

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

OAH Case No. 2018110462

PARENT ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL DISTRICT.

DECISION

Student filed a due process hearing request with the Office of Administrative Hearings on November 13, 2018, naming Long Beach Unified School District. On December 14, 2018, OAH granted the parties' joint request for a hearing continuance. Administrative Law Judge Sabrina Kong heard this matter in Long Beach, California, on April 16, 17, and 18, 2019.<sup>1</sup>

Attorney Bruce Bothwell represented Student. Mother attended the hearing on all days. Attorney Debra Ferdman represented Long Beach. Long Beach's special education and Special Education Local Plan Area director, Dr. Rachel Heenan, attended the hearing on Long Beach's behalf on all days.

ALJ Kong granted a continuance for the parties to file written closing arguments

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<sup>1</sup> Long Beach filed its response to Student's complaint on November 26, 2018, which permitted the hearing to go forward. (*M.C. v. Antelope Valley Unified Sch. Dist.* (9th Cir. 2017) 858 F.3d 1189, 1199-1200.)

and the record remained open until May 9, 2019. The parties timely filed written closing arguments. The record was closed on May 9, 2019, and the matter was submitted for decision.

## ISSUES<sup>2</sup>

1. Whether Long Beach denied Student a free appropriate public education by failing to timely convene an individualized education program team meeting on or before June 19, 2018?

2. Whether Long Beach denied Student a FAPE by failing to have an IEP in place before the commencement of the 2018-2019 school year?

## SUMMARY OF DECISION

Student proved that Long Beach denied Student a FAPE by not timely convening an IEP team meeting by June 19, 2018.<sup>3</sup> The April 17, 2018 30-day/transition IEP was outdated as of June 20, 2018. Long Beach did not have an updated IEP in place before the beginning of the 2018-2019 school year.

Long Beach sent a triennial assessment plan to Parents on June 19, 2018, after Long Beach's 2017-2018 school year ended. Parental delay in not consenting to the assessment plan from September 13, 2018 (the 15th day after the start of the 2018-2019 school year) until October 9, 2018 impacted Long Beach's ability to assess Student. Long Beach had 60-days after Parents consented to the assessment plan, excluding Long Beach's non-school days in excess of five days, to hold an IEP team meeting. However,

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<sup>2</sup> The parties identified and agreed to issues at the PHC.

<sup>3</sup> Student's triennial and annual IEP team meetings were due on this same day and shall be referred to as the 2018 IEP team meeting.

Long Beach did not hold an IEP team meeting by January 22, 2019, the last day of the 60-day period. Long Beach had not held the 2018 IEP team meeting to discuss Student's educational needs by the conclusion of this hearing.

Long Beach's failure to convene Student's 2018 IEP team meeting and continuing failure to offer Student an updated IEP were not merely procedural violations, but egregious FAPE denials because its failures significantly impeded Parents' opportunity to participate in the decision-making process and impeded Student's right to a FAPE by depriving them the necessary and updated information about Student's educational needs. Student is entitled to the remedies discussed below.

## FACTUAL FINDINGS

1. Student was 15 years old, and eligible for special education under the category of autism. Student resided with Parents within Long Beach's boundaries during all relevant periods. She attended Kids Institute for Development and Advancement, a certified non-public school, for approximately five years until March 12, 2018. She then attended Beacon Day School, also a certified non-public school. At the time of hearing she attended ECE 4 Autism, a certified non-public school, placed there by Parents.

2. Student was academically and developmentally delayed, requiring assistance with functional daily activities including feeding, dressing, and toileting. She was a nonverbal student who used an iPad as her augmentative and alternative communication device with the ProLoQuo application since 2016.

### JUNE 19, 2017 IEP TEAM MEETING

3. Student met her academic goals from the 2016-2017 school year. The June 19, 2017 IEP team proposed six new academic goals using her iPad: three functional math goals; and three English language arts/reading goals. The June 19, 2017 IEP team revised Student's two behavior goals to, in four out of five times: initiate a task within

one minute of when the direction is given; and ask for help when using her iPad or asked to perform a task with which Student had difficulty performing. Student did not meet any of her four speech and communication goals from the 2016-2017 school year. The June 19, 2017 IEP team agreed that Student should continue working on the May 2016 IEP speech and communication goals, and that those goals did not need revision. Student also did not meet any of her four occupational therapy goals from the 2016-2017 school year. The June 19, 2017 IEP team revised Student's occupational therapy goals to: (a) in three out of four times and with minimal physical support and verbal/gestural cues Student would: (i) complete five steps of handwashing including turning on the faucet, pumping the soap dispenser, rubbing hands together, rinsing under water, and turning the faucet off; and (ii) wipe her face with a napkin during mealtime; and (b) in 60 percent of the time, with moderate verbal and physical prompts, scoop or stab food using utensils, self-feed without overstuffing, with proper pacing and minimal spillage; and (c) in 50 percent of the time, participate up to 10 minutes in three new and age appropriate activities without challenging off-task behaviors or crying.

4. The June 19, 2017 IEP team offered Student placement at Kids Institute; two daily roundtrip mileage reimbursements for transportation from Student's home to Kids Institute; 30 minutes, five times per week of individual speech and language services; 30 minutes, twice a week of speech and language consultation services; 30 minutes, three times per week of individual occupational therapy services; and extended school year from July 16, 2018 to August 18, 2018. The IEP team also noted that an individual transition plan would be developed and reviewed at Student's 2018 annual and triennial IEP team meeting. Parents consented to Long Beach's offer of FAPE.

5 On December 12, 2017, Kids Institute notified Long Beach that the school would be closing and would terminate its contract with Long Beach. Long Beach offered Student placement at Beacon. Student started at Beacon on March 12, 2018.

## APRIL 17, 2018 IEP TEAM MEETING/30-DAY REVIEW

6. On April 17, 2018, the IEP team convened a 30-day review of Student's placement and progress at Beacon. Because she had been sick, Student attended approximately 19 school days at Beacon by the time of this 30-day review. The IEP team discussed Student's present levels of performance. Beacon contracted with a non-public agency to provide speech and language, occupational therapy and behavioral services for Student. Speech pathologist Inish Martin, occupational therapist Kyle Welch, and behavioral specialist Stephanie Kim each discussed Student's progress, goals and their impressions of Student since her placement at Beacon. Ms. Kim developed a behavior intervention plan after Student enrolled at Beacon and discussed Student's behavioral data and the proposed behavioral strategies during the IEP team meeting. Ms. Kim identified Student's challenging behaviors as whining, dropping to the ground and refusing to move. The IEP team did not develop new goals for Student. Ms. Martin, Mr. Welch, Ms. Kim and Student's special day class teacher opined that working on Student's June 19, 2017 IEP goals was appropriate because Student had not met all of her goals. Student's special day class teacher added that she wanted Student to work more on self-care and independence.

