

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

In the Matter of:

SAN DIEGO UNIFIED SCHOOL
DISTRICT,

Petitioner,

v.

STUDENT,

Respondent.

OAH CASE NO. N2007030059

DECISION

Administrative Law Judge (ALJ) Richard T. Breen, Office of Administrative Hearings, Special Education Division (OAH), State of California, heard this matter in San Diego, California on April 2, 2007.

Petitioner, San Diego Unified School District (District), was represented by Amy Bozone, Assistant General Counsel. District representative Peter Penman, Ph.D., also attended the hearing.

No appearance was made on behalf of Respondent Student (Student).¹

¹ Student was not represented by counsel. Student's mother (Mother) participated in a telephonic prehearing conference on March 23, 2007. According to Amy Bozone, Assistant General Counsel for the District, Mother was present at the District's office for the telephonic prehearing conference. Ms. Bozone showed Mother the conference room where the due process hearing would be held. After the prehearing conference, Mother was properly served with a prehearing conference

The District filed its request for due process hearing on March 2, 2007. The matter was submitted and the record closed after the receipt of testimony and documentary evidence on April 2, 2007.

ISSUES

1. Is the District's offer of placement at Riley School for the 2006-2007 school year a free and appropriate public education (FAPE)?
2. May the District conduct a mental health examination of Student without Mother's consent?

CONTENTIONS OF THE PARTIES

The District contends that to provide a FAPE to Student, Student's placement should be changed from a special day class (SDC) for emotionally disturbed (ED) students at a District middle school, to an SDC at Riley School, a District-operated center with expertise in teaching and supporting students with emotional disabilities that offers on-site mental health services.

The District also contends that Student requires a mental health referral pursuant to Government Code section 7576,² which should be implemented despite Mother's

order in Spanish that correctly reflected the time, date, and place of the hearing. At 9:30 a.m. on April 2, 2007, a receptionist at OAH called Student's home, and was told that Mother was not present and that no one knew her whereabouts. The hearing was delayed until 10:00 a.m., in order to give Mother, or a representative for Student, an opportunity to appear. A Spanish-language interpreter was present at the hearing and remained on stand-by in the event Mother appeared. Neither Mother, nor any representative for Student, appeared or contacted OAH at any time prior to the close of the hearing on April 2, 2007.

²In its due process complaint, the District referred to its mental health

refusal to consent.

FACTUAL FINDINGS

BACKGROUND INFORMATION

1. Student is a 15-year-old male who resides within the geographical boundaries of the District. Student is eligible for special education under the category of ED.

STUDENT'S UNIQUE NEEDS AND WHETHER THE RILEY SCHOOL PLACEMENT IS AN OFFER OF FAPE

2. A child who qualifies for special education and related services is entitled to a FAPE. FAPE generally means special education designed to meet the unique needs of a child with a disability and such related services as may be required for the child to benefit from special education. FAPE must be provided in the least restrictive environment. A school district's obligation to provide FAPE is generally met when the parent has been afforded all of the applicable procedural rights during the formulation of the school district's offer, and the child receives access to an education that is sufficient to confer some educational benefit. As discussed below, the facts support a finding that the District's offer of placement at Riley School is an offer of FAPE.

3. Student attended the District's Horace Mann Middle School (Horace Mann) from the 2004-2005 school year, when Student was in the sixth grade, until the date of hearing. During the 2004-2005 school year, Horace Mann was a traditional middle school, with a student population of approximately 1,000 pupils.

assessment referral as an "AB 2726 referral." Assembly Bill 2726 amended Government Code sections 7576 and 7587, and added Government Code section 7586.6. Of the statutes impacted by the passage of Assembly Bill 2726, only Government Code section 7576 is at issue in this matter.

4. During the 2004-2005 school year, Student was found eligible for special education under the category of ED and was placed in an SDC for ED pupils. Prior to that time, Student had been eligible for special education under the category of other health impaired based on a diagnosis of attention deficit hyperactivity disorder (ADHD).

5. During the 2005-2006 school year, when Student was in seventh grade, Horace Mann was split into three separate schools located on the same campus. After September 2005, each school within Horace Mann had approximately 350-400 pupils. Student was placed in an SDC for ED pupils located within the "School of Expression." Student continued to be mainstreamed for some of his academic classes, but would act out or disrupt the class, resulting in Student being returned to the SDC.

