

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

Petitioner,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT,

Respondent.

OAH CASE NO. N 2006011031

DECISION

Dennis C. Brue, Administrative Law Judge, Office of Administrative Hearings, (OAH), Special Education Division, State of California, heard this matter on June 13, 2006, in Los Angeles, California.

Student's mother (Parent) represented Petitioner (Student)¹. Also in attendance on Student's behalf was Marquetta Simmons, Services Coordinator of the South Central Los Angeles Regional Center.

Respondent Los Angeles Unified School District (District) was represented by attorney Laura M. Marrero.

¹ Student had legal representation that was obtained after the due process hearing request was filed. The attorney was discharged prior to the telephonic prehearing conference and was not present during the due process hearing.

Student's due process hearing request was filed on January 20, 2006. Oral and documentary evidence were received. At the hearing's conclusion, the parties were given until July 27, 2006, to file closing briefs. Respondent filed a brief and the record was closed on that date.

ISSUES²

1. Did the District deny Student a free and appropriate public education (FAPE) for the 2005-2006 school year by failing to convene an Individualized Education Program (IEP) meeting to review the triennial assessment?
2. Did the District deny Student FAPE for the 2005-2006 school year by failing to provide Student with complete copies of Student's IEPs?

CONTENTIONS OF PARTIES

Student alleges a denial of FAPE because the District failed to convene a triennial IEP or provide him copies of his last two IEPs.

District contends the triennial IEP timely occurred and that Student was given copies of his IEPs.

² For purposes of clarity and organization, the ALJ has reorganized the wording of Student's issues as identified in the due process hearing request and as clarified at the telephonic prehearing conference.

FACTUAL FINDINGS

JURISDICTION

1. Student is twenty years old and eligible for special education services as a student with mental retardation, autism, and other health impairment. He attends Venice High School and resides within District boundaries.

FACTUAL BACKGROUND

2. Student receives special education services in the form of a Community Based Instruction class, extended school year, transportation, career and transition services, and an adult assistant.

2005 IEP

3 The IEP to review the triennial assessment was first convened on November 9, 2005. In attendance were Venice High School Special Education Coordinator James Debiase, Parent, Student, Student's advocate Marquetta Simmons, and three teachers.

4. The IEP meeting began in the morning in the school's magnet office and lasted several hours. The parties were unable to complete their work in the time available.

5. Attempts at reconvening the IEP meeting in a cooperative manner failed. While the District made numerous attempts to schedule another meeting to complete the triennial review, Parent refused to reschedule on the basis that the magnet office room was too small and therefore unsuitable.

7. The District attempted to reschedule the IEP meeting approximately seven times. Two dates were offered in December of 2005, and three dates in January of 2006. To corroborate its claims, District placed into evidence copies of several letter sent to Parent as well as some handwritten entries in a notebook used by Parent and teachers to communicate.

8. District's efforts were to no avail as the meetings were continuously scheduled in the magnet office, which Parent had previously rejected.

9. No attempts were made by the District to reconvene the IEP meeting during the months of February, March, April, or May of 2006.

10. On June 15, 2006, during the last month of the school year, the District sent a letter that offered Parent three choices of dates that month to complete the IEP meeting. The letter also offered Parent the option of attending by phone or having a relative or representative present. Parent was informed that the District was obligated to complete the triennial review whether she participated or not.

11. In response, on June 19, 2006, Parent provided a note from Michael D. Hamilton, M.D., indicating Parent has a diagnosis of degenerative disc disease in her lumbar spine which produces severe persistent pain in her back that radiates into her lower extremities. The doctor indicated that a larger room was required for her comfort as a medical necessity.³

12. The triennial assessment review and IEP team meeting were completed on June 22, 2006, without Parent's participation.

13. Both Special Education Coordinator James Debiase and Parent testified that Student suffered no loss of special educational services or placement due to the delay in completing the triennial review.

14. Student's IEP was convened on November 9, 2005, and completed seven months later on June 22, 2006. While there were four months without any effort by either party to resolve this dispute, the IEP was completed without detriment to Student.

³ District should hold all further IEP meetings in a room larger than the Venice High School magnet office to accommodate Parent's medical necessity.

Therefore, there was no denial of FAPE and Student has failed to meet his burden of proof regarding this issue.

IEP COPIES

OCTOBER 6, 2005 IEP

15. An IEP meeting was held on September 8, 2005, for the purpose of reviewing and amending the IEP in effect for the 2005-2006 school year. The IEP team was unable to complete its work and another IEP meeting was reconvened on October 6, 2005.

16. Parent testified that she received a copy of the October 6, 2005, IEP but found the print to be too small to read. Though she had no corroborating evidence, Parent also believes the IEP copy she was given was incomplete and missing pages. The District then generated an enlarged copy of the IEP that Parent found too large.

17. Student's witness, Marquetta Simmons, the Services Coordinator of the South Central Los Angeles Regional Center, was present at the September 28, 2005, IEP meeting. She testified that Parent received a copy of the IEP.

18. Special Education Coordinator James Debiase testified that Parent received both the original and the enlarged IEP copies. Mr. Debiase personally photocopied the enlargement and provided a complete copy of the IEP to Parent.

