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

In the Matter of: STUDENT, Petitioner, vs. LANCASTER SCHOOL DISTRICT, Respondent.	OAH No. N 2005080321

DECISION

Anahid Hoonanian, Administrative Law Judge (ALJ) of the Office of Administrative Hearings (OAH), Special Education Division, State of California, heard this matter on February 21, 22, 23, and 24, 2006, in Lancaster, California.

David J. Kim of Adams Esq. represented Petitioner (Student). Kathleen LaMay of Schools Legal Service represented Respondent Lancaster School District (District). Student's parents (Parents) and the District's Director of Student Services, Janis Rivera, were also present during the hearing.

Petitioner called the following witnesses: Student's mother (Mother), Student's father (Father), Student, and Dr. Kimani Norrington-Sands. Respondent called the following witnesses: Karen Avila, administrative secretary; Eric George, principal at Park View School; Father; Scott Smith, the District's Director of Pupil Safety and Attendance; Karly Romo, Student's physical education teacher at Park View School; Charles Cooley, Student's computer class teacher at Park View School; Terri Ede-Levin, the District's

Accessibility modified document

psychologist; Rosemary Oppenheim, assistant principal at Park View Middle School; and Janis Rivera, District's Director of Student Services.

Oral and documentary evidence were received. The parties agreed that the hearing would be continued and the record would remain open until March 7, 2006, pending receipt of their written closing arguments. On March 7, 2006, the ALJ received these arguments, which were made part of the record as Petitioner's exhibit 6 and Respondent's exhibit JJ, respectively. The record was then closed and the matter was submitted for decision.

PROCEDURAL HISTORY

On August 11, 2005, Petitioner filed the instant due process complaint. On August 26, 2005, Respondent filed a notice of insufficiency of due process compliant. On August 31, 2005, OAH determined that Petitioner's compliant was insufficient and permitted Petitioner to file an amended complaint. On September 14, 2005, Petitioner filed an amended due process complaint, and on September 21, 2005, Respondent filed another notice of insufficiency. OAH denied Respondent's notice of insufficiency.

On October 21, 2005, the parties agreed to mediate their dispute. On October 27, 2005, OAH issued a notice of due process hearing, setting the matter for hearing on November 22, 2005. On November 9, 2005, Respondent made a motion to continue the due process hearing. On November 21, 2005, OAH granted the motion and set the matter for a continued hearing on January 3, 2006. On December 9, 2005, OAH convened a pre-hearing conference and granted Petitioner's request to amend his due process complaint. At the pre- hearing conference, OAH continued the hearing to February 21, 2006. On December 30, 2005, Petitioner filed a motion to amend the due process complaint. On January 3, 2006, Petitioner filed his second amended complaint.

Accessibility modified document

ISSUES

I. Did the District deny Student a free appropriate public education (FAPE) for the 2004-2005 school year by failing to conduct an appropriate re-evaluation of Student during the October 14, 2004, January 26, 2005, and April 13, 2005 individualized education programs (IEPs)?

II. Did the District deny Student a FAPE for the 2004-2005 school year by using intelligence testing that violates the *Larry P. v. Riles*[1] injunction?

III. Did the District deny Student a FAPE for the 2004-2005 school year by failing to provide Student a transition plan?

IV. Did the District deny Student a FAPE from April 13, 2005, until the end of the 2004-2005 school year and while he was attending Crossroads by (i) failing to provide special education and related services that comports with his IEP, and (ii) inappropriately placing Student in an alternative educational setting?

V. Did the District deny Student a FAPE by failing to offer and provide special education and related services designed to meet his unique needs from October 14, 2004, through the end of the 2004-2005 school year?

VI. Are Student's Parents entitled to reimbursement for the independent pyschoeducational assessment by Dr. Norrington-Sands?

VII. Did the District violate the timeline for developing an assessment plan to conduct a functional behavior assessment after Student's change of placement on April 13, 2005?

VIII. Did the District violate Student's Parents' procedural rights by failing to provide a complete copy of Student's educational records?

IX. Is Student entitled to compensatory education?

---

[1] (9th Cir. 1974) 502 F.2d 963.

Accessibility modified document

FACTUAL FINDINGS

1. Student is a fourteen-year-old boy who lives with his mother, father, and younger brother within the jurisdictional boundaries of the District. In 1999, Student became eligible for special education and services as a student with a Specific Learning Disability (SLD). Student continues to be eligible for special education and services under the category of SLD.

2002-2003 SCHOOL YEAR

2. Student began the 2002-2003 school year as a fifth grader attending the District's Linda Verde School. On or about September 24, 2002, the District conducted a triennial evaluation of Student. The District used an alternative assessment battery in order to test Student's intellectual development domain. As part of this triennial evaluation, the District administered the following tests: Developmental Test of Visual Motor Integration, Test of Auditory-Perceptual Skills, Test of Visual-Perceptual Skills, Woodcock-Johnson III Test of Achievement (WJ-III), the Behavior Assessment System for Children, and the Adaptive Behavior Evaluation Scale.

3. At the time of this evaluation, Student's chronological age was 11.1 years and his grade level was 5.1. On the WJ-III, Student scored as follows:

Cluster/Test	Grade Equivalence	Age Equivalence
Total Achievement	2.2	7.7
Broad Reading	1.5	6.10
Broad Math	4.4	10.0
Broad Written Language	2.1	7.7
Basic Reading Skills	1.7	7.0
Math Calculation Skills	5.0	10.6

Accessibility modified document

Written Expression	2.1	7.5
Academic Skills	2.5	7.11
Academic Fluency	1.7	6.11
Academic Applications	2.2	7.7

The District found that Student was functioning within the average range of cognitive ability. According to the academic testing, Student's performance was average in math calculation skills, low average in math reasoning, and low in basic writing skills. Student's total achievement was at the 2.2 grade level. Based on the triennial evaluation, the District determined that Student continued to meet special education eligibility criteria as a student with SLD.