7. The IEP team discussed and decided that since Student's triennial and annual IEP would be in June 2018, they would review Student's progress and reevaluate her needs then, after they had more time to work and observe Student after her recent transition to Beacon. In the meantime, the IEP team agreed that staff at Beacon would implement the June 19, 2017 IEP. Parents did not share any concerns about Student's placement at Beacon by the April 17, 2018 IEP team meeting other than safety concerns while Student was on community based outings. Mother was concerned that Student would be unable to stay with the group during community outings.

8. At the April 17, 2018 IEP team meeting, Long Beach offered Student a

one-to-one aide five days per week, for a total of 360 minutes, in response to Mother's concerns regarding Student's safety during community outings. Long Beach offered non-public school placement at Beacon; transportation to and from Student's home to Beacon; 30 minutes, five times per week of individual speech and language services; 30 minutes, twice a week of speech and language consultation services; and 30 minutes, three times per week of individual occupational therapy services. The anticipated start and end dates for the placement offer and related services offered were from April 17, 2018 to June 19, 2018. Long Beach also offered Student extended school year at Beacon along with related services from July 11, 2018 to August 28, 2018. The FAPE offer was the same as the June 19, 2017 FAPE offer with the addition of a one-to-one aide, and Long Beach provided transportation instead of reimbursing Parents mileage for two roundtrips each day. Parents consented to this IEP.

9. Sometime between April 17, 2018, and May 31, 2018, Mother developed concerns regarding Student's self-help and communication skills at Beacon. On May 31, 2018, when she had not heard from Long Beach regarding the status of the triennial assessments and triennial/annual IEP team meeting, Mother contacted Long Beach's program specialist Patricia O'Connell inquiring about scheduling the IEP team meeting. Mother expressed to Ms. O'Connell concerns regarding Student's safety and access and wished to have Long Beach assess Student in adapted physical education and physical therapy. Other than her May 31, 2018 email to Ms. O'Connell, Mother did not express other concerns about Student's placement at Beacon to anyone because she expected to have the opportunity to do so more extensively at Student's June 2018 triennial and annual IEP team meeting.

10. The last day of Long Beach's 2017-2018 school year was June 14, 2018. The last day of Beacon's 2017-2018 school year was June 19, 2019. Long Beach did not assess or hold Student's triennial and annual IEP team meeting by June 19, 2018.

Mother left the country shortly before June 19, 2018, when it became clear that Long Beach would not complete Student's triennial assessments and/or hold an IEP team meeting by June 19, 2019.

11. On June 19, 2018, Long Beach's psychologist Kristin Bogdan sent an assessment plan and rating scales to Parents. The documents arrived at Parents' home on June 21, 2018. A relative who checked the mail while Mother was out of the country informed Mother the documents arrived.

12. On June 23, 2018, Parents sent Long Beach a letter informing that they would withdraw Student from Beacon and enroll her in ECE on July 23, 2018, because Beacon did not meet Student's educational needs. Parents also informed Long Beach that at Beacon Student had difficulty meeting her IEP goals and making academic gains, especially in self-help and communication. Parents further informed Long Beach that they would seek reimbursement for the ECE placement.

13. On July 6, 2018, Ms. Bogdan followed up with Mother inquiring when Parents would sign and return the assessment plan and complete the rating scales. Ms. Bogdan worked during the summer until mid-July 2018 and opined at hearing that if Parents had returned the assessment plan she could have assessed Student during the summer including during Student's extended school year. However, neither Ms. Bogdan, nor anyone else from Long Beach told Parents that Ms. Bogdan (or anyone else) was available to assess Student in the summer. Mother returned from her trip on July 10, 2018.

14. On July 12, 2018, Long Beach notified Parents by letter that because it had offered a FAPE to Student in April 2018, it would not fund Parents' unilateral placement of Student at ECE. Long Beach again requested that Parents return the assessment plan so that Long Beach could proceed with Student's triennial assessments.

15. Student's last day at Beacon was on July 20, 2018. Student started ECE on

July 23, 2018. Student did not receive speech and language or occupational therapy services after leaving Beacon.

16. On July 31, 2018, Long Beach notified Parents by a second letter that it offered a FAPE to Student in April 2018, and would not fund Parents' unilateral placement of Student at ECE. In this letter, Long Beach also informed Parents that because they had not made Student available for assessment and had not consented to Long Beach's June 2018 assessment plan, Long Beach would not fund Student's placement at ECE.

17. On August 22, 2018, Mother informed Ms. Bogdan that she had completed the assessment documents. However, Mother did not return the assessment plan or the rating scales over the summer because she understood that school districts typically did not assess students over the summer and she did not believe Long Beach would assess Student until the beginning of the 2018-2019 school year. Mother also explained that she had been occupied with Student's transition to ECE during the summer and did not have time to complete the rating scales, which consisted of approximately 200 questions.

18. Long Beach's first day of the 2018-2019 school year was August 29, 2018. On August 30, 2018, and on September 20, 2018, Ms. Bogdan followed up with Mother regarding the status of the assessment plan and the rating scales and offered to pick up the documents at a location agreeable to Mother. September 13, 2018, was the 15th day after the start of the 2018-2019 school year.

19. On October 9, 2018, Mother returned the signed assessment plan to Long Beach authorizing Long Beach to conduct Student's triennial assessments along with the completed rating scales. After November 6, 2018, Mother renewed her request that Long Beach schedule a date for the 2018 IEP team meeting. Long Beach responded on



November 14, 2018, that it was working on scheduling an IEP team meeting date, but did not do so at that time.

20. January 22, 2019, would have been 60 days, excluding days between regular school sessions and school holidays in excess of five days, from October 9, 2018, the date the assessment plan was signed and returned to Long Beach.

