

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2018090669

DECISION

Student filed a due process hearing request (complaint) with the Office of Administrative Hearings, State of California, on September 18, 2018, naming Long Beach Unified School District.¹

Administrative Law Judge Elsa H. Jones heard this matter in Long Beach, California, on December 11 and 12, 2018. Ushma Vyas and Damian R. Fragoso, Attorneys at Law, represented Student. Mother was present for the majority of the time on both hearing days. She agreed that the hearing could go forward during those times when she was absent from the hearing.

Sundee M. Johnson, Attorney at Law, represented Long Beach Unified. Rachel A.

¹ On September 28, 2018, Long Beach Unified filed a response to the complaint, which allowed the hearing to proceed. (*M.C. v. Antelope Valley Unified School Dist.* (9th Cir. 2017) 858 F.3d 1189, 1199-1200.)

Heenan, Ed.D., Director of Special Education for Long Beach Unified, was present on all hearing days.

Sworn testimony and documentary evidence were received at the hearing. The parties requested and were granted a continuance until close of business on January 14, 2019, to file written closing briefs. The parties timely filed their written closing briefs on January 14, 2019, and the issues set forth below were submitted.

ISSUE

Did Long Beach Unified deny Parent meaningful participation in the individualized education program development process and deny Student a free appropriate public education, by unilaterally deciding outside of the IEP process that Student no longer needed access to a motorized scooter, and by refusing to provide Student the motorized scooter offered in Student's IEP dated December 1, 2017?²

SUMMARY OF DECISION

This case arises out of a settlement agreement that the parties entered into on May 5, 2015. The settlement agreement provided, among other things, that Long Beach Unified would purchase a Student a Littlescoot motorized scooter for Student's use at

² The issue is stated as it appeared in the PHC Order, which echoed the manner in which the issue was formulated in Student's complaint and PHC statement. For reasons discussed below, the crux of the issue is actually whether Long Beach Unified implemented the December 1, 2017 IEP with respect to providing the scooter to Student, and not whether Mother was deprived of meaningful participation in the IEP process. Indeed, Student includes legal arguments regarding IEP implementation in his closing brief. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).)

home and at school as compensatory education.³ Student's IEP dated December 1, 2017, and the May 18, 2018 amendment which incorporated parts of that IEP, mentioned the scooter on the Accommodations, Supports, and Services page as an item to which Student had access. Other portions of the December 1, 2017 IEP briefly mentioned Student's use of the scooter, and some of those portions were also incorporated into the May 18, 2018 amendment.

In spring 2018, the scooter broke and could not be repaired or replaced. Long Beach Unified did not replace the scooter.

Student asserts that the mention of the scooter in the December 1, 2017 IEP and other factors signified that the scooter was offered as part of a FAPE offer in the IEP, and that Long Beach Unified deprived Student of a FAPE on both procedural and substantive grounds by failing to provide Student another scooter. This Decision finds that Long Beach Unified agreed to purchase one scooter as compensatory education, that there was no evidence that Long Beach Unified provided the scooter as part of an offer of a FAPE, that Student did not need the scooter to receive a FAPE, and that Long Beach Unified did not deny Mother meaningful participation in the IEP process by not providing Student another scooter to replace the scooter that was no longer operational. Long Beach Unified did not deprive Student of a FAPE on either procedural or substantive grounds by failing to replace the scooter.

³ Witnesses and documents variously referred to the scooter as a Segway, a scooter, a Littlescoot, or a Little Scooter. For the sake of clarity, this Decision will refer to the device as a scooter.

FINDINGS OF FACT

GENERAL BACKGROUND AND JURISDICTION

1. Student is a 14-year-old boy who attends Millikan High school, where he is in ninth grade. Millikan is located within the boundaries of Long Beach Unified. At all relevant times, he and Mother have lived within the boundaries of Long Beach Unified and Student has attended its public schools. Prior to attending Millikan, Student attended a special day class at Stanford Middle School.

2. When Student was very young, he was diagnosed with spondyloepimetaphyseal dysplasia (dwarfism), a congenital skeletal disorder that affects bone and tissue development. This condition caused a severe orthopedic impairment. Student was also diagnosed with pervasive developmental disorder, asthma, and profound visual impairment. Student exhibits concomitant delays in cognition, adaptive functioning, communication, and academic abilities. Student has been eligible for special education since May 2008, when he was three years old. He is currently eligible for special education as a student with multiple disabilities.

SETTLEMENT AGREEMENT OF MAY 5, 2015

3. During 2015, Student and Long Beach Unified were engaged in a different special education due process dispute before the Office of Administrative Hearings. On May 5, 2015, the parties signed a document entitled Final Settlement Agreement to resolve that dispute, and both parties were represented by counsel. The settlement agreement stated that Long Beach Unified would provide a specific educational placement to Student and a variety of specific services and equipment for the 2015-2016 regular school year, all of which were clearly described in the settlement agreement as "stay-put." Included in these stay-put items was an iPad and software, provided that Parent signed an equipment release.

4. Paragraph 5 of the settlement agreement also stated that Long Beach Unified would provide certain additional specified, listed services and other items “[a]s *compensatory education only*.” [Emphasis added.] Paragraph 5, subpart iv, stated, in pertinent part: “[Long Beach Unified] agrees to purchase a Littlescoot scooter for Student’s use at home and school, provided Student’s Parents signs [sic] an equipment release. [Long Beach Unified] agrees to provide 6 hours of instruction to Student regarding use of the scooter. . . .” The settlement agreement did not specify for how long Student would have use of the scooter. Paragraph 7 of the settlement provided that the agreement was executed voluntarily and without duress. Paragraph 8 of the settlement agreement provided that Parent represented and agreed that she fully understood her right to discuss the agreement with anyone of her choosing, including an attorney. Parent also represented and agreed that she fully understood all of the provisions of the agreement and was voluntarily entering into the agreement. Paragraph 9 of the agreement specified that it constituted the sole and entire agreement and understanding of the parties.