4. In its September 2002 triennial evaluation, the District identified Student's needs in the social-emotional domain. The triennial evaluation report notes the following observations about Student: frequently requires one-to-one attention, is sensitive to criticism, tries to do best on most tasks, often seems preoccupied/day dreaming, and engages in excessive social talking in class. His fifth grade teacher reported that Student's citizenship in the classroom setting was average and he displayed some leadership skills.

5. In November 2002, while Student was still in the fifth grade, Student and his family moved to Nevada due to a family medical emergency. The Parents enrolled Student in school in the Clark County School District in Nevada (Clark County) and informed Clark County that Student had been receiving special education and services in California. On or about January 15, 2003, Clark County conducted a multidisciplinary evaluation of Student. As part of this evaluation, Clark County administered the Kaufman Brief Intelligence Test (K-BIT) and the Wechsler Individual Achievement Test – Second Edition (WIAT-II). Based on its evaluation, Clark County determined that Student qualified for special education under Nevada law as a student with SLD. Clark County

Accessibility modified document

determined that Student functioned within the low range in reading and language arts and the low average range in math skills.

6. Clark County convened an IEP meeting on January 15, 2003, and offered Student Resource Support Program (RSP) services in math, reading, and writing expression. Mother was not present at this IEP meeting. However, Clark County included Mother in the IEP via telephone and discussed the results of its evaluation with her.

7. Sometime after the Clark County IEP was held, Student and his family moved from Nevada to Louisiana due to another family emergency. From March 31, 2003, through May 29, 2003, Student lived with his maternal grandmother and attended Walter D. Hadnot Elementary School within the Rapides Parish School District in Louisiana. During this time, Student received "F"s in spelling, reading, science and social studies. He received a "D" in mathematics, an "unsatisfactory" in language arts, and a "satisfactory" in fine arts.

2003-2004 SCHOOL YEAR IN LOUISIANA

8. In September 2003, Student moved with Mother to Monroe, Louisiana, and began his sixth grade school year there. In January 2004, Student moved back to his maternal grandmother's home in Louisiana. From January 22, 2004, through May 28, 2004, he attended Arthur F. Smith Jr. High School in the Rapides Parish School District.

The Rapides Parish School District in Louisiana convened an IEP meeting on February 3, 2004. At the time of this IEP meeting, the Rapides District had not received Student's educational records yet. Parents did not attend the IEP, but Student's grandmother consented to the IEP. The IEP team determined that Student was eligible for special education and services under the category of SLD and provided Student with RSP services in reading comprehension. In the portion of the IEP reciting Student's then-current level of performance for Student's reading goal, the IEP erroneously indicated that Student was at that time "on the fifth grade level" and that the district

Accessibility modified document

expected Student to improve one grade level. As set forth in Factual Finding 3 above, Student's September 2002 academic testing showed that Student was at the second grade level. Student completed the 2003-2004 school year in Louisiana. Student's grades for this period show that he received failing grades in reading, English, science, and math.

2004-2005 SCHOOL YEAR

9. Sometime in August 2004, Student and his family moved back to California. Shortly thereafter, Student and his family re-settled within the jurisdictional boundaries of the District.

10. In or about August 2004, Mother requested that the District provide Student with placement and special education services. The District contacted Student's former school in Louisiana. On or about September 13, 2004, based on the information provided by the school district in Louisiana, the District provided Student with an interim placement at Park View Middle School. Father consented to the interim placement and services. Student began attending Park View on September 17, 2004, about a month after school had begun. Student was placed in the resource program for two periods of language arts per day and three periods of social studies per week.

11. On October 14, 2004, the District convened Student's IEP team for the 30-day review of Student's IEP and his interim placement. Student remained eligible for special education and services under the category of SLD. The District offered Student RSP in language arts (two periods per day, five days a week) and RSP in social science (one period per day, five days a week). Under the heading of "measures used" in the IEP, the District referred to the K-BIT administered by Clark County. Under present levels of performance for Student's reading and writing goals, the IEP team used information from Student's last IEP held in Louisiana in February 2004. Thus, the IEP team erroneously stated that, Student was "on the fifth grade level", while, in fact, according

Accessibility modified document

to the September 2002 triennial evaluation, Student was functioning at the second grade level.

12. At the October 2004 IEP meeting, the District determined that Student was capable of completing his work but that he did not turn in homework on a regular basis. His math teacher reported that Student was failing and that, rather than completing his work in the classroom, he would flirt with the girls. The RSP language arts teacher reported that Student was failing and that Student was "a little spacey." The RSP social studies teacher also noted that Student was failing and that, in order to redirect Student, the teacher moved Student to the front of the classroom. The computer teacher also noted that Student was missing some work and that he had Student sit in the front of the classroom. Student's grade in his computer class improved from a "C" to a "B." The District added accommodations to Student's IEP and included a homework goal to help Student complete his assignments. Overall, the IEP team found that that Student's grades in his first trimester at Park View improved.

13. Student's Parents did not attend the October 2004 IEP meeting. Father claimed that he did not give the District permission to hold this IEP meeting without the Parents. Father contended that he has attended most of Student's IEP meetings. Mother claimed that she could not recall if the District had contacted her to give notice of the IEP meeting. Parents' claims are not persuasive. The Parents did not attend the February 2004 IEP or the January 26, 2005 IEP. As described in the October 2004 IEP, the Parents did not attend the IEP meeting, but gave the District permission to hold the IEP meeting without them. On October 27, 2004, Mother consented to the October 2004 IEP.

14. On November 11, 2004, Student was involved in an altercation with a peer, and, as a result of that fight, Student received a one-day suspension. Thereafter, Student tried out for the school's basketball team. In order to play on the team, Student was required to maintain the school's behavior standards and bring up his academic grades.

Accessibility modified document

By the second trimester at Park View, Student was able to bring up his grades to mostly "C"s and was able to play on the basketball team.

