

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

SANTA ANA UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NO. 2009071148

DECISION

The due process hearing in this matter convened on September 1, 2009, in Santa Ana, California, before Timothy L. Newlove, Administrative Law Judge (ALJ) from the Office of Administrative Hearings, Special Education Division (OAH).

Sundee Johnson, of Atkinson, Andelson, Loya, Ruud & Romo, attorneys at law, appeared on behalf of Santa Ana Unified School District (Santa Ana or District). Barbara Cummings, the District's Coordinator of Special Education, attended the hearing. Student's parents did not attend the due process hearing, and Student otherwise was not represented at the hearing.

On July 30, 2009, the District filed with OAH the Request for Due Process Hearing in this matter. On the same day, by overnight mail, counsel for the District served the complaint upon Student's mother at her address of record with the District. On August 3, 2009, OAH issued a Scheduling Order which set the due process hearing in this case for September 1, 2009. OAH served the Scheduling Order upon Student's mother at her address of record with the District.

On August 31, 2009, Student's mother submitted to OAH a request for continuance of the due process hearing in this case. On September 1, 2009, the ALJ

considered and denied this request. On the same day, after presenting five witnesses and documentary evidence, the District submitted the matter for decision, and the ALJ closed the record.

## ISSUE

At the outset of the due process hearing, the District moved to withdraw the first issue in the Request for Due Process hearing: whether the District appropriately assessed Student in all areas of suspected disability as part of the triennial assessment in 2008.

The remaining issue for hearing and decision was as follows:

Did the District's offer of placement and services contained in Student's June 12, 2009 annual Individualized Education Program constitute a free appropriate public education in the least restrictive environment?

## FACTUAL FINDINGS

### THE STUDENT

1. Student is a nine-year-old boy who will turn 10 in October 2009. Student's family resides within the boundaries of the Santa Ana Unified School District. Student currently attends fourth grade at the Orange County Educational Arts Academy (OCEAA) which is a charter school operated by the District.

2. Student qualifies for special education as a child with a specific learning disability and a speech and language impairment. Student has auditory processing deficits which impair his ability to retain information that he hears. Student's imperfect working memory affects all areas of his schooling. In particular, Student has unique needs in learning basic reading skills, in reading comprehension, in writing abilities, in spelling, and in matters relating to organization such as completion of homework.

Student also has difficulty pronouncing the /r/ sound. This difficulty in articulation calls attention to his speech and affects his ability to be understood.

### THE JUNE 2008 IEP

3. During the 2007-2008 school year, Student attended second grade in a general education classroom at OCEAA. In June 2008, the District conducted a triennial evaluation of Student and produced a Multidisciplinary Assessment Report of this evaluation. The Multidisciplinary Assessment evaluated Student in the areas of cognitive abilities, basic psychological processing, communication, social/emotional/behavioral, academic achievement, and adaptive behavior/vocational/self-help. The Multidisciplinary Assessment concluded that Student demonstrated average intellectual ability and that, due to deficits in the basic psychological processing area of auditory processing, a significant discrepancy existed between Student's ability and achievement in the areas of reading and written language.

4. On June 2, 2008, Student's Individualized Education Program (IEP) team conducted a meeting. The IEP team reviewed the triennial evaluation of Student and discussed his special education program for the upcoming 2008-2009 school year. Student's mother and attorney attended this IEP meeting.

5. At the June 2008 IEP meeting, the team developed the following goals to address Student's areas of need.

a. Organizational Skills: Student needed support in order to complete classroom tasks. The IEP team developed a goal to improve Student's ability to complete a four-step class activity.

b. Written Expression: Student needed help with his handwriting ability. He required cues to write sentences from left to right, to correctly space written words, and to write within designated lines. The IEP team formulated a goal to

improve Student's abilities in sentence creation, letter formation, spacing and punctuation.

c. Handwriting Skills: Student sometimes misspelled his name through misplacement of an "e" and "r." As a further effort to improve his handwriting ability, the IEP team developed a goal which required Student to spell and write his name accurately.

d. Morphological/Syntax: Student did not consistently use the third person singular or plural of verbs. For example, instead of saying that "The sheep eats," Student said "The sheep eating." The IEP team developed a goal which required Student to demonstrate the correct use of the third person singular present tense of verbs and the plural auxiliary verb "are" without cues.

