

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2019040734
CASE NO. 2019050092

IN THE CONSOLIDATED MATTERS INVOLVING

PARENTS ON BEHALF OF STUDENT, AND
MCCABE UNION ELEMENTARY SCHOOL DISTRICT.

DECISION

MARCH 12, 2020

On April 17, 2019, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parents on behalf of Student, naming McCabe Union Elementary School District as respondent in OAH case number 2019040734. On May 1, 2019, McCabe Union filed a due process hearing request with OAH in case number 2019050092, naming Student as respondent. OAH consolidated cases 2019040734 and 2019050092 on May 8, 2019.

OAH granted Student's request to amend his complaint. Student's amended complaint was deemed filed on August 22, 2019. The amended complaint remained consolidated with McCabe Union's case, OAH case number 2019050092. All dates were

reset. OAH continued the consolidated cases for good cause on September 11, 2019, and November 18, 2019.

Administrative Law Judge Rommel P. Cruz heard this matter in El Centro, California on January 14, 15, and 16, 2020.

Attorneys Meagan Nunez and Patricia Darlin represented Student. Mother and Father attended the hearing on all days. Student did not attend the hearing.

Attorney Jack Sleeth represented McCabe Union. Superintendent Laura Dubbe attended the hearing each day on behalf of McCabe Union.

At the parties' request the matter was continued to February 3, 2020, for written closing briefs. The record was closed and the matter was submitted on February 3, 2020.

ISSUES

On January 7, 2020, Student withdrew Issues 1, 2(a), 2(b), 2(c), 3(a), and 3(b) as outlined in the January 6, 2020 Order Following Prehearing Conference. The issues were renumbered accordingly.

STUDENT'S ISSUES

1. Did McCabe Union substantively deny Student a free appropriate public education, referred to as a FAPE, during the 2018-2019 school year by:
 - a. Failing to conduct legally adequate evaluations in all areas of suspected need; and

- b. Failing to find Student eligible for an individualized education program, referred to as an IEP?
- 2. Did McCabe Union procedurally deny Student a FAPE during the 2018-2019 school year by:
 - a. Failing to find Student eligible for an IEP resulting in:
 - i. Preventing Parents from participating in Student's education;
 - ii. Depriving Student of an educational benefit;
 - iii. Depriving Student of educational opportunities;
 - b. Depriving Student of educational opportunities by:
 - i. Failing to conduct legally adequate evaluations in all areas of suspected need; and
 - ii. Failing to present the March 20, 2019 psychoeducational assessment results to Parents in a comprehensible manner?

MCCABE UNION'S ISSUE

- 3. Did McCabe Union's March 20, 2019 psychoeducational assessment comply with federal and state laws such that Student is not entitled to publicly funded independent educational evaluations?

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.)

The main purposes of the Individuals with Disabilities Education Act, referred to as the IDEA, are to ensure:

- all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and
- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; 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, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Here, Student and McCabe Union requested the hearing in this matter. Student had the burden of proof as to his issues. McCabe Union had the burden of proof as to its issue. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was 14 years old at the time of the hearing. He was in ninth grade, and no longer attending McCabe Union. He resided within McCabe Union's geographic boundaries at all relevant times.

ISSUES 1(a), 2(b)(i), 2(b)(ii), AND 3: DID MCCABE UNION CONDUCT A PSYCHOEDUCATIONAL ASSESSMENT CONSISTENT WITH THE LAW?

Student contends McCabe Union's March 20, 2019 psychoeducational assessment was legally flawed. Student's parents were not interviewed and no observation of Student occurred as part of the assessment. Student further argues the assessor failed to accurately assess Student's needs in attention, behavior, and mental health. In addition, Student argues the assessment report contained numerous inaccuracies and omitted key information. Student contends the assessor inaccurately applied the wrong analysis in concluding Student did not qualify for special education. Student further argues the assessor failed to consider and include a discussion in the psychoeducational report as to whether Student qualified for special education under the category of other health impairment. McCabe Union contends it assessed Student in all areas of suspected need and its psychoeducational assessment and assessment report met all legal requirements.

Before any action is taken with respect to the initial placement of a special education student, an assessment of the student's educational needs shall be conducted. (Ed. Code, § 56320.) An evaluation under federal law is the same as an assessment under California law. (Ed. Code, § 56302.5.) No single procedure may be used as the sole criterion for determining whether the student has a disability or determining an appropriate educational program for the student. (20 U.S.C. § 1414(b)(2)(B); Ed. Code, § 56320, subd. (e).)

A local educational agency must assess a special education student in all areas of suspected disability, including, if appropriate, health, vision, hearing, social and

emotional status, general intelligence, academic performance, communicative status, and motor abilities. (20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4); Ed. Code, § 56320, subd. (f).) In assessing a child with a disability, the assessment must be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified. (34 C.F.R. § 300.304(c)(6).)

Tests and assessment materials must be used for the purposes for which they are valid and reliable, and must be administered by trained personnel in conformance with the instructions provided by the producer of such tests. (20 U.S.C. § 1414(b)(3)(A)(iii)-(v); Ed. Code, § 56320, subd. (b)(2), (3).) Tests must be selected and administered to produce results that accurately reflect the student's aptitude, achievement level, or any other factors the test purports to measure. (Ed. Code, § 56320, subd. (d).)

Assessments must be conducted by individuals who are knowledgeable of the student's disability. (Ed. Code, § 56320, subd. (g).) The assessments must also be conducted by persons competent to perform the assessment. (Ed Code, § 56322.) The competency of an assessor is determined by the local educational agency. (*Ibid.*) A psychological assessment must be performed by a credentialed school psychologist. (Ed. Code, § 56324, subd. (a).) School districts are required to use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that would assist in determining the educational needs of a child. (20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(1).) Assessments must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, along with physical or developmental factors. (20 U.S.C. § 1414(b)(2)(C); 34 C.F.R. § 300.304(b)(3).)