21. On February 12, 2019, Mother again requested that Long Beach set a date for the 2018 IEP team meeting. On February 20, 2019, Long Beach proposed three IEP team meeting dates. Mother chose March 21, 2019, one of the three proposed dates. However, on February 26, 2019, Long Beach proposed April 5, 2019, for the 2018 IEP team meeting date without any explanation as to the reason for the change. Parents agreed to April 5, 2019. On April 2, 2019, Long Beach informed Mother that it needed to reschedule the April 2, 2019 date to May 31, 2019. Because of Long Beach's staff's availability, and other reasons which had not been explained to Parents, Long Beach delayed holding Student's 2018 IEP team meeting from after January 22, 2019, which was 60 days from the date Mother consented to assessments on October 9, 2018. At the time of the April 2019 hearing, Student's 2018 IEP team meeting was scheduled for May 31, 2019.

22. ECE charged Parents \$190 for each day Student attended school and billed Parents at total of \$27,360 from July 2018 to March 2019 in the following amounts: July 2018: \$950; August 2018: \$4,370; September 2018: \$3,610; October 2018: \$3,990; November 2018: \$3,040; December 2018: \$1,900; January 2019: \$3,420; February 2019: \$3,230; and March 2019: \$2,850. ECE charged Parents for: eight days from September 1, to September 13, 2018; and 16 days from October 10, to October 31, 2018. Parents paid a total of \$22,610 to ECE for the period from July 2018 to March 2019. Long Beach did not contradict these amounts at hearing.

23. Mother's Google maps search from her home to ECE was 27.8 miles each

way times four trips for a total of 111.2 miles a day for two roundtrips. Using the Internal Revenue Service mileage rate of 54.5 cents per mile in 2018 and 58 cents per mile in 2019, times 111.2 miles per day, for each day Student attended ECE, Mother calculated that Long Beach owed her a total of \$8,921.57 from July 2018 to March 2019 for mileage. Mother's mileage calculations were: July 2018: 556 miles for \$303.02; August 2018: 2,557.60 miles for \$1,393.89; September 2018: 2,112.80 miles for \$1,151.48; October 2018: 2,335.20 miles for \$1,272.68; November 2018: 1,779.20 miles for \$969.66; December 2018: 1,112 miles for \$606.04; January 2019: 2,001.60 miles for \$1,160.93; February 2019: 1,890.40 miles for \$1,096.43; and March 2019: 1,668 miles for \$967.44. Long Beach did not contradict these numbers at hearing. Mother opined that because Long Beach reimbursed Parents mileage for two roundtrips from home to Kids Institute, it should also reimburse Parents mileage for two roundtrips from home to ECE.

24. Mother agreed to Student's placement at Beacon because it was the only option proposed by Long Beach after Kids Institute stated it would close. After the April 17, 2018 IEP team meeting, Mother became concerned that Beacon had not been meeting Student's needs. She intended to discuss them with the IEP team at Student's 2018 IEP team meeting. Mother's concerns included: (i) Student was not progressing academically, especially with her communication and self-help skills; (ii) Student had difficulty meeting her IEP goals; (iii) Student's IEP goals were dated; (iv) Student was not using, or motivated to use, her augmentative alternative device enough; and (v) Whether the time spent on two to three community outings per week benefitted Student as compared to spending the time on other areas of need including communication and occupational therapy/self-help skills. Mother also intended to propose a different placement at Student's triennial and annual IEP team meeting. When Long Beach failed to timely hold Student's triennial and annual IEP team meeting and Mother was unable to obtain the IEP team's input about her concerns as to Student's

educational needs, she decided to place Student at ECE sometime between June 19, 2018 and June 23, 2019. She opined that ECE was an alternative to help Student progress academically and developmentally when Beacon had not done so.

25. Mother found ECE appropriate for Student because it was a small school with one classroom of no more than 14 students, including Student. Although ECE had occupational therapy and speech and language services available, Parents could not afford to pay for them because ECE charged extra for these services.

26. The California Department of Education certified ECE as a non-public school and authorized it to educate students from pre-kindergarten to 12th grade with autism, multiple disabilities and intellectual disability. Hoonoosh Virgo, ECE's director and behavioral specialist, held a bachelor's degree in psychology, and master's degrees in psychology and child development; and worked with special education students since high school. ECE's staff included one special education teacher credentialed to work with moderate to severe students; two paraprofessionals with associate of arts degree in child development; and Ms. Virgo. Ms. Virgo provided behavior intervention implementation and behavior intervention development services to ECE students. Like Beacon, ECE contracted with outside non-public agencies to provide speech and language and occupation therapy services to its students.

27. Ms. Virgo opined that ECE did not place students in the same class based on age but on intellectual ability and functional level. She also opined that ECE's students were severely impacted students from the disabled population. The ECE classroom comprised of three groups of three to four students, and an adult for each group. Ms. Virgo, the fourth adult, typically worked with students' behaviors. Most of the students also had pull out speech and language and occupational therapy sessions. A typical ECE day was from 8:30 a.m. to 3:00 p.m. and consisted of: a general class morning activity; breaking into a smaller group to work on academics and/or goals;

recess which included free play toy choices, walking, swimming, games, and/or ball play; breaking into a smaller group to work on academics and goals; lunch; breaking into reading groups for story time; hand eye coordination activity or independent activity time such as working on puzzles, or resting; recess; then school ends. ECE provided approximately one and a half hours of direct, group specialized academic instruction per day to all students.

28. Ms. Virgo administered the Student Annual Needs Determination Inventory, SANDI, a functional learning assessment, to Student in July 2018 and in January 2019. Through the SANDI, Ms. Virgo determined Student's reading, writing, math and science skills for daily function and independent living. Ms. Virgo could not opine at what age level Student functioned beyond just "low" because she was not a licensed school psychologist, or a licensed psychologist. Because Student functioned at a low level, ECE staff worked with her on functional and independent living skills. Student's class had students between the ages of nine and 18 and a half. Ms. Virgo opined that Student did not require a one-to-one aide at ECE because Student followed instructions in small groups and progressed without one. Ms. Virgo concluded that Student progressed because Student worked on and successfully executed the following skills while at ECE: (a) taking off/putting on pants and diapers with assistance; (b) putting on socks and shoes; placing her backpack where instructed; (c) fine motor skills such as: grabbing/letting go of items, small object placement such as puzzles, and sorting colors, shapes, and letters; (d) socializing/participating in an outdoor activity such as: walking up to a peer and extending a hand, running after a peer, and sharing a toy and playing with a peer; and (e) taking off clothes and working on wiping and self-cleaning. Ms. Virgo did not observe Student at Kids Institute or Beacon and was not familiar with Student beyond what Parents shared with her about Student before she worked with Student at ECE. When Student started at ECE, she cried often to express herself. By the

April 2019 hearing, Student rarely cried to express herself which Ms. Virgo attributed to progress at ECE.