e. Articulation/Phonology: Student had difficult pronouncing correctly the /r/ sound in his speech. The IEP team created a goal designed to improve Student's articulation skills by requiring him to produce the /r/ sound in all positions in words during structured speech.

f. Decoding and Word Recognition: In terms of reading skill, "decoding" refers to the ability to transfer a word from print to speech, usually through the knowledge of the relation between the sound and symbol. Student knew individual letter sounds but he had difficulty blending the sounds together to form words. The IEP team developed a goal designed to improve Student's reading ability by requiring him to recognize one and two syllable words and priority sight words.

g. Phonemic Awareness: "Phonemic awareness" refers to the ability to distinguish the component sounds, or phonemes, in words. Student had difficulty recognizing short and long vowel sounds in words. The IEP team formulated a goal designed to improve Student's phonemic awareness by

requiring him to distinguish between short and long vowel sounds when an instructor gave him one syllable words.

h. Comprehension: Student struggled with reading comprehension based upon his difficulties with decoding and phonemic awareness. The IEP team developed a goal to improve Student's reading comprehension by requiring him to accurately respond to questions after reading instruction level material.

i. Spelling: Student also struggled with spelling based upon his difficulties with phonemic awareness. The IEP team developed a goal to improve Student's spelling ability by determining the spelling of words through letter names, knowledge of letter sounds and use of pre-phonetic knowledge.

j. Sentence Structure: Student had difficulty writing clear and concise sentences. The IEP team created a goal that required Student to write in complete sentences when given a verbal or visual cue.

k. Auditory Processing: Based upon his auditory processing deficits, Student required his teachers to repeat auditory information and clarify directions. The IEP team developed a goal to improve Student's ability to follow multi-step directions through the use of various strategies such as repeating directions to himself, checking directions on the board, using visuals and writing auditory information on his agenda.

l. Social Skills: Student had difficulty initiating social interactions with his peers. The IEP team developed a goal to help Student with his social skills by requiring Student to initiate a conversation with a classmate after a teacher or aide provided him with a subject of conversation.

6. At the June 2008 IEP meeting, the team offered Student the following special education program for the 2008-2009 school year: (1) placement in a general education third grade classroom at OCEAA; (2) specialized academic instruction for one

hour each day; (3) individual and group speech and language services for two 30 minute sessions each week, totaling 1,500 minutes for the school year; and (4) group occupational therapy services for two 30 minute sessions each month. For the 2008 Extended School Year (ESY), the IEP team also offered Student instruction from July 8, 2008 to August 1, 2008, and the delivery of speech/language and occupational therapy services during this time period.

### 2008-2009 SCHOOL YEAR – THIRD GRADE

7. During the 2008-2009 school year, Student attended third grade at OCEAA under the June 2008 IEP. Krista Ratnaweera was Student's third grade general education teacher. Ms. Ratnaweera testified at the due process hearing. She described Student as an enthusiastic pupil who worked hard, behaved well and maintained good relations with his classmates. Ms. Ratnaweera testified that, during third grade, Student made academic progress with the biggest improvement in the area of reading fluency where he jumped an entire grade level. Ms. Ratnaweera also stated that Student improved in the areas of mathematics, handwriting and social skills. She cautioned that Student must improve in the area of homework completion and that he must strive for a better school attendance.

8. Tara Pilato was Student's special education teacher during his third grade year. She has been Student's resource teacher in language arts and mathematics for the last three school years. Ms. Pilato testified at the due process hearing. She stated that, during the sessions in which she provided specialized academic instruction, Student had excellent behavior, followed directions and tried hard to please her. In June 2008, as part of the District's Multidisciplinary Assessment, Ms. Pilato tested Student's academic achievement with the Kaufman Test of Educational Achievement – Second Edition (KTEA-II). At that time, Student scored at grade level 1.3 in reading and grade level 2.0 in mathematics. During his third grade year, Ms. Pilato again administered the KTEA-II, and

Student scored at grade level 2.4 in reading and grade level 2.8 in mathematics. Ms. Pilato testified that Student also made gains in his social skills. She expressed concern that Student must not miss so many days of school.