Assessments and other evaluation materials must include those that are tailored to assess specific areas of educational need. (34 C.F.R. § 300.304(c)(2).)

Tests and assessment materials must be selected and administered so as not to be racially, culturally, or sexually discriminatory. (20 U.S.C. § 1414(a)(3)(A)(i); Ed. Code, § 56320, subd. (a).) The materials must also be provided and administered in the student's primary language or other mode of communication unless this is clearly not feasible. (20 U.S.C. § 1414(a)(3)(A)(ii); Ed. Code, § 56320, subd. (a).) In addition, an assessor must produce a written report of each assessment that includes:

- whether the student may need special education and related services;
- the basis for making that determination;
- the relevant behavior noted during the observation of the student in an appropriate setting;
- the relationship of that behavior to the student's academic and social functioning; and
- the educationally relevant health and development, and medical findings, if any.

(Ed. Code, § 56327, subds. (a)-(e).)

The benefits of an appropriate public education through special education is not limited to academics, but also in aiding a child's social and emotional growth to support them academically, behaviorally, and socially. (*County of San Diego v. California Special Education Hearing Office, et al.* (9th Cir. 1996) 93 F.3d 1458, 1467.)

A child qualifies under other health impairment if the child has limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that

results in limited alertness with respect to the educational environment due to chronic or acute health problems such as attention deficit disorder or attention deficit hyperactivity disorder and that adversely affects a child's educational performance. (Cal. Code Regs., tit. 5, § 3030, subd. (a)(9).)

A failure to properly assess is a procedural violation of the IDEA. (*Department of Educ., State of Hawaii v. Cari Rae S.* (D. Hawaii 2001) 158 F.Supp. 2d 1190, 1196 (*Cari Rae*); *Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1032 (*Park*).) However, a procedural error does not automatically require a finding that a FAPE was denied. A procedural violation results in a denial of FAPE only if it impedes the child's right to a FAPE, significantly impedes the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child, or causes a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).); see *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.)

THE ASSESSOR FAILED TO USE APPROPRIATE ASSESSMENT TOOLS AND STRATEGIES

Student was diagnosed with attention deficit disorder in 2014. In January 2016, when he was in sixth grade, McCabe Union's student study team identified Student as having poor organizational skills that were evident across all settings, poor handwriting, and a tendency to rush through things. His teacher and Mother reported concerns with his organization and ability to focus. Student impulsively provoked reactions from others. In response, the student study team offered Student interventions that included preferential seating in the classroom, a checklist of assignments, dictation of written work, a limited extension of time to complete assignments, after-school tutoring, and opportunities to make corrections on tests.

On March 23, 2016, Student underwent a psychiatric evaluation by a private psychiatrist. Student reported difficulty concentrating and sitting still, fidgeting, and described himself as impatient and impulsive. He identified school as a stressor. The psychiatrist noted that Student was falling behind academically. After-school tutoring was not helping. Student was failing most subjects, math in particular. He got into trouble at school. He was impulsive with his siblings and classmates. The psychiatrist diagnosed Student with attention deficit hyperactivity disorder and prescribed him daily medication. By April 19, 2016, Student's math test scores, focus and self-control improved, however, he continued to require the interventions the McCabe Union's student study team offered. He received a D plus grade in math for the third quarter of that school year.

During his sixth grade year, despite the interventions, Student was constantly off-task, disrupted class, and needed frequent reminders to focus and calm down. His attention needed to be redirected several times a day. He constantly played in his desk with anything that was at hand. These behaviors continued throughout the day. His seat was moved to keep him from excessively talking to his seating partner. Student was forgetful with classwork assignments, turned in assignments late and at times forgot to turn in assignments altogether. Student noticeably struggled when he was not on his medication. Student was reevaluated by his psychiatrist, who increased the dosage of his attention deficit hyperactivity disorder medication.

Student's behaviors worsened in seventh grade during the 2017-2018 school year. He was suspended on October 18, 2017, for fighting with another student. On December 15, 2017, he scored a zero on his language arts test for failing to remain in his seat despite being given multiple warnings.

On April 23, 2018, seventh grade technology and science teacher Michael Garcia removed Student from a class project for failing to control himself. Student was told to step outside because of his constant talking and disruption of class. He engaged in horseplay, disrupted other peer groups, and threw materials across the room. Student could no longer be unsupervised. Mr. Garcia lost confidence in Student's ability to conduct himself appropriately and work independently.

At the hearing, Mr. Garcia described Student as often off-task and regularly roughhoused with other students. Student required constant redirection. Mr. Garcia had to admonish Student for his behavior approximately two to three times a week.

PARENTAL REQUEST FOR ASSESSMENTS AND THE ASSESSMENT PLAN

Student's behaviors continued to get worse in the eighth grade. In October 2018, the assistant principal counseled Student and gave him detention once for excessive tardiness. That same month he was also given detention on three occasions for defiant and inappropriate behaviors. In January 2019, he was suspended for two days. In February 2019, he was suspended for five days for conduct McCabe Union described as an obscene act of bullying and sexual harassment.

On February 26, 2019, while Student was suspended, Parents provided McCabe Union with a written request for a comprehensive assessment of Student to determine if he was eligible for special education. McCabe Union provided Parents with an assessment plan dated February 27, 2019. The assessment plan proposed to assess Student in the areas of intellectual development, motor development, social emotional, behavior, and adaptive behavior to be conducted by a school psychologist. The assessment plan also proposed a teacher assess Student's academic achievement and a

nurse to assess his health. Parents consented to the plan on February 27, 2019 and promptly returned it to McCabe Union.

