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

In the Matter of: STUDENT, Petitioner, v. FRANKLIN-MCKINLEY ELEMENTARY SCHOOL DISTRICT, Respondent.	OAH CASE NO. N 2007060231

DECISION

Administrative Law Judge (ALJ) Suzanne B. Brown, Office of Administrative Hearings (OAH), Special Education Division, State of California, heard this matter on September 27 and 28, 2007, in San Jose, California.

Student's mother, Mother, represented her son, Student. Max Forman, Director of Special Services, represented Franklin-McKinley Elementary School District (District). Robert Spychala, Coordinator of Special Services, was also present on behalf of the District for a portion of the hearing. Spanish interpreter Olga Ramirez provided interpreter services for Mother.

On June 6, 2007, OAH received Student's due process complaint. On July 31, 2007, OAH granted the District's motion to continue the hearing. At the hearing, the ALJ received sworn testimony and documentary evidence. The parties requested leave to submit closing arguments in writing. Upon receipt of those arguments, the record was

closed on October 29, 2007, and the matter was submitted.[1]

ISSUES[2]

1. From May 2, 2006, through the end of the 2006-2007 school year, did placement in five Stanford Research Associates (SRA) support classes, with no science or social studies classes, deny Student a free appropriate public education (FAPE) in the least restrictive environment (LRE)?

2. From May 2, 2006, through the end of the 2006-2007 school year, did the District deny Student a FAPE by failing to offer or provide speech therapy as a related service?

3. Did the District deny Student a FAPE by failing to conduct an academic evaluation in math and language arts when Student began attending school in the District in May 2006?

4. Did the District fail to assess Student in all areas of suspected disability by

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[1]The deadline for receipt of the closing briefs was 5:00 p.m. on Friday, October 26, 2007. The District timely filed its brief on October 26, 2007. However, OAH did not receive Student's closing brief until Monday October 29, 2007. It is not entirely clear why Student did not timely file his brief, although Mother indicated to a member of OAH's clerical staff that she encountered difficulties sending the document by facsimile (fax). Student's delay in filing his closing brief does not appear to create any unfair prejudice against the District. Considering also that Mother was not represented by an attorney or advocate, the ALJ considers Student's closing brief despite the untimely filing.

[2]The ALJ has slightly rephrased Issue 2 to accurately reflect Student's claim. Furthermore, during the Prehearing Conference on August 23, 2007, the ALJ dismissed two other issues. That ruling is memorialized in the Order Following Prehearing Conference And Granting Motion To Continue, dated August 27, 2007

failing to conduct a comprehensive assistive technology (AT) evaluation in spring 2007?

5. In the 2006-2007 school year, did the District deny Student a FAPE by failing to arrange or conduct a transitional individualized education program (IEP) team meeting with staff from the high school, in preparation for his transition to high school?

REQUESTED REMEDIES

Student seeks the following remedies: (1) compensatory education in the form of tutoring in reading, writing, and math; (2) speech therapy services; (3) a comprehensive AT evaluation; and (4) a transitional IEP meeting with the staff at the high school Student now attends.[3]

CONTENTIONS OF THE PARTIES

Student contends first that, from May 2, 2006, through the end of the 2006-2007 school year, the District denied him a FAPE in the LRE by placing him in five SRA support classes, with no science or social studies classes. Second, concerning the same time period of May 2006 through the end of the 2006-2007 school year, Student asserts that the District denied him a FAPE by failing to offer or provide related services such as

[3]Student's due process complaint contained two additional proposed remedies which are not considered here. The request for an occupational therapy (OT) evaluation was dismissed because, at the Prehearing Conference, Student agreed that the District subsequently conducted that evaluation. Furthermore, because the issue of "inadequate IEP or FAPE" was dismissed at the Prehearing Conference, the accompanying proposed resolution of "an adequate IEP develop for appropriate education," is likewise dismissed due to vagueness. In addition, because Student has been promoted from the District and no longer attends school there, the District is not Student's responsible local educational agency (LEA) for the 2007-2008 school year, and thus has no involvement in providing Student an appropriate education for this school year.

speech therapy. Third, Student argues that the District denied him a FAPE by failing to conduct an academic evaluation in math and language arts when he first enrolled in the District in May 2006, and that the District failed to accurately measure his academic functioning in those areas. Fourth, Student argues that the District failed to assess him in all areas of suspected disability by failing to conduct a comprehensive AT evaluation. Finally, Student contends that the District denied him a FAPE during the 2006-2007 school year by failing to arrange or conduct a transitional IEP team meeting with staff from the high school, in preparation for his transition to high school.

