

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

In the Matter of:

STUDENT,

Petitioner,

vs.

PALOS VERDES PENINSULA UNIFIED
SCHOOL DISTRICT,

Respondent.

OAH No. N 2005060588

DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, in Palos Verdes on September 20 - 22 and October 5 - 6, 2005. Petitioner was represented by Jill Bonnington, Advocate. Respondent was represented by Patrick Balucan, Attorney at Law. Petitioner and his father were present during the last two days of hearing.

At the conclusion of the hearing, the record was held open for the parties to file written argument. On October 21, 2005, respondent filed its Closing Brief which was marked as respondent's Exhibit N. On Saturday, October 22, 2005, petitioner filed his Closing Brief which was marked as petitioner's Exhibit 35. In addition, upon review of the evidence, the Administrative Law Judge hereby admits into evidence petitioner's Exhibits 8 and 32.

Oral, documentary, and stipulated evidence and written argument having been received and considered, the Administrative Law Judge finds as follows:

ISSUES

The issues presented for decision are as follows: First, whether respondent school district failed to fulfill its child find obligations to identify, locate, and assess petitioner as a child with disabilities during the three school years from 2002 through 2005; and Second, whether the school failed to provide petitioner with a free and appropriate public education and is therefore responsible to reimburse petitioner for the medical, hospital, transportation, and/or other non-public agency or school and associated costs that his parents incurred to treat and/or educate petitioner during the 2004-2005 school year.

FACTUAL FINDINGS

1. Petitioner Student (hereinafter also student) is a fifteen-year old child who currently lives and attends school in Colorado. He was born in Torrance and, for the first fourteen years of his young life, lived with his family in Rolling Hills Estate which is within the boundaries of the Palos Verdes Peninsula Unified School District (school district). From kindergarten through eighth grade, petitioner was not a student in the school district but instead attended Rolling Hills Country Day School, a private school. Petitioner and his family, which include his parents and younger sister, have resided in Fort Collins, Colorado, since early February 2005.

2. (A) In 2001, when he was 11 years old and a fifth grader at the private school, petitioner's parents requested the Palos Verdes Peninsula Unified School District to assess their son for special education services due to their concerns about his reading comprehension and listening comprehension skills. The parents also expressed concerns about their son's low self esteem and/or negative self image, feelings of discouragement, and social emotional development. The school district conducted assessments.

(B) On May 21, 2001, a school district nurse prepared a health and developmental history of petitioner after conferring with his mother on the telephone, testing his vision and hearing, and observing him during screening tests. Petitioner was not taking any medications on a regular basis and his vision and hearing were within normal limits. He presented as a well-developed, well-nourished, and well-groomed child in the 90th percentile for height and weight.

(C) On June 15, 2001, a speech and language pathologist evaluated petitioner for the school district. Petitioner was administered tests of his language fundamentals, auditory processing, and listening. He demonstrated articulation, voice, and fluency skills within normal limits for his age. He exhibited above average receptive and expressive language skills, was able to follow complex directions, and understood relationships between words. He was able to reconstruct simple, compound, and complex sentences at a significantly above average level. He showed significantly lower ability to retain information presented in paragraphs though within normal limits for his age. He was above average in ability to determine the main idea and within the average range in recalling details, concepts, and reasoning. Petitioner showed weakness in listening to filtered words, but showed no evidence of a receptive language disorder. The speech and language pathologist determined that petitioner presented with age appropriate speech and language abilities. He had a weakness in his ability to listen to distorted speech that could affect his listening in the classroom. The specialist recommended that petitioner sit in a preferential location in the classroom and that he be spoken to closely, directly, and clearly.

(D) In September 2001, a district school psychologist performed a psychoeducational evaluation by conducting interviews; administering intelligence and academic achievement tests; assessing his visual motor skills, perceptual functioning, and attention; and evaluating his social, emotional, and behavioral functioning.

Petitioner's academic potential was determined to be in the high average range; his ability to verbally comprehend and produce information was in the average range and his speed to mentally process simple information without errors was within the above average range. He showed significant weakness in general factual knowledge. Petitioner performed within the average to above average range in academic areas that measured his reading, math, and writing skills and performed in the below average and low average range in listening comprehension and oral expression. His mother expressed concerns about his social and emotional development, but two of his teachers did not have the same concerns. The results of the psychoeducational evaluation did not show a severe discrepancy between petitioner's cognitive ability and his academic achievement. The school psychologist made certain recommendations.

(E) On September 24, 2001, the school district and the Southwest Special Education Local Plan Area held an individualized education plan (IEP) meeting with petitioner's parents. The school psychologist and speech and language pathologist who had conducted evaluations as well as an administrator and special education teacher participated in the IEP meeting. The IEP team discussed the results of the evaluations and noted that petitioner scored at the average or above average range on testing. The parents expressed concerns about the student's difficulty in focusing, completing tasks, and auditory processing. The IEP team made recommendations to address the parents' concerns, but found that the student did not meet eligibility criteria for special education.

(F) Upon issuance of the IEP in September 2001, the parents signed the document, which memorialized the school district's finding of ineligibility, and acknowledged receipt of a copy of Parent's Rights and Responsibilities and Due Process/Appeal Procedures. The parents did not appeal the determination that

petitioner was not eligible for special education services. Petitioner thereafter completed the sixth, seventh, and eighth grades at the private school.