9. Catilin Struelens is a licensed Speech and Language Pathologist with extensive experience in the field. She testified at the administrative hearing. During the 2008-2009 school year, Ms. Struelens provided Student with speech and language therapy according to the June 2008 IEP. She worked with Student on his syntax, on the proper ordering of his speech, on the use of grammatical markers and on his articulation problem with the phoneme /r/. She testified that Student made progress in communication during his third grade year. He improved in the ability to put together sentences and in the ability to articulate certain sounds. In February 2009, Ms. Struelens prepared a Speech and Language Assessment regarding Student. In this assessment, she determined that Student scored very low on an index that measures oral expression and word retrieval. This low score results from Student's difficulties with word markers and the rules of grammar. In the assessment, Ms. Struelens also determined that Student continued to have difficulty pronouncing the /r/ sound in words.

10. Anne Fleck is a licensed Occupational Therapist in private practice doing business as Russo, Fleck & Associates. She testified at the due process hearing. During the 2008-2009 school year, Heidi Brown, a licensed Occupational Therapist employed at Russo, Fleck & Associates, provided Student with the occupational therapy services required under his June 2008 IEP. Ms. Fleck supervised the work of Ms. Brown. Ms. Fleck testified that the purpose of the occupational therapy was to improve Student's handwriting. She stated that Student has the fine motor skills to write appropriately, and that he made improvements in his handwriting abilities.

## THE JUNE 2009 IEP

11. On June 12, 2009, Student's IEP team conducted a meeting. The persons who attended this IEP meeting included Student's mother, Barbara Cummings (District Coordinator of Special Education), Krista Ratnaweera (Student's general education teacher), Tara Pilato (Student's special education teacher), Catlin Struelens (Student's provider of speech and language services), Anne Fleck (Student's provider of occupational therapy services), and Gail Minnich (District Program Specialist). The IEP produced at this meeting is the subject of the underlying Request for Due Process Hearing brought by the Santa Ana Unified School District.

12. At the June 2009 IEP meeting, the team discussed the goals in Student's June 2008 IEP. Anne Fleck produced a report entitled Occupational Therapy Progress Report which confirmed that Student had met the three OT goals in his June 2008 IEP: Organizational Skills, Written Expression and Handwriting Skills. Catlin Struelens reviewed her Speech and Language Assessment Report, and informed the team that Student had met the Morphological/Syntax goal in the June 2008 IEP. The team also determined that Student had met the following further goals in the June 2008 IEP: Decoding and Word Recognition, Phonemic Awareness, Comprehension, Sentence Structure and Social Skills. The IEP team determined that Student had made partial progress on the June 2008 IEP goals relating to Articulation/Phonology and Auditory Processing.

13. At the June 2009 IEP meeting, the team developed the following goals to address Student's area of needs for the upcoming 2009-2010 school year.

a. Fluency: At the June 2009 IEP meeting, Student's mother raised the issue that Student sometimes stuttered when speaking in class. The IEP team created a goal to address this problem by requiring Student to maintain a "fluency notebook" in which he will keep track and learn from episodes of dysfluency.



b. Articulation/Phonology: In her February 2009 Speech and Language Assessment, Catlin Struelens determined that Student continued to have difficulty producing the vocalic /r/. She found that, depending upon the location of the /r/ sound in a word, such as the location of the /r/ with vowels like ar, ir, or er, Student could repeat the sound correctly only 10 to 60 percent of the time. The IEP team formulated a goal requiring Student to target the vocalic /r/ leading to a mastery of this sound.

c. Communications/Syntax/Morphology: In her assessment, Ms. Struelens also determined that Student scored in the low range of indexes measuring syntax which concerns the knowledge and use of grammar. The IEP team developed a goal to help Student with the correct use of syntax and grammar by requiring him to retell a story with sentences and grammatical elements.

d. Reading: A Results Assessment conducted by Student's teacher determined that Student currently knows 97 of 120 sight or irregular words. The IEP created a goal to improve Student's reading ability by requiring him to recognize 500 high frequency words.

e. Decoding/Blending: Currently, Student blends words that contain three to five sounds. The IEP team fashioned a goal to improve Student's language skills by requiring him to blend seven to 10 sounds into syllables and words.

f. Reading Comprehension: Recent KTEA-II test results determined that Student reads at a 2.4 grade level. He scores low in class on reading comprehension assessments. The IEP team formed a goal to help Student with reading comprehension by requiring him to distinguish between the main idea and supporting details in expository text.

g. Reading Fluency: The Results Assessment determined that Student reads correctly 70 words per minute. The IEP team developed a goal to improve