The District contends that it offered Student a FAPE during the entire time period at issue. The District further argues that, because Mother refused to consent to receipt of special education and related services, the District cannot be found in violation of the requirement to make a FAPE available. Next, the District argues that Student's placement in SRA classes was a 100 percent general education placement provided at the request of Student's mother, and that it provided Student with educational benefit in the LRE. The District states that all pupils at Student's middle school were placed in SRA classes if they received low scores on school-wide placement testing, pursuant to the school's designation by the State of California as a Program Improvement school. Thus, Student's enrollment in SRA classes was a general education placement determined by his scores on school-wide placement testing. The District argues that Student was not eligible to receive speech therapy services, and therefore the failure to offer those services did not deny Student a FAPE. The District asserts that, when Student first enrolled in the District, it conducted valid academic evaluations which accurately assessed Student in all areas of suspected disability. The District argues that it conducted a comprehensive AT evaluation. Finally, the District argues that, while Student did not require a transition IEP, the District nevertheless conducted a transition meeting with high school staff at the beginning of the 2007-2008 school year, and therefore did not deny Student a FAPE on that basis.

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. Student is 14 years old. During all times at issue in this case, he was a resident within the boundaries of the District, and was eligible for special education services due to a specific learning disability (SLD). He completed eighth grade at the District in June 2007, and currently attends ninth grade at Eastside Union High School District (EUHSD).

LRE/PLACEMENT IN SRA CLASSES

2. A special education student must be educated with nondisabled peers to the maximum extent appropriate, and may be removed from the regular education environment 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 cannot be achieved satisfactorily. The parent of a special education student must consent to the special education and services in an IEP before they can be implemented. If the parent of a special education child refuses to consent to the receipt of special education, the local educational agency (LEA) shall not be considered to be in violation of the requirement to make available a FAPE for failure to provide the child with the special education and related services for which the LEA requests parental consent.

3. For the first portion of the 2005-2006 school year, Student attended seventh grade in the Alum Rock Union Elementary School District (Alum Rock), where he was eligible for special education. In April 2006, Mother enrolled Student in the District's J.W. Fair Middle School (Fair Middle School). Although Student was eligible for special education under the category of SLD, Mother informed District staff that she did not consent to Student's placement in any special education setting, and instead consented only to a general education placement. As a result, the District placed Student in a general education setting for a 30-day interim administrative placement.

4. On May 26, 2006, the IEP team convened to discuss the 30-day interim administrative placement and to develop Student's IEP.[4] District members of the IEP team suggested options for Student's educational program, such as the resource specialist program (RSP) or a special day class (SDC). Mother stated that she would not agree to any special education placement, and that she wanted Student placed in general education. Pursuant to Mother's refusal to consent to a special education placement, Student remained in general education, and was not placed in any special education classes.

6. For the 2006-2007 school year, Student was in the eighth grade at Fair Middle School, and remained in general education classes for the entire school year. In October 2006, the IEP team convened to discuss Student's program. Although Mother continued to refuse a special education placement, she agreed to some special education services, such as RSP services delivered using a "push-in" model for one period per school day. The District provided these services to Student in his general education classes.

7. Because of Student's scores on initial placement tests when he enrolled in the District, the general education classes in which he was enrolled included five remedial classes using the SRA program. Testimony from witnesses including special education teacher Paul Ruffner and school psychologist David Rogers established that all general education students at Fair Middle School who scored below grade level on the placement tests were required to attend the remedial SRA classes.[5] At the time of Student's

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[4]A Spanish translator provided translation services for Mother at this IEP meeting and all other District IEP meetings during the time period at issue

[5]The schedule at Fair Middle School consisted of six class periods per day. As a result of the requirement for intensive remedial classes, some pupils, such as Student, who tested below grade level in math and language arts, did not have time to attend classes in science or social studies

enrollment in the District, the State of California had designated Fair Middle School as a Program Improvement school under the federal No Child Left Behind Act (NCLB), based upon its students' scores on statewide testing. Because of the school's status as a Program Improvement School, a School Assistance and Intervention Team (SAIT) designed a school- wide program wherein all pupils at Fair Middle School who received low scores on placement tests in math and/or language arts were required to attend intensive remedial classes during the school day. In light of Student's placement test scores, his placement in the SRA classes was determined according to standards applicable to all general education students at the school, as a result of the school's attempt to comply with NCLB. Testimony from witnesses including Mr. Ruffner and Gloria Perkins, who was vice-principal of Fair Middle School during Student's attendance there, established that the SRA classes were general education classes. Hence, Student's enrollment in the SRA classes was not a special education placement.

