BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2021070739

PARENT ON BEHALF OF STUDENT,

v.

WILLIAM S. HART UNION HIGH SCHOOL DISTRICT.

DECISION

OCTOBER 26, 2021

On July 23, 2021, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parent on behalf of Student, naming William S. Hart Union High School District as respondent. Administrative Law Judge Ted Mann heard this matter via videoconference on August 31, 2021.

Student's mother represented Student and testified at hearing. Student's father also attended portions of the hearing and testified at hearing. Attorney Ian M. Wade represented William S. Hart. Joanna White, William S. Hart's Special Education Director, attended the hearing day on William S. Hart's behalf.

At the parties' request, the matter was continued to September 20, 2021, for written closing briefs. The record was closed, and the matter was submitted on September 20, 2021.

ISSUES

ISSUE CLARIFICATION

Following a discussion on the record at the prehearing conference, Student's issue alleging a denial of a free appropriate education for five years preceding the filing of the hearing request was limited to the two-year statutory period. There were no allegations in Student's complaint to support extending the statute of limitations beyond two years. At hearing, and as further explained below, the issue was further limited to the period arising after the waiver of rights by Student pursuant to the June 8, 2021 Settlement Agreement. Also, the issues have been reworded for clarity within the discretion of the Administrative Law Judge. (*M.C. v. Antelope Valley Union High Sch. Dist.* (9th Cir. 2017) 858 F.3d 1189.)

ISSUES DETERMINED

1. Did William S. Hart deny Student a free appropriate public education, referred to as a FAPE, from June 9, 2021, through the date of filing of the complaint, July 23, 2021, by failing to implement the placement and services described in the September 3, 2019 individualized educational program, called an IEP, as incorporated in the Settlement Agreement?

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The primary purposes of the Individuals with Disabilities Education Act, referred to as the IDEA, are to ensure:

- all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living, and
- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing concerning any matter relating to the identification, assessment, or educational placement of the child or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint unless the other party consents; and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Here, Student had the burden of proof on all issues. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was sixteen years old the time of the hearing. Student resided within William S. Hart's geographic boundaries at all relevant times. Student was eligible for special education under the categories of autism and intellectual disability.

SETTLEMENT AGREEMENT

Student's mother, on behalf of Student, and William S. Hart entered into a Settlement Agreement on June 8, 2021. Student waived all claims against William S. Hart through the date of the Agreement. The parties agreed that Student would be placed in a diagnostic placement at Valencia High School in the Living Skills program. Student's September 3, 2019 IEP, including the placement in the Living Skills program, along with services, goals and objectives in the IEP were to serve as Student's diagnostic placement. William S. Hart also agreed to work with Student's mother to obtain a modification of the temporary restraining order against her so as to allow her to drop off and pick up Student at the high school.

Parents have the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) OAH has jurisdiction to hear due process claims arising under the IDEA. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029 (*Wyner*).)

This limited jurisdiction does not include jurisdiction over claims alleging a school district's failure to comply with a settlement agreement. (*Wyner*, supra, 223 F.3d at p.1030.) In *Wyner*, during the course of a due process hearing, the parties reached a settlement agreement in which the district agreed to provide certain services. The

hearing officer ordered the parties to abide by the terms of the agreement. Two years later, the student initiated another due process hearing, and raised, inter alia, six issues as to the school district's alleged failure to comply with the earlier settlement agreement. The California Special Education Hearing Office (SEHO), OAH's predecessor in hearing IDEA due process cases, found that the issues pertaining to compliance with the earlier order were beyond its jurisdiction. This ruling was upheld on appeal. The Wyner court held that "the proper avenue to enforce SEHO orders" was the California Department of Education's compliance complaint procedure (Cal. Code Regs., tit. 5, § 4600, et. seq.), and that "a subsequent due process hearing was not available to address … alleged noncompliance with the settlement agreement and SEHO order in a prior due process hearing." (*Wyner*, supra, 223 F.3d at p. 1030.)

When a party files a due process case based on claims that were waived as part of a settlement agreement, OAH will dismiss the case. (See, e.g., *Student v. Los Angeles Unified School District*, (2011) OAH case number 2011091067; *Capistrano Unified School District v. Parent* (2011) OAH case number 2011060748.)