THE SCHOOL PSYCHOLOGIST AND STUDENT'S EXPERT

McCabe Union contracted with Imperial County Office of Education to conduct the psychoeducational assessment. Imperial County Office of Education school psychologist Apolos De La Garza led a team of assessors. Mr. De La Garza received a master's degree in school psychology in 1998. He conducted over 1000 psychoeducational assessments and reviewed over 1500 IEPs in his career. The assessors' findings, conclusions, and recommendations were presented in a report written by Mr. De La Garza. The assessment report was dated March 20, 2019. Mr. De La Garza concluded that Student was not eligible for special education.

Despite having over twenty years of experience as a school psychologist, Mr. De La Garza's understanding of special education eligibility was misplaced. He believed that special education was designed to serve only students with academic needs. At the hearing, he opined that a child would not be an appropriate candidate for special education if the child did not have a need in the area of academics. He explained that every IEP he encountered had at least one academic goal, with the exception of an IEP that was limited to a communication goal. He understood that a child could qualify for special education under other health impairment only if the disability had an adverse impact on academic performance. However, the purpose of special education is not so narrow. Special education also involves aiding a child's social and emotional growth to support them academically, behaviorally, and socially. McCabe Union superintendent Laura Dubbe testified that a student could qualify for special education without demonstrating an academic need. Mr. De La Garza failed to

grasp this point and proceeded to assess Student with the distorted view that as long as Student had no academic needs, he did not qualify for special education. Thus, his testimony was unpersuasive and given little weight.

Student hired Jill Weckerly, Ph.D., to conduct an independent psychoeducational evaluation of Student in November 2019. As part of her evaluation, Dr. Weckerly reviewed Student's medical and educational records, including McCabe Union's March 20, 2019 psychoeducational assessment report. She also administered a number of assessment tools that assessed Student in the areas of intellectual development, academic achievement, attention, working memory, visual processing, processing speed, motor functioning, executive functioning, and emotional functioning. She administered tests that were tailored to specifically measure attention and executive functioning. She interviewed Parents and Student, and observed Student at school. Her findings, conclusions, and recommendations were presented in a comprehensive written report completed in December 2019.

Dr. Weckerly was a clinical psychologist for the San Diego Unified School District's Mental Health Resource Center since 2002. As a member of the Mental Health Resource Center's interdisciplinary team, she diagnosed, assessed, and treated children and adolescents with attention deficit hyperactivity disorder, among other conditions. In her private practice, Dr. Weckerly conducted independent neuropsychological evaluations for various school districts within the county of San Diego, and at the request of parents. She also offered diagnostic consultations. She provided individual and family therapy with a focus on treating explosive behaviors, bipolar mood disorders, mood and anxiety disorders, attention deficit hyperactivity disorder, learning disabilities,

and other neurodevelopmental disorders. She had a master's degree in linguistics and two doctorates, one in cognitive science and linguistics, the other in clinical psychology.

Dr. Weckerly co-authored three peer-reviewed publications in the area of attention deficit hyperactivity disorder. In addition, she conducted approximately 500 psychoeducational assessments in her career. 20 to 25 percent of those assessments involved children and adolescents with attention deficit hyperactivity disorder. Dr. Weckerly testified at hearing. Her experience and training was extensive and impressive, particularly in the area of attention deficit hyperactivity disorder. Her responses were measured and thoughtful. Therefore, her testimony was given substantial weight.

ASSESSMENT TOOLS AND STRATEGIES

Mr. De La Garza administered the Behavior Assessment System for Children, Third Edition. His assessment report did not describe the Behavior Assessment System for Children and what it was intended to measure. The Behavior Assessment System for Children called for rating scales to be completed by teachers and parents, and when appropriate, the child. The rating scales were given to two of Student's eighth grade teachers, science teacher Lindsay Claverie and history teacher Michael Bohannon to complete. A rating scale was also provided to Mother. Student was not given a rating scale to complete.

The evidence did not support Student's contention that McCabe Union should have assessed Student's mental health. Mr. Bohannon rated Student at-risk for depression, somatization, and withdrawal. However, neither Ms. Claverie nor Mother rated Student at-risk in those areas. In addition, no other evidence was offered that

demonstrated Student had issues with mood, anxiety, depression, or any other mental health concern. Accordingly, a mental health assessment was not warranted.

However, the rating scales did show a need for additional tests that specifically assessed Student's attention and behavior. Ms. Claverie rated Student in the clinically significant range in the area of conduct problems and at-risk in the areas of hyperactivity, aggression, and externalizing problems. Mr. Bohannon rated Student in the clinically significant range in the areas of hyperactivity, aggression, conduct problems, externalizing problems, attention problems, and atypicality. He also rated Student at-risk for internalization of problems, learning problems, school problems, adaptability, social skills, leadership, study skills, and adaptive skills. Mr. Bohannon clarified at hearing that when completing the rating scale, he did not clearly distinguish "often" and "almost always" when identifying the frequency of an item listed on the scale. However, there was no evidence offered as to how that would have affected the scores of his ratings. Mother rated Student at-risk of hyperactivity, conduct problems, attention problems, and atypicality.

Despite the clinically significant and at-risk ratings in the areas of hyperactivity, attention, and conduct problems, Mr. De La Garza failed to administer additional tests that were tailored to specifically measure Student's attention and behavior. At the hearing, Dr. Weckerly discussed the difference between a broad measure and a narrow measure. She explained that a broad measure, such as the Behavior Assessment System for Children, measured a variety of areas such as attention, behavior, mood, and anxiety, but did not provide an in-depth assessment of any one area. On the other hand, an assessment that was designed to narrowly measure a specific area, such as attention, provided a more thorough analysis of that area. Dr. Weckerly persuasively opined that in Student's case, an in-depth analysis of his attention was necessary due to Student's

attention deficit hyperactivity disorder. For example, Dr. Weckerly used two tests that narrowly measured Student's attention, the Connor's Rating Scales, Third Edition, and Test of Variables of Attention, Second Edition. The Connor's Rating Scales was a tool that narrowly measured attention deficit hyperactivity disorder and other attention related issues. The Test of Variables of Attention provided an objective measure of attention and inhibitory control. It aided in the assessment of, and evaluation of treatment for, attention deficits, including attention deficit hyperactivity disorder. Neither Mr. De La Garza nor any other qualified school psychologist, administered a narrow measure of attention that provided a more thorough analysis of the impact Student's disorder had on his educational performance.

