BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ARCADIA UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2014060827

DECISION

Parents, on behalf of Student, filed the due process hearing request (complaint) on June 16, 2014, naming Arcadia Unified School District.

Administrative Law Judge Sabrina Kong heard this matter in Arcadia, California, on August 12, 13, and 14, 2014.

Student's mother represented Student. Student's parents attended the hearing on all days. Anahid Hoonanian, Attorney at Law, represented District. David Munoz, Arcadia's Director of Special Education, attended the hearing on all days.

A continuance was granted for the parties to file written closing arguments and the record remained open until September 10, 2014. Upon timely receipt of the written closing arguments, the record was closed and the matter was submitted for decision.

ISSUES[1]

1. Did District deny Student a free appropriate public education from January 2014 to June 16, 2014 by:

a. Failing its child find obligations;

b. Failing to evaluate Student; and

c. Denying Student's request for an independent evaluation?

2. Did District fail to offer Student a FAPE by failing to offer appropriate placement and related services?

SUMMARY OF DECISION

Student did not demonstrate that District failed in its child find obligations because, at all relevant periods, Student was eligible for special education and received special education services. Student was enrolled in another school district's sponsored charter school during the period from January 2014 through June 16, 2014. Accordingly, Student did not prove District was required to evaluate Student, to fund an independent evaluation, or to offer an appropriate placement and related services. District prevailed on all issues. Student is not entitled to any remedy.

FACTUAL FINDINGS

1. Student is a thirteen-year-old-boy who resided within District at all relevant periods. Student was found eligible for special education by District under the category of specific learning disorder in January 2009. District assessed Student in

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[1] The issues have been rephrased and reorganized for clarity. The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

December 2011 and provided services to Student until Parents withdrew Student from District on August 28, 2012. Student's triennial reevaluation would have been due in December 2014.

2. June 15, 2012 was Student's last day at a District school. When the 2012-2013 school year started, Parents dis-enrolled Student from District, and enrolled Student in a home school program known as the California Virtual Academy (CAVA), a charter school sponsored by the West Covina Unified School District. Parents withdrew Student from District because they disagreed with District's June 2012 individualized education program offer and because District refused to retain Student in the fifth grade.

3. District was part of the West San Gabriel Valley special education local plan area. West Covina Unified School District was part of the East San Gabriel Valley SELPA.

4. Student was enrolled in CAVA from August 2012 through June 3, 2014. Neither CAVA, nor West Covina Unified School District formally assessed Student during this period. CAVA last convened an IEP team meeting with Parents, Student's special education and general education teachers, and assistive technology therapist on December 11, 2013.

5. The December 11, 2013 IEP team considered a continuum of program options including general education, general education with specialized academic instruction support, special day class, and non-public school, and determined that the most appropriate environment for Student was general education with specialized academic instruction and assistive technology consultation services. CAVA's December 11, 2013 IEP offer consisted of 74 percent of general education and 26 percent of specialized academic instruction in math, reading, writing, organization and assistive technology consultation. The IEP team concluded that Student's identified areas of

need, including reading fluency, reading, reading comprehension, writing strategies, writing, math reasoning and study skills, could not be met in a general education setting without special education supports. They noted that while Student was able to decode multisyllabic words individually, he read with long pauses between words, when presented with a reading passage, and required heavy support to decode new words and struggled to read longer texts independently. His test scores showed that he read with 98 percent accuracy, and was able to respond to who, what, where questions after reading a passage at his instructional level, and needed to work on drawing inferences, conclusions or generalizations about the text. Student had a difficult time organizing his writing independently, required multiple prompts to create an outline, required constant prompting and guidance in creating cohesive sentences and supporting details for the main idea. Student could perform simple algebraic problems with single digits, but needed to work on equations using variables to represent two quantities in real world problems that change in relationship to one another. Student also required multiple prompts to answer reading comprehension questions. Parents signed the IEP.

6. On January 6, 2014, Parents provided District's registrar, Denise Fong, with the necessary documents to register Student in District, including proof of age and of residency, immunization records, transcripts and the December 11, 2013 IEP. Mother was under the impression that by providing the required registration documentation to Ms. Fong, she had enrolled Student in District on January 6, 2014. Ms. Fong provided the December 11, 2013 IEP to the special education department to handle enrollment because Student was a special education student.