5. Also on May 5, 2015, pursuant to the settlement agreement, Mother executed a Long Beach Unified form entitled Equipment Release. The Equipment Release referred to the scooter, and to other items, such as an iPad Air and software, which Long Beach Unified agreed to provide as part of the settlement agreement. The standard form language of the Equipment Release stated that the equipment listed on the form was the property of Long Beach Unified, and were provided “on loan until such time as no longer needed for educational purposes, the student graduates, or the student moves out of” Long Beach Unified. The Equipment Release restricted the use of the equipment to Student, and provided that Long Beach Unified may seek return of the equipment if no longer appropriate for the purposes intended, if the device was not brought to school on a regular basis, or due to misuse. The Equipment Release stated

that it must be signed yearly at the IEP team meeting or at the time the equipment was made available for school and/or home use. The Equipment Release delineated the respective responsibilities of the parents and Long Beach Unified for normal wear and tear and for loss or damage to the equipment due to gross negligence. The Equipment Release did not specify that some of the items listed on it (such as the iPad and software) were provided on a stay-put basis pursuant to the settlement agreement, while the scooter was provided only as compensatory education. Rather, the standard form language purported to apply to all of the equipment listed on the form.

6. At hearing, Mother testified that an assistive technology specialist advised Mother at the time Mother signed the Equipment Release that the release meant Student could have the scooter until he no longer resided in Long Beach Unified. Mother presented no evidence that, at the time Mother spoke to the assistive technology specialist, that person knew anything about the terms of the May 5, 2015, settlement agreement, or which items in that agreement were provided as stay-put versus as compensatory education, or whether the assistive technology specialist even knew the significance of that distinction. In contrast, Mother was a knowledgeable signatory of the settlement agreement, who acknowledged in the settlement agreement that she understood all of the provisions of the agreement, including the provision that the settlement agreement constituted the sole agreement and understanding of the parties, and who was represented by counsel in signing the settlement agreement. Under these circumstances, Mother could not credibly or reasonably rely on what the assistive technology specialist told Mother about the terms of the Equipment Release and how they applied to the scooter.

STUDENT'S USE OF THE SCOOTER

7. Long Beach Unified provided the scooter to Student during the 2015-2016 school year pursuant to the settlement agreement, and Student used it during the 2015-

2016, 2016-2017, and the 2017-2018 school years, while he attended sixth, seventh, and eighth grades at Stanford. Long Beach Unified provided the scooter only because it was required to provide one scooter to Student as compensatory education. Long Beach Unified never assessed Student at any time regarding the scooter, and there was no evidence that any IEP team specifically considered and decided that Student required a scooter to receive a FAPE. Additionally, Mother never requested that the IEP team consider whether Student required the scooter to receive a FAPE. When Student first received the scooter, a Long Beach Unified occupational therapist trained Student, Mother, Patricia Anaya (Student's special day class teacher), the visual impairment teacher, Student's one-to-one aide, and Student's special day classroom staff on the use of the scooter. After this initial training, Long Beach Unified provided no further training to anybody on the use of the scooter.

8. At hearing, Mother testified that Student used the scooter independently at school, but all Long Beach Unified staff who observed Student on the scooter said that he could not use the scooter independently. Student could only operate the scooter with the assistance of his one-to-one aide and the use of a gait belt, one end of which was placed around Student's waist, and the other end of which was held by Student's full-time one-to-one aide, who walked next to Student or slightly behind Student when he rode on the scooter. Shortly after he began to use the scooter, Student could independently put on his helmet and the gait belt, and get on and off the scooter. However, while he was riding it his one-to-one aide had to hold onto the gait belt to help Student regulate his speed and to assist him in maneuvering the scooter. Further because Student was visually impaired, the one-to-one aide had to advise Student about obstacles, such as a bump, in the scooter's path.

9. Student often used the scooter to travel around campus, but he usually preferred to walk with his friends. He did not need the scooter to get to his classes or to

his service providers on Stanford's campus, which was not particularly large, as he could walk to those.

IEP TEAM MEETING OF DECEMBER 1, 2017

10. Long Beach Unified convened an IEP team meeting on December 1, 2017, for Student's annual IEP and to discuss several independent assessments. The meeting took place over three sessions in December, and the participants at each session varied somewhat.⁴ On December 1, 2017, the IEP team included Mother, a special education teacher, occupational therapist Ann Abel, a Long Beach Unified administrator, independent psychologist Ann Simun, Psy. D., (who participated by telephone), and attorneys for Student and Long Beach Unified. Mother waived the presence of a general education teacher, and was offered a copy of the procedural safeguards. Dr. Simun reported on her independent psychological assessment at the December 1, 2017 session of the meeting.

11. The team discussed Student's disabilities, and how they affected his progress in the curriculum, considered special factors related to low incidence disabilities, and summarized some of his needs. Student required large print to read. He received vision services and used a video magnifier. He used a communication device, gestures, signs, a picture exchange communication system, and some vocalization to communicate with adults and peers. He received speech and language services, and also had a one-to-one aide who assisted him with his educational needs.

⁴ The evidence was not entirely clear as to which portions of the IEP were completed at each session. Therefore, the contents of the IEP are summarized here in their entirety, without specifying the particular session at which the various parts of the IEP were developed.

12. The school nurse's report described Student's health and medical issues. Student was personable and social. His functional hearing was intact. Student was legally blind and wore glasses. He was ambulatory and had a scooter at school, but he preferred to walk. He needed some assistance in the restroom.

13. The general education teacher provided input. Student attended general education physical education with his adaptive physical education teacher and peers for one period each day. He participated in physical education activities with staff modeling and support. The IEP did not reflect that Student needed the scooter to participate in physical education.

14. The team discussed Student's learning strengths and preferences. Student required one-to-one and small group instruction. His curriculum was aligned with Long Beach Unified and state content standards. He did not require any behavioral interventions. The team noted Student's progress on prior goals, and discussed his present levels of performance. The team developed goals in mathematics, language arts, speech and language, self-help motor skills, vocational (orientation and mobility), and depth perception/tactile discrimination. Student's strengths in orientation and mobility included the ability to walk independently to all pertinent campus locations. The amount of walking he did during the school day was based on his fatigue level and knee pain. At the time of the IEP team meeting, he used the long cane on one route per day.

