SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPARTMENT 40

Date: 9/19/07			
Honorable: ANN I. JONES	Judge	E. GARCIA	Deputy Clerk
A. COMICK, C.A.	Bailiff	A. JOKO (CSR# 12272)	Reporter

(Parties and Counsel checked if present)

BC363711

[redacted]

VS

COMPTON UNIFIED SCHOOL DISTRICT

Counsel for Plaintiff: DAVID M. GREY (X)

Counsel for Defendant: DANIEL L. GONZALEZ (X)

RULING OF SEPTEMBER 19, 2007 HEARING

The court having read the papers and heard the arguments rules as follows:

I. BACKGROUND

In this case, the plaintiffs have sued the defendants for a (1) partial reversal of a decision by the Office of Administrative Hearings ("OAH") in a case involving plaintiff [redacted], and (2) asserting a violation of IDEA, 20 U.S.C. §1400, *et seq* and California Education Code.

[redacted] was born in 1993 and was a seventh grade student at Willowbrook Middle School in Compton. [redacted] attended school in the ABC school district before entering the defendant Compton Unified School District ("Compton"). Although [redacted] was in the seventh grade, he was functioning substantially below grade level. In fact, [redacted] was at an elementary school fourth grade level. Specific academic weaknesses were noted in spelling, reading comprehension, letter-word identification, reading comprehension and math computation. Despite his sub par academic achievement, [redacted] has average to above average intelligence.

A psychological assessment of [redacted] was performed in September 2005 by Compton. An IEP meeting was held in October 2005. After the October meeting, [redacted] was home schooled due to Compton's unwillingness to offer an appropriate individual educational program ("IEP") or educational plan.

This is an appeal of a decision by the OAH denying [redacted] all other relief except the ruling that [redacted] was entitled to 20 hours of Lindamood-Bell tutoring in reading.

Plaintiffs base their appeal on a number of grounds. Specifically, they allege both procedural and substantive errors in the OAH decision. Procedurally, plaintiffs argue that they were deprived of an opportunity to participate meaningfully in the hearing because of the failure to produce requested student records. Plaintiffs also assert that there were a number of other procedural shortcomings in [redacted]'s case, including: a failure to assess [redacted] properly in areas of suspected disability; a failure to hold IEP meetings in the time prescribed by law, and a failure to provide services that Compton agreed to provide.

Compton counters that although the ALJ found that Compton was remiss in not producing some of [redacted]'s records, plaintiff cannot establish how these missing records would have resulted in a different outcome or how this procedural omission resulted in a deprivation of [redacted]'s right to a free, appropriate public education ("FAPE"). Compton further argues that the ALJ's decision on the assessment issue was based on substantial evidence considered by the ALJ.

II. STANDARD OF REVIEW

Upon conclusion of a special education student's due process administrative hearing pursuant to Education Code §56501 and 20 U.S.C. §1415(f), the student may appeal the OAH decision or file a civil action in the Superior Court pursuant to Education Code §56505(k) and 20 U.S.C. §1415(i).

Judicial review in cases alleging a violation of Individual Disability Act ("IDEA") differs substantially from judicial review of other agency actions, in which courts generally are confined to the administrative record and are held to a highly deferential standard of review." See Ojai Unified School Dist. v. Jackson, 4 F.3d 1467, 1471 (9th Cir. 1993) . Thus, a less deferential standard is applied to the agency decision than may apply in other contexts. Id.

III. FAILURE TO FURNISH PLAINTIFFS WITH REQUESTED SCHOOL RECORDS

At the outset, plaintiffs bear the burden of proving a violation. Schaffer v. Weast, 546 U.S. 49, 57-58, 62 (2005). As set forth below, plaintiff have met that burden.