8. By definition, general education is the LRE. Student's placement in five SRA classes did not remove him from the regular education environment, and was not a special education placement. Hence, there is no LRE issue to determine, because Student was in a general education setting for his entire school day. Moreover, the IEP team was obligated only to offer a FAPE in the LRE; because Mother rejected the special education placement offered by the District, the District cannot be found in violation of its obligation to offer FAPE in the LRE.

SPEECH THERAPY AS A RELATED SERVICE

9. FAPE consists of special education and related services that are available to the child at no charge to the parent or guardian, meet the State educational standards, and conform to the child's IEP. Related services means transportation and other developmental, corrective and supportive services as may be required to assist the child to benefit from special education. In the present case, because speech therapy is the only specific related service Student identified during clarification of the issues, it is the only

related service considered here.

10. From late October to mid-December 2006, District speech-language pathologist Bevon Martinez administered testing of Student for a speech-language assessment, pursuant to a referral from the IEP team in October 2006. Based upon the results of this assessment, Ms. Martinez recommended that Student did not qualify for speech- language services. Testimony from Ms. Martinez established that Student did not require speech therapy to benefit from his educational placement. Preliminarily, Ms. Martinez explained that Student was not below the 7th percentile for his chronological age or 1.5 standard deviations below the mean in any of the specified areas of language development.Based upon Student's test results on the assessment, he did not meet the legal criteria for special education eligibility due to a speech-language impairment. Furthermore, Ms. Martinez established that Student did not require speech therapy to benefit from his education. Ms. Martinez spoke to at least two of Student's teachers, who reported that Student had good verbal expression. From her conversations with Student during the assessment, Ms. Martinez likewise concluded that Student expressed himself well.Similarly, Student's scores on the speech and language assessment tools indicated that he had relatively strong vocabulary skills and receptive language skills. Ms. Martinez was a credible witness whose testimony was convincing on these points.

11. In November 2004, an assessment by a speech-language pathologist at Alum Rock recommended speech therapy services for Student due to a significant delay in his receptive and expressive language skills. However, Ms. Martinez established in her testimony that the 2004 Alum Rock assessment did not reflect Student's needs in 2006. She explained that, because Spanish is Student's native language, the speech and language problems indicated in that report were likely due to English language acquisition problems, which he subsequently overcame. In addition, a 2005 evaluation report by the Center for Communication Disorders at San Jose State University (San Jose State) recommended that Student receive speech therapy their Speech and Language

Clinic, but did not address whether Student needed speech therapy to benefit from his education at school. That report also did not address what standards the assessors used in making their recommendation for speech therapy at the clinic. Given all of these circumstances, neither of these reports established that Student needed speech therapy to access his educational curriculum during the time period at issue. Therefore, considering the persuasive testimony and assessment report from Ms. Martinez, Student did not meet his burden of proving that he needed speech therapy to benefit from his education during the time period at issue.

ACADEMIC EVALUATION AT STUDENT'S ENROLLMENT IN MAY 2006

12. The District was obligated to assess Student in all areas related to his suspected disability. Student generally contends that the District failed to assess him in all areas of suspected disability by failing to conduct an academic evaluation in math and language arts when he first enrolled in the District in or about May 2006. However, when Student first enrolled in the District, a reading specialist administered placement tests in language arts, and a "math coach" administered placement tests in math. Those test results indicated that Student was performing below grade level in both areas. District school psychologist David Rogers established that the May 2006 IEP team also had assessment reports, IEP documents, and report cards from Student's previous school district. In light of the District's placement tests and the information from Alum Rock, the May 2006 IEP team had sufficient information about Student's academic functioning to determine a proper placement for him. Moreover, in December 2006 and January 2007, an independent clinical neuropsychologist, Yvette Tazeau, conducted an independent educational evaluation (IEE) of Student, which was paid for by the District. The IEE included academic testing in math and language arts, including the Wechsler Individual Achievement Test, Second Edition (WIAT- II).

