BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2019101110

PARENT ON BEHALF OF STUDENT

v.

COMPTON UNIFIED SCHOOL DISTRICT.

DECISION

NOVEMBER 10, 2020

On October 28, 2019, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parent on behalf of Student, naming Compton Unified School District. Administrative Law Judge Clifford H. Woosley heard this matter in a videoconference hearing, on August 18, 19, 20, 25, 26, 27 and September 1, 2, 3, 8, 9 and 10, 2020.

Attorneys Rosa K. Hirji and Jenny Chau, represented Student. Student's mother, called Parent in this Decision, attended on Student's behalf.

Attorney Ian T. Wade represented Compton Unified. Helen Rodriguez, M.D., Senior Director of Special Needs Department, attended on Compton Unified's behalf.

The parties agreed the matter was continued until October 19, 2020, for submission of written closing briefs. OAH granted, for good cause, the parties' joint continuance request on October 15, 2020, and the matter was continued to October 26, 2020, at which time the briefs were filed, the record closed, and the matter submitted for decision.

ISSUES

A free appropriate public education is referred to as a FAPE. An individualized education program is referred to as an IEP.

1. Did Compton Unified deny Student a FAPE by failing to comply with child find mandates to assess, identify, and serve Student from October 2017 through June 2018?
2. Did Compton Unified deny Student a FAPE and Parent her right to participate by unilaterally disenrolling Student from Compton on or about February 2018?
3. Did Compton Unified deny Student a FAPE and Parent her right to participate by failing to timely assess and convene an IEP team meeting upon Parent's request?
4. Did Compton Unified deny Student a FAPE by failing to offer special education and related services to her between October 2017 and June 2018?

The issues have been renumbered for purposes of analysis, but otherwise remain the same.

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 et seq. (2006); 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 free appropriate public education 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, 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, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. §1415(i)(2)(C)(iii).) Student, as the filing party, had the burden of proof by a preponderance of the evidence in this matter. The factual statements below 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 started the 2016-2017 school year at La Tijera Academy charter school in Inglewood, California, but was expelled. Student finished seventh grade with California Virtual Academy in Los Angeles.

In January 2017, Compton Unified School District hired Parent as a full-time Special Education Administrator. At the time, Parent said she lived with Student and siblings in a house that Parent owned, located in Los Angeles, California. This house is referred to as the "Los Angeles House." The Los Angeles House was located in the geographical boundaries of the Los Angeles Unified School District, referred to as LAUSD.

In the summer of 2017, Parent applied for an inter-district permit for Student to attend Compton Unified, based upon Parent's employment at Compton Unified. LAUSD and Compton Unified approved and issued the employment related inter-district permit.

On August 17, 2017, Student started eighth grade at Bunche Elementary. Upon entry, Student was not identified as a student with a disability. She was not receiving services or accommodations pursuant to an IEP or under Section 504 of the Rehabilitation Act of 1973, called a Section 504 plan. While at Compton Unified, Student was never found eligible for special education.

ISSUE 1: DID COMPTON UNIFIED DENY STUDENT A FAPE BY FAILING TO COMPLY WITH CHILD FIND MANDATES TO ASSESS, IDENTIFY, AND SERVE STUDENT FROM OCTOBER 2017 THROUGH JUNE 2018?

Student contended that Compton Unified's child find obligations were triggered early in the 2017-2018 school year. Student asserted Compton Unified should have assessed, had an IEP team meeting, found her eligible, and provided services and placement to enable her to access and benefit from her educational curriculum. Student asserted that her educational history, bullying early in the school year, pseudo-seizures, and dangerous elopement attempts clearly put Compton Unified on notice that Student was a child with suspected disability who should be assessed for special education

eligibility. Student claimed Compton Unified's failure to meet its child find obligations denied Student a FAPE.

Compton Unified responded that Parent declined its offer to assess Student for special education, long minimized Student's symptomology, failed to provide promised Student medical records, and denied Compton Unified access to Student's medical records. Further, Compton Unified contended it provided Parent with an assessment plan on the same day Parent requested assessment. Compton Unified argued that it met its child find duty and timely commenced Student's assessment for special education upon Parent's execution of an assessment plan.

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 individualized education program, referred to as 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 educational benefit through an IEP reasonably calculated to enable a 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].)

The IDEA places an affirmative, ongoing duty on the state and school districts to identify, locate, and evaluate all children with disabilities residing in the state who are in

need of special education and related services. (20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a).) This duty is commonly referred to as "child find." California law specifically incorporates child find in Education Code section 56301, subdivision (a).

Parent completed the Compton Unified enrollment forms for Student on August 7, 2017. On the health survey form, Parent informed Compton Unified that Student had pulmonary stenosis, which did not affect physical activity. Student had a history of depression, started counseling with a therapist, and had seen a psychiatrist, but Parent did not notify Compton Unified of any of these prior educational or medical concerns. Though the enrollment form specifically asked if Student had been expelled from another school, Parent answered "no" and did not mention La Tijera Academy's expulsion.

Parent listed Student's grandmother, who was Parent's mother, as an emergency contact with an address in Compton, California. Grandmother owned this home, which is referred to as the "Compton House." Parent's mother is referred to as Grandmother.

Student started her eighth-grade middle school year at Bunche on August 17 2017. Bunche was primarily an elementary school, with a smaller number of sixth, seventh, and eighth grade middle schoolers. All of Bunche's eighth graders fit in one classroom of roughly 30 students, for the 2017-2018 school year. Student had teachers Megan Rowerdink for English and history in the morning and Charles Watkins for science and math in the afternoon. Both teachers testified at the hearing. Rowerdink had taught at Compton for 15 years, before leaving for Long Beach Unified School District three years before the time of hearing. Watkins taught at Compton for 24 years.

Watkins described Student as bright and friendly at the beginning of the school year. She was liked by teachers and other pupils. She enjoyed music, dancing, and playing with others. Both teachers agreed that Student had few academic issues in the early fall of 2017. Student was not absent and had only a few tardies during the first month of school.

PSEUDOSEIZURES BEGIN

In the late morning of Thursday, September 14, 2017, someone said something mean to Student, who then sat down and started crying. Student began hyperventilating. People placed her on the floor. Student was shaking and vomiting and was observed to go in and out of consciousness. The school called Parent and the Los Angeles County Fire Paramedics, who transported Student to Harbor-UCLA Medical Center in Torrance, California. The emergency room staff examined and interviewed Student, took an incident history from paramedics, a medical history from Parent, and conducted general diagnostic tests. Student denied having thoughts of self-injury. Parent reported that Student had a similar episode several months before when Parent reprimanded Student, who began crying, dropped to the floor, and shook her body. Parent took Student to an emergency department, which found that Student did not have a seizure and released her to follow up with her private doctor. Parent also reported that Student had a recent three-day hospital stay, and was discharged with an outpatient psychiatry follow up. Compton Unified was unaware of this medical history.

Harbor confirmed that Student had a pseudoseizure, which was associated with anxiety and depression. Student' pulmonary stenosis was not related to the seizure-like episodes. Pseudoseizures were not neurological. The emergency room requested an emergency psychological evaluation but, after a long wait for a psychiatrist, Parent

decided to follow-up with an outpatient psychiatrist. Harbor released Student late September 14, 2017, with instructions for Parent to obtain a psychiatric evaluation.

Student returned to school on Tuesday, September 19, 2017. She was absent the following Friday, but was in attendance for the remainder of the month. In the late morning of Monday, October 2, 2017, Student had a second pseudoseizure episode at school. She fell to ground and had full body shaking, vomiting, and semi-consciousness. The school called Parent and the paramedics, who again transported Student to Harbor. Student denied any thoughts of self-injury. Harbor confirmed the episode was not neurological and not related to Student's pulmonary stenosis. Harbor diagnosed Student with conversion disorder. Harbor's child psychologist recommended outpatient management and discharged Student.

Student's expert, Dr. Ann Simun, testified at hearing. Dr. Simun was a neuropsychologist and, since 2005, was a principal with Neuropsychologist Partners, Inc., which provided neuropsychological and psychoeducational evaluations. Dr. Simun reviewed all available documentation regarding Student, including her medical records, educational records, grade reports, assessments, and IEP documents. She never met or spoke to Student or Parent. Her testimony was based solely upon her document review.

Dr. Simun explained that a conversion disorder was a mental health disorder where a person converted their psychiatric disorder into physical symptoms. A classic example was post-traumatic stress disorder. Some combatants were unable to manage their emotions related to what they witnessed in battle, which caused them to lose their sight, the ability to walk, or the use of an arm. Their mind's inability to process emotions caused physical symptoms.