In *Pedraza v. Alameda Unified Sch. Dist.* (N.D. Cal. 2007, No. C 05-04977 VRW) 2007 WL 949603 (*Pedraza*), the United States District Court for the Northern District of California recognized OAH's jurisdiction to adjudicate claims alleging denial of a free appropriate public education as a result of a violation of a mediated settlement agreement, as opposed to "merely a breach" of the mediated settlement agreement that should be addressed by the California Department of Education's compliance complaint procedure. In that case, the settlement agreement intended that the placement set forth in the terms of the agreement would provide Student with a FAPE.

Settlement agreements are interpreted using the same rules that apply to interpretation of contracts. (*Vaillette v. Fireman's Fund Ins. Co.* (1993) 18 Cal.App.4th 680, 686, citing *Adams v. Johns-Manville Corp.* (9th Cir. 1989) 876 F.2d 702, 704.) "Ordinarily, the words of the document are to be given their plain meaning and understood in their common sense; the parties' expressed objective intent, not their unexpressed subjective intent, governs." (Id. at p. 686.) If a contract is ambiguous, i.e., susceptible to more than one interpretation, then extrinsic evidence may be used to interpret it. (*Pacific Gas & Electric Co. v. G. W. Thomas Drayage & Rigging Co*. (1968) 69 Cal.2d 33, 37-40.) Even if a contract appears to be unambiguous on its face, a party may offer relevant extrinsic evidence to demonstrate that the contract contains a latent ambiguity; however, to demonstrate an ambiguity, the contract must be "reasonably susceptible" to the interpretation offered by the party introducing extrinsic evidence. (*Dore v. Arnold Worldwide, Inc*. (2006) 39 Cal.4th 384, 391, 393.)

The parties entered into a settlement agreement signed by both William S. Hart and Student's mother on June 8, 2021. The parties agreed that the effective date of the settlement was the date the agreement was signed by all the parties, subject to approval by William S. Hart's Board. Therefore, the effective date of the agreement was June 8, 2021. The agreement settled all FAPE claims filed by Student against William S. Hart at that time.

Paragraph 6 of the agreement was a comprehensive release and discharge of claims. By way of this paragraph, Student unambiguously agreed to waive all claims against William S. Hart up to the date the settlement was fully executed. Therefore, any other claims against William S. Hart for actions it took or failed to take prior to June 8, 2021, were waived in the settlement agreement. Student was not entitled to raise claims he waived. Included in that waiver was any challenge to the appropriateness of

Student's September 9, 2019, which was developed prior to the execution of the parties' settlement agreement. Because the plain language of the release in the settlement agreement bars all claims related to the time period prior to and up through its execution, OAH is without jurisdiction to entertain any claim that the agreed to IEP itself denied Student a FAPE, or that William S. Hart otherwise denied Student a FAPE prior to June 8, 2021.

However, what did remain at issue as alleged by Student was the question of whether William S. Hart implemented the agreed to IEP program and services once school resumed for the extended school year or summer session. Under *Pedraza*, OAH retains jurisdiction over the issue of whether an implementation failure led to a denial of FAPE to a student when the IEP at issue was agreed to and the subject of a FAPE waiver in a negotiated settlement agreement. That is the case here. Student alleges that William S. Hart failed to implement the September 19, 2019 IEP during the summer school session following the settlement agreement, and that issue was appropriately within OAH's jurisdiction.

ISSUE 1: DID WILLIAM S. HART DENY STUDENT A FAPE, FROM JUNE 9, 2021, THROUGH THE DATE OF FILING OF THE COMPLAINT, JULY 23, 2021, BY FAILING TO IMPLEMENT THE PLACEMENT AND SERVICES DESCRIBED IN THE SEPTEMBER 3, 2019 INDIVIDUALIZED EDUCATION PROGRAM, CALLED AN IEP, AS INCORPORATED IN THE SETTLEMENT AGREEMENT?

Student's issue is limited to the contention that, beginning at the start of summer school, also referred to as extended school year, to the date of the filing of his complaint, William S. Hart denied Student a FAPE by failing to provide the program and

services in Student's operative IEP. Parents also complained that they were not treated equally with other parents and that they were the subject to rude or impersonal treatment by school staff. William S. Hart argued that it implemented the operative IEP with fidelity, and that Student received the program and services agreed to by William S. Hart and Parent, as reflected in the June 8, 2021 Settlement Agreement.

A FAPE means special education and related services available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Parent and school personnel develop an IEP, for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031,56032, 56341, 56345, subd. (a) and 56363 subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501.)

