

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

OAH CASE NO. 2011080704

v.

GLENDALE UNIFIED SCHOOL  
DISTRICT AND LOS ANGELES UNIFIED  
SCHOOL DISTRICT.

**DECISION**

Elsa H. Jones, Administrative Law Judge, Office of Administrative Hearings (OAH), heard this matter on November 7-10, and December 5, 7, 8, and 9, 2011, in Van Nuys, California.

Student was represented by Valerie J. Gilpeer, Attorney at Law, of Newman Aaronson Vanaman. Student's Mother and Father (collectively, Parents) were present on all hearing days.

Glendale Unified School District (Glendale USD) was represented by Jennifer Rowe Gonzalez, Attorney at Law, of Fagen Friedman & Fulfrost. Amy Lambert, Ed.D., Assistant Superintendent, Special Education for Glendale USD, and William Gifford, M.Ed., Coordinator, Special Education Department for Glendale USD, were present on all hearing days.

Los Angeles Unified School District (LAUSD) was represented by Mary Kellogg, Attorney at Law, of Lozano Smith. Cary Mullen, Due Process Specialist for LAUSD, was present on all hearing days.

Student filed a request for due process hearing (Complaint) on August 18, 2011. On September 15, 2011, the matter was continued upon the joint request of the parties. Sworn testimony and documentary evidence were received at the hearing. The parties were ordered to file written closing briefs by no later than January 5, 2012. The parties timely filed their written closing briefs on January 5, 2012, at which time the record was closed and the matter was submitted.

## ISSUES<sup>1</sup>

1. Did Glendale USD fail to engage in child find from August 2009 and did such failure constitute a procedural and substantive violation of the IDEA and the California Education Code so as to deny Student a free appropriate public education (FAPE) during the 2009-2010 and 2010-2011 school years?
2. Did LAUSD fail to engage in child find from August 2009, and did such failure constitute a procedural and substantive violation of the IDEA and the California Education Code so as to deny Student a FAPE during the 2009-2010 and 2010-2011 school years?
3. Is Student entitled to reimbursement from Glendale, LAUSD, or both (collectively, the Districts) for the costs of placing Student at Westmark School (Westmark) during the 2009-2010 and 2010-2011 school years, as a result of the failure of one or both of the Districts to engage in child find?

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<sup>1</sup>The issues have been slightly re-formulated from the issues as stated in the Prehearing Conference (PHC) Order, for the purpose of clarity. Additionally, Issues 1 and 2 are not articulated as they appeared in Student's Complaint. Student's Complaint alleged that the issues were whether the failure of Glendale and LAUSD to develop IEP's for implementation during the 2009-2010, 2010-2011, and 2011-2012 school years constituted a denial of a FAPE. Prior to the PHC, Student served and filed a notice withdrawing his allegations in the Complaint that Glendale and LAUSD failed to develop an IEP that offered a FAPE for the 2011-2012 school year. At the PHC, Student's counsel confirmed that the withdrawal of this issue included the withdrawal of any allegations regarding the adequacy of the assessments performed by LAUSD during the 2011-2012 school year.

With respect to the 2009-2010 and 2010-2011 school years, Student's PHC Statement specified the issues at hearing as whether "The failure of Glendale and LAUSD to engage in child find from and after August 2009 constituted both a procedural and substantive violation of the law which resulted in loss of educational opportunity and a denial of FAPE," and whether Student was entitled to reimbursement by reason of those violations. At the PHC, the parties confirmed that the "child find" issues described in the Student's PHC statement, and which were encompassed by the allegations of the Complaint, were the issues to be decided at hearing, as well as the issue of reimbursement. Therefore, based upon the Student's PHC statement and the parties' discussion at the PHC, these issues were the subject of the PHC Order and of the hearing.

## FINDINGS OF FACT

### *Background and Jurisdictional Matters*

1. Student is a 14-year-old boy who, at all relevant times, has resided with Parents in the area served by Glendale USD. As of September 2008, when Student was entering fifth grade, Student has attended Westmark School, a private school located within the geographic area served by LAUSD. At the time Student enrolled at Westmark, it was a California certified non-public school (NPS), but it has not held such a status since June 30, 2009. At the time of the hearing, Student was attending 8th grade at Westmark.

### *Student's Education Prior to Enrolling at Westmark*

2. Student has never attended public school. Student attended The Country School, a private school located in the area served by LAUSD, from preschool through the 2007-2008 school year, when he was 11 years old and had completed fourth grade. When he first began to attend The Country School, Student repeated preschool. He had difficulties with fine motor skills, but those difficulties eventually resolved. From kindergarten through fourth grade at The Country School, Student had difficulty with reading, memorization, and math facts. The school advised Parents that boys were slower to develop, and Parents should wait to see whether Student improved. In third grade, Parents hired a tutor for about two months to assist in keeping Student on task, and who helped him with memorization and with homework. Student still did not improve such that he could complete homework in math, reading, and writing independently. Instead, Student became more distressed and frustrated, and Parents were concerned that Student would not simply outgrow his academic difficulties.

3. At the beginning of fourth grade, Student's teacher at The Country School recommended that Student have a full assessment. The Country School also referred student to an educational therapist, who recommended that Student be assessed by André Van Rooyen, PhD. A neighbor who had a child enrolled in a Glendale USD special education program at Franklin Elementary school, (Franklin), Student's local school, suggested that Parents contact Glendale USD to obtain services for Student.

4. Consequently, in early 2008, when Student was ten years old and in the fourth grade, Parents contacted Glendale USD and signed a written consent for assessment. In approximately February 2008, Glendale USD assessed Student pursuant to the Parents' written consent.

### *Assessment by Dr. Van Rooyen in 2008*

5. In January and February 2008, at approximately the same time as Glendale USD was assessing Student, Parents privately retained Dr. Van Rooyen, a pediatric neuropsychologist, to assess Student. Dr. Van Rooyen obtained his B.A. in developmental psychology, Magna Cum Laude, from Loma Linda University, his M.A. in psychology from the Fuller Theological Seminary, and his Ph.D. in clinical psychology from the same

institution. He has been in private practice since 2001, and from 2001 to 2004 he was a faculty member at Children's Hospital Los Angeles, University of Southern California Keck School of Medicine.

6. Following his assessment, Dr. Van Rooyen produced a written report which was undated. Dr. Van Rooyen's report stated that the learning support specialist at Student's school had referred Student based upon concerns for his reading development, inconsistent focus skills, difficulties retaining information, and slow work rate. Parents were concerned about these difficulties on his development, and wanted to better understand Student's function and what interventions could optimize his development. The report included background information, noting Student's early motor development was at the late end of the typical developmental window, and that his early speaking skills were slightly delayed. Parents reported to Dr. Van Rooyen that Student's gross motor skills and fine motor skills were below average, and that Student attended preschool an extra year because of concerns for his fine motor development. Parents reported Student's inability to understand how to begin or complete his schoolwork. They reported that Student was doing well socially, but they worried that Student had become more moody and had shown decreasing frustration tolerance. Father was concerned that Student was becoming depressed due to his academic difficulties. The report noted that Glendale USD's assessment showed that Student was of average cognitive ability, that his academic skills were generally at grade level, and that he no longer looked forward to going to school as he had in the past. Parents reported that Student was struggling academically. Two of Student's teachers reported that Student's had difficulty completing the majority of his work even with modification, and that Student seemed withdrawn and not "connected to the classroom."

7. Dr. Van Rooyen's report commented that Student's speech was notable for articulation issues. During testing, Dr. Van Rooyen's report noted that Student became anxious when tasks became challenging. His work pace was slow overall compared to others his age. His attention waxed and waned. The assessor had to repeat questions frequently. Dr. Van Rooyen reported that the test results were an accurate estimate of the range in which Student was functioning, but they probably underestimated his true potential in view of his attentional difficulties and anxiety.

8. Dr. Van Rooyen interviewed Parents and Student. He also administered the following instruments:

- Achenbach Teacher Report Form (Parent/Teacher)
- Behavioral Rating Inventory of Executive Functioning (BRIEF)
- Children' Depression Inventory Short Version (CDI-S)
- Conners' Parent and Teacher Rating Scales, Revised: Long Version
- California Verbal Learning Test for Children (CVLT-C)
- Delis Kaplan Executive Functioning System (DKEFS) selected subtests
- NEPSY-II (selected subtests)
- Rey-Osterreith Complex Figure Drawing (Rey-O)
- Test of Auditory Processing Skills-3rd Edition (selected subtests)

Test of Variables of Attention (TOVA)

Test of Visual Perceptual Skills, 3rd Edition (TVPS-3) selected subtests

9. The report noted that the assessment did not duplicate the intellectual and achievement measures administered by Glendale USD. Rather, the measures Dr. Van Rooyen administered focused on executive functioning, memory, and attention, to assist with considering a diagnosis of an attentional disorder.

10. The report did not include all of Student's scores on all of the measures administered. Rather, Dr. Van Rooyen summarized his conclusions, and weaved Student's scores into the discussion. In the memory and learning area, the report noted that Student's performance on measures of verbal memory were significantly variable. He performed in the high average range (75th percentile) on the Narrative Memory Free and Cued Recall subtest. He performed in the average range (58th percentile) on the CVLT-C, a measure of long-term verbal memory and learning. He had an average initial attention span for auditory-verbal information, which deteriorated after delay. Further, he recalled fewer words when provided with category cues than when recalling words on his own. The report considered these results as suggesting that Student had difficulty using semantic strategies to remember verbal information, and that Student would have difficulty organizing information for learning. Student would also have difficulty at times organizing information for recall.

