence was adduced detailing how the District's failure resulted in a loss of educational opportunity or infringed upon Parent's participation in the IEP process. As every procedural violation does not constitute a FAPE denial, Legal Conclusion 13, the District's actions, while out of compliance with the Education Code, do not constitute a denial of FAPE.

ISSUE 5: WHETHER COMPENSATORY EDUCATION, SERVICES, AND PLACEMENT ARE REQUIRED TO COMPENSATE PETITIONER FOR THE DISTRICT'S FAILURE TO PROVIDE FAPE.

28. As set forth in Factual Findings 7 and 12, Student has received special education services in the form of the September 2005 IEP and SDC placement. Student is currently receiving the balance of 50 hours of Lindamood-Bell tutoring to which the District previously agreed to as compensation education. (Factual Finding 7.)

ORDER

1. Student's requests for additional compensatory education are denied.

PREVAILING PARTY

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

1. Student prevailed on Issues, 1B, 1C, 2A and 5.
2. District prevailed on Issues 1A, 2B, 3 and 4.

RIGHT TO APPEAL THIS DECISION

29. 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. (Cal. Ed. Code § 56505, subd. (k).)

IT IS SO ORDERED THIS September 26, 2006.

A handwritten signature in black ink, appearing to read "Dennis C. Brue", is written over a horizontal line.

DENNIS C. BRUE

Administrative Lw Judge

Office of Administrative Hearings

Special Education Division