15. The IEP referenced the scooter only once in this section of the IEP, when the team noted that Student used the scooter the majority of the school day for his travels on campus. The IEP did not designate any staff member as responsible for Student's use of the scooter. None of the goals involved use of the scooter. Specifically, the self-help goal involved independently gathering his materials for class (laptop, keyboard, mouse, and assistive communication device), preparing them for use, and initiating tasks with them within 10 minutes with limited support. The motor skills goals

involved applying manipulative skills, such as passing or throwing a ball, during adapted physical education. Another motor goal, involving maintaining his heart rate within a certain range during moderate and vigorous exercise, had been curtailed as of the time of the IEP because Student was experiencing knee pain. There were two goals to address orientation and mobility. One of them involved using a long cane to locate a pertinent destination at the high school campus he would attend the following school year. The second one involved Student using his cane at an appropriate gait.

16. The IEP also referred to the scooter on the Accommodations, Supports, and Services page. The team acknowledged that Student required assistive devices and/or services to make progress toward IEP goals. This page of the IEP stated that the following is/are "recommended," and listed a variety of items. Some of the items were prefaced with the words Student "has access to," and some of them were prefaced with the phrase "He requires." With respect to the scooter, the IEP stated: "[Student] has access to a Little Scooter to navigate around the campus." This was the only reference to the scooter on the page.⁵

17. The IEP went on to describe classroom accommodations and the need for a one-on-one aide at all times to meet Student's educational and safety needs.

18. The IEP described a variety of accommodations and supports Student required for the classroom, for classroom and statewide assessments, for using the restroom, and for the school bus. The team also considered Student's need for alternative exercises in adapted physical education to work on abdominal strength,

⁵ A previous draft of the IEP placed all of this information on the Special Factors page, instead of the Accommodations, Supports, and Services page. There was no evidence as to why a previous draft of the IEP had the same content but a different format.

because sit-ups were contraindicated for Student.

19. The team offered Student placement in a special day class for 75 percent of his school day, including all academic periods, with specialized academic instruction. The team offered individual and group speech and language services, direct and consultative specialized vision services, orientation and mobility consultative services, orientation and mobility direct services to assist Student in transitioning to high school, direct and consultative occupational therapy services, and adapted physical education.

20. The team initially offered Student placement at a school other than Millikan. In March 2018, the IEP was amended to show Student had been granted enrollment at Millikan through Long Beach Unified's "school of choice" process.⁶

21. The team also offered special education summer school services, to include specialized academic instruction, specialized vision services, and speech and language services. Student attended Millikan for special education summer school.

22. At the December 1, 2017 IEP team meeting, the team agreed to reconvene on December 13. The IEP team at the December 13, 2017, session included Mother, Mother's attorneys, Ms. Abel, Ms. Anaya, a general education teacher, the orientation and mobility specialist Cheryl Yacoubian, assistive technology specialist Katie Field, vision impairment specialist Elizabeth Iovine, an administrator, adapted physical education teacher Nancy Levy, speech and language therapist Allison Koller, and Long Beach Unified's attorney. In addition, an independent occupational therapist, Susanne Smith Roley, OTD, participated by telephone.

23. During the December 13 team meeting, Dr. Roley presented the results of her evaluation by telephone, and Ms. Abel, Student's occupational therapist, discussed

⁶ The placement dispute is not relevant to the issues involved in this matter, but the fact that Student attended high school at Millikan is relevant.

Student's skills as well. The team discussed some of Student's functional skills. Student was learning Braille.

24. Ms. Yacoubian, Student's orientation and mobility specialist, also presented her report at this session of the IEP team meeting. The IEP notes of the meeting summarized her information. Student used his cane to go from the classroom to the restroom and from the classroom to his physical education class. Student was using his scooter more frequently because he was experiencing knee pain. Parent suggested that the team ask Student whether he wanted to use the scooter or walk, because he would self-report if his knees bothered him. Student's use of the cane was most appropriate when there were not many other students around, because they got in Student's way. Ms. Yacoubian recommended consultative services until Student went to high school, where he would need mobility training in the new environment. The team adopted this recommendation. However, Parent specified that if Ms. Yacoubian noticed a problem while Student was still at Stanford, she would provide additional support to address the problem. The team agreed, and the program and services page of the IEP reflected these matters. The team also provided that Student would receive more frequent occupational and mobility services during the first month of school at his new high school.

25. The December IEP team convened for the third time on December 14, 2017. The team included many of the same personnel who attended the meeting the day before, except that the Long Beach Unified administrator was a different person; and the independent occupational therapy assessor was not present. The adapted physical education specialist, the speech and language specialist, the vision specialist, and Student's classroom teacher presented their progress reports. The team discussed the most appropriate setting for high school. The occupational therapist reviewed Student's progress and addressed several concerns that Dr. Roley had reported on at

the IEP team meeting the previous day.

26. In addition to the references to the scooter in the December 1, 2017, IEP, Dr. Simun's report mentioned that Student's June 5, 2017 triennial IEP indicated that a variety of devices and services, including a scooter, were needed for Student to access the curriculum. The June 5, 2017 triennial IEP was not produced at hearing or offered into evidence, and Dr. Simun did not testify at hearing. Dr. Roley's report mentioned that Student used a scooter to navigate the school campus, and included a brief reference to her observation of Student riding the scooter on campus while his aide held the gait belt. Dr. Roley did not testify at hearing.⁷

27. By letter dated April 18, 2018, Student's counsel advised counsel for Long Beach Unified that Mother consented only to specified portions of the December 1, 2017 IEP. The list of items Mother consented to included all goals and objectives, all accommodations and special factors, and specified the full-time one-to-one aide. Mother did not consent to various other specified portions of the IEP. Those portions reflected a reduction in services or removal of certain accommodations and equipment. Student's counsel's letter did not specifically mention the scooter.