15. On December 10, 2004, Student's RSP teacher administered the Woodcock - Johnson III (WJ-III) test in preparation for Student's annual IEP meeting. At the time of this test, Student's chronological age was 13.6 years and his grade equivalence was 7.3. On the WJ-III, Student scored as follows:

Cluster/Test	Grade Equivalence	Age Equivalence
Total Achievement	2.7	8.0
Broad Reading	2.1	7.5
Broad Math	5.5	11.1
Broad Written Language	2.0	7.5
Basic Reading Skills	2.0	7.5
Math Calculation Skills	5.0	10.6
Written Expression	2.0	7.3
Academic Skills	2.7	8.0
Academic Fluency	2.6	8.8
Academic Applications	2.7	8.2

16. On or about January 14, 2005, the District provided written notice to Mother that Student's annual IEP meeting was scheduled for January 26, 2005. Mother signed the invitation on January 17, 2005, indicating that she planned to attend the IEP meeting. By signing the invitation, Mother also agreed that if she did not attend or contact the District to re-schedule the meeting, the IEP team would proceed without her. On January 26, 2005, neither Mother nor Father attended the IEP meeting, and the District held the IEP meeting without them.

Student's RSP teacher contacted Mother by telephone regarding the IEP. Mother requested additional assistance for Student in the area of reading. Student's RSP teacher

Accessibility modified document

agreed that Student needed additional help with reading and informed Mother that Student would be eligible for a special reading class.

17. At the January 2005 IEP meeting, the District determined that Student remained eligible for special education and services as a student with SLD and adjusted his language art goals and objectives to meet his needs. The District added a modification to Student's IEP to allow for questions or items to be read aloud to Student. The District revised the reading goal carried over from the Louisiana IEP to remediate Student's reading. The District modified Student's writing goal to include additional support and strategies (what the District termed "scaffolding" at the hearing) to his paragraph-writing. The District added RSP five days per week to Student's program. By the January 2005 IEP meeting, Student's grades had improved to mostly "C"s.

In addition, the District replaced Student's computer class with a special study skills class in order to provide Student with reading assistance. Mother claimed that Student never received the special reading class. Mother's claim was not persuasive. Based on his report card, Student, in fact, was removed from his computer class and placed in a reading RSP study hall for reading remediation.

18. In or about April 2005, Student had been involved in an altercation with some high school students near his middle school campus. On April 8, 2005, Student brought a knife to school. As a result, the District suspended Student from school for five days and started expulsion proceedings.

19. On April 13, 2005, the District held a manifestation determination IEP meeting. Both Parents attended the meeting. The District determined that Student's behavior was not a manifestation of his disability, he was appropriately placed, and he had been receiving all the services deemed necessary in his IEP. The IEP team discussed that the District could remove Student to a 45-day alternative interim educational

Accessibility modified document

setting, such as Crossroads Community Day School (Crossroads). Mother did not want Student to attend Crossroads, because she perceived it as a school for pupils with disciplinary problems. The IEP team agreed that Student would be dismissed form his RSP pull out program and receive resource collaboration, and he would be placed on independent study until the completion of the expulsion process. The IEP team also determined that, if Student was expelled, he would be placed at Crossroads and would receive services through the District's special education resource collaboration model.

20. Mother attended the manifestation determination IEP meeting and consented to Student's placement in independent study. She agreed that, as part of the independent study program, she would pick up Student's work from school. Mother agreed to pick up Student's academic work from school and assist Student by re-directing him, reading information out loud for Student, rephrasing information, and checking to ensure that Student had completed his work. The District modified Student's school work and sent those assignments home to him via Mother. Student's father also assisted Student with his independent study by reading the assignments out loud to him and making sure that he had completed all his work.

21. On April 20, 2005, the District notified Parents of its administrative panel hearing to be held on May 4, 2005 and the subsequent board of trustees meeting to determine whether Student should be expelled from the District. Mother did not receive the District's April 20, 2005, letter until April 25, 2006, because the District had sent the letter to the wrong address. On April 26, 2005, Mother wrote the District and requested that the District postpone the administrative hearing panel to allow her time to review Student's records and to prepare for the administrative hearing. Mother requested that the District provide her with all the documents that the District intended to use at the administrative hearing. Mother received the documents related to the expulsion proceedings.

Accessibility modified document

Pursuant to Mother's request, the District postponed the administrative panel hearing to May18, 2005. Mother was aware that the postponement of the administrative panel hearing would also postpone the board of trustees meeting. Mother was also aware that Student would not be eligible to enroll or attend Crossroads until after the board of trustees meeting.

22. At the administrative panel hearing on May 18, 2005, the panel recommended that Student be expelled from the District. Subsequently, the board of trustees of the District met on June 7, 2005 and voted to expel Student from the District for the remainder of the 2004-2005 school year and the first trimester of the 2005-2006 school year. In a letter dated June 8, 2005, the District notified Parents of the board of trustees' decision to expel Student. The District advised the Parents that the expulsion would be suspended contingent upon Student's attendance at the Crossroads.

23. On or about June 14, 2005, Mother signed the paperwork needed in order to enroll Student at Crossroads. Prior to Student's attendance at Crossroads, Student and Mother were required to have an orientation meeting with the principal at Crossroads. Mother's testimony that Student's enrollment at Crossroads was unduly delayed by the District was not persuasive.

24. Student attended Crossroads from August 2005 through October 2005, and then he returned to Park View. While attending Crossroads, Student received instruction in a small general education setting of seven students with both a teacher and a teacher's aide.

25. Shortly after the April 13, 2005, manifestation determination meeting, Student's Parents filed a compliance complaint with the California Department of Education (CDE), alleging that the District failed to conduct a functional behavioral assessment following ten days of suspension and that the District had failed to adhere to the requirements for determination of alternative educational setting during

Accessibility modified document

discipline procedures. The CDE determined that the District was not required to develop an assessment plan for a FBA and that the District was in compliance with the law. In addition, the CDE concluded that the Parent signed the April 13, 2005, IEP, approving Student's change of placement to independent study.

Although the CDE determined that a FBA was not necessary, the District psychologist believed that a FBA might be appropriate. Therefore, the District obtained parental consent for a FBA. The District's psychologist reviewed Student's records and determined that, since Student's conduct was limited to a single incident and there was not a pattern of behavior, the District would not develop a behavior support plan.

