

**BEFORE THE
EDUCATION AUDIT APPEALS PANEL
STATE OF CALIFORNIA**

In the Matter of:

La Honda-Pescadero Unified School District,

Appellant.

EAAP No.: 04-20

OAH No.: N2004100488

DECISION

The attached Proposed Decision of Administrative Law Judge Perry O. Johnson is hereby adopted by the Education Audit Appeals Panel as its Decision in the above-entitled matter.

This Decision shall become effective on April 25, 2005.

IT IS SO ORDERED April 25, 2005.

(Original Signed)

Thomas E. Dithridge, Chairperson

BEFORE THE
EDUCATION AUDIT APPEALS PANEL
STATE OF CALIFORNIA

In the Matter of the Appeal (Statement of
Issues) of:

LA HONDA-PESCADERO
UNIFIED SCHOOL DISTRICT,

Appellant.

Case No. 04-20

OAH No. N2004100488

PROPOSED DECISION

On January 18, 2005, in Oakland, California, Administrative Law Judge Perry O. Johnson, Office of Administrative Hearings ("OAH"), State of California, heard this matter.

Ronald V. Placet, Staff Counsel, represented Steve Westly, California State Controller.

Julie Weng-Gutierrez, Deputy Attorney General, represented the Department of Finance, State of California.

Lee A. Thompson, Deputy County Counsel, for Thomas F. Casey, III, County Counsel for San Mateo County, represented Appellant La Honda-Pascadero Unified School District.

The record was held open to afford an opportunity to the parties to file with OAH written closing arguments. On February 8, 2005, OAH received from the Office of the State Controller a "Post Hearing Brief," which was marked as exhibit "8." On February 8, 2005, OAH received the Department of Finance "Closing Brief," which was marked as exhibit "9." On February 10, 2005, OAH received "Appellant's Closing Brief," which was marked as exhibit "A." On February 15, 2005, OAH received from the Office of the State Controller a "Reply Brief," which was marked as "10." On February 23, 2005, OAH received "Department of Finance's Reply Brief," which was marked as exhibit "11." On February 23, 2005, OAH received "Appellant's Reply Brief," which was marked as "B."

On February 23, 2005, the parties were deemed to have submitted the matter, and the record closed.

FACTUAL FINDINGS

Procedural Background

1. On June 21, 2004, the State Controller's Office certified audit findings, as prepared by Vavrinek, Trine, Day & Co., LLP, certified public accountants/consultants ("independent auditor") for the fiscal year that ended on June 30, 2000, which pertained to the La Honda-Pescadero Unified School District ("Appellant"). The independent auditor's report, which issued tentatively on or about June 30, 2000, set forth a determination that Appellant's Home (independent) Study written agreement lacked two items as required by statute for inclusion in Appellant's form contract.

The two required items, which did not appear in Appellant's form contract, were described as: (i) a statement regarding "the maximum length of time allowed between the assignment of work and the completion of the assigned work" and (ii) and a term that prescribed "the number of missed assignments allowed that will require an evaluation of whether or not the student should be allowed to continue in the home study program."

2. On July 19, 2004, Appellant, by its superintendent, requested that the executive officer for the Education Audit Appeals Panel, State of California ("EAAP"), conduct Summary Review¹ of the 1999-2000 audit finding. But, the EAAP executive officer did not find "noncompliant audit exceptions that clearly constitute substantial compliance" and he did not grant Summary Review so as to abate Appellant's potential forfeiture of apportionment funding that may amount to nearly \$85,000.

3. On October 14, 2004, by letter, Appellant timely filed with EAAP an Appeal of Audit Finding. On October 22, 2004, OAH received Appellant's letter, which was deemed as a notice of appeal, as well as correspondence, dated October 21, 2004, from staff counsel with the EAAP that requested that a date be set for a hearing on the appeal.

On October 28, 2004, EAAP dispatched a Notice of Hearing that set a hearing date of December 15, 2004. But, on the motion of counsel for the State Controller's Office, OAH issued an order that granted a continuance of the original hearing date so as to set the matter for hearing on January 18, 2005.

On November 8, 2004, the California Department of Finance filed with OAH a Notice and Motion to Intervene in the matter of the appeal by Appellant. On November 15, 2004, the presiding administrative law judge for the regional office of OAH in Oakland issued an Order Granting [the] Motion to Intervene so that the Department of Finance became a party to the appeal proceedings.