(G) Contrary to the parents' assertions in this matter, it was not established that the IEP team discussed, or that the parents raised at or prior to the 2001 IEP meeting, any issue of petitioner having emotional issues. That petitioner may have had emotional problems was neither the basis of the parents' request for special education services nor an issue for assessment or consideration by the IEP team convened by the school district in 2001.

3. (A) At Rolling Hills Country Day School, petitioner did well academically in the sixth and seventh grades, achieving outstanding and above average grades in almost all of his subjects. His grades were not quite as good in the eighth grade.

(B) In seventh or eighth grade, petitioner began having emotional and social difficulties that affected his academic performance. He began seeing a psychiatrist for therapy or treatment in late 2002. As described in a psychological evaluation report from 2004, he regressed socially and did not have as many friends. He had physical altercations with peers, ran away from class on several occasions, and was oppositional towards his teachers. His mother attributed her son's problems, in part, to low self esteem, feeling overwhelmed with school work, and pressure to do well academically. To accommodate his emotional issues, the private school allowed petition to have a modified homework schedule and access to a private office where he could go if he felt anxious during the school day. Petitioner did not receive any special education services from the school district while attending the private school.

4. (A) In or about May 2004, when petitioner was nearing the end of eighth grade at the private school, his parents were worried about their son's upcoming enrollment and adjustment to public high school. The parents planned for petitioner to attend Palos Verdes High School (PVHS), one of two four-year high schools within the

respondent school district. On or about May 4, 2004, petitioner's mother attended the information or registration day for private school students at PVHS.

(B) On May 11, 2004, petitioner's mother sent an electronic message (email) to the associate vice-principal at PVHS, expressing interest in the Advancement Via Individual Determination (AVID) program for her son. His mother wrote that it was critical that petitioner be included in the AVID program for his academic success. She asked for a meeting with the associate vice-principal to discuss her son's application to the AVID program. That same day, petitioner's father called the associate vice-principal and insisted on meeting with her that day.

(C) On May 11, 2004, the associate vice-principal at PVHS met with petitioner's parents. The parents stated that their son was moving from private school to PVHS and they were worried how he would fare or adjust to the public high school. They explained that their son had a lot of anxiety about schoolwork and that he cried about and could not start his schoolwork. They asked whether their son could participate in the AVID program. The associate vice-principal explained to the parents that the AVID was a program to help average students who were underperforming in the classroom. Students in the AVID program were provided extra support and tutoring to motivate and impress upon them the importance of schoolwork. The administrator further explained that the applications for the AVID program had been taken earlier in the year and students were already being interviewed for the program. Believing that petitioner may have other issues, the associate vice-principal suggested that the parents consider a special education assessment for their son as well as a Student Study Team (SST) meeting in the fall when his adjustment to high school could be discussed with his teachers. A Student Study Team is comprised of a student's parents and teachers, who would have had an opportunity to observe the student in the classroom and monitor his academic progress. In a SST meeting, the parents and teachers would discuss the

student's progress and review possible supports to facilitate his academic achievement, including accommodations in the general education curriculum as well as assessments.

(D) On May 11, 2004, petitioner's parents completed and filed the enrollment and class request forms for their son to be enrolled at PVHS in the fall. On that date, the parents did not ask the associate vice-principal or any other school district personnel for a special education assessment, special education services, or an IEP for their son. Nor did the parents inform the associate vice-principal that their son had been earlier assessed for special education services or that he had an emotional problem or disability.

(E) The testimony and statements of petitioner's parents that they did ask for a special education assessment and/or services or IEP for their son at the May 11th meeting with the associate vice-principal was not persuasive. The mother's email message contained no reference to a special education assessment or services and did not state that her son had an emotional, reading comprehension, or auditory processing problem; her email mentioned interest in the AVID program. Petitioner's father testified that he and his wife were worried about their son's emotional, reading, and processing problems, but he added that he did not recall telling the associate vice-principal that his son was seeing a psychiatrist or suffered from anxiety or depression. In a Timeline of Contacts accompanying a letter dated April 12, 2005, petitioner's advocate indicated that the school district "was fully informed of [student's] severity of problems" at the May 11 meeting, but did not state that the parents mentioned that their son had a disability or requested a special education assessment. Further, no probative evidence was presented that the parents advised the associate vice- principal or any other school district official that petitioner had undergone a special education assessment about three years earlier.

(F) On or about May 11, 2004, petitioner's mother completed a Health File Update and submitted the form to PVHS. On the health update, the mother indicated that petitioner was taking the medications Trileptol, Lexapro, and Prevacid for mood stabilization and stomach aches, respectively. On May 11th, the school nurse reviewed the health update and entered the information on medications onto the Student Medical Records of the high school.

5. In the summer of 2004, before he was to enter PVHS, petitioner experienced serious emotional or behavioral problems at home. He acted out by taking the family car, climbing up on the roof of the house at night, and opening a door while riding in a car. His parents had significant concerns about him. His father attributed his son's problems, in part, to the fact that he was starting high school in the fall and had too much free time. That summer, his parents had petitioner see a new psychiatrist for therapy or treatment.

6. On or about August 25, 2004, petitioner went with his mother to registration or orientation day at PVHS. When he saw the large number of students and realized that students were apparently being paired up for some kind of group exercise, petitioner felt uncomfortable and did not want to participate. He left the registration or orientation without completing the registration process. His parents submitted the Student Emergency Information Form which they signed and dated on August 24, 2004.