McCabe Union argues Mr. De La Garza assessed Student's attention and concentration by administering the Wide Range Assessment of Memory and Learning, Second Edition. However, Dr. Weckerly persuasively explained that the Wide Range Assessment of Memory and Learning's "Attention/Concentration" index label was a misnomer, and the Wide Range Assessment of Memory and Learning did not measure attention and concentration, but rather working memory. Sustained attention is the ability to keep one's mind on a task. Working memory refers to the ability to mentally sequence and manipulate information held in awareness without distraction. Therefore, Student's average to above average score on the attention/concentration index did not rule out a weakness in Student's ability to sustain attention.

Student's behaviors were also of concern. He displayed defiant behaviors that resulted in numerous detentions and three suspensions over the past year. Mr. De La Garza failed to administer a test tailored to measure the function of Student's behaviors to better understand why he behaved in ways that resulted in school discipline and lost instructional time.

In addition, children with attention deficit hyperactivity disorder often have problems with executive functioning. Executive functions are mental processes that direct an individual's thought, action, and emotion, particularly during active problem solving. The executive functions are also responsible for controlling an individual's emotional responses, thereby allowing for more effective problem solving.

Here, Mr. De La Garza did not assess Student's executive functioning. However, an assessment in this specific area was necessary based on the clinically significant and at-risk ratings in the areas of hyperactivity, attention, and conduct problems found in the behavior rating scales. Student's struggles with organization and following through with assignments were further reasons why an assessment in the area of executive functioning was needed.

Furthermore, Mr. De La Garza did not interview either of Student's parents. He also did not observe Student working on assignments. A parent interview and an observation of Student would have provided a more comprehensive picture of how his attention deficit hyperactivity disorder impacted his ability to complete schoolwork. Though Student was on an independent home study program at the time of the assessment, an observation of him working at home could have offered some insight on his ability to organize and focus. In addition, Mother explained at the hearing that she had to remind him to do his homework and turn in his homework on time at least three times a week. She testified that Student spent on average two hours a day on homework, sometimes longer when Mother had to redirect him to finish his assignments. Furthermore, Mother reported to Dr. Weckerly that Student was emotionally reactive, easily frustrated, and sensitive to criticism. She also reported that he was disorganized and lost assignments.

An observation and a parent interview would have offered a better understanding of how Student's disorder affected his ability to complete assignments both at home and at school, and what Parents were doing to support him with homework. The failure to interview Parents and observe Student resulted in an incomplete picture of how Student's attention deficit hyperactivity disorder impacted his educational performance.

McCabe Union claims that Mr. De La Garza did not interview either of Student's parents because of the expedited nature of the expulsion timelines. That claim is unsupported by the evidence. Parents did not request an expedited assessment of Student. Mr. De La Garza testified that he had enough time and was able to collect the data he needed to complete the psychoeducational assessment. There was nothing expedited about the psychoeducational assessment.

The assessments and strategies used by Mr. De La Garza were inadequate to assess Student in all areas of need. Relevant information was not collected due to the failure of the assessor to conduct a parent interview and observe Student. Furthermore, the failure to administer additional tests that were tailored to assess Student's attention, behavior, and executive functioning were significant missteps in the assessment process. These mistakes lead to an insufficiently comprehensive assessment of the impact Student's attention deficit hyperactivity disorder had on his educational performance.

THE MARCH 20, 2019 PSYCHOEDUCATIONAL ASSESSMENT REPORT WAS INACCURATE AND INCOMPLETE

The March 20, 2019 psychoeducational assessment report contained inaccuracies and omissions that were inaccurate and confusing. In addition, the report failed to

discuss a critical component of Student's assessment, that is, whether he was eligible for special education under the category of other health impairment.

Mr. De La Garza's comment in the report that Parents requested a psychoeducational evaluation of Student as part of the expulsion process was not accurate. Parents' written request dated February 26, 2019, for a comprehensive evaluation to determine Student's eligibility for special education, made no mention of his suspension and potential expulsion. Nowhere in their request did Parents seek to expedite the assessments.

In addition, the March 20, 2019 psychoeducational assessment report listed the wrong special education teacher, Martha Bell, as the special education teacher who conducted the academic assessment. Evelyn Sanchez, the special education teacher who conducted the academic assessment, attended the March 20, 2019 IEP team meeting. However, she did not present her findings and conclusions. Inexplicably, McCabe Union offered no clarification to Parents at the March 20, 2019 IEP team meeting as to who conducted the academic assessment.

Beside the inaccuracies, the March 20, 2019 psychoeducational assessment report failed to analyze and discuss student's behaviors, discipline, low processing speed, and most importantly, whether he was eligible for special education under the category of other health impairment. As for Student's behaviors and discipline, Mr. De La Garza neglected to include a discussion in the report of Student's disciplinary record beyond the two suspensions immediately preceding his expulsion. The report made no mention of the other 15 documented referrals related to excessive tardiness, defiant behaviors that resulted in detentions and a suspension in seventh grade for fighting. More

notably, the report failed to discuss if and how these behaviors were related to Student's disability and what impact they had on his educational performance.

Moreover, Student received a composite score of 72 in the area of processing speed on the Wechsler Intelligence Scale for Children, Fifth Edition. The Wechsler Intelligence Scale for Children measured an individual's general intellectual functioning. The composite score of 72 was in the very low range, indicative of a deficit. Yet, the March 20, 2019 psychoeducational assessment report contained no discussion or explanation of how a deficit in processing speed could affect his ability to access the curriculum or complete classwork.