29. Long Beach staff started Student's triennial assessment sometime in January 2019 and observed Student at ECE in connection with assessing Student. Ms. Bogdan, who was a school psychologist for 11 years, observed Student for approximately two and a half hours in March 2019. She did not observe Student at Kids Institute or Beacon and was not familiar with Student beyond reviewing her June 19, 2017 and April 17, 2018 IEPs prior to observing Student at ECE.

30. Ms. Bogdan saw 10 to 15 students of wide age ranges in Student's class, separated into three tables, with one adult at each table. She was concerned with ECE because of the wide age range of students combined into one classroom. She opined that having a wide age range of students in one classroom was inappropriate even if the students shared similar developmental and cognitive profiles. Ms. Bogdan explained that despite having similar cognitive and developmental profiles, age differences triggered different sexual and puberty characteristics and needs that would render a combination classroom of an age range of even a couple of years inappropriate. Ms. Bogdan also observed very little direct academic instruction from the teacher to Student, or to any group, and opined this was disconcerting. The extent of Ms. Bogdan's observations of adult direction included an adult directing students to engage in a new activity when students completed an activity and an adult assisting students with an activity such as putting together a puzzle. She saw Student engaging in a matching puzzle activity with an adult's assistance.

31. Long Beach staff opined that Beacon provided a FAPE to Student, and ECE did not because it: (1) did not have permanent staff who was a board certified behavior analyst, a credentialed speech and language therapist, and a credentialed occupational therapist to provide these services to Student without charging Parents extra for each

service; (2) provided only minimal direct academic instruction; (3) did not work on any of Student's IEP goals; (4) never contacted Long Beach or any of Student's prior placements to determine how Student performed before arriving at ECE; (5) did not have staff capable of determining at what age Student functioned; and (6) did not develop an IEP for Student for the 2018-2019 school year. Long Beach staff also criticized ECE for not having a credentialed administrator, a licensed school psychologist, or a licensed psychologist, and only having one credentialed teacher on staff which impacted ECE's ability to offer and provide services Student needed as Long Beach had while Student was at Beacon.

32. Long Beach's last day of the regular 2018-2019 school year is June 13, 2019.

## LEGAL AUTHORITIES AND CONCLUSIONS

### INTRODUCTION – LEGAL FRAMEWORK UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT<sup>4</sup>

1. This due process hearing was held under the IDEA, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 et seq. (2006)<sup>5</sup>; Ed. Code, § 56000, et seq.; and 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 FAPE that emphasizes special education and related services designed to meet their unique needs and to prepare them for employment and

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

<sup>5</sup> All subsequent references to the Code of Federal Regulations are to the 2006 edition.

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); 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 IEP. (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 as may be 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 called designated instruction and services].) In 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, and which sets forth 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); Ed. Code, § 56032.)

3. In *Board of Education of the Hendrick Hudson Central Sch. Dist. v. Rowley* (1982) 458 U.S. 176, 200 [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 pp. 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.) In a recent unanimous decision, the United States Supreme Court declined to interpret the FAPE provision in a manner that was at odds with the *Rowley* court’s analysis, and clarified FAPE as “markedly more demanding than the ‘merely more than the de minimus test’...” (*Endrew F. v. Douglas County Sch. Dist. RE-1* (2017) 580 U.S. \_\_\_ [137 S. Ct. 988, 1000-1001] (*Endrew F.*)) The Supreme Court in *Endrew F.* stated that school districts needed to “offer a cogent and responsive explanation for their decisions” and articulated FAPE as that which is “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstance.” (*Id.*)

4. The IDEA affords parents or 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) & (h); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505, 56505.1; 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, § 56505, 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); Ed. Code, § 56505, sub. (l).)

5. 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. 49, 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 due process hearings is preponderance of the evidence].) In this case, Student has the burden of proof.



## ISSUES 1 AND 2: TIMELY 2018 IEP TEAM MEETING; HAVING AN IEP IN PLACE FOR THE 2018-2019 SCHOOL YEAR

6. Student contends that Long Beach did not timely convene Student's 2018 IEP team meeting before the June 19, 2018 due date and did not have an updated IEP in place before the commencement of the 2018-2019 school year. Long Beach did not dispute that it did not timely convene Student's 2018 IEP team meeting, but contends that this was a mere procedural violation because it offered Student a FAPE at the April 17, 2018 IEP team meeting. Long Beach also contends that it continued to offer Student a FAPE through the April 17, 2018 IEP which was the effective and agreed upon IEP in place for the 2018-2019 school year. Long Beach further contends that despite having received the assessment plan on June 21, 2019, two days after Long Beach sent it, Parents delayed in consenting to the triennial assessments until October 9, 2018 which impacted its ability to assess Student and timely holding the 2018 IEP team meeting.

7. An IEP meeting must be held at least annually. In addition, an IEP meeting must be held when a student demonstrates a lack of anticipated progress, or when a parent or teacher requests an IEP meeting to develop, review or revise a student's IEP. (Ed. Code, §56343.). For a child who is already in special education, an IEP meeting shall be held within 30 days from the date the district receives a Parent's written request for an IEP meeting. (Ed. Code, §56343.5). A school district must ensure that the IEP team revises the IEP, as appropriate, to address "any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate." (20 U.S.C. § 1414 (d)(4)(A); 34 C.F.R. § 300.324(b)(2).) California law provides that an IEP team "shall meet" whenever "[t]he pupil demonstrates a lack of anticipated progress." (Ed. Code, § 56343, subd. (b).)

8. The IDEA provides for periodic reevaluations to be conducted not more frequently than once a year unless the parents and district agree otherwise, but at least

once every three years unless the parent and district agree that a reevaluation is not necessary. (20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b); Ed. Code, § 56381, subd. (a)(2).) A reassessment may also be performed if warranted by the child's educational or related service needs. (20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1); Ed. Code, § 56381, subd. (a)(1).)