PALOS VERDES HIGH SCHOOL

7. (A) On September 7, 2004, which was the Tuesday following the Labor Day Holiday and the first day of new school year, petitioner went with his parents to late registration at PVHS. He was anxious and nervous and did not want to attend the late registration. In the car, he told his parents that he would scream out that he was being beaten if they made him go through the process. Eventually, petitioner calmed down and was able to wait in line for about two hours to complete registration. He received

his class schedule, had his school and identification photographs taken, and obtained textbooks from the school library.

(B) After completing late registration, petitioner had missed one or two of his seven classes. He was nervous and his parents walked with him to his second or third period class. Petitioner entered the classroom and his parents left school. He had five or six of his classes remaining to attend, each of which lasted about 30 minutes that first day of school. At the end of the school day, his parents met and picked him from school.

(C) During that first school day, petitioner received and brought home the biology expectations signature sheet from his biology class and the course policies from Spanish class. He signed the biology expectations signature sheet and both he and his mother signed the Spanish course policies document.

8. (A) On first day of school on September 7, 2004, petitioner's mother called the PVHS school psychologist to ask about possible supports for her son at the high school. By telephone, the mother explained to the school psychologist that petitioner had attended private school and his grades were good. She stated that her son had registered late for high school and did not handle stress well. He was under the treatment of a psychiatrist and had been diagnosed earlier with mood disorder and now with attention deficit hyperactivity disorder. He had good days and bad days and was taking medications. She indicated that her son had been assessed in sixth grade and found ineligible for special education. The mother stated to the school psychologist that her son was immature, had auditory processing problems, and was perhaps now exhibiting a learning disability.

(B) On September 7, 2004, the PVHS school psychologist advised petitioner's mother what program supports were available for her son in the school district. The school psychologist suggested that the school district first obtain progress reports from petitioner's teachers and then convene a Student Study Team (SST) meeting with his

counselor and teachers to discuss the student's adjustment and possible supports. The school psychologist scheduled a SST meeting for petitioner for October 9, 2004.

(C).On September 7, 2004, petitioner's mother did not ask the PVHS school psychologist that her son be assessed for eligibility for special education services. The mother did not request an IEP or an IEP meeting for provision of special education services.

9. (A) After the first day of school on September 7, 2004, petitioner was driven to and picked up from school by his parents on four of the next five school days. On Monday, September 12, petitioner was suffering from anxiety and his mother reported to the PVHS that he was ill. For the first week of school, petitioner was very anxious, upset, and angry about attending high school. He found it stressful to attend high school. He could not cope well at school; he ate lunch in a restroom. He told his parents he did not want to go to high school and acted out at home after school. His parents had a very difficult time with petitioner that first week of school.

(B).During this first week of school, petitioner's parents began discussing with their children a possible move of the family to Colorado.

(C) On Monday of the second week of school, petitioner was suffering from anxiety. His mother reported to PVHS that he was ill and he stayed home from school that Monday, September 13. The next day, petitioner was taken to school by his parents. He returned from school that day angry and anxious. The following day, September 15, petitioner suffered what his father has termed a "total meltdown" and was admitted by his psychiatrist to the psychiatric unit at Del Amo Hospital.

10. (A) It was not clearly established by petitioner that he actually attended any of his classes at PVHS after the first day of school on September 7, 2004. After that first day of classes, his parents drove him to school in the morning and picked him up in

the afternoon on four of the next five school days. However, neither parent accompanied the student to a classroom.

(B) While he was on their class rosters, four of petitioner's teachers do not recall ever seeing or having him in their classroom during the first week of school in September 2004. When his name was called at roll, petitioner did not answer or announce his presence in those classes. On taking roll on the third day of school, the biology teacher heard from an unidentified student that petitioner had moved to Colorado, which was not true.

(C) It was not established that petitioner returned the course policies sheets to his Spanish teacher after the first day of school. Although required by his biology teacher, petitioner did not return a "Biology Expectations" sheet signed by the student and parent to the teacher for her stamp. His assigned math teacher did not receive any school work or the interest survey from petitioner. Both the biology and math teachers were credible witnesses; the math teacher is a retired U.S. Air Force lieutenant colonel with 30-years of military service. None of the four teachers would have any motive or financial incentive to lie about petitioner's absence from their classrooms.

(D) On the other hand, petitioner certainly did not want to go to school. He was anxious and nervous about attending PVHS and the large number of students. He chose to eat lunch in the restroom rather socialize or congregate with other students. After one week of school, he had to be admitted to a hospital. The clear preponderance of the probative evidence demonstrated that, while registered as a student at PVHS, petitioner did not attend his classes after the first day of school.

11. (A) Beginning on September 15, 2004, petitioner stayed at Del Amo Hospital for about week. He was admitted by and under the treatment of his psychiatrist for anxiety and emotional instability. On or about September 21, 2004, petitioner's

parents arranged for their son to be escorted or taken to the Youth Care Residential Treatment Center in Utah.