Similarly, Student had somatic physical symptoms from life and school events. Dr. Simun opined that Student's pseudoseizures were a means of protecting Student from her inability to manage her emotions. They were not caused by abnormal electrical discharges, like epilepsy, and did not pose a direct life-threatening danger, like choking or brain damage. The primary danger of pseudoseizures was falling and hitting a head, which therefore required some type of safety plan within the school setting to minimize possible harm. Dr. Simun agreed with Harbor's recommendation to treat Student's conversion disorder by addressing her underlying anxiety and depression, along with behavior management.

BULLYING

Parent had a discussion with La Ronda L. Ortega, Bunche's principal, on or about October 2, 2017. Parent reported that Student said she had been bullied by certain students at school, which caused her stress and anxiety. Ortega implemented and complied with Compton Unified's bully protocols and commenced an investigation. She summarized the findings and actions in an October 9, 2017 letter to Parent and Student. Bunche also interviewed Student, the alleged perpetrators, witnesses, and any others who had relevant information. The investigation confirmed that Student had likely been bullied. During the investigation, measures were taken to monitor peer interaction by informing teachers and pertinent staff to assist in keeping Student and the other pupils separated until appropriate conflict resolution and counseling occurred. Bunche scheduled follow-up meetings with the involved students for October 20, 2017.

Thereafter, Student was not bullied. The parents of the other pupils involved in bullying Student decided to transfer from Bunche to another Compton Unified middle school. Rowerdink, Watkins, and other staff did not see Student bullied. However, Rowerdink and Watkins noted that Student was increasingly sensitive and needed

regular encouragement and affirmation. Watkins saw that Student would take relatively innocent statements by other kids in the wrong manner and become anxious or reactive. Student's fellow eighth-graders generally demonstrated concern and support for Student, especially during a pseudoseizure episode.

PSEUDOSEIZURES CONTINUE

Student was absent the remainder of the week, due to illness, following her October 2, 2017 discharge from Harbor. On Saturday, October 7, 2017, Parent took Student to St. Francis Medical Center's emergency department having had another pseudoseizure episode and severe anxiety. St. Francis concluded her physical symptoms were caused by anxiety and emotional distress. St. Francis released Student, encouraging her to take necessary steps to decrease her anxiety symptoms, including counseling or medication.

Student returned to school on Monday, October 9, 2017. Student had another pseudoseizure episode at school on Tuesday, October 10, 2017. Paramedics transported Student to Harbor. She had no head trauma. Student remembered the entire event. Harbor determined the episode was another pseudoseizure but recommended outpatient electroencephalogram, called an EEG, to definitively rule out neurologically related seizure activity. Harbor discharged Student with follow up instructions to see her personal physician and a neurologist.

Parent, with an appropriate medical recommendation, had Student put on independent study. Principal Ortega arranged for Student's teachers to assemble study packets, which Parent retrieved for Student. Student remained on independent study through Friday, October 20, 2017. Student was periodically on independent study for the remainder of her attendance at Bunche.

ADDRESSING STUDENT'S NEEDS

Ortega talked with Parent regarding the episodes at school, accompanied Student to the hospital on occasion, and was aware of the pseudoseizure diagnosis. Ortega was concerned about Student's and other pupils' safety and the disruption of paramedics transporting Student from school. Ortega sought direction and support from Compton Unified's Pupil Services Department, which was responsible for assuring supports and safety for students, outside of special education. Ortega believed there needed to be a student study team meeting or Section 504 meeting to determine if Student's needs could be addressed by accommodations. Parent also requested a Section 504 meeting to address Student's health concerns.

Ortega started talking to Dr. Aaron Benton about Student, around the second week of October 2017, seeking some guidance. Ortega shared her concerns regarding Student's episodes and that she was not receiving support and direction from Pupil Services. Dr. Benton was Compton Unified's assistant superintendent of special education and Compton Unified's Special Education Local Plan Area, called a SELPA, from 2016 to 2018. Dr. Benton testified at the hearing.

When Dr. Benton left Compton Unified, he became the director of Butte County SELPA. He had a bachelor's degree in English, master's degree in educational administration, and a juris doctorate degree. His credentials included cross-cultural language acquisition and development, professional clear multiple subject K-12, and professional clear administrative services. He had been a professional educator since 1991.

While at Compton Unified, Dr. Benton reported to superintendent Dr. Darin Brawley. Dr. Benton was Parent's superior because Parent worked as one of six special

education administrators. Parent was initially assigned to elementary education. Parent's duties were providing staff support to 10 elementary schools (including Bunche) and administering autism continuum, county deaf and hard of hearing programs, nonpublic schools, extended school year, and state testing and curriculum. Late in 2017, Parent became the special education administrator assigned to compliance and prekindergarten and elementary schools, which did not include Bunche. Parent was involved with due process case management, settlement agreements, and department of education reports.

Dr. Benton demonstrated in-depth knowledge and experience with special education laws and procedures, including child find, both generally and more specifically for Compton Unified. All six special education administrators were responsible for assuring Compton Unified's compliance with its child find duties. Parent claimed that Compton Unified did not provide her any training regarding child find. However, Dr. Benton confirmed that Compton Unified staff were trained in child find and any staff member could refer a student with a suspected disability, which would begin the initial special education assessment process.

Ortega similarly talked to Dr. Colleen Hawkins, the Assistant Superintendent of Educational Services for Compton Unified because of Pupil Services' lack of support. Dr. Hawkins suggested that Ortega talk to Dr. Benton regarding the Section 504 process and encouraged Ortega to invite Dr. Benton to the Section 504 meeting to help determine if a special education assessment should be offered.

Ortega asked Dr. Benton if he could provide Section 504 procedures and paperwork for an initial Section 504 meeting regarding Student. Dr. Benton was seldom involved in Section 504 matters, but he found and sent the Section 504 manual and paperwork to Ortega. Dr. Benton agreed to attend the meeting. Ortega was a

colleague and Dr. Benton wanted to provide support. Parent talked to Dr. Benton regarding Student and also invited Dr. Benton to attend the Section 504 meeting.

Student returned to school on Monday, October 23, 2017, had another pseudoseizure episode, was transported to Harbor, and released.

INITIAL SECTION 504 MEETING

Rowerdink and Watkins completed Section 504 Teacher Observation forms. The teachers agreed that Student maintained her academics, but Student was falling behind because of her many recent absences. Student was having difficulty adapting to new situations without getting upset, became easily discouraged by difficulties and minor setbacks, and often had an uneven, unhappy disposition.

Parent completed Compton Unified's standard Section 504 packet. On the Health Evaluation and Referral forms, Parent reported that Student had pseudoseizures caused by stress and anxiety, which substantially limited major life activities, such as walking, learning, and breathing. Student was taking two prescription medications –one an anticonvulsant, and another for anxiety. Parent said current medical records from Harbor UCLA and physician reports supported Student's health concerns. Parent did not attach the medical records, as requested by the referral form.

Parent signed and dated the Parent Consent for Release of Medical Information for Harbor-UCLA Medical Center. However, Parent did so because the consent form was part of the Section 504 packet that she was required to complete before the Section 504 meeting could be held. Parent later told the Section 504 team members at the meeting that Parent would provide the medical records. Accordingly, Ortega wrote on the consent form that Parent would provide the copies of the medical information, effectively nullifying consent and rendering the release useless. Though Parent brought

medical records to the meeting for review, Parent did not thereafter provide Compton Unified access to Student's medical records.

Compton Unified convened the Section 504 meeting on Tuesday, October 24, 2017. Attending were: Parent; Student; Principal Ortega; teachers Watkins and Rowerdink; Dr. Benton; Davida Fountain, an administrator of Pupil Services; district nurse Ijeoma Maduakor; health assistant Claudia Coley; and curriculum specialist, Alicia Jackson. The purpose of the meeting was to determine 504 eligibility and develop a plan of accommodations to support Student. The team reviewed the referral packet Parent completed and teachers gave an update of Student's academics. Watkins reported Student's math performance to be at a 7.5 grade level. Student needed to complete math diagnostics. Watkins had granted Student's request for a seat change. Rowerdink reported Student was at grade level in her classes.

Parent reported that Student was in counseling, where she received strategies to cope with stress, anxiety, and being upset, such as controlling her breathing and walking. Though Student trusted some adults at school, Student was uncomfortable sharing her issues because such sharing was socially unacceptable.

Student had four pseudoseizures at school since the beginning of the school year. Nurse Maduakor asked Student what her feelings were when she had an episode. Parent encouraged Student to participate. Ortega asked Student if she felt threatened. Student stood up, started to have an episode, and fell to the ground. Parent laid Student on her right side and calmed Student by talking to her. The episode passed.