13. Student argues that the District failed to accurately assess his skills in math and language arts, and that as a result it placed him at a lower level of classes than he

needed. The only evidence for this contention was Mother's testimony, which was unsupported lay opinion and was outweighed by the assessment information described in the preceding paragraph.[6] In light of the evidence discussed above, Student did not prove that the District failed to assess him in math or language arts.

ASSISTIVE TECHNOLOGY (AT) EVALUATION

14. In April 2007, the District agreed to refer Student for an AT consultation by an independent assessor, an AT specialist in the iTECH Department of Parents Helping Parents (PHP). That assessor produced an AT consultation report dated May 5, 2007.

15. Student alleges that the AT evaluation was not comprehensive enough, and that the PHP evaluator did not conduct sufficient observations of him. There was no persuasive evidence to support these contentions. The May 5, 2007 AT consultation report indicates that the independent assessor devoted a total of 10 hours to the consultation, which time included: a review of Student's records; two visits to Fair Middle School; an observation of Student in the classroom; an in-house observation of Student at the iTECH Center, consultation with Mother, Student, Student's Language Arts teacher, and other AT specialists; and preparation of a written report. Former District special education director Carolyn Johnson testified credibly that she had seen other AT reports, but had never before seen one as extensive as the May 5, 2007 report regarding Student. All of this evidence established that the May 5, 2007 AT consultation was comprehensive and adequately assessed Student in all areas related to his AT needs.

[6]In support of her argument, Mother points out that Student has a high intelligence quotient (IQ). Student's high IQ is undisputed, but does not indicate that the District failed to accurately assess him in math or language arts. Rather, Student's high IQ and low placement test scores are generally consistent with his disability of SLD

IEP MEETING FOR STUDENT'S TRANSITION TO HIGH SCHOOL

16. When a pupil is to enroll in a high school district from an elementary school district, the elementary school district shall invite the high school district to the IEP team meeting prior to the last scheduled review.

17. Student alleges that the District should have convened an IEP meeting with the EUHSD staff, in preparation for his transition to high school. On June 5, 2007, Mother and District staff met for Student's IEP team meeting. District staff proposed special education, related services, and goals for Student for the 2007-2008 school year, when he would be attending ninth grade at EUHSD. Student's mother did not sign her consent to this IEP.

18. There was no evidence that the District invited anyone from EUHSD to attend the IEP meeting on June 5, 2007. In a notice dated May 25, 2007, the District notified Mother that an IEP meeting was scheduled for June 5, 2007; none of the team members listed on the notice were from EUHSD. When the IEP team convened on June 5, 2007, no one from EUHSD attended. Ms. Johnson testified that the District does not conduct a transition IEP meeting for every special education pupil graduating eighth grade and transitioning to high school, and that Student did not need such a transition meeting.

19. At a meeting with Mother on June 27, 2007, the District agreed to hold a meeting with EUHSD staff pursuant to Mother's request.[7] The IEP notes of June 27, 2007, state that "the team agrees that Franklin McKinley will meet within the first 2 weeks of

[7]The IEP notes of June 27, 2007, state that "the team agrees that Franklin McKinley will meet within the first 2 weeks of school for Franklin McKinley to update EUHSD on [Student's] current status." This IEP meeting was apparently conducted as part of the resolution session convened in response to Student's complaint filed on June 6, 2007. Mother did not sign this IEP

school for Franklin McKinley to update EUHSD on [Student's] current status." Mr. Spychala, Coordinator of Special Services, testified that he participated in a transition meeting with EUHSD's special education director and an EUHSD program specialist at the beginning of the 2007-2008 school year, on or about September 7, 2007. However, there is no indication that the September 7, 2007 meeting between Mr. Spychala and EUHSD staff constituted an IEP meeting. Among other requirements, an IEP team consists of one or both of the pupil's parents, and not less than one regular education teacher of the pupil.