7. On January 7, 2014, District e-mailed CAVA informing them that Student had registered[2] in District, and requesting CAVA to release Student's records from the Special Education Information System (SEIS). SEIS was an online special education records system used by many districts, including District and West Covina Unified School District.

8. Dr. Munoz, District's Director of Special Education, and Marti Griffin, the Program Specialist reviewed the December 11, 2013 IEP and held a meeting on January 8,2014, to obtain parental input and information about Student's performance levels in order to find the proper interim placement for Student when school resumed on January 27, 2014, if Student enrolled in District. Parents, Dr. Munoz, Ms. Griffin, and Marlene Sereno, the resource teacher at Dana Middle School, Student's school of residence, attended the meeting. The group discussed CAVA's December 11, 2013 IEP, Student's strengths and challenges, potential placement at Dana Middle School, and Parents' desire for Student to be placed at The Frostig School, a non-public school. Student's placement at Frostig was not supported by any evidence other than parental preference. At the meeting, Parents presented their written request to District for a comprehensive evaluation of Student. Dr. Munoz informed Parents that if Student enrolled in the District, an interim placement would be made, an IEP team meeting would be held after 30 days of the interim placement and District would assess Student. District's proposed interim placement was Dana Middle School. Parents wanted to observe the classes at Dana Middle School before deciding whether to dis-enroll

[2] District's staff used the term registration and enrollment interchangeably. At hearing, District staff confirmed that in this context even though the word enrollment was used in the e-mail, what was meant was Student had registered with the District. Student could not have been enrolled in District because he was still enrolled in CAVA.

Student from CAVA and re-enroll in District. A site visit was scheduled for Dana Middle School at Parents' request.

9. Student was considered an intrastate transfer student from another local education agency under a different SELPA. The January 8, 2014 meeting was a forum for District to obtain information for placing Student in an interim program, comparable to what Student had at CAVA if Student enrolled in District. Had Student enrolled in District, District would hold an IEP team meeting 30 days after the interim placement, and assess Student at some point after he enrolled in District.

10. On January 10, 2014, District sent an e-mail with a proposed class schedule to Parents explaining that it was a sample schedule if Student were to enroll at Dana Middle School. The proposed schedule consisted of an advisory class, a break and lunch period, and six periods of classes, including a collaborative science, a physical education, a modified math, an art, and two Read 180 classes.

11. On January 13, 2014, Parents visited Dana Middle School accompanied by Dr. Munoz for a portion of the day, and Ms. Griffin for the entire day. Parents observed various classes for approximately six hours. That same day, CAVA responded to District's January 7, 2013 request for release of records from SEIS. CAVA informed District that Parents represented that they were touring school sites, had not withdrawn Student from CAVA and intended to have Student remain at CAVA for the Spring semester. Dr. Munoz called and left Parents a message the week of January 20, 2014 inquiring whether they intended to enroll Student and informing them that school would start on January 27, 2014.

12. On January 28, 2014, District e-mailed a second request to CAVA requesting release of Student's records from SEIS. CAVA's staff responded that they had spoken to Parents who represented that Student would not be withdrawing from CAVA.

Therefore, CAVA could not release Student's records to District. CAVA could release records from SEIS only after Student dis-enrolled from CAVA.

13. On January 27, 2014, Parents provided written notice that they intended to have Kenneth Herman, Ph.D., an independent clinical psychologist, evaluate Student and requested that District fund Dr. Herman's assessment. Dr. Herman started evaluating Student on January 29, 2014.

14. On January 31, 2014, District sent a letter to Parents reiterating that District was not the local educational agency because Student was not enrolled in District and was still enrolled in CAVA. Therefore, District explained, it was not responsible to provide Student a FAPE, assess Student or fund his independent evaluation. The letter also addressed Mother's belief that the January 8, 2014 meeting was an IEP meeting. District explained that the purpose of the meeting was to gather information for establishing potential program placements if Student re-enrolled with District, and that it was not an IEP meeting. The letter also informed Student that District had contacted Parents the week of January 20, 2014 to follow-up on their intent to enroll Student with District, and that the semester started January 27, 2014.