6. During the 2006-2007 school year, Student's eighth grade year, Student remained in an SDC for ED pupils located within the "School of Expression." Student's current teacher in the SDC is Ann Lacy (Lacy). Lacy is credentialed in both special education and multiple subjects. Lacy was credible because she displayed an attitude of genuine concern for Student and his future even though Student has called her profane names and disregarded her instructions. Lacy's testimony regarding Student was professional and matter-of-fact, without a hint of anger or frustration with Student.

7. Student's SDC at Horace Mann consists of 12 Students. The class is taught by Lacy and a paraprofessional aid that was trained in behavior management techniques. Students frequently do school work in small groups. Student behavior is managed using positive reinforcement with tangible rewards. In addition, students are given an opportunity to talk to the teacher or counselor at any time and students are provided with a "planning station" to allow Students to stop and think about what is expected of them and how to meet that expectation. Counseling is available to students at any time, and a counselor visits the classroom on Mondays, Tuesdays and Fridays to work on social skills and replacement behaviors.

8. Student has not followed the classroom expectations in the ED SDC at

Horace Mann. In particular, Student refuses to get into small groups, will not complete work, and distracts other Students and Lacy. The only strategy that Lacy found to be effective with Student is one-on-one teaching in close proximity to Student with frequent prompts. Student has not been making academic progress in the SDC at Horace Mann and his attendance has been so inconsistent that Student has not adequately practiced the replacement behavior strategies that are part of the curriculum. Student's behavior has prevented him from having strong peer relationships with the other SDC students. Student attempts to verbally and physically intimidate the other students. Student is not benefiting educationally, socially or emotionally in the ED SDC at Horace Mann.

9. In his current placement, Student is in the SDC the majority of the school day and is only in general education for physical education and lunch. However, Student spends little time in the mainstreamed component of his current placement. Instead, Student evades the teachers, paraprofessionals and lunch monitors and walks the halls or suddenly enters classrooms or offices where he is not supposed to be. Lacy repeatedly has to call security because Student has walked out of her classroom. During the six-month period prior to the hearing, Student missed close to 300 class periods due to unexcused or unverified absences, and 48 class periods due to suspension. In order to receive an educational benefit, Student requires increased supervision, a smaller class size, and a smaller, more contained campus than is provided at Horace Mann.

10. Student's disciplinary record at Horace Mann from September 2005 to December 2006 reflects that Student was involved in all manner of disciplinary incidents including fighting with other students, threatening other students, defying teachers and administrators, committing petty theft and property damage, wandering the campus without permission, spitting, disrupting classes, and using inappropriate language. When disciplinary techniques such as detention were attempted, Student frequently did

not comply, or arrived late. The two most serious disciplinary events occurred during the 2005-2006 school year. On November 10, 2005, Student repeatedly called a female staff member a “fucking bitch” while touching his genitalia through his clothing. This incident was determined to be a manifestation of Student’s disability. On March 8, 2006, Student was fighting with another student and continued to attack the other student after a teacher intervened. Despite a recommendation for expulsion, this incident was determined to be a manifestation of Student’s disability and resulted in a behavior service plan being implemented rather than expulsion. The frequency of disciplinary incidents has increased during the 2006-2007 school year. Student has struggled with controlling his behaviors, despite the reduction in school size afforded by Horace Mann’s reorganization, and despite being afforded the small class and increased supervision in the SDC at Horace Mann.

11. As reflected in the December 4, 2006, Functional Analysis Assessment by school psychologist Jack Sharpe, Ed.D. (Sharpe),³ and as testified to at hearing by Sharpe and Lacy, when Student is in class he is off-task approximately 50 to 60 percent of the time. Student does not comply with Lacy’s requests in the classroom. Student’s compliance increases when fewer Students are present and Student is being directly instructed. Student completes tasks only 40 percent of the time, with task completion increasing when Student is given less time-consuming tasks. Student also inappropriately touches himself multiple times on a daily basis.