The first violation identified by plaintiffs is the failure by Compton to furnish requested school records as required by Education Code §§ 56504(b)(3) and 49060 and 20 U.S.C. § 1415(b)(1). Plaintiffs requested these records on seven different occasions. Despite these numerous requests, Compton did not provide the required records. Compton's failure to provide the records was the subject of a Pre-Hearing Conference Order, dated May 10, 2006. Under that order, Compton was to produce all of [redacted]'s records by May 11, 2006. In addition, Compton was ordered to provide a declaration from its custodian of records specifying what steps were taken to produce documents.

Despite that clear order, Compton failed to provide plaintiffs with a complete set of student records in advance of the administrative hearing. At the hearing, Mr. Davis, a school psychologist who assessed [redacted], and Ms. Caumeran (a tutor at Compton) testified that they possessed certain records that had never been produced. Davis testified that he had notes of his classroom observations of [redacted], as well as perhaps other documents, that were never produced. (Davis Testimony 22: 1-22). Davis also testified that a preliminary draft of his psycho-educational report evaluating [redacted] was not available. (Id. at 22-16). Ms. Caumeran, who was [redacted]'s tutor, testified that she performed two reading assessments that were not produced. (Caumeran Testimony 100-102: 1-3). Even though she failed to produce the documents, Caumeran was allowed to testify as to the results. Moreover, the decision referred to these results as evidence that Compton had provided [redacted] with an educational benefit.

California Education Code §56504 states:

The parent shall have the right and opportunity to examine all school records of his or her child and to receive copies pursuant to this section and to Section 49065 within five business days

after the request is made by the parent, either orally or in writing. The public education agency shall comply with a request for school records without unnecessary delay before any meeting regarding an individualized education program or any hearing pursuant to Section 300.507 or Sections 300.530 to 300.532, inclusive, of Title 34 of the Code of Federal Regulations or resolution session pursuant to Section 300.510 of Title 34 of the Code of Federal Regulations and in no case more than five business days after the request is made orally or in writing.

Compton does not dispute that it failed to provide all of [redacted]'s school records prior to the OAH hearing. Even the Administrative Law Judge acknowledged in his decision that Compton failed to provide all of [redacted]'s school records, and that this failure constituted a violation of [redacted]'s rights under the Education Code.

Rather, the ALJ, and Compton, contend that that failure did not rise to the level of a denial of FAPE because plaintiffs could adduce no evidence detailing how documents they'd never seen or otherwise been allowed to review or consider translated into a loss of educational opportunity for [redacted] or infringed upon plaintiffs' participation in the IEP process.

The court finds the reasoning of the ALJ and the position of Compton to be wholly incomprehensible. The burden should not be put on [redacted] or his parents to explain or speculate how particular documents withheld by the defendants would help in case. Rather, as in this case, plaintiffs have demonstrated that the omitted records are material to the adjudication and have pointed to testimony where the withheld records were relied upon by the party withholding production.

Access to *all* of the records of a child for whom special educational services are being sought is a hallmark of the procedural protections afforded under IDEA. The provisions set out in the Education Code embody the importance of access to information as the prerequisite to a full and fair administrative proceeding. Under federal provisions, as well, all parties are provided with the opportunity "to examine all records relating to such child and to participate in meetings" thereafter having been informed of the complete state of the educational record. See 20 U.S.C. §1415(b)(1). To saddle the plaintiffs with having to prove any further prejudice from Compton's admitted failure to comply with the law and the court's orders is clearly impermissible. Nor is sufficient to present a

parent with the record at the hearing and expect them to process that information, prepare a complete examination and incorporate it into their case as Compton believes.

Moreover, given the nature of the materials not produced, It is incomprehensible how the ALJ could have concluded that documents withheld from the plaintiffs in this case did not abridge or seriously undermine their ability to participate fully in the administrative process regarding [redacted]'s need for an IEP. Specifically, Alma Caumeran, [redacted] tutor, was allowed to testify regarding certain tests that she'd administered and her conclusions based thereon – despite her admission that she'd never provided a copy of those tests to plaintiffs. Given the plaintiffs' concerns about the adequacy of the objective information underlying Caumeran opinions and their inability to prepare in advance of her testimony, it cannot be concluded that this omission did not "significantly infringe" upon plaintiffs' participation in the process. See W.G. v. Board of Trustees of Target Range School Dist. No. 23, 960 F.2d 1479, 1484 (9th Cir. 1992)(procedural inadequacies that seriously infringe on the parents' opportunity to participate in the process "clearly result in the denial of a FAPE").