11. The report stated that Student's visual memory abilities were also inconsistent. He obtained a low average score (25th percentile) on the Memory for Faces portion of the NEPSY-II, and improved to the average range (37th) after a delay, suggesting that Student improved when he took the time to consolidate his memories. Student's performance on the TVPS-3 Visual Memory subtest was in the very superior range (98th percentile), but he performed in the average range (37th percentile) on the TVPS-3 Sequential Memory subtest. He performed in the average range on the Rey-O when required to copy a complex figure, but his ability to produce the previously copied figure from memory on the Rey-O Immediate Recall test was only in the low average range (21st percentile). He also scored in the low average range (8th percentile) on the Rey-O Delayed Recall test, but when required to recognize portions of the figure on the Rey-O Recognition test, his performance was average (31st percentile). The report concluded that Student was able to encode the information but his poor copying strategy and organizational difficulties negatively impacted his recall.

12. The report noted that Student's phonological awareness skills, as measured by the TAPS-3, ranged from the low end of the average range to the high average range. The report concluded that Student's articulation issues appeared to negatively impact his performance on the Phonological Segmentation and Phonological Blending tasks. The report concluded that Student's phonics skills were average overall, and he should be capable of adequately decoding phonemically correct words.

13. Dr. Van Rooyen administered the TOVA to measure Student's performance in the area of sustained attention. Student's overall performance was not within normal limits compared to other boys his age, as he responded impulsively to the test tasks. The second

half of the test was rendered invalid given Student's high number of anticipatory responses. In the first half of the test, Student's vigilance was in the borderline range for the first half of the test (Omission Errors, 2nd percentile), and he showed poor impulse control (Commission Errors, < 1st percentile). Student's response time was average (58th percentile), and he displayed an average degree of variability in his response time (61st percentile). Dr. Van Rooyen reported that these scores indicated significant difficulties sustaining attention and modulating impulsivity for boring tasks.

14. Student's performance on the D-KEFS measures of focused attention was generally average. His scores ranged from the 63rd percentile (average range) in Number Sequencing, to the 25th percentile (low average range) on a measure of letter sequencing. The report concluded that overall, Student's focused attention skills were well-developed when he was required to focus for briefer periods of time.

15. Student's performance on measures of executive functioning was inconsistent. He performed in the average range for time to complete a D-KEFS measure of mental flexibility (37th percentile), but he made five sequencing errors (8th percentile). His performance was in the impaired range for time to completion on a D-KEFS task requiring him to inhibit a natural response (1st percentile), and he also made many errors (1st percentile). Student's timed performance was average on another D-KEFS task requiring mental flexibility and inhibition of a natural response (37th percentile), but he made numerous errors (2nd percentile).

16. Student completed self-report measures of anxiety and depression. He showed above average elevation on the Negative Self-Esteem scale on the CDI-S. He reported no current suicidal ideation, intent, or plan. On the Multidimensional Anxiety Scale for Children, Student's responses on the Perfectionism scale were significantly elevated.

17. Dr. Van Rooyen requested Parents and two of Student's teachers to complete behavioral checklists. On the Conners' Parent Rating Scales, both Mother and Father had given Student markedly elevated ratings on the Cognitive Problems/Inattention scale, an indicator that Student was likely to be inattentive, have organization problems, and have difficulty completing tasks. They also scored Student as moderately elevated on the DSM-IV Inattentive scale, indicating above-average correspondence with diagnostic criteria for Attention Deficit Hyperactivity Disorder (ADHD) Inattentive Type and on the Conners' ADHD Index, which identifies children at risk for ADHD. On the Achenbach Child Behavior Checklists, Mother's ratings showed a clinically significant elevation on the Attention Problems scale (> 97th percentile). Father's ratings showed a borderline elevation on the Thought Problems scale (95th percentile) and on the Attention Problems scale (95th percentile).

18. Parents also completed the BRIEF. Their ratings showed elevations on the Initiate scale (83rd percentile), Working Memory (92nd percentile), Plan/Organize (95th percentile), and Organization of Materials scale (87th percentile).

19. On the Conners' Teacher Rating Scale, Student received markedly elevated ratings on the Cognitive Problems/Inattention and DSM-IV Inattentive scales. Student received mildly elevated ratings on the Conners' ADHD index, Social Problems, and Restless Impulsive scales. On the Achenbach Teacher Report Form, Student's ratings showed an elevated trend on the Withdrawn/Depressed scale (92nd percentile), and borderline elevation on the Thought Problems scale (95th percentile) and Attention Problems scale (95th percentile). On the teacher version of the BRIEF, Student's ratings were significantly elevated on the Initiate (99th percentile), Working Memory (94th percentile), and Plan/Organize (93rd percentile) scales.

20. Dr. Van Rooyen's report commented that Student had previously worked with a reading tutor because of concerns about his reading development, but Parents had discontinued this service as Student had progressed such that he was at grade level in his abilities. The report noted Student's performance on the assessments pertaining to sustained attention and impulse control, and extreme variability with his memory performance and executive functioning, demonstrated a cognitive profile typically seen in individuals with attention problems. In view of the impact of these difficulties on Student's learning and functioning, the report concluded that Student's overall profile was consistent with the diagnosis of ADHD, Predominantly Inattentive Type. The report also noted Student's significant difficulties in the area of working memory, noting that Student has substantial difficulty holding an appropriate amount of information in mind for further processing, encoding, and/or mental manipulation. The report also noted that Student's scores on the BRIEF's Plan/Organize and Initiate scales were significantly elevated, which often indicated a disorganized approach to solving problems, such that Student may become overwhelmed with complex demands and shut down. Student's ratings also were elevated on the Working Memory and the Organization of Materials scales, which indicated generalized difficulty with organized problem solving, and that Student had difficulty starting tasks. Furthermore, student may underestimate the time required to complete tasks or the task's level of difficulty. The report concluded that Student felt overwhelmed by large amounts of information and may have difficulty retrieving material spontaneously or in response to open-ended questions. The report stated that addressing these weaknesses in executive functioning would be important to Student's academic self-confidence.

21. The report also commented that, given Student's cognitive processing differences, Student was at risk for increasing anxiety and declining self-esteem if he did not receive appropriate accommodations. The report also noted that because of his processing difficulties, Student missed learning information. The report noted that the report's findings were valid and reliable estimates of Student's cognitive, education, and emotional functioning. The report recommended 10 classroom accommodations, including minimizing distractions, preferential seating, use of a calming manipulative, allowing Student to leave class for breaks, repetition of information, breaking up schoolwork and homework into smaller chunks, positive reinforcement, classroom tests that require recognition memory such as matching, true/false, and multiple choice, techniques for self-monitoring of task performance, and "self-talk" strategies to help Student focus. The report also recommended that Student would benefit from a specific homework plan that avoided having Student learn

large amounts of material, and that Student work with an educational therapist to target organization and memory skills. The report suggested that Student receive individual therapy and enroll in a social skills group. The report also suggested that Parents might explore medication for ADHD, given the dramatic impact of Student's attention deficit disorder on his day-to-day functioning.

22. At hearing, Dr. Van Rooyen elaborated on his report. He concluded that Student's overall profile was consistent with ADHD Predominantly Inattentive Type. Dr. Van Rooyen believed that Student's ADHD adversely affected Student's educational performance. Based on his assessment alone, Dr. Van Rooyen did not believe that he could have made a recommendation at the time regarding special education eligibility. His assessment was not designed to determine whether Student was eligible for special education, and Dr. Van Rooyen made no such determination. Dr. Van Rooyen also acknowledged that educational therapy, such as he included in his recommendations, was not necessarily limited to special education students, as all types of students could benefit from educational therapy.

23. Glendale USD convened an IEP meeting on March 17, 2008, which was continued to March 31, 2008. At the March 31, 2008, IEP meeting, the IEP team found that Student was not eligible for special education. At one of the March 2008 IEP meetings, Glendale USD provided Parents with a copy of a document entitled "Parents' Rights and Procedural Safeguards" (Parents' Rights document). The Parents' Rights document explained that special education is provided to children with disabilities, that federal and state laws exist to protect parents and students during the assessment and identification process, that parents have the right to participate in the IEP process, and to be informed of the availability of a FAPE. The document defined various terms, such as Children with Disabilities, Consent, Evaluation, FAPE, and IEP. It described parental and student rights with respect to independent educational evaluations, prior written notice, consent, access to educational records, compliance and due process complaints (including recovery of attorneys' fees), mediations, discipline, unilateral placement in a private school, and surrogate parents. The document included the address and telephone numbers of the Glendale USD special education department.

24. The evidence was disputed as to whether Parents provided Glendale USD with Dr. Van Rooyen's 2008 report such that it should have been considered by the IEP team when it determined Student's eligibility for special education on March 30, 2011. Parents stated that they provided the District with the report. William Gifford, Glendale USD's Coordinator of Special Education stated that Glendale USD did not have the report at the March 2008 IEP meetings, and that Glendale USD did not have the report until subsequent to the filing of Student's Complaint. For the reasons set forth below, whether Parents had given Glendale USD Dr. Van Rooyen's 2008 report is not relevant to the disposition of the issues in this case.