The meeting continued. Nurse Maduakor reviewed the medical documentation, regarding pulmonary stenosis, neurology referral, pseudoseizures, and present

medication. The team considered Student's safety at school to be a priority and found that Student met the eligibility criteria for Section 504.

Parent requested counseling and a certified nursing assistant or adult aide (with mental health training) to support Student at school. The team agreed that Student required support. Nurse Maduakor was concerned about Student attending an upcoming field trip, noting that the only health supports were herself and health assistant Coley. Fountain suggested that a Compton Unified counselor provide case management while Student received treatment from an outside agency. Parent disagreed, asking that Compton Unified provide treatment/direct counseling services during the school day.

The team proposed a Section 504 plan consisting of a "buddy system" where other pupils would be assigned to be with Student during unstructured times outside of the class (lunch, recess, physical education), mental health case management, coping strategies (deep breathing, taking a supervised walk, counting to 10, etc.), and extra time for assignments, tests, and projects. Student would go to the bathroom with another pupil and rest in the health office when not feeling well. Parent would report absences and provide medical updates as needed. The nurse would provide seizure education to Student's class. The issue of supports on field trips was tabled for further discussion.

Parent did not agree that the buddy system properly addressed Student's and others' safety. Student was tall for her age and another pupil would have difficulty protecting Student during an episode, falling to the floor or out of a chair. Parent continued to request full-time, trained adult support. Parent was told that her request would be passed onto Dr. Virginia Ward-Roberts, the Senior Director of Pupil Services, who would make the decision.

At the meeting, Dr. Benton offered Parent to have Student assessed for special education services, perhaps with other health impairment or emotional disturbance eligibility. Parent strongly rejected the assessment proposal. Parent said that Student's plans and professional goals would be compromised if she was labeled a special education student, especially with an eligibility of emotional disturbance.

CHILD FIND TRIGGERED

A school district's child find obligation toward a specific child is triggered when there is knowledge of, or reason to suspect, a disability, and reason to suspect that special education services may be needed to address that disability. (*Dept. of Education, 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 school district's appropriate inquiry is whether the child should be referred for an evaluation, not whether the child actually qualifies for services. (*Ibid.*) Either a parent's suspicion or a district's suspicion may trigger the need for a child-find initial evaluation to determine if the student is a child with a disability within the meaning of the IDEA. (*Pasatiempo by Pasatiempo v. Aizawa* (9th Cir. 1996) 103 F.3d 796, 802.)

The actions of a school district with respect to whether it had knowledge of, or reason to suspect, a disability, must be evaluated in light of information that the district knew, or had reason to know, at the relevant time. It is not based upon hindsight. (See *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (citing *Fuhrmann v. East Hanover Bd. of Educ.* (3rd Cir. 1993) 993 F.2d 1031, 1041).) The Ninth Circuit Court of Appeals noted in an unpublished decision that it had not yet articulated a test for determining when the child find obligation is triggered. (*G.M. ex. rel. G.M. v. Saddleback Valley Unified Sch. Dist.* (9th Cir. 2014) 583 Fed.Appx. 702, 703, fn. 1.)

Here, Compton Unified's child find duty was triggered at the October 24, 2017 Section 504 meeting. The Section 504 attendees heard from Parent regarding Student's medical condition, medication regimen, and counseling. Parent had brought medical records, confirming the pseudoseizure diagnosis. Student's teachers reviewed her academics, behaviors, and social relationships. The entire team recognized the safety concerns associated with Student's episodes on the school campus. Increasingly longer absences followed the pseudoseizure episodes, which affected her academics. Notably, Student had a pseudoseizure when she returned to school the day before the meeting and an episode during the meeting. Therefore, the team had sufficient information to suspect that Student may have a disability and may need special education services to access her education. Dr. Benton recognized this and offered to have Student assessed. The triggering of Compton Unified's child find obligation was the equivalent of a referral of Student for special education assessment.

Compton Unified's child find duty was not triggered earlier. Though Compton Unified personnel were concerned about Student's episodes, Compton Unified did not have sufficient information to reasonably suspect Student had a disability that may need special education assessment. Student's first episode was September 14, 2017. Student then returned to school for the remainder of September, but for a couple of absences. Student had a second episode on October 2, 2017 and was out ill for the remainder of the week. She returned on Monday, October 9, 2017. Ortega only knew what Parent had shared. Parent had not provided Compton Unified with medical records or reports and had withheld Student's prior history of depression, counseling, and seizure activity. School personnel did not know if Student's pseudoseizures were temporary and could be medically addressed. Compton's Unified child find obligation was not triggered as of the October 2, 2017 episode.

Student's October 10, 2017 episode similarly did not trigger Compton Unified's child find obligation. Compton Unified personnel had not received any additional substantive information regarding Student's condition. The episode did, however, cause Ortega to seek guidance and support, for purposes of gathering additional data and input, to enable an informed decision. When Pupil Services did not respond to her request, Ortega dutifully sought direction and guidance from other district level staff, such as Dr. Benton and Dr. Hawkins. Along with Parent, Ortega wanted a Section 504 meeting, where the attendees could review data and input from all sources. Ortega also recognized the meeting may provide information that could trigger referral for special education assessment, so she asked Dr. Benton to attend and assist in identifying a possible assessment need.

Dr. Simun opined that child find had been triggered earlier than October 24, 2017. Dr. Simun's opinion in this regard was unpersuasive. Dr. Simun had the benefit of having reviewed all of Student's medical records, including those from Harbor following the September 14, October 2, and October 10, 2017 episodes. Compton Unified did not see these records before the Section 504 meeting. Dr. Simun was aware of prior incidents before Student started at Bunche; Compton Unified was not. Also, Dr. Simun's opinions were based solely upon a review of records, having never spoken to Student, Parent, or any of the involved personnel. Dr. Simun was generally unaware of what information was withheld by Parent. During testimony, Dr. Simun was noticeably surprised to have learned that Compton Unified offered to assess Student for special education at the October 24, 2017 meeting and that Parent refused.

Compton Unified did not have a basis of knowledge that triggered its child find duty before the Section 504 meeting. Student met her burden of proving by a

preponderance of the evidence that Student's child find duty was triggered, as of October 24, 2017.

ASSESSMENT PLAN

Once a child is identified as potentially needing specialized instruction and services, the district must conduct an initial evaluation to determine whether the child is eligible for special education. (34 C.F.R § 300.301; Ed. Code, § 56302.1.) No action may be taken to place a student with exceptional needs in a program of special education without first conducting assessment of the student's educational needs. (20 U.S.C. § 1414(a)(1)(A); Ed. Code, § 56320.)

Parental consent for an assessment is required before a school district can conduct an initial assessment of a student. (20 U.S.C. § 1414(c)(3); Ed. Code, § 56381, subd. (f); 34 C.F.R. § 300.300(a)(1)(i).) The triggering of Compton Unified's child find duty was the equivalent of a referral for special education assessment. When a student is referred for assessment, the school district must provide the student's parent with a written proposed assessment plan, along with notice of the parent's rights, within 15 calendar days of referral for assessment not including school vacation in excess of five schooldays. (Ed. Code, § 56321, subd. (a).) Therefore, Compton Unified was not required to immediately issue an assessment plan when its child find duty was triggered at the Section 504 meeting.

Dr. Benton wanted to have further conversations with Parent, gaining Parent's consent before issuing an assessment plan. This was especially true because of Parent's forceful refusal when he offered an assessment at the meeting. Also, school districts shall make reasonable efforts to obtain informed consent from the parent before conducting an initial assessment. (20 U.S.C. § 1414(a)(1)(D); Ed.Code, § 56321,

subd.(c)(1); 34 C.F.R. § 300.300(d)(5).) Dr. Benton did not recall specifics of further conversations with Parent regarding Student's assessment. Though Dr. Benton thought he had someone issue an assessment plan, Compton Unified did not.

Student missed a few days of school following the October 25 and November 7, 2017 episodes, but she was otherwise in attendance through November 17, 2017, the week before Thanksgiving break. Parent and family went to Calimesa, California, for Thanksgiving holiday week. Parent owned a house in Calimesa and it is referred to as the "Calimesa House." Sometime early in the week, Student tried or said she tried to harm herself. Student was admitted to Canyon Ridge Hospital, in Chino, California, for 10 days of in-patient psychiatric care, and was discharged on Thursday, November 30, 2017. She was on independent study at school for the week following Thanksgiving break, through December 1, 2017.

Student demonstrated that Compton Unified was obligated to issue a proposed assessment plan within 15 days from when Compton Unified's child find duty was triggered on October 24, 2017. November 8, 2017 was the last day upon which Compton Unified could have timely met its statutory duty. It did not. Compton Unified did not provide Parent with an assessment plan until January 2018, after Parent requested assessment.