SCOOTER BREAKS DOWN

28. At some point in April or May 2018, Student's scooter ceased to operate. Ms. Anaya attempted to fix it, and contacted other Long Beach Unified personnel regarding fixing the scooter. They could not get the scooter to work, and, upon contacting the vendor or manufacturer, learned that the scooter was no longer being

⁷ Only small portions of Dr. Simun's and Dr. Roley's reports were admitted into evidence. There was no evidence that either Dr. Simun or Dr. Roley recommended that Long Beach Unified provide Student a scooter.

made and parts were not available. During this time, while the scooter was inoperative, Ms. Anaya retrieved a wheelchair from the school nurse's office. She placed it in the classroom for Student to use, if he needed it because of pain in his knees or to travel long distances. Student never needed it on the Stanford campus or asked to use it. The wheelchair was only used once during the spring of 2018, for a class trip to a local amusement park. Mother and Ms. Anaya specifically discussed and agreed Student would use the wheelchair for this purpose, as it would be easier for Student to navigate the crowds in the amusement park and to get on and off the park's rides.

29. Long Beach Unified never assessed Student regarding the use of the wheelchair. The wheelchair was not specially fitted for Student. There was some evidence that the wheelchair was too large for Student, but there was no evidence that Student could not use the wheelchair as intended, pushed by his one-to-one aide.

30. On May 16, 2018, Ms. Vyas, Student's attorney, sent an email to Ms. Johnson, Long Beach Unified's attorney. Ms. Vyas noted that the occupational and mobility specialist intended to recommend services for Student during special education summer school, and requested that Long Beach Unified send an IEP amendment with the occupational and mobility specialist's recommendations for services for summer school. The email also noted that Long Beach Unified had to arrange a one-to-one aide for Student during summer school, as Student's current aide would not be working over the summer. The email also advised that Student's scooter had not been operating for several weeks. Ms. Vyas requested that Long Beach Unified repair or replace the scooter as soon as possible, as Student was suffering from increased pain in his knees due to the failure of the scooter to function, and Student would soon be transitioning to Millikan for special education summer school.

31. In response to Ms. Vyas's email, on May 18, 2018, Long Beach Unified prepared an amendment to Student's December 1, 2017 IEP to add direct, individual

orientation and mobility services for Student during special education summer school at Millikan, just as Ms. Vyas's email requested. The IEP amendment noted that the amendment was prepared pursuant to a phone conversation between Parent and the special education teacher on May 16, 2018, and that Parent requested the amendment be sent home for her review. The amendment further stated that it was sent home for Parent's review on May 18, 2018. The amendment otherwise incorporated most of the content of the December 1, 2017 IEP. It included some of the same brief references to the scooter as did the December 1, 2017 IEP, including the reference to the scooter on the "Accommodations, Supports, and Services" page. However, the May 18, 2018 amendment did not contain the December IEP note page which referenced Student's increased use of the scooter due to knee pain. The May 2018 amendment did not contain any additional information about the scooter that was not contained in the December 1, 2017 IEP. At hearing, Student presented no evidence or argument that the May 18, 2018 amendment did not adequately address her concern that Student have direct, individual orientation and mobility services for Student during special education summer school, or was defective in any way.

32. By letter dated May 29, 2018, addressed to Long Beach Unified's special education administrator, Ms. Vyas advised Long Beach Unified that Mother consented to the delivery of services at Millikan during special education summer school, pursuant to the May 18, 2018 amendment. The letter did not mention the scooter.

33. Subsequent email correspondence between the parties confirmed that Student would have a one-to-one aide during special education summer school, as Ms. Vyas requested. There was no evidence that Ms. Johnson responded to Ms. Vyas's May 16, 2018, email with respect to the scooter. On June 21, 2018, Ms. Vyas emailed Wendy Rosenquist at Long Beach Unified regarding the scooter, and copied Ms. Johnson. In her email, Ms. Vyas inquired whether the scooter would be repaired by June 25, the first day

of special education summer school. Ms. Rosenquist responded by an email dated June 22, 2018, advising that Long Beach Unified was “still working out the details of the scooter repairs,” and the scooter would not be available on June 25.

34. On July 2, 2018, Ms. Vyas emailed Ms. Rosenquist and sent a copy to Ms. Johnson, protesting the delay in repairing or replacing the scooter. Ms. Vyas’s email noted that more than two months previously Mother had inquired regarding repairing or replacing the scooter, and pursuant to the IEP of December 2017 and Ms. Vyas’s letter of April 18, 2018, Student required a scooter for navigation around the school campus. The email noted that, without the scooter, Student had experienced profound pain in his knees and regularly complained of fatigue. Ms. Vyas requested Ms. Rosenquist to arrange for a new scooter or repair the scooter as soon as possible, and warned that failure to do so may be a denial of a FAPE.

35. By letter dated July 9, 2018, to Student’s counsel, Ms. Johnson provided prior written notice to advise that Long Beach Unified would not repair or replace the scooter. The prior written notice explained that Long Beach Unified purchased and provided the scooter pursuant to the May 5, 2015 settlement agreement solely as compensatory education. The letter explained that the model of the subject scooter was no longer being manufactured, and no replacement parts were available. Long Beach Unified did not believe Student required the scooter to receive a FAPE in the least restrictive environment, as Student was able to walk and appropriately navigate the campus without use of a scooter or a wheelchair. The letter advised that Long Beach Unified was willing to have a wheelchair available should Student need to navigate across campus and the distance was too far for him to walk, and would ensure that Student’s aide would have access to and would push the wheelchair.

STUDENT’S FUNCTIONING AT SCHOOL WITHOUT A SCOOTER

36. Student finished the 2017-2018 school year at Stanford, without access to

or use of a scooter. He attended special education summer school at Millikan during the summer of 2018, without access to or use of a scooter, and also attended Millikan during the 2018-2019 school year without access to or use of a scooter. Student had access to a wheelchair at all relevant times, but he usually traversed both campuses on his own power, or used a cane. Mother believed that after Student no longer had the use of the scooter, he exhibited more fatigue and the pain in his legs increased. No expert witness testified, however, that any aspect of Student's physical condition was negatively affected by Student's lack of access to his scooter.