Furthermore, the March 20, 2019 psychoeducational assessment report failed to include a discussion of whether Student qualified for special education under the category of other health impairment. Parents specifically requested a comprehensive assessment of Student to determine whether his previously diagnosed attention deficit hyperactivity disorder adversely affected his educational performance. The March 20, 2019 psychoeducational assessment report noted that the "assessment included all the components of a comprehensive evaluation in all areas of suspected disability, which included Specific Learning Disability and Other Health Impairment" However, the March 20, 2019 psychoeducational assessment failed to analyze, and the assessment report contained no discussion, of whether Student's attention deficit hyperactivity disorder limited his alertness at school thereby adversely affecting his educational performance. The report failed to explain whether Student may need special education and related services due to his attention deficit hyperactivity disorder and failed to explain why a determination of special education eligibility under other health impairment was not required in this case.

The failure to analyze and discuss within the written assessment report whether Student met special education eligibility requirements for other health impairment due to his attention deficit hyperactivity disorder was a critical procedural error in the assessment process. The error deprived Parents of critical information to meaningfully participate in the decision making process regarding Student's education.

As a whole, the March 20, 2019 psychoeducational assessment and the report failed to assess Student in all areas of need and was insufficiently comprehensive. The March 20, 2019 psychoeducational assessment left Parents with more questions than answers. The inaccuracies and omissions in the assessment report were confusing. In addition, the assessment failed to use tools and strategies that gathered relevant information regarding Student's functional and academic performance. Specifically, the assessment failed to use measures tailored to assess specific areas related to Student deficits in attention and executive functioning, as well his behavioral challenges. Most importantly, it failed to analyze the impact Student's attention deficit hyperactivity disorder had on his educational performance and whether Student was eligible for special education under the category of other health impairment. Therefore, McCabe Union failed to meet its burden of proving the March 20, 2019 psychoeducational assessment met legal requirements.

McCabe Union's failure to conduct a legally compliant psychoeducational assessment of Student was a procedural violation of the IDEA. That violation denied Parents of critical information and a clear understanding of Student's educational needs. The violation significantly impeded their ability to meaningfully participate in the decision making process regarding Student's education. In addition, the procedural violation denied Student the benefit of special education and related services when McCabe Union erroneously denied Student an IEP based on the inadequate

March 20, 2019 psychoeducational assessment, when a preponderance of the evidence demonstrated, that Student was eligible for special education on March 20, 2019.

Accordingly, Student met his burden of proving by a preponderance of the evidence that McCabe Union denied him a FAPE when it failed to assess him in all areas of suspected need, and failed to present the findings and conclusions of the March 20, 2019 psychoeducational assessment in a manner that was sufficiently comprehensive.

ISSUES 1(b), 2(a)(i), 2(a)(ii), AND 2(a)(iii): WAS STUDENT ELIGIBLE FOR SPECIAL EDUCATION ON MARCH 20, 2019?

Student contends McCabe Union denied him a FAPE by failing to find him eligible for special education under the category of other health impairment on March 20, 2019. Student argues the failure denied him educational benefits and opportunities, and significantly impeded Parents' ability to meaningfully participate in Student's education. McCabe Union contends Student was not eligible for special education on March 20, 2019.

A FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Parents and school personnel develop an IEP for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a) and 56363 subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501.)

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide an

educational benefit through an IEP reasonably calculated to enable the child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204; *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. ____ [137 S.Ct. 988, 1000].)

In California, special education is required for individuals who are defined in part as individuals whose "impairment . . . requires instruction, services, or both, which cannot be provided with modification of the regular school program" (Ed. Code, § 56026, subd. (b).) "Special education" means specially designed instruction to meet the unique needs of individuals with exceptional needs. (Ed. Code, § 56031, subd. (a).)

Only children with certain qualifying disabilities are eligible for special education. For purposes of special education eligibility, the term "child with a disability" means a child with, as relevant here, an other health impairment; and who, by reason thereof, needs special education and related services. (20 U.S.C. § 1401(3)(A)(i), (ii); 34 C.F.R. § 300.8(a)(1).)

A student having a suspected or diagnosed attention deficit disorder or attention deficit hyperactivity disorder may be eligible for special education in the category of other health impairment. (Ed. Code, §56339, subd. (a).) A student may qualify for special education in the category of other health impairment if the student "has limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment that . . . is due to chronic or acute health problems such as . . . attention deficit or attention deficit hyperactivity disorder . . . and [a]dversely affects a child's educational performance." (34 C.F.R. § 300.8(c)(9); Cal. Code Regs., tit. 5, § 3030, subd. (b)(9).) To be eligible for special education and related services, the student's educational performance must be

adversely affected by the disorder, and the student must demonstrate a need for special education and related services by meeting the eligibility criteria for other health impairment. (Ed. Code, §56339, subd. (a).) If a student with attention deficit hyperactivity disorder is not determined to be eligible for special education and related services, his instructional program must be provided in the regular education program. (Ed. Code, §56339, subd. (b).)

A student shall be referred for special education and related services only after the resources of the regular education program have been considered and, where appropriate, utilized. (Ed Code, § 56303.) Not every child who is impaired by a disability is eligible for special education. (*Hood v. Encinitas Union School District* (9th Cir. 2007) 486 F.3d 1099, 1106 (*Hood*) [decided under former Education Code section 56337].) A student may have a qualifying disability, yet not be found eligible for special education, because the student's needs are able to be met with appropriate accommodations in and/or modification of the general education classroom. (*Id.* at pp. 1107-1108, 1110.) In *Hood*, the court instructed, "Just as courts look to the ability of a disabled child to benefit from the services provided to determine if that child is receiving an adequate special education, it is appropriate for courts to determine if a child classified as non-disabled is receiving adequate accommodations in the general classroom – and thus is not entitled to special education services – using the benefit standard." (*Id.* at p. 1107.)

