

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

STUDENT

v.

SANTA MONICA-MALIBU UNIFIED  
SCHOOL DISTRICT

OAH Case No. 2015040382

DECISION

On March 27, 2015, Student filed a request for a due process hearing with the Office of Administrative Hearings, naming the Santa Monica-Malibu Unified School District. OAH granted a continuance for good cause on May 7, 2015.

On May 22, 2015, District moved to bifurcate Student's issues to have the threshold issue of District's duty to provide Student with a free appropriate public education resolved before a hearing on Student's procedural and substantive FAPE issues. On June 5, 2015, OAH granted District's motion.

Administrative Law Judge Caroline A. Zuk heard this bifurcated matter in Santa Monica, California, on June 11 and 15, 2015.

Surisa Rivers and Sarah Gross, Attorneys at Law, represented Student for the entire hearing. Student, an adult, and his father were present for the entire hearing. A Spanish language interpreter was present during the morning of June 11, 2015, to translate for Student's father during his testimony.

Jabari A. Willis, Attorney at Law, represented District. Sara Woolverton, Ph.D., District's Director of Special Education, was present for the entire hearing.

At the conclusion of the hearing, the matter was continued to June 30, 2015, at the parties' request to file written closing briefs. The record was closed on June 30, 2015, when the parties filed closing briefs, and the matter was submitted for decision.

## ISSUE

For the bifurcated hearing, the sole issue is did District have an obligation to provide Student a FAPE, beginning on March 27, 2013, to March 27, 2015?

## SUMMARY OF DECISION

District contends that it had no responsibility for Student's special education program, beginning March 27, 2013, to March 27, 2015, because at the beginning of the 2012-2013 school year, when Student was a non-conserved, 19-year-old, 12<sup>th</sup> grader, he voluntarily withdrew from, and never returned to, the District. District contends that Student needed to re-enroll to trigger District's FAPE obligations and, even if he did re-enroll, Student only needed to complete one English course to earn a regular high school diploma and be exited from special education. District also contends that in the alternative portions of Student's claims were barred by the two-year statute of limitations.

Student opposed District's motion, contending that he did not voluntarily withdraw from the District at the beginning of the 2012-2013 school year.

Student contends that it was not appropriate for him to graduate with a regular high school diploma in June 2012, that he diligently submitted written requests regarding his interest in a FAPE between March 2013 and March 2015, and that District unlawfully conditioned the scheduling of IEP meetings, and his receipt of special education services upon his re-enrollment in the District. Student contends that his residency, prior special education eligibility, and interest in a

FAPE were sufficient to trigger District's FAPE obligations regardless of his enrollment.

District's motion to dismiss Student's complaint is granted in part and denied in part.

District's motion is granted as to the time period of March 27, 2013, to May 3, 2013, because Student's May 3, 2012 IEP was in effect through May 3, 2013, and the two-year statute of limitations bars any claims related to the May 3, 2012 IEP.

District's motion is granted as to the time period of May 4, 2013, to March 27, 2015, as to District's duty to provide a FAPE by *implementing* Student's last agreed upon and implemented IEP, because Student failed to re-enroll in the District, despite being notified in May 2012, May 2013, and June 2014 that he needed to enroll before he could attend classes and receive special education services.

District's motion is denied as to its duty to make a *new* FAPE *available*, following Student's May 2013 and June 2014 requests for an IEP team meeting and revisions to his special education program, because District's obligation derives from Student's residency and his interest in a prospective FAPE, rather than his re-enrollment, assuming that Student was still eligible for special education services. Therefore, Student may proceed on the issues set forth in the Prehearing Conference Order, dated June 5, 2015, as modified by this Decision.

## FACTUAL FINDINGS

1. Student was