NO DENIAL OF FAPE

Child find does not guarantee eligibility for special education and related services under the IDEA. It is merely a locating and screening process which is used to identify those children who are potentially in need of special education and related services. Once a child is identified as potentially needing specialized instruction and services, the district must conduct an initial evaluation to determine the child's eligibility for special

education. (34 C.F.R § 300.301; Ed. Code, § 56302.1.) Once the assessment is completed, the IEP team considers the assessment, as well as evaluations and information provided by the parent, and makes the decision as to whether the child qualifies for special education and what special education services and supports the child needs. (20 U.S.C. § 1414(c)(1)(a) and (b).)

Student returned to school on December 4, 2017. In the early afternoon, Student had a pseudoseizure episode. When notified, Ortega immediately dispatched a Campus Security assistant to the scene. Personnel attempted to follow the doctor's November 9, 2017 directive by allowing Student to convulse, telling her she was safe, and providing a nurturing environment. The other students were evacuated from the classroom. Student opened her eyes, stood up on her own, and ran out of the classroom. Ortega and security followed, calling for Student to stop; Student refused. Student ran to a back field, around the staff parking lot, out of a side gate, and left the Bunche campus. Security requested support from Compton Unified school police. Ortega and other personnel pursued Student, who ran into the center of a nearby street intersection, stopping cars. Student yelled "I want to kill myself. I want to kill myself my way." School personnel led Student out of the street and on to the sidewalk. Student tried to bite, pinch, and scratch them. Ortega called Parent, who quickly arrived on the scene. A Compton Unified school police officer arrived, assessed the situation, and determined Student should be placed on a Welfare and Institutions, section 5150 hold for 72 hours, based upon Student's attempted self-harm.

Student was transported to Harbor, admitted into the psychiatric department for three days, and identified as a suicide risk with depressive disorder. Student was then transferred and admitted to the UCLA Resnick Neuropsychiatric Hospital in Los Angeles on December 8, 2017, where she remained for two weeks. Resnick treated, evaluated

and assessed Student, issuing a neurological evaluation upon Student's December 22, 2017 discharge.

Resnick diagnosed Student with major depressive disorder and unspecified anxiety disorder. Student experienced excessive anxiety and worry, manifesting in restlessness, insomnia, easy fatigue, muscle tension, irritability, and difficulty concentrating. Student demonstrated social anxiety, with limited use of verbal communication for social purposes, which led to significant impaired physical symptoms. Resnick prescribed a daily medication regimen of Thorazine and Escitalopram.

Resnick conducted cognitive, academic achievement, and visual motor integration assessments. Resnick concluded Student's deficits adversely affected her ability to access instruction in a general curriculum, which may also exacerbate her fragile emotional status. Student needed a school program that provided instructional services, supports and supervision to help her achieve educational benefit. Resnick recommended a full assessment for an IEP.

On January 9, 2018, Parent sent Ortega a letter requesting a special education assessment for Student. Compton Unified issued an assessment plan for Student later the same day. Compton Unified proposed to assess Student in the areas of academic achievement, health, intellectual development, language and speech, motor development, social emotional and behavior, adaptive behavior, and an Educationally Related Intensive Counseling Services assessment. Parent signed the assessment plan, adding an occupational therapy assessment based upon Resnick's report that found Student had motor delays. Parent returned the assessment plan on January 11, 2018, which started the 60-day period for Compton Unified to complete assessments and

convene an IEP team meeting. The 60th day would have been March 12, 2018. (Ed. Code, § 56344, subd. (a).)

After Resnick, Student was admitted to BHC Alhambra Hospital, a mental health facility. BHC Alhambra released Student on February 2, 2018. Parent emailed Dr. Benton, Ortega, and Dr. Ward-Roberts on February 3, 2018. Parent explained that Student would go to school the following Monday, February 5, 2018, and that Student would need aide support. Dr. Benton recognized that Student needed aide support when she returned to school and, with Ortega, made arrangement to have Compton Unified behavioral personnel support Student. Watkins saw an adult nearby Student, at all times, after her return to school in February 2018. However, Compton Unified did not have enough behavioral personnel to continue to provide Student with full-time adult support. Student attended school through Friday, February 9, 2018, but was not in school the following week. In anticipation of Student's full-time return to school on February 21, 2018, Dr. Benton arranged to have an outside service provide additional behavioral support. However, Compton Unified disenrolled Student as of February 23, 2018.

Student presented extensive evidence relative to Parent's request for adult aide support, first made at the Section 504 meeting. Pupil Services was not responsive regarding aide support because Dr. Ward-Roberts had been dealing with serious medical issues. Dr. Ward-Roberts was out for weeks at a time in fall and winter of 2017, and was on medical leave from February 7, 2018 through the end of the 2017-2018 school year. Various Compton Unified district level staff disagreed as to whether full-time aid support could be a Section 504 accommodation. Some contended that Student should have received aide support, pursuant to the general mandate that a student was entitled to a safe educational environment. Others thought

Compton Unified should provide aide support so Compton Unified could conduct the special education assessments. Dr. Benton arranged for behavior specialist Vanessa Burrell to support Student. This caused disagreement and resentment amongst personnel because "proper channels" were not followed. Personnel were inappropriately pulled from assigned duties, igniting internal investigations. This evidence may be relevant to pending civil litigation between the parties, a Section 504 due process, or a complaint against Compton Unified that Parent filed with the U.S. Department of Education, Office for Civil Rights. However, this due process was limited to issues under the IDEA. Student did not cite any federal or state special education law that required a school district to provide services to a child suspected of a disability who had not yet been found eligible for special education. These disagreements and interdepartmental intrigue regarding aide support to Student, who had not yet been assessed and found eligible, were not relevant to determining Compton Unified's obligations under IDEA.

Compton Unified did not complete all of Student's assessments and never convened an IEP team meeting because of Student's disenrollment. Compton Unified did finish the psychological educational assessment, the educational related intensive counseling services assessment, and the functional behavior assessment. Compton Unified's psychoeducational assessment found that Student met the criteria for three special education eligibilities as a student with emotional disturbance, other health impairments, and specific learning disability. The functional behavior assessment recommended behavior supports and a behavior intervention plan for Student's IEP.

Student contends that Compton Unified's failure to timely issue an assessment plan meant that Compton Unified did not complete Student's assessments and convene an initial IEP before Student was disenrolled on February 23, 2018. Parent could have

signed the assessment plan at any time after it had been issued. Therefore, Student argued, Compton Unified denied Student a FAPE because Student's assessments and initial IEP team would have found Student eligible for special education.

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., et al.* (9th Cir. 2006) 464 F.3d 1025, 1031-1033.) A procedural violation results in liability for denial of a FAPE only if the violation: impeded the child's right to a FAPE; significantly impeded the parent's opportunity to participate in the decision-making process; or caused 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.). A due process hearing decision cannot be based solely upon a nonsubstantive procedural error. (Ed. Code § 56505(j).)

Here, Student did not prove that Parent would have signed an assessment plan before January 9, 2018. Parent stated that she believed Compton Unified should have provided an assessment plan, so she had the option to sign. However, Parent never stated when or what event would have caused her to agree to the assessment. Student did not otherwise present evidence as to when Parent would have signed an assessment plan.

The evidence demonstrated that Parent would not have signed an assessment plan before her January 9, 2018 request. Parent expressed some belief that Student may have been using the events to manipulate Parent. Parent did not want paramedics called, providing a pediatrician's November 9, 2017 letter instructing Compton Unified not to call an ambulance when Student had a pseudoseizure. In addition, Parent

continued to affirmatively state that Parent did not want Student assessed for special education.

In December 2017, Parent was laterally moving to a different special education administrator position that was primarily responsible for legal and compliance issues. Compton Unified hired Narin Khy-Ly to take Parent's prior special education administrator position on or about December 7, 2017. Parent and Khy-Ly had the same position, but different responsibilities. Khy-Ly had a bachelor's and a master's degrees, had been working in education for about 11 years, and held special education teacher and administrative credentials. Khy-Ly was still in her special education administrator position, when she testified at the hearing. Her testimony was consistent, credible, and persuasive.

As part of her special education administrator position, Khy-Ly was responsible for assuring that special education students received their IEP supports and services for the schools under her administration. Parent was tasked with introducing Khy-Ly to her duties. Therefore, beginning the week of December 11, 2017, Parent drove Khy-Ly to the school sites for which Khy-Ly would be responsible, for about four to six days.

During these times, Parent and Khy-Ly chatted, asking each other about their backgrounds and families. Parent said that she had a daughter at Bunche, who was in the hospital at the time. Student was having issues with panic attacks. Parent was concerned and stated that Student might need some supports. Khy-Ly asked Parent why she did not get Student assessed for special education. Parent said she did not want Student to be labeled a special education student. Khy-Ly and Parent had a similar discussion regarding Parent not wanting assessment later in the month of December 2017.