9. Parental consent for an assessment is generally required before a school district can assess a student. (20 U.S.C. § 1414(a)(1)(B)(i); Ed. Code, § 56321, subd. (a)(2).) The parent or guardian shall have at least 15 calendar days from the receipt of the proposed assessment plan to arrive at a decision. The 15-day response time shall restart on the date regular school days reconvene. (Ed. Code, § 56321, subd. (a).) The assessment may begin immediately upon receipt of the consent. (Ed. Code, § 56321, subd. (c)(4); Ed. Code §56043, subd. (b).)

10. An IEP team meeting that is required as a result of an assessment must be held within 60 calendar days of the date the assessment plan was signed, excluding days between regular school sessions and school holidays in excess of five days. (Ed. Code, § 56344, subd. (a).)

11. A procedural violation does not automatically require a finding that a FAPE was denied. A procedural violation results in a 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); see Ed. Code, § 56505, subd. (f)(2); *W.G. v. Board of Trustees of Target Range Sch. Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484 *superseded by statute on other grounds, as stated in R.B. v. Napa Valley Unified Sch. Dist.* (9th Cir.2007) 496 F.3d 932, 939 (*Target Range*).)

12. The Ninth Circuit has supplied some guidance to school districts faced with the competing commands of federal law. In *Doug C. v. Hawaii Dept. of Educ.* (9th

Cir. 2013) 720 F.3d 1038 (*Doug C.*), a district had scheduled an annual IEP team meeting just in time to meet the IDEA's requirement that a meeting be held at least annually to consider the student's progress on his goals and make revisions if appropriate. (See 20 U.S.C. §1414(d)(4)(A)(i); 34 C.F.R. § 300.324(b)(1)(i).) The student's parent could not attend because of illness, and sought postponement to a later date. The district refused, citing its obligation to hold the meeting within a year of the previous meeting, but the Ninth Circuit held that this choice denied the student a FAPE because it deprived parents of adequate participation in the IEP process. The Court announced this standard:

"When confronted with the situation of complying with one procedural requirement of the IDEA or another, we hold that the agency must make a reasonable determination of which course of action promotes the purposes of the IDEA and is least likely to result in the denial of a FAPE."

(*Doug C., supra*, 720 F.3d at pp. 1046.) The Court then held, under that standard, that the district's choice to prefer the annual meeting requirement over the participation of the student's parents was clearly unreasonable and a denial of FAPE. (*Ibid.*)

#### Failure To Timely Convene The 2018 IEP Team Meeting

13. The April 17, 2018 IEP team specifically reviewed and discussed Student's goals with the teacher, speech and language pathologist, occupational therapist and behavior specialist. The April 17, 2018 IEP team was also aware that Student had not met her June 19, 2017 IEP goals when she left Kids Institute; and that some of Student's goals were older than a year because she had not met them in 2016, so those goals carried over to the June 19, 2017 IEP. Because Student spent only 19 days at Beacon, the April 17, 2018 IEP team decided not to modify Student's goals or IEP services with the intention of doing so after further observations and working with Student. With this in

mind, despite opining that Student needed to focus more on functional skills and independence, the teacher did not propose any modification to Student's goals or IEP services at the April 17, 2018 IEP team meeting. Likewise, the speech and language pathologist, occupational therapist and behavior specialist did not propose any changes to Student's goals or IEP services at the April 17, 2019 IEP team meeting. Because of their unfamiliarity with Student, the April 17, 2018 IEP team agreed to implement the June 19, 2017 IEP. They intended to discuss whether to, and how, to revise Student's goals and IEP services at the triennial/annual IEP team meeting in June 2018, after having the benefit of spending more time with Student.

14. Long Beach's failure to timely convene the 2018 IEP team meeting before June 19, 2018, was therefore not a mere procedural violation. Likewise, without timely holding the 2018 IEP team meeting to address Student's educational needs, Long Beach's April 17, 2018 extended school year offer to Student was also no longer a FAPE as of June 20, 2018. While Long Beach offered Student a FAPE at the April 17, 2018 IEP team meeting, the untimeliness of triennial assessments triggered a FAPE violation because Long Beach did not hold Student's 2018 IEP meeting without the assessment results. Regardless of whether Long Beach had conducted its triennial assessments, Long Beach should have convened the 2018 IEP team meeting before its due date, and/or when Mother requested dates for an IEP team meeting from Ms. O'Connell on May 31, 2018. By June 19, 2018, Long Beach should have convened the 2018 IEP team meeting to discuss and reconsider Student's goals, IEP services, and progress with input from the speech pathologist, occupational therapy, and behavioral therapist; and parental concerns. By not doing so, Long Beach significantly impeded Parents' meaningful participation in the decision making process by silencing their May 31, 2018 concerns; and by depriving them of updated information from the rest of the IEP team that they needed to be informed on what Student required to have a FAPE. Long Beach also

impeded Student's right to a FAPE by depriving her of the benefit of having her goals, IEP services, progress considered by the IEP team and properly revised/updated to meet her educational needs, including considering if Beacon was still a proper placement.

15. Under *Doug C.*, Long Beach's inability to conduct triennial assessments<sup>6</sup> at the end of the 2017-2018 school year was not a valid excuse for not holding the 2018 IEP team meeting to address Student's educational needs and parental concerns. Whether Long Beach conducted triennial assessments before the end of the school year did not restrict Long Beach's duty to at least convene the 2018 IEP team meeting and address areas of need not requiring assessment, especially when Mother requested that an IEP team meeting be scheduled to address certain concerns. Therefore, Long Beach's argument that had Parents consented to the assessment plan over the summer, Ms. Bogdan could have assessed Student while he attended extended school year at Beacon was irrelevant to the issues of whether Long Beach timely held the 2018 IEP team meeting. Nothing prevented Long Beach from timely holding the 2018 IEP team meeting in June 2018 to discuss parental concerns, Student's updated progress, appropriate goals, placement and related services, using information from Student's two-month placement at Beacon. Long Beach could then have further refined Student's IEP after it conducted its triennial assessments.