15. Dr. Herman completed his evaluation of Student on March 17, 2014. He found Student to have attention deficits and provisionally diagnosed him with attention deficit hyperactivity disorder. He did not recommend a non-public school for Student.

16. In April 2014, Mother received a response to her e-mail inquiry about the status of Student's enrollment from Ms. Fong confirming that Student was registered in the District. Mother understood Ms. Fong's response to mean Student was enrolled in District because Ms. Fong did not correct Mother's use of the term "enrollment" to mean registered.

17. Student was dis-enrolled from CAVA effective June 4, 2014. District was not informed of Student's June 4, 2014 disenrollment from CAVA until July 2014, well after the June 16, 2014 filing date of Student's due process complaint.

18. Mother explained at hearing that she never withdrew Student from CAVA during the relevant period because she was waiting for District to offer Student an appropriate placement and related services which never happened. Mother recalled that during the site visit to Dana Middle School both parents criticized the classes they observed and made comments to Dr. Munoz and Ms. Griffin, which Parents believed amounted to disagreeing with the proposed placement and schedule. She did not consider the proposed placement at Dana Middle School and the proposed schedule a FAPE, or a comparable program to that offered in CAVA's December 11, 2013 IEP. She concluded that the proposed schedule at Dana Middle School was not comparable to the December 11, 2013 IEP offer because Student would be in special education for three out of six periods of the classes, or 50 percent of the time in special education, while CAVA placed Student in special education 26 percent of the time. As a result, she elected to keep Student enrolled in CAVA through June 3, 2014, the entirety of the Spring 2014 semester. In June 2014, Mother informed District personnel that she did not want to enroll Student in District until the due process complaint was resolved.

19. District did not have an online home school program similar to that of CAVA's. After reviewing the December 11, 2013 IEP and obtaining information about Student from Parents at the January 8, 2014 meeting, District concluded that Student would have a better chance at success and a smoother transition into District if he were in reading and math classes which offered him more supports than the District's general education classes would. Although Mother reported that Student was reading at grade level, Student was weak in reading fluency as demonstrated by his need for heavy support in decoding and his struggles to read longer texts independently as reported in

the December 11, 2013 IEP. Even though Mother believed that math was Student's area of strength, the December 11, 2013 IEP reported that Student's area of need or goal was to work on equations using variables to represent two quantities in real world problems that change in relationship to one another. Because seventh grade math involved word problems, beyond simple, single digit algebraic problems, and Student had reading decoding difficulties, District concluded that a modified math class would be an appropriate interim placement comparable to the December 11, 2013 IEP offer.

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA[3]

1. This due process hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 et seq. (2006)[4]; Ed. Code, § 56000, et seq.; and Cal. Code. Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: 1) to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and to prepare them for employment and independent living; and 2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); Ed. Code, § 56000, subd. (a).)

[3] Unless otherwise indicated, the legal citations in this introduction are incorporated by reference into the analysis of each issue decided below.

[4] All subsequent references to the Code of Federal Regulations are to the 2006 edition.

2. A FAPE means special education and related services that are available to an eligible 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(9); 34 C.F.R. § 300.17; 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(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "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); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a) [In California, related services are called designated instruction and services].) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel, and which sets forth the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

3. In *Board of Education of the Hendrick Hudson Central School Disrict v. Rowley* (1982) 458 U.S. 176, 200 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to "maximize the potential" of each special needs child "commensurate with the opportunity provided" to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that

is reasonably calculated to "confer some educational benefit" upon the child. (*Id.* at pp. 200, 203-204.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, to date, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.].) Although sometimes described in Ninth Circuit cases as "educational benefit," "some educational benefit," or "'meaningful' educational benefit," all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 950, fn. 10.)

4. The IDEA affords parents or local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6)(f) & (h); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505, 56505.1; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56505, subd. (i).) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3)(C) & (D); Ed. Code, § 56505, sub. (l).) At the hearing, the party filing the complaint, in this case Student, has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA due process hearings is preponderance of the evidence].)

CHILD FIND (ISSUE 1A)

5. In Issue 1a, Student contends that District violated its child find obligations starting in January of 2014 when District failed to assess and identify Student's attention deficit needs and failed to categorize them under a secondary special education eligibility of other health impairments, in addition to his primary eligibility category of specific learning disorder. District contends that it met its child find obligations because it identified that Student qualified for special education in 2009, and provided services to Student until he withdrew from District in 2011whereupon it had no obligations to offer FAPE until Student re-enrolled in District.