Student's rate of reading by requiring him to read accurately up to 123 words per minute.

h. Writing: Recent KTEA-II test results determined that Student writes at a 2.2 grade level, and that he can write multiple paragraphs with teacher assistance. The IEP team formulated a goal to improve Student's writing abilities by requiring him to produce a correctly indented multiple-paragraph narrative composition that includes a paragraph establishing and developing a situation or plot, a paragraph describing the setting, and a paragraph that contains an ending.

i. Subtraction with Regrouping: Currently, Student can subtract numbers without regrouping. The IEP team developed a goal to improve Student's abilities in mathematics by requiring him to subtract multiple numbers through regrouping.

j. Organization and Planning: During third grade, Student regularly forgot assignments and failed on several occasions to return notes that needed signatures from his parents. The IEP team formed a goal to help Student in the area of organization by requiring Student to utilize a homework management system.

k. Organization and Belongings: The IEP team also developed a second goal to assist Student with organization by requiring him to use a Check List system which reminds Student to keep homework in a folder and his glasses in a backpack and to focus upon his responsibilities regarding a homework log.

14. At the June 2009 IEP meeting, there was a slight disagreement between Student's mother and the remaining members of the IEP team regarding Student's need for assistance in the area of pragmatic speech. Student's mother expressed concern that her son did not initiate conversation and converse with classmates in an appropriate

manner. Student's general education and special education teachers did not observe this problem, and Catlin Struelens informed the IEP team that Student was not impaired in the area of pragmatic speech. Nevertheless, the IEP team recommended that the District provide Student with group speech and language services designed to improve social skills and social thinking.

15. At the June 2009 IEP, the team offered Student the following special education program for the 2009-2010 school year: (1) placement in a general education fourth grade classroom at OCEAA; (2) specialized academic instruction in a mild/moderate classroom, four times a week at 60 minutes per session, for a total of 240 minutes each week; (3) group speech and language services, 50 times a year at 30 minutes per session, for a total of 1,500 minutes of this service; (4) group speech and language services emphasizing social skills and social thinking, 28 times a year at 30 minutes per session, for a total of 840 minutes of this service. The IEP team determined that Student no longer needed occupational therapy services, and did not need ESY services for the summer of 2009.

16. In conjunction with the foregoing educational placement, the June 2009 IEP also provided Student with the following accommodations relating to tests, classroom instruction, class work and homework: test taking in the RSP room, extra time on tests and projects, clear examples provided during instruction, outlines provided for written assignments, use of manipulatives, reduction in the amount of problems or questions per assignment, rephrasing of directions, reading questions aloud (unless reading skills are tested), provision of a class buddy or tutor, and organization of papers through use of an accordion folder.

17. The IEP team did not offer occupational therapy services based upon the recommendation of Anne Fleck. She determined that, in terms of handwriting, Student was functional in the classroom; that he had the basic fundamentals; and that his

teachers could address problems that might arise. Student's teachers agreed. Both Ms. Ratnaweera and Ms. Pilato testified that Student's handwriting has improved to a point that his general education and special education teachers could correct and redirect his efforts if his script was illegible or messy.

18. Student's mother did not provide consent to the June 2009 IEP. In the section of this IEP relating to "Consent," Student's mother wrote by hand: "Don't agree with OT being terminated. (OT) Should continue and RSP should be more time. Requesting an IEE for OT. I pay and SAUSD can reimburse."

19. The June 2009 IEP established a special education program designed to address Student's unique needs and reasonably calculated to enable Student to receive educational benefits. This IEP contained goals formulated to improve the weaknesses caused by Student's learning disability and speech impairment. In particular, the IEP contained goals designed to improve Student's abilities in reading skills, reading comprehension, writing, spelling, communication and organization. The June 2009 IEP placed Student in a general education classroom, a learning environment which he enjoys. Krista Ratnaweera testified that Student is a happy pupil who likes to participate and who fits well in the regular education setting. The June 2009 IEP set aside four hours of specialized academic instruction. Ms. Ratnaweera also testified that Student needs this resource instruction to address his shortcomings in language arts and mathematics, and that such support will help him complete assignments in the general education classroom.