¹ Education Code section 41344.1, subdivision (d), describes the procedure for Summary Review by the executive officer for the Education Audit Appeals Panel.

On December 16, 2004, EAAP dispatched a Notice of Hearing that set a hearing date of January 18, 2005.

4. The matter proceeded to hearing within ninety days of Appellant's filing of a notice of appeal.²

Substantive Facts

5. The firm of Vavrinek, Trine, Day & Co., LLP, deemed the independent auditor, was a firm of certified public accountants that Appellant retained to prepare an audit for the Fiscal Year 1999-2000.

6. The independent auditor's report, as issued in about June 2000, included a topic sentence that read: "The following findings represent instances of noncompliance or questioned costs relating to state programs laws and regulations." Under the item numbered "2000-2," the report specified a finding that concluded Appellant was "using a home study master agreement that is missing ...required elements." The report recommended that Appellant "should create a master form agreement that includes all the necessary requirements as found in Education Code section 51747."

7. As a result of the deficiency in the form contract as revealed in the audit report, a calculation showed that for the fiscal year 1999-2000 Appellant would be disallowed apportionment funding for 19 Average Daily Attendance (ADA) student positions under the independent study program.

8. In about September 2000, Appellant's administration added to the Home Study master form agreement the two missing elements, which the independent auditor's report had noted as being absent from the form contract.

9. After issuing the audit report with Audit Finding 2000-2, the independent auditor, through a firm partner named Leonard Danna ("Mr. Danna"), wrote a letter, dated October 2, 2001, to the State Controller's Office. Mr. Danna's letter sought to state a basis for withdrawing the finding by an argument that, while the elements were missing from the contract, Appellant had met the spirit of the law in conducting its home study program. Hence, the independent auditor recommended the report be amended so that a total of 19 in-home study ADA student positions might be counted for apportionment funding to Appellant.

² The records in evidence do not include a pleading captioned "Statement of Issues." (Government Code section 11504.)

10. On May 29, 2002, the State Controller's Office issued a letter³ to Mr. Danna. The letter described that the agency's review found the independent auditor's report was deficient, and concluded that the attempted effort to withdraw Finding 2000-2 of the audit report was denied. The State Controller's Office directed the independent auditor "to correct the exception and modify [the] report" to conform with the State Controller's audit guide."

11. Again, the State Controller's Office wrote a letter to Mr. Danna to instruct the independent auditor that the assertions made to support the effort to withdraw Audit Finding 2000-2 remained deficient. The letter, dated February 21, 2003, expressed that the audit report "did not meet the minimum reporting standards contained in the State Controller's audit guide, *Standards and Procedures for Audits of California K-12 Local Educational Agencies*." The letter⁴ directed the independent auditor to modify its report so that the document might be certified as the audit report for the fiscal year that ended on June 30, 2000.

12. In time, the independent auditor restored Audit Finding 2000-2, which specified that Appellant's Home Study contract lacked the two required elements as described in Factual Finding 1.

³ The May 29, 2002, letter's attachment, which was captioned "Exception," sets out, in part: "Original Finding 2000-2, Home Study Program, disclosed that [Appellant] used a home study master agreement that was missing one required element. The auditors did not quantify the error or recommend that [Appellant] revise its attendance report.

"The auditors withdrew the finding because they determined that the home study contracts did have all the relevant required elements. However, the explanation states that while required elements were not 'separately or specifically spelled out,' they determined that [Appellant] met the 'spirit of the law' in conducting its home study program.

"In order to receive state apportionment funding for independent study pupils, [Appellant] must meet certain specified conditions of apportionment. If [Appellant] did not comply with the independent study requirements, it is not entitled to receive apportionment for the independent study pupils...."

⁴ The February 2003 letter's attachment, which was captioned "Exception," included:

"...[A]dditional documentation was provided [by the independent auditor] to support the auditor's assertion that [Appellant] complied with Independent Study requirements. [The State Controller's Office's] review ... disclosed that the auditor's conclusion was not sufficiently supported. The support for the 'time allowed between assignments' and the 'number of missed assignments' did not comply with the applicable requirements. The assertion that one semester and periodic evaluations support the auditor's conclusion is not accurate. One semester is the maximum amount of time that a student can participate in the Independent Study program. Therefore, this does not pertain to the required element of 'time allowed between assignments.' Further, periodic evaluations are a standard methodology for measuring student progress and this does not in any way address the required element of 'number of missed assignments.'"