6. Pursuant to California special education law and the IDEA, school districts have an affirmative, ongoing duty to identify, locate, and evaluate all children with disabilities residing within their boundaries. (20 U.S.C. § 1412(a)(3); Ed. Code, § 56300 et seq.) This ongoing duty is referred to as "child find." The district's duty is not dependent on any request by the parent for special education testing or referral for services. A district's child find obligation toward a specific child is triggered where there is knowledge of, or reason to suspect a disability, and reason to suspect that a student may need special education services to address that disability. (*Dept. of Educ., State of Hawaii v. Cari Rae S.* (D. Hawaii 2001) 158 F.Supp.2d 1190, 1194.) The threshold for suspecting that a child has a disability is relatively low. (*Id.* at p. 1195.) A district's appropriate inquiry is whether the child should be referred for an evaluation, not whether the child actually qualifies for services. (*Ibid.*)

7. In *N.B. v. State of Hawaii , Dept. of Educ.* (U.S.D.C. Hawaii July 21, 2014) 63 IDELR 216 (*N.B.*), the District Court held that the new school district in Hawaii had no obligation to provide FAPE until the parent enrolled the child in the public school system. The dispute stemmed from an alleged telephone conversation that the parent had with the Hawaiian school district's student services coordinator while the family was

in the process of relocating from Texas. According to the parent, the coordinator stated that the Hawaiian school district would receive the Texas IEP, but would conduct its own assessments to determine special education eligibility upon the child's enrollment. The District Court acknowledged the parent's "entirely understandable" concern that the child would go without critical services during the 60-day evaluation process. However, the District Court explained that the Hawaiian school district had no obligation to provide services comparable to those set forth in the Texas IEP until the child actually enrolled in public school. Because the parents never enrolled the child in the public school or provided the Hawaiian school district with a copy of the child's IEP, electing to enroll the child in a private program, the court held that the Hawaiian school district did not violate the IDEA by failing to make special education services available. (*Ibid.*)

8. "If a child with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, *and enrolls* in a new school within the same school year, the new public agency (in consultation with parents) must provide FAPE to the child…" (34 C.F.R. §300.323(e).) (Emphasis added.) In the case of an individual with exceptional needs who has an individualized education program and transfers intrastate into a district from another district not operating programs under the same SELPA in which he or she was last enrolled in a special education program within the same academic year, the local educational agency shall provide the pupil with a FAPE, including services comparable to those described in the previously approved IEP, in consultation with the parents, for a period not to exceed 30 days, by which time the local educational agency shall adopt the previously approved IEP or shall develop, adopt, and implement a new IEP that is consistent with federal and state law. (20 U.S.C. § 1414(d)(2)(C)(i)(I); Ed. Code, § 56325, subd. (a)(1).).

9. District found Student eligible for special education in 2009 and provided Student special education and related services at all times Student was enrolled in District. Student was not enrolled in District from January 2014 to June 3, 2014. Student was enrolled in CAVA, chartered by the West Covina Unified School District, within a different SELPA. District was not the responsible local educational agency until June 4, 2014, the day Student was no longer enrolled at CAVA. When Student sought to transfer back into District in January 2014, District reviewed Student's December 11, 2013 IEP from CAVA, was aware that Student continued to be eligible for special education and discussed proposals for interim placement based on Student's needs as set forth in the December 11, 2013 IEP and from information provided by Parents at the January 8, 2014 information gathering meeting. District did not fail in its child find obligations to Student under these facts.

ASSESSMENTS (ISSUES 1B AND 1C)

10. Student contends he was denied a FAPE because District failed to assess Student per Parents' January 8, 2014 request, and denied Student's request for an independent assessment. District contends that it had no duty to assess or fund Student's independent assessment because it was not the responsible local educational agency to Student and Student did not enroll in District during the relevant period.