26. On June 28, 2005, Parents obtained an independent psychological assessment from Kimani Norrington-Sands, Ph.D. Dr. Norrington-Sands administered the WJ-III. At the time of this assessment, Student's chronological age was 14.0 years and he was in the seventh grade. On the WJ-III, Student's scores were as follows:

Cluster/Test	Grade Equivalence	Age Equivalence
Total Achievement	2.8	8.2
Broad Reading	2.1	7.5
Broad Math	5.4	10.11
Broad Written Language	2.4	7.10
Basic Reading Skills	1.8	7.2
Math Calculation Skills	5.9	11.5
Written Expression	2.5	7.11
Academic Skills	2.8	8.1
Academic Fluency	2.8	8.2
Academic Applications	2.7	8.3

27. Dr. Norrington-Sands diagnosed Student with reading disorder, written expression disorder, and Attention Deficit Hyperactivity Disorder – Not Otherwise

Accessibility modified document

Specified (ADHD- NOS). Dr. Norrington-Sands determined that Student had made minimal progress in the RSP program. She opined that Student needed placement in a special day class (SDC) with staff who could address Student's behavioral or attention needs. According to Dr. Norrington-Sands, Student required a behavior modification plan to address his behavioral challenges, individual psychotherapy, and a medication evaluation to address ADHD.

LEGAL CONCLUSIONS

1. Under both State law and the federal Individuals with Disabilities Education Act (IDEA), students with disabilities have the right to a Free Appropriate Public Education (FAPE). (20 U.S.C. §1400; Ed. Code, § 56000.) The term "free appropriate public education" means special education and related services that are available to the student at no cost to the parents, that meet the State educational standards, and that conform to the student's Individualized Education Program (IEP). (20 U.S.C. § 1401(9).) "Special education" is defined as specially designed instruction, at no cost to parents, to meet the unique needs of the student. (20 U.S.C. § 1401(29).)

Likewise, California law defines special education as instruction designed to meet the unique needs of individuals with exceptional needs coupled with related services as needed to enable the student to benefit fully from instruction. (Ed. Code, § 56031.) The term "related services" includes transportation and other developmental, corrective, and supportive services as may be required to assist a child to benefit from special education. (20 U.S.C. § 1401(26).) California Education Code section 56363, subdivision (a), similarly provides that designated instruction and services (DIS), California's term for related services, shall be provided "when the instruction and services are necessary for the pupil to benefit educationally from his or her instructional program." These services include psychological services. (Ed. Code, § 56363, subd. (b).)

Accessibility modified document

2. In *Board of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley* (1982) 458 U.S. 176, the United States Supreme Court addressed the level of instruction and services that must be provided to a student with disabilities to satisfy the requirement of the IDEA. The Court determined that a student's IEP must be reasonably calculated to provide the student with some educational benefit, but that the IDEA does not require school districts to provide special education students with the best education available or to provide instruction or services that maximize a student's abilities. (*Id.* at pp. 198-200.) The Court stated that school districts are required to provide only a "basic floor of opportunity" that consists of access to specialized instructional and related services which are individually designed to provide educational benefit to the student. (*Id.* at p. 201.)

Federal special education law requires states to establish and maintain certain procedural safeguards to ensure that each student with a disability receives the FAPE to which he is entitled and that parents are involved in the formulation of the student's educational program. (*W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1483).) The Supreme Court in *Rowley* also recognized the importance of adherence to the procedural requirements of the IDEA. However, procedural flaws do not automatically require a finding of a denial of a FAPE. (*Id.* at p. 1484.) Procedural violations may constitute a denial of FAPE if they result in the loss of educational opportunity to the student or seriously infringe on the parent's opportunity to participate in the IEP process.

3. Therefore, the inquiry under the IDEA is twofold. The first question is whether the school district has complied with the procedures set forth in the IDEA. The second is whether the IEP developed through the IDEA's procedures is reasonably calculated to enable the student to receive an educational benefit. To determine whether the District offered Petitioner a FAPE, the analysis must focus on the adequacy

Accessibility modified document

of the District's proposed program. If the District's program was designed to address Petitioner's unique educational needs, was reasonably calculated to provide her some educational benefit, and comported with her IEP, then District provided a FAPE, even if Petitioner's parent preferred another program and even if her parent's preferred program would have resulted in greater educational benefit. The District was also required to provide Petitioner with a program which educated her in the least restrictive environment, with removal from the regular education environment occurring only when the nature or severity of her disabilities was such that education in regular classes with the use of supplementary aids and services could not be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); Ed. Code, § 56031.) Therefore, under the IDEA and *Rowley*, the program the District offered must have met the following four requirements to be have constituted an appropriate educational program for Student: (1) be designed to meet his educational needs; (2) be reasonably calculated to provide him some educational benefit; (3) comported with his IEP; and (4) provided him an education in the least restrictive environment.

ISSUE I: DID THE DISTRICT DENY STUDENT A FAPE FOR THE 2004-2005 SCHOOL YEAR BY FAILING TO CONDUCT A RE-EVALUATION OF STUDENT?

4. Petitioner contends that the District failed to re-evaluate Student during the 2004-2005 school year. Petitioner asserts that, once Student returned to the District in August 2004, the District was on notice that Student had been receiving RSP support, that he had not been making any progress, and needed a re-evaluation. The District asserts that it conducted a full assessment of Student in September 2002 and that it designed IEPs to meet Student's needs.