(B) In late September 2004, petitioner's parents placed or listed their Rolling Hill Estates home for sale. In or about January 2005, they purchased a home in Fort Collins, Colorado. On February 5, 2005, the escrow closed on the purchase of the Colorado home and petitioner's family moved from Rolling Hills Estates and into their Colorado home. On March 16, 2005, escrow closed on the sale of petitioner's parents' home in Rolling Hills Estate

12. (A) On September 30, 2004, petitioner's mother advised the school counselor at PVHS that her son had been staying at Del Amo Hospital, but was now receiving treatment at a residential facility in Utah. She indicated that petitioner had been diagnosed with oppositional defiant disorder and attention deficit disorder and was taking medications. She stated that petitioner had been at the Utah facility for a week now and she felt comfortable with his placement there. The mother said she would come by the high school to return his textbooks. It was not established that, on September 30, the mother requested a special education assessment and/or services of the school district.

(B) On September 30, 2004, the school counselor told the registrar at PVHS that petitioner was at a residential facility in Utah. Earlier, the school counselor and registrar were informed by the attendance office at PVHS that petitioner had registered for high school but had not shown up for any of his classes. On October 1, based on the information received from petitioner's mother, the registrar withdrew petitioner from high school by completing a Student Withdrawal Report, noting that petitioner was a "no show" at school since September 7th.

(C) By an email message on October 4, 2004, the registrar at PVHS confirmed with petitioner's parents that their son was attending another school and he was to be

checked out of the high school. The registrar requested that parents return petitioner's textbooks. The parents returned the textbooks to the high school.

(D) On an undetermined date in or about late September 2004, petitioner's mother advised the PVHS school psychologist that her son was hospitalized. The mother did not request a special education assessment on this occasion. After being hospitalized on September 15 and then sent to the residential treatment facility in Utah on September 21, petitioner did not at any time return to PVHS for schooling or to the family home to live.

YOUTH CARE/PINE RIDGE ACADEMY

13. (A) From September 21, 2004, through May 5, 2005, petitioner received treatment at Youth Care Residential Treatment Center (Youth Care) in Draper, Utah. At the same time, he attended school and/or received educational services at the Pine Ridge Academy in Utah, which is affiliated with Youth Care and accredited by the Northwest Association of Schools and Colleges. Petitioner completed academic coursework for the 2004-2005 school year at Pine Ridge Academy.

(B).After first being placed at Youth Care beginning on September 22, 2004, petitioner was prescribed a regimen of medications. About two weeks later, on October 6, 2004, Youth Care health professionals diagnosed petitioner with mood disorder not otherwise specified (NOS), attention deficit disorder predominately inattentive type, and oppositional defiant disorder and wanted to rule out bipolar disorder; a treatment plan was developed for him. He was noted to have a history of self-injury and para-suicidal behavior. The treatment plan consisted of academic services, behavior modification programs, family therapy once weekly, group therapy five times weekly, and individual therapy three times weekly. In addition, petitioner was to undergo psychological, intellectual, personality, and academic testing as well as receive psychiatric medication

management and recreational therapy. Family therapy, parent education, and leaves and visits were also prescribed.

(C) As set forth in his treatment plan, health professionals at Youth Care sought to address petitioner's problems of labile mood, disturbances in conduct, and inconsistent school performance. First, petitioner's depressed and agitated mood, which was evidenced, in part, by episodes of self-mutilation and thoughts of suicide, was treated with medications and counseling with a licensed clinical social worker in anger management, coping skills, expression of emotions, and self-esteem. Second, petitioner displayed conduct disturbances by deliberately annoying others and showing disregard for authority figures. He had repeated acts of physical and verbal aggression toward others, especially his parents and sister, and poor impulse control. The Youth Care LCSW provided petitioner with intervention therapy by reviewing letters written by his family, counseling him to be truthful, to express his anger appropriately, and to exhibit a social attitude. Third, Youth Care treated petitioner's difficulty in achieving school success by having a special education coordinator monitor his progress in making lists of things he could do to succeed in school and in participating in school activities and discussions.

(D) As established by Exhibit 33, petitioner worked hard to develop his study skills at Youth Care and Pine Ridge Academy and experienced academic success there. While he initially struggled with his organizational skills and motivation, petitioner developed rapport with his teachers, became comfortable with the school environments, and acquired self-advocacy skills. He came to enjoy class discussions and activities and obtained leadership skills. His academic success was attributable, in part, to the small, structured classroom settings.

14. (A) After completing the 2004-2005 school year at Youth Care and Pine Ridge Academy in Utah, petitioner then joined his family in Fort Collins, Colorado, where his parents had been residing since early February 2005. On August 11, 2005,

petitioner's special education needs and eligibility were discussed and reviewed at an IEP meeting convened by the Poudre School District in Fort Collins, Colorado. Prior to the IEP meeting, petitioner underwent assessments to determine his special education needs, if any.

(B) On June 29, 2005, as part of the assessments to determine his eligibility for special education, the Poudre School District had petitioner undergo a speech and language evaluation by a speech-language pathologist. Petitioner's expressive and receptive language skills were found to be within the average range when compared to students of his same age. He presented with relatively weaker receptive language skills in comparison to his expressive language skills which were thought to be due to weak short-term auditory memory. He demonstrated well-developed vocabulary skills and a good grasp and use of complex sentence structures for oral language tasks. Petitioner showed no needs in speech and language.

(C) On June 30, 2005, the Poudre School District administered the Woodcock-Johnson Tests of Achievement, Third Edition, to petitioner in order to evaluate his education level. He completed the testing at a moderate or good pace, understood the written directions, and scored within the average to above-average range. The evaluator detected "some very small auditory processing problems" but it did not affect his score in any significant manner. Petitioner performed at the high average range in written language and expression and average in reading, mathematics, and math calculation skills. He showed a need to be given extra time or clarification and/or repetition of directions for tasks requiring auditory processing.