11. Legal Conclusions 7 through 8 above are incorporated by reference.

12. Assessments are required in order to determine eligibility for special education, and what type, frequency and duration of specialized instruction and related services are required. In evaluating a child for special education eligibility and prior to the development of an IEP, a district must assess him in all areas related to a suspected disability. (20 U.S.C. § 1414(b)(3)(B); Ed. Code, § 56320, subd. (f).) The IDEA provides for periodic reevaluations to be conducted not more frequently than once a year unless the parents and district agree otherwise, but at least once every three years unless the

parent and district agree that a reevaluation is not necessary. (20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b); Ed. Code, § 56381, subd. (a)(2).) A reassessment may also be performed if warranted by the child's educational or related services needs. (20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1); Ed. Code, § 56381, subd. (a)(1).).

13. A school district's failure to conduct appropriate assessments or to assess in all areas of suspected disability may constitute a procedural denial of a FAPE. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2007) 464 F.3d 1025, 1031-1033.) A procedural violation does not automatically require a finding that a FAPE was denied. A procedural violation results in a denial of a FAPE only if the violation: (1) impeded the child's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision-making process; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); see Ed. Code, § 56505, subd. (f)(2); *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.)

14. At the January 8, 2014 meeting and in its January 31, 2014 letter to Parents, District informed Parents that its efforts to obtain Student's records from CAVA were declined by CAVA because Student was still enrolled there, and that District could not assess Student until he was enrolled in District. If Parents wanted District to assess Student, they should have dis-enrolled Student from CAVA and enrolled Student with District. Because they did not do so, and Student could not be simultaneously enrolled in two school districts, CAVA and West Covina Unified School District remained the local educational agency; District was not Student's local educational agency, and had no duty to assess Student, or fund Student's independent evaluation. Even if Student had been enrolled in District in January 2014, Student's next triennial evaluation was not due and there was no evidence that would have warranted an assessment. Any obligations District had to assess Student during the relevant period would not arise until June 4, 2014, the date District became the local educational agency. Because the relevant period

of this hearing ended June 16, 2014, which was only 8 calendar days after District became the local educational agency excluding the days when District was not in session, Student did not demonstrate this 8-day period impeded Student's right to a FAPE, or Parent's right to participate in the decision making process nor did it amount to a deprivation of educational benefits. In sum, because Student was not enrolled in District, District had no obligation to assess for special education or fund independent assessments.

PLACEMENT AND SERVICES (ISSUE 2)

15. Student contends that he was denied a FAPE because District did not offer an appropriate placement or services at the January 8, 2014 meeting, which Parents believed was an IEP team meeting. District contends that because it was not the responsible local educational agency and because Student did not enroll in District, it did not, and could not offer Student a FAPE. Student failed to prove District was the local educational agency responsible for Student at any time between January 2014 and June 16, 2014.

16. Legal Conclusions 7 through 8 above are incorporated by reference.

17. Despite Parents' characterization of the January 8, 2014 meeting as an IEP team meeting, it was not an IEP team meeting because Student was not enrolled in the District. District had no obligations as of that date to convene an IEP team meeting or make a FAPE offer to Student until Student enrolled in District. Mother's decision not to enroll Student in District until District offered an appropriate placement and related services to Student was like the actions of the parent in *N.B. v. State of Hawaii , Dept. of Educ., supra,* 63 IDELR at page 216. Like *N.B.*, Student argued for an extension of the law, requiring District to commit to providing a FAPE based on inquiries from District's prospective parents. Like *N.B.*, District's obligation to provide Student a FAPE would only trigger if Student enrolled in District and notified it that he had a valid IEP from the West

Covina Unified School District. Like Mother, the parent in *N.B.* was concerned that the Hawaiian school district would not offer his child placement and services comparable to that offered by the child's Texas IEP, so he elected not to enroll his child in the Hawaiian school district. In a telephone conversation, *N.B.*'s parent informed the student services coordinator that the child was relocating from Texas, had an IEP, and asked what services the Hawaiian school district would provide for the child upon enrollment in the Hawaiian school district. According to *N.B.*'s parent, the student services coordinator informed him to bring the Texas IEP, that the district would conduct their own assessments regarding eligibility for special education after the child enrolled in the Hawaiian school district, and the assessment process could take up to 60 days. Because parent believed that the child would be without special educational services during the 60-day period of the Hawaiian school district's assessment, parent never visited the school, and did not enroll the child in the Hawaiian school district, or provide it with the child's IEP. Instead, parent enrolled the child in a private program and sought reimbursement from the Hawaiian school district. The District Court affirmed the hearing officer's holding that it was enrollment and implementation of the IEP in the new school district that triggered a FAPE, not a telephone inquiry, and concluded that parent was not entitled to reimbursement, or any relief. (*N.B. v. State of Hawaii , Dept. of Educ., supra*, 63 IDELR 216).