20. The June 2009 IEP offered Student group speech therapy (50 times a year, 30 minutes a session). This service is designed to help Student with his articulation problems and his understanding of the English language. The IEP also offered Student group speech and language therapy emphasizing social skills and social thinking (28 times a year, 30 minutes a session). Student's mother requested this service which will

assist Student in his ability to communicate with peers. Finally, the June 2009 IEP contains accommodations that will assist Student in meeting the demands of the general education classroom.

21. If implemented, the special education program set forth in the June 2009 IEP, more likely than not, will provide Student with educational benefit. The District established that Student derived significant educational benefit from his June 2008 IEP. Student's reading and math scores have improved. His speech and social skills have improved. He no longer needs occupational therapy services to address problems with handwriting. He has passed from third to fourth grade. The June 2009 IEP, for the most part, continues Student on the same path in the efforts to improve his abilities to read, write and communicate.

22. District witnesses at the due process hearing established that the general education classroom is the least restrictive environment for Student. Both Ms. Ratnaweera and Ms. Pilato testified that Student derives academic benefit from a regular education setting. Ms. Struelens further testified that Student has strong receptive language skills and benefits from exposure to the learning environment in the general education classroom. Each District witness stated that Student receives non-academic benefits from the regular education classroom. Tara Pilato described Student as a social boy who likes to talk and have friends. Krista Ratnaweera stated that Student had a core group of friends in third grade and got along with everyone. With his positive attitude and good behavior, Student was not a distraction to the general education teacher and the pupils in his class.

## LEGAL CONCLUSIONS

### BURDEN OF PROOF

1. In a special education administrative due process hearing, the party seeking relief has the burden of proving the essential elements of its claim. (*Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528, 163 L.Ed.2d 387].) In this matter, the District has the burden of proof.

### OAH JURISDICTION

2. A school district may bring a due process complaint on matters relating to the identification, assessment, educational placement or provision of a free appropriate public education (FAPE) for a child with special needs. (20 U.S.C. § 1415(b)(6); 34 C.F.R. § 300.507(a)(1)(2006); Ed. Code, § 56501, subds. (a)(1)-(4).) In addition, if the parents of a child with special needs refuse all services in an Individualized Education Program (IEP) after having consented to such services in the past, then the school district must bring a due process complaint. (Ed. Code, § 56346, subd. (d).) OAH has the authority to hear and decide this matter since it is a case that raises the issue of whether the Santa Ana Unified School District has provided a FAPE to Student after Student's parents have consented to special education programs in the past.

### ELEMENTS OF FAPE

3. Under the Individuals with Disability Education Act (IDEA) and state law, children with disabilities have the right to a FAPE. (20 U.S.C. § 1400(a); 34 C.F.R. § 300.101 (2006); Ed. Code, § 56000.) A FAPE means special education and related services that are available to the special needs pupil at no charge to the parents, that meet state educational standards, and that conform to the child's IEP. (20 U.S.C. § 1401(a)(9); 34 C.F.R. § 300.17 (2006); Cal. Code Regs., tit. 5, § 3001, subd. (p).) "Special education" is

instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(a)(29); 34 C.F.R. § 300.39 (2006); Ed. Code, § 56031, subd. (a).) “Related services” are developmental, corrective and support services that are required to assist a special needs pupil to benefit from special education. (20 U.S.C. § 1401(a)(26); 34 C.F.R. § 300.34(a) (2006); Ed. Code, § 56363, subd. (a).) “Related services” include speech and language assistance and occupational therapy. (Ed. Code, § 56363, subds. (b)(1), (6).) Specially designed instruction also includes accommodations that address a child’s unique needs and that ensure access to the general curriculum. (34 C.F.R. § 300.39(b)(3) (2006).)

4. A school district that operates a charter school must ensure that a child with special needs who is enrolled in the charter school receives special education and related services under the child’s IEP in compliance with federal and state law. (Ed. Code, § 47646, subd. (a).)

5. The United States Supreme Court has held that the IDEA does not require school districts to provide special needs pupils with the best education available, or to provide instruction or services that maximize a student’s abilities. (*Bd. of Educ. of the Hendrick Hudson Sch. Dist. v. Rowley* (1982) 458 U.S. 176 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*).) School districts are required to provide special needs students with a “basic floor of opportunity” that consists of access to specialized instruction and related services individually designed to provide educational benefit to the child. (*Id.* at p. 201.)