(D) On July 20, 2005, a school psychologist for the Poudre School District completed a cognitive evaluation of petitioner as part of his special education eligibility assessments. He was administered the Wechsler Intelligence Scale for Children, Fourth Edition. The school psychologist found that petitioner's verbal reasoning and

comprehension as well as his nonverbal reasoning abilities were within the average range and well developed. His working memory index which measures the ability to hold auditory information, perform some operation or manipulation with the information, and produce a correct result was within the average range and age appropriate. His speed of processing information when using visual cues and fine motor responses was within the low average range. Petitioner's overall cognitive abilities, not considering his processing speed, were within the average range. The school psychologist opined that petitioner's relative weakness in processing speed should be considered in designing an educational program for him and recommended that he be given extra time to complete tasks, extra time to give an oral response to a question, and extra time to complete school tasks. The school psychologist found petitioner had no cognitive needs.

15. (A) On August 11, 2005, the Poudre School District completed a Special Education Referral form for petitioner in which it was noted that he had received special education services three years earlier. The evidence did not demonstrate that petitioner ever received special education services at respondent school district or his private school.

(B) On the Initial Health Form and Social/Developmental Inventory forms required for the Poudre School District special education assessment, petitioner's mother reported that her son had been hospitalized for bipolar disorder and diagnosed with depression, attention deficit and attention deficit hyperactivity disorder, and bipolar disorder. The mother further reported that petitioner had received residential treatment, medication, and therapy for his emotional or mental health conditions. She added that she was concerned about her son having difficulty with reading comprehension and auditory processing, his psychological problem, and his ability to socialize, attend school, and keep up with school assignments. Petitioner was described as shy, lacking in

confidence and self esteem, irritable, and tended to keep his feelings inside; his mother indicated that he has social fears and avoids social gatherings and meeting new people.

(C) On August 11, 2005, following an IEP meeting, the Poudre School District found petitioner eligible for special education services on the basis of a significant identifiable emotional disability. The Poudre School District discussed placement options and resource support services for petitioner. His parents explored the placement options and, in the fall of 2005, enrolled their son at an off-site school for students needing more intensive supports. After three days at the off-site school, petitioner left the school and chose to receive home schooling instead from the Poudre School District.

DUE PROCESS COMPLAINT

16. (A) By letter dated January 31, 2005, petitioner's representative or advocate requested that the school district conduct a complete and comprehensive psycho-educational assessment and a referral to the Los Angeles County Department of Mental Health. The advocate added that petitioner was at non-public NPS facility in Utah due to serious mental health concerns that were not addressed at the school district. The school district received the advocate's request for assessment on February 5th.

(B) On February 8, 2005, the PVHS school psychologist sent the following documents by certified mail to petitioner's parents at their residence in the Palos Verdes Peninsula: Parent Notification of Referral for Special Education, Assessment Plan, Parent Authorization Form, Child Behavior Checklist, Consent to Refer to Los Angeles, County Department of Mental Health, and Notice of Parent Rights. With this mailing, the school district acknowledged and initiated the special education assessment requested by the parents. The school psychologist also asked the parents for information regarding their son's current placement and plans for returning home so that the school psychologist could develop a testing schedule.

(C) On February 21, 2005, petitioner's father signed the consent to refer his son to the Los Angeles County Department of Mental Health, the parental consent for pupil assessment, and Child Behavior Checklist and returned the forms to the school district. On the checklist, petitioner's father wrote that his son exhibited strange behavior by standing on the roof of the house and/or car and singing out loud; the father added that the student had academic problems in reading comprehension or behavior and had the illness or disability of attention deficit hyperactivity and mood disorders. The school district received the consent forms and checklist on or about February 23rd.

(D) On May 19, 2005, petitioner filed a due process complaint against respondent school district with the Special Education Hearing Office (SEHO). That office acknowledged receipt of petitioner's request for a due process hearing and set a due process hearing for June 9, 2005. After the hearing was continued twice on motions for continuance, this matter proceeded to hearing before the Office of Administrative Hearings, Special Education Division, beginning on September 20, 2005.

18. In this proceeding, petitioner's parents seek reimbursement from the school district of the following sums that they expended or incurred in caring and/or educating their son in the years 2004 and 2005: \$41,408.08 for inpatient psychiatric care at Del Amo Hospital and Youth Care, 6,329.92 for outpatient psychiatric care, \$1,997.50 for legal or advocacy fees, \$2,051.58 for airline travel, and \$409.60 for transportation or gasoline.

19. (A) Respondent school district is a member of the Southwest Special Education Local Plan Area (SELPA). Under its Assurance Statement, the school district has promulgated policies to make a free appropriate public education available to all children residing in the district and to ensure that all pupils with disabilities have access to a variety of educational programs and services available to non-disabled pupils. Moreover, the school district has a child find policy to identify, locate, and evaluate all

children with disabilities, including those with disabilities attending private schools, regardless of the severity of their disability, and who need special education and related services.