19. Whether too small, too large, or just right, Student, through his Parent, received a copy of the October 6, 2005 IEP. Therefore, there was no procedural denial of FAPE in that Parent was not denied the right to participate in the IEP process and Student has failed to meet his burden of proof regarding this issue.

JUNE 22, 2006 IEP

20. Student carries a lined notebook with him on a daily basis. It is designated as his "communications log" and is used for teacher and Parent communication. Entries

placed into evidence included such common concerns as the need for gym clothes as well as attempts to reschedule the IEP meeting.

21. On June 23, 2006, the last day of school, Parent testified she and her aunt went to pick up Student's communication log from school. District employees detained Student for an indeterminate length of time while they apparently obtained the necessary signatures to complete the triennial review and IEP. Student was then escorted to Parent's car, with a copy of the triennial review and IEP tucked inside his communications log.

22. Parent, who was already disturbed by the District's actions in going forward with the IEP without her, was unsurprisingly deeply offended by this manner of providing her with the IEP. She would have preferred to have been present at the IEP meeting and received her copy of the IEP in person. She described the placing of the IEP in Student's communication log as "sloppy".

23. While not the standard method of document distribution, the District did provide Parent and Student a copy of the IEP. If Parent had been present at the IEP meeting, she would have received her IEP copy in person, the traditional manner of receipt. As the IEP was received, therefore, there was no denial of FAPE.

LEGAL CONCLUSIONS

APPLICABLE LAW

1. Pursuant to Education Code section 56341.5 subsection (a), a school district shall take steps to ensure that a student's parent(s) are present and are afforded the opportunity to participate at an IEP team meeting.

2. Education Code section 56341.5 subsection (h), permits a school district to conduct an IEP meeting without a parent present if the district is unable to convince the parent to attend. The district must maintain a record of its attempts to arrange a mutually agreed-upon time and place, by keeping records of telephone calls made or attempted and

the results of those calls; copies of correspondence sent to the parents or guardians and any responses received; and records of visits made to the home, if any.

3. Federal and State law impose an affirmative duty on school districts to minimally review and revise special education IEPs annually. In instances where a change in circumstances occurs, school districts are tasked to review/revise IEPs on an "as appropriate" basis. (20 U.S.C. § 1414, and Ed. Code § 56380.)

4. Not every procedural flaw constitutes a denial of a FAPE. Procedural flaws must result in the loss of educational opportunity to the student, or seriously infringe on the parent's participation in the IEP process, to constitute a denial of a FAPE. (*Board of Education of the Hendrick Hudson Central School District v. Rowley*, supra, 458 U.S. at 206-07; see also *Amanda J. v. Clark County School District*, 267 F.3d 877 (9th Cir. 2001).) However, procedural violations which do not result in a loss of educational opportunity or which do not constitute a serious infringement of parents' opportunity to participate in the IEP formulation process are insufficient to support a finding that a pupil has been denied a free appropriate public education. (*W.G. v. Board of Trustees of Target Range School District No. 23*, 960 F.2d 1479, 1482 (9th Cir. 1992).)

5. A parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way. (*Furman v. East Hanover Bd. Of Education* (3rd Cir. 1993) 993 F.2d 1031, 1036.)

6. Petitioner, as the party seeking relief, has the burden of proof. (*Schaeffer v. Weast* (2005) 546 U.S._____; 126 S.Ct. 528, [163 L. Ed. 2d 387]).

DETERMINATION OF ISSUES

Issue 1. Did the District deny Student a FAPE by failing to convene an IEP meeting to review the triennial assessment?

24. As determined in Factual Findings 5 and 12, District in fact held an IEP to review Student's Triennial assessments. It was initiated timely, but completed seven months later due to District's failure to actively pursue the issue of reconvening the IEP and Parent's obstreperous behavior.

25. District kept detailed records of its attempts to contact Parent and reschedule the IEP pursuant to Legal Conclusion 2.

26. Pursuant to Factual Findings 12 and 13, the IEP was completed and there was no denial of services or FAPE. Therefore, the District prevails on this issue.

Issue 2. Did the District deny Student FAPE by failing to provide Student with complete copies of Student's IEPs?

27. As determined in Factual Findings 16 through 24, Student's Parent received copies of both of the relevant IEPs.

ORDER

1. All of Student's requests for relief are denied.

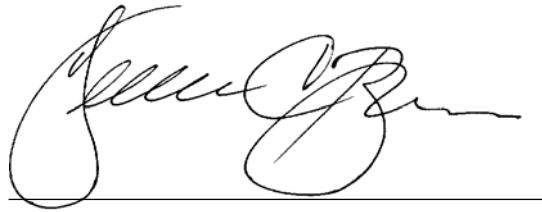
PREVAILING PARTY

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. The following findings are made in accordance with this statute: The District prevailed on all issues heard and decided.

RIGHT TO APPEAL THIS DECISION

28. The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within ninety days of receipt of this decision. (Cal. Ed. Code section 56505, subd. (k).)

IT IS SO ORDERED THIS October 18, 2006.

A handwritten signature in black ink, appearing to read "Dennis C. Brue", is written over a horizontal line.

DENNIS C. BRUE

Administrative Law Judge

Office of Administrative Hearings

Special Education Division