20. A procedural violation may constitute a denial of FAPE only if the violation impeded the child's right to a FAPE, significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a FAPE to the child, or caused a deprivation of educational benefits. In the present case, the District's failure to invite the high school district to Student's last District IEP team meeting was not harmless error. The regulation requiring this invitation serves the important purpose of facilitating a pupil's smooth transition from elementary school to high school. While Mr. Spychala met with EUHSD administrators at the beginning of the 2007-2008 school year, that meeting was not an IEP meeting; thus, it did not follow required IEP procedures, such as inviting a parent of the pupil and including a regular education teacher of the pupil. Hence, the District's failure to invite EUHSD staff to Student's final IEP meeting constituted a procedural violation that denied Student a FAPE on that basis.

REMEDIES

21. As determined above, the District denied Student a FAPE to the extent that it failed to invite high school staff to Student's final IEP meeting at the District. To remedy that denial, the District shall convene a transition IEP meeting and shall invite the pertinent members of the EUHSD staff to participate. Because Student no longer attends school at the District, the District cannot offer Student a placement or services; however, District staff can provide relevant information about Student to assist the current members of the

IEP team in developing Student's educational program for the 2007-2008 school year. Within 15 calendar days of the date of this order, the District shall notify the IEP team members,including EUHSD staff, of the date, time, and location of the IEP meeting.[8] The District shall convene this IEP meeting no later than December 31, 2007.

22. This transition IEP meeting constitutes a sufficient remedy for the single denial of FAPE determined herein. All of Student's other requests for relief are denied.

CONCLUSIONS OF LAW

BURDEN OF PROOF

1. The District, as the petitioner, has the burden of proving the essential elements of its claim. (*Schaffer v. Weast* (2005) 546 U.S. 49 [163 L.Ed.2d 387].)

ELEMENTS OF A FAPE

2. Under the Individuals with Disabilities in Education Improvement Act (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).)

3. There are two parts to the legal analysis of a school district's compliance with the IDEA. First, the tribunal must determine whether the district has complied with the procedures set forth in the IDEA. (*Board of Educ. v. Rowley* (1982) 458 U.S. 176, 206-07 [73 L.Ed.2d 690].) Second, the tribunal must decide whether the IEP developed through those procedures was designed to meet the child's unique needs, was reasonably calculated to enable the child to receive educational benefit, and comported with the child's IEP. (*Ibid.*)

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[8]The District is not required to hold the IEP meeting at a District site, and may instead arrange to hold the meeting at an EUHSD location

4. 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. (*Rowley*, 458 U.S. at pp.198-200; see, *Seattle Sch. Dist. No. 1 v. B.S.* (9th Cir. 1995) 82 F.3d 1493, 1500.) School districts are required to provide only a "basic floor of opportunity" that consists of access to specialized instruction and related services individually designed to provide educational benefit to the student. (*Rowley*, 458 U.S. at p. 201.)

5. To determine whether the District offered Student a FAPE, the analysis must focus on the adequacy of the District's proposed program. (*Gregory K. v. Longview Sch. Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) The Ninth Circuit has endorsed the "snapshot" rule, explaining that the actions of the school cannot "be judged exclusively in hindsight…an IEP must take into account what was, and what was not, objectively reasonable when the snapshot was taken, that is, at the time the IEP was drafted." (*Adams, etc. v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (citing *Fuhrman v. East Hanover Bd. of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1041).)

FROM MAY 2, 2006, THROUGH THE END OF THE 2006-2007 SCHOOL YEAR, DID PLACEMENT IN FIVE SRA SUPPORT CLASSES, WITH NO SCIENCE OR SOCIAL STUDIES CLASSES, DENY STUDENT A FAPE IN THE LRE?

6. The IDEA establishes a strong preference in favor of the placement of a special education student in the LRE. (20 U.S.C. § 1412(a)(5)(A); *Rowley, supra*, 458 U.S. at p. 181 n.4; *Poolaw v. Bishop* (9th Cir. 1995) 67 F.3d 830, 834.) A special education student must be educated with nondisabled peers to the maximum extent appropriate and may be removed from the regular education environment 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 cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114; see, Ed. Code, §§ 56031, 56342, subd. (b), 56364.2,subd. (a).)

7. The parent of a special education student must consent to the special education and services in an IEP before they can be implemented. (20 U.S.C. § 1414(a)(1)(D); see, Ed. Code, § 56346, subd. (e).) If the parent of a special education child refuses to consent to the receipt of special education services, the LEA shall not be considered to be in violation of the requirement to make available a FAPE for the failure to provide the child with the special education and related services for which the LEA requests consent. (Ed. Code, § 56346, subd. (c).)