37. Ms. Levy, Student's adapted physical education specialist at Stanford, observed that Student used to ride the scooter to get to her class, but, after the scooter stopped working, Student could walk to her class. There was no evidence that Student could not attend any class or access any portion of the Stanford campus at any time because he did not have a scooter. Student did not ask to use the wheelchair while at Stanford.

38. At Millikan, Student did not have to travel far to go to his classes. He walked well, and he could traverse campus by walking or using his wheelchair. He did not ask to use the wheelchair at Millikan, but he used it one time per day for a class involving community service which required him to travel around Millikan's campus. Student was a client of California Children's Services, but Mother did not pursue obtaining a wheelchair for Student from that agency. The occupational therapist there did not recommend a wheelchair for Student because Student preferred to walk.⁸

⁸ California Children's Services is a state and county program administered by the California Department of Health Care Services. It provides medically necessary benefits, including medical equipment, to individuals 21 years of age and younger who have physically disabling conditions and who meet its medical, financial and residential

39. Except for Mother, no witness at hearing testified that Student required a scooter to receive a FAPE or to access his education. Indeed, with the exception of Mother, every witness who testified at hearing who had observed Student on the scooter asserted that Student did not require a scooter for a FAPE. At hearing, Ms. Anaya expressed her opinion that the scooter was listed on the IEP as an accommodation because he had access to it as needed. Additionally, several witnesses expressed concerns about Student's safety when he used the scooter. Ms. Yacoubian, Student's orientation and mobility specialist at both Stanford and Millikan, was concerned about Student's ability to perceive when there was a drop-off or elevation in the scooter's path, and Student's ability to maneuver the scooter through crowds on campus. Ms. Iovine, Student's vision impairment teacher at Stanford and during special education summer school at Millikan, explained that she was initially nervous about Student's use of the scooter because of his vision deficits, but her concerns were assuaged because of the presence of Student's aide and Student's use of the gait belt. Ms. Levy, Student's adapted physical education teacher at Stanford, and Ms. Abel, Student's occupational therapist there, were also concerned about Student's use of the scooter because of his vision impairment. Ms. Abel was particularly concerned about Student's use of the scooter under variable lighting conditions. Ms. Anaya noted that Student could not use the scooter when it rained, because puddles and uneven ground made it unsafe to use. Furthermore, when Student used the scooter, it was necessary for staff to clear the other students out of his path, for everybody's safety. As of the time of hearing, nobody had been injured by reason of Student's use of the scooter.

40. Ms. Iovine, who also holds a credential in orientation and mobility in addition to her credential in visual impairments, expressed that, for Student, the

eligibility requirements.

wheelchair was comparable to his scooter. They were both methods to travel around campus, and Student needed the assistance of his aide to use both of them. Ms. Abel believed that the wheelchair would be appropriate for Student to use, because his vision impairment would not be a safety factor when his aide was pushing him in the wheelchair.

LEGAL CONCLUSIONS

INTRODUCTION: LEGAL FRAMEWORK UNDER THE IDEA

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement the IDEA and its regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.;⁹ Ed. Code, § 56000, et seq.; 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 prepare them for employment, independent living and higher education; and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see 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

⁹ All references to the Code of Federal Regulations are to the 2006 version, unless otherwise stated.

services that are 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 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. The IEP describes 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 School Dist. v. Rowley* (1982) 458 U.S. 176, 201 [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 p. 200.) Instead, the *Rowley* court decided that the FAPE requirement of the IDEA was met when a child received access to an education that was reasonably calculated to "confer some educational benefit" upon the child. (*Id.* at pp. 200, 203-204.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.]) Although sometimes described in Ninth Circuit cases as "educational benefit," "some educational benefit" or "meaningful educational benefit," all of these

phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 950, fn. 10.)

4. The Supreme Court recently decided the case of *Endrew F. v. Douglas County School Dist.* (2017) 580 U.S. ____ [137 S. Ct. 988] (*Endrew F.*) and clarified the *Rowley* standard. *Endrew F.* provides that an IEP must be reasonably calculated to enable “progress appropriate in light of the child’s circumstances.” (137 S.Ct. at 999.) The Court recognized that this required crafting an IEP that required a prospective judgment, and that judicial review of an IEP must recognize that the question is whether the IEP is reasonable, not whether the court regards it as ideal. (*Ibid.*) Additionally, the Court stated, “for a child fully integrated in the regular classroom, an IEP typically should, as *Rowley* put it, ‘be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.’” (*Id.* at 999 [citing *Rowley, supra*, 458 U.S. at 203-204.]) The Ninth Circuit Court of Appeals has held that *Endrew F.* did not change, but simply clarified *Rowley*. (*E.F. v. Newport Mesa Unified School Dist.* (9th Cir. 2018) 726 Fed.Appx. 535; *K.M. v. Tehachapi Unified School Dist.* (E.D. Cal. Apr. 5, 2017, 1:15-cv-001835 LJO JLT) 2017 WL 1348807, **16-18.)

5. The IDEA affords parents and 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); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, 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. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) 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. 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 administrative hearing decision is preponderance of the

evidence].) In this case, Student is the petitioning party and has the burden of persuasion as to his issue.

ISSUE: WHETHER LONG BEACH UNIFIED DEPRIVED STUDENT OF A FAPE BECAUSE IT FAILED TO REPLACE STUDENT'S SCOOTER

6. Student contends that the accommodations page of the December 1, 2017 IEP provided that Student had access to the scooter, and Mother never agreed to remove Student's access to the scooter from the IEP. Therefore, Student contends Long Beach Unified's decision not to replace the scooter was an impermissible unilateral amendment to the IEP which removed the scooter as an accommodation. Long Beach Unified thereby violated Mother's right to meaningfully participate in the IEP process, and deprived Student of a FAPE.