### *Student's Attendance at Westmark*

25. At the March 31, 2008, IEP meeting, after the team determined that Student was ineligible for special education, Mr. Williams, Franklin's principal, conversed with Parents about Parents' options. Mr. Williams told Parents that Glendale USD would re-assess Student if Parents enrolled Student in Glendale USD and he "failed." Mr. Williams also suggested that Parents enroll Student in private school. Parents did not wish to wait for Student to "fail" to any greater extent than he already had, so they did not enroll Student in Glendale USD. Student applied for admission to Westmark. Westmark focused on students with language-based learning differences, with average to above-average intellect, and no diagnosed emotional issues. In deciding whether to admit Student, Westmark personnel considered Dr. Van Rooyen's report, which showed attentional and processing issues, but that was not sufficient for Westmark to admit Student. Westmark also considered the results of the Wechsler Intelligence Scale for Children—Fourth Edition (WISC-IV), which Dr. Van Rooyen administered to Student on April 2, 2008. Dr. Van Rooyen prepared a report dated April 4, 2008, regarding Student's scores on the WISC-IV. Student's composite scores on the WISC-IV ranged from a 104 (average range) in Perceptual Reasoning to 80 (low average range) in Processing Speed. His composite scores in Verbal Comprehension and Working Memory, were all in the average range. He obtained a Full Scale IQ score of 93 (average range). After considering Student's scores on the WISC-IV, and in particular Student's low average range score in Processing Speed, Westmark accepted Student. In approximately September 2008, Parents enrolled Student at Westmark.

26. Westmark had small class sizes. Student's reading classes had a student/teacher ratio of no more than four-to-one, and his math classes had a student/teacher ratio of eight-to-one. During the 2008-2009 school year, and continuing through the time of the hearing, Student was in a specialized reading program at Westmark. The program included instruction using Lindamood-Bell methodology. During the 2009-2010 school year and 2010-2011 school year, Student was in a specialized writing class, which used the Jane Shafer method. That class had approximately eight students. There was no evidence that Student's teachers at Westmark were fully credentialed special education teachers. In this regard, Jane Shafer and Lindamood-Bell methodology are not used exclusively for students in need of special education. Rather, they are used for general education students also. Student performed well at Westmark. During the 2009-2010 school year, Student did not have any greater challenges in reading than did any other Westmark student. He did not require any educational services beyond what Westmark could provide. Father noted that Student continued to have some difficulties with written and verbal communication and visual processing, but Parents never expressed concerns to anybody at Westmark that Student needed additional assistance to succeed at Westmark. Two of Student's teachers at Westmark noted that Student, during his time at Westmark, had written and verbal communication issues, as well as issues with organization, with transitioning from task to task, and with social awareness. These teachers did not believe there was any need to refer Student to any school district for an assessment. Nobody at Westmark ever recommended to Parents that Student should be assessed by LAUSD or any other public school district for

special education or any other purpose. Westmark did not, as a matter of practice, refer students to school districts for assessments.

27. The evidence was uncontradicted that Parents did not notify Glendale USD that they were enrolling Student at Westmark. The evidence was uncontradicted that Parents had no contact with Glendale USD from the time of the March 31, 2008, IEP meeting until on or about November 30, 2010, when Student, through his attorneys, requested Student's educational records. That request did not request an assessment, mention that Student had any disability, or mention anything about Student's academic progress. A copy of the fax cover sheet of that request, produced by Glendale USD at hearing, contained several handwritten notations written by unidentified Glendale USD personnel, including a notation that said "Westmark School, 3/31/08," but there was no evidence as to who wrote that notation, when it was written, or why it was written. Therefore, the weight of the evidence demonstrated that Glendale USD did not learn that Student was enrolled in and attending Westmark until January 14, 2011, when Student, through his attorneys, filed and served a due process hearing complaint (January 2011 Complaint) against Glendale USD. Parents never advised Glendale USD regarding Student's educational performance during the 2009-2010 school year or the 2010-2011 school year until sometime after Parents filed their January 2011 Complaint. Between the time that the Glendale USD IEP team found Student ineligible for special education and services in March 2008, until the filing of the January 2011 Complaint, Parents did not seek any assessments or public education services or assessments for Student, from either Glendale USD or from LAUSD.

28. The January 2011 Complaint, which was dismissed prior to the filing of the Complaint which is the subject of this action, sought relief for the alleged failure of Glendale USD to find Student eligible for special education in March 2008. The January 2011 Complaint was the first time Student had challenged the IEP team's determination at the March 31, 2008, IEP meeting that Student was not eligible for special education. The January 2011 Complaint sought development of an IEP which included eligibility for special education under the category of other health impaired (OHI), based upon Student's diagnosis of ADHD; reimbursement for tuition at The Country School, reimbursement for tuition at Westmark from and after fall 2008, plus reimbursement and transportation and related services, and prospective placement at Westmark, or reimbursement for continued placement, transportation and services at Westmark. The January 2011 Complaint summarized Dr. Van Rooyen's assessment report based on his assessment of Student in January and February 2008, and alleged that Parents had provided the District with Dr. Van Rooyen's 2008 report by the time of the March 31, 2008, IEP meeting. The January 2011 Complaint did not request an assessment, and did not contain any information regarding Student's academic functioning since 2008. In response to the January 2011 Complaint, William Gifford, the Coordinator of Special Education for Glendale USD, sent a letter to Parents dated January 26, 2011, enclosing a copy of the Parent's Rights document and a copy of a Motion to Dismiss Glendale USD had filed with respect to the January 2011 Complaint. The Motion to Dismiss contended that the January 2011 Complaint was barred by the two-year statute of limitations. Mr. Gifford's letter denied Student's requests for reimbursement for tuition, transportation, and related services obtained for Student, as well as for

prospective placement at Westmark. The letter also denied the request to convene an IEP team meeting, noting that Student had not been assessed since spring 2008, that a new assessment would be required prior to convening another IEP team meeting, and that such an assessment was the responsibility of the school district where Westmark was located. The letter also stated that, if the school district, after assessment, determined that Student was eligible for special education, then Glendale USD would convene an IEP team meeting to develop an offer of a FAPE. Mr. Gifford intended the letter as a response to the January 2011 Complaint, and as a response to the Complaint's request to convene an IEP to determine eligibility. Mr. Gifford enclosed a copy of the Parent's Rights document because it was Glendale USD's practice to do so when it responded to a due process complaint, regardless of the purpose of the complaint.

29. Parents knew that Westmark was located within the boundaries of LAUSD. After receiving Mr. Gifford's January 26, 2011 letter, Parents sent a letter dated March 1, 2011, to Lisa Kendrick, an LAUSD administrator, requesting that LAUSD evaluate Student for special education. Mother believed she was advised to address the letter to Ms. Kendrick by another parent at Westmark who was having her child assessed by LAUSD. At that time, Mother knew of several children at Westmark who were being assessed by LAUSD. LAUSD proceeded to assess Student in response to the March 1, 2011, letter.

30. In March and April 2011, at approximately the same time as LAUSD was assessing Student, Parents again retained Dr. Von Rooyen to assess Student. Dr. Van Rooyen assessed Student on March 29, 2011, April 1, 2011, and April 7, 2011. He wrote an undated report of that assessment, in which he diagnosed Student not only with Attention Deficit Hyperactivity Disorder, Predominantly Inattentive Type, as he had in early 2008, but he also diagnosed Student with Disorder of Written Expression, Learning Disorder NOS (Visual Processing Speed), and Anxiety Disorder (NOS).

31. In approximately June 2011, LAUSD convened an IEP meeting at which time Student was found eligible for special education as a student with autism. Subsequently, in approximately July 2011, Glendale USD held an IEP, and found Student eligible for special education under the category of OHI. As of the time of the hearing, Parents had not consented to either of these IEP's. Consequently, Student continued to attend Westmark. As of the time of the hearing, he was not receiving any special education services from either Glendale USD or LAUSD.

32. The parties stipulated that Parents paid tuition to Westmark in the amount of \$17,000 during the 2009-2010 school year, and incurred transportation costs in the amount of \$3,500 during the 2009-2010 school year. The parties also stipulated that Parents paid tuition to Westmark in the amount of \$20,200 during the 2010-2011 school year, and incurred transportation costs in the amount of \$2,939 during that school year. Parents paid an additional \$1,315 in transportation costs in cash during the 2010-2011 school year.

## *Child Find Procedures in Los Angeles County*

33. In approximately 2005, the directors for the Special Education Local Program Areas (SELPA's) in Los Angeles County formed an organization called Greater Los Angeles Area SELPA'S (GLAAS). The SELPA directors formed GLAAS to share information and provide assistance to each other on a variety of common topics relating to their duties, including child find. Both the Foothill SELPA (which encompasses Glendale USD), and the Los Angeles SELPA (which was identical to the LAUSD), were members of GLAAS. Among other things, GLAAS members developed protocols by which each SELPA would handle child find, also known as "search and serve," for children enrolled in private schools pursuant to the mandate of the Individuals with Disabilities Education Act (IDEA) as amended in 2004. The protocols were developed so that the SELPA's could provide consistent information to families regarding child find procedures. The GLAAS protocols were formulated in close and continuing consultation with Pamela Allen, a representative of the United States Office of Special Education Programs of the United States Department of Education (OSEP). The protocols were memorialized in a memorandum of understanding (MOU), which each SELPA director in GLAAS approved. GLAAS revised the MOU from time to time, to add details or to clarify provisions, but the basic division of responsibility in each revision of the MOU for child find of private school students beyond kindergarten level between the school district in which the student resided (District of Residence, referred to hereinafter as DOR), and the school district in which the student's private school was located (District of Location, referred to hereinafter as DOL) remained the same. The operative MOU's for the 2009-2010 school year, which were revised as of July 9, 2008, March 16, 2009, and April 29, 2009, provided the DOL would be responsible for child find activities and for completing the "meaningful consultation" process with local private schools.<sup>2</sup> Each of these MOU's further provided that the DOL would assess the student and hold an IEP meeting to determine eligibility. If the student was attending elementary school or above, and if the parent agreed the student would attend public school, and the DOL found the student eligible, the DOR would then convene an IEP meeting to provide a FAPE. If the parent declined the offer of public school, the DOL would offer an Individual Service Plan (ISP) or Private School Service Plan (PSSP) to serve the student.