12. Student has not benefited educationally from the current SDC placement

³ All aspects of Sharpe’s testimony were credible. Sharpe had personally counseled Student beginning in Student’s sixth grade year at Horace Mann, Sharpe’s doctoral studies were in the area of emotional disturbance, Sharpe had decades of experience as a school psychologist, and Sharpe displayed a genuine concern for Student.

and would benefit educationally and behaviorally from greater structure and supervision. Student has average intelligence, as measured in October of 2006 by the Kaufman Assessment Battery for Children, Second Edition. Student has average abilities in math, but below average skills in reading and writing, as measured in October of 2006 by the Woodcock- Johnson Tests of Achievement, Third Edition. For the past two school years, Student has been reading at the third grade level. During the 2004-2005 school year, Student mainly achieved classroom grades of C in academic subjects and F in Physical Education. On California's Standardized Testing and Reporting (STAR) test given in the spring 2005, Student cored "below basic" in Mathematics and "far below basic" in English-Language Arts. During the 2005-2006 school year, Student's grades fell to D in all subjects. On the STAR test given in the spring 2006, Student scored "far below basic" in both Mathematics and English-Language Arts. In the current school year, Student's first semester grades have fallen to F in English, Algebra and Physical Education, with grades of D in all other subjects. Student is graded based on a modified program and is cognitively capable of achieving better grades. Lacy related that Student is capable of doing all of the work required of him, however, Student's grades reflect his frequent absences and failure to complete the work assigned to him.

13. The Riley School placement is a separate campus for 90 to 100 pupils in grades K-8. Class size is limited to eight pupils who are supervised by three adults. All staff at Riley School is trained in behavioral support and de-escalation techniques. The positive reinforcement system at Riley School is administered consistently throughout the campus, not just at the classroom level. Riley School is intended for pupils like Student who are on a diploma track, and state grade-level standards are taught. Suspension is not used for discipline at Riley School, which would benefit Student, who frequently loses needed instruction time due to suspension. All Students are bused to Riley School, which, in conjunction with the increased supervision, would increase the

likelihood of Student attending more of his classes. Riley School also has outpatient mental health services available to pupils who qualify through a community mental health referral.

14. Mother was provided all of her procedural rights during the IEP process. Mother was present, and participated in IEP team meetings on November 14, 2005, March 13, 2006, September 25, 2006, and December 4, 2006. At each of these IEP team meetings, the team discussed placement at the Riley School. Mother was provided with a Spanish- language translator at all times, and participated in the meetings by expressing her concerns. Each IEP team meeting resulted in an IEP document that reflected Student's present levels of performance, the IEP team's recommendations, the discussions held at the IEP, and measurable goals and written descriptions of the special education and related services to be provided.

REFERRAL FOR A MENTAL HEALTH ASSESSMENT

15. The District contends that Student would benefit from a further mental health assessment but Mother has refused to consent to such an assessment. An IEP team may initiate a referral to community mental health services if a pupil who is eligible for special education is suspected of needing mental health services, and the following conditions are met: 1) the pupil has been assessed by school personnel; 2) written parental consent has been obtained for the referral; 3) the pupil has significant emotional or behavioral characteristics that impede the pupil from benefiting from educational services and that are not short-term or solely the product of social maladjustment; 4) the pupil's cognitive level is sufficient to enable the pupil to benefit from mental health services; and 5) the local educational agency has provided appropriate behavior services and counseling, but the services do not meet the educational needs of the pupil. Parental consent may be overridden if it is demonstrated in a due process hearing that the referral is necessary. Here, the District

may refer Student for an assessment by community mental health services.

16. At an IEP team meeting on September 26, 2006, the team discussed referring Student to community mental health services. At that time, Mother consented to a functional analysis assessment, but not a referral to community mental health services.

17. In October 2006, Sharpe, the school psychologist, conducted a triennial assessment of Student. The assessment included measures of cognitive functioning, a functional analysis assessment, behavioral checklists completed by Student and Lacy, and a standardized test of academic performance.