13. When the independent auditor ultimately restored Audit Finding 2002-2, Mr. Danna made further remarks that included:

“Upon secondary review of the home study program the auditors determined [Appellant], in practice, included the two missing elements in ... running ... the program, even though the items were not spelled out in the agreement. Nonetheless, the omission of these items from the agreement is a technical violation as the required elements noted above are conditions of apportionment. Exclusion of these items from the home study contact could jeopardize [Appellant’s] ability to earn state apportionment on the Home Study ADA reported.

.... The amount of apportionment funding in question approximates \$85,000....”

Fallacious Basis of Appellant’s Contentions

14. The independent auditor was incorrect to argue over a course of more than three years for withdrawal of Audit Finding 2000-2. The auditor ignored statutorily mandatory requirements⁵ upon school districts as to fulfilling conditions for apportionment of public funds.

Moreover, the independent auditor, through Mr. Danna, showed a lack of credibility in an attempt to withdraw Finding 2000-2 by asserting that Appellant had shown substantial compliance in that Appellant’s administration had sought to meet “the spirit of the law.” Such a stance showed the auditor exceeded the bounds of its authority. The auditor’s responsibility and duty was to state whether “the district is in compliance.” If a school district “is not in compliance with a requirement that is a condition of eligibility for the receipt of state funds, the audit report shall include a statement of the number of units of average daily attendance, if any, that were inappropriately reported for apportionment.” (Ed. Code, § 14503, subd. (a).)

15. Mr. Timothy Arthur Beard (“Mr. Beard”), Appellant’s current superintendent, appeared at the hearing of this matter on behalf of Appellant. The assertions of Mr. Beard are neither compelling nor persuasive on the issue of Appellant’s breach of standards required by law for form contracts as used in home study programs upon which apportionment funding should be payable to Appellant.

⁵ Education Code section 14503, subdivision (a), establishes: “If a local education agency is not in compliance with a requirement that is a condition of eligibility for the receipt of state funds, the audit report shall include a statement of the number of units of average daily attendance, if any, that were inappropriately reported for apportionment.”

a. The District is a small school district with an annual budget of approximately \$4 million. The subject unified school district has about 375 students, who are served through three school structures established for grades K through 12. The subject apportionment funding, which pertains to the audit finding in question, represents about two percent of Appellant's annual operating budget. But, the size of the school district under Appellant's jurisdiction or the sought after funding for the Home Study program as a percentage of the district's budget, or the adverse impact through prospective disallowance of such funding upon the Appellant's budget do not create an exemption from the provisions of the Education Code's dictates regarding compliance with the Home Study program schemes as established by the legislature.

b. Mr. Beard is not credible when he asserts that the District was in substantial compliance with the statutory requirements for implementation of a Home Study Program. During the fiscal year in question, Mr. Beard was not employed by Appellant before or during the time of implementation of the form contract as used by Appellant for the Home Study Program in the fiscal year 1999-2000. Mr. Beard did not become Appellant's district superintendent until July 15, 2004.

c. Mr. Beard is not persuasive that Appellant substantially complied with the controlling statutory provision when the governing board or the administration for Appellant adopted, at the beginning of the school year beginning in September 2000, a revised contract form that included the terms or elements that were absent from the form of agreement as used in the fiscal year 1999-2000.

d. On July 19, 2004, in his official capacity for Appellant, Mr. Beard wrote a letter to the Executive Officer for EAAP. Among other things, the letter made an admission that "the program was missing two elements on the home study contracts, which was a significant omission..." But, the letter showed no authority for Appellant's entitlement to apportionment funding for the ADA census due to the home study program in light of Appellant's contract's statutory deficiency, even when the missing elements purportedly were "inadvertent and had no negative consequences for students."

e. Mr. Beard's letter of July 19, 2004, was not believable in its representation that the missing elements reflected minor deficiency. Mr. Beard did not show how the inferred ignorance of law by Appellant's governing board or its professional administration regarding the missing essential elements in the form contract can be deemed as having been "inadvertently omitted" within the meaning of section 41344.1, subdivision (c) of the Education Code.