7. Long Beach Unified contends that it did not deprive Student of a FAPE. Rather, Long Beach Unified contends it agreed, through the May 2015 settlement agreement, to purchase one scooter for Student to use as compensatory education only. The scooter was never offered, recommended, or provided through the IEP process. Long Beach Unified further contends that Student presented no evidence that Mother ever requested an IEP team discuss whether Student required Long Beach Unified to provide a scooter for purposes of Student receiving a FAPE, or that Long Beach Unified failed to convene an IEP team meeting to discuss these matters, and therefore it did not violate Mother's right to meaningfully participate in the IEP process. Finally, Long Beach Unified contends if Student required a specialized wheelchair or other equipment to assist in his mobility at school, such specialized equipment would constitute medical equipment, and Long Beach Unified would not be responsible to provide it.

8. States must establish and maintain certain procedural safeguards to ensure that each student with a disability receives the FAPE to which the student is entitled, and that parents are involved in the formulation of the student's educational

program. (*W.G., et al. v. Board of Trustees of Target Range School Dist., etc.* (9th Cir. 1992) 960 F.2d 1479, 1483 (*Target Range*) [superseded by statute on other grounds, as stated in *R.B. v. Napa Valley Unified School Dist.* (9th Cir. 2007) 496 F.3d 932, 939.]) Citing *Rowley, supra*, 458 U.S. at 206-207, and fn 27, the court also recognized the importance of adherence to the procedural requirements of the IDEA, but determined that procedural flaws do not automatically require a finding of a denial of a FAPE. (*Target Range, supra*, 960 F.2d at p. 1484.) This principle was subsequently codified in the IDEA and Education Code, both of which provide that a procedural violation only constitutes a denial of a FAPE 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 regarding the provision of a FAPE to the child; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).)

9. In *Van Duyn v. Baker School Dist.* (9th Cir. 2007) 502 F. 3d 811 (*Van Duyn*), the court stated that a material failure to implement an IEP constituted a violation of the IDEA. (*Id.* at p. 822.) The court noted, "A material failure occurs when there is more than a minor discrepancy between the series a school provides to a disabled child and the services required by the child's IEP." (*Ibid.*) The court also clarified that the materiality standard did not require that the student suffer demonstrable educational harm, however, the student's educational progress, or lack thereof, may be probative of whether there has been more than a minor shortfall in the services provided. (*Ibid.*)

10. Significantly, the *Van Duyn* court specifically criticized framing the issue in terms of the school district violating IDEA procedures by unilaterally amending the IEP without notifying Mother in advance, which is essentially how Student framed the issue here, instead of framing the issue as a material failure to implement the IEP. Basically, Student contends that because the school district failed to provide Student another scooter, Long Beach Unified amended the IEP without notifying Mother in advance, and

the school district violated the IDEA procedures for amending IEPs and impeded Mother's right to meaningfully participate in the IEP process. Therefore, Student contends, this procedural violation entitles Student to relief without demonstrating any loss of educational benefit. The *Van Duyn* court stated that these contentions essentially constituted a novel proposition: that failure to implement an IEP was equivalent to changes in an IEP, and, as a result, all IEP implementation failures would be converted to procedural violations of the IDEA. (*Van Duyn, supra*, 502 F.3d at 819.) The court found no indication that this conflation was intended or permitted by the IDEA. (*Ibid.*)

11. The appropriate analysis, according to *Van Duyn*, is whether there has been a material failure to implement the IEP. Student's contentions are essentially based on the assumption that the scooter is mentioned on the accommodations page and in other sections of the IEP, and these references therefore signify that the scooter was required for Student to receive a FAPE. The law is more precise and discerning than Student's assumption, however. Case law clarifies that there is no deprivation of a FAPE for a material failure to implement an IEP if the IEP did not contain a clear requirement that the services in question should be implemented. (*L.J., etc. v. School Board of Broward County* (S.D. Fla., Sept. 28, 2017, No. 11-60772-CIV-MARRA) 2017 WL 6597516, at *31.) (*L.J.*) For example, in the case of *Tyler J., et al. v. Dept. of Ed., State of Hawaii* (D. Hawaii, Feb. 24, 2015, Civil No. 14-00121 DKW-KSC) 2015 WL 793013) (*Tyler J.*), the student contended that his charter school failed to implement his IEP when it did not provide him with an iPad. The IEP provided that on a "when needed" basis, student should be allowed to "[u]se an iPad in the classroom." (*Id.* at *8.) The District Court found that student provided no evidence to suggest he needed an iPad, and therefore that an iPad would not be necessary to implement the IEP. (*Ibid.*) Rather, the only evidence in the record on this point established that none of the charter school's teachers ever felt that the iPad was needed. (*Ibid.*) Similarly, in *Forest Grove School Dist.*

v. Student, (D. Or., November 27, 2018, 3:14-cv-00444-AC) 2018 WL 6198281 (*Forest Grove*), the student contended that the school district failed to implement his IEP, because the IEP accommodations provided that student could request copies of his aide's notes, but copies of notes were not sent home as frequently as requested. Rather, the notes were kept at school, and student was permitted to have them at school, except for one class. (*Id.* at *19.) The court found that the IEP did not require that the school send the notes home on a daily basis or at all. (*Ibid.*) Further, student had received a modified grade of "A" in the one class for which student contended he received no notes. (*Ibid.*) The court concluded that the district had not denied Student a FAPE by failing to implement the IEP with respect to the notes. (*Ibid.*)

12. Under these authorities, Student has failed to demonstrate that there was a material failure to implement the December 1, 2017 IEP. The IEP does not clearly require that Long Beach Unified provide Student with a scooter, and Student did not provide any evidence that any IEP team ever determined that Student required the scooter to receive a FAPE.