18. Student has significant emotional or behavioral characteristics that impede him from benefiting from educational services and are not short-term or solely the product of social maladjustment. Sharpe's testimony revealed that he knew Student well since Student was in sixth grade at Horace Mann. Sharpe testified regarding Student without the aid of documents, and exuded an air of genuine concern for Student's future. Sharpe's testimony regarding Student was very credible and entitled to great weight. Sharpe described how beyond the behaviors discussed in Factual Findings 10 and 11 above, Student has consistently exhibited symptoms of depression including moodiness, sadness, sullenness and overall being "down on himself." In addition, Sharpe was concerned about Student's inappropriate verbal and physical interactions with females, such as the use of sexually explicit language and inappropriate touching. Sharpe testified that Student could benefit from the more comprehensive assessments, consistent counseling, and broader range of services that could be provided by community mental health services. In addition, Sharpe noted that community mental health services personnel could speak to Mother about the possibilities of medication, particularly for Student's unmedicated ADHD. Sharpe noted that Student's emotional and behavioral characteristics have existed throughout Student's entire enrollment at Horace Mann, but have become more pronounced. In

addition, Student's emotional and behavioral characteristics are not the product of social maladjustment, particularly where the worst of Student's behavioral outbursts in the past have been determined to be manifestations of his disability.

19. Student's cognitive level is sufficient such that he could benefit from mental health services. Student is of average intelligence, and Sharpe provided concrete examples of how Student had good story-telling ability, could speak using metaphors, and could carry on meaningful conversations with adults in the English language.

20. The District has provided appropriate behavior services and counseling to Student. Specifically, the SDC at Horace Mann has provided counselors and social skills training in the classroom. In addition, Student has been subject to a behavior support plan and has been in a classroom setting that relies heavily on behavioral supports. Sharpe has also suggested that Student and Mother take advantage of community counseling services and the counseling center at Horace Mann, but they have declined to do so.

LEGAL CONCLUSIONS

1. As the petitioning party, the District has the burden of proof on all issues. (*Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528, 534-537, 163 L.Ed.2d 387].)

2. Under the IDEA and state law, children with disabilities have the right to a FAPE. (20 U.S.C. § 1400(d); Ed. Code, § 56000.) FAPE means special education and related services that are available to the child at no charge to the parent or guardian, meet State educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(a)(9).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(a)(29).) "Related services" are transportation and other developmental, corrective and supportive services as may be required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26).)

In California, related services are called designated instruction and services (DIS), which must be provided if they may be required to assist the child in benefiting from special education. (Ed. Code, § 56363, subd. (a).)

3. The determination of whether a school district has offered a FAPE to a student who is eligible for special education requires a two-part analysis. First, it must be determined whether the school district has complied with the procedural requirements of the IDEA. Second, it must be determined whether the substance of the school district's offer of placement and DIS is designed to meet the student's unique needs, comports with the student's IEP, and is reasonably calculated to provide the pupil with some educational benefit in the least restrictive environment. (*Board of Education of the Hendrick Hudson Central School District, et al. v. Rowley* (1982) 458 U.S. 176, 188-189, 200-201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*); see also *Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1307, 1314.)

4. A parent is a required member of the IEP team. (20 U.S.C. § 1414(d)(1)(B)(i); 35 C.F.R. § 300.344(a)(1); Ed. Code, § 56341, subd. (b)(1).) The IEP team must consider the concerns of the parent for enhancing his or her child's education. (See 20 U.S.C. § 1414(d)(3)(A)(ii); Ed. Code, § 56341.1, subd. (a)(2).) Local educational agencies "shall take any action necessary to ensure that the parent or guardian understands the proceedings at a meeting, including arranging for an interpreter for parents or guardians . . . whose native language is other than English." (Ed. Code, § 56341.5, subd. (i); see also 34 C.F.R. § 300.322(e) [same].) A parent has meaningfully participated in the development of an IEP when she is informed of her child's problems, attends the IEP meeting, expresses her disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*Fuhrmann v. East Hanover Bd. of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1036.) When an IEP team meeting results in an offer of placement and related services, the offer must be communicated to parents in a formal written offer that clearly identifies the proposed program. (*Union Sch. Dist. v. Smith* (9th Cir. 1994)

15 F.3d 1519, 1526.)

5. *Rowley* interpreted the substantive FAPE requirement of the IDEA as being met when a child receives access to an education that is "sufficient to confer some educational benefit" upon the child. (*Rowley* at pp. 200, 203-204.) Educational benefit in a particular program is measured by the degree to which the student is making progress on the goals set forth in the IEP. (*County of San Diego v. California Special Education Hearing Office, et al.* (9th Cir. 1996) 93 F.3d 1458, 1467.) In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (*Gregory K. v. Longview School District, supra*, 811 F.2d at p. 1314.) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Ibid.*)

6. As referenced above, school districts are 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.) In *Sacramento City Unified School District v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404, the court established a four-part test that provides guidance on the question of whether a placement is in the least restrictive environment. The four factors are: 1) the educational benefits of placement full time in a regular class; 2) the non-academic benefits of such placement; 3) the effect the child will have on the teacher and other students in the class; and 4) the cost of mainstreaming the child.