5. Special education law requires that before the initial provision of special education and related services to a student with a disability, a local educational agency (LEA) must conduct a full and individual initial evaluation of the student. (20 U.S.C. §

Accessibility modified document

1414(a)(1)(A); Ed. Code, § 56320.) Reevaluations of the student must be conducted if conditions warrant a reevaluation or if the parent or teacher requests a reevaluation, but at least once every three years. (20 U.S.C. § 1414(a)(2)(A); Ed. Code, § 56381, subd. (a).) In developing a student's IEP, the IEP team must take into consideration the student's most recent evaluation. (20 U.S.C. § 1414(d)(3)(A)(iii); Ed. Code, § 56341.1, subd. (a)(3).)[2]

6. A local educational agency must assess a special education student in all areas related to his suspected disability, including the student's social and emotional status. (Ed. Code, § 56320, subd. (f).) An evaluation must be sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the eligibility category of the student. The school district must use technically sound testing instruments that demonstrate the effect that cognitive, behavioral, physical, and developmental factors have on the functioning of the student. The school district must use assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the student. (34 C.F.R. § 300.532(h), (i), & (j).)

In addition, the school district must use a variety of assessment tools and strategies to gather both relevant functional and developmental information about the child, including information provided by the parent**.** (34 C.F.R. § 300.532(a), (b), (g), (h), (i), and (j).)

7. Petitioner contends that, in designing the October 14, 2004 IEP, the District erroneously relied on the September 2002 triennial assessment. Petitioner also contends that Student needed a behavior plan. The District administered a complete triennial

[2] The pertinent parts of the Individuals with Disabilities Education Improvement Act of 2004 became effective on July 1, 2005. As Student's claims arose prior to July 1, 2005, the Individuals with Disabilities Education of 1997 applies.

Accessibility modified document

assessment of Student in September 2002. The District identified Student's needs, including his attention issues. At Student's subsequent IEPs in the 2004-2005 school year, the District addressed his attention issues by providing him with accommodations, including: re- direction, preferential seating, a multi-sensory instructional approach, oral reminders, repeating instructions, and minimizing distractions in his educational environment. The evidence established that the District implemented Student's IEPs. Student's teachers used classroom management strategies, which were successful in addressing Student's needs. The evidence established that Student is a polite and athletic boy who does not have any behavior difficulties. There was no persuasive evidence to support Petitioner's contention that Student required a behavior plan to address his difficulty with attention.

Moreover, Petitioner presented no evidence that the 2002 triennial assessment was in any way inadequate or inappropriate. The District used a variety of assessment tools to gather relevant information about the Student. The District's assessment was sufficiently comprehensive to identify all of the Student's special education needs. Mother did not inform the District that she disagreed with the District's assessment. Accordingly, the ALJ determines that the District's September 2002 triennial evaluation was appropriate.

8. Four months after the September 2002 triennial evaluation, the Clark County School District in Nevada conducted a multidisciplinary assessment of Student. The Clark County evaluation resulted in findings about Student's functioning that were similar to those determined by the District in its September 2002 assessment. In September 2004, when Student returned to the District from Louisiana, the District provided Student with an interim placement and services pending his 30-day IEP meeting. At the October 14, 2004 IEP, the District relied on the February 2004 IEP from Louisiana, Student's school records, the District's prior triennial evaluation, as well as

Accessibility modified document

Student's performance in the classroom and the concerns expressed by Student's teachers regarding Student not completing his work. In response to Student's needs, the District offered Student accommodations. The IEP team added a goal to help Student in completing his assignments. Therefore, the ALJ determines that the District properly identified and addressed Student's needs.

9. Petitioner contends that by revamping Student's goals and objectives, the January 2005 IEP team wrote that the previous goals from the October 14, 2004 were inappropriate.

Prior to the January 26, 2005, annual IEP meeting, the District administered the WJ- III in December 2004 in order to obtain accurate information about Student's present level of academic performance. The IEP team reviewed Student's goals and objectives and, based on all the information the IEP team had, it determined to modify Student's writing goal by adding steps and strategies to assist Student in meeting his goals. The District also considered Mother's input and request for additional assistance for Student in the area of reading. The District replaced Student's computer class with a reading study skills class. Student's language arts RSP teacher provided Student with remedial assistance in reading skills.

The District psychologist, Ms. Ede-Levine persuasively testified that the October 2004 IEP goals were appropriate. At the January 2006 IEP, the team agreed that the objectives did not provide Student with enough support or "scaffolding." Therefore, the January 2005 IEP team revised Student's goals and objectives to provide him with more scaffolding so he could access the core curriculum.

10. Student also contends that the April 13, 2005, manifestation determination IEP was not designed to meet Student's needs and that at the time the District should have re- evaluated Student. However, the April 13, 2005, meeting was a manifestation

Accessibility modified document

determination to decide whether Student should be subject to expulsion proceedings. The April 2005 manifestation determination IEP was not Student's annual IEP meeting.

At the time, Student had been suspended for five days, pending expulsion proceedings, for bringing a knife to school. The District convened the April 13, 2005, IEP in order to determine whether Student's behavior was a manifestation of his disability. Mother attended the IEP meeting. The IEP team determined that Student's behavior was not a result of his learning disability, his disability did not impede his understanding and ability to follow school rules, and that Student's IEP was appropriate to address Student's behaviors. The District determined that Student did not have a pattern of conduct or behaviors which required the IEP team to develop a behavior support plan. At the IEP meeting, based on Mother's preference that Student not attend the alternative education site at Crossroads, the District recommended and Mother consented to Student's placement in independent study pending expulsion. The IEP team, including Mother, determined that, should Student be expelled, he would be placed at Crossroads during of his expulsion.

The evidence established that Student was in independent study while he was awaiting completion of the expulsion proceedings. Student received home study packets from the District and with his Mother's help he completed the work and returned to the school.

11. While Student was in Louisiana, he was receiving failing grades. However, once he returned to the District, he began to make progress. Student's grades and his academic achievement test scores establish that Student made progress in the program provided by the District. He received educational benefit. Student was able to bring up his grades and was able to play on the school's basketball team. Based on the testimony of the District's psychologist, it was established that the District appropriately identified

Accessibility modified document

Student's needs and developed IEPs during the 2004-2005 school year that were designed to provide Student with educational benefit.

ISSUE II: DID THE DISTRICT DENY STUDENT A FAPE FOR THE 2004-2005 SCHOOL YEAR BY USING TESTING THAT VIOLATES THE LARRY P. V. RILES INJUNCTION?