34. The operative GLAAS MOU for the first part of the 2010-2011 school year was the April 29, 2009, revision of the MOU, and therefore these procedures were also applicable during that time. The MOU was revised again on January 29, 2010, and thereafter that revision was in effect at all relevant times. The January 29, 2010, revision specified that the DOR was responsible for referring the Parents to the DOL for assessment. However, if the Parents specified at the outset of the process that the student would be attending public school in the future, the DOR would complete the assessment.

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<sup>2</sup> As is further described below, the law pertaining to child find and parentally-placed private school students requires school districts to timely and meaningfully consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities.

35. Glendale USD would not always comply with these policies. For example, Glendale USD would sometimes assess if the residence of the student was not clear, or if the proper school district refused to assess.

*Glendale USD's Child Find Efforts During the 2009-2010 and 2010-2011 School Years*

36. The Foothill SELPA, which was comprised of the Burbank and La Cañada school districts as well as Glendale USD, assisted its member districts regarding child find. It had a written child find policy. There were approximately 60 private schools in the SELPA, about 27 or 28 of which were in Glendale USD. During the 2009-2010 and 2010-2011 school year, child find brochures were placed in every public school office in the SELPA and mailed to all pediatricians in the area. Child find information and these brochures were available on the SELPA website. The SELPA held parent trainings to provide information on education topics to parents, and child find information would be presented at every parent training. Any parent who resided in the SELPA or had a child in a private school located in the SELPA could attend the parent training. The parent trainings were publicized on the SELPA website, and on fliers. The SELPA prepared lists of the trainings and distributed them to special education program specialists in the three school districts in the SELPA, and sent them via e-mail and mail to private schools. Sometimes the SELPA list of trainings was hand-delivered to private schools. Upcoming trainings were discussed at the trainings and at Community Advisory Committee (CAC) meetings, which were open to parents of public school and private school students. CAC meetings also sometimes addressed child find issues.

37. In spring 2009, the Foothill SELPA placed advertisements describing the availability of special education services for children with special needs in three local English-language newspapers: the Glendale News-Press, the Crescent Valley Sun, and the Burbank Leader. The SELPA also placed ads one time per year, in the spring, written in the appropriate foreign language in Armenian, Spanish, and Korean newspapers. These advertisements, which were intended for parents who resided in the SELPA and who had children attended public schools in the SELPA, as well as for parents who had children attending private schools in the SELPA, included telephone numbers by which the public could contact the school districts. The SELPA placed similar ads in the spring 2010-2011 school year, but instead of the Crescent Valley Sun, the ad was placed in the La Cañada Valley Sun.

38. The Foothill SELPA also held annual "meaningful consultation" meetings during the 2009-2010 and 2010-2011 school years for private school staff, at which child find was discussed, as was the GLAAS MOU. Parents could also attend these meetings. Private schools were notified of the meetings by mail, by e-mail, by telephone call, or by hand delivery of a flyer. One such meeting was held on January 28, 2010, and another such meeting was held on September 15, 2010. Five private school representatives attended the meeting held on September 15, 2010. Private schools that were not represented at the meeting were mailed the materials from the meeting. The written materials distributed at the meeting held on September 15, 2010, included a schedule of the training meetings for private

school staff and parents, a procedural safeguards brochure containing information regarding students with disabilities enrolled by their parents in private schools, a power point which described child find and the responsibilities imposed by law for privately placed private school children who were suspected of having disabilities, and the GLAAS MOU. Among the materials provided at the January 28, 2010, meeting was a power point that was similar to the power point provided at the September 15, 2010, meeting, and a copy of the GLAAS MOU.

39. During the 2009-2010 and 2010-2011 school years, Glendale USD conducted child find activities in addition to those conducted by the Foothill SELPA. Glendale USD had child find information on its website. Glendale USD also had District Advisory Committee (DAC) meetings. The DAC was composed of staff, parents, and interested community members, which held meetings four times per year which were open to parents and the public. These meetings were publicized by fliers to school sites, and postings at Glendale USD's office and on its website. Child find topics were occasionally discussed at these meetings.

40. Families contacted Glendale USD because of the newspaper advertisements. Additionally, Mr. Gifford, Glendale USD's Coordinator of Special Education, was contacted by local hospitals regarding special education services for children. Both the Foothill SELPA and Glendale USD received referrals from private schools. A number of parents who resided inside Glendale USD and outside Glendale USD contacted Glendale USD regarding assessments. During the 2009-2010 school year, Glendale USD received approximately 65 requests for assessments due to its child find efforts. During the 2010-2011 school year, Glendale USD received approximately 80 requests for assessments based on its child find efforts.

41. Parents did not see any of the newspaper advertisements and were unaware of Glendale USD's child find efforts. Had Mother seen the newspaper advertisements, she would have contacted Glendale USD to request an assessment.

#### *LAUSD's Child Find Efforts*

42. LAUSD had a written child find policy, which was contained in its "Special Education Policies and Procedures Manual." During the 2009-2010 and 2010-2011 school years, LAUSD's general child find efforts included: (1) Providing all public schools in LAUSD with a brochure regarding child find entitled, "Are You Puzzled by Your Child's Special Needs? Special Education Information Services for Parents" ("Are You Puzzled" brochure); (2) Providing the "Are You Puzzled" brochure to each student to take home to their parents; (3) Inserting a questionnaire regarding whether the child had an IEP or learning difficulties in the enrollment packet for district schools; (4) Posting a child find poster at every district school with contact information from the Parent Resources Network, a response unit staffed by parents and an LAUSD district administrator; (5) Holding periodic public family resource fairs; (6) Conducting in-service trainings for teachers regarding the

process for referring a child to special education; (7) Providing information regarding child find and special education on its website.

43. During the 2009-2010 and 2010-2011 school years, the District's child find efforts for parentally-placed private school children included: (1) Mailing a child find poster annually throughout LAUSD, to numerous private schools, libraries, regional centers, social service agencies, health centers, and other community groups; (2) Providing child find information on its website; (3) Holding "meaningful consultation" meetings to which private school organizations were invited; and (4) Providing trainings to private school staff at which child find information was distributed on at least one occasion.

44. In spring 2009, LAUSD commenced its child find efforts for the 2009-2010 school year, when it began to prepare its mass mailing of the child find poster and to review the contents of the "Are You Puzzled" brochure. In early September 2009, LAUSD mailed child find posters to hundreds of institutions within its boundaries as well as outside of its boundaries but within Los Angeles County. The posters were sent to regional centers, secular private schools, religious schools, NPS's, pre-schools, community health centers, homeless shelters, hospitals, rehabilitation centers, probation departments, public social services departments, public libraries, public mental departments, non-profit mental health centers, non-profit organizations that served children and families, free clinics, and similar entities that served children and families. The address labels reflect that these organizations were widely dispersed throughout Los Angeles County, from Sun Valley and Chatsworth, to Wilmington and San Pedro, from Venice and Pacific Palisades, to Cudahy and Industry, and to many communities and towns in between. During that school year, LAUSD personnel prepared and stuffed the envelopes for the mailing of the child find posters to the private schools, while the other posters were prepared for mailing by outside vendors. All of the posters were mailed through LAUSD's mail unit. There was no evidence that any of the envelopes were returned to LAUSD as undelivered. The child find posters stated that LAUSD had a duty to identify, locate, and evaluate children suspected of having a disability who may be eligible for free special education services designed to meet their educational needs. The posters specified that students attending private schools located in LAUSD boundaries, as well as students who resided in the LAUSD attendance area could be eligible for services. The posters gave contact information for school age and for pre-school age children, and for children enrolled in LAUSD and those enrolled in private schools. The posters stated, "Please Post."

45. Additionally, during the 2009-2010 school year the posters were accompanied by a cover letter dated September 8, 2009, addressed to "Private School Administrator" from Sharyn Howell, identified in the letter as the Executive Director at LAUSD. The cover letter briefly explained child find and the right of parents at the private school to request an evaluation from LAUSD if their child was suspected of having a disability. The letter contained the phone number of the LAUSD Private Schools Office. Further, during the 2009-2010 school year, the District sent a follow-up letter from Jody Molodow, who was LAUSD's special education coordinator for private schools, to private school administrators. Ms. Molodow held this position for a brief period of time, from approximately the end of

July 2009 to approximately the end of September 2009. Ms. Molodow's letter, dated September 8, 2009, advised that various reference materials regarding supporting students with special needs would be sent to their private school, that training was available for some of the topics mentioned in the materials, and reminding recipients of a deadline to register for a fall conference on autism. The letter also advised the administrators that the child find poster had been mailed, and requesting that LAUSD be contacted if the school did not receive it. The letter contained contact information for Ms. Molodow. No school contacted Ms. Molodow to advise that it had not received the poster. Ms. Molodow received one call from a private school requesting additional child find posters.

46. During the 2010-2011 school year, LAUSD mailed hundreds of the child find posters to approximately the same institutions, and the same types of institutions, to which it mailed the posters during the 2009-2010 school year. The address labels again reflected that these institutions were widely dispersed throughout Los Angeles County. The posters were in English and Spanish, and contained substantially the same information as did the posters mailed in 2009-2010. LAUSD contracted with outside vendors to prepare the child find posters and envelopes for mailing, including labeling and stuffing the envelopes. The posters were mailed through LAUSD's mail unit. There was no evidence that any of the envelopes were returned to LAUSD as undelivered.

47. Veronica Smith, the Director of the LAUSD Division of Special Education Modified Consent Decree Monitoring/Policies and Procedures, supervised the process of preparing and mailing the child find posters in the 2009-2010 and 2010-2011 school years, including reviewing and approving the charges for preparing the posters and the mailings, and verifying that the child find posters were duly mailed.