8. Pursuant to the requirements of the Education Code and the federal No Child Left Behind Act of 2001 (NCLB), the California Superintendent of Public Instruction may place a school in Program Improvement status due to the school's failure to make Adequate Yearly Progress (AYP) in improving the scores of its students on statewide tests. The Education Code requires the Superintendent of Public Instruction, with the approval of the State Board of Education, to impose various sanctions on state-monitored schools. (Ed. Code, §§ 52055.5, 52055.51, and 52055.650.) One option is to require the district to enter into a contract with a School Assistance and Intervention Team (SAIT), whose members assist the school or LEA in developing a plan to improve pupils' scores on the statewide testing.

9. Based upon Factual Findings 2-8 and Legal Conclusions 1-8, placement in five SRA classes, with no science or social studies classes, did not deny Student a FAPE in the LRE. Because Mother did not consent to placement in any special education classes, Student attended only general education classes. Due to the District's status as a Program Improvement school, the SAIT utilized by the District developed a plan to require some pupils to attend remedial classes, if the pupil's scores on academic placement tests were below grade level. Student's attendance in SRA classes was not determined by the IEP team, and instead was determined by his placement test scores, pursuant to requirements imposed on all general education students in the District. Because Student's placement was entirely in the regular education environment, no LRE issue

exists. Hence, the District did not deny Student a FAPE on that basis.

FROM MAY 2, 2006, THROUGH THE END OF THE 2006-2007 SCHOOL YEAR, DID THE DISTRICT DENY STUDENT A FAPE BY FAILING TO OFFER OR PROVIDE SPEECH THERAPY AS A RELATED SERVICE?

10. The IDEA requires that an eligible student receive related services, such as transportation and developmental, corrective, and other supportive services, "as may be required to assist a child with a disability to benefit from special education." (20 U.S.C. § 1401(a)(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.[9] (Ed. Code, § 56363, subd. (a).)

11. Based on Factual Findings 9-11 and Legal Conclusions 1-5 and 10, the District's failure to offer speech therapy as a related service did not deny Student a FAPE. Student did not require speech therapy to benefit from his educational placement.

DID THE DISTRICT DENY STUDENT A FAPE BY FAILING TO CONDUCT AN ACADEMIC EVALUATION IN MATH AND LANGUAGE ARTS WHEN STUDENT BEGAN ATTENDING SCHOOL IN THE DISTRICT IN MAY 2006?

12. A pupil must be assessed in all areas related to his or her suspected disability. (Ed. Code, § 56320, subd. (f); 20 U.S.C. § 1414 (b)(3). A reassessment shall be conducted if the LEA determines that the educational or related services needs of the

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[9] The District incorrectly argues that whether a pupil is entitled to speech therapy is governed by the eligibility requirements of California Education Code section 56333 and California Code of Regulations, Title 5, section 3030, subdivision (c). These criteria determine whether a pupil "shall qualify as an individual with exceptional needs" under the category of "language or speech disorder." (Cal. Code of Regs, tit. 5, § 3030, subd. (c).) However, as discussed in Legal Conclusion 10, for a pupil who has already qualified as eligible for special education, whether the pupil is entitled to related services is determined by whether he or she requires such services to benefit from special education

pupil warrant a reassessment, or if the pupil's parents or teacher requests a reassessment. (Ed. Code, § 56381, subd. (a)(1); 20 U.S.C. § 1414(a)(2)(A)(2005).)

13. Based on Factual Findings 12-13 and Legal Conclusions 1-5 and 12, the District conducted an academic evaluation in math and language arts when Student began attending school in the District. Moreover, Student's argument that the District denied him a FAPE by inaccurately assessing his academic skills was unsupported and unpersuasive. Thus, the District did deny Student a FAPE by failing to conduct an academic evaluation when he began attending school in the District.

DID THE DISTRICT FAIL TO ASSESS STUDENT IN ALL AREAS OF SUSPECTED DISABILITY BY FAILING TO CONDUCT A COMPREHENSIVE AT EVALUATION IN SPRING 2007?

14. Based on Factual Findings 14-15 and Legal Conclusions 1-5 and 12, the District did not fail to assess Student in all areas of suspected disability by failing to conduct a comprehensive AT evaluation. The AT evaluation was thorough and assessed Student in all areas related to his AT needs.