Other educational records not produced in advance of the hearing also seriously infringed on [redacted]'s parents' ability to participate in the process. Mr. Davis' testimony on behalf of Compton was challenged by plaintiffs, in part because of a failure to conduct an adequate assessment. Mr. Davis' notes and drafts were directly relevant to the issue of whether his observations and empirical findings were predicated on a thorough investigation, or whether (as plaintiffs believe) his opinions rested on little more than "snap shot" observations and unanswered questions. Without the benefit of his contemporaneous observations notes and interim reports, the extent and sufficiency of Davis' opinions could not be adequately challenged by plaintiffs' or their expert at the hearing.

The court does not find that there is evidence in the record to support Compton's assertion that the Davis' notes are not educational records of the sort required to be produced under the California Education Code or federal law. See 20 U.S.C. § 1232(g)(a)(4). There is nothing in the record to suggest that Davis' records were in his sole possession and not revealed to any person except a substitute. Id., at subpart (B)(i). And, as for the Caumeran tests, although she testified that the documents were in her sole possession, there is nothing to suggest that these tests were "personal

teaching notes" otherwise not revealed to anyone. See J.P. v. W. Clark County Schools, 230 F. Supp. 2d 910, 949 (S.D. Ind. 2002).

The failure to afford plaintiffs' essential information needed to adequately prosecute their claim at an administrative hearing or to successfully impeach testimony being adduced by Compton's witnesses constitutes a serious procedural inadequacy and interfered with parental participation in the process. As such, the failure to produce these records undermines the very essence of the IDEA and, in this case, resulted in a denial of an FAPE.

IV. REMAINING ISSUES

In light of the court's conclusion that the plaintiffs' procedural protections were violated, the court declines to reach the other bases upon which plaintiffs seek a reversal of the OAH decision.

V. FURTHER PROCEEDINGS

The court requested both parties to provide the court with additional authority regarding what proceedings should follow this decision.

As the court has found that the failure by the school district to produce records was a violation of FAPE, the question remains what remedy is appropriate at this juncture. Plaintiffs contend that remand is not appropriate and that the defective and incomplete record adduced by the administrative hearing officer in this case supports and order compelling Compton to provide certain assessments – issues that the court clearly declined to reach. Defendant seeks a narrow remand, solely for the purpose of allowing a limited number of records to be received by plaintiffs and to re-open the proceeding only to allow the hearing officer to consider what, if any, impact the omission of the documents had on his or her decision. This proposal fails to address the procedural due process defects inherent in the court's decision finding a denial of FAPE. Neither counsel has provided any relevant authority on this issue nor have they properly construed the scope of the court's ruling.

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Accordingly, the court shall issue its own order. On remand, the Office of Administrative Hearings shall initiate a *de novo* review of those issues presented in the appeal of [redacted].[1] This review must necessarily include the production of all records by the school, and the hearing officer shall allow both parties to adduce testimony from the persons from whom documents will now be produced, with ample time afforded to plaintiffs to receive these materials and to prepare effective examination of these witnesses. As the deprivation of process is the basis for the court's ruling, the remand shall afford all parties full and fair process to participate effectively in the proceeding.

Notice is to be given by the moving party.

It is so ordered.

9/19/07
Date

ANN I. JONES
Ann I. Jones, Judge

[1] The appeal to this court did not challenge the OAH's finding that Compton denied [redacted] FAPE by failing to provide RSP, by failing to conduct a 30 day annual IEP, or the finding that compensatory education was appropriate. Thus, the remand cannot possibly encompass these issues.

Minutes Entered
9/19/07
County Clerk