48. Parents never saw any of LAUSD's child find materials during the 2009-2010 and 2010-2011 school years, although Mother habitually looked at public notices, and Father read notices posted at Westmark and The Country School, where one of Student's siblings attended. Had Parents seen the child find posters, they would have requested that LAUSD assess Student.

49. Westmark was one of the private schools to which LAUSD mailed the child find posters. LAUSD mailed the posters to "Westmark School." during the 2009-2010 school year, and to "Westmark School, ATTN: Principal/Director" during the 2010-2011 school year. Muir Meredith, Westmark's headmaster during the 2009-2010 school year through the time of the hearing, asserted that he would have received any mail directed to him, and denied that Westmark received any of the posters, or the "Are You Puzzled" brochure, and denied that he or staff had seen any other child find materials from LAUSD at Westmark. He would have posted the child find posters and shown parents the "Are You Puzzled" brochure had he received them. When shown these materials by Student's counsel in October 2011, he showed them to other Westmark administrators, and other workers in Westmark's office, and none of them had seen the materials.

50. LAUSD also mailed the child find posters during the 2009-2010 and 2010-2011 school years to The Country School, and Bridges Academy (Bridges), both of which were private schools within the boundaries of LAUSD. Student had previously attended The Country School, but he never attended Bridges, and there was no evidence that Parents had ever been to Bridges' campus. Daveen Fox was Head of School at The Country School since May 2010, and a member of the school's Board of Directors between 1994 through 2010. As Head of School, she opened her own mail. She was not the only person who opened mail addressed to the school. She did not read every piece of mail that the school received, and did not look at the mail in-depth, but anything from LAUSD would have eventually come to her attention. She did not regularly receive or review the mail at The Country School before May 2010. She never saw the child find posters sent during the 2009-2010 and 2010-2011 school years until October 2011, when Student's counsel showed them to her. She never saw the letters from Ms. Howell or Ms. Molodow dated September 9, 2009. In late October 2011, she showed the child find posters to approximately 12 people on campus, and nobody recognized them. She never saw the "Are You Puzzled" brochure in the 2009-2010 school year. If she had received the child find poster, she would have posted it and shared it with families at the school. She was never contacted by LAUSD to assess any students at The Country School, but she knew of one child who was assessed by LAUSD during the period of the 2009-2010 and 2010-2011 school years. She was aware that LAUSD could assess The Country School students.

51. The child find poster sent to Bridges during the 2009-2010 school year was sent to "Bridges Academy"; the poster sent to Bridges during the 2010-2011 school year was sent to "Bridges Academy, ATTN: Principal/Director." Sherri Minkowski, the Director of the Bridges High School during the 2009-2010 school year, and Associate Divisions Director of Bridges during the 2010-2011 school year, never saw LAUSD's child find posters sent during the 2009-2010 or 2010-2011 school years, until Student's counsel sent them to her in late October 2011. During the 2009-2010 school year, she would not have received mail addressed only to Bridges Academy, but sometimes would receive mail addressed to "Administrator" or "Director." After receiving the child find posters from Student's counsel, Ms. Minkowski showed them to other staff at Bridges, and they have not seen them either. She also sent an e-mail asking faculty and staff if they had heard of child find, or seen an LAUSD child find poster. Most of those she e-mailed responded, and they responded in the negative. If she had received the posters in the mail, she would have asked, the school principal whether to post them. LAUSD has assessed Bridges students during the past three years. Bridges referred parents to their local public schools when parents asked about the IEP process, and some Bridges students have IEP's with LAUSD.

52. Also as part of its child find efforts for parentally-placed private school students, LAUSD convened "meaningful consultation" meetings on October 27, 2009, on January 26, 2010, and on November 2, 2010, and child find was discussed at each of these meetings. Private school representatives were invited to and attended these meetings. At the October 27, 2009, meeting, LAUSD's private school policy brochure was disseminated, along with an LAUSD document entitled "Procedural Guide for Serving Students with Disabilities Placed By Their Parents in Private Schools" which discussed child find, a

calendar for trainings for parents of private school students, and forms regarding referrals to LAUSD for assessments for special education. The January 26, 2010, meeting materials included information about distribution of a one-time increment in federal funding for students with disabilities, and a calendar for trainings for parents of private school students. The November 2, 2010, meeting materials included information regarding funding for private school students with disabilities and information about two academic presentations for private school teachers.

53. On October 21, 2009, LAUSD held a professional development training on autism for private school personnel. LAUSD also held a professional development training for private school personnel regarding reading and math instruction on February 26, 2011, and an identical professional development training was held on February 27, 2011. LAUSD placed child find brochures on a table and made them available to the attendees at the February meetings. The child find brochures included information about the process, explained ISP's, and contained contact information for the appropriate personnel at LAUSD.

54. Ms. Molodow, who was LAUSD's special education coordinator for private schools from approximately the end of July 2009 to approximately the end of September 2009, received one or two requests for assessments of private school students every week or every other week. The requests came from parents as well as from private schools. During the 2009-2010 school year, LAUSD performed 190 assessments of private school students, eight of which were for students enrolled at Westmark. Sixty-six of the 190 assessments were initial assessments. During the 2010-2011 school year, LAUSD performed 200 assessments of private school students, five of which were for Students attending Westmark, including Student. Sixty-seven of these assessments were initial assessments. In addition, Karen Harwood, the LAUSD specialist for the private school office and least restrictive environment (LRE) programs since January 2011, received an average of five calls per week from parents and private school representatives requesting that LAUSD assess private school students. These calls come through the phone numbers on the child find posters sent in 2009-2010 and 2010-2011.

55. Whenever Glendale USD referred a student who was a resident in the Glendale USD, but who attended private school in LAUSD, to LAUSD for assessment pursuant to the GLAAS MOU, LAUSD never refused to assess the student.

## CONCLUSIONS OF LAW

### *Burden of Proof*

1. The petitioner in a special education due process hearing has the burden of proving his or her contentions at the hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-57 [126 S. Ct. 528].) As the petitioning party, Student has the burden of proof in this case.

### *Contentions*

2. Student contends that neither LAUSD nor Glendale USD conducted appropriate child find activities to identify and assess Student as a child with a disability or a suspected disability. As a result, no IEP was developed for him and he did not receive a FAPE. Further, with respect to Glendale USD, Student contends that it had an obligation to assess Student based upon the information contained in Student's January 2011 Complaint.

3. Glendale USD contends that it had no affirmative duty to Student with respect to child find because Westmark was not located in Glendale USD, and Student did not request an assessment from Glendale USD during the 2009-2010 and 2010-2011 school years. Glendale USD further contends that it had no knowledge that Student was a student with a disability who was in need of special education during the 2009-2010 and 2010-2011 school years. Glendale USD further contends that, at all relevant times, its child find activities complied with the law with regard to all students residing in the district who attended public schools, as well as all parentally-placed students attending private schools located in the district. Glendale USD further contends that, if it violated child find, any such procedural violation did not rise to the level of a denial of a substantive FAPE. Glendale USD further contends that, if it violated child find such that the violation arose to the level of a denial of a substantive FAPE, Student is not entitled to reimbursement for placement at Westmark because he failed to demonstrate that he properly notified Glendale USD about his concerns regarding eligibility, and of his intention to enroll in Westmark.

4. LAUSD contends that it met its child find obligations to Student. To the extent that it did not do so, LAUSD contends that Student failed to demonstrate that he was eligible for special education during the 2009-2010 and 2010-2011 school years, or that any violation of child find rose to the level of a denial of a substantive FAPE. LAUSD further contends that, even if it violated child find, and denied Student a FAPE, the only equitable remedy would be an assessment, which LAUSD has already performed.

### *FAPE*

5. Pursuant to California special education law and the Individuals with Disabilities in Education Act (IDEA), as amended effective July 1, 2005, children with disabilities have the right to a FAPE that emphasizes special education and related services designed to meet their unique needs and to prepare them for employment and independent living. (20 U.S.C. §1400(d); Ed. Code, § 56000.) FAPE consists of special education and related services that are available to the student at no charge to the parent or guardian, meet the state educational standards, include an appropriate school education in the state involved, and conform to the child's 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).) Similarly, 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 such developmental,

corrective, and other supportive services as may be required to assist a child to benefit from special education. (20 U.S.C. § 1401(26).) In California, related services may be referred to as designated instruction and services (DIS). (Ed. Code, § 56363, subd. (a).)

6. States must establish and maintain certain procedural safeguards to ensure that each student with a disability receives the FAPE to which the student is entitled, and that parents are involved in the formulation of the student's educational program. (*W.G., et al. v. Board of Trustees of Target Range School District, etc.* (9th Cir. 1992) 960 F.2d 1479, 1483.) Citing *Board of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley* (1982) 458 U.S. 176, 200 [102 S.Ct. 3034] (*Rowley*), the court also recognized the importance of adherence to the procedural requirements of the IDEA, but indicated that procedural flaws do not automatically require a finding of a denial of a FAPE. (*Id.* at 1484.) Procedural violations may constitute a denial of a FAPE if they result in the loss of educational opportunity to the student or seriously infringe on the parents' opportunity to participate in the IEP process. (*Ibid.*) These requirements are also found in the IDEA and California Education Code, both of which provide that a procedural violation only constitutes a denial of FAPE if the violation (1) impeded the child's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision making process regarding the provision of a FAPE to the child; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415 (f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).)

7. The issue of whether a school district has offered a FAPE has substantive aspects in addition to the procedural components. In *Rowley, supra*, the United States Supreme Court addressed the level of instruction and services that must be provided to a student with disabilities to satisfy the substantive requirements 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. (*Rowley, supra*, at 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 201.) In *County of San Diego v. California Special Education Hearing Office, et al.* (1996) 93 F.3d 1458, 1467, the court specified that educational benefit is not limited to academic needs, but includes the social and emotional needs that affect academic progress, school behavior, and socialization.