12. Petitioner contends that the District relied on intelligence testing conducted by Clark County to develop the October 14, 2004, January 26, 2005 and April 13, 2005 IEPs.

13. In *Larry P. v. Riles* (9th Cir. 1974) 502 F.2d 963, the Ninth Circuit Court of Appeals enjoined California schools from using standardized intelligence tests for the purpose of identifying African-American students for special education and services. The rationale behind the prohibition was that there appeared to be a disproportionate number of African-American students found eligible for special education services under the eligibility category of mental retardation based on intelligence testing. The California Department of Education has also issued a legal advisory prohibiting intelligence or I.Q. testing on African- American students. In 1984, the court expanded the original *Larry P.* injunction, where the parties stipulated to a settlement which provided a complete ban on the use of I.Q. testing on African-American students for any purpose. (*Larry P. v. Riles* (9th Cir. 1984) 793 F.2d 969.) Thereafter, in *Carwford v. Honig* (9th Cir. 1994) 37 F3d 485, the Court held that the *Larry P.* injunction would not prevent the use of I.Q. testing for purposes other than the identification of African-American students as special education students, particularly where the parent consents to I.Q. testing.

Accessibility modified document

Furthermore, the IDEA and the Education Code prohibit the use of discriminatory testing and evaluation materials. (34 C.F.R. § 300.532(a)(1)(i); Ed. Code, § 56320, subd. (a).)[3]

14. Here, the District itself did not administer any instruments to Student that can be classified as IQ tests. After Student moved to Nevada, Clark County conducted intelligence testing on Student when it administered the K-BIT. When Student returned to the District in fall 2004, the District referred to the K-BIT in Student's October 14, 2004, January 26, 2005 and April 13, 2005 IEPs.

The District's practice is to provide a statement in the IEP under the section of "measures used," to state the test instruments administered. The District reported on the October 14, 2004, IEP what assessment was used in Student's previous IEP from Louisiana. Once the school District psychologist became aware of the Clark County assessment and that it included intelligence testing, she purged the District's records of the I.Q. test results. The District did not rely on the Clark County testing in designing Student's IEPs.

15. In 2004, the District used the prior 2002 triennial evaluation as well as information from the parents and Student's teachers in developing his IEPs. The mere fact that the District wrote on the IEP that the Student was at one point administered the K-BIT did not establish that the District inappropriately evaluated, placed, or served Student using intelligence testing. The District did not change Student's eligibility, placement, or services after it received the Clark County assessment. Ms. Ede-Levine's testimony that the IEP team did not rely on the K-BIT was persuasive.

---

[3] For the reasons discussed in Larry P. v. Riles, the results of the Clark County standardized intelligence testing administered to Student are not considered in this decision

Accessibility modified document

Therefore, the ALJ determines that the District did not administer, use, or otherwise rely on I.Q. testing in determining Student's special education eligibility or in designing his IEPs.

ISSUE III: DID THE DISTRICT DENY STUDENT A FAPE FOR THE 2004-2005 SCHOOL YEAR BY FAILING TO PROVIDE STUDENT A TRANSITION PLAN?

16. Petitioner contends that the District denied Student a FAPE by failing to provide a statement of Student's transition service needs.

Beginning at age 14 and updated annually, the IEP must contain a statement of the transition service needs of the student under the applicable components of the student's IEP that focus on the student's course of study. (20 U.S.C. § 1414(d)(1)(A)(vii); 34 C.F.R. § 300.347(b)(1).)[4] The statement of transition service needs should relate directly to the student's goals beyond secondary education, and show how planned studies are linked to these goals. (34 C.F.R. Part 300, App. A, No. 11.) "Transition services" means a coordinated set of activities for a student designed with an outcome-oriented process that promotes movement form school to post-school activities, including post-secondary education, vocational training, integrated employment, continuing and adult education, adult services, independent living, or community participation. (20 U.S.C. § 1401(30)(A); Cal. Ed. Code, § 56345.1.)

17. Petitioner turned fourteen years old on June 16, 2005. Therefore, the District was not obligated to provide a statement of Student's transition service needs in the October 2004, January 2005, or April 2005 IEPs. Petitioner did not present any

[4] Student turned fourteen on June 16, 2005. The pertinent sections of the Individuals with Disabilities Education Improvement Act of 2004 became effective on July 1, 2005. Therefore, 20 U.S.C. § 1414(d)(1)(A)(vii) of the Individuals with Disabilities Education Act of 1997 applies to the analysis of this issue.

Accessibility modified document

probative evidence at the hearing in this matter to address his claim that the District denied Student a FAPE by failing to provide a transition Statement in Student's IEP after Student turned 14 years old in June 2005. Therefore, the ALJ determines that Petitioner did not establish that the District denied Student a FAPE based on the alleged failure to provide a transition plan.

ISSUE IV: DID THE DISTRICT DENY STUDENT A FAPE BY INAPPROPRIATELY PLACING HIM IN AN INTERIM ALTERNATIVE EDUCATIONAL SETTING

18. Petitioner contends that at the April 13, 2005, IEP the District inappropriately placed Student in an alternative educational setting. Petitioner argues that Student's alternative educational placement lasted beyond the 45-days allowed by law and that Student's interim placement in independent study was not appropriate. The District contends that the April 13, 2005, IEP team, including Mother, agreed to provide Student with Independent Study instead of placing him at an alternative educational setting at Crossroads. The District asserts that it provided Student RSP collaborative model during the independent studies placement period and that Student made progress.

19. A school district may order a change in placement of a child with a disability to an appropriate interim alternative educational setting… for not more than 45 days if the child carries or possesses a weapon to or at school. (20 U.S.C. § 1415(k)(1)(A).) Any interim alternative educational setting in which a child is placed … shall be selected as to enable the child to continue to participate in the general curriculum, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP. (20 U.S.C. § 1415(k)(3).)

20. Here, since the Student's disciplinary violation involved bringing a weapon to school, the District could have placed him in an interim alternative educational

Accessibility modified document

setting, such as Crossroads, for 45 days. However, the District agreed to change his placement to independent study. Once Student was expelled, the District agreed to suspend the expulsion and allow Student to attend Crossroads.

