

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PASADENA UNIFIED SCHOOL DISTRICT.

OAH Case No. 2015060450

DECISION

Student, by and through her Parent, filed a Due Process Hearing Request on May 27, 2015, with the Office of Administrative Hearings, State of California, naming Pasadena Unified School District.

Administrative Law Judge Clifford H. Woosley heard this matter in Altadena, California, on August 4 and 5, 2015.

Attorney Carolyn J. Olson, from the Law Offices of Abraham Labbad, appeared on behalf of Student. Mother and Student attended the hearing. Attorney Lisa Dennis and educational advocate Hamlet Yarijanian, from Mr. Labbad's offices, were present. Attorney Meredith B. Reynolds represented District. Special Education Director Jerell B. Hill attended on behalf of District.

On the last day of hearing, a continuance was granted for the parties to file written closing arguments and the record remained open until August 14, 2015. Upon timely receipt of written closing arguments, the record was closed and the matter submitted for decision on August 14, 2015.

ISSUES¹

Within the two years before the complaint's filing, did District fail to meet its child find obligations under the Individuals with Disabilities Education Act by not identifying and assessing Student, who attended a private school, for special education services and supports?

SUMMARY OF DECISION

Student did not prove District violated its child find obligations. The evidence demonstrated that District had an effective child find program that disseminated information into its communities, including the sponsoring and partnering of classes and seminars to which the public was invited. Also, District contacted every private school in its boundaries at the beginning of each school year, twice. Here, District contacted Student's private school for the past three years informing it of District's child find duties, and providing contact information for referral of students in need of special education evaluation or services, and schedules for classes and seminars to which its staff was invited. District sought to consult with Student's private school; the school did not respond. However, District could not force Student's private school to consult with District about its students who might be in need of special education support. Therefore, Student's argument that District's efforts were inadequate was not supported by persuasive evidence.

¹ The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

FACTUAL FINDINGS

1. Student was a 17-year-old eleventh grader, attending Pasadena Waldorf School, a private school within District's boundaries. She had never been enrolled in a District school or program. Before the filing of the complaint herein, District was unaware of Student. Student had never been assessed or found eligible for special education services or placement.

2. Student testified at the hearing. She was poised, pleasant, engaging, and knowledgeable. Student ably and pragmatically described her physical condition and what she might expect as she ages. She was motivated and positive about her future. Student's demeanor and presentation was credible and persuasive.

3. Student has Marfan syndrome. Marfan syndrome is a genetic disorder that affects the body's connective tissue. Connective tissue provides strength and flexibility to structures such as bones, ligaments, muscles, blood vessels, and heart valves. Marfan syndrome symptoms widely vary in severity, timing of onset, and rate of progression.

4. The two primary features of Marfan syndrome are vision problems caused by a dislocated lens in one or both eyes and defects in the aorta, which is the large blood vessel that distributes blood from the heart to the rest of the body. The aorta could weaken and stretch, which may lead to an aneurysm, or bulge in the blood vessel wall. Stretching of the aorta may cause the aortic valve to leak, which can lead to a sudden tearing in the aorta's wall, an aortic dissection. Aneurysm and aortic dissection could be life threatening.

5. Student had both of these syndrome features. She was born with dislocated lenses, which moved around and rubbed against her corneas, diminishing irreplaceable cornea cells. Student consequently had both of her natural lenses replaced with artificial lenses, a procedure similar to cataract surgery. Even with the artificial lenses, Student was visually impaired and required bifocal and progressive lenses.

Student also had aortic dissection, putting her at risk for a life-threatening eruption. She was easily fatigued and prone to dizziness.

STUDENT'S ELEMENTARY AND MIDDLE SCHOOL EDUCATION

6. She started school at Primanti Montessori, a private school in Whittier, California, where she attended until third grade. She then went to Miami, Florida, and enrolled in a public elementary school for fourth grade. She moved out of the country for a time, but resumed public elementary school in Miami at the beginning of her fifth grade for the 2008-2009 school year. After a few weeks, she returned to Southern California and again attended Primanti Montessori, where Student remained until graduating eighth grade in 2012.

7. Student's symptoms affected her ability to do her school work. She required accommodations to avoid fatigue and to access her education. When in fourth grade at public school in Miami, Student had reserved seating in her classes, large fonts for state tests, and a special testing room with a counselor. While at Primanti, her accommodations included sitting in front of her classes, use of large fonts, and no physical education or other exertions.

8. Mother testified at the hearing. She dealt with teachers and school administrators, provided transportation, and arranged for payment of expenses. Mother was pleased with Primanti's sensitivity to, and awareness of, Student's accommodation needs. If there was any issue, Mother would address her concerns to Primanti staff, confident the school would respond.

9. Primanti's class size and educational model were well-suited to addressing Student's educational needs related to her Marfan syndrome symptoms. She was one of five students for her grade and regularly received one-on-one instruction. Student's academic performance at Primanti was superior. She graduated eighth grade in Spring 2012.

PASADENA WALDORF SCHOOL

10. Student and Mother began the search for a private high school. Neither considered public school an option. Student chose Pasadena Waldorf School because of Waldorf associated schools' reputation for producing students well-versed in the humanities, the course of study she intended to pursue in college. Student considered Pasadena Waldorf to be an excellent stepping-stone toward college.

Applying to Waldorf

11. Pasadena Waldorf started its high school in the 2012-2013 school year. Previously, it only had a "lower school," consisting of grade school (grades one through five) and middle school (grades six through eight). Pasadena Waldorf's lower school campus and the school's administrative offices were located at 209 East Mariposa Street, Altadena, California 91001. Pasadena Waldorf's high school was located on the William Carey International University Campus, 1539 East Howard Street, Pasadena, California 91104.

12. Mother and Student started the admission process for Pasadena Waldorf's high school, after attending a presentation on the school's program. Mother took care of the financial paperwork at the administrative offices on Mariposa Street. The application process and interview took place at the high school offices on East Howard Street. Pasadena Waldorf's high school class advisor/counselor, Corby Gallegos, interviewed Student in Mother's presence. Student and Mother explained to Mr. Gallegos, as well as other Waldorf staff during the admission process, that Student had Marfan syndrome and the symptoms meant that Student would need certain accommodations from the school. Both Student and Mother were told during the interview that Student would be in a freshman class of just 14 students and that the program would not have any difficulty meeting her special needs. Waldorf accepted

Student into their first high school freshman class.

13. Mother and Student moved to Pasadena from Long Beach, California, to be closer to Waldorf. Mother was concerned for Student's safety because of Student's visual impairment and would walk with her to school. Mother and Student never lived or attended school within District's boundaries before attending Pasadena Waldorf.

14. At the time of Student's admission, Mother provided Pasadena Waldorf with documentation from Student's doctors regarding her physical symptoms for which she would need some accommodations relative to her vision and heart condition. Mother and Student also provided Pasadena Waldorf with a 33-page booklet, published by The Marfan Foundation, entitled "Need-to-Know Information for the Teacher." One section described how students living with Marfan syndrome might require an individualized education plan under the Individual with Disabilities Education Act or a 504 Plan pursuant to Section 504 of the Rehabilitation Act of 1973. The booklet explained how an IEP and 504 Plan could address Marfan syndrome symptoms at school.

15. The informational guide carefully reviewed the various visual, physical, and psychological challenges of Marfan syndrome within the school setting. The booklet provided detailed lists of accommodations for various Marfan syndrome symptoms related to the heart and blood vessels, bones and joints, vision and the eyes, lungs, and the nervous system. The guide was informative, thorough, and helpful to teachers and schools to better enable their Marfan syndrome students to benefit from their education.

Student's Performance at Waldorf

16. In the first semester of 9th grade, Student's grades were mostly A's, with a few B's. However, in her second semester, some of her A's dropped to B's and she received "incompletes" in two subjects because of deteriorating health. Student became

increasingly concerned and talked to various school personnel regarding her options. She spoke to the high school counselor. Student was not given any accommodations. She was not referred to District for assessment.

17. In 10th grade, the 2013-2014 school year, Student's grades plummeted in the first semester. During this time, Student was seeing many doctors to address health issues. She had multiple meetings with the high school counselor, seeking direction as to what she might be able to do.

18. During this time, Mother and Student discovered that Waldorf had lost the medical and Marfan Foundation documents which they provided upon enrollment. Therefore, in Student's 10th grade spring semester, Mother again provided the school with the Marfan syndrome handbook for teachers and medical documentation.

19. Student was not given any accommodations. Student finished 10th grade with grades of a few A's and B's, some C's and three F's.

20. Student's struggles continued as she entered 11th grade, the 2014-2015 school year. Student got the worst grades she had received in school. She asked for help at her school. When she would try and explain, she was often cut off, unable to finish her comments or inquiries. Pasadena Waldorf staff said they were giving her everything that they could.

21. On January 13, 2015, Pasadena Waldorf provided Student and Mother with a "contract," which included Student, Mother, and Waldorf as parties. The school's contractual commitments included providing various accommodations to Student and communicating to Mother about how Student was performing, including notice of missing work. Student's contractual obligations included attending a study skills class, initiating any requests for extensions on assignments, and to complete all daily and long-range assignments. Mother would commit to monthly meetings during the school year, timely communicating Student's absences, responding within two days to

Pasadena Waldorf emails, and supplying Student with any necessary devices to help with the accommodations.

22. Mother and Student were not involved in writing the proposed contract and did not know how the terms were formulated, especially the accommodations. There was no indication that the proposed contract utilized the recommended accommodations from the Marfan Foundation's booklet for teachers. Mother and Student did not sign the contract.

23. By letter dated March 9, 2015, Pasadena Waldorf informed Mother that the school remained uncertain as to what more it could do to support Student. Therefore, Pasadena Waldorf requested that Student have a professional evaluation, with specific recommendations for accommodations that would address Student's needs. Later, school personnel gave Mother and Student a referral for the evaluation, but at a cost of about \$6,000. Pasadena Waldorf did not refer Student to District for assessment. At the time, Mother was unaware that she could request District to assess Student, even though Student was in a private school.

24. Student ended her 11th grade with only a few grades, one of which was an F; she did not earn grades in many of her classes. She was taking two English classes and a math class at Opportunities for Learning, in Glendale, California, over the 2015 summer. Mother and Student chose Opportunities for Learning because it was tuition free. Student primarily studied on her own, taking scheduled tests, with no direct, one-on-one teaching. The summer program was difficult for Student because she did not receive any additional supports or accommodations in her frantic effort to complete the three classes.

Pasadena Waldorf Testimony

25. Pasadena Waldorf's school administrator, Douglas Garrett, testified at the hearing. He worked at Pasadena Waldorf since July 2014, having come from Prairie Hill

Waldorf School in Pewaukee, Wisconsin. Mr. Garrett's responsibilities at Pasadena Waldorf were administrative and did not include supervision of educational programs. His office was located at Pasadena Waldorf's administrative offices on Mariposa Street. Administrative staff and faculty who only dealt with the high school had offices at the high school campus on Howard Street.

26. Mr. Garrett had reviewed the January 13, 2015 proposed contract regarding accommodations for Student, though he could not recall attending a meeting where the contract was presented to Student and Mother. Mr. Garrett was aware that Student had Marfan syndrome, which caused issues affecting her studies. He also reviewed the March 9, 2015 letter to Mother, which he signed, along with the high school's pedagogical chair, Arthur M. Pittis, and the high school coordinator, Cynthia Martinez.

27. Mr. Garrett did not hold California teaching or administrative credentials, which were not necessary because of Pasadena Waldorf's private school status. He was unaware if any of Pasadena Waldorf's students had been evaluated by District for special education services. He went to an IEP team meeting the year before, to see what one was like. Mr. Garrett said he knew that private school students were able to be evaluated for special education. However, he stated that Pasadena Waldorf had not done anything in that regard and did not know who, if anyone at the school, was responsible for Waldorf students who might need special education services. He did not know how to refer a student to District for evaluation and was generally uninformed regarding private school students and special education.

28. If a notice or communication came to Pasadena Waldorf, Mr. Garrett believed it would have been routed to him by the person in the front office responsible for distributing school mail. He did not recall receiving any notices, written or otherwise, from District regarding special education evaluations, available District training for

private school staff, or District contact information. However, he acknowledged that such notices could have been routed elsewhere. For example, Pasadena Waldorf had a College of Teachers, who were directly responsible for academic curriculum and program. The school also had a Student Care and Services group, composed of faculty members who addressed students' needs. The front office might have routed mail from District to either group, both of which have an assigned box in the administrative offices. Generally, Mr. Garrett could not be certain that he would have received notices mailed by the District to Pasadena Waldorf regarding special education.

29. Cynthia Martinez was Pasadena Waldorf's high school coordinator, having held the position for nine months. She testified at the hearing. Her offices were located on the high school campus. Her duties included administering the operations of the high school, including working with Mr. Pittis. She coordinated the organization of various events and open houses, and maintained the high school's calendar. She was aware of Student's health concerns. She signed the March 9, 2015 letter to Mother, which she helped author.

30. Ninety percent of the mail to the high school came through her administrative assistant. Ms. Martinez would receive any mail that came to the high school that was not otherwise addressed to a specific person. This included mail addressed to the high school at the Howard Street campus and at the school's Mariposa Street administrative offices. She did not recall receiving any notices or written communication from District. She did not receive any invitations to District training. Ms. Martinez was unaware that Pasadena Waldorf could refer one of its students to District for evaluation for special education eligibility.

31. At the time of hearing, Pasadena Waldorf's high school had approximately 55 students and had not yet issued a high school diploma. Student's class of 2016 would be the school's first senior class.

DISTRICT'S GENERAL "CHILD FIND" PRACTICES

32. Jerell B. Hill was the Executive Director for District's Special Education Department and Pasadena Unified Special Education Local Plan Area (SELPA).² Mr. Hill had been the District's director since March 2015. Previously, he was Director of Special Education at Beverly Hills Unified School District, a program specialist in special education for three years at Norwalk-La Mirada Unified School District, and a special education instructor for 11 years at District. He earned a bachelor's degree in political science (2000), a master of arts in education (2004), and a master of arts in special education (2009). He was a candidate for a doctorate in education from Taft University, to be completed in 2016. He held an Administrative Services Credential (Preliminary and Clear), an Educational Specialist Clear Credential (with autism authorization), a Professional Clear Credential, and an Educational Specialist credential.

33. Mr. Hill's duties as director of special education and SELPA were very similar, but regionalized child find efforts were more in line with his role as SELPA director. Though District's director for only five months, Mr. Hill had acquainted himself with the special education department, its staff and resources, and the procedures and business practices associated with District's and Pasadena Unified SELPA's general child find program. Mr. Hill reviewed the District Board policies and administrative regulations associated with child find. At hearing, he generally displayed a keen awareness of the

² All school districts and county school offices are mandated to form consortiums in geographical regions of sufficient size and scope to provide for special education service needs of children residing within the region's boundaries. Each consortium is a SELPA charged with developing a local plan describing how it would provide special education services. The District is of sufficient size and scope to be its own SELPA.

District's child find legal obligations and was well acquainted with the District's child find efforts. Mr. Hill detailed the standard business practices utilized by his offices, which he supervised as the District superintendent's designee.

34. District's general child find process was the same as the process adopted in a memorandum of understanding by SELPA members of the Greater Los Angeles Area SELPAs (GLAAS). GLAAS members developed protocols that each member SELPA would use in child find efforts, including identifying children enrolled in private schools pursuant to the IDEA mandate. In November 2007, the California Department of Education approved the Pasadena Unified SELPA plan, which included a summary of its child find duties.

35. District's child find efforts received input and assistance from the Pasadena Community Advisory Committee, which was a parent-run group, established by the state to give parents a voice in special education implementation. The advisory committee helped with SELPA governance, held regular meetings, and sponsored training sessions for parents and the Pasadena community at large relevant to special education, further supporting District's child find. Their meeting and training program schedule was available on the District's website. District's Office of Communications also had a Family Resource Center, which provided training and resources for present and future District students and their families. District published a newsletter a few times each year, which it sent to every household in the District's communities and which contained contact information. These programs and communications offered opportunities to District area parents, whether or not their children attended a District school, to become acquainted with special education services for children with disabilities and connect with District.

36. District also directly contacted each private school within its borders. In late summer of each year, the California Department of Education provided District's

special education department with a listing that contains all of the private schools operating within District's boundaries.³ Mr. Hill estimated there were about 50 private schools in the District. Pasadena Waldorf was listed, with the Mariposa Street designated as the only mailing address. The private school listing also contained additional information, such as the grades offered, number of students and faculty, diplomas issued, and the name of an administrator.

37. Mr. Hill supervised a number of special education program coordinators, who were each assigned a group of District schools for which they were responsible for coordination of special education. Each year during September, a coordinator used the private school list and mailed notices to every private school at the designated addresses, making a record that a school was mailed a notice. The notices informed the private schools of District's responsibility to identify and evaluate children who may have a disability that could entitle them to special education services. District invited the private schools to contact the District to consult how their private school students with a disability might be identified and assessed. In addition, District provided the private schools with a calendar of scheduled training sessions involving special education, including identifying children who may be in need of assessment. District invited the

³ In August of each year, the California Department of Education assembles and publishes a listing entitled "Private School Affidavit Data - Schools with Enrollment of Six or More Students," which is sent to all California public school districts and available to the public on the department's website. The department lists the data provided by a private school, which includes the address at which the school receives mail. Pasadena Waldorf School filed its annual affidavit for the three years its high school had been open, listing the Mariposa Street address in Altadena as the sole address for Pasadena Waldorf School.

private schools to send their teachers, administrators, and staff to the training. District informed the private schools on how to contact District for possible assessment of their students.

38. After mailing, the coordinator kept track and noted if any notice was returned as undeliverable to a particular school. The coordinator would then assure that the address was correct and perhaps telephone. If no contact, District would then inform the Department of Education. If a private school communicated with District, a coordinator would arrange to consult with the school regarding District's special education obligations to private school students and, if warranted, commence the assessment process for identified students. Also, the coordinators sent a follow-up letter to all the listed private schools in October of each year. These mailings were similarly tracked like the ones sent in September.

39. At the time of hearing, the coordinator who was responsible for the private school mailing was Carol Higa. With Mr. Hill, she reviewed the records of the mailings over the past few years and confirmed that District mailed the special education notice each September, and the follow-up notice in October to Pasadena Waldorf, at the Mariposa Street address in accordance with the department's usual business practice. Additionally, the records indicated that none of the mailings to Pasadena Waldorf were returned.

40. Pasadena Waldorf never contacted District to consult with District or to attend the trainings. Mr. Hill explained that District could not force the private schools to avail themselves of the services available through the District. District has no control over the private school or their personnel; District cannot enter a private school's facility unless invited.

41. Before the filing of Student's complaint, District was unaware of Student. Mr. Hill conducted a search and confirmed that Student had previously never attended a

District school or approached District for special education assessment or services. Therefore, other than District's efforts with Pasadena Waldorf, District had no means of directly contacting Student or Parent directly.

42. If District was aware of Student and her needs, District's normal practice would have been to commence an evaluation process by presenting Mother with an assessment plan for her signature. In that case, Mother would have been informed of her procedural rights, a District nurse and other assessors would have reviewed and reported regarding Student's health and how the Marfan syndrome affected Student's education. An IEP team meeting would be held after the assessment to determine if Student was eligible for special education. Since District was also Student's district of residence, District would make an offer of placement and services consistent with its requirement to provide a free and appropriate public education. If Mother intended to keep Student in private school, the District would develop an Individualized Services Plan, which would describe the alternative services the Student would be eligible to receive.

43. Since becoming director, Mr. Hill had personally communicated with a number of private schools who accepted District's offer to consult regarding special education and private school students. Many private schools send a list of students who may need assessment or updated ISP's at the beginning of each school year. A District program coordinator would then work with the private schools in addressing their students' special education needs. Mr. Hill emphasized that this two-way conversation must be initiated by the private school. At the time of hearing, District had no ISP's for students at Pasadena Waldorf.

LEGAL CONCLUSIONS

INTRODUCTION: LEGAL FRAMEWORK UNDER THE IDEA⁴

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006)⁵ et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's individualized education program. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a) [In California, related services are also called designated instruction and services].) In

⁴ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

⁵ All subsequent references to the Code of Federal Regulations are to the 2006 version.

general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a).))

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to "maximize the potential" of each special needs child "commensurate with the opportunity provided" to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to "confer some educational benefit" upon the child. (*Id.* at pp. 200, 203-204.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.]) Although sometimes described in Ninth Circuit cases as "educational benefit," "some educational benefit" or "meaningful educational benefit," all of these phrases mean the *Rowley* standard, which should be applied to determine whether an

individual child was provided a FAPE. (*Id.* at p. 951, *fn.* 10.)

4. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3)(C), (D).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing division is preponderance of the evidence].) Here, Student carries the burden of persuasion.

LAW RELATED TO CHILD FIND DUTY

5. 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).) This duty is commonly referred to as “child find.” California law specifically incorporates child find in Education Code section 56301, subdivision (a).

6. Child find applies 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 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.)

7. Child find for children enrolled by their parents in private school is the responsibility of the district in which the private school is located. (34 C.F.R. § 300.131, Ed. Code § 56171.) (Also see, Analysis of Comments and Changes to 2006 IDEA Part B Regulations, 71 Fed. Reg. 46593 (August 14, 2006).) If the IEP team finds the child to be eligible for special education, then 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, the district of residence has no obligation to make FAPE available to the child. (Comments to Regulations, *ibid.*)

8. 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 has elaborated upon the meaning of "similar" activities in this context, stating that "similar" activities might 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.) "Comparable" time period means that the school district's child find activities must be conducted within a reasonable period, without undue delay, and may not be delayed until after the school district conducts child find for public school children. (*Ibid.*)

9. 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. (*Dept. of Education, State of Hawaii v. Cari Rae S.* (D. Hawaii 2001) 158 F.Supp. 2d 1190, 1194 (“*Cari Rae S.*”).) 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.*)⁶ 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* (9th Cir. 1999) 195 F.3d 1141, 1149, (citing *Fuhrmann v. East Hanover Bd. of Educ.* (3rd Cir. 1993) 993 F.2d 1031, 1041).)

10. Child find does not guarantee eligibility for special education and related services under the IDEA. It is merely a locating and screening process which is used to identify those children who are potentially in need of special education and related services. Once a child is identified as potentially needing specialized instruction and services, the district must conduct an initial evaluation to confirm the child’s eligibility for special education. (34 C.F.R § 300.301; Ed. Code, § 56302.1.)

11. 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 a SELPA to establish written policies and procedures for use by its constituent local agencies for a continuous child find

⁶ In a footnote in an unpublished decision, the Ninth Circuit Court of Appeals recently noted that it has not yet articulated a test for determining when the child find obligation is triggered. (*G.M. ex. rel. G.M. v. Saddleback Valley Unified Sch. Dist.* (9th Cir. 2014) 583 Fed.Appx. 702, 703, fn. 1.)

system. (Ed. Code § 56301, 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 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.)

12. Education Code Section 33190 requires all private schools to annually file the Private School Affidavit. Absent an affidavit’s timely filing, a private school’s students are not relieved of California’s compulsory education law (Ed. Code, § 48200) that requires each person between 6 and 18 years of age to attend public, full-time day.

13. Violations of child find, and of the obligation to assess a student, are procedural violations of the IDEA and the Education Code. (*Cari Rae S., supra*, 158 F.Supp. 2d at p. 1196; *Park v. Anaheim Union High School District* (9th Cir. 2006) 464 F.3d 1025, 1031.) A procedural violation results in liability for denial of a FAPE only 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; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2); see *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.)

BURDEN OF PRODUCING EVIDENCE AND BURDEN OF PROOF

14. A letter correctly addressed and properly mailed is presumed to have been received in the ordinary course of mail (Evid. Code, § 641). This is a presumption affecting the burden of producing evidence (Evid. Code, § 630) and therefore requires the trier of fact to assume the existence of the presumed fact unless, and until, evidence is introduced which would support a finding of its nonexistence. In this case, the trier of fact shall determine the existence or nonexistence of the presumed fact from the

evidence, without regard to the presumption. (Evid. Code, § 604.)

15. Absent other evidence, District is a public agency and is presumed to have performed its official duties. (Evid. Code, § 664). This presumption is a presumption affecting the burden of proof (Evid. Code, § 660) and therefore imposes upon the party against whom it operates the burden of proof as to the nonexistence of the presumed fact. (Evid. Code, § 606.)

16. Here, Student carries the burden of proof.

ANALYSIS OF ISSUE: CHILD FIND

17. Student contends that her private school did not receive District's notices and letters and that District failed to conduct sufficiently intensive activities to involve Student's private school and locate Student in the community. Student offers the fact that she was not identified and assessed as evidence of District's child find inadequacy. District responds by referring to its many general child find efforts in the community and, in particular, those focused on private schools. District states that it has fulfilled its child find obligation; it cannot force a private school to participate. Student failed to demonstrate that District did not actively and systematically seek to locate private school students with disabilities.

18. Student is a bright and personable young woman. Before she started at Pasadena Waldorf high school, her symptoms were addressed in her private elementary school, enabling her to academically excel. When interviewed for admission to Pasadena Waldorf, she and Mother talked about the Marfan syndrome and symptoms. Student and Mother were encouraged by the freshman class size of 14 students and the assurance that, with such a small class, Student's needs could be managed and addressed.

19. However, when Student's grades started to suffer by the second semester of her freshman year, she and Mother sought assistance but Student was not provided

accommodations. No one at Pasadena Waldorf referred Mother or Student to District for evaluation. Before retaining counsel, Mother did not know she could have asked District to assess Student. She did not know about an IEP or special education services.

20. The evidence demonstrates that District developed and implemented a general child find program, including contacting every private school within their boundaries, consistent with state and federal law. Pasadena Waldorf's failure to refer Student to District for assessment does not support a different conclusion.

21. Mr. Hill is fairly new to his position as executive director for the special education department and Pasadena Unified SELPA. However, his education and experience in special education enabled him to thoroughly acquaint himself with the special education department, its staff and resources, and the procedures and business practices associated with District's general child find program. These procedures are part of a program that the greater Los Angeles area SELPAs devised and to which the member SELPAs had agreed to abide in a memorandum of understanding. This is in compliance with Education Code, section 56301, subdivision (d)(1), that obligates SELPAs to establish written policies and procedures for use by its districts for a continuous child find system. Similarly, District's child find program was referred to in the Pasadena Unified SELPA's plan, which was approved by the Department of Education. Therefore, District demonstrated it satisfied state and federal law to develop a general child find program to identify, locate, and service children with disabilities, including private school students.

22. Mr. Hill knowledgeable testified about District's general child find efforts. District offers special education classes and seminars to which the public is invited. District mails a newsletter that goes to every household in District's region. The Community Advisory Committee partners with the District in child find with the seminars and classes about special education for the community at large. The District's Family

Resource Center is available to assist families within the District's boundaries about the District's services. The District and advisory committee's schedule of meetings, classes, and seminars, as well as the resource center's calendar and services, are on the District's website.

23. Mr. Hill reviewed the special education department's standard business practices relevant to contacting private schools within the District. In September of each year, District mails a letter to every private school in its boundaries. District uses the private school addresses that the California Department of Education provides each year in late summer. For the years relevant herein, District mailed the notices to Pasadena Waldorf School at 209 East Mariposa Street, Altadena, California 91001.

24. Student criticizes District for not mailing its September yearly notices to the high school campus at 1539 East Howard Street, Pasadena, California 91104. However, District was unaware of the address, as was the Department of Education. The addresses on the list are provided by the schools in their private school affidavits that are annually filed with the Department of Education. Pasadena Waldorf's affidavits for the past three years only listed the Mariposa address for receipt of correspondence, even though the affidavits provided data about the high school. In other words, Pasadena Waldorf chose the address at which it wanted to be contacted when it filed the affidavit. Therefore, District cannot be faulted for sending an official letter to the address designated by the school.

25. None of District's notices to Pasadena Waldorf's Mariposa address, mailed in September and October of each year relevant to this proceeding, were returned by the post office. A correctly addressed and properly mailed letter is presumed to have been received (Evid. Code, § 641) and, to overcome this presumption, Student must produce evidence that would support a finding that the mail was not received by Pasadena Waldorf. Student did not do so.

26. Pasadena Waldorf's school administrator Mr. Garrett's office was at the administrative offices on Mariposa Street. A person in the school's front office sorted and distributed the school's mail, putting mail into assigned boxes in the administrative offices. Mr. Garrett said he had no recollection of receiving any mail from District since arriving at the school in July 2014. Though he believed that any District mail about special education and classes would have been sent to him, he acknowledged it could have been routed elsewhere, such as the College of Teachers or the Student Care and Services group. High school coordinator Ms. Martinez also testified that she did not receive any mail from the District.

27. Mr. Garrett's and Ms. Martinez's testimony are unpersuasive as to whether Pasadena Waldorf received District's child find mailings. Ms. Martinez was on the high school campus and received mail addressed to Mariposa Street only after it was sorted and routed at the administrative offices. Such mail was likely sorted and distributed again by her assistant. Similarly, Mr. Garrett expected District's mailing would have been routed to him, but admitted they could have been routed elsewhere. Mr. Garratt could not be certain that the school did not receive District's mail. Therefore, Mr. Garret and Ms. Martinez were qualified to testify only as to what mailings they personally recalled getting. Neither harbored the necessary knowledge to state that Pasadena Waldorf did not receive the District mailings.

28. Pasadena Waldorf was not receptive to District's notices and mailings. Mr. Garratt said that he was aware that private school students might be evaluated by the public school district for disabilities. However, he frankly acknowledged that Pasadena Waldorf had not really done anything in this regard, further indicating that Mr. Garrett's and Ms. Martinez's testimony do not definitively establish that Pasadena Waldorf did not receive District's mailings.

29. The annual private school mailing is the standard business practice of the

District, a public agency, to fulfill its official child find duty related to parentally-placed private school students. Pursuant to Evidence Code, section 664, the District is presumed to have performed its official duties. Student therefore has the burden of proof, by the preponderance of the evidence, as to the nonexistence of the presumed fact. (Evid. Code, §§ 606 and 660.) In other words, Student must prove that District did not perform its standard business practice of contacting all private schools in its boundaries, as well as its other general child find efforts, to overcome the presumption.

30. Mr. Garrett's and Ms. Martinez's testimony did not establish that District failed to perform its standard business practice of contacting all private schools or did not pursue its other general child find efforts as outlined by Mr. Hill. Student presented no other evidence in this regard. Therefore, Student did not overcome the statutory presumption.

31. Further, Mr. Hill's testimony demonstrated that District pursued an established child find program in the community and with private schools. Even without consideration of the statutory presumption, the evidence indicates that District performed its child find program. Here, District's child find system has been effective, as indicated by the many private schools who responded to District's invitation to consult with District, providing names of private school students who are in need of evaluation and services. District's program meets the statutory standards for searching, finding, and serving learning disabled students within the District, including parentally-placed private school students. Student did not establish that District failed to meet federal and state child find requirements.

32. Therefore, Student has not demonstrated by a preponderance of the evidence that District failed to meet its child find duties. Student did not meet her burden of proof.

ORDER

Student's request for relief 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. District prevailed on all issues.

RIGHT TO APPEAL THIS DECISION

This was 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: September 4, 2015.

/s/

CLIFFORD H. WOOSLEY

Administrative Law Judge

Office of Administrative Hearing