A student may still qualify for special education services as a student with an other health impairment even though the student may be obtaining satisfactory grades, and have the knowledge and skills typical of a student of his age and in his grade at school. (*M.P. v. Santa Monica Malibu Unified School Dist.* (C.D. Cal. 2008) 633 F.Supp. 2d 1089, 1103; *W.H. ex rel. B.H. v. Clovis Unified School Dist.* (E.D. Cal., June 8, 2009, No. CV

F 08-0374 LJO DLB) 2009 WL 1605356, *judgment withdrawn in part* (E.D. Cal., Dec. 22, 2009, No. CV F 08-0374 LJO DLB) 2009 WL 5197215.)

An administrative law judge has the authority to determine whether a student is eligible for special education and related services under the IDEA. (*Hacienda La Puente Unified School Dist. v. Honig* (9th Cir. 1992) 976 F.2d 487, 492-493.) If a school district has failed to properly identify a student as eligible for special education, and therefore failed to develop an appropriate IEP for the student, the school district has denied the student a FAPE. (*Cari Rae, supra*, 158 F.Supp.2d 1190, 1196.) The development of an IEP is evaluated in light of information available at the time it was developed, and is not to be evaluated in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)

STUDENT'S ATTENTION DEFICIT HYPERACTIVITY DISORDER ADVERSELY AFFECTED HIS EDUCATIONAL PERFORMANCE

An IEP team meeting was convened on March 20, 2019, to review McCabe Union's March 20, 2019 psychoeducational assessment report and to determine if Student was eligible for special education. McCabe Union's IEP team members presented nothing in the IEP team meeting to cure the March 20, 2019 psychoeducational assessment's inadequacies. At the IEP team meeting, Mr. De La Garza mischaracterized Student as doing well academically that current school year. However, Student received a D plus in science for the first quarter and was earning a F in science at the time of the meeting. He ended up with a D minus in science when grades came out for the third quarter just days following the IEP team meeting.

Student's diagnosed attention deficit hyperactivity disorder was significant and adversely affected his educational performance. His disability impeded his ability to maintain alertness and focus in the educational environment. He struggled with focus and organization in his fifth and sixth grade years. His teacher observed him to be constantly off-task and he needed frequent redirection throughout the school day. His attention deficit hyperactivity disorder was so severe that it was obvious to his teacher when he was not on his medication. Though McCabe Union provided interventions in the regular classroom, such as preferential seating and extended time to complete assignments, the evidence demonstrated that those accommodations did not alleviate Student's struggles with attention and behavior in school.

Student's disorder continued to adversely impact his performance in middle school. In middle school, Student earned some passing grades and met or nearly met State standards for academics. However, he also received poor grades. It is not uncommon for students with attention deficit hyperactivity disorder to perform well on tests, and still struggle with the day-to-day demands of school. Looking beyond grades and test scores, it was clear Student's attention deficit hyperactivity disorder adversely affected his educational performance. He was often off-task, tardy, required frequent redirection, had difficulty remaining seated in class, was disruptive, and often failed to complete and turn in assignments on time or altogether. At home, he required frequent reminders and prompting to complete and turn in assignments on time. He spent on average two hours to complete his assignments at home. The increased demands and complexity of middle school, coupled with his attention deficit hyperactivity disorder, led to Student's increased defiance and behaviors resulting in detention, suspension and, ultimately, expulsion from McCabe Union. Dr. Weckerly persuasively explained that

inattention, inappropriate behaviors, and lack of organization were common traits of a child whose attention deficit hyperactivity disorder negatively impacted their education.

STUDENT DEMONSTRATED A NEED FOR SPECIAL EDUCATION AND RELATED SERVICES

The evidence demonstrated that Student required special education and related services to address his needs in the areas of attention, executive functioning, and behavior. Dr. Weckerly's testimony that Student qualified for special education under the category of other health impairment based on the information available at the time of the March 20, 2019 IEP team meeting was persuasive. In her opinion, after-school tutoring and classroom accommodations and modifications were not enough. She convincingly opined that Student required direct instruction from a credential special education teacher, and interventions through a study skills class and a behavior intervention plan, to help him with organization, planning, and to address his executive functioning deficits and behaviors associated with his attention deficit hyperactivity disorder.

At the March 20, 2019 IEP team meeting, district team members concluded that his attention deficit hyperactivity disorder had no impact on Student's academic performance and his behavior did not impact his learning. Relying primarily on the flawed March 20, 2019 psychoeducational assessment report, McCabe Union erroneously determined Student did not have a qualifying disability that adversely affected his educational performance, and that he did not need special education or related services. However, the information available at the time of the IEP team meeting demonstrated otherwise, and Student should have been found eligible for special education under the category of other health impairment due to his attention deficit

hyperactivity disorder and the significant negative impact his disorder had on his social emotional functioning at school.

Student established that he had a disability under the category of other health impairment as of March 20, 2019, due to his attention deficit hyperactivity disorder. His disorder manifested at school as limited alertness in the educational environment. Interventions in the general education classroom did not alleviate his attention and behavioral problems. Student proved that he needed special education and related services, and that he required instruction, services, or both, that could not be provided with modification of the regular school program. Despite having average cognitive abilities and average performances on standardized academic achievement tests, he performed poorly in some of his core academic classes.

A preponderance of the evidence demonstrated that McCabe Union's failure to find Student eligible for special education on March 20, 2019, denied him the benefits of special education and related services, educational opportunities, and significantly impeded Parents' ability to meaningfully participate in the decision-making process regarding the provision of a FAPE to Student. (*Timothy O. v. Paso Robles Unified School Dist.* (9th Cir. 2016) 822 F.3d 1105, 1118-1119.) Accordingly, Student met his burden of proving by a preponderance of the evidence that McCabe Union denied him a FAPE by failing to find him eligible for special education on March 20, 2019.