Mother attended the April 13, 2005, IEP meeting and agreed to the change of placement to independent study. In fact, the District acceded to Mother's request not to make an interim alternative educational placement at Crossroads. Mother knew that by agreeing to placing Student in independent study, Student would receive work packets from school. Due to Mother's request that Student not be placed at Crossroads pending expulsion proceedings, the IEP team agreed to place Student in independent study. In its investigation of Mother's compliance complaint, the CDE reached the same conclusion. Student's placement in independent study was not a placement in an interim alternative educational setting, and therefore, not subject to the 45-day timeline.

21. The ALJ determines that, at the April 13, 2005, IEP meeting, Mother agreed to a change of placement to independent study in lieu of an administrative placement in an interim alternative educational setting, such as Crossroads. Since the placement in independent study was not an interim alternative setting, the IEP team was allowed to change his placement to last more than 45-days. Therefore, the 45-day timeline did not apply. The ALJ determines that the District did not deny Student a FAPE by placing him in independent study.

ISSUE V: DID THE DISTRICT STUDENT A FAPE BY FAILING TO PROVIDE STUDENT WITH SPECIAL EDUCATION AND RELATED SERVICES SINCE OCTOBER 14, 2004 THROUGH END OF THE 2004-2005 SCHOOL YEAR?

22. First, Petitioner contends that the October 2004 IEP was not designed to meet Student's needs. Petitioner argues that, because Student's October 2004 IEP stated that Student was "on the fifth grade level" in reading and writing, the IEP was not

Accessibility modified document

designed to meet Student' needs. According to the September 2002 triennial assessment, Student was functioning at the second grade level.

23. The fact that the District repeated incorrect information from the Louisiana IEP did not establish that the District's IEP was not designed to meet Student's needs. When Student returned to the District, he had already missed about one month of school. At the 30-day IEP in October 2004, the District did not have all of Student's educational records from Nevada and Louisiana. Within his first 30 days at the District, based on observation and reviewing his work, his teachers determined that Student was capable of completing his work. As set forth in Factual Finding 12, after his departure from Louisiana and return to the District, Student's grades improved.

24. The school District psychologist presented persuasive testimony that Student's goals and objectives were appropriate and met his needs. Student's teachers provided Student with accommodations and support to assist him in accessing the core curriculum. Petitioner did not establish that the District's reliance on the Louisiana IEP at the 30-day IEP resulted in a denial of FAPE.

25. Second, Petitioner contends that, the reading and writing goals in the January 2005 IEP do not have a measurable time frame and do not state whether Student was meeting his goals. School psychologist, Ms. Ede-Levine testified and established that, unless stated otherwise, IEP goals are annual goals. Therefore, the fact that the reading and writing goals do not specifically state that they are annual goals, does not make them inappropriate. Furthermore, each of the three objectives for the goal are limited to a ten-week period. A school year has thirty weeks. Therefore, both the goals and the objectives have measurable time frames.

Moreover, Student's IEP contains information regarding his then-present levels of performance, including his scores from the December 2004 WJ-III test. Witnesses for the District presented credible testimony to establish that, at Student's IEP meetings, the IEP

Accessibility modified document

teams discussed Student's then-present levels of performance and developed goals and objectives based on his needs. Therefore, the fact that the IEP does not contain information about whether Student was meeting his previous goals, did not result in a denial of FAPE.

26. Third, Petitioner also contends that, at the April 2005 IEP meeting, the IEP team simply copied Student's goals and objectives from the January 2005 IEP, and thus the goals are not measurable. The April 2005 IEP was a manifestation determination IEP. The purpose of that IEP meeting was to determine whether Student's conduct was a direct manifestation of his disability.

In addition, a comparison of Student's WJ-III scores in December 2004 and those obtained by Ms. Norrington-Sands in June 2005 reveals that Student made academic gains raging from one month to nine months. There were only two subtests in which Student's scores were lower in June 2005: (1) in broad math Student's score was one month lower than the December 2004 test results, and (2) in broad reading Student's score was two months lower than the December 2004 test results. While at the time that Student was placed in independent study his grades were lowered from "C"s to "D"s, the ALJ determines that Student was able to complete his independent study assignments and his academic achievement scores indicate that he was making academic progress. Therefore, the April 2005 manifestation determination IEP did not deny Student a FAPE by re-stating earlier goals and objectives.

27. Fourth, Petitioner contends that the RSP support the District provided was not appropriate and that the District should have placed Student in a SDC. The District contends that it designed an educational program to meet Student's needs and that, given the short period of time Student was at the District, Student made some progress.

28. Psychologist Dr. Norrington-Sands, asserted that, the District should have placed Student at a special day class (SDC) or a non-public-school (NPS). Dr.

Accessibility modified document

Norrington- Sands opined that, since Student was receiving RSP and he failed his RSP social studies class, the services he was receiving were not effective and that perhaps he needed a more intensive type of environment, such as a SDC or NPS where staff would be available to address children who have behavior difficulties. Dr. Norrington-Sands' testimony was not persuasive.

29. The IEP team considered Student's peer group in determining his placement and services. According to Ms. Ede-Levine, without a peer group, the classroom teacher may not be able to address the students' needs. With a peer group, there are other students in the class who have equal needs and the teacher can provide them adequate support. The breakdown of Student's seventh grade peer group in the area of reading at Park View was as follows: 12 percent could read at grade level or higher; 11 percent could read at or below the second grade level; 11-30 percent could read between second and fourth grade level. Therefore, Student had a peer group. If Student were placed at a SDC, Student's peers would be pupils who may have diagnoses such as mild to severe autism and mild mental retardation. By being placed in general education with RSP support, Student was able to take advantage of his strengths to help support his areas of weaknesses. Placement at a SDC was not appropriate for Student. The work Student completed was adequate or average. Student was capable of understanding the concepts addressed in his classes.