16. Although Parents did not consent to summer assessment, this was unpersuasive to reduce parental reimbursement rights from Long Beach's FAPE denials. The possibility of assessing Student over the summer only surfaced at hearing. Long Beach sent the assessment plan after its regular school year ended without informing

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<sup>6</sup> This Decision did not address the issue of whether Long Beach timely conducted triennial assessments by June 19, 2018, as this was not an issue at hearing raised by the parties at the prehearing conference or in Student's complaint.

Parents that it would do so. It also never informed Parents that it intended to assess Student over the summer, or during the time Student attended extended school year at Beacon. Further, Mother left the country by the time the Long Beach sent its assessment plan. It was unreasonable to expect Parents to conclude that they needed to present Student for assessments over the summer without Long Beach ever communicating that possibility to Parents before the regular school year ended. The facts also showed that Long Beach did not inform Parents that its assessors intended and were available to assess Student during any of the communications it exchanged with Parents over the summer. Although Ms. Bogdan opined at hearing she would have been able to assess Student during the summer of 2018, Long Beach did not present any evidence supporting that anyone else was available to assess Student in her other areas of need. Even if Parents consented to the assessment plan over the summer, the evidence showed that Ms. Bogdan would have been the only available assessor. This would still not have enabled Long Beach to conduct all the other assessments on its assessment plan, or have an updated IEP with the triennial assessment information for Student by the beginning of the 2018-2019 school year.

17. Further, Education Code sections 56321 (a) and 56344 (a) regarding assessments permitted school districts to fulfill its obligations to students by calculating calendar days “excluding days between regular school sessions and school holidays in excess of five days”. Equity dictates that the same should apply to Parents when calculating 15 calendar days from the receipt of Long Beach’s assessment plan to consent to the assessment. The 15 calendar days Parents had to consent to Long Beach’s assessment plan should also exclude holidays in excess of five days as they would be equally unavailable to respond because of vacations during these extended breaks. Here, Parents had until 15 calendar days after the first day of the 2018-2019 school year, September 13, 2018, to timely return the assessment plan and consent to

the assessment. Although Parents' failure to consent to summer assessment was unpersuasive to reduce Parents' summer reimbursement rights for Long Beach's FAPE denials, Parents' delay in not returning the assessment plan from September 14, 2018 to October 9, 2019 impacted Long Beach's ability to assess Student. See the Remedies section below for discussion of this impact on Student's remedies.

#### Failure To Have An IEP In Place For The 2018-2019 School Year

18. For the same reasons stated above, Long Beach's contention that it had an operating April 17, 2018 IEP in place at the beginning of the 2018-2019 school year was equally unpersuasive. The April 17, 2018 IEP team meeting was specifically convened to discuss Student's mid-school year transition to Beacon and to cover only through the end of the school year. Because Long Beach did not timely hold an IEP team meeting by June 19, 2018, the April 17, 2018 IEP was outdated. It did not have updated information on Student, including progress at Beacon beyond her first 19 days; and did not have the benefit of an IEP team's discussion and shared expertise on Student's developing educational needs including parental concerns at this new educational setting upon which a FAPE could be offered to Student by the beginning of the 2018-2019 school year.

19. Long Beach's failure to at least convene an IEP meeting before the beginning of the 2018-2019 school year was a FAPE denial. The April 2018 IEP had end dates for its offer of placement and services set for the end of the 2017-2018 school year, contemplating that the 2018 IEP team meeting would be held to update goals and/or make an updated FAPE offer. Parents were unable to have their concerns about Student addressed when Long Beach did not convene an IEP team meeting. They did not have an IEP forum to voice their May 31, 2018 concerns, and concerns about Student's progress, goals, placement and related services. They were also deprived of updated information from the rest of the IEP team which they needed to be informed

on what Student required to have a FAPE. This significantly impeded Parents' opportunity to participate in the decision-making process and prevented Student from having an updated IEP addressing parental concerns in place by the beginning of the 2018-2019 school year. Long Beach also impeded Student's right to a FAPE by depriving her of the benefit of having her goals and IEP services considered by the IEP team and properly revised/updated to meet her educational needs. The fact that Long Beach had still not reevaluated whether Student's IEP goals, placement, or services were appropriate by the time of the hearing, and would not do so until after this hearing concluded, rendered its FAPE denial all the more egregious.

20. Student met her burden of proof on all issues. Student is entitled to the remedies discussed below.

## REMEDIES

1. Student prevailed on both issues. She requests that Long Beach reimburse Parents for Student's July 2018 to March 2019 tuition at ECE and two roundtrip mileage per day for the days Student attended ECE; individual speech and language sessions of two and a half hours per week, and occupational therapy sessions of one and a half hours per week from July 23, 2018 to present; and that Long Beach fund Student's continued placement at ECE during the 2019 extended school year and the 2019-2020 school year with individual speech and language sessions of two and a half hours per week and occupational therapy sessions of one and a half hours per week at ECE to compensate for Long Beach's FAPE violations.

2. Long Beach contends no remedies were appropriate because Student did not meet her burden of persuasion on any issue. Long Beach also contends the following should preclude Parents from being awarded any remedies: (a) Parents' delay in consenting to the assessment plan until October 9, 2018, thereby failing to make Student available for assessment; (b) Parents did not share any of their concerns about



Student's placement at Beacon at the April 17, 2018 IEP team meeting; and (c) ECE was a subpar non-public school and not a FAPE for Student as compared to its FAPE offer of Beacon.

3. Remedies under the IDEA are based on equitable considerations and the evidence established at hearing. (*Burlington v. Department of Education* (1985) 471 U.S. 359, 374 [105 S.Ct. 1996, 85 L.Ed. 2d 385].) In addition to reimbursement, school districts may be ordered to provide compensatory education or additional services to a pupil who has been denied a FAPE. (*Student W. v. Puyallup Sch. Dist.* (9th Cir. 1994) 31 F.3d 1489, 1496.) The conduct of both parties must be reviewed and considered to determine whether relief is appropriate. (*Id.* at pp.1496.)