7. The Ninth Circuit Court of Appeals has endorsed the "snapshot" rule, explaining that the actions of the District cannot "be judged exclusively in hindsight" but instead, "an IEP must take into account what was, and what was not, objectively

reasonable . . . at the time the IEP was drafted." (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrman v. East Hanover Bd. Of Education, supra*, 993 F.2d at p. 1041.)

8. For purposes of assessing a child for special education eligibility, a school district must ensure that "the child is assessed in all areas of suspected disability" including "social and emotional status." (20 U.S.C. § 1414(b)(3)(B); Ed. Code, § 56320, subd. (f).) The determination of what tests are required is made based on information known at the time. (See *Vasherese v. Laguna Salada Union School District* (N.D. Cal. 2001) 211 F.Supp.2d 1150, 1157-1158 [assessment adequate despite not including speech/language testing where concern prompting assessment was deficit in reading skills].)

9. In California, in order to maximize the utilization of state and federal resources, mental health assessments for purposes of developing an offer of FAPE are the joint responsibility of the State Secretary of Public Instruction and the State Secretary of Health and Welfare. (Gov. Code, §§ 7570; 7572, subds. (a) & (c); 7576, subd. (a) [community mental health services provide the mental health services required in order to provide a FAPE].) "Mental health assessment" means "a service designed to provide formal, documented evaluation or analysis of the nature of the pupil's emotional or behavioral disorder" that is conducted by qualified mental health professionals in conformity with Education Code sections 56320 through 56329 [detailing the numerous procedural safeguards associated with assessments]. (Cal. Code Regs., tit. 2, § 60020, subd. (g).)

10. A local educational agency, an IEP team, or a parent, may initiate a referral to community mental health services for a special education student or a student who may be eligible for special education, who is suspected of needing mental health services. (Gov. Code, § 7576, subd. (b); Ed. Code, § 56320; Cal. Code Regs., tit. 2, § 60040, subd. (a); see also Cal. Code Regs., tit. 2, § 60030 [describing interagency

agreements between local educational agencies and local mental health director for provision of mental health assessments].) The following conditions must be met in order to make a referral for a mental health assessment:

- (1) The pupil has been assessed by school personnel in accordance with [Education Code section 56320, et seq.]. Local educational agencies and community mental health services shall work collaboratively to ensure that assessments performed prior to referral are as useful as possible to the community mental health service in determining the need for mental health services and the level of services needed.
- (2) The local educational agency has obtained written parental consent for the referral of the pupil to the community mental health service, for the release and exchange of all relevant information between the local educational agency and the community mental health service, and for the observation of the pupil by mental health professionals in an educational setting.
- (3) The pupil has emotional or behavioral characteristics that are all of the following:
 - (A) Are observed by qualified educational staff in educational and other settings, as appropriate.
 - (B) Impede the pupil from benefiting from educational services.
 - (C) Are significant as indicated by their rate of occurrence and intensity.
 - (D) Are associated with a condition that cannot be described solely as a social maladjustment or a temporary adjustment problem, and cannot be resolved with short-term counseling.
- (4) As determined using educational assessments, the pupil's functioning, including cognitive functioning, is at a level sufficient to enable the pupil to benefit from mental health services.
- (5) The local educational agency . . . has provided appropriate counseling and

guidance services, psychological services, parent counseling and training, or social work services to the pupil pursuant to Section 56363 of the Education Code,^[4] or behavioral intervention as specified in Section 56520 ^[5] of the Education Code, as specified in the individualized education program and the individualized education program team has determined that the services do not meet the educational needs of the pupil, or, in cases where these services are clearly inadequate or inappropriate to meet the educational needs of the pupil, the individualized education program team has documented which of

⁴ Education Code section 56363, subdivision (b), provides, in relevant part, that designated instruction and services may include: Counseling and guidance services; psychological services other than assessment and development of the individualized education program; parent counseling and training; and social worker services. (Ed. Code, § 563563, subds. (b)(9), (b)(10), (b)(11) & (b)(13).)