f. Mr. Beard advanced unsound reasoning for Appellant's defense of "substantial compliance" with the law. Appellant's representative posited that "school personnel met regularly with the students and families at least quarterly." But, the legislature intended Appellant to employ explicit written policies and form contracts that reflect actual

meetings with credentialed teachers, clear assignment plans, suspension dates for completion of defined studies, and other enumerated elements that would warrant the "pupil" to fill an ADA student position within the affected district. The law does not permit as legally sufficient Appellant's effort that attains an ill defined scheme for home study arrangements. Mr. Beard failed to show that the quarterly meetings between students/parents and credentialed or other school district personnel achieved the statutory objective of prescribing a maximum length of time to complete assignments. Moreover, Mr. Beard's defense failed to show how quarterly meetings met the objective of establishing the objective of defining the number of missed assignments that would prompt an evaluation of placement. At most, the quarterly meeting arrangements only permitted attainment of the requirement for the manner, time, frequency and place for submitting the student work assignments.

16. Appellant's form contract deficiency showed an unreasonable neglect of statutory requirements. Such neglect regarding total inclusion of statutorily required elements can not be viewed as a basis to conclude Appellant acted in good faith when its administration crafted a form contract that lacked essential elements.

17. Not only was Appellant's form contract insubstantial, Appellant's governing board's statement of policy regarding the home study program was inadequate under the dictate of the Education Code. Appellant's board policy, in effect at the relevant time of the subject audit, lacked the requirements laid out in Education Code section 51747, subdivisions (a) and (b). Those subdivisions required Appellant to adopt written policies that articulated the elements that were absent from Appellant's form contracts. Because Appellant's policy did not explicitly state the mandatory elements prescribed by the legislature, there was no means to ensure that the statutory mandates were continuously and faithfully complied with by all participants in the home study arrangements.

The State Controller's Evidence

18. Mr. Michael Spalj appeared at the hearing and he offered credible and persuasive evidence.

Mr. Spalj is the Controller's audit manager for education oversight for the certification process for school district audits. His assertions, observations, conclusions and opinions were reasonable and compelling.

On or about August 15, 2002, the Controller's Office received the independent auditor's work papers, which purportedly supported the auditor's effort to withdraw Audit Finding 2000-2. The work papers included the form of agreement that Appellant used for the Home Study Program for the fiscal year that ended June 30, 2000. The Controller's Office had in its possession documents necessary to make a reasonable determination that Appellant's form of contract did not meet statutory requirements.

The Office of State Controller was justified in overruling the independent auditor's legally inadequate effort to withdraw the audit finding regarding the missing elements in the form contract as used for the Home Study program for the fiscal year 1999-2000.

Mr. Spalj established that Appellant's form contract failed to include two essential elements that were required by state law. Appellant was not in compliance with the law when it used a defective master, or form, contract for its home study program during the fiscal year that ended on June 30, 2000.

Ultimate Findings

19. The matters that have been identified as two "missing elements" were, as a matter of law, required to be included in Appellant's form contracts.

20. Appellant's Home Study Program master agreement form, as used for the fiscal year that ended on June 30, 2000, did not contain an adequate statement of Appellant's policies regarding the maximum length of time allowed between the assignment and the completion of a pupil's assigned work, and the number of missed assignments allowed prior to an evaluation of whether or not the pupil should be allowed to continue in independent study.

21. Appellant's Home Study Program form agreements did not contain provisions specifying the maximum length of time allowed to complete assignments and the number of missed assignments that are allowed before an evaluation is conducted.

22. Appellant did not comply or substantially comply with all legal requirements in the implementation of the Home Study Program for the fiscal year 1999-2000.

23. The independent auditor expressed neither fact nor authority to establish Appellant had fulfilled its obligation to craft a legally sufficient form of contract in the implementation of the Home Study Program. The independent auditor's assertion was without merit that Appellant should gain the apportionment funding because Appellant's operation of the Home Study Program's form of contract met the "spirit of the law."

24. The independent auditor had no credible or rational basis to attempt to withdraw Factual Finding 2000-2 based upon a faulty view that Appellant had substantially complied with the statutory condition of apportionment. A reasonable inference may be drawn that over the considerable time the independent auditor was involved with the audit review for the fiscal year that ended June 30, 2000, that the auditor's personnel looked beyond the "boilerplate" language in Appellant's master agreement to ascertain the statutory deficiency in Appellant's implementation of the home study program. Also, the weight of evidence indicates that for the subject audit, the independent auditor amassed and reviewed all available documents in existence for the subject fiscal year. Yet, no document offered by

Appellant, which existed before June 30, 2000, establishes that Appellant used the explicit language that referenced the maximum length of time between assignments and due dates for such academic work, and the allowable number of missed assignments that would prompt an evaluation.