18. Here, although Mother met with District, shared the December 11, 2013 IEP with District and visited the proposed placement at Dana Middle School, she, like *N.B.*'s parent, nonetheless elected not to enroll Student in District. Absent enrollment, Parents' actions were no more than an inquiry, albeit a more extensive inquiry than that of *N.B.*'s parents, and did not trigger District's duty to offer FAPE. District did not need to make any offer of placement, or provide Student with any related services because it was not legally required to do so.

19. Even if Student had enrolled in District on January 8, 2014, the proposed placement at Dana Middle School with the sample schedule was comparable to the December 11, 2013 IEP. The two Read 180 classes were appropriate for Student because of his need for substantial support in decoding, and his struggle to read and comprehend longer materials independently. The modified math class was also appropriate because Student's reading abilities would also impact his math performance because seventh grade math involved word problems, an area of difficulty for Student. District considered Student's educational benefits and non-academic benefits of being in a general education environment, considered Student's needs as stated in the December 11, 2013 IEP and Parental concerns of Student's reading and writing needs, and properly concluded that the proposed placement and schedule at Dana Middle School was the least restrictive environment for Student. Although Mother considered Frostig an appropriate placement for Student, this was unsupported by any evidence other than Parental preference. Placement at a non-public school would be a much more restrictive environment which would not expose Student to typical children, and would be inconsistent with Mother's concern that Student not be placed in a special education environment in a greater percentage of the time than that set forth in the December 11, 2013 IEP. The proposed Dana Middle School schedule would be more comparable to the December 11, 2013 IEP because it provided exposure to typical children in the general education environment. In addition to the three general education classes, Student would be with typical children during break and lunch periods.

20. Beginning June 4, 2014, the date Student was dis-enrolled from CAVA, District became the local educational agency during the relevant period. If Student was considered enrolled as of June 4, 2014, District would be required to offer Student placement and services comparable to that offered in the December 11, 2013 IEP, in

consultation with Parents, for 30 days, after which District would be required to adopt the December 11, 2013 IEP, or develop its own IEP. Student was not enrolled in District as of June 4, 2014 because Mother did not wish to enroll Student until the due process complaint was resolved. Even if Student was considered enrolled in District as of June 4, 2014, Student did not present any evidence supporting that District deprived him of a FAPE from June 4, 2014 to June 16, 2014.

ORDER

All of Student's requests for relief are denied. [5]

[5] Student filed a Motion for Interim Placement at hearing which the ALJ denied because the relief Student sought was inappropriate for determination based on the information submitted by motion and required full consideration of the evidence presented at hearing. Upon consideration of the relevant evidence presented at hearing and consistent with the reasons articulated in this decision, District had no responsibility to offer FAPE to Student because Student was not enrolled in District during the relevant period. To the extent Student sought stay put as to CAVA, OAH had no jurisdiction to order stay put as to CAVA because CAVA was not a party to this hearing. Further, stay put with CAVA would not be possible at the time of the hearing because Student dis-enrolled from CAVA as of June 4, 2014. As to Student's request that he be temporarily placed in Frostig and/or an order requiring District to provide tutoring services to Student on a temporary basis, Student presented no persuasive evidence, other than parental preference, justifying this order for the period from January 2014 to June 16, 2014. The relevant evidence at hearing, set forth in this decision, also supports the ALJ's denial of the Motion for Interim Placement.

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, District was the prevailing party as to all issues.

RIGHT TO APPEAL

This Decision is the final administrative determination and is binding on all parties. (Ed. Code, § 56505, subd. (h).) Any party has the right to appeal this Decision to a court of competent jurisdiction within 90 days of receiving it. (Ed. Code, § 56505, subd. (k).)

DATED: September 25, 2014

/s/

SABRINA KONG

Administrative Law Judge

Office of Administrative Hearings