⁵ Education Code section 56520, subdivision (b)(1), provides, "That when behavioral interventions are used, they be used in consideration of the pupil's physical freedom and social interaction, be administered in a manner that respects human dignity and personal privacy, and that ensure a pupil's right to placement in the least restrictive educational environment." California regulations provide that a functional analysis assessment (FAA) and a behavior intervention plan (BIP) which is derived from the FAA, occur after the IEP team finds that instructional/behavioral approaches specified in the student's IEP have been ineffective, or after a parent has requested an assessment pursuant to Education Code section 56320 et seq. (Cal. Code Regs., tit. 5, § 3052, subd. (b).) The BIP is a written document that becomes part of an IEP and is developed when the student exhibits a serious behavior problem that significantly interferes with the implementation of the goals and objectives of the student's IEP. (Cal. Code Regs., tit. 5, §§ 3001, subd. (f), 3052, subd. (a)(3).)

these services were considered and why they were determined to be inadequate or inappropriate.

(Gov. Code, § 7576, subd. (a); see also Cal. Code Regs., tit. 2, § 60040, subd. (a).)

11. As discussed above, before conducting a mental health assessment, a local educational agency must obtain parental consent. (See 20 U.S.C. § 1414(a)(1)(C)(i); Ed. Code, § 56321, subd. (c); Gov. Code, § 7576, subd. (b)(2); Cal. Code Regs., tit. 2, § 60040, subd. (a)(2).) However, a local educational agency may proceed with an assessment without parental consent by seeking a determination through a due process hearing that such assessment is necessary. (20 U.S.C. § 1414(a)(1)(C)(ii); Ed. Code, §§ 56321(c), 56501(a)(3).)

DETERMINATION OF ISSUES

Issue 1: Is the District's offer of placement at Riley School for the 2006-2007 school year a FAPE?

12. Factual Findings 2 through 14, and Legal Conclusions 1 through 7, demonstrate that the District's offer of placement at Riley School will provide Student with FAPE during the 2006-2007 school year. Mother was afforded all necessary procedural rights to participate in the IEP teams that recommended the Riley School placement. Student's lack of academic improvement and social/emotional goal improvement, despite the substantial behavioral supports afforded at Horace Mann, demonstrates that in his current placement, Student is not getting "some educational benefit" as contemplated by the Supreme Court in *Rowley*. In particular, the supplementary aids and services being provided to Student at Horace Mann are not sufficient to confer an educational benefit given the seriousness of Student's behaviors and the need for increased supervision. Accordingly, despite Mother being unwilling to consent to the Riley School placement, the District may implement its offer of placement there.

Issue 2: May the District conduct a mental health examination of Student without Mother's consent?

13. Factual Findings 15 through 20, and Legal Conclusions 8 through 11, demonstrate that despite Mother's lack of consent, the District may refer Student to community mental health services for an assessment. Sharpe and Lacy provided poignant testimony that despite the best efforts of the staff at Horace Mann, who have provided and/or offered assessments, behavioral supports and counseling, Student continues to exhibit significant emotional and behavioral characteristics that are chronic and not the result of social maladjustment. Student has the cognitive ability to graduate, yet demonstrates emotional and behavioral characteristics that require further assessment. Hopefully, such an assessment will lead to treatment and positive changes for Student and his family.

ORDER

- 1) The District may place Student at Riley School, as recommended in the December 4, 2006 IEP.
- 2) The District may refer Student to community mental health services for an assessment within the meaning of Government Code section 7576.

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. Here, the District was the prevailing party on all issues presented.

RIGHT TO APPEAL THIS DECISION

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

DATED: April 10, 2007

A handwritten signature in black ink, appearing to read 'R. T. Breen', is written over a horizontal line. A vertical red line is positioned to the right of the signature.

RICHARD T. BREEN

Administrative Law Judge

Office of Administrative Hearings

Special Education Division