4. Parental private school placement need not meet the state standards that apply to public agencies in order to be appropriate. (34 C.F.R. § 300.148(c). If the hearing officer finds that a procedural violation significantly impeded the parents' opportunity to participate in the IEP process, the analysis does not include consideration of whether the student ultimately received a FAPE, but instead focuses on the remedy available to the parents. (*Amanda J. ex rel. Annette J. v. Clark County Sch. Dist.* (9th Cir. 2001) 267 F.3d 877, pp. 892-895 [school's failure to timely provide parents with assessment results significantly impeded parents' right to participate in the IEP process, resulting in compensatory education award]; *Target Range, supra*, 960 F.2d at pp. 1485-1487 [when parent participation was limited by district's pre-formulated placement decision, parents were awarded reimbursement for private school tuition during time when no procedurally proper IEP was held].) Parents may receive reimbursement for their unilateral placement if the placement met the child's needs and provided the child with educational benefit, even if not all necessary educational benefits are provided. (*C.B. v. Garden Grove Unified Sch. Dist.* (9th Cir. 2011) 635 F.3d 1155, 1159 (*C.B.*).

5. An award of compensatory education need not provide a “day-for-day compensation.” (*Id.* at pp. 1497.) An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student’s needs. (*Reid ex rel. Reid v. District of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 524.) The award must be “reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.” (*Ibid.*)

6. Reimbursement may be denied based on a finding that the actions of parents were unreasonable. (20 U.S.C. § 1412(a)(10)(C)(iii)(III); 34 C.F.R. § 300.148(d)(3).) The cost of reimbursement may be reduced or denied if 1) at the most recent IEP team meeting the parents attended prior to removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the public agency to provide a FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or 2) at least ten business days prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information; 3) if, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in Sec. 300.503(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or 4) upon judicial finding of unreasonableness with respect to actions taken by the parents. (34 C.F.R. § 300.148 (d).)

7. Student demonstrated that Long Beach significantly impeded Parents’ opportunity to participate in the decision-making process and impeded Student’s right to a FAPE by not timely holding the 2018 IEP team meeting and not having an updated 2018-2019 IEP in place by the beginning of the 2018-2019 school year. Parents timely

gave written notice to Long Beach on June 23, 2018 stating that they intended to place Student at ECE starting July 23, 2018 and stated the reasons for so doing.

8. Parents did not report any concerns about Student's placement at Beacon at the April 17, 2018 IEP team meeting because Student was still adjusting to her placement. When Parents later developed concerns about Student's communication skills, self-help skills and inability to meet her goals at Beacon, Mother appropriately followed up with Ms. O'Connell on May 31, 2018 requesting IEP team meeting dates and triennial assessments. Parents were also reasonable in waiting until the June 2018 triennial and annual IEP team meeting to express concerns about Beacon because the due date for the triennial and annual IEP team meeting was only a few weeks later, had Long Beach timely convened the meeting.

9. Student demonstrated that her placement at ECE was reasonable and appropriate as a remedy under the circumstances. Student's functional level aligned with ECE's population of severely impacted students, and she progressed in her functional living skills at ECE. Neither Long Beach's staff, nor Beacon's staff rebutted Student's showing of progress at ECE. Long Beach's arguments that ECE did not provide related services and did not provide Student a FAPE because of ECE's teaching methods; wide age range classroom composition; and failures to assess Student's age function, to develop an IEP and to work on appropriate IEP goals were unpersuasive to deny reimbursements to Parents. The law charged Long Beach (not Parents), as the local educational agency, to provide Student a FAPE. Further, the Ninth Circuit in *C.B.* specifically stated that reimbursements in a parental unilateral placement were unaffected even if not all necessary educational benefits were provided. (*C.B.*, *supra*, 635 F.3d at pp. 1159.) Long Beach did not provide any legal support mandating that a parental placement must meet the criteria of a FAPE *for purposes of seeking*

*reimbursements when a school district denied students a FAPE.*<sup>7</sup> While Long Beach disputed the propriety of ECE's non-public school certification based on staff and Ms. Virgo's qualifications, Student demonstrated that ECE was certified by the California Department of Education as a non-public school with the same staff qualifications which Long Beach argued were inadequate. Therefore, Long Beach's arguments that ECE was subpar to Beacon were unpersuasive *for purposes of determining whether Long Beach should reimburse Parents* for ECE when it denied Student a FAPE, and when it placed Parents in the position of having to seek alternatives to meet Student's educational needs.

10. Long Beach's FAPE denials began on June 20, 2018, the day after the due date of Student's triennial and annual IEP team meeting. Student started at ECE on July 23, 2018 and was therefore entitled to reimbursement from that day. Further, there was no break between the last day of Student's extended school year, August 28, 2018, and the first day of the 2018-2019 school year, August 29, 2019. Because Parents delayed the triennial assessments by not returning the assessment plan until October 9, 2019, ALJ considered this delay and calculated reimbursements accordingly as discussed below. Because Long Beach never held an IEP team meeting in compliance with the 60-day period for assessments after Parents consented to the assessment on October 9, 2019, and as of the hearing date still had not held an IEP team meeting to discuss the assessments, Long Beach shall also reimburse Parents for Student's ECE tuition, related services, and mileage during this 60-day period for its continued FAPE violations, excluding days between its regular school sessions and school holidays in excess of five days. Further, should the IEP team determine that Student required a placement change at her May 31, 2019 IEP team meeting, the earliest natural transition for such a change

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<sup>7</sup> This Decision did not determine whether ECE was a FAPE for Student.

would be the 2019 extended school year. To change Student's placement nine school days before the end of the school year on May 31, 2019, could be disruptive to Student. Student is therefore entitled to remain at ECE, her current placement, through the end of the 2018-2019 school year, at Long Beach's expense.

11. Parents received Long Beach's assessment plan on June 21, 2018, after the 2017-2018 school year had already ended. Long Beach's 2018-2019 school year started on August 29, 2018, so Parents had until September 13, 2019, 15 calendar days after August 29, 2018 to review, sign and return the assessment plan. Parents did not return the signed assessment plan until October 9, 2018. Long Beach had until January 22, 2019, 60 days from October 9, 2018, excluding days between its regular school sessions and school holidays in excess of five days to conduct Student's triennial assessments and hold an IEP team meeting to discuss those assessments. However, Long Beach did not complete its assessments or hold an IEP team meeting to discuss the results of the assessments by January 22, 2019. To compensate Student for Long Beach's FAPE denials, Long Beach shall reimburse Parents for Student's ECE tuition, related services and mileage for July 2018; August 2018; September 1 through 13, 2018; October 10, 2018 through January 31, 2019; February 2019 and March 2019. However, because Parents delayed in consenting to the assessment plan, from September 14, 2018 until October 9, 2018, Parents shall not be reimbursed for Student's tuition, related services and mileage from September 14, 2018 through October 9, 2019.

