

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

In the Matter of:

LANCASTER ELEMENTARY SCHOOL
DISTRICT,

Petitioner,

v.

STUDENT,

Respondent.

OAH CASE NO. N 2007020304

AMENDED DECISION

Robert D. Iafe, Administrative Law Judge, Office of Administrative Hearings (OAH), Special Education Division, heard this matter on May 29 and 30, 2007, in Lancaster, California.

Stacy L. Inman, Assistant General Counsel of Schools Legal Service, appeared on behalf of Petitioner Lancaster Elementary School District (District). District representative Janis Rivera, Director of Student Services, was also present throughout the entire hearing.

Respondent Student (Student) did not appear for the hearing. Victoria Baca of The Foundation for Mexican American Services, Inc. has appeared as the advocate for Student in this case, but did not appear for the hearing. No parent and no other representative for Student appeared for the hearing. Angie Birchfield, of Interpreting Services, who is a Spanish-to-English and English-to-Spanish interpreter provided by OAH, appeared on the morning of the first day of the hearing on May 29, 2007, and was excused later in the day.

PROCEDURAL BACKGROUND

On February 9, 2007, District filed the request for due process hearing in this case. On February 13, 2007, OAH gave notice setting March 12, 2007, as the date for the due process hearing. On February 23, 2007, at the request of District, OAH continued the initial due process hearing date. OAH then gave notice of the continued due process hearing to

commence on April 30, 2007. During an April 20, 2007, prehearing conference, at the request of Student, OAH again continued the due process hearing date, noting no further continuances would be granted barring extraordinary circumstances. OAH then gave notice of the second continued due process hearing to commence on May 29, 2007. At the May 21, 2007, continued prehearing conference, Student requested another continuance of the due process hearing. The administrative law judge conducting the prehearing conferences noted that Student did not present extraordinary circumstances and denied a third continuance of the due process hearing.

The administrative law judge (ALJ) opened the record on May 29, 2007. On the morning of the first day of the hearing, no one appeared on behalf of Student. District's Director of Student Services, Janis Rivera told the ALJ that she received a telephone call from Student's father (Father) at 7:55 a.m., before the hearing was to begin, in which Father stated he would not appear for hearing because it was not continued. Father also said he was going to speak with his lawyer about the hearing. In view of the fact that no one appeared on behalf of Student at the time of hearing, and no attorney had made any appearance in the case, the ALJ directed District and the interpreter to make attempts to reach Student's advocate, his Father, and his mother (Mother) to determine if any attorney was going to make an appearance on behalf of Student at the hearing.

District and the interpreter made the following attempts to reach Student beginning at approximately 9:40 a.m. on the morning of May 29, 2007. Stacy Inman, attorney for District, attempted to leave a telephone message for Victoria Baca, Student's advocate of record, at the known cellular telephone number provided for Ms. Baca. However, the telephone call connected to a voice mailbox system and the voice mail recording stated the mailbox was full. As a result, no message could be left on the advocate's cellular telephone. Attorney Inman also telephoned to the business telephone number on papers filed by Ms. Baca in the case. The person who answered the telephone for Ms. Baca's office stated she was not able to reach Ms. Baca but would give her a message when she next spoke with her. Ms. Inman left a message to call the District office regarding an appearance at the hearing. Ms. Inman also called the work telephone number for Father and left a message for him to call the District regarding appearing at the hearing. Angie Birchfield, the interpreter provided by OAH for the hearing, left a message at the home telephone number requesting a return call to the District office. After making these telephone calls and leaving messages, the ALJ continued the hearing to 1:00 p.m. to allow time for the messages to be received by Student's advocate, Mother, and Father through the lunch hour.

When the ALJ called the case again at 1:00 p.m., District representative Ms. Rivera told the ALJ she received a return telephone call from Mother instructing the District to stop calling Father at work because he could only receive emergency telephone calls at work. Although the telephone messages left by District had requested information about whether any attorney was going to make an appearance at the hearing, there was no response to this inquiry, only Mother's directive to stop calling Father at his work number.

With knowledge that Mother and Father had received the telephone messages seeking information about appearing at the hearing, and that the office staff of Student's advocate was likewise contacted, the due process hearing proceeded with no appearance by Student or any representative on behalf of Student. The ALJ heard testimony and received written evidence on May 29 and May 30, 2007. The ALJ closed the record and considered the matter submitted on May 30, 2007.

ISSUE

May District exit Student from the special education program because Student is no longer a child with a disability and no longer qualifies for special education and/or special education services?

PARTIES' CONTENTIONS

District proposes to exit Student from the special education program on the ground Student no longer qualifies for special education and related services. District contends that reassessment of Student in all areas of suspected disability show there is no disabling condition which adversely impacts Student's ability to learn in the general education environment without special education and related services. District intends to transition Student into the general education program.

Student's contentions can only be found in the testimony and evidence introduced by District as there was no appearance for Student during this hearing. Student contends he has a disabling condition which requires the special education program and related services. As a result, Parents disagreed with the eligibility determination and refused to consent to the proposed Individualized Education Program (IEP) which provided that Student be exited from the special education program.

FACTUAL FINDINGS

Jurisdictional Matters

1. Student, who turned six years old on October 7, 2006, has been receiving special education and related services because of autistic-like behaviors since he was three years old. At the time the due process hearing request was filed, Student was attending the first grade at Sierra Elementary, one of District's public schools located in Lancaster, California. During the time period at issue, Student has resided with his Mother and Father (collectively Parents) in Lancaster, California, within the geographical boundaries of District.

Background

2. This case arises from District's request that Student be exited from special education and placed in District's general education program at Sierra Elementary School. As discussed in the Legal Conclusions, to resolve the issue of whether District may exit Student from special education, the analysis is similar to when Student was first determined eligible. The focus must be on whether Student is a child with a disability who, by reason of the disability, needs special education and related services. The child's disability must be one of the disabling conditions enumerated by law which makes the child eligible for special education.

3. Before moving within District's boundaries, Student lived within the boundaries of the Los Angeles Unified School District (LAUSD). When Student was three years old, LAUSD found Student eligible for special education because of a diagnosis of autism. LAUSD's initial IEP meeting for Student convened on December 11, 2003, and reconvened on January 13, 2004. The IEP developed at these meetings determined Student's needs could not be met in the general education setting and noted his "autistic-like behaviors interfere with overall development and progress." For the 2003-2004 school year, Student was placed in a special day class with designated instruction and services to meet goals in several areas of need including social, communication, language, cognitive, and motor. This IEP was set to be reviewed a year later on December 11, 2004.

4. Although Student's annual review was to occur by December 11, 2004, there is no evidence there was an annual program review until the IEP team at LAUSD met eight months later in August 2005. Members of the IEP team from LAUSD provided assessment results, including a then recent May 3, 2005, psychoeducational report by bilingual school psychologist Mary S. Kapamaci, showing no evidence of autistic-like behaviors, no evidence of a severe discrepancy between Student's cognitive ability and academic achievement, and no psychological processing disorders. As a result, the proposed IEP from LAUSD dated August 12, 2005, noted Student was not eligible for special education for the following disabilities: autistic and specific learning disability. Parents disagreed with this eligibility determination and did not sign the proposed IEP dated August 12, 2005.

5. On December 2, 2005, speech language pathologist Fredi Seraydarian, MACCC, conducted a speech and language assessment of Student while at LAUSD. The assessment session with Student took approximately 90 minutes and Mother was present during this entire time. Although Mother reported that Spanish was the primary language spoken in the home, English has been Student's language of instruction at school for several years. Ms. Seraydarian's assessment report noted that Student, Mother, and Student's teacher all indicated English was Student's stronger language. Student's formal testing results were generally above average. For example, Student's standard scores included the following: on the Expressive One-Word Picture Vocabulary – Spanish Bilingual Third Edition, Student's standard score was 145 (at the 99th percentile); on the Receptive One-Word Picture Vocabulary – Spanish Bilingual Third Edition, Student's standard score was 117 (at the 87th percentile); and on the Preschool Language Scale – 4, Student's standard

score for auditory comprehension was 113 (at the 81st percentile) and his expressive communication was 116 (at the 86th percentile). Ms. Seraydarian noted Student's spontaneous language "consisted of an abundance of language" as he readily participated in conversation, responded to questions, took several turns within a conversation, was able to tell a simple story, asked questions, readily changed topics, and provided commentary about what he found interesting. Student was able to express his needs and ideas, he demonstrated a sense of humor and imaginary play, and produced sentences of varying length and complexity. In addition, Student's teacher reported he participates in oral language activities in school, appears to enjoy communicating with adults and peers, interacts in an appropriate manner, and is able to access the curriculum. Ms. Seraydarian's report concluded Student had few deficits and many strengths in language and did not recommend any speech and language services or interventions.

6. On January 23, 2006, the IEP team met to review the speech and language assessment conducted by Ms. Seraydarian. The IEP team meeting notes showed that Parents disagreed with the results of the assessment and wanted to continue the speech and language services being provided to Student under the 2003-2004 IEP. Members of the IEP team from LAUSD did not agree that Student was eligible for speech and language services based on Ms. Seraydarian's assessment, but there was no change to Student's IEP at this meeting.

7. To resolve the dispute between Student and LAUSD concerning eligibility for special education, the parties eventually entered into an agreement for informal dispute resolution (Settlement Agreement) dated February 21, 2006. As part of the parties' Settlement Agreement, LAUSD agreed Student would remain in his "stay-put" placement for the services described in the IEP for the 2003-2004 school year. Although members of the IEP team from LAUSD did not agree Student was eligible for special education, LAUSD agreed it would continue to provide services to Student including language and speech (LAS) for 30 minutes per week; occupational therapy (OT) for 30 minutes per week; behavior intervention implementation (BII) for 15 hours per week; and behavior intervention development (BID) for six hours per week. Among other terms of the Settlement Agreement, LAUSD agreed to perform an independent educational assessment of Student for all areas of suspected disability.

District's Administrative Placement of Student Pursuant to the 2003-2004 IEP from LAUSD

8. Student and his family moved to Lancaster during the summer of 2006 and began living within the boundaries of District. Student transferred to District's Sierra Elementary School in September 2006. District made an administrative placement of Student on September 19, 2006, and began implementing the IEP and Settlement Agreement services from LAUSD. District has continuously provided Student with his education program and services as provided in the 2003-2004 IEP from LAUSD until the time of this hearing.

District's Assessment of Student for Eligibility

9. A district must reassess a child before exiting that child from special education. In conducting such a reassessment, a district is required to assess a child in all areas related to a suspected disability, and no single procedure may be used as the sole criterion for determining whether the child has a disability. To determine whether a child continues to have a disability, the IEP team and other qualified professionals must review existing assessment data on the child, including assessments and information provided by the parents, current classroom-based assessments and observations, and teacher and related service provider observations.

10. District began its reassessment of Student upon Student's enrollment at the beginning of the 2006-2007 school year. Benay Loftus, Coordinator of Student Services for District, was involved with the interim administrative placement of Student on September 19, 2006. Ms. Loftus and school psychologist Thomas St. Pierre helped gather documents from LAUSD for review. These documents included Student's previous IEP documents from LAUSD and numerous assessment reports of Student. The IEP team met on October 11, 2006, for its 30-day review of Student's interim placement. At the time of this meeting, an independent educational assessment of Student, funded by LAUSD, had been completed.

Student's August 2006 Independent Psychoeducational Assessment

11. In May and August of 2006, Kurt C. Kuekes, Ph.D., performed an independent educational assessment of Student pursuant to the Settlement Agreement between LAUSD and Student's Parents. Dr. Kuekes is well qualified to perform such an assessment. He obtained his Ph.D. in psychology, with a specialty in health psychology, in 1991. He also obtained a master's degree in health psychology and a master's degree in family therapy. He has been a licensed psychologist in the State of California since 1992. Dr. Kuekes is employed in private practice where he has provided a wide range of psychological services for children and families. For the past ten years he has conducted psychoeducational assessments at the request of families, school districts, and attorneys. In addition to his private practice, Dr. Kuekes is also employed as a forensic psychologist with the State of California's Department of Corrections and Rehabilitation and the Board of Prison Terms.

12. Dr. Kuekes assessed Student on May 18, 22, 25, 26, and August 3, 2006. He prepared a written Confidential Independent Psychoeducational Assessment dated August 16, 2006 (Kuekes Report). His report was based on record review, interviews, observations, and formal testing of Student.

13. Dr. Kuekes spent many hours observing Student in both the classroom environment and outside in social settings. He spent about an hour and a half during each session with Student. He spent a total of about seven and a half hours with Student. During the time he observed Student, Dr. Kuekes tried to write something down every two minutes. From his extensive observations, Dr. Kuekes concluded Student was on a par with his peers. He noted no perseverations, no odd interactions with peers, and no eye gaze problems.

Student interacted with adults appropriately and engaged another student in game playing. He followed directions appropriately with the kinds of prompts and repetitions typical of other kindergarten children. Dr. Kuekes noted Student had no difficulty understanding speech. Student had no ritualistic or repetitive types of behavior, and no obsessive compulsive behavior was observed.

14. In addition to these observations, Dr. Kuekes administered formal testing. The following tests were included in the assessment: Woodcock-Johnson Tests of Cognitive Abilities – Third Edition (WJC-III); Woodcock-Johnson Diagnostic Supplement to the Tests of Cognitive Abilities (WJC-DS); the NEPSY: A Developmental Neuropsychological Assessment, Selected Subtests; Test of Visual Perceptual Skills (non-motor) – Revised (TVPS-R); Beery-Buktenica Developmental Test of Visual-Motor Integration: Fifth Edition (VMI-5); Peabody Picture Vocabulary Test – Third Edition, Form B (PPVT-3B); Test of Auditory-Perceptual Skills – Third Edition (TAPS-3); Woodcock-Johnson Tests of Achievement – Third Edition; Form A (WJA-3A); Achenbach Child Behavior Checklist for Ages 1 1/2 to 5 (CBCL); and the Achenbach Caregiver-Teacher Report Form for Ages 1 1/2 to 5 (CRF).

15. Student’s academic ability was found to be clustered in the average to above average range on the WJA-3A. Compared to the average standard score of 100, Student’s standard scores included basic reading skills-113, math reasoning-102; and academic knowledge-102. Dr. Kuekes found no evidence of a specific learning disability. However, what he found interesting was the large discrepancy between what Mother reported about home behavior on the Achenbach scales as compared to what the teacher reported about school behavior. For example, Mother’s responses showed clinically significant elevations on the Total Problems, Externalizing, and Internalizing Scales where all were reported at greater than 90 percent. Additionally, Mother reported significant elevations on the Emotionally Reactive Somatic Complaints, Withdrawn, Sleep Problems, Attention Problems, and Aggressive Behavior Scales, where all were above 97 percent. In contrast, the teacher behavior rating scales showed no elevations in any of the areas addressed. Dr. Kuekes noted that in a teacher narrative section, Student was described as an “excellent student, very capable, easy to work with once the rules are established”

16. Dr. Kuekes concluded that Student is not autistic and that a diagnosis of autism did not adequately or accurately describe Student. He noted that while most children diagnosed with autism will continue to meet the diagnostic criteria, not all children will remain within that category after receiving intervention. Dr. Kuekes also concluded that although Student may have once met the diagnostic criteria for autism, Student’s current presentation was best described by a diagnosis of Pervasive Developmental Disorder, Not Otherwise Specified (PDD, NOS).

17. The Kuekes Report also discussed Mother’s report that Student was diagnosed with a seizure disorder and that Student acts very angry during the seizures but does not convulse. Dr. Kuekes saw no evidence of this disorder and no school personnel made any report of any symptoms. Based on Mother’s report, he recommended the IEP team should

further consider Student's seizure disorder in view of possible classification as a student with an other health impairment (OHI).

Student's December 2006 Multi-Disciplinary Assessment for OHI

18. Based on Dr. Kuekes's recommendation to consider Student's seizure disorder, Student was assessed to determine whether Student met the eligibility criteria for the Other Health Impaired (OHI). OHI eligibility exists where a pupil has limited strength, vitality or alertness, due to chronic or acute health problems, including but not limited to a heart condition, cancer, leukemia, rheumatic fever, chronic kidney disease, cystic fibrosis, severe asthma, epilepsy, lead poisoning, diabetes, tuberculosis and other communicable infectious diseases, and hematological disorders such as sickle cell anemia and hemophilia, which adversely affects a pupil's educational performance.

19. A Multi-Disciplinary Assessment Report dated December 6, 2006, provided the findings of this OHI assessment. The assessment team who participated in this assessment included District's school psychologist, a nurse, a speech/language pathologist, a teacher, and a resource specialist. The assessment included record review, observations of Student, interview, and formal assessment.

20. During the time Student has attended District's school, there was no report of any seizure or any inability to function in any class. Assessments and other records from LAUSD provided no information or indication of any observable impairment in the school setting associated with any health issue. In all of Student's records, there was no indication of the consideration of any district health plan. Available attendance records from District also showed Student had seven excused and two unexcused absences during 47 days of school, and none of the absences were attributable to any seizure disorder.

21. Results from formal testing on the Vineland Adaptive Behavior Scales showed an overall adaptive behavior composite standard score of 99 which is within the "adequate" adaptive level for Student. Student's standard scores on the subtests included motor skills with a standard score of 94; socialization skills with a standard score of 99; daily living skills with a standard score of 96; and communication with a standard score of 109. Student demonstrated adequate adaptive functioning with no medical or health issue impacting his classroom performance or skill development. Student's teacher reported his participation levels are at or above the levels of other students in the general education classroom. His teacher also noted Student finishes his class work at close to 100 percent of what is assigned and his level of task completion is commensurate with the levels of work completion by other students.

22. Based on the information and data considered by the multi-disciplinary team, the team reported Student did not demonstrate any significant level of observable behaviors to suggest limited strength, vitality, or alertness due to a chronic or acute health problem that was impeding Student's school performance. To the contrary, Student had academic scores within the average to above average range and was functioning at the appropriate first grade

level in all subject areas. As a result, the Multi-Disciplinary Assessment Report concluded Student did not meet the criteria for a finding of OHI.

The December 2006 Recommendations Regarding Behavior Intervention

23. As noted above, District was providing behavior intervention implementation (BII) services to Student as provided under the stay-put provisions of the IEP and Settlement Agreement from LAUSD. District provided these services to Student through a service provider known as California Psychcare, Inc. who made periodic recommendation reports to District. In a letter of recommendation dated December 4, 2006, California Psychcare, Inc. confirmed that it was providing 15 hours per week of discreet trial training to Student. However, the letter also noted that Student's then level of functioning exceeded the criteria for the discreet trial training methodology.

24. The letter of recommendation noted Student demonstrated no delays in the areas of attention, imitation, and language (both receptive and expressive). Student was able to provide eye contact when his name was called and was able to maintain eye contact during a verbal exchange. He was able to imitate multi-step actions and was able to follow multi-step instructions. Student was also able to express his needs and wants appropriately. Based on Student's functional development, California Psychcare, Inc. concluded Student was able to learn from others and did not need the behavioral intervention being provided.

25. As a separate behavioral issue, Mother reported Student was having difficulty complying with her requests and becoming physically aggressive during pretend play scenarios. To meet these deficits in self-regulation and social skills, California Psychcare, Inc. recommended behavioral respite services and behavior intervention/parent training through the local North Los Angeles County Regional Center. Mother reported she agreed with these recommendations and would soon request these Regional Center services.

Appropriateness of District's Eligibility Determination

26. A district is required to assess a child in all areas related to a suspected disability. A district is also required to reassess a child before exiting that child from special education (unless the child has graduated with a high school diploma or is past the maximum age for special education).

27. District reassessed Student for special education eligibility under the suspected disabling conditions of autism and OHI. Assessments were conducted by qualified professionals and included input from previous assessments and other record review, Student's Mother, teacher, and service providers. The Kuekes Report, the Multi-Disciplinary Assessment Report and the California Psychcare, Inc., recommendations, together with the assessments received from LAUSD, provided the broad spectrum of data from which the IEP team could determine eligibility. No single score or product of scores was used as the sole criterion to determine eligibility. Based on District's reassessment of Student, District

appropriately determined Student did not meet eligibility criteria under these categories and was not eligible for special education.

LEGAL CONCLUSIONS

Applicable Law

1. Under the Individuals with Disabilities Education Act (IDEA) and state law, children with disabilities have the right to a free appropriate public education (FAPE). (20 U.S.C. § 1400(d); Ed. Code, § 56000, et seq.¹) FAPE consists of special education and related services that are available to the child at no charge to the parent or guardian, meet the state educational standards, and conform to the child’s individualized education program (IEP). (20 U.S.C. § 1401(9).)

2. “Special education” is defined as specially designed instruction, at no cost to the parents that is provided to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); Ed. Code, § 56031.) “Related services” means transportation and such developmental, corrective, and supportive services as may be required to assist the child to benefit from special education. (20 U.S.C. § 1401(26); Ed. Code, § 56363, subd. (a).)

Eligibility for Special Education

3. Under the Individuals with Disabilities in Education Improvement Act of 2004 and state law, only children with certain disabilities are eligible for special education. (20 U.S.C. § 1401(3)(A); Ed. Code, § 56026, subd. (a).) For purposes of special education eligibility, the term “child with a disability” means a child with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, require instruction, services, or both, which cannot be provided with modification of the regular school program. (20 U.S.C. § 1401(3)(A)(ii); 34 C.F.R. § 300.8(a).)

4. Similarly, California law defines an “individual with exceptional needs” as a student who is identified by an IEP team as “a child with a disability” pursuant to 20 U.S.C. section 1402(3)(A)(ii), and who requires special education because of his or her disability. (Ed. Code, § 56026, subs. (a) & (b).) California Code of Regulations, title 5, section 3030 includes a list of conditions that may qualify a pupil as an individual with exceptional needs and thereby entitle the pupil to special education if required by “the degree of the pupil’s impairment.”

¹ All statutory citations to the Education Code are to California law.

5. A student is eligible for special education for “autistic-like behaviors” if he or she exhibits any combination of the following autistic-like behaviors, including but not limited to:

- (1) An inability to use oral language for appropriate communication.
- (2) A history of extreme withdrawal or relating to people inappropriately and continued impairment in social interaction from infancy through early childhood.
- (3) An obsession to maintain sameness.
- (4) Extreme preoccupation with objects or inappropriate use of objects or both.
- (5) Extreme resistance to controls.
- (6) Displays peculiar motoric mannerisms and motility patterns.
- (7) Self-stimulating, ritualistic behavior.

If a pupil exhibits any combination of these behaviors and the autistic disorder is adversely affecting his educational performance to the extent that special education is required, the pupil meets the eligibility criteria for autism. (20 U.S.C. § 1402; 34 C.F.R. § 300.8; Cal. Code Regs., tit. 5 § 3030, subd. (g).)

6. Similarly, federal regulations define autism as “a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child’s educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.” (34 C.F.R. § 300.8(c)(1)(i).)

7. A student is eligible for special education as a child with other health impairments if the child has limited strength, vitality or alertness, due to chronic or acute health problems, including but not limited to a heart condition, cancer, leukemia, rheumatic fever, chronic kidney disease, cystic fibrosis, severe asthma, , epilepsy, lead poisoning, diabetes, tuberculosis and other communicable infectious diseases, and hematological disorders such as sickle cell anemia and hemophilia, which adversely affects a pupil’s educational performance. (Cal. Code Regs., tit. 5, § 3030(f); Ed. Code, § 56026, subd. (d).)

Assessments to Determine Eligibility

8. A district is required to assess a child in all areas related to a suspected disability, and no single procedure may be used as the sole criterion for determining whether the child has a disability or for determining an appropriate educational program for the child. (Ed. Code, § 56320.) A district is also required to reassess a child before exiting that child from special education (unless the child has graduated with a high school diploma or is past the maximum age for special education). (Ed. Code, § 56381, subds. (h) & (i).) Whether Student remains eligible for special education and services from District is a critical matter for Student since “[a]n eligibility determination is the most important aspect of the IDEA. It is the lynchpin from which all other rights under the statute flow.” *Parent V.S. v. Los Gatos-*

Saratoga Joint Union High School District (9th Cir. 2007) No. 04-17480, 2007 U.S. App.LEXIS 10918.

9. Before any action is taken with respect to the initial placement of an individual with exceptional needs in special education instruction, an individual assessment of the pupil's educational needs shall be conducted in all areas of the suspected disability. (20 U.S.C. § 1414(a)(1); Ed. Code, § 56320.) When developing a pupil's IEP, the IEP team must consider the results of this initial assessment, or the most recent assessment, of the pupil. (20 U.S.C. § 1414(c)(1)(A); Ed. Code §56341.1, subd. (a)(3).) Regarding the reassessment of a student with an IEP, a District must consider whether a student continues to be an individual with exceptional needs. If additional data is needed to make this determination, additional assessments must be conducted. (Ed. Code, §56381.)

10. An eligibility determination must be made by a group of qualified professionals and the parent of the child. Such determinations must be based on assessment data from a variety of sources including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior. (34 C.F.R. § 300.305-300.307).

11. Under *Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528, 163 L.Ed.2d 387], Petitioner District has the burden of proof in this case.

Determination of Issue

1. Pursuant to Factual Findings 1-6 and 11-17, and Legal Conclusions 1-12, the most recent assessments by LAUSD determined Student did not have a qualifying disability enumerated by law and was therefore not eligible for special education.

2. Pursuant to Factual Findings 8-10 and 18-27, and Legal Conclusions 1-12, District has reassessed Student in all areas of suspected disability. As a result of these recent District assessments and additional existing data, Student does not have a qualifying disability enumerated by law and is therefore not eligible for special education.

3. For the same reasons, and pursuant to Factual Findings 1-27, and Legal Conclusions 1-12, District may exit Student from special education.

ORDER

District may exit Student from the special education program because Student no longer qualifies for special education.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. District prevailed on the single issue heard and decided.

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 ninety (90) days of receipt of this decision. (Ed. Code, § 56505, subd. (k).)

Dated: June 28, 2007


ROBERT D. IAFE
Administrative Law Judge
Office of Administrative Hearings