6. There are two parts to the determination of whether a school district has complied with the IDEA and companion state law. First, the tribunal must determine whether the district has complied with the procedures set forth in special education law. (*Rowley, supra*, 458 U.S. at pp. 206-207.) In this case, Student’s parents have not raised any procedural irregularities with the June 2009 IEP, and the ALJ did not identify any irregularities during the due process hearing. Second, the tribunal must decide whether

the IEP developed through such procedures addressed the student's unique needs and was reasonably calculated to enable the special needs child to receive educational benefits. (*Id.* at p. 201; *Park v. Anaheim Union High School District* (9th Cir. 2006) 464 F.3d 1025, 1031; *J.L. v. Mercer Island School District* (9th Cir. Aug. 6, 2009, No. 07-35716) \_\_ F.3d \_\_ [2009 WL 2393323].)

7. There is no set formula for measuring whether a special education program provides a child with educational benefits. (*Rowley, supra*, 458 U.S. at p. 202.) However, the grading and advancement system for special needs children who are mainstreamed in general education classes is an important factor in determining educational benefit. (*Id.* at pp. 202-203.) In California, educational performance is determined primarily through academic measures which include grades and test scores. (*R.B. v. Napa Valley Unified School District* (9th Cir. 2007) 496 F.3d 932, 946.)

8. A school district must also provide a special education program in the least restrictive environment. This means that the district must educate the special needs pupil with non-disabled peers "to the maximum extent appropriate." (20 U.S.C. § 1412(a)(5)(A); see also 34 C.F.R. 300.114 (2006); Ed. Code, § 56342, subd. (d).) In California, courts determine whether a district has placed a special needs pupil in the least restrictive environment by balancing the following four factors: (1) the educational benefits derived from placement in a regular education classroom; (2) the non-academic benefits derived from placement in a regular education classroom; (3) the effect that the special needs pupil has on the teacher and students in the regular education classroom; and (4) the cost of a regular education placement. (*Sacramento City Unified School District v. Rachel H.* (9th Cir. 1994) 14 F.3d. 1398, 1401-1402.)



DETERMINATION OF ISSUE: DID THE DISTRICT'S OFFER OF PLACEMENT AND SERVICES CONTAINED IN STUDENT'S JUNE 12, 2009, ANNUAL IEP, CONSTITUTE A FREE APPROPRIATE PUBLIC EDUCATION IN THE LEAST RESTRICTIVE ENVIRONMENT?

9. Based upon Findings of Fact 1-22, and Legal Conclusions 1-8, in the June 12, 2009 IEP, the District offered Student a free appropriate public education. The IEP contained goals, a general education placement, provision for specialized academic instruction, speech and language therapy services and accommodations that addressed Student's unique needs in the areas of reading skills, reading comprehension, writing abilities, spelling, communication and organization. The special education program in the June 12, 2009 IEP is reasonably calculated to enable Student to receive educational benefits during his fourth grade year at the Orange County Educational Arts Academy.

10. Based upon Findings of Fact 1-22, and Legal Conclusions 1-8, the June 12, 2009 IEP made a FAPE offer in the least restrictive environment. Quite clearly, Student derives academic benefit from placement in a general education setting. Student also derives non-academic benefits from such a placement as he is a social boy with friends in the classroom. Further, rather than a distraction, Student is an asset to his teacher and classmates since he is well-behaved and has a positive attitude towards school.

## ORDER

In the June 12, 2009 Individualized Education Program, the Santa Ana Unified School District provided Student with a free appropriate public education in the least restrictive environment. The District may implement this IEP despite the lack of parental consent.

## PREVAILING PARTY

The decision in a special education administrative due process hearing must indicate the extent to which each party prevailed on the issues heard and decided at

the hearing. (Ed. Code, § 56507, subd. (d).) The District prevailed on the issue heard and decided in this matter.

## RIGHT TO APPEAL THIS DECISION

The parties in this case have the right to appeal this Decision by bringing a civil action in a court of competent jurisdiction. (20 U.S.C. § 1415(i)(2)(A); 34 C.F.R. § 300.516(a)(2006); Ed. Code, § 56505, subd. (k).) An appeal or civil action must be brought within 90 days of the receipt of the Decision. (20 U.S.C. § 1415(i)(2)(B); 34 C.F.R. § 300.516(b)(2006); Ed. Code, § 56505, subd. (k).)

Dated: September 14, 2009

                    /s/                    

TIMOTHY L. NEWLOVE

Administrative Law Judge

Office of Administrative Hearings