(B) The Southwest SELPA assists school districts, including the Palos Verdes Peninsula Unified School District, in fulfilling their child find obligations under state and federal law. The SELPA publishes public notices in local newspapers about disabilities and special education, provides posters and informational brochures to school districts and other public entities, and sponsors programs and resource fairs for purposes of community outreach and education. The SELPA also sends letters to private schools, asking if there students with disabilities attending the private schools. The private school that petitioner attended is on the list of private schools that receive the inquiry letter and information on special education from the SELPA.

Based on the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Applicable Law: Under the federal Individuals with Disabilities Education Act (IDEA) and state law, students with disabilities have the right to a free appropriate public education (FAPE). (20 U.S.C. §1400 (2005); Ed. Code §56000 et seq.) The term “free appropriate public education” means special education and related services that are available to the student at not cost to the parents, meet state educational standards, and conform to the student’s individualized education program (IEP). (20 U.S.C. §1401(9).) This right to FAPE arises only after a student is assessed and determined to be eligible for special education.

IDEA and state law also impose upon each school district the duty to actively and systematically identify, locate, and assess all children with disabilities or exceptional needs who require special education and related services, including children with

disabilities who may be homeless or migrant, wards of the state, or not enrolled in a public school program. (20 U.S.C. §1412(a)(3); 34 C.F.R. §300.125; Ed. Code §§56300, 56301.) This statutory obligation of a school district to identify, locate, and assess children with disabilities is often referred to as the “child find” or “seek and serve” obligation and applies also to children who are suspected of having a disability and in need of special education even though they may be advancing from grade level to grade level. (34 C.F.R. §300.125(a)(2).) A state must ensure that these child find duties are implemented by public agencies throughout its jurisdiction as part of its general obligation to ensure that FAPE is available to all children with disabilities who reside within the state. (34 C.F.R. §300.300(a)(2).)

Under California law, a school district or special education local plan area must establish written policies and procedures for implementing a continuous child find system that addresses the relationships among identification, screening, referral, assessment, planning, implementation, review, and the triennial assessment. (Ed. Code §56301.) Said policies and procedures must include written notifications to all parents of their rights and the procedure for initiating a referral for assessment to identify individuals with exceptional needs. (Ed. Code §56301.) Identification procedures shall include systematic methods of utilizing referrals of students from teachers, parents, agencies, appropriate professional persons, and members of the public and shall be coordinated with school site procedures for referral of students with needs that cannot be met with modification of the regular instructional program. (Ed. Code §56302.) A student shall be referred for special educational instruction and services only after the resources of the regular education program have been considered and, where appropriate, utilized. (Ed. Code §56303.)

A referral for a special education assessment means any written request for assessment to identify an individual with exceptional needs made by a parent, teacher,

or service provider of the individual. (Ed. Code §56029, subd. (a)-(b).) All referrals for special education and related services shall initiate the assessment process and shall be documented; when a verbal referral is made, staff of the school district or special education local plan area shall offer assistance to the person in making a request in writing. (Cal. Code Regs., tit. 5, §3021, subd. (a).) All school staff referrals shall be written and include a brief reason for the referral and documentation of the resources of the regular education program that have been considered, modified, and when appropriate, the results of intervention. (Cal. Code Regs., tit. 5, §3021, subd. (b).) Upon initial referral for assessment, parents shall be given a copy of their rights and procedural safeguards. (Ed. Code §56301, subd. (c).)

Education Code section 56320 provides that an individual assessment of the pupil's educational needs must be conducted by qualified persons before any action can be taken with respect to the initial placement of an individual with exceptional needs in a special education instruction. Education Code section 56320, subdivision (f), adds, in pertinent part, that the pupil must be assessed in all areas related to the suspected disability including, if appropriate, health and development, language function, general intelligence, academic performance, and social and emotional status.

A school district shall develop a proposed assessment plan within 15 calendar days of referral for assessment, unless the parent agrees in writing to an extension (Ed. Code §56043, subd. (a)), and shall attach a copy of the notice of parent's rights to the assessment plan (Ed. Code §56321, subd. (a)). A parent shall have at least 15 calendar days from the receipt of the proposed assessment plan to arrive at a decision whether to consent to the assessment plan. (Ed. Code §56403, subd. (b).) A school district cannot conduct an assessment until it obtains the written consent of the parent prior to the assessment (unless the school district prevails in a due process hearing relating to the assessment); assessment may begin immediately upon receipt of the consent. (Ed. Code

§56321, subd. (c).) Thereafter, a school district must develop an individualized education program required as a result of an assessment no later than 50 calendar days from the date of receipt of the parent's written consent to assessment, unless the parent agrees in writing to an extension. (Ed. Code §56043, subd. (d).)

2. School District Child Find Obligations for Earlier School Years: First, petitioner contends in this proceeding that, during the 2002-2003 and 2003-2004 school years, respondent school district failed to identify, locate, and find him as a student with disabilities who was eligible for special education and services. Petitioner adds that the school district failed to assess him or conduct assessments and, consequently, he was denied a free appropriate public education for those two school years. The facts do not support this contention by petitioner.

For all of the three school years at issue (2002-2005), respondent school district met its federal and state statutory child find obligations by having promulgated and implemented policies to identify, locate, and evaluate all children with disabilities, including pupils in private schools, and to provide appropriate education and services to children with disabilities. The school district was a member of the Southwest SELPA which published notices, conducted community outreach, and informed the public and private schools about special education. Petitioner's private school received such information from the SELPA.