In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. (*Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1307, 1314.) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Id.*) For a school district's offer to a disabled pupil to constitute a FAPE under the IDEA, the educational services and/or placement offered must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the pupil with some educational benefit in the least restrictive environment. (*Ibid.*; 20 U.S.C. § 1401(9).) The IEP need not conform to a parent's wishes to be sufficient or appropriate. (*Shaw v. District of Columbia* (D.D.C. 2002) 238 F. Supp.2d 127, 139 [IDEA does not provide for an "education … designed according to the parent's desires"], citing *Rowley*, *supra*, 458 U.S. at p. 207.) Parents, no matter how well motivated, do not have a right to compel a school district to provide a specific program or employ a specific methodology in

providing education for a disabled student. (*Rowley, supra,* 458 U.S. at pp. 207-208.) As long as a school district provides an appropriate education, methodology is left up to the district's discretion. (*Rowley*, *supra*, 458 U.S. at p. 209; *Roland M. v. Concord Sch. Committee* (1st Cir. 1990) 910 F.2d 983, 992.)

Where a student alleges the denial of a FAPE based on the failure to implement an IEP, the student must prove that any failure to implement the IEP was "material," which means that the services provided to a disabled child fall "significantly short of the services required by the child's IEP." (*Van Duyn v. Baker School Dist. 5J* (9th Cir. 2007) 502 F.3d 811, 822 (*Van Duyn*).) There is no statutory requirement of perfect adherence to the IEP, nor is there any reason rooted in the statutory text to view minor implementation failures as denials of a FAPE. (*Id.* at p. 821.) "A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP." (*Id.* at p. 815.) "[T]he materiality standard does not require that the child suffer demonstrable educational harm in order to prevail. However, the child's educational progress, or lack of it, may be probative of whether there has been more than a minor shortfall in the services provided." (*Id.* at p. 822.)

SEPTEMBER 3, 2019 IEP

On September 3, 2019, the IEP team convened an amendment IEP meeting for Student's eighth grade year. Student had just recently turned fourteen years old. Student's mother attended. Student's placement was in the Life Skills program and included 200 minutes per day of specialized academic instruction. Student's services included 90 minutes per week of speech/language with 60 minutes served individually

and 30 minutes in group, and 60 minutes per week of occupational therapy served individually. Student also received full day special circumstances instructional aide for the full school day.

Student failed to establish that William S. Hart denied student a FAPE by failing to implement the program and services identified in the September 3, 2019 IEP. Neither Parent ever observed Student at school during his period of attendance at summer school from July 1, 2021 through July 13, 2021, nor were they able to provide any evidence that Student had not received the agreed upon program and services during his days of attendance. Parents did complain that Student did not eat his snack at school during one day of the summer program, and that he was thirsty when he arrived home. However, that information, while concerning to Parents, did not reveal whether or not Student had received the program and services required under the September 19, 2019 IEP. Similarly, Parents concerns regarding the nature and amount of communication from the school to them did not relate to the issue of whether the agreed to IEP was implemented.

In contrast, Joanna White, William S. Hart's special education director, testified convincingly and competently as to the details of the implementation of Student's program by William S. Hart during Student's days of attendance. She explained that the teacher and necessary staff were provided with Student's September 19, 2019 IEP to implement during the summer class. She further explained that she personally observed Student daily in his summer class. She observed his program and services being fully implemented, including occupational therapy and speech/language services, as well as the full-time classroom aide. White's testimony was clear and detailed regarding the

implementation of Student's IEP and his experience during the time he attended the summer program, and her testimony was accorded substantial weight on this issue.

Student received the agreed upon program and services, including speech/language, occupational therapy services, and a full-time aide in the Learning Skills classroom. Although Parents felt disrespected and mistreated during Student's drop off on the first two days of summer school, nothing about that experience affected the provision of Student's program or services. Any friction between Parent's and William S. Hart personnel those two days arose, at most, from miscommunication and misunderstanding, rather than intentional conduct, particularly in consideration of the temporary restraining order in place against Student's mother. In sum, Student did not establish by a preponderance of the evidence that William S. Hart failed to implement the agreed-to program and services.

CONCLUSIONS AND PREVAILING PARTY

As required by 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.

Issue 1: William S. Hart did not deny Student a free appropriate public education, referred to as a FAPE, from June 9, 2021, through the date of filing of the complaint, July 23, 2021, by failing to implement the placement and services described in the September 3, 2019 individualized educational program, called an IEP, as incorporated in the Settlement Agreement

ORDER

1. Student's requests for relief are denied.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

/s/
Ted Mann
Administrative Law Judge
Office of Administrative Hearings