CONCLUSIONS AND PREVAILING PARTY

As required by 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.

Issue 1, subsection a: McCabe Union substantively denied Student a FAPE by failing to conduct legally adequate evaluations in all areas of suspected need. Student prevailed on Issue 1, subsection a.

Issue 1, subsection b: McCabe Union substantively denied Student a FAPE by failing to find him eligible for an IEP. Student prevailed on Issue 1, subsection b.

Issue 2, subsections a(i), a(ii), and a(iii): McCabe Union procedurally denied Student a FAPE by failing to find him eligible for an IEP which prevented Parents from participating in Student's education, and deprived Student of an educational benefit and educational opportunities. Student prevailed on Issue 2, subsections a(i), a(ii), and a(iii).

Issue 2, subsection b(i): McCabe Union procedurally denied Student a FAPE by failing to conduct legally adequate evaluations in all areas of suspected need which deprived Student of educational opportunities. Student prevailed on Issue 2, subsection b(i).

Issue 2, subsection b(ii): McCabe Union procedurally denied Student a FAPE by failing to present the March 20, 2019 psychoeducational assessment results to Parents in a comprehensible manner which denied Student educational opportunities. Student prevailed on Issue 2, subsection b(ii).

Issue 3, McCabe Union's March 20, 2019 psychoeducational assessment did not comply with federal and state laws. Student is entitled to independent educational evaluations. Student prevailed on Issue 3.

REMEDIES

As remedies, Student requests that McCabe Union reimburse Parents for costs associated with Dr. Weckerly's independent psychoeducational evaluation. Student further seeks an order for publicly funded independent educational evaluations in the areas of functional behavior and educationally related mental health services. In addition, Student request that McCabe Union fund educational services to compensate Student for lost educational opportunities in the amount of 104 hours of specialized academic instruction to be provided by a nonpublic agency. Furthermore, Student requests an order that McCabe Union provide its special education administration, staff, and contractors with 10 hours of training to cover psychoeducational assessments and special education eligibility. McCabe Union contends Student is not entitled to any relief.

Under federal and state law, courts have broad equitable powers to remedy the failure of a school district to provide a FAPE to a disabled child. (20 U.S.C. §1415(i); see *School Committee of Town of Burlington, Mass. v. Department of Educ. of Mass.* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996, 85 L.Ed.2d 385] (*Burlington*).) This broad equitable authority extends to an administrative law judge who hears and decides a special education administrative due process matter. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 243-244, n. 11 [129 S.Ct. 2484, 174 L.Ed.2d 168].) When a school district fails to provide a FAPE to a student with a disability, the student is entitled to relief that is "appropriate" in light of the purposes of the IDEA. (*Burlington, supra*, 471 U.S. 359, 369-370.) Remedies under the IDEA are based on equitable considerations and the evidence established at the hearing. (*Id.* at p. 374.)

An administrative law judge can award compensatory education as a form of equitable relief. (*Park, supra*, 464 F.3d 1025, 1033.) Compensatory education is a prospective award of educational services designed to catch-up the student to where he should have been absent the denial of a FAPE. (*Brennan v. Regional School Dist. No. Bd. of Educ.* (D.Conn. 2008) 531 F.Supp.2d 245, 265; *Orange Unified School Dist. v. C.K.* (C.D.Cal. June 4, 2012, No. SACV 11-1253 JVS(MLGx)) 2012 WL 2478389, *12.) The award must be fact-specific and be “reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.” (*Reid v. District of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 524.) Compensatory education awards depend upon the needs of the disabled child, and can take different forms. (*R.P. v. Prescott Unified School Dist.* (9th Cir. 2011) 631 F.3d 1117, 1126.) Typically, an award of compensatory education involves extra schooling, in which case, “generalized awards” are not appropriate. (*Parents of Student W. v. Puyallup School Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1497 (*Puyallup*)). Day-for-day compensation for time missed is not required so long as the relief ensures that the student is appropriately educated within the meaning of the IDEA. (*Ibid.*)

Parents may also be entitled to reimbursement for the costs of placement or services that they independently obtained for their child when the school district failed to provide a FAPE. (*Burlington, supra*, 471 U.S. 359, 374.; *Puyallup, supra*, 31 F.3d 1489, 1496.) In addition, an independent educational evaluation at public expense may also be awarded as an equitable remedy, if necessary to grant appropriate relief to a party. (*Los Angeles Unified School Dist. v. D.L.* (C.D.Cal. 2008) 548 F.Supp.2d 815, 822-23.)

Training for school district personnel is also an appropriate remedy, as the IDEA does not require compensatory education services to be awarded directly to a student.

(*Park, supra*, 464 F.3d 1025, 1034 [student, who was denied a FAPE due to failure to properly implement his IEP, could most benefit by having his teacher appropriately trained to do so].) Appropriate relief in light of the purposes of the IDEA may include an award that school staff be trained concerning areas in which violations were found, to benefit the specific student involved, or to remedy procedural violations that may benefit other students. (*Ibid.*)

INDEPENDENT EDUCATIONAL EVALUATIONS

On April 8, 2019, Parents provided McCabe Union with written notice of their disagreement with the March 20, 2019 psychoeducational assessment and requested McCabe Union fund independent educational evaluations in the areas of psychoeducation, functional behavior, and educationally related mental health services. On April 29, 2019, McCabe Union provided Parents with prior written notice denying Parents' request for publicly funded independent educational evaluations. McCabe Union's March 20, 2019 psychoeducational assessment failed to meet legal requirements. Therefore, Student is entitled to independent educational evaluations at public expense.

