

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

In the Matter of:

STUDENT,

Petitioner,

v.

SEQUOIA UNION HIGH SCHOOL
DISTRICT,

Respondent.

OAH NO. N 2005070582

DECISION

Judith A. Kopec, Administrative Law Judge, Office of Administrative Hearings, Special Education Division, State of California, heard this matter on June 13 and 14, 2006, in Redwood City, California.

Susan Foley, Attorney, represented Petitioner and Student (Student). Student's mother (Mother) was also present.

Tracy L. Tibbals, Attorney, represented Sequoia Union High School District (District). Joyce A. Willett, the District's Director of Special Education, was also present.

Testimony concluded, closing arguments were filed, and the matter was submitted on June 21, 2006.

ISSUE¹

Did District deny Student a free appropriate public education (FAPE) on or after February 22, 2002, through July 31, 2004, by failing to fulfill its child find obligations to seek and serve disabled children attending private schools who reside within the District?

¹ Respondent's motion to dismiss two issues that were beyond the statute of limitations was granted.

FACTUAL FINDINGS

1. Student is 21 years old. He graduated from Junipero Serra High School (Serra), a private, parochial school in San Mateo, California, in 2004 with a grade point average of 3.6. He previously attended San Francisco State University and currently attends Foothill College. He resided in the District from February 22, 2002, through July 31, 2004. Student never received special education services from the District.

2. Student received special education services through the fifth grade while attending school in the Belmont-Redwood Shores Elementary School District. The record does not indicate the basis for Student's eligibility for special education services. Mother attended all of Student's individualized education program (IEP) meetings, about two each year.

3. The IEP team determined Student was no longer eligible for special education services in November 1996 when Student was in the fifth grade. Student attended Charles Armstrong School (Armstrong), a private school, for the sixth through eighth grades.

4. In December 1999, while Student was in eighth grade, Mother began exploring options for Student's high school placement. Mother spoke to a woman whom she believed to be the head of special education at Carlmont High School (Carlmont), Student's neighborhood District high school. Mother explained that her son had specialized needs and wanted information about what programs were available. In January 2000, a woman whom Mother believed to be the District's director of special education returned Mother's call and told her to contact the principal of a new charter school. Mother spoke with the principal of the charter school and determined that it was not appropriate for Student because it was not a mature program.

5. Barbara Hauer², the director of Carlmont's special education department, did not recall speaking with Ms. Silva. Ms. Hauer received calls from parents with children at both Armstrong and Serra and she explained the special education program and eligibility process. She never referred a parent to either a private school or a charter school because she believed that Carlmont can meet children's special education needs. Joyce Willett³, the District's Director of Special Education, and her staff respond to calls concerning special education programs and the eligibility process. They explain the process for determining eligibility for special education services, and refer calls to the appropriate high school.

² Ms. Hauer has been director of Carlmont's special education department since 1999. She holds a credential as a special education resource specialist and has been a credentialed teacher for 27 years.

³ Ms. Willett has been the District's Director of Special Education for over eight years. She holds a lifetime pupil personnel services credential with a specialization in school psychology and a professional clear administrative services credential.

6. Mother did not clearly articulate during any of her conversations with staff at Carlmont or the District that she wanted to know whether Student was eligible for special education services, or what special education services were available at Carlmont or in the District. Mother was aware that she needed to provide her consent before Student could be assessed for special education services. She was familiar with the special education process because of her experience with it in the Belmont-Redwood Shores Elementary School District. Mother made no further effort to explore educational options in the District. She assumed that Carlmont did not have any programs to meet Student's needs. Mother decided to place Student at Serra because she believed it met Student's needs, other parents were satisfied with the school, and it was close to home. Mother did not express or exhibit a clear intent to place Student in a public school if special education services were made available.

7. While at Serra, Student received a private psycho-educational evaluation in September and October 2002 to document his need for accommodations during the PSAT and SAT examinations for college admission. Student subsequently received accommodations for those examinations. The private psycho-educational evaluation shows discrepancies between Student's stronger verbal comprehension skills and his weaker working memory and processing speed, between his stronger mathematical skills and his weaker written expression skills, and between his stronger verbal comprehension skills and his weaker written expression skills. While these discrepancies indicate that Student may have met the criteria for a specific learning disability, there is no evidence that Mother or anyone at Serra informed anyone at the District of the results of this private psycho-educational evaluation.

8. There is no evidence that the District received any of Student's educational records while he attended school in the Belmont-Redwood Shores Elementary School District or any other school.

9. From February 22, 2002, through July 31, 2004, information concerning special education in the District was distributed in mailings to parents and incorporated into a variety of meetings and events with parents. The District's Superintendent sent an annual letter to parents that included information concerning special education services. The Superintendent's letter was sent to parents of students attending the District's schools, to parents of incoming ninth grade students, and to private schools. Mother received these letters while Student's siblings attended Carlmont; Student's sister graduated from Carlmont in 1998 and his brother graduated in 2001 or 2002.⁴

10. From February 22, 2002, through July 31, 2004, Ms. Willett conducted yearly meetings for parents of seventh and eighth grade students who were receiving special education services. The District's special education programs and services were described and the special education process was explained. Information about the meetings was

⁴ Mother also received notices of parental rights and procedural safeguards, including information concerning the assessment process, while Student received special education services from the Belmont-Redwood Shores Elementary School District.

distributed to schools in the elementary school districts, to PTA groups, and was printed in local newspapers. The District also provided special education information to parents at a District-wide parents' night each year.

11. The District also conducted an annual meeting with representatives from both public and private middle schools. The directors of all programs and the guidance counselors in the District's high schools attended these meetings. Ms. Willett presented information at the meetings concerning special education services, and answered questions concerning the District's special education services.

12. From February 22, 2002, through July 31, 2004, San Mateo County Special Education Local Plan Area (SELPA) had written policies to locate, identify and evaluate students enrolled in private schools who may be eligible for special education services. The policies required the SELPA to conduct an annual meeting with representatives of private schools and distribute materials to private schools concerning special education eligibility and referral procedures.

13. From February 22, 2002, through July 31, 2004, the SELPA conducted a yearly meeting with the directors of private schools in San Mateo County to inform them of special education services. SELPA staff sent notices of the meetings to the directors of private schools located in San Mateo County, including Serra. The meetings provided information concerning the law and SELPA's policies concerning special education services to students enrolled in private schools by their parents, and how students can be referred for assessment for special education services.

14. From February 22, 2002, through July 31, 2004, information was available on the SELPA's web site informing parents of the availability of special education services. The SELPA also published annual notices in both English and Spanish in the San Mateo County *Times* and *La Oferta*. The notices informed the public that special education services were available for students with disabilities in San Mateo County and that assistance was available from the SELPA.

APPLICABLE LAW⁵

1. A district is responsible for identifying, locating, and evaluating all children with disabilities within its boundaries who attend private, including parochial, schools and are in need of special education and related services. (20 U.S.C. §§ 1412(a)(3)(A); 1415(a)(10) (A)(ii); 34 C.F.R. §§ 300.125(a)(i); 300.451(a); Ed. Code, §§ 56300, 56301, subd. (a).) These are commonly referred to as a district's "child find" or "seek and serve" obligations. Child find activities undertaken for children attending private schools must be comparable to activities undertaken for children attending public schools. (34 C.F.R.

⁵ Unless otherwise noted, citations to 20 United States Code are to statutes in effect prior to July 1, 2005, and citations to the Education Code are to statutes in effect prior to October 7, 2005.

§ 300.451(a).) A due process hearing may be requested if a district fails to fulfill its child find obligations. (20 U.S.C. § 1415(f); 34 C.F.R. § 300.457(b); Ed. Code, § 56501, subd. (a)(1).)

2. California law imposes additional requirements. Each SELPA must have written policies and procedures for use by its constituent agencies for a continuous child-find system. (Ed. Code, § 56301, subd. (c).) Parents must receive written notice of their rights under special education law and the procedure for initiating a referral for assessment to identify students who are eligible for special education services. (*Ibid.*) Parents shall be given copies of their rights and procedural safeguards upon initial referral for assessment, notice of an IEP meeting or reassessment, or filing a complaint, request for pre-hearing mediation, or a request for a due process hearing. (*Ibid.*)

3. In addition to the requirements for a continuous child-find system, a district has child-find responsibilities for specific children. A district's child find obligation toward a specific child is triggered when there is reason to suspect a disability and reason to suspect that special education services may be needed to address that disability. (*Dept. of Education, State of Hawaii v. Rae* (D. Hawaii 2001) 158 F.Supp.2d 1190, 1194.) The threshold for suspecting that a child has a disability is relatively low. (*Id.*, at p. 1195.) A district's appropriate inquiry is whether the child should be referred for an evaluation, not whether the child actually qualified for services. (*Ibid.*)

4. A district shall be deemed to have knowledge that a student is a child with a disability if the parent has expressed concern in writing to staff of the district that the child needs special education and related services; the behavior or performance of the child demonstrates the need for the services; the parent has requested an evaluation of the child; or the teacher or other personnel have expressed concern about the child's behavior or performance. (20 U.S.C. § 1415(k)(8); 34 C.F.R. § 300.457(b).) A parent's expression of concern must include enough information to indicate that the child is in need of special education and related services. (64 Fed.Reg. 12628 (Mar. 12, 1999).)

5. In order to be eligible for special education services, a student must have one or more specific disabilities which include specific learning disabilities. (20 U.S.C. § 1401(3)(A); 34 C.F.R. § 300.7(a)(1); Ed. Code, § 56026, subd. (a); Cal. Code Regs., tit., 5, § 3030.) Generally, a specific learning disability is an impairment of a child's psychological processes which may manifest itself in an impaired ability to use language or perform mathematical calculations and a severe discrepancy in one or more specific academic areas. (34 C.F.R. § 300.7(c)(10); Cal. Code Regs., tit. 5, § 3030, subd. (j).)

6. A child with a disability has the right to a FAPE. (20 U.S.C. § 1412(a)((1)(A); Ed. Code, § 56000.) A FAPE is defined in pertinent part as special education and related services that are provided at public expense and under public supervision and direction, that meet the State's educational standards, and that conform to the student's IEP. (20 U.S.C. § 1401(8); Cal. Code Regs., tit. 5, § 3001, subd. (o).) Special education is defined in pertinent part as specially-designed instruction, at no cost to parents, to meet the unique

needs of a child with a disability, whose educational needs cannot be met with modification of the regular instruction program. (20 U.S.C. § 1401(25); Ed. Code, § 56031.)

LEGAL CONCLUSIONS

1. Based on Factual Findings paragraphs 9 through 14 and Applicable Law paragraphs 1 and 2, District had a continuous child find system that fulfilled its general child find obligations. There is no evidence that its child find activities for children attending private schools was not comparable to activities for children attending public schools.

2. Based on Factual Findings paragraphs 1 through 8 and Applicable Law paragraphs 1 through 4, District did not have reason to suspect that Student was a child with a disability, or that special education services may be needed. Mother never requested that the District assess Student for special education services. The District never received Student's educational records or any other information that triggered any child find obligations toward Student.

3. Based on Legal Conclusions 1 and 2, District fulfilled its child find obligations to seek and serve disabled children attending private schools who reside within the District from on or after February 22, 2002, through July 31, 2004.

4. Based on Legal Conclusions paragraphs 1 through 3 and Applicable Law paragraphs 5 and 6, District did not deny Student a FAPE from February 22, 2002, through July 31, 2004, by failing to fulfill its child find obligations to seek and serve disabled children attending private schools who reside within the District.

ORDER

All of Petitioner's requests for relief are denied.

PREVAILING PARTY

Education Code section 56507, subdivision (d), requires a decision to indicate the extent to which each party prevailed on each issue heard and decided. District prevailed on all issues.

RIGHT TO APPEAL THIS DECISION

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

Dated: June 21, 2006

JUDITH A. KOPEC
Administrative Law Judge
Special Education Division
Office of Administrative Hearings