IN THE 2006-2007 SCHOOL YEAR, DID THE DISTRICT DENY STUDENT A FAPE BY FAILING TO ARRANGE OR CONDUCT A TRANSITIONAL IEP TEAM MEETING WITH STAFF FROM THE HIGH SCHOOL, IN PREPARATION FOR HIS TRANSITION TO HIGH SCHOOL?

15. When a pupil is to enroll in a high school district from an elementary school district, the elementary school district shall invite the high school district to the IEP team meeting prior to the last scheduled review. (Cal. Code Regs, tit. 5, § 3024, subd. (b).)

16. Among the IDEA's important procedural requirements is LEA's obligation to invite required members to an IEP team meeting, including one or both of the pupil's parents and a regular education teacher of the pupil. (20 U.S.C. § 1414(d)(1); Ed. Code, § 56341, subd. (b).)

17. When analyzing whether an LEA complied with the procedures set forth in the IDEA, procedural flaws do not automatically require a finding of a denial of a FAPE. A procedural violation may constitute a denial of FAPE only if the violation impeded the

child's right to a FAPE, significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a FAPE to the child, or caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); see also Ed. Code, § 56505, subd. (j).) Recent Ninth Circuit Court of Appeals cases have confirmed that not all procedural violations deny the child a FAPE. (*Park v. Anaheim Union High Sch. Dist.* (9th Cir. 2006) 464 F.3d 1025, 1033, n.3; *Ford ex rel. Ford v. Long Beach Unified Sch. Dist.* (9th Cir. 2002) 291 F.3d 1086, 1089.)

18. Based on Factual Findings 16-20 and Legal Conclusions 1-5 and 15-17, the District's failure to invite high school staff to Student's June 5, 2007 IEP meeting was a procedural violation that constituted a procedural denial of FAPE. While the District's coordinator of special education met with EUHSD staff regarding Student on or about September 7, 2007, this meeting was not an IEP meeting. Because Mother was not invited to the September 7, 2007 transition meeting, the violation significantly interfered with the parent's participation in the decisionmaking process, which constituted a procedural denial of FAPE.

REMEDY

19. Appropriate equitable relief can be awarded in a due process hearing. (See, *Park*, *supra*, 464 F.3d at 1033-1034; *Parents of Student W. v. Puyallup Sch. Dist.* (9th Cir. 1994) 31 F.3d 1489, 1496-97.)

20. Based on Factual Findings 16-22 and Legal Conclusions 1-5, 15-17, and 19, the District shall convene a transition IEP meeting and shall invite the members of the EUHSD staff who are members of Student's current IEP team, pursuant to Education Code section 56341, subdivision (b). Because Student no longer attends school at the District, the District cannot offer Student a placement or services; however, District staff can provide relevant information about Student to assist the current members of the IEP team in developing Student's educational program for the 2007-2008 school year. Within 15 calendar days of the date of this order, the District shall notify the IEP team members,

including Mother and EUHSD staff, of the date, time, and location of the IEP meeting. The District shall convene this IEP meeting no later than December 31, 2007.

ORDER

1. The District shall convene a transition IEP meeting and shall invite the members of the EUHSD staff who are members of Student's current IEP team, pursuant to Education Code section 56341, subdivision (b). Within 15 calendar days of the date of this order, the District shall notify the IEP team members, including EUHSD staff, of the date, time, and location of the IEP meeting. The District shall convene this IEP meeting no later than December 31, 2007.

2. All of Student's other requests for relief are denied.

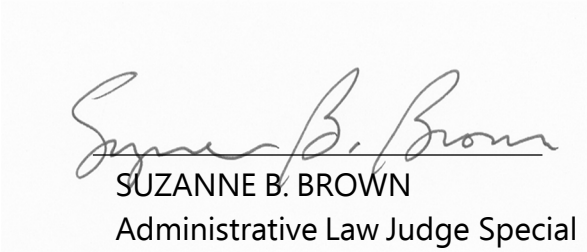
PREVAILING PARTY

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: The District prevailed on Issues 1, 2, 3, and 4. Student prevailed on Issue 5.

RIGHT TO APPEAL THIS DECISION

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

Dated: November 19, 2007



SUZANNE B. BROWN
Administrative Law Judge Special Education Division
Office of Administrative Hearings