13. Student relies on several factors which he contends demonstrated that his IEP required that he have the scooter: The first of these factors is the references to Student's access or use of the scooter in the December 1, 2017 IEP. Second, Student relies on the Equipment Release, which referred to the scooter and other equipment Long Beach Unified provided Student, and which stated that the equipment listed on it would be relinquished under several circumstances, including when it was no longer needed for educational purposes, or when the student moved out of the boundaries of Long Beach Unified. Third, Student relies on Long Beach Unified's efforts to repair the scooter as evidence that the scooter was necessary for Student to receive a FAPE. Fourth, Student relies on the comments in the independent assessors' reports that the scooter was provided as an accommodation in the IEP.

14. None of these factors, jointly or severally, leads to the conclusion that any IEP team determined Student required the scooter to receive a FAPE, such that there was a material failure to implement the IEP when Long Beach Unified did not replace the scooter. Rather, the evidence was undisputed that Long Beach Unified provided the scooter to Student in 2015 as part of a settlement agreement. The settlement agreement specified that a scooter was provided as compensatory education only, and Mother represented and agreed that she understood the settlement agreement.¹⁰

15. Turning to the first factor upon which Student relies, the references to the scooter in the IEP of December 2017 IEP did not convert the scooter into an item that was part of a FAPE offer or an item that Student needed for a FAPE. For example, the reference to the scooter on the Accommodations, Supports, and Services page of the IEP simply states that Student had access to the scooter to navigate around the campus. The other references to the scooter in the IEP states he used it, or why he used it or did not use it. As the above authorities discuss, the mere mention of Student's access to and use of the scooter in the IEP do not reflect a clear requirement that Long Beach Unified provide a scooter to Student so that he could access his education. Rather, such information may simply be useful information to the IEP team with respect to the type of equipment available for Student to use on campus, and to Student's abilities. It may also be relevant to any consideration the team might give to the tasks Student's aide performed. None of the references to the scooter amounted to a recognition by the IEP team that Student required the scooter to receive a FAPE. Further, there was no

¹⁰ Educational services that are agreed upon as compensatory education do not constitute stay-put services that a school district must provide during the pendency of the dispute. (*Student v. Los Angeles Unified School District* (April 29, 2011) OAH Case No. 2011020071 [Denial of stay-put request].)

evidence that any IEP team had ever specifically discussed, or that Mother ever requested an IEP team meeting to discuss, whether Student required a scooter to receive a FAPE.

16. The Equipment Release, which Mother signed only one time with respect to the scooter, on the same day as she signed the settlement agreement dated May 5, 2015, also did not serve to convert the scooter from an item of compensatory education into an item that was part of an offer of a FAPE, and that Student required for a FAPE. The Equipment Release only served to document that the scooter remained, at all relevant times, the property of Long Beach Unified, and that it must be relinquished under certain circumstances. Further, there was no evidence that the Equipment Release purported to specify the only circumstances under which the scooter would be relinquished. The Equipment Release contained several items, and it did not differentiate between the items that Mother knew the settlement agreement described as stay-put, such as the iPad, and those that Mother knew the settlement agreement described as compensatory education, such as the scooter. Nor did the Equipment Release reflect that, according to the settlement agreement, Long Beach Unified had agreed to provide one scooter. Mother could not reasonably rely on the form Equipment Release to change the terms of the settlement agreement that she had signed on the very same day she signed the Equipment Release, especially when the settlement agreement provided that it was the only and entire agreement and understanding of the parties. Similarly, she could not reasonably rely on any conversation she may have had with the assistive technology specialist regarding the meaning of the Equipment Release so as to convert the scooter from an item of compensatory education to an item that was stay-put, and thus part of a FAPE offer or an item that Student required for a FAPE. There was no evidence that the assistive technology specialist had any knowledge of the existence of or the terms of the settlement agreement, including the term that Long Beach Unified

would provide a scooter only as compensatory education.

17. Student did not provide any evidence or legal authority to support his contention that Long Beach Unified's efforts to repair the scooter reflected that there had been an IEP team decision that Student needed the scooter to receive a FAPE. Rather, Long Beach Unified's efforts to repair the scooter were simply an attempt to fulfill its obligations under the settlement agreement to provide one scooter for Student's use, as compensatory education only.

18. Finally, Student's reliance on references to the scooter as an IEP accommodation in the independent assessors' reports is misguided. Dr. Simun's report mentions a reference to the scooter in a June 2017 IEP. That IEP was not produced or offered into evidence at hearing, and it was not the subject of this case. Dr. Roley's references to the scooter in her report do not specifically mention any IEP. Neither of these witnesses testified at hearing. There was no evidence that they were at the meetings regarding any IEP to which they were, or may have been, referring in their reports. There was thus no foundation for any paraphrasing or interpretation either of them rendered regarding the language of any IEP. Their comments do not constitute evidence that the IEP teams that developed the December 1, 2017 IEP determined that Student required the scooter to receive a FAPE, or that the IEP contained a clear requirement that Long Beach Unified should provide Student with a scooter so that he could access his education, such that the failure to do so constituted a failure to implement the IEP.

19. Indeed, Student did not demonstrate that *any* IEP team ever specifically considered and determined that Student required a scooter to receive a FAPE. Student never had an assessment to determine whether he needed the scooter to access his education. The December 1, 2017 IEP and its May 2018 amendment did not reflect that there were any goals related to Student's use of the scooter, and there was no evidence

that any of Student's IEPs ever included any such goals. No teacher or service provider was designated in any of the IEPs in evidence as being responsible for Student's use of the scooter.

20. As in *L.J., supra*, 2017 WL 6597516; *Tyler J., supra*, 2015 WL 793013, and *Forest Grove, supra*, 2018 WL 6198281, the December 1, 2017 IEP had no clear statement that Student required Long Beach Unified to provide him a scooter so that he could access his education.