#### *Eligibility for Special Education*

8. Under both California law and the IDEA, a child is eligible for special education if the child needs special education and related services by reason of the following disabilities: mental retardation, hearing impairments, speech or language impairments, visual impairments, severe emotional disturbance, orthopedic impairments, autism, traumatic brain injury, OHI, or specific learning disabilities. (20 U.S.C. §1401 (3)(A)(i) and (ii); Cal.Code Regs., tit. 5, §3030.) ADHD is not, by itself, a specified disability that qualifies a child for special education. However, a child with ADHD can be eligible for special education if his

ADHD so affects the child that the child meets the criteria for severe emotional disturbance, OHI, or specific learning disabilities. (Ed. Code § 56339, subd. (a).)

9. A student meets eligibility as a student with OHI if he has limited strength, vitality, or alertness, due to chronic or acute health problems. (Cal. Code Regs., tit. 5, § 3030, subd. (f).) A student can qualify for eligibility as OHI if he has ADHD, because his disability-related distractibility can cause him to have limited alertness with respect to his educational environment, which can then demonstrate a need for special education and related services. (34 C.F.R. §300.8(c)(9); Ed. Code, § 56026, subd. (e).)

10. Unless a student otherwise meets the criteria in the eligible categories, a student is not disabled if the student's educational needs are due primarily to social maladjustment or environmental, cultural, or economic factors. (Ed. Code § 56026.) Furthermore, not only must the child meet the criteria in the eligible categories, but the child must also, as a result of the child's impairment, require instruction and services that cannot be provided with modification of the regular school program. (Ed. Code, § 56026, subd. (b).) *Hood v. Encinitas Union School District* (9th Cir. 2007) 486 F.3d 1099-1107-1108, 1110, demonstrates that a child may have a qualifying disability, yet not be found eligible for special education, because the child's needs can be met with modification of the general education classroom. In *Hood*, the due process hearing officer and the reviewing court considered the child's above-average success in the classroom as shown by the child's grades and the testimony of teacher as evidence that the child's needs could be met in a general education classroom without specialized education and related services. (*Ibid.*)

#### *Child Find*

11. The IDEA places an affirmative, ongoing duty on the state and school districts to identify, locate, and evaluate all children with disabilities residing in the state who are in need of special education and related services. (20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a) (2006).)<sup>3</sup> This duty is commonly referred to as "child find." California law specifically incorporates child find in Education Code section 56301, subdivision (a).<sup>4</sup> The IDEA and the California Education Code do not specify which activities are sufficient to meet a school district's child find obligation, and there is no requirement that a school district directly notify every household within its boundaries about child find. However, California law obligates the SELPA to establish written policies and procedures for use by its constituent local agencies for a continuous child find policy. (Ed. Code § 56300, subd. (d)(1).) The school district must actively and systematically seek out "all individuals with exceptional needs, from birth to 21 years of age," including children not enrolled in public

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<sup>3</sup> All references to the Code of Federal Regulations are to the 2006 version, unless otherwise noted.

<sup>4</sup> Instead of the term "evaluate," which is found in the IDEA, the Education Code uses the term "assess."

school programs, who reside in a school district or are under the jurisdiction of a SELPA. (Ed. Code, § 56300.) The school district's duty for child find is not dependent on any request by the parent for special education testing or services. (*Reid v. Dist. of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 518.) Violations of child find, and of the obligation to assess a student, are procedural violations of the IDEA and the Education Code. (*Dept. of Education, State of Hawaii v. Cari Rae S.* (D. Hawaii 2001) 158 F.Supp. 2d 1190, 1196. (“*Cari Rae S.*”); *Park v. Anaheim Union High School District* (9th Cir. 2006) 464 F.3d 1025, 1031.)

12. The law also provides that child find shall apply to parentally-placed private school children, defined as children who are enrolled by their parents in private school. (34 C.F.R. § 300.131; Ed. Code § 56170.) The IDEA regulations and the Education Code specify that child find for children enrolled by their parents in private school is the responsibility of the DOL, the district in which the private school is located. (34 C.F.R. § 300.131, Ed. Code § 56171.) The purpose of this child find activity is to ensure the equitable participation of parentally-placed private school children in services that a school district may provide to children who attend private school in the district, as well as an accurate count of those children. (Office of Special Education Programs, *Letter to Eig*, January 28, 2009, 52 IDELR 136 (hereafter *Letter to Eig*).)<sup>5</sup> Again, however, neither the IDEA nor the Education Code specify which activities are sufficient to meet a school district's child find obligation, and there is no requirement that a school district directly notify every household within its boundaries about child find.

13. The DOL is charged with assessing the child and holding an IEP team meeting to consider the assessment and to determine whether the child is eligible for special education. (Analysis of Comments and Changes to 2006 IDEA Part B Regulations, 71 Fed.

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<sup>5</sup>The IDEA imposes other obligations upon school districts regarding parentally-placed private school students. Such students are not entitled to the same special education services as students enrolled in public schools, rather, they receive services based upon an equitable apportionment of available funds. (34 C.F.R. §§ 300.132 and 300.133.) School districts must hold timely and meaningful consultations with private school representatives and representatives of parents of parentally-placed private school children with disabilities regarding, *inter alia*, child find, and about resources the school district has available to private school students with disabilities. (34 C.F.R. § 300.134.) When the timely and meaningful consultation has occurred, the school district must obtain a written affirmation that it has occurred signed by the representatives of the participating private schools. (34 C.F.R. § 300.135.) Parents have no standing to request a due process hearing based upon a school district's violation of the “meaningful consultation meeting” requirements. (34 C.F.R. § 300.140 (a).) Rather, private school representatives may file a compliance complaint with the state. (34 C.F.R. § 300.140 (c).) However, since “meaningful consultation” meetings can involve the dissemination of child find information and materials to private school representatives, evidence regarding these meetings is relevant as to whether a school district has met its child find obligations.

Reg. 46593 (August 14, 2006) (hereafter Comments to Regulations.) If the IEP team finds the child to be eligible for special education, then the DOR, the district in which the child resides, is charged with convening an IEP meeting to offer a FAPE to the child. (34 C.F.R. § 300.201; Comments to Regulations, *supra*, 46593.) If, however, the parent expresses the intention to keep the child enrolled in the private elementary or secondary school located in another school district, the DOR has no obligation to make FAPE available to the child. (Comments to Regulations, *ibid.*) If parents request an assessment from the DOR, rather than the DOL, the DOR may not refuse to conduct the assessment and determine the child's eligibility for FAPE because the child attends a private school in another school district. (*Letter to Eig, supra.*)<sup>6</sup> Though OSEP does not recommend it, parents can theoretically request assessments from both school districts. (Comments to Regulations, *supra*, 46593.)

14. Until they were amended effective October 2006, the regulations implementing the IDEA provided that child find for parentally-placed private school children was the responsibility of the DOR. (34 C.F.R. § 300.451(1999).) Education Code section 56171 also so provided, until October 10, 2007. On that date, Education Code section 56171 was amended to provide, in conformity with the October 2006 federal regulations, that the responsibility of child find for such privately placed students was the DOL.

15. The child find activities a school district undertakes for parentally-placed private school children must be similar to the activities undertaken for the school district's public school children, and must be completed in a time period comparable to that for student attending public school in the school district. (34 C.F.R. § 300.131(c) & (e); Ed. Code, § 56301, subds. (c)(1) & (3).) The U.S. Department of Education (ED) has elaborated upon the meaning of "similar" activities in this context, stating that "similar" activities would generally include, but are not limited to, such activities as widely distributing informational brochures, providing regular public service announcements, staffing exhibits at community activities, and creating direct liaisons with private schools. (Comments to Regulations, *supra*, 46593.) The ED has also elaborated upon the definition of "comparable" time period as meaning that the school district's child find activities must be conducted within a reasonable period of time, without undue delay, and may not be delayed until after the school district conducts child find for public school children. (*Ibid.*)

16. A school district's child find obligation toward a specific child is triggered when there is knowledge of, or reason to suspect a disability, and reason to suspect that special education services may be needed to address that disability. (*Cari Rae S., supra*, 158 F. Supp. 2d at p. 1194.) The threshold for suspecting that a child has a disability is relatively low. (*Id.* at p. 1195.) A school district's appropriate inquiry is whether the child should be referred for an evaluation, not whether the child actually qualifies for services. (*Ibid.*) The actions of a school district with respect to whether it had knowledge of, or reason to suspect a disability, must be evaluated in light of information that the district knew, or had reason to know, at the relevant time. It is not based upon hindsight. (*See Adams v. State of Oregon*

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<sup>6</sup>The GLAAS MOU's did not specifically address this situation.

(9<sup>th</sup> Cir. 1999) 195 F.3d 1141, 1149, (citing *Fuhrmann v. East Hanover Bd. of Educ.* (3rd Cir. 1993) 993 F.2d 1031).)

### *Analysis*

#### *Glendale USD and its Child Find Obligations*

17. Student failed to demonstrate that Glendale USD failed to meet its child find obligations to Student during the school years 2009-2010 and 2010-2011.