30. The evidence does not support Petitioner's contention that he should have been placed in a SDC or NPS. As determined in Factual Findings 12, 14, and 17, Student made progress and was receiving educational benefit from his program. The District's placement and services offered him a FAPE.

31. Fifth, Petitioner contends that the District did not address Student's attention and behavior issues. As set forth in Legal Conclusion 7 above, the District identified and addressed Student's attention issues.

Accessibility modified document

32. Finally, Student also contends that, once Student was expelled, he did not receive appropriate services at Crossroads. As set forth in Factual Findings 19 and 24, the IEP team, including the Parents, agreed that if Student was expelled, he would be placed at Crossroads and would receive services through the District's special education resource collaboration model. Student was in a small class setting with seven other students and received assistance from the teacher and the teacher's aide. The District provided Student with services at Crossroads which were appropriate and constituted FAPE.

ISSUE VI: ARE STUDENT'S PARENTS ENTITLED TO REIMBURSEMENT FOR THE INDEPENDENT PSYCHO- EDUCATIONAL ASSESSMENT BY DR. NORRINGTON-SANDS?

33. Petitioner contends that Student's Parents are entitled to reimbursement for Dr. Norrington-Sands assessment because: (i) the conditions warranted that the District re- evaluate Student, and (ii) the District's triennial evaluation of September 2002 was more than two years old and inappropriate, because it failed to make any recommendations regarding Student's behavioral concerns while it found him to be significantly at risk for conduct problems.

34. A parent is entitled to obtain an independent educational evaluation (IEE) at public expense if the parent disagrees with an evaluation conducted by the school district. (34 C.F.R. § 300.502(b)(1); Cal. Ed. Code, § 56329, subd. (b).) Petitioner claims that the requirement that the Parent disagree with a district's assessment in order to seek an independent educational evaluation should not apply here because Mother claims she never saw or had knowledge of the District's September 2002 assessment.

35. Mother's testimony that she did not recall seeing the District's September 2002 assessment report was not credible. Mother did not establish that she ever disagreed with that assessment or informed the District of the desire to obtain an independent assessment. As set forth in Legal Conclusion 7 above, the ALJ has

Accessibility modified document

determined that the District's September 2002 evaluation was appropriate. Therefore, because they did not disagree with the District's earlier assessment, Parents are not entitled to reimbursement for Dr. Norrington-Sands' evaluation.

ISSUE VII: DID THE DISTRICT VIOLATE THE TIMELINE FOR DEVELOPING AN ASSESSMENT PLAN TO CONDUCT A FUNCTIONAL BEHAVIOR ASSESSMENT AFTER STUDENT'S CHANGE OF PLACEMENT ON APRIL 13, 2005?

36. Petitioner contends that the District should have developed an assessment plan to conduct an FBA within ten days of changing Student's placement to independent study.

At the April 13, 2005, IEP meeting, the IEP team agreed to change Student's placement to independent study, which did not constitute a removal of Student to a 45-day interim alternative educational setting. The District did obtain parental consent to conduct a FBA and it referred the matter to the school psychologist to conduct the assessment. However, the school psychologist reviewed Student's records and found that there was no pattern of behavior, expect for the one-day suspension in November 2004. She determined that, based on an isolated incident, she could not develop a FBA. In its investigation of Parent's compliance complaint, the CDE also determined that the District was not required to conduct a FBA. The evidence established that the District was not required to conduct a FBA. Since the District was not required to conduct a FBA, it was not necessary to hold an IEP meeting to discuss the results of the FBA. Petitioner did not establish that the District committed any procedural violation that resulted in a denial of FAPE.

Accessibility modified document

ISSUE VIII: DID THE DISTRICT VIOLATE PARENTS' PROCEDURAL RIGHTS BY FAILING TO PROVIDE A COMPLETE COPY OF STUDENT'S EDUCATIONAL RECORDS?

37. Petitioner contended that the District failed to provide Student's Parents a complete copy of Student's educational records. Respondent contends that it provided Petitioner with the records he requested.

38. One of the procedural safeguards afforded to parents under the IDEA is the right to examine all records relating to the student. (20 U.S.C. § 1415(b)(1).) The school district must provide the parent with a copy of the student's records, within five days of the oral or written request by the parent. (Ed. Code, § 56504.) In allegations of procedural violations, a hearing officer may find that a child did not receive a FAPE only if the procedural violations impeded the child's right to a FAPE, significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the child, or caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(D)(ii).)

39. The only evidence provided on this issue was that Mother testified that, on April 26, 2005, she requested that the District provide her with the records the District intended to use at the expulsion hearing. As set forth in Factual Finding 21, Mother received the records she had requested. Petitioner did not present any evidence to support his allegation that the District did not provide him with a copy of his educational records. Petitioner did not present any evidence or argument regarding how, if such a procedural violation had occurred, it resulted in a denial of FAPE. Thus, the ALJ determines that the District did not deny the Parents' procedural rights by failing to provide educational records.

Accessibility modified document

ISSUE IX: IF THE DISTRICT DENIED STUDENT A FAPE, IS HE ENTITLED TO COMPENSATORY EDUCATION?

40. Because the District has not denied Student a FAPE as set forth in the Legal Conclusions above, Petitioner's request for compensatory education or other relief is denied.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. The following findings are made in accordance with the statute:

Issue I: The District prevailed.

Issue II: The District prevailed.

IssueIII: The District prevailed.

IssueIV: The District prevailed.

Issue V: The District prevailed.

Issue VI: The District prevailed.

Issue VII: The District prevailed.

Issue VIII: The District prevailed.

ORDER

Petitioner's request for relief is denied. Petitioner has failed to prove by a preponderance of the evidence that the District denied him a FAPE in the 2004-2005 school year.

Accessibility modified document

RIGHT TO APPEAL THIS DECISION

The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within 90 days of receipt of this Decision. (Ed. Code, § 56505, subd. (k).)

DATED: April 12, 2006

_____

ANAHID HOONANIAN

Administrative Law Judge

Office of Administrative Hearings

Special Education Division

Accessibility modified document