21. Finally, Student failed to demonstrate that Student *actually* required the scooter to receive a FAPE. This failure undermines Student's contention that the references to the scooter in the December 1, 2017 IEP required Long Beach Unified to provide Student with a scooter. Student called no expert witness to testify that he required a scooter to receive a FAPE. None of Student's teachers and service providers who testified at hearing, whether they knew Student at Millikan or Stanford, testified that Student required a scooter to receive a FAPE or to access his education. Rather, the evidence demonstrated that Student's use of a scooter was simply another method Student used to travel around campus with his one-to-one aide. From spring 2018, when the scooter was out of service, through the time of the hearing, Student could traverse both the campuses of Stanford and Millikan by walking or using his cane, all while accompanied by his one-to-one aide. There was no evidence that Student missed a single class or activity, or failed to receive any educational benefit, by reason of not being able to use his scooter after it became inoperable. Indeed, the evidence reflected that Student's scooter presented limitations, in that he could not use it in the rain, and he could not use it without the constant attention of his one-to-one aide. Several witnesses testified that Student's use of the scooter posed safety issues, largely due to Student's vision impairment.

22. Mother testified that Student experienced increased knee pain and fatigue

after the scooter became inoperable, but the implication that Student therefore required the scooter to receive a FAPE is not meritorious, for several reasons. First, Student's knee pain and fatigue were mentioned in the orientation and mobility section and notes of the December 1, 2017 IEP, while Student was still using the scooter. Second, no expert witness testified that any increased knee pain or fatigue Student had was caused by or related to his inability to use the scooter. Third, a wheelchair was available to Student after the scooter became inoperable, but Student did not demonstrate that he requested or was required to use it at any time due to knee pain or fatigue, which casts doubt upon Mother's testimony regarding increased knee pain and fatigue. Finally, again, there was no evidence that Student's ability to access or benefit from his education was adversely affected after he no longer had access to the scooter.

23. In this regard, Long Beach Unified's obligation under the IDEA does not extend beyond what is educationally necessary. Student may require a wheelchair or other medical equipment to address medical needs unrelated to his education, but Long Beach Unified is not obligated to provide any such medical equipment. (Ed. Code, § 56363.1.)

24. The evidence also reflected that the wheelchair Long Beach Unified made available to Student was functionally equivalent to the scooter, in that they were both means by which Student could travel across campus, and Student could not use either one independently. Student required to be pushed in the wheelchair by his aide, and his aide was required to hold onto Student's gait belt at all times when Student was on the scooter. The wheelchair was not custom-fitted to Student, but there was no evidence that a wheelchair was required to be custom-fitted for Student, or that its failure to be so fitted caused Student any discomfort or otherwise diminished the wheelchair's utility. The evidence reflected that Student could use the wheelchair that Long Beach Unified made available.

25. Under all of these circumstances, Student did not demonstrate that Long Beach Unified materially failed to implement Student's IEP with respect to the scooter.

26. Finally, as noted above, the *Van Duyn* court criticized characterizing an issue involving a material failure to implement an IEP as an improper unilateral amendment of an IEP which prevented parent from participating in decisions regarding Student's education. (*Van Duyn, supra*, 502 F.3d 819.) Nevertheless, Student framed the issue here in such a manner. Student contends that Long Beach Unified unilaterally decided outside of the IEP process that Student no longer required access to the scooter offered in Student's December 1, 2017 IEP, and failed to provide a replacement scooter when Student's scooter became inoperable. As a result, Student contends, Mother was denied meaningful participation in the IEP process and Student was denied a FAPE.

27. This contention is unmeritorious. First, for the reasons discussed above, the December 1, 2017 IEP did not contain an offer that Long Beach Unified would provide Student a scooter. Secondly, there was no evidence that Long Beach Unified attempted to unilaterally change the IEP by not replacing the scooter when it broke down. Rather, as the prior written notice stated, Long Beach Unified considered that the settlement agreement only required it to purchase a single scooter for Student's use as compensatory education. Therefore, when the scooter became irreparable, Long Beach Unified contended it had no obligation to replace it. For the reasons discussed above, Long Beach Unified's position is meritorious. The settlement agreement obligated Long Beach Unified to provide one scooter, as compensatory education. Student did not establish that Student's December 1, 2017 IEP imposed any obligation upon Long Beach Unified to replace the scooter when it broke. Additionally, there was no evidence that Mother ever requested an IEP team meeting to consider whether Student required the scooter to receive a FAPE, or that any IEP team ever specifically considered whether Student required the scooter to receive a FAPE. Rather, the evidence demonstrated that

Mother attended all three sessions of the December 1, 2017 IEP meeting, with her counsel. She participated in those sessions, and her comments and concerns were considered. Student's attorneys wrote a lengthy letter dated April 18, 2018, conveying Mother's consent to some portions of the IEP, and her disagreement with other portions. The letter did not specifically mention the scooter.

28. Subsequently, on May 16, 2018, Student's attorneys wrote an email to Long Beach Unified's attorney regarding the need for Student to have orientation and mobility services at summer school added to his IEP. In response, on May 18, 2018, Long Beach Unified amended the December 1, 2017 IEP to include the orientation and mobility services, as requested by Student's counsel, and as Mother had discussed with Student's special education teacher. The amendment was sent to Mother. By letter dated May 29, 2018, Student's counsel conveyed Mother's consent to the IEP amendment regarding the special education summer school services it offered.

29. Under these circumstances, Student did not demonstrate that Long Beach Unified unilaterally decided outside of the IEP process that Student no longer needed access to the scooter. Long Beach Unified did not deprive Mother of meaningful participation in the IEP development process and deny Student a FAPE on this ground.

30. For all of the foregoing reasons, Long Beach Unified did not fail to materially implement Student's IEP, or deprive Mother of meaningful participation in the IEP process. Long Beach Unified did not deny Student a FAPE, by reason of its refusal to provide Student another scooter after the scooter it had previously provided Student became inoperable.

ORDER

All of the relief sought by Student is denied.

PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that this Decision indicate the extent to which each party prevailed on each issue heard and decided in this due process matter. Long Beach Unified prevailed on the only issue heard and decided.

RIGHT TO APPEAL

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.

DATED: January 30, 2019

_____/s/_____

ELSA H. JONES

Administrative Law Judge

Office of Administrative Hearings