18. First, Glendale USD's general child find activities for students who reside in Glendale USD were sufficient. As is stated in Legal Conclusions 11 and 12, the IDEA and the Education Code do not specify which activities are sufficient to meet a school district's child find obligation. In particular, there is no requirement that Glendale USD directly reach every household within its boundaries with its child find efforts, or that those efforts will guarantee that every family will take notice of and remember its child find efforts. However, Glendale USD, though its own efforts and those undertaken on its behalf by the Foothill SELPA, employed a variety of systematic and active child find measures during the 2009-2010 and 2010-2011 school years to locate students with exceptional needs who required special education. These included placing advertisements in local newspapers throughout the Foothill SELPA area in a variety of languages, holding meetings with private school providers at which child find was discussed, distributing brochures to school sites and pediatricians' offices, providing information on the Foothill SELPA and Glendale USD websites, along with conducting parent trainings and CAC and CDC meetings at which child find was discussed. Additionally, as part of the obligation for child find regarding parentally-placed private school students, the Foothill SELPA held "meaningful consultation" meetings at which child find was discussed.

19. The evidence was uncontradicted that Glendale USD received referrals and inquiries regarding its special education services, which demonstrates that its general child find efforts were both sufficient and effective. Parents did not see any of the newspaper advertisements, or notice any of the brochures that Glendale USD and the SELPA distributed throughout the community during the 2009-2010 and 2010-2011 school years. However, Parents had previously learned about the special education services offered by Glendale USD through conversations with a neighbor who had a child enrolled in a Glendale USD special education program. As a result, in early 2008, Parents requested that Glendale USD assess Student. In effect, therefore, Glendale USD had already identified and "found" Student as of early 2008, by virtue of Parents' request for an assessment. Consequently, Parents were fully aware as to how to access Glendale USD's special education services during the 2009-2010 and 2010-2011 school years, since they had done so in early 2008.

20. Furthermore, as part of the assessment and IEP process, Parents were given what was perhaps the ultimate in child find documents: the Parents' Rights Document. This document advised Parents of their rights under federal and state special education laws, and contained contact information regarding Glendale USD's special education administrators.

Parents could have reviewed this document and called Glendale USD's personnel at any time during the 2009-2010 and 2010-2011 school years to inquire about special education for Student. They made no attempt to contact Glendale USD about their son until November 30, 2010, when they requested Student's records through their counsel.

21. Mr. Williams's statement at the March 31, 2008, IEP meeting, that Parents could enroll Student in Glendale USD and, if Student "failed," Glendale USD would reassess Student may have inhibited Parents from enrolling Student in Glendale USD schools at the time, but it does not detract from the fact that Glendale USD had "found" Student and had fully complied with its duty to provide written notice to Parents about their rights under the IDEA and the Education Code. There was no evidence as to what Mr. Williams intended by his statement, or what he meant by the word "failed." Strictly speaking, however, Mr. Williams' blunt statement was technically correct. If Student were enrolled in a Glendale USD public school, Glendale USD would have knowledge of Student's progress or lack thereof. If he "failed," (regardless of whether Student actually failed a class), Glendale USD would have had an obligation to reassess Student and convene an IEP meeting to determine whether Student was eligible for special education. Moreover, the evidence did not reflect that Mr. Williams's comment discouraged Parents from seeking assistance from Glendale USD. Mother testified that, had she seen any of the child find advertisements placed by the Foothill SELPA during the 2009-2010 or 2010-2011 school years, she would have approached Glendale USD again to seek services. Therefore, although Mr. Williams' statement was unfortunately not phrased as sensitively as it could have been, there was no evidence that it so discouraged Parents such that they would not have sought assistance from Glendale USD in the future. Indeed, Parents also contend that they sought such assistance by filing and serving their January 2011 Complaint.

22. Therefore, the focus of the inquiry as to Glendale USD's responsibility in this case turns to Student's contention that Glendale USD did not properly engage in child find, because it knew that Student had ADHD, based upon the Van Rooyen assessment in early 2008, and therefore it should have followed-up with Student from August 2009 and during the 2009-2010 and 2010-2011 school years. Student also contends that his January 2011 Complaint constituted a request to assess, and that Glendale USD wrongfully responded to the January 2011 Complaint by refusing to assess Student.

23. As was stated in Legal Conclusion 16, a school district's child find responsibility towards a particular student is triggered when the school district has reason to suspect that the Student (1) has a disability and (2) is in need of special education services. A school district's action as to whether it had knowledge of, or reason to suspect, a disability must be evaluated in light of information that the district knew, or had reason to know, at the relevant time. As was discussed in Legal Conclusions 8 through 10, whether a child is disabled is dependent upon more than meeting criteria in eligible categories. As was stated in Legal Conclusions 6 and 11, a violation of child find is a procedural violation, which is actionable only if the violation impeded the child's right to a FAPE; significantly impeded the parent's opportunity to participate in the decision making process; or caused a deprivation of educational benefits.

24. The evidence is in dispute as to whether Parents provided Dr. Van Rooyen's 2008 report to Glendale USD at or about the time of the March 2008 IEP meetings. However, resolution of this evidentiary dispute is not necessary. Glendale USD had assessed Student in 2008 and the IEP team had found Student ineligible for special education. At about the time that Glendale USD assessed Student, Dr. Van Rooyen diagnosed Student with ADHD a diagnosis which does not, by itself, confer special education eligibility upon Student. Dr. Van Rooyen's 2008 assessment report did not state that Student was eligible for special education or recommend that Student receive special education. The evidence was uncontradicted that Glendale had no information regarding Student's academic progress from the time of the March 31, 2008, IEP meeting, throughout the 2009-2010 school year, and during the 2010-2011 school year until at least June 2011, when LAUSD, after assessing Student, held an IEP, and found Student eligible for special education. In this regard, there was no allegation in the January 2011 Complaint regarding Student's academic functioning during the 2009-2010 or 2010-2011 school years. Nobody at Westmark believed that there was any need to refer Student to any school district for assessment. Parents admitted that they never advised Glendale USD that Student was attending Westmark, or advised the district of Student's academic functioning during the 2009-2010 and 2010-2011 school years. In short, regardless of whether Glendale USD had received Dr. Van Rooyen's 2008 report at the IEP meetings of March 2008, after those meetings Glendale USD had no information that would trigger any suspicion that Student had a disability *and* was in need of special education from August 2009 and during the 2009-2010 and 2010-2011 school years until Student was found eligible for special education by LAUSD in June 2011.<sup>7</sup>

25. Student also contends that Glendale USD violated child find by referring Student to LAUSD, the district in which Westmark was located, in responding to Student's January 2011 Complaint, instead of offering to assess Student itself. This contention is unmeritorious. First, the January 2011 Complaint, which was signed by Valerie Gilpeer, Student's attorney, did not request an assessment. It did not reference Student's progress or lack thereof at Westmark, or mention Student's academic functioning during the 2009-2010 or 2010-2011 school years. Rather, the gravamen of the January 2011 Complaint was the

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<sup>7</sup> To bolster his contention that Glendale USD breached its child find obligations, as well as to challenge Glendale USD's credibility, Student contends that Glendale USD was aware that Student was attending Westmark, because of a handwritten notation on a copy of the fax cover sheet that accompanied the request for records that Student's counsel sent Glendale USD in November 30, 2010. The typewritten fax cover sheet and the request for records it transmitted do not refer to Westmark. Rather, the faxed documents reference the "School of Residence" and "School of Attendance" as Franklin Elementary. The handwritten notation on the copy of the fax cover sheet says only "Westmark School 3/31/08." There was no evidence as to who made this notation, when it was made, why it was made, or what it references. Therefore the notation cannot serve as evidence that Glendale USD had any knowledge of Student's enrollment and attendance at Westmark from March 31, 2008, until the time Glendale USD received the January 2011 Complaint, when Parents finally disclosed that Student was attending Westmark.

failure of Glendale USD to find Student eligible for special education in 2008. It alleged that Glendale USD's assessment of Student in spring 2008 was defective. It alleged that the IEP team did not take into account Dr. Van Rooyen's report, or his diagnosis that Student had ADHD, in determining that Student was not eligible for special education. It alleged that, as a result of these violations of the IDEA and the Education Code in spring 2008, Glendale USD deprived Student of a FAPE. As remedies, Student sought an IEP which would include eligibility under the category of OHI, reimbursement for the expenses Parents had incurred by Student's attendance at The Country School and at Westmark, and funding or reimbursement of prospective placement and services at Westmark. The allegations of the Complaint were based upon Glendale USD's conduct in spring 2008. There was no new information in the January 2011 Complaint regarding Student's academic functioning so as to cause Glendale USD to suspect that Student was, at the time the Complaint was filed, a Student with a disability who was in need of special education, therefore triggering<sup>8</sup> a duty to assess.

26. Mr. Gifford's January 26, 2011, letter was intended as a response to Student's Complaint. Such a response is required by title 20 United States Code section 1415(c)(2)(B) and Education Code section 56502, subdivision (d)(2). In addition to explaining Glendale USD's position, Mr. Gifford's letter suggested to Parents that, if they wanted an assessment of Student, they should request an assessment from the school district in which Westmark was located. The letter further advised Parents that if the district where Westmark was located found Student eligible for special education, then Glendale USD would convene an IEP meeting to offer a FAPE. These statements were in accordance with the IDEA, the Education Code, and the GLAAS MOU. There was no evidence that Mr. Gifford knew that Parents would wait for approximately one month after receiving Mr. Gifford's letter before contacting LAUSD, where Westmark is located, to request an assessment. In fact, there was no evidence of the reason for Parents' delay in contacting LAUSD. Nor was there evidence that Mr. Gifford knew that LAUSD, the district in which Westmark was located, would not assess Student, such that he should not have referred parents to that district. In fact, when Parents contacted LAUSD and requested an assessment, LAUSD performed its obligations under the law and under the GLAAS MOU, assessed Student, and found Student eligible for special education. Then, Glendale USD fulfilled its obligation to hold an IEP meeting and offered what the IEP team considered a FAPE.