12. Specifically, for the period of July 2018 to March 2019, Long Beach shall reimburse Parents for Student's tuition at ECE for July, August, September (eight days for which ECE charged Parents \$190 each day from September 1 through 13, 2018), October 2018 (16 days for which ECE charged Parents \$190 each day from October 10 through 31, 2018), November, and December 2018; January, February, and March 2019 in the total amount of \$24,320. Long Beach shall also reimburse Parents' mileage for two

roundtrips from Student's home to ECE for the months of July, August, November, December 2018 and January, February and March 2019 in the amount of \$6,497.41; eight days for September and 16 days for October 2018 at the Internal Revenue Service rate of 54.5 cents per mile times 111.2 miles in the amount of \$1,454.50. Therefore, total mileage reimbursement for the period of July 2018 to March 2019 shall be \$7,951.91.

13. Long Beach shall also reimburse Parents for Student's tuition at ECE and mileage for two roundtrips from Student's home to ECE from April 2019 through June 13, 2019, the last date of Long Beach's regular 2018-2019 school year. The tuition rate shall be \$190 for each school day Student attends ECE. The mileage shall be the Internal Revenue Service mileage rate of 58 cents per mile. Parents shall provide proof of tuition payment, Student's attendance dates at ECE, and mileage calculations for this April through June 13, 2019 period to Long Beach no later than June 30, 2019.

14. Long Beach shall also fund a total of 95 hours of individual speech and language services and 57 hours of individual occupational therapy services from a non-public agency for the period of July 23, 2018 to June 13, 2019. The hours were calculated based on two and a half hours a week of individual speech and language and one and a half hours per week of individual occupational therapy sessions offered in the April 17, 2018 IEP, taking into consideration parental delay in the assessment process from September 14, 2018 to October 9, 2018; and Student's needs for skills recoupment until the time an updated IEP could be developed because she had not received these related services since July 23, 2018.

15. The compensatory speech and language and occupational therapy hours were calculated as follows: (a) 17.5 hours of speech and language and 10.5 occupational therapy hours for seven weeks from July 23, 2018 to September 13, 2018, the date Parents had to timely consent to the triennial assessments; and (b) 77.5 hours of speech and language and 46.5 occupational therapy hours for 31 weeks from October 10, 2019

(the day after Parent consented to the assessment plan) to June 13, 2019, the last day of Long Beach's 2018-2019 school year, excluding days between its regular school sessions and school holidays in excess of five days. Because Long Beach never held an IEP team meeting in compliance with the 60-day period after Parents consented to the assessment on October 9, 2019, Long Beach shall also reimburse Parents for Student's related services during this 60-day period.

16. Within 10 days of the date of this Decision, Long Beach shall provide to Parents in writing the name of at least two non-public agencies with which it contracts, or with which it could consider contracting, to provide speech and language and occupational services to Student. Within 10 days after receiving Long Beach's list of non-public agencies, Parents shall inform Long Beach in writing the non-public agency they selected to provide Student with speech and language and occupational therapy services. Within 10 days after Parents' selection, Long Beach shall arrange for direct payment with the selected non-public agency, or agencies. Student shall have until December 31, 2020 to access the compensatory speech and language and occupational therapy hours.

## ORDER

1. Within 30 days of this Decision, Long Beach shall reimburse Parents for Student's tuition at ECE for July, August, the partial months of September and October, November, and December 2018; and January, February, and March 2019 in the amount of \$24,320.

2. Within 30 days of this Decision, Long Beach shall reimburse Parents mileage for two roundtrips from Student's home to ECE for July, August, and the partial months of September and October, November, and December 2018; and January, February, and March 2019 in the amount of \$7,951.91.

3. Long Beach shall reimburse Parents for Student's tuition at ECE from April

through June 13, 2019, at the daily rate of \$190 for each day Student attends ECE. Parents shall provide proof of ECE tuition payment and Student's attendance dates at ECE to Long Beach no later than June 30, 2019, for this April through June 13, 2019 period. Long Beach shall reimburse Parents within 30 days after Parents provide the information for reimbursement set forth in this paragraph.

4. Long Beach shall reimburse Parents mileage for two roundtrips from Student's home to ECE from April through June 13, 2019. The mileage shall be the Internal Revenue Service mileage rate of 58 cents per mile from April through June 2019. Parents shall provide mileage calculations to Long Beach no later than June 30, 2019 for this April through June 13, 2019 period. Long Beach shall reimburse Parents within 30 days after Parents provide the information for reimbursement set forth in this paragraph.

5. Long Beach shall fund 95 hours of individual speech and language services from a non-public agency. Within 10 days of the date of this Decision, Long Beach shall provide to Parents in writing the name of at least two non-public agencies with which it contracts, or with which it could consider contracting, to provide speech and language to Student. Within 10 days after receiving Long Beach's list of non-public agencies, Parents shall inform Long Beach in writing the non-public agency they selected to provide Student with speech and language services. Within 10 days after Parents' selection, Long Beach shall arrange for direct payment with the selected non-public agency. Student shall have until December 31, 2020, to access the compensatory speech and language therapy hours.

6. Long Beach shall fund 57 hours of individual occupational therapy services from a non-public agency. Within 10 days of the date of this Decision, Long Beach shall provide to Parents in writing the name of at least two non-public agencies with which it contracts, or with which it could consider contracting, to provide occupational therapy



services to Student. Within 10 days after receiving Long Beach's list of non-public agencies, Parents shall inform Long Beach in writing the non-public agency they selected to provide Student with occupational therapy services. Within 10 days after Parents' selection, Long Beach shall arrange for direct payment with the selected non-public agency. Student shall have until December 31, 2020, to access the compensatory occupational therapy hours.

7. All other requests for relief are denied.

## PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, Student was the prevailing party as to all issues.

## RIGHT TO APPEAL

This Decision is the final administrative determination and is binding on all parties. (Ed. Code, § 56505, subd. (h).) Any party has the right to appeal this Decision to a court of competent jurisdiction within 90 days of receiving it. (Ed. Code, § 56505, subd. (k).)

DATED: May 31, 2019

\_\_\_\_\_/s/\_\_\_\_\_  
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SABRINA KONG

Administrative Law Judge

Office of Administrative Hearings