Appellant offered no competent evidence to show that the independent auditor was subjected to a compulsory adherence to the Controller's demands that the auditor abdicate professional judgment or blindly follow the Controller's audit guide.⁶

25. No basis in fact warrants Appellant to receive the entirety of the apportionment fund that may have resulted from a lawfully implemented Home Study Program for the fiscal year that ended on June 30, 2000.

LEGAL CONCLUSIONS

1. As it then read, Education Code section 51747, in part, established:

A school district or county office of education shall not be eligible to receive apportionments for independent study by pupils, regardless of age, unless it has adopted written policies, pursuant to rules and regulations adopted by the Superintendent of Public Instruction, that include, but are not limited to, all of the following:

(a) *The maximum length of time, by grade level and type of program, that may elapse between the time an independent study assignment is made and the date by which the pupil must complete the assigned work.*

(b) *The number of missed assignments that will be allowed before an evaluation is conducted to determine whether it is in the best interests of the pupil to remain in independent study, or whether he or she should return to the regular school program. A written record of the findings of any evaluation made pursuant to this subdivision shall be maintained in the pupil's permanent record.*

⁶ “[Education Code section]14503 states the audit guide serves as a suggested resource but not the sole resource for performing compliance audits. The auditor possesses the discretion to follow alternative procedures....[¶] The wording of section 14503 clearly establishes the audit guide as an optional resource, not the only acceptable method of performing audits. The audit guide is not a rule of general application, but [rather it is] a tool an auditor may or may not utilize in performing an audit. [¶] ... The audit guide does not implement, interpret, or make specific the law enforced or administered by the agency. [citations omitted.] It proposes procedures to be employed in conducting an audit.” (*Modesto City Schools v. Ed. Audit Appeals Panel* (2004) 123 Cal.App.4 th 1365, 1382.)

(c) A requirement that *a current written agreement* for each independent study pupil shall be maintained on file *including*, but not limited to, *all of the following*:

(1) The manner, time, frequency, and place for submitting a pupil's assignments and for reporting his or her progress.

...
(4) A statement of the policies adopted pursuant to subdivisions (a) and (b) regarding the *maximum length of time allowed between the assignment and the completion* of a pupil's assigned work, *and the number of missed assignments allowed prior to an evaluation* of whether or not the pupil should be allowed to continue in independent study. [Emphasis added.]

2. Legislative history and other material germane to the enactment of the subject statutory provision “reveal an unequivocal legislative intent to require [school] districts to include the specific elements enumerated in section 51747, subdivision (c) in *each and every* written agreement...” (*Modesto City Schools v Education Audits Appeal Panel* (2004), 123 Cal.App.4th 1365, 1377.) (Emphasis in text)

Appellant's form of written agreements lacked two essential components that showed a disregard for the unequivocal legislative intent for explicit inclusion of required language.

The first missing required element was a statement in the agreement “regarding the maximum length of time allowed between the assignment and the completion of a pupil's work.” That element was mandated under Education Code section 51747, subdivision (c)(4). Appellant's excuse was that: “Timelines for assignments were formalized during meetings and grading policies [as] discussed and distributed.” But, the intent of the legislature was to ensure that all parties to the written agreement, namely parents, students and teachers, were aware of the requirements of the statute. Appellant's method provided no reasonable assurance that all parties gained an absolutely clear appreciation of the requirement when the term was not set out in the written agreement. Further, the statutory language indicates that the legislature demanded a written record of the terms to which the participants in a home study arrangement agreed to be bound so as to remove all doubt of the California goal for educational attainment.

The second missing mandatory element was a statement in the written form contract regarding “the number of missed assignments allowed prior to an evaluation of whether or not the pupil should be allowed to continue in independent study.” Such also was required under Education Code section 51747, subdivision (c)(4). Appellant attempted to excuse the

missing requirement by advancing: “There is ongoing evaluation of the student’s progress throughout the term of the semester. There does not appear to be a need for language in this contract that spells out how many assignments can be missed before an evaluation takes place.” In this regard, Appellant cavalierly proclaims that it can ignore a statutorily mandated requirement simply because Appellant’s administration believes the language is not necessary. In essence, Appellant seeks to substitute its judgment for the determination and directive of the legislature.