27. Student cites no legal authority that a school district can be held liable in a separate proceeding for sending a family a response to a due process hearing complaint which the family contends is inaccurate, but which nonetheless meets the statutory requirements for such responses. Such an application of the law would, if nothing else, create the potential of vastly increasing the quantity of due process hearing complaints.

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<sup>8</sup> In its closing brief, Glendale USD requests that the ALJ take judicial notice of Ms. Gilpeer's experience as an attorney, pursuant to Evidence Code section 452, subdivision (h). The request is denied.

28. Moreover, even if the January 2011 Complaint were to be interpreted either as a request from Parents for Glendale USD to assess Student, or as a notification of new information sufficient for Glendale USD to suspect that Student had a disability and required special education and therefore an assessment, Glendale USD's procedural violation in failing to offer to assess Student would not constitute a denial of a FAPE. As was stated in Legal Conclusion 11, a procedural violation is a denial of a FAPE only if it impeded the child's right to a FAPE; significantly impeded the parent's opportunity to participate in the decision making process; or caused a deprivation of educational benefits. LAUSD timely evaluated Student and found him eligible for special education, and Glendale USD then held an IEP meeting and offered services to Student. Under these circumstances, Student was not deprived of a FAPE or an educational benefit by reason of Glendale USD's failure to assess, and Parents were not deprived of their right to participate in the development of Student's educational program. Student does not assert that he would rather have been assessed by Glendale USD, and, prior to hearing, Student withdrew his claims against LAUSD arising out of its assessment and IEP. It is true that there was a delay in assessing Student when Glendale USD referred Student to LAUSD for assessment, but Student did not demonstrate that he suffered any harm by reason of this delay. Moreover, the vast bulk of the delay was due to the fact that Parents inexplicably waited approximately a month after receiving Mr. Gifford's letter to request an assessment from LAUSD. Therefore, Glendale USD is not responsible for any harm caused by the delay.

29. Because Glendale USD met its child find obligations, it did not have any obligation to find Student eligible for special education from August 2009 and during the 2009-2010 and 2010-2011 school years, and did not deny Student a FAPE during that time period. Student is not entitled to reimbursement for the tuition and other costs Parents incurred by reason of Student's private placement at Westmark. (Findings of Fact 1-41, 55; Legal Conclusions 1-28.)

#### *LAUSD and its Child Find Obligations*

30. Student did not demonstrate that LAUSD, which is both a school district and a SELPA, failed to fulfill its child find obligations to Student. LAUSD, in its capacity as a SELPA, had a written child find policy. LAUSD's particular obligations to Student, in its role as a school district, arose from the fact that Student was a parentally placed private school student whose private school was located within the boundaries of LAUSD. As was stated in Legal Conclusions 11 and 12, the IDEA and the California Education Code do not specify which activities are sufficient to meet a school district's child find obligation, and there is no requirement that a school district directly notify every household within its boundaries about child find. The activities LAUSD must undertake with respect to Student, however, must be similar to those activities it undertook for pupils in public schools, and should be completed in a time period comparable to that for pupils attending public schools in the school district. Therefore, the general child find activities that LAUSD employed are relevant to LAUSD's fulfillment of its child find obligations to Student.

31. The evidence demonstrated that LAUSD employed a variety of systematic and active child find measures during the 2009-2010 and 2010-2011 school years to locate and identify children with special needs residing within its boundaries who required special education. It provided materials in each enrollment packet regarding child find, including a questionnaire concerning whether the child had an IEP or any learning difficulties. A poster regarding child find and containing contact information was posted at every LAUSD school. Brochures regarding child find were available at every school site and sent home with every child. LAUSD organized periodic family resource fairs which were open to the public, at which child find information was distributed. LAUSD also conducted in-service trainings for teachers regarding the process for referring a child to special education. Information regarding child find was available on LAUSD's website.

32. LAUSD also conducted a variety of activities with respect to parentally-placed private school children such as Student. During the 2009-2010 and 2010-2011 school years, LAUSD mailed brochures to hundreds of institutions. These included every public library in LAUSD boundaries, public agencies, hospitals and health clinics, secular private schools, religious schools, and regional centers throughout Los Angeles County. During the 2009-2010 school year, LAUSD sent a letter to private school administrators following up on the mass mailing of the child find posters, offering to send additional posters if requested, and offering to provide educational materials. Additionally, as part of the "meaningful consultation requirement," during both the 2009-2010 and 2010-2011 school years, LAUSD invited private school representatives to meetings. LAUSD provided materials regarding child find and discussed child find at these meetings, and child find materials were provided at these meetings. LAUSD also held trainings on various educational topics for private school personnel. During the 2010-2011 school year, LAUSD held such a training at which child find brochures were made available. The evidence demonstrated that LAUSD's child find efforts directed to parentally-placed private school students were active, systematic, and timely. The mailings of child find posters, distribution of child find brochures, contacts with private school personnel through trainings, and postings on LAUSD's website, were similar to LAUSD's child find efforts directed at students who resided in LAUSD, in that the child find information was widely disseminated through a variety of means.

33. At hearing, Student offered the testimony of one witness from Westmark, one witness from The Country School, and one witness from Bridges, each of whom stated that they never saw the child find posters that LAUSD contended it sent to their respective private schools during the 2009-2010 and 2010-2011 school years. These witnesses also stated that they showed copies LAUSD's child find materials to other staff on their respective campuses, in approximately October 2011, and none of those people had seen the materials either. This testimony was apparently presented to demonstrate (1) that the child find posters were not mailed; or (2) that the mailings were not an effective child find method. None of this testimony was persuasive.

34. First, the law does not require that any particular person or entity receive child find materials; it only requires that the school district make the materials available. The weight of the evidence demonstrated that LAUSD mailed the child find posters and, in

September 2009, it also mailed a follow-up letter. Second, there was no evidence that any of these schools had any systematic method of logging or tracking incoming mail. Third, none of the witnesses who testified regarding this issue was the primary person responsible for opening the mail at their respective schools. Fourth, there was no evidence that these individuals had seen every piece of mail, or even most of the pieces of mail, that came to the school during the periods at issue. Fifth, there was no evidence that any of these individuals would remember receiving items, such as the child find posters and their cover letters, which would have been mailed at least one year, and as much as two years, prior to the time they testified at hearing in November 2011. Sixth, there was no evidence that any of the individuals to whom these witnesses showed the child find materials in approximately October 2011 had such acute memories that they would have recalled seeing such materials at least one year, and as much as two years, prior to the time the witnesses showed them the materials. Fourth, only Mr. Meredith, the headmaster at Westmark, and Ms. Fox, from The Country School, stated that, if they had received the child find poster, they would have posted it on campus or would have otherwise shown it to parents. Their testimony in this regard was not persuasive. Father testified that he spent time at Westmark and The Country School looking at the notices posted on campus and that the notices on each campus mostly concerned events pertaining to that particular school. Ms. Minkowski of Bridges testified that she would have to ask if LAUSD's child find poster could be posted, which further marginalizes the relevance of her testimony. LAUSD cannot be held responsible if the child find information it sends is not disseminated. Finally, to the extent the private school witnesses were presented to show that LAUSD's child find efforts were not effective, the weight of the evidence was to the contrary. LAUSD assessed at least one child from each of these private schools during the period at issue, including several children from Westmark, which demonstrates that its child find efforts at private schools were successful. Parents of students at these schools obviously were learning about LAUSD's special education offerings in some manner.

35. In contrast to the private school witnesses presented by Student, LAUSD presented sufficient evidence as to the manner in which the mailings of the child find posters were prepared so as to demonstrate that they were actually mailed. Moreover, LAUSD presented uncontradicted evidence that its child find methods were effective. LAUSD received inquiries from parents during the school years at issue regarding referrals for special education and assessments. In fact, LAUSD received requests for assessment from Westmark during the 2009-2010 and 2010-2011 school years. Mother admitted that she knew of several Westmark students who were assessed by LAUSD during the 2010-2011 school year.

36. Parents never saw any of the child find materials or information that Glendale USD distributed, they never saw any of the child find materials or information that the Foothill SELPA distributed, and they never saw any of the child find materials or information that LAUSD distributed. There may be many reasons for Parents' failure to notice the information disseminated to numerous entities throughout Los Angeles County by two different school districts, as well as by the Foothill SELPA which encompassed two additional school districts. The failure of Parents to notice these districts' child find efforts

does not mean that LAUSD and Glendale USD violated their child find obligations. As was stated in Legal Conclusions 11 and 12, the law does not require that school districts directly distribute child find information to every household in the school district. Nor does the law require that those individuals and entities who receive the child find information post it or otherwise publicize it, or make referrals to LAUSD.

37. The law requires that LAUSD, as the DOL, assess students in private schools located in its boundaries when they are referred to LAUSD. The evidence demonstrated that, when LAUSD received the request to assess from Parents, LAUSD assessed Student and found him eligible for special education.

38. Under these circumstances, based upon Findings of Fact 1 through 34, and 41 through 55, and Legal Conclusions 1 through 16, and 30 through 37, LAUSD met its child find obligations to Student. LAUSD did not deny Student a FAPE, and Student is not entitled to reimbursement for the tuition and other costs Parents incurred by reason of Student's private placement at Westmark.

#### ORDER

All of the relief sought by Student in his Complaint is denied.

#### PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that this Decision indicate the extent to which each party prevailed on each issue heard and decided in this due process matter. Glendale USD prevailed on all issues heard and decided in this matter that pertained to Glendale USD. LAUSD prevailed on all issues heard and decided in this matter that pertained to LAUSD.

#### RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56506, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within ninety (90) days of receipt.

Dated: February 10, 2012

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/s/  
ELSA H. JONES  
Administrative Law Judge  
Office of Administrative Hearings