Student hired Dr. Weckerly to conduct a psychoeducational evaluation of Student, and is entitled to reimbursement for this expense. Student presented an invoice in the amount of \$4778.96 for the time and expenses Dr. Weckerly spent in conducting her evaluation. Dr. Weckerly's time was spent administering testing, observing Student and interviewing Parents over two days, traveling, scoring tests and reviewing records, writing her November 15, 2019 psychoeducational evaluation report, and attending an IEP team meeting at Student's current high school to present her report. Dr. Weckerly's practice was located in La Jolla, California, approximately

120 miles from El Centro, California, where Student resided and attended school. Her invoice included meal and lodging expenses for her travel to El Centro, California to carry out her evaluation. All these items were reasonably necessary in carrying out the psychoeducational evaluation. Accordingly, Student is entitled to reimbursement in the amount of \$4778.96.

Furthermore, the March 20, 2019 psychoeducational assessment barely scratched the surface and failed to delve further into Student's behaviors. McCabe Union denied Student's request for an independent functional behavior assessment, but also failed to request its own behavior assessment of Student. Student's behaviors were a significant impediment to his educational performance. Therefore, in considering the equities in this case, this Decision finds that Student is entitled to an independent educational evaluation at public expense in the area of functional behavior.

However, the evidence did not support a publicly funded independent educationally related mental health services evaluation of Student. A mental health assessment of Student was not required in the Spring of 2019. Furthermore, Dr. Weckerly's assessment of Student did not reveal clinically significant concerns related to anxiety, depression, and mood. She did not opine in her assessment report a need for a further evaluation of Student's mental health and only recommended that continued monitoring be done. Accordingly, an independent educationally related mental health services evaluation at public expense is not an equitable remedy here.

COMPENSATORY EDUCATIONAL SERVICES

McCabe Union's failure to offer Student an IEP on March 20, 2019 denied him the benefits of specially designed instruction and related services. Since leaving McCabe

Union, Student's struggles carried over into his ninth grade year. Student presented evidence of his grades for the 2019-2020 school year over roughly 15 weeks of school. He was failing his English language arts, and computer science and robotics classes, and earning a D plus grade in math and D minus grade in biology as of December 18, 2019. On January 10, 2020, Student was found eligible for special education. There were 11 weeks of school from March 20, 2019, to the end of the 2018-2019 school year at McCabe Union. At the hearing, Dr. Weckerly recommended a couple of hours of specialized academic instruction each week to help Student catch-up. Accordingly, the balance of the equities in this case entitles Student to 22 hours of study skills instruction and another 22 hours of specialized academic instruction.

TRAINING FOR MCCABE UNION

McCabe Union's March 20, 2019 psychoeducational assessment and report failed to provide a sufficiently comprehensive picture of Student's educational needs and the impact his attention deficit hyperactivity disorder had on his school performance. McCabe Union administrators and staff failed to recognize that a child may qualify for special education even when the child showed the ability to access grade level curriculum and produce grade level work. However, a child may need special education and related services not only to support academic performance, but the child's social emotional and behavioral functioning at school. McCabe Union failed to analyze and identify Student as a child eligible for special education under the category of other health impairment. Accordingly, training for McCabe Union's special education administrators and staff regarding psychoeducational assessments and special education eligibility is warranted.

ORDER

1. Within 45 days of the date of this Decision, McCabe Union shall reimburse Parents in the amount of \$4778.96 for costs associated with Dr. Weckerly's independent psychoeducational evaluation. Student submitted sufficient documentation at the hearing for McCabe Union to reimburse Parents for costs associated with Dr. Weckerly's independent psychoeducational evaluation.
2. McCabe Union shall fund an independent educational evaluation of Student in the area of functional behavior, consistent with its up-to-date Special Education Local Plan Area, referred to as SELPA, criteria for independent educational evaluations.
3. Within five business days of this Decision, McCabe Union shall provide Student with its SELPA criteria. Student shall select an assessor who meets the specified criteria, if any, and provide McCabe Union with the assessor's contact information.
4. Within 10 business days of receipt of the contact information of the qualified, chosen assessor, McCabe Union shall send the assessor a contract to perform the assessment. McCabe Union shall cooperate with any reasonable request of the assessor. McCabe Union also shall fund the attendance, by telephone or in person, of the assessor to an IEP team meeting(s) to present the results of their independent educational evaluation, for a total of 4 hours, including travel.
5. McCabe Union shall contract directly with a nonpublic agency or credentialed special education teacher of Parent's choice to provide Student 22 hours of individual study skills instruction.
6. Within 10 days of Parent providing McCabe Union of the study skills instruction provider's contact information, McCabe Union shall contact the selected study

skills instruction provider to initiate the service contract. The provider and Parent shall determine the appropriate schedule and location for service delivery.

Student shall be allowed to access these services hours through June 30, 2021.

7. McCabe Union shall contract directly with a nonpublic agency or credentialed special education teacher of Parent's choice to provide 22 hours of individual academic instruction.
8. Within 10 days of Parent providing McCabe Union of the academic instruction provider's contact information, McCabe Union shall contact the selected academic instruction provider to initiate the service contract. The provider and Parent shall determine the appropriate schedule and location for service delivery. Student shall be allowed to access these services hours through June 30, 2021.
9. Cancellations by the study skills instruction and academic instruction providers shall be made up. Scheduled absences by Student with at least 24-hour notice or verified medical absence shall be credited to Student and also made up. McCabe Union shall be responsible for transportation costs related to the compensatory academic and study skills services in the form of mileage reimbursement, for one round-trip per session, up to and including a round-trip of 50 miles.
10. McCabe Union shall provide a six-hour training to its special education administrators and staff regarding the legal requirements of psychoeducational assessments and special education eligibility. The training shall be provided by an outside special education counsel that does not represent McCabe Union. The six-hour training shall be completed no later than June 30, 2021. Within 10 days of completing the training, McCabe Union shall provide Parent a copy of the training agenda, the instructor's curriculum vitae, training materials, and a written certification that all required staff attended.

11. All other claims for relief by Student are denied.

12. All claims for relief by McCabe Union are denied.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

/s/

Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings