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Read All About It!
A Synopsis of Salient Cases in Special Education

Since the last issue of *Read All About It*, the SRO has released 16 new Decisions. Several of which have reiterated the well settled law that parents are not entitled to tuition reimbursement for their unilateral placement where the District has provided FAPE. This month, the SRO has rendered a number of decisions favorable to the parents. Specifically, in an interpretation of the Burlington-Carter burden shifting scheme, the SRO held that where a parent does not seek tuition reimbursement, rather seeks only an Order directing the district to provide services different from those recommended, the burden does not shift to the parent to prove the appropriateness of the services sought. The good news is that a number of the SRO decisions have continued the trend amongst the SRO and the Courts that in tuition reimbursement cases, the inquiry is focused on substantive rather than procedural violations of IDEA. Specifically, this month, the SRO has held that, notwithstanding the CSE's failure to conduct a reevaluation of a student for 5 years, this "procedural error" did not deprive the student of FAPE, where the CSE has relied upon other updated information regarding the student.

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Federal District Court

1. Exhaustion of Administrative Remedies Under IDEA Required Before Pursuing 504 Claims.

Baldessarre ex rel. Baldessarre v. Monroe-Woodbury Cent. Sch. Dist., Slip Copy, 2011 WL 2638448 (S.D.N.Y., 2011)

SALIENT FACTS:

The parents of a speech-impaired student filed a federal court action alleging intentionally discriminatory actions, including, but not limited to: (1) the District's delay in convening a CSE, (2) the CSE's insistence on an ED classification and out-of-district placement, and (3) persistent mistreatment of the student by his special education teacher. In the parents' initial Complaint, they alleged violations of IDEA, 504, and ADA. However, in their Amended Complaint, they dropped the IDEA claim, but maintained the same set of facts. The parents argued that their claims satisfied the futility exception to IDEA's exhaustion doctrine, on the grounds that they requested monetary damages.

COURT'S DECISION:

Where the Parents' claims, though couched in terms of 504 or ADA, relate to matters addressed by IDEA, and there is relief available through IDEA's administrative appeals process, the parents must first exhaust this process. The Court concluded that here, the issues were clearly about placement and identification, matters covered under IDEA. Thus, the parents should have exhausted their administrative due process remedies before bringing the federal action. Further, the mere fact that the parents sought monetary damages, did not bring their case within any exception to IDEA's exhaustion requirements, accordingly, the court dismissed the case.

WHY YOU SHOULD CARE:

Simply because a Complaint alleges a violation of 504 or the ADA, where the issues may be resolved through the IDEA administrative process, the plaintiff is obligated to exhaust. The exceptions to the exhaustion requirement are narrow, which apply only where (1) it would be futile to resort to the IDEA due process procedure; (2) the District has adopted a policy or pursued a practice of general applicability that is contrary to the law; or (3) it is improbable that adequate relief can be obtained by pursuing administrative remedies. See Murphy v. Arlington Cent. Sch. Dist. Bd. of Educ., 297 F.3d 195, 199 (2d Cir., 2002).

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State Review Officer Decisions

1. Reasons for CSE's Rejection of Parents' Requests Required at CSE and in PWN.

Application of the Board of Education, SRO Appeal No. 11-031 (June 17, 2011)

SALIENT FACTS:

The parents of a preschool student with autism, who had been unilaterally placed in the Manhattan Children's Center ("MCC"), rejected the CSE's recommendation. The student's MCC program was highly individualized - his classroom was composed of six students, six instructors and one lead teacher. In addition to receiving related services at MCC, the student received home-based ABA services. The CSE recommended a twelve month 6:1+1 program in a special school with related services of 30 minutes of 1:1 OT four times weekly, and 30 minutes of 1:1 speech-language therapy three times weekly. At the meeting, the parents' attempts to discuss the provision of a 1:1 paraprofessional or a program option other than a 6:1+1 were rebuffed by the CSE. Although the parents subsequently visited the proposed class, they determined that the recommendation was inappropriate, unilaterally placed the student in MCC for the 2010-11 school year and requested reimbursement for tuition, home-based ABA, and related services.

SRO'S DECISION:

First, the SRO found that the CSE's failure to discuss the reasons for its refusal to consider a program other than the 6:1+1 or the provision of a 1:1 paraprofessional at the meeting significantly impeded the parents' right to participate. Most notably, the SRO relied upon the fact that, although there was testimony from the district that a 1:1 placement would be inappropriate, there was neither testimony nor a written record in the Comments section of the IEP or otherwise, which reflected a discussion of the parents' specific request for the 1:1 paraprofessional. Nor was there any indication of consideration of, and reasons for rejecting, any other special education placement options. Therefore, on this basis, the SRO held that the district denied FAPE.

Second, the SRO found that MCC was appropriate. Specifically, the SRO found persuasive that the students were appropriately grouped for instructional purposes, the teachers possessed special education certifications, and the lead teachers were responsible for designing and implementing programs for each student. The SRO found equally persuasive that the classroom teacher regularly reinforced strategies learned and developed during the student's individual related service sessions.

Regarding the equitable considerations, the SRO rejected the District's contention that the parents failed to comply with the 10-day Notice requirement. Specifically, the SRO held that to the extent that the parents did not unequivocally state at the CSE meeting that they intended to enroll the student in MCC, their

letters sent prior to the removal, which informed the district that the parents would seek reimbursement for the student's tuition and educational expenses, provided sufficient notice. Further, the SRO found persuasive that the District failed to produce evidence of the date the student was considered removed.

WHY YOU SHOULD CARE:

Traditionally, IEPs included a section entitled "other options considered." In this section Districts would identify exactly what other options the CSE considered, and the reasons for its rejection of these options. However, the new State-mandated form contains no such section. Rather, this information is now included in the prior written notice ("PWN"). Although, in this case, the SRO did not stress the need for a PWN, in light of the new State-mandate, Districts should use this decision as a reminder that the CSE must not only discuss at the meeting other options considered, but must discuss the same in the PWN. Notwithstanding SED instructing that meeting minutes are not a part of the IEP and should not be regarded as such, this case demonstrates why meeting minutes may still come in handy - to prove among other things, that other options were considered at the CSE meeting. Failure to provide an explanation, not only at the CSE meeting, but also in the PWN, may deprive parents of an opportunity to participate in the development of the student's IEP.

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2. No Violation Where District Failed to Conduct Reevaluation, But CSE Relied Upon Updated Testing.

Application of a Student with a Disability, SRO Appeal No. 11-043 (June 24, 2011)

SALIENT FACTS:

At the 2010-11 annual review of a learning disabled student who attended the Stephen Gaynor School ("Stephen Gaynor") for 2009-10, the CSE relied upon a 2005 psychoeducational evaluation report, a 2009 speech-language evaluation report, reports from the student's Stephen Gaynor teacher, and a 10-page Stephen-Gaynor progress report. The District failed to conduct an evaluation since the 2005 evaluation, thus, the parents argued that the student's 2010-11 "IEP process and result" was invalidated by the CSE's reliance upon the "stale" 2005 evaluation. The IHO concluded that, even in the absence of updated testing, the Stephen Gaynor information supplied the CSE with accurate and sufficient information to develop an appropriate IEP for the student. Nevertheless, the IHO ordered the district to conduct updated testing, and the District complied.

SRO'S DECISION:

The SRO characterized the District's failure to evaluate the student as a "procedural violation," which did not deny FAPE, because the District eventually conducted the reevaluation per the instruction of the IHO. The SRO noted that the parents never challenged the accuracy of the student's present levels of performance as reflected in the IEP. In addition, the district's psychologist testified that while a more recent evaluation would provide updated information, she believed the CSE had sufficient information to develop the student's IEP. As such, the SRO held that this procedural violation did not result in a denial of FAPE. The SRO also found the IEP appropriate although it failed to include specific annual goals to address the student's attentional, organizational, or fluency needs. Essentially, the SRO reasoned that the suggestion of these needs, in the management needs section of the IEP, was sufficient.

WHY YOU SHOULD CARE:

Section 200.4(b)(4) of the Regulations requires that a reevaluation be conducted once every three years, but not more frequently than once per year, unless the parents and CSE agree. This case suggests that where reevaluations are not conducted, Districts may not be found to have violated IDEA if the CSE reviewed sufficient current information and provided FAPE. Recently, the SRO has become less concerned with procedural violations, and more concerned with substantive violations - if you do drop that ball, all may not be lost. However, Districts should not take this as their cue to forego their responsibilities under the Regulations. Rather, Districts should be aware that mere procedural violations may not result in a finding that there has been a denial of FAPE.

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3. Compensatory Services May Be Awarded For Post-Secondary Education Where There Was A Gross Violation of IDEA.

Application of a Student Suspected of Having a Disability, SRO Appeal No. 11-044 (June 22, 2011)

SALIENT FACTS:

At the time of the CSE's initial eligibility determination, wherein it found the student ineligible, the parent alleges that he referred his son to the district's 504 Committee. Although the student graduated with a Regents diploma, the parent filed a due process complaint challenging the CSE's determination and requesting post-graduate compensatory education. The IHO concluded that because the student had graduated, the issue was moot. Notwithstanding this, the IHO held, among other things that, even if the issue was not moot, she lacked

jurisdiction to award compensatory education or services for the student's post-graduate education.

SRO'S DECISION:

The SRO held that the IHO incorrectly determined that the issue was moot. Although the student had graduated, the parent should have been afforded the opportunity to be heard, clarify the nature of relief requested and, if found to have alleged a viable compensatory education claim, both parties should have been given the opportunity to present their arguments. Regarding the IHO's refusal to exercise jurisdiction, "the fact that the student graduated does not operate as a *per se* jurisdictional bar that precludes an [IHO] from directing the district to provide post-graduation compensatory education upon a finding of a gross violation of the IDEA" (citations omitted). Therefore, the SRO remanded the matter to the IHO. As an aside, the SRO noted that he has no jurisdiction to review any of the Section 504 issues alleged on appeal. Specifically, the SRO wrote, "New York State Education Law makes no provision for state-level administrative review of hearing officer decisions in section 504 hearings and a [SRO] does not review section 504 claims" (citations omitted).

WHY YOU SHOULD CARE:

Compensatory education services are most often provided in New York State where a child has been denied all special education services for an extended period of time. Generally, compensatory education is awarded for post-secondary education because if the FAPE denial occurred while the student was still enrolled in the school, the district could provide these services during the school year. However, once the student has graduated, this is not an option. Therefore, districts should remember that simply because a student has graduated does not mean that they are off the hook if they have failed to provide services while the student was enrolled in the district.

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4. A Request For An Order Directing the District To Provide Services Does Not Mandate That the Parent Prove Appropriateness of the Services Sought.

Application of a Student with a Disability, SRO Appeal No. 11-053 (June 23, 2011)

SALIENT FACTS:

The parent of a preschool student with autism rejected the CSE's 2010-11 placement recommendation of a 6:1+1 special class with related services including group counseling, PT, OT, speech-language therapy, and a 1:1 health

paraprofessional. The parent requested that the IHO order the district to provide the student with a "home program" similar to that provided by the CPSE in the student's 2009-10 IEP, which also consisted of 45 hours of weekly SEIT services, and related services. In addition to finding that the District denied FAPE, the IHO found that the parent failed to meet her burden to demonstrate that the home program was appropriate to meet the student's educational needs. Therefore, the IHO denied the parents' request.

SRO'S DECISION:

The parent did not seek tuition reimbursement for a unilateral placement, rather only sought an Order directing the district to provide services different from those recommended in the IEP. Therefore, the IHO should not shift the burden to the parent to prove that the services were appropriate. The SRO noted that the burden-shifting scheme applies where the parent seeks tuition reimbursement (*citing* Education Law §4404[1][c]). Here, the parent was not requesting reimbursement, rather, she requested that the District develop an IEP, which provided home instruction. Accordingly, the SRO concluded that, "once the [IHO] determined that the district failed to offer the student a FAPE, she should have next determined what appropriate remedy, if any, should be provided to the parent based upon evidence presented in the hearing record." Therefore, the SRO remanded the matter to the IHO to develop the hearing record more expansively to enable her to determine what remedy, if any was appropriate.

WHY YOU SHOULD CARE:

At an impartial hearing, the burden of proving the appropriateness of the CSE's recommendation is on the school district. A parent seeking tuition reimbursement must prove that the private program and services selected by the parent were appropriate. Where the parent has not obtained private services for which she seeks reimbursement, and files a demand seeking services different from those recommended, the burden does not shift to the parent to prove the appropriateness of the services requested. Rather, the district must prove such services were not required to provide FAPE. In an interesting interpretation of the Burlington-Carter burden shifting scheme, the SRO has instructed that under these circumstances, the district retains its burden of proving the appropriateness of its recommendation. However, where the district fails to meet this burden, the IHO is charged with the responsibility of determining what program would be appropriate (As discussed below, *cross-reference*: K.M. ex rel. Bright v. Tustin Unified School Dist., Not Reported in F.Supp.2d, 2011 WL 2633673 [C.D.Cal., 2011])

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5. A District Was Responsible for Reimbursement of Tuition Where FAPE Was Provided, But Not In The LRE.

Application of the Board of Education, SRO Appeal No. 11-037 (June 15, 2011)

SALIENT FACTS:

Since the 2008-09 school year, the multiply disabled student with a diagnosis of cerebral palsy, attended the Sinai School ("Sinai"), an out-of-State special education high school located within a mainstream high school. At Sinai, the student was in a special class where he received related services. The CSE convened to develop the student's 2010-11 IEP and recommended a 12-month program in a 12:1+1 special class in a special school with related services and an adapted physical education class in a 12:1+1 setting. After visiting the proposed school, the parent rejected the IEP on the grounds that the designated class had students who were three years younger than her son, and that he required more redirection than would be available in a 12:1+1 placement. The parent then unilaterally enrolled the student in Sinai for 2010-11 where he was placed in a self-contained special class for a 10-month program. Although the IHO concluded that the district provided FAPE for the 2010-11 school year, because the hearing did not commence until February 28, 2011 and concluded on March 1, 2011, he reasoned that it was "too late in the school year to afford a reasonable opportunity for transition from Sinai to a new setting;" therefore, in addition to declaring that Sinai was the pendency placement, the IHO ordered that the student continue at Sinai at the District's expense for the conclusion of 2010-11.

SRO'S DECISION:

Although the SRO held that the CSE's recommendation of a 12:1+1 was appropriate given the student's needs, he held that the recommended placement in the special school failed to meet the LRE requirement. First, the SRO noted the 2-prong test articulated by the Second Circuit for determining whether an IEP places a student in the LRE: (1) whether education in the general classroom, with the use of supplemental aids and services, can be achieved satisfactorily for the student, and, if not, (2) whether the school has mainstreamed the student to the maximum extent appropriate. Given that the CSE recommended a special school placement, which did not provide any general education classes, and the CSE did not consider a less restrictive placement, the SRO held that the CSE failed to meet the LRE requirement.

Although the SRO found that Sinai was more restrictive than that recommended by the CSE, he held that it was appropriate for the student because, among other things, it offered individual instruction; supplemental instruction; vocational development, and functional instruction that integrated life skills with the student's academic instruction. Sinai also provided mainstreaming activities including a "Lunch Buddy" program, wherein the student and a general education

student were paired for a 40 minute period, usually during lunch. Notwithstanding the District's assertion that Sinai was inappropriate because it was only a 10-month program, the SRO held that, while nothing in IDEA precluded the district from recommending a program beyond what the student required, there was nothing to suggest that the student required a 12-month program.

In light of the foregoing, and in consideration of the parties' agreement to reduce any award to the parent by 12 percent of Sinai's "base tuition" to account for that part of the instruction devoted to religious instruction, the SRO directed the district to reimburse the parents for tuition costs at Sinai for the entire 2010-11 school year.

WHY YOU SHOULD CARE:

At CSE meetings, the main concern is ensuring that the recommended program provides FAPE to the student. Specifically, the CSE must ensure that the IEP provides annual goals that are specifically tailored to address the student's needs as identified in the SPAMs, and appropriate program accommodations, modifications, and test accommodations, which will be provided in an appropriate placement and with appropriate related services. However, CSEs, this is only half of the battle - this recommendation must be provided in the LRE. Therefore, regardless of whether the CSE proposes to change the student's placement, it is essential that present at the meeting is an individual capable of explaining the features and characteristics of the proposed placement, which will make it a good "fit" for the student, and most importantly, will explain how it will provide FAPE in the LRE.

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6. Tuition Reimbursement Request Reduced as a Result of Failure to Comply with 10-Day Notice Requirement.

Application of a Student with a Disability, SRO Appeal No. 11-041 (June 9, 2011

SALIENT FACTS:

Since 2006-07, the student, classified with an emotional disability, had been parentally placed at Robert Louis Stevenson School ("RLS") and received private counseling. On August 10, 2009, the parents sent a letter, which they argued was their "10-day Notice." However, in this letter, the parents did not indicate their intention to seek tuition reimbursement. In response to the letter, the CSE convened on August 11, 2009, absent an RLS representative, to develop the student's 2009-10 IEP. Notwithstanding the school psychologist's evaluation

indicating that the student had academic and social/emotional difficulties that could potentially affect his ability to function in a general education classroom setting, the only information considered by the CSE regarding the student's classroom functioning was provided by the student's mother in an updated social history report. The CSE recommended that the student be placed in a general education class and receive group counseling. On September 9, 2009, the parents unilaterally enrolled their son in RLS, and in a letter dated September 23, 2009, rejected the recommended placement and filed a demand for due process.

SRO'S DECISION:

The SRO held that the District denied FAPE, as the IEP was developed without adequate information about the student's individual needs. Further, the SRO found that RLS was appropriate, on the grounds that the teachers had satisfactory qualifications, including Masters degrees in education and State certifications in special education; instructional support systems including individual tutoring were integrated into the program; and school advisors supervised by licensed psychologists assisted the students in various aspects of their academic functioning. Further, the SRO relied upon RLS' 2009-10 progress report, which demonstrated that the student made progress.

However, the SRO held that the equities weighed against full reimbursement as a result of the parents' failure to comply with the 10-day Notice requirement. Because the parents failed to indicate their intent to seek reimbursement in their August 10th letter, this purported "10-day Notice" did not satisfy the requisite specificity. The SRO exercised his discretion to provide a reduced tuition reimbursement award and ordered that the District reimburse the parents for 75% of the tuition costs. Regarding the parents' alleged inability to "front" the costs of RLS, the SRO held that the parents failed to submit adequate proof that they lacked the financial resources to do so. Although the parents presented the following evidence: the father's income of $82,000; the parents' $45,000 contract with RLS for the 2009-10 school year; testimony that the father's financial situation was "quite strained"; and the student's social history, which indicated that the mother possessed a Bachelors degree, and characterized her as "talented, career oriented, employed, and qualified to work as a librarian and researcher;" the SRO held that this evidence was insufficient to satisfy the parents' burden of proving that they lacked the financial resources to "front" the student's tuition costs for the 2009-10 school year. Therefore, the SRO ordered reimbursement only upon proof of payment.

WHY YOU SHOULD CARE:

Where the equitable considerations weigh against reimbursement for tuition, districts may request that the IHO, SRO, or court deny the request in whole; however, reduction in reimbursement is discretionary. Districts may attack

the quality and content of any purported 10-day Notice. Therefore, depending upon the equitable considerations, reimbursement may be granted in whole, in part or denied. Further, the IHO has discretion to order that the District pay the private school directly, or reimburse the parents after they have produced proof of payment. This case illustrates that the parents' mere financial "strain" may be insufficient to warrant an Order of direct payment. Reimbursement upon proof of payment will insulate districts from overpayments and ensure that reimbursement is only made after services have been provided to the student.

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7. IHO Decision Ordering District To Reimburse Parents for Non-Refundable Deposit and Balance of Tuition Reversed.

Application of the Board of Education, SRO Appeal No. 11-047 (June 24, 2011)

SALIENT FACTS:

The district appealed from the portion of an IHO's decision, which ordered it to reimburse the parents for both the $10,000 non-refundable deposit paid to the Rebecca School for 2010-11 and the costs of tuition for that school year. Although the student, who had a genetic disorder characterized by significant delays in cognitive, gross motor and fine motor skills, and speech-language development, required a full-time 1:1 health professional to function in school, the Rebecca School did not and would not provide this service. Instead, the District provided the service to the student while he attended the Rebecca School for 2010-11. Although the Rebecca School's program incorporated PT and OT, the parent introduced little evidence regarding what services the student received and whether these services enabled the student to receive educational benefits. The student's home-based speech-language therapist testified that the student required more services at school.

SRO'S DECISION:

Because the District did not appeal the portion of the IHO's decision, which held that it denied FAPE for 2010-11, the SRO's review was limited to the appropriateness of the Rebecca School. The SRO found that the parents failed to demonstrate that the Rebecca School was appropriate to meet the student's needs. Specifically, the SRO relied upon testimony that the student required additional services that were not provided by the Rebecca School, and the evidence that the District's 1:1 health professional provided a substantial portion of the support required by the student to function at the Rebecca School. Therefore, because the student would not have been able to function at the Rebecca School without the services provided by the District, the District had no obligation to reimburse the cost of tuition.

WHY YOU SHOULD CARE:

Although the District may have denied FAPE to a student, it will not be required to reimburse the parents for costs related to the student's time in a private placement where the private placement is inappropriate to meet the student's needs. Districts may strengthen their argument that the private placement is inappropriate where it has provided a number of services to the student at the private school, which enabled the student to function in the private placement. If the student could not be successful in the parental placement without the District provided services, the parental placement may be inappropriate.

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8. District Ordered to Place Student in State-Approved Nonpublic School.

Application of a Student with a Disability, SRO Appeal No. 11-048 (June 30, 2011)

SALIENT FACTS:

A student with a history of attentional and behavioral problems was classified with an emotional disturbance. After visiting the CSE's recommended school, her parents rejected the recommendation of a 12:1+1 special class in a community school with classroom support to manage her behaviors, once weekly 1:1 counseling for 30 minutes, and once weekly counseling for 30 minutes in a group of three for 2010-11.

The student commenced 2010-11 in a charter school after being selected from a lottery. While at charter school, she was subjected to a neuropsychological evaluation as a result of her behaviors. The evaluator diagnosed the student with an oppositional defiant disorder (ODD) and an adjustment disorder with mixed disturbance of emotions and conduct. The evaluator opined, among other things, that the student would benefit most from a classroom with a low student-to-teacher ratio and frequent 1:1 attention. In her due process complaint, the parent alleged that the 12:1+1 recommendation was inappropriate, and requested that her daughter be placed in the Greenburgh-Graham UFSD (Greenburgh-Graham), a Special Act school district. Thereafter, following an intake interview, the student was accepted at Greenburgh-Graham.

SRO'S DECISION:

The SRO noted that the District had the burden of proving that it offered FAPE. Rather than attempt to meet this burden, the District conceded that

another CSE meeting was required to develop an educational placement. Thus, the SRO concluded that the District failed to meet its burden.

Regarding the parent's request that the District be ordered to place the student at Greenburgh-Graham, the SRO first noted that the assignment of a particular school is an administrative decision, provided it is made in compliance with the CSE's educational placement recommendation. However, the SRO was troubled by the fact that the district conceded in its Answer that a collaborative team teaching (CTT) program was inappropriate for the student, yet nine days after the IHO's decision, the CSE recommended a CTT program. In considering the appropriateness of Greenburgh-Graham, the SRO noted the parent's approval of Greenburgh-Graham, and found persuasive the testimony of the Greenburgh-Graham intake coordinator that most of the Greenburgh-Graham students have an ED classification. After spending about an hour and a half with the student, and reviewing her IEP, evaluations, diagnoses, and classification prior to meeting her, the coordinator said that Greenburgh-Graham was an appropriate placement for the student.

Thus, in light of his conclusion that Greenburgh-Graham had ample information to determine whether the student could be appropriately placed at the school, the SRO directed that, the district arrange for the student to be placed there at public expense.

WHY YOU SHOULD CARE:

This decision reminds districts that, although assignment of a particular school is typically an administrative decision, where the district has failed to provide FAPE, and has not made a good faith effort to explore other options that may be appropriate, it may be ordered in an administrative appeal to place the student in another school program that appropriately meets the student's needs, and which may also be the parents' preferred placement.

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1. A District Has No Obligation to Provide Additional AT Where The Student Receives Meaningful Benefit From Current AT.

K.M. ex rel. Bright v. Tustin Unified School Dist., Not Reported in F.Supp.2d, 2011 WL 2633673 (C.D.Cal., 2011)

SALIENT FACTS:

A parent of a student with a cochlear implant, who relied on lip-reading to communicate, requested that the IEP consider the provision of Communication Access Real-time Translation ("CART"), which involves a live body entering spoken words into a machine, which displays them in real-time on a screen. The

district had been providing the student with closed-captioning for videos, preferential seating, copies of class notes, FM Technology, and repetition of student comments. However, her frequent struggle to follow the teacher's statements prompted the parent to request the provision of CART. Following the parent's request for CART, the district sought assessments, and teacher input regarding the student's need for the device. However, the parent failed to cooperate with the district's efforts to obtain additional assessments despite being provided with further information regarding the assessments. Teachers reported that the student regularly participated in class and appeared to follow class discussions.

SRO'S DECISION:

The parent did not show a need for CART services. The student's grades were average and above average. Her teachers spoke highly of her performance and classroom participation. Moreover, a review of her notebook suggested she fully comprehended class discussions and had no difficulty taking notes. U.S. District Judge David O. Carter wrote, "[r]epeated classroom observations of her performance in classes depict a student thriving despite the obstacles" at *12. Finding that the student received meaningful benefit, the Court dismissed the case.

WHY YOU SHOULD CARE:

While the district is not obligated to provide additional services or devices to the student simply because the parent makes the request, the CSE should consider such requests, and make its determination based upon the results of any additional evaluations, teacher reports, and the student's progress with the current services received. It should be noted that here, the California court essentially disagreed with the SRO in Application of a Student with a Disability, SRO Appeal No. 11-053 (June 23, 2011) (see #4 above) by holding that notwithstanding the fact that the parent did not seek reimbursement for private CART services, rather only requested services different from those provided by the district, the parent retained the burden of proof that the student demonstrated a need for such services.

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