Moreover, at all times relevant herein, petitioner's parents have been well aware that a special education assessment and services were available to child with disabilities who was a resident of the Palos Verdes Peninsula Unified School District. In September 2001, when petitioner was 11 year old and a fifth grader at his private school, the parents were worried about their son's comprehension skills; they requested and obtained assessments and participated in an IEP meeting with the school district to determine petitioner's eligibility for special education. After petitioner was found not to

be eligible for special education, the parents had him finish his elementary education at the private school. For the next three years, the parents did not ask for another assessment and did not request an IEP or special education services.

In May 2004, petitioner's parents were concerned about petitioner's upcoming enrollment and adjustment to public high school and met with the associate vice-principal of the high school. The parents asked about the AVID program for underachieving pupils, but did not advise the administrator that their son had been earlier assessed for special education or had a learning disability or emotional issues. The parents did not ask for an assessment to determine special education eligibility nor did they ask for special education supports and services. Rather, it was the school district administrator who suggested that petitioner undergo an assessment and that a SST meeting be held to evaluate his adjustment and progress. Petitioner's parents did not avail themselves of an assessment or SST meeting at this time and gave no indication to the school district that their son may be a student with disabilities. Petitioner's claim that they asked for an assessment or intervention and an IEP in May 2004 was not borne out by the probative evidence.

Based on Findings 2 – 4 and 19 above, respondent school district fulfilled its child find obligations during the 2002-2003 and 2003-2004 school years. The school district had no information, knowledge, or request from the parents or any other source that petitioner was a student with disabilities and should be assessed for special education. As such, the school district was not obligated or required to initiate a referral of petitioner for a special education assessment and services at any time prior to September 2004.

3. School District Child Find Obligations for 2004-2005: Second, petitioner contends that, for the 2004-2005 school year, respondent school district failed to identify and assess the student as a pupil with disabilities and thus did not fulfill its child

find obligations. Petitioner further argues that the school district did not properly convene an IEP and did not design or provide instruction that met his unique needs. Petitioner's claims are not supported by the evidence or applicable law.

As described above, respondent school district fulfilled its general federal and state child find obligations for all of the school years at issue by virtue of its policies and membership in the SELPA. With respect to petitioner, on the first day of school for the 2004-2005 school year, his mother did advise the high school psychologist that her son was being seen by a psychiatrist, had been diagnosed with a mood disorder and ADHD, and was prescribed medications. On that date of September 7, 2004, the mother revealed that petitioner had been earlier assessed for special education and was now exhibiting a possible learning disability. However, the evidence showed that petitioner did not ask the school psychologist for a special education assessment or services on September 7. In the absence of a request for assessment, the school district was not required to assist the mother or to document any request for special education services in writing and was not required to initiate the assessment process under Education Code sections 56029, subdivisions (a)-(b), and California Code of Regulations, title 5, section 3021.

Even if the mother's disclosure of petitioner's diagnosis and treatment and expression of concerns of a possible learning disability were to be construed as a lay request or referral for special education and/or assessment, the school district did not have to immediately refer petitioner for special education, for Education Code section 56303 provides that a student shall be referred for special education only after the resources of the regular education program have been considered. Here, on the first day of school on September 7, petitioner was newly enrolled in the regular education high school program of the school district after completing his elementary education in a private setting; he had not been receiving special education services at his prior private

school. Respondent school district did not necessarily have information or the input of his teachers as to his academic performance, adjustment to high school, or any disability. Upon speaking with the mother, the school psychologist scheduled a SST meeting for petitioner for the next month. The scheduling of the SST meeting was a reasonable and prudent measure for the school district to ascertain petitioner's academic needs and performance and to determine whether the resources of the regular education program was appropriate or could met his unique needs.

Further, under Education Code section 56043, the school district would have had 15 calendar days from September 7 to develop an assessment plan and the parents would have had another 15 calendar to approve and consent to the assessment plan. The school district could not have conducted any assessment in the absence of the parents' consent. (Ed. Code §56321, subd. (c).) In this matter, within eight days of enrolling in high school, petitioner had to be hospitalized for emotional issues. And within 14 days of his enrollment, his parents placed him in a residential treatment center in Utah. On September 30, 2004, petitioner's mother informed the school district that her son was now at the Utah residential facility and she was returning his textbooks. She did not ask for an assessment, special education services, or an IEP from the school district. Based on the mother's representations, the school district disenrolled or withdrew the student from school. Under the circumstances of this matter, even if petitioner's mother's disclosures on the first day of school were treated as a request for assessment, the evidence demonstrated that the parent ostensibly withdrew that request in late September when she caused her son to be withdrawn from the high school.

Subsequently, on January 31, 2005, petitioner by his representative did request a psychoeducational assessment from the school district and a referral to the county Department of Mental Health. The school district received the request on February 5

and timely prepared and sent an assessment plan and consent forms to petitioner and his parents on February 8. The school district received signed consent forms, including a consent to assessment, from petitioner on February 23, 2005. However, petitioner and his family had moved from the school district to Colorado by early February 2005 and the school district was not able to assess him for special education.