These conversations took place after the December 4, 2017 episode when Student ran into traffic and during Student's hospitalization at Resnick. Up to Bunche's winter break, Parent affirmatively stated she did not want Student assessed for special education. At hearing, Parent acknowledged that she did not want Student in special education, but asked for assessment in January 2018 because she "had no choice." Student did not provide persuasive evidence that Parent would have signed an assessment plan before Parent requested assessment on January 9, 2018.

Student asserted that Compton Unified should have filed a request for due process to obtain an order to assess Student, without Parent's request. This argument was unpersuasive. In the event a parent does not provide consent for initial assessment, or the parent fails to respond to the request to provide the consent, the district may bring a due process complaint seeking an order allowing it to conduct the proposed assessment. (20 U.S.C. § 1414(a)(1)(D)(ii)(I); Ed. Code, § 56321, subd. (c)(2); *Schaffer, supra*, 546 U.S. at p. 53 [school districts may seek a due process hearing if parents refuse to allow their child to be evaluated].)

Here, if Compton Unified filed a due process request with OAH, the matter would not have been resolved in time to complete assessments and convene an initial IEP before Student's February 26, 2018 disenrollment. If Compton Unified provided an assessment plan on November 8, 2017, Parent would have had until November 23, 2017 to make her decision. (Ed. Code, § 56321, subd. (c)(4).) Compton Unified could have thereafter filed a due process hearing request. But, even if filed the following business day, a decision after a due process hearing would have taken at least 45 days. (Ed.Code, § 56043, subd. (s).) And, if the decision allowed assessment of Student without parental consent, Compton Unified would have the statutory 60 days to complete assessment and hold an initial IEP. As Dr. Simun acknowledged after finding out that Parent

declined assessment, a school district's due process filing to enable initial assessment was very time consuming. Here, the due process filing would not have enabled Compton Unified to assess any earlier than that provided by the signed assessment plan. Also, Compton Unified was not required to pursue assessment of Student by filing a due process request and was not in violation of its special education obligations under IDEA for not doing so. (Ed.Code, § 56321, subds. (c)(2) and (c)(3); 34 C.F.R. §300.00(a)(3).)

Student did not meet her burden of proof of demonstrating by a preponderance of the evidence that Compton Unified's procedural error, in not issuing an assessment plan after its child find duty was triggered, denied Student a FAPE. Compton could not assess Student without Parent's permission. The evidence persuasively demonstrated that Parent continued to resist special education assessment until Parent requested an assessment on January 9, 2018. Student's assessments were not delayed by Compton Unified's violation of its child find obligations. Student failed to meet her burden of proof and Compton Unified prevailed on Issue 1.

ISSUE 2: DID COMPTON UNIFIED DENY STUDENT A FAPE AND PARENT HER RIGHT TO PARTICIPATE BY UNILATERALLY DISENROLLING STUDENT FROM COMPTON ON OR ABOUT FEBRUARY 2018?

Student claimed that Compton Unified wrongfully determined that Parent was not a resident of Compton, as Parent claimed, and improperly disenrolled Student as of February 23, 2018. Compton Unified therefore did not complete Student's initial assessment or convene an IEP team meeting, denying Student a FAPE. Compton Unified asserted that it appropriately investigated Parent's claim of Compton residency, determined Parent was not a Compton resident, and properly disenrolled Student.

Under the IDEA, a local education agency is charged with "providing for the education of children with disabilities within its jurisdiction." (20 U.S.C. § 1413(a)(1).) California law requires public school students to attend a school in the school district "in which the residency of either the parent or legal guardian is located," unless exceptions, such as approval of an inter-district transfer, apply. (Ed. Code, § 48200; *Katz v. Los Gatos-Saratoga Joint Union High Sch. Dist.* (2004) 117 Cal.App.4th 47, 57.) That school district becomes the local education agency responsible for providing an eligible student a FAPE. (20 U.S.C. § 1401(19); 34 C.F.R. § 300.28(a); Ed. Code, § 56026.3.)

A residency determination for the purpose of the IDEA is made under state law and is no different from a residency determination in other types of cases. (*Union Sch. Dist. v. Smith* (1994) 15 F.3d 1519, 1525.) "The residence of the parent with whom an unmarried minor child maintains his or her place of abode" is the residence of that child. (Gov. Code, § 244, subd. (d).) Parent's residency therefore determines Student's residency.

PARENT'S RESIDENCY

Student's sole witness in support of Parent's residency was Parent. Parent testified as follows: Grandmother was in a skilled nursing facility during Christmas 2017. Grandmother had been ill for quite some time and had been off of work. However, in December 2017, Grandmother and the family learned there was little more to be done medically. Parent said she therefore moved, with her three children, from her Los Angeles House to Grandmother's Compton House around the beginning of January 2018. Grandmother was placed on palliative care through Kaiser Downey Medical Center. Parent's stated intent was to reside in the Compton House and care for Grandmother until she passed away. If Grandmother passed away before the end of the Compton Unified school year, Parent intended to remain at the Compton House until

Student completed eighth grade. Parent then intended to move to her Calimesa House, leaving Compton Unified. Parent and her children went to the Calimesa House for Thanksgiving and winter break. Grandmother died on June 17, 2018.

On January 22, 2018, Parent notified Compton Unified's human resources department of her change of address from the Los Angeles House to the Compton House. On the same date, Parent applied for health care provider leave from Compton Unified for the stated purpose of caring for Student's chronic medical condition, such as transportation to medical appointments and medication management. Parent acknowledged that the caregiver leave also allowed Parent to care for Grandmother. However, Parent was often at work at Compton Unified, when Parent's presence was not needed by Student or Grandmother. Parent later sought medical leaves of absences from March to May 2018.

COMPTON UNIFIED INVESTIGATES PARENT'S RESIDENCY

Parent told Dr. Benton that she changed her address and moved into Compton Unified's geographical area. Thereafter, Dr. Benton heard Dr. Brawley say that Parent did not live at the Compton House. On February 8, 2018, Dr. Benton emailed Parent, stating "I want to remind you, if you haven't done so already, to provide enrollment with proofs/bills for the address (the Compton House) below." Parent responded that she was never asked to provide such information, but she definitely could and would. Dr. Benton responded, "OK. Yes, you'll need to do that to establish residency in Compton. Thanks." Parent was therefore aware that, as of that time, her Compton residency was being questioned by Compton Unified.

On February 13, 2018, Parent completed and submitted a Student Referral Evaluation Form and an Annual Update Form, informing Compton Unified's Transfer

Permits Office that Student changed her address to the Compton House. Parent also requested an intradistrict attendance permit, which would allow Student to continue to attend Bunche, though Student's home school for the Compton House address was Willowbrook Middle School. To verify residency, Parent submitted an undated printout from the SoCalGas website, showing that bills for the Compton House should be sent to Parent at the Compton House address. The account for the Compton House was listed in a dropdown menu window on the website and, therefore, Parent likely had accounts for other addresses. The SoCalGas website billing printout may be considered as evidence of residency (Ed. Code, § 48204.1; Compton USD, AR 5111.1, District Residency.) However, though accepted by the permits office, this bill did not verify Parent's residency at the Compton House. Both Dr. Ward-Roberts and her replacement at Compton Unified's Pupil Services, Dr. Abimbola Williams-Ajala, persuasively opined that they would not have confirmed residency based on the SoCalGas printout. They would have required additional definitive information establishing that Parent and Student were living at the Compton House.

Dr. Ajala worked at Compton Unified for 31 years and became executive director of Compton Unified's Pupil Services in April 2018. Dr. Ajala testified at the hearing. Dr. Ajala had been a classroom teacher, a specialist, an assistant principal, a district supervisor of elementary schools, and part of human resources, before assuming her pupil services duties. Pupil services included enrollment, permits, and residency issues and Dr. Ajala had been involved in 4 or 5 residency investigations during her tenure. Dr. Ajala did not know Student but was acquainted with Parent from human resources. Dr. Ajala was not involved in Parent's residency issues before becoming pupil services director. Dr. Ajala demonstrated a keen awareness of enrollment and residency process and procedures and her testimony was insightful and persuasive.

Dr. Ajala said that when a parent enrolls a student, the enrollment clerk must accept the parent's evidence of residency. But enrollment could be revoked if the evidence was later reviewed and found to be false or unreliable. When there are doubts regarding residency, for whatever reason, the information would be brought to Dr. Ajala, who would seek additional evidence of residency, as appropriate. Part of a residency inquiry may include sending a social worker or the school police for a home visit. Pupil services would not notify a parent before a home visit because the notice gave the parent an opportunity to cover up a lack of residency, by being in the household, staging a living situation, or bringing others to the home to attest to their residency.

When Compton Unified's superintendent or designee reasonably believed that a student's parent provided false or unreliable evidence of residency, he or she may make reasonable efforts to determine that the student meets residency requirement. (Ed. Code, § 48204.1; Compton USD, AR 5111.1.) Here, Dr. Brawley received information which caused him to doubt Parent's claim that she and her children lived at the Compton House. Dr. Ward-Roberts was Dr. Brawley's designee. However, Dr. Ward-Roberts was unavailable due to illness and Dr. Ajala had yet to be named director. Dr. Brawley took the lead in verifying Student's residency.

In mid to late February 2018, Parent openly shared that she was under investigation, regarding her residency, in front of Khy-Ly, Burrell, and Danielle Wright, another special education administrator. Parent said that Compton Unified school police discovered that she did not reside with Grandmother at the Compton House. Parent said that she did not live in Compton with Grandmother but had a home in the desert. Parent said she would move some of her belongings into Grandmother's home and then invite the police to the Compton house. In her testimony, Parent stated there

was no need for her to have moved any of her belongings into the house because Grandmother's Compton House was furnished.

William Wu was Chief of the Compton Unified School Police since December 2013 and testified at the hearing. Chief Wu attended police academy and was also a lawyer, with an active California Bar license. He practiced law for about three to five years and had been in law enforcement for about 20 years. Chief Wu reported that, on February 23, 2018, a Compton Unified School Police sergeant attempted a package delivery to Parent at the Compton House, but nobody was home. The officer talked to neighbors who stated they knew of an elderly female who resided at the Compton House but had never seen kids at the house. The officer returned later in the day but was unable to contact anyone at the house. The school police concluded Parent did not reside at the Compton House.

DISENROLLMENT

Dr. Brawley met with Parent on February 23, 2018, and informed Parent that the Compton Unified School Police determined that Parent did not live at the Compton House. Dr. Brawley stated that Friday, February 23, 2018, was Student's last day at school with an enrollment date ending Monday, February 26, 2018. Parent wrote Ortega on February 24, 2018, asking for a formal letter stating that Student was not allowed to attend Compton Unified, ostensibly because Parent did not want to be pursued by the School Attendance Review Board for not having Student attend school.

On Friday, March 2, 2018, Ortega received a letter from Attorney Nicole Hodge Amey, stating that Student was improperly disenrolled and that Parent would return Student to school the following Monday. On Friday, March 2, 2018, at 7:00 p.m., a Compton Unified School Police officer attempted to contact Parent at the Compton

House. The officer talked to Parent's aunt, who was visiting at the Compton House. The aunt told the officer that she was aware that Student attended Compton Unified, but that Student did not live at the Compton House. The officer again talked to neighbors who had lived in the neighborhood for years and who said they had not seen kids at the Compton House.

Dr. Brawley designated Ortega with the task of writing a letter and informing Parent of the basis of the disenrollment. Ortega wrote the letter, reviewed the February 23 and March 2, 2018 Compton Unified police visits to the Compton House, and reported the police finding that the Compton House was not the actual residence of Parent and her children. Therefore, Student was not a student residing within Compton Unified's boundaries, Compton Unified was denying Student's enrollment, and Student would not be allowed to attend Bunche. Ortega ended by inviting Parent to contact the Pupil Services office or the Office of the Superintendent if Parent required further information regarding the address verification process or enrollment. Ortega gave the letter to Parent on Monday, March 5, 2018.

While at work, Parent stated in front of Khy-Ly, Burrell, and another employee that Compton Unified confirmed that Parent did not reside in Compton and that Compton Unified disenrolled Student. Parent said she would reconcile the problem by having Grandmother sign an affidavit saying that Parent and Student lived in the Compton House. Khy-Ly thought it strange that someone would go to such lengths to prove that they resided at a house where they did not live, so Khy-Ly asked Parent why she did not just move into the Compton House. Parent stated that she was a "grown ass woman" and would not live with her mother. Parent also said that Ortega had given her a letter, that the permit was revoked, and that she was "going to get the district."

On April 30, 2018, Attorney Amey filed a request for due process with OAH on behalf of Parent and Student. On May 3, 2018, Parent submitted an Inter-District Transfer/Permit Application Request with Pupil Service's Office of Transfers and Student Permits. Parent was seeking a permit allowing Student's older brother to continue to attend an LAUSD high school. Parent explained in her testimony that she was concerned about her son continuing in an LAUSD school when he was now living in Compton. Parent was familiar with the necessity of an inter-district permit and had no credible explanation for the almost four-month delay. Parent claimed in the application that her son lived at the Compton House, with Parent, Student, and younger sister.

Dr. Ayala reviewed Parent's inter-district permit application and was provided the facts regarding Student's disenrollment in February 2018. Dr. Ayala found the utility bill that Parent submitted with the February 12, 2018 intradistrict attendance permit application. Dr. Ajala wrote a May 11, 2018 letter to Parent saying that it appeared that Parent was claiming "to have now taken steps to reside with the District's boundaries," and referred to the utility bill. Dr. Ayala said that if Parent was now claiming that Parent and Student were in fact residing within Compton Unified's boundaries and Parent intended to seek educational services, Parent needed to take necessary steps to complete Student's enrollment. Dr. Ayala signed the inter-district permit for Student's older brother to remain at LAUSD.

Student asserted that Dr. Ayala's letter was an admission that the utility bill sufficiently established Parent's residency, that the February 2018 disenrollment was in error, and that Parent was instructed to again enroll Student. This misstates the letter's clear language. Parent told Compton Unified in the May 2018 inter-district permit application that Parent and her three children lived at the Compton House. Dr. Ayala gave Parent the benefit of doubt, wrote the letter, and told Parent that if this was true,

Parent would have to reenroll Student for school. Dr. Ayala's letter did not acknowledge Parent's residency within Compton Unified's boundaries and did not instruct Parent to enroll Student.

In the meantime, on May 11, 2018, Dr. Brawley asked Chief Wu to deliver a manila envelope to Parent at the Compton House. Chief Wu and Compton Unified police captain Thomas McFadden went to the Compton House in the early afternoon. They approached a male standing next to a car in the Compton House driveway, identified themselves, and asked if Parent was home. The man told the officers that Parent was not there and he did not know where she was. The police officers' presence appeared to agitate the man, who was uncooperative and raised his voice, and asked the officers to leave. The man was Parent's 34-year-old younger brother, who lived at Compton House with Grandmother.

Chief Wu and captain McFadden left the Compton House property and canvased the neighborhood to ascertain if any neighbors knew Parent or observed young children at the Compton House. They went to 12 houses and talked to five residents, most of whom had lived near the Compton House for decades and were well acquainted with the neighborhood. Captain Wu had a photograph of Parent from Human Resources to help confirm the identity of the person he was seeking. The neighbors told Captain Wu that Parent had been seen at the Compton House on occasion and that a lot of people had been visiting the house. One neighbor, who knew of Grandmother's medical condition, saw Student at the Compton House with Parent in the summer 2017, but had not seen Student since then. All the neighbors stated they had not seen any young children at the Compton House. Chief Wu and Captain McFadden concluded that Parent did not reside at the Compton House. Chief Wu prepared a written

memorandum, summarizing their efforts. Chief Wu gave the memo and the undelivered envelope to Dr. Brawley.

On May 15, 2018, Parent submitted a completed enrollment packet to pupil services, stating Parent and the three children lived at the Compton House. Parent attached a copy of a March 30, 2018 SoCalGas billing, addressed to Parent at the Compton House. Parent wanted Student to be placed at Bunche, but Compton Unified could not offer Bunche. Dr. Ayala and Parent talked and exchanged emails regarding placement, with Parent finally asking that Student be put on independent study the remainder of the year. Also, Senior Director of Special Education, Dr. Keichea Reever, learned of Parent's attempted reenrollment and reached out to Parent for purposes of completing the assessments and scheduling the initial IEP team meeting. Parent, however, demanded that Compton Unified pay for an independent educational evaluation. Parent did not complete enrollment and placement, claiming that Compton Unified was trying to get Parent to dismiss her due process request.

COMPTON HOUSE RESIDENCY

In determining Parent's place of residence, the following rules shall be observed:

1. It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which she returns in seasons of repose;
2. There can only be one residence;
3. A residence cannot be lost until another is gained; and
4. The residence can be changed only by the union of act and intent.

(Gov. Code, § 244.)

By these standards, Student did not prove by a preponderance of evidence that Parent was a resident of Compton in 2018.

STUDENT'S EVIDENCE

Student's documentary evidence of residency was sparse, duplicative, and unpersuasive. Parent's January 22, 2018 notice of change of address to human resources did not require confirmation of residency and Parent's representation was taken at face value. A subsequently issued Compton Unified paystub with the Compton House address reflected what Parent told human resources. Dr. Benton's February 8, 2018 email referred to the address Parent provided. On March 18, 2018, Compton Unified mailed a copy of a January 2018 form letter in an envelope addressed to Parent at the Compton House, which was the address Parent gave Compton Unified, was after Student's disenrollment, and was not evidence of residency.

Student submitted three different documents from SoCalGas indicating that Parent was the name on the Compton House account. Parent gave Compton Unified a gas bill with the February 2018 intradistrict permit application and another with the May 2018 enrollment forms. At hearing, Student submitted a July 1, 2020 letter from SoCalGas stating Parent was the service name on the Compton House account from January 1 to September 4, 2018. Parent was the successor trustee of Grandmother's revocable trust and was charged with attending to Grandmother's finances and selling the Compton House after Grandmother's death. Having Parent as the service name on the Compton House's gas account, especially during the difficult last days of Grandmother's illness, would not be surprising. SoCalGas did not do a residency check before listing Parent as the account's service name. These documents did not establish residency.

On June 12, 2018, Compton Unified's Senior Director of Human Resources signed a Request for Employment Verification, when Parent still worked for Compton Unified, but Parent entered the Compton House address. On July 2, 2018, Parent filed a Request for Domestic Violence Restraining Order with the Los Angeles County Superior Court, seeking an order restraining Parent's younger brother, who had been living at Grandmother's Compton House. Parent wrote that she had been living at the Compton House to care for Grandmother. The application was written after Student had been disenrolled and after Parent and Student filed a due process complaint against Compton Unified. Again, Parent's representations did not verify Parent's residency at the Compton House.

Compton Unified introduced evidence of two letters from PIH Health addressed to Parent at the Calimesa House, dated April 25 and June 11, 2018. Parent's private medical information was properly redacted in all letters. The April 25, 2018 Calimesa House letter summarized Parent's medical examination, assessment, and plan. Student introduced two letters from PIH addressed to Parent at the Compton House, dated March 29 and April 25, 2018. These two Compton House letters from PIH Health were "To Whom It May Concern" and, together, stated Parent was entitled to a medical leave of absence from March 29 to May 9, 2018. Notably, the April 25, 2018 Calimesa House and Compton House letters came from the same PIH Whittier office and were electronically signed by the same doctor on the same date. The only person who had control of the addresses to which PIH would address these two letters was Parent. Since Parent was contesting Compton Unified's finding of nonresidency and Student's disenrollment, Parent understandably wanted the Compton House, not the Calimesa House, address on the letters she would present to Compton Unified to obtain medical leave of absence. The letters do not support a finding of residency but, instead,

evidence a calculated effort by Parent to control the documentary record of where she lived.

Student did not offer the type of documentation that would be expected from Parent having moved an entire family from one house into another house, where they intended to reside. Parent did not produce bank or credit card statements, or other financial information like cell phone bills. Parent acknowledged she did not change the address on her California driver's license. Parent claimed to have used the Compton House address on her 2017 taxes, but redacted copies were not offered. Parent did not introduce voter registration information and did not provide a copy of a postal change of address form. Student's documentary showing was remarkably weak.

Although the technical laws of evidence do not apply to these proceedings (see Cal. Code Regs., tit. 5, § 3082, subd. (b)), those laws suggest by analogy what common sense confirms: if a party having important evidence concerning the matter in dispute does not produce it, or produces weak evidence when strong evidence is available, it can fairly be inferred that the evidence not produced would not have helped the party who does not produce it. (See, e.g., Evid. Code, § 412; *Hardesty v. Sacramento Metropolitan Air Quality Management Dist.* (2011) 202 Cal.App.4th 404, 425; *Vallbona v. Springer* (1996) 43 Cal.App.4th 1525, 1537; *Largey v. Intrastate Radiotelephone, Inc.* (1982) 136 Cal.App.3d 660, 672.) This negative inference was appropriate here. Student assumed the burden of proof of Parent's residency by filing the due process hearing request. Student can fairly be assumed to have produced all the significant evidence Student was able to produce in support of residency.

Student's testimonial evidence was also weak. Student called 13 witnesses but only Parent testified that Parent and her children resided at the Compton House. Parent was soft spoken and modulated, but significant parts of her testimony seemed scripted.

In other places, Parent appeared to be acting. An example was when Parent was struggling to recall where she was on the occasions the school police visited the Compton House, as if to garner credibility. These questions were sure to be asked of Parent at the hearing, so she certainly knew the answers having had more than three years to prepare. Other times, Parent's response seemed incongruent. Parent testified that she did not move any of her furniture or appliances because Grandmother's Compton House was already furnished. However, Parent could have only one residence. (Gov. Code, § 244, subd. (b).) If Parent intended to change her residence to the Compton house, Parent did not say what she did with the Los Angeles House furnishings.

Parent said her aunt claimed she did not tell the school police that Student did not live at the Compton House. Such a hearsay statement could have been easily addressed by having aunt testify. If not the aunt, then someone who witnessed the family of four residing at the Compton House. Parent acknowledged that other family members helped with Grandmother, allowing Parent to spend time at the Calimesa House. Neighbors confirmed that a lot of people visited the Compton House during Grandmother's illness between January and June 2018. The restraining order application referred to a family meeting of at least five relatives at the Compton House. Yet, despite the heavy traffic, not one witness was called to affirm that Parent and her three children resided at the Compton House. Student's claim of residency primarily depended on Parent's credibility. Parent's testimony alone was not sufficiently persuasive.

COMPTON UNIFIED'S EVIDENCE

Compton Unified presented direct evidence that Parent's residency representation was false. The Compton Unified school police had, on three occasions, gone to the Compton House. The police never found any evidence that Parent and her

three children resided at the house. Parent's aunt affirmatively told the officers that the children did not live there. Neighbors occasionally saw Parent, along with many other people, visit the house during Grandmother's illness. Parent's youngest daughter was not yet four years old, but none of the neighbors had seen young children at the Compton House. The investigative findings well-supported the school police's conclusion that Parent and Student did not reside at the Compton House.

Student argued that the school police visits to the Compton House were inappropriate. Student asserts that pupil services would typically send a social worker, have discussions with the parent, and attempt to confirm residency without police skulking about the neighborhood. However, Compton Unified investigated in a manner that provided the most reliable information. Student did not provide evidence that the investigative outcome would have been different if a social worker went with the school police. And as Dr. Ayala pointed out, if Compton Unified was going to go to a student's alleged residence to confirm residency, it would be counterproductive to make an appointment or let the parent know they were on the way.

Khy-Ly testified that Parent told Khy-Ly and at least two other colleagues that she did not live at the Compton House and owned a home in the desert. Parent said she intended to deceive Compton Unified by moving some of her things to the house, and inviting the police back, or have Grandmother sign an affidavit that Parent and Student lived at the Compton House. Parent said she was a "grown ass woman" who was not going to live with her mother and that Parent was going to get the district.

Khy-Ly's testimony was persuasive and credible. Khy-Ly had no personal interest in this hearing's outcome, was transparent regarding her uneasiness in testifying regarding a former colleague, and readily admitted when she did not know an answer.

Khy-Ly's testimony was not scripted, was consistent with other evidence, and did not demonstrate any bias.

Student failed to prove by a preponderance of the evidence that Parent acted and intended to change Parent's residence to the Compton House. (Gov. Code, § 244, subd. 4).) Compton Unified demonstrated that Parent and her children did not reside at the Compton House. Compton Unified therefore properly disenrolled Student.

CLAIMED PROCEDURAL ERRORS

Student asserted that Compton Unified violated its own policies and regulations in investigating and disenrolling Student. For example, Student argued that Compton Unified's disenrollment of Student and the March 5, 2018 notice violated Compton Unified's District Residency Administrative Regulation 5111.1, in the section entitled Failure to Verify Residency. Student claimed that Compton Unified improperly disenrolled Student before the disenrollment was final.

The regulation states that upon determining a student's enrollment was based on false or unreliable evidence of residency, the superintendent or designee shall deny or revoke student's enrollment. The regulation therefore required Compton Unified to disenroll Student upon its finding that Parent did not reside at the Compton House. The disenrollment would become final 10 days later if no new material evidence of residency was provided. Dr. Ajala confirmed that her department followed this process. Student's disenrollment was consistent with the administrative regulation's directive.

Ortega's March 5, 2018 letter did not, however, specifically inform Parent that she had 10 school days within which to provide new material evidence of residency before the disenrollment became final, as required by the district regulation. Though the superintendent's designee, Ortega was a school principal and not well acquainted with

the notice's requirements, like Dr. Ward-Roberts. Ortega invited Parent to contact pupil services or the superintendent's offices for more information of residency or enrollment, but the letter did not strictly conform with the regulation's 10-day notice requirement. Here, though, this procedural error was not substantive because Parent did not present material or persuasive evidence of residency.

A due process hearing decision cannot be based solely upon a nonsubstantive procedural error. (Ed. Code § 56505(j).) Student was assumed to have introduced all essential, persuasive documentary and testimonial evidence at this due process hearing in support of Student's residency claim. Student did not prove by a preponderance of the evidence that Parent and Student resided at the Compton House. If Student was unable to present sufficient evidence of residency during a 12-day hearing, Student certainly would not have produced new material evidence of residency within the 10-day period following disenrollment.

Student's argument that Compton Unified violated or did not follow various board policies or administrative regulations was not persuasive. Student did not prove Compton House residency in this due process proceeding. Therefore, any procedural error was nonsubstantive because procedural adherence would not have resulted in a different outcome.

THE INTERDISTRICT PERMIT

Student argued that Compton Unified improperly disenrolled Student because Student was attending on an inter-district permit based on Parent's employment with Compton Unified. Student asserted that Compton Unified did not give notice that the permit was void or withdrawn and, therefore, the permit remained in place and Student should not have been disenrolled.

Student's argument in this regard was disingenuous. Basically, Student claimed that when Parent was caught deceiving Compton Unified about the Compton House residency, Compton Unified was required to continue honoring the inter-district permit. This argument was unpersuasive and contrary to the regulations for residency permits based on a Parent's employment.

Compton Unified's Board Policy 5117 and Administrative Regulation 5111.12 stated that district residency may be granted to a student who resides outside the district if a parent was physically employed within district boundaries. (Ed. Code, §48204, subd(b).) Parent resided in Los Angeles and LAUSD was Student's district of residence when Parent applied for an employment-based inter-district permit. On July 28, 2017, LAUSD and Compton Unified executed a 2017-2018 inter-district employment-based permit. On August 9, 2017, Dr. Ward-Roberts addressed a letter to Parent at the Los Angeles House, formally informing Parent of Compton Unified's approval of the inter-district permit, allowing Student to attend Bunche instead of LAUSD. Both the permit and Dr. Ward-Roberts' letter stated that the permit was subject to the permit provisions, terms and conditions of Compton and LAUSD. Any change of address, employment, or criteria relevant to the employment-based permit must be immediately reported to both Compton Unified and LAUSD. The fundamental basis for the intra-district permit was that the Student's district of residence was LAUSD, not Compton Unified.

Parent informed Compton Unified on multiple occasions that the inter-district permit was no longer necessary by notifying Compton Unified that Parent and Student moved to Compton and resided within the boundaries of Compton Unified. Parent had human resources change Parent's address to the Compton House on January 22, 2018. On February 23, 2018, Parent applied for an intradistrict permit, because Student lived at

the Compton House address. On May 3, 2018, Parent applied for an inter-district permit from Compton Unified because Student's brother was now a Compton resident. Parent's claimed that Parent and her three children lived at the Compton House address in the May 15, 2018 enrollment packet. Parent completed and signed Compton Unified's Annual Update Form (A.R., District Residency Status, 5111.1) on May 25, 2018, stating there were no changes to Student's information. Parent explained that Parent had already informed Compton Unified of the Compton House address and there was therefore nothing to change.

Despite Parent's continued perpetuation of the Compton House residential ruse, Student unashamedly claimed Compton Unified could not disenroll her because of the inter-district permit. Yet, every time Parent informed Compton Unified that Student resided at the Compton House, Parent asserted the inter-district permit was not needed. The inter-district permit and Dr. Ward-Roberts' letter included cautionary language stating that falsification of information may result in revocation of the permit. Student asserted that Compton Unified did not give notice of the inter-district permit's revocation. However, as explained by both Dr. Ward-Roberts and Dr. Ayala, notice of revocation was not necessary because Parent claimed Compton residency and renounced the basis of the inter-district permit. Student failed to demonstrate that Compton Unified could not disenroll Student because of the inter-district permit. Parent repeatedly repudiated the permit by claiming Compton Unified was Student's district of residence, up to and throughout the due process hearing.

Student did not prove by a preponderance of the evidence that Compton Unified wrongfully disenrolled Student in February 2018. Parent did not reside at the Compton House. Parent had repudiated the inter-district permit. As of the disenrollment,

Compton Unified was no longer obligated to educate Student. Student failed to meet her burden of proof and Compton Unified prevailed on Issue 2.

ISSUE 3: DID COMPTON UNIFIED DENY STUDENT A FAPE AND PARENT HER RIGHT TO PARTICIPATE BY FAILING TO TIMELY ASSESS AND CONVENE AN IEP TEAM MEETING UPON PARENT'S REQUEST?

At the time of Student's February 23, 2018 disenrollment, Compton Unified was in the process of assessing Student for special education eligibility. The 60th day by which Compton Unified would have convened an initial IEP would have been March 12, 2018, based upon Parent returning the signed assessment plan on January 11, 2018. (Ed. Code, §56344, subd. (a).) However, Student asserted that since the assessments were ongoing, Compton Unified was obligated to complete the assessments and hold an IEP team meeting, even though Student was no longer enrolled.

Residency is a basic requirement for all educational services, including students with special education needs. (See Ed.Code, § 48200; *Katz v. Los Gatos–Saratoga Joint Union High School Dist., supra,* 117 Cal.App.4th at p. 57.) Unless otherwise provided by law, children 6 to 18 years old who go to public school must attend schools in the district in which their parents or guardians reside. (Ed.Code, § 48200.) Children whose parents live outside a school district may not attend school in that particular district. (*Anselmo v. Glendale Unified School Dist.* (1981) 124 Cal.App.3d 520, 522–523; 67 Ops.Cal.Atty.Gen. 452 (1984).) Student cites no authority supporting the proposition that the IDEA required a school district to provide special education services to students who reside outside its borders. Since Student could not prove her Compton residency,

Compton Unified was not obligated to educate her and, therefore, had no obligation to continue assessing and hold an IEP. (Ed. Code, § 48200.)

Student did not prove by a preponderance of the evidence that Compton Unified failed to timely assess Student and hold an IEP team meeting. The only reason Compton Unified stopped assessing was because Student was disenrolled. As of the disenrollment, Compton Unified was no longer obligated to educate Student, which included evaluating her for special education eligibility. Compton Unified prevailed on Issue 3.

ISSUE 4: DID COMPTON UNIFIED DENY STUDENT A FAPE BY FAILING TO OFFER SPECIAL EDUCATION AND RELATED SERVICES TO HER BETWEEN OCTOBER 2017 AND JUNE 2018?

As determined in Issue 1 of this Decision, Compton Unified's failure to timely issue an assessment plan, when its Child Find duty was triggered on October 24, 2017, did not deny Student a FAPE because Student failed to prove that Parent would have signed an assessment plan before Parent's January 9, 2018 request for assessment. As determined in Issue 2 of this Decision, Student failed to prove that Compton Unified improperly disenrolled Student in February 2018. As determined in Issue 3 of this Decision, the only reason Compton Unified did not complete assessment and hold an IEP team meeting was because Student was disenrolled and Compton was no longer obligated to educate Student. Student did not introduce evidence or law that required Compton Unified to provide special education and related services to Student after her disenrollment.

Compton Unified prevailed on Issue 1, Issue 2, and Issue 3. Compton Unified was not required to educate Student after her disenrollment. Therefore, Compton Unified

did not deny Student a FAPE by not offering her special education and related services between October 2017 and June 2018. Compton Unified prevailed on Issue 4.

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.

1. Compton Unified did not deny Student a FAPE by failing to comply with child find mandates to assess, identify, and serve Student from October 2017 through June 2018. Compton Unified prevailed on Issue 1.
2. Compton Unified did not deny Student a FAPE and Parent her right to participate by unilaterally disenrolling Student from Compton on or about February 2018. Compton Unified prevailed on Issue 2.
3. Compton Unified did not deny Student a FAPE and Parent her right to participate by failing to timely assess and convene an IEP team meeting upon Parent's request. Compton Unified prevailed on Issue 3.
4. Compton Unified did not deny Student a FAPE by failing to offer special education and related services to her between October 2017 and June 2018. Compton Unified prevailed on Issue 4.

ORDER

All of Student's requests for relief are denied.

RIGHT TO APPEAL

This is a 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).)

/s/

Clifford Woosley

Administrative Law Judge

Office of Administrative Hearings