3. The legislature’s clear purpose in enacting section 51747, subdivision (c), is that school districts should create, maintain and use specific independent study contracts as part of their quality control measures. The *Modesto City Schools* decision is instructive. That decision relayed that the California Senate Committee on Education, Staff Analysis (SB 1563 May 4, 1989) stated in pertinent part that, “This bill [which contemplated creation of authority for home study type programs] would require LEA’s [local educational agencies] that offer ISP [independent study program] to do the following: [¶] 1) Adopt written policies regarding [¶] a) The maximum length of time that a student has to complete his/her instructional assignments. [¶] b) The number of missed assignments that will automatically trigger a formal evaluation to determine if ISP is an appropriate placement. [¶] 2) *Include in each pupil’s written agreement:* [¶] [the elements listed in section 51747, subdivision (c)] [¶] 3) Specify that an LEA will not receive apportionment for pupils in ISP unless it does each of the following: [¶] Maintain a written agreement, as specified, for each pupil.” Such content is mandated for contracts for home study programs similar to the program offered by Appellant.

Appellant’s contract not only failed to include two essential or required elements, but also Appellant’s program implementation did not substantially comply with the law under the strict directive of the legislature. Education Code section 41344.1, subdivision (c), prescribes, in part:

Compliance with all legal requirements is a condition to the state’s obligation to make apportionments. A condition may be deemed satisfied if the panel finds there has been compliance or substantial compliance with all legal requirements. ‘Substantial compliance’ means nearly complete satisfaction of all material requirements of a funding program that provide an educational benefit substantially consistent with the program’s purpose. A minor or inadvertent noncompliance may be grounds for a finding of substantial compliance provided that the local education agency can demonstrate it acted in good faith to comply with the conditions established in law or regulation necessary for apportionment of funding....

The facts show that Appellant's home study program for the subject fiscal year cannot be considered to have attained "nearly complete satisfaction of all material requirements." For the subject fiscal year, Appellant's form of contract omitted two significant requirements of the subject funding program. The California Legislature explicitly dictated specific elements for both a governing body's policy statement in offering a home study program and also for the specific form of contract that is presented to parents or guardians of pupils enrolled in a home study program. The Legislature intended that a district could not receive the funding unless the district complied with all of the requirements of the statute.

Appellant argues that it has substantially complied with the requirements of section 51747, subdivision (c), and thus it should not be deprived of ADA apportionment for pupils purportedly in the home study program for the subject fiscal year. But, Appellant did not advance rational and good faith explanations for its failure to include important statutory elements in form contracts.

"Good faith" is a phrase that is "used in a variety of contexts, and its meaning varies somewhat with the context. Good faith performance or enforcement of a contract emphasizes faithfulness to an agreed common purpose and consistency with the justified expectations of the other party...." (*Restatement (Second) of Contracts* § 205, comment a (1979).) Appellant, by its own admission, used a form contract that reflected a "significant omission." Hence, Appellant's performance of the requirements under Education Code section 51747 can not be viewed as being consistent with the justified expectations of the State of California agencies that are required to assure compliance with the statute.

"Section 51747 does not merely refer to general policies of student accountability; it prescribes the content and form of such policies." (*Modesto City Schools v. Educ. Audit Appeals Panel*, supra, 123 Cal.App.4th at p. 1375.) The independent study agreement for the Home Study Program is the foundation. Absent the mandatory content in the form contracts, as well as the deficiently written board policy that implemented the Home Study program, Appellant failed to comply with the material requirements to earn independent study funding under the apportionments mechanism.

ORDER

The appeal of Appellant La Honda-Pascadero Unified School District is denied. Audit Finding No. 2000-2 of the audit report regarding Appellant La Honda-Pascadero Unified School District for the fiscal year ending June 30, 2000, is upheld. The determination that Appellant La Honda-Pascadero Unified School District be disallowed apportionment-funding representative of 19 ADA pupil positions purportedly in the home study program is affirmed.

DATED: March 18, 2005

(Original Signed)

PERRY O. JOHNSON

Administrative Law Judge

Office of Administrative Hearings