Based on Findings 7 – 12 and 19 above, respondent school district fulfilled its child find obligations during the 2004-2005 school year and did not deny petitioner a free appropriate public education. For purposes of determining whether the regular education program was appropriate for the student and to ascertain his needs, the school district reasonably scheduled a SST meeting for the student after the mother disclosed on first day of school that he had been diagnosed and treated for emotional issues and she expressed concern that he had a learning disability. Petitioner's parents did not specifically request an assessment or special education services and the school district did not have information or knowledge from the parents or any other source that petitioner was a student with disabilities and should be assessed for special education. As such, the school district was not obligated or required to initiate a referral of petitioner for a special education assessment and services during the first semester of the 2004-2005 school year.

4. Reimbursement of Expenses for Alleged Denial of FAPE during 2004-2005:

Third, petitioner argues that he is entitled to reimbursement of costs and expenses associated with his placement, services, and education at the private facility and/or school in Utah. He contends respondent school district failed to identify and assess his disabilities and needs and failed to develop an IEP for him. Petitioner argues that, as a result of the school district's failures, he was not afforded a free appropriate public education and services to meet his unique needs and was required to incur costs for

out-of-state placements and services. Petitioner's argument is without merit for several reasons.

Parents may be entitled to appropriate relief, including reimbursement for the costs of placement or services that they have independently obtained for their child with exceptional needs when the school district has failed to provide a free appropriate public education and the private placement or services are determined to be proper under IDEA and are reasonably calculated to provide educational benefit to the child. (*School Committee of the Town of Burlington v. Department of Education* (1985) 471 U.S. 359, 369, 105 S.Ct. 1996; *Student W. v. Puyallup School District* (9th Cir. 1994) 31 F.3d 1489, 1496.)

Here, as discussed above, respondent school district did not violate its child find obligations with respect to petitioner in the 2004-2005 school year or any other school year. On first day of school on September 7, 2004, the school psychologist properly scheduled a SST meeting for petitioner after speaking with his mother about her concerns. On September 15, 2004, after suffering a "total meltdown", petitioner was admitted to a local hospital by his treating psychiatrist for anxiety and emotional instability. After a one-week stay, his parents placed him in the residential treatment facility in Utah where he was diagnosed and treated for mood disorder NOS, attention deficit disorder, and oppositional defiant disorder. His mother then advised the school district of his hospital stay and placement in the out-of-state residential facility and said she was returning his textbooks, causing the school district to withdraw him from school. For the remainder of the 2004- 2005 school year, petitioner's parents kept him in the Utah residential facility, where he also received educational services, not because they believed he was being denied a free appropriate public from respondent school district but rather because he needed intensive treatment and therapy for his emotional issues. Petitioner's parents thus placed him in the Utah facility as a matter of their own

judgment and preference to treat his emotional or psychological issues in a residential setting; it was not an educational placement or a placement to assist him to benefit from special education.

After his placement in the Utah residential facility, the parents did not ask for an assessment until shortly before moving to Colorado in early February 2005. Because of the out-of-state placement and family's move to another state, petitioner was not ever assessed and determined by respondent school district to be eligible for special education; he thus cannot be said to have had a right to a free appropriate public education from this school district. Under these circumstances, respondent school district did not deny the student a free appropriate public education for 2004-2005 and the parents are not entitled to reimbursement for their private placement costs and expenses.

The evidence clearly established that petitioner's family moved from their California home within the boundaries of respondent school district to the state of Colorado on February 5, 2005. Effective on the date of the family's move to Colorado, respondent school district was no longer responsible to provide petitioner prospectively with a free appropriate public education since he was no longer a resident of the school district. Petitioner does not contend otherwise. Later, in the summer of 2005, the Colorado school district found petitioner eligible for special education services due to emotional disability or disturbance. The subsequent determination of eligibility by the Colorado school district does not necessarily mean that petitioner should have been earlier found eligible by respondent school district or that he was denied a free appropriate public education by not being identified and assessed earlier. Respondent school district fulfilled its child find obligations for all times relevant herein, properly sought to determine if the regular education program was appropriate when first informed that the student might have a disability, and did not receive an actual request

for assessment for emotional disturbance until after the student was placed out-of-state and shortly before the family moved from the school district. Prior to request for assessment in January 2005, respondent school district was not obligated to refer petitioner for assessment. After receipt of said request, respondent school district was not afforded the opportunity and did not ever assess or determine petitioner to be eligible for special education. As such, petitioner cannot be said to have had the right to a free appropriate public education in respondent school district for 2004-2005.

Based on Findings 7 - 19 above, it was not established that, during the 2004-2005 school year, respondent school district failed to properly identify and assess petitioner or failed to provide him with a free appropriate public education that met his unique needs. Petitioner's parents are not entitled to reimbursement of costs and expenses incurred or associated with placing him a private residential facility and school outside of California.

5. Under Education Code section 56507, subd. (d), this Decision must indicate the extent to which each party prevailed on each issue heard and decided in this due process matter. Pursuant to said mandate, it is determined that respondent school district prevailed on each and every issue heard and decided in this matter.

Wherefore, the Administrative Law Judge makes the following Order:

ORDER

The request of petitioner Student for relief and/or reimbursement of private placement and services costs and expenses from respondent Palos Verdes Peninsula Unified School District is denied, based on Conclusions of Law 1 - 5 above. The due process complaint of petitioner Student shall be dismissed.

Dated: 12/7/05

Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings

NOTICE OF APPEAL RIGHT

This is the final administrative decision and both parties are bound by this decision. Under Education Code section 56505, subdivision (k), either party may appeal this Decision to a court of competent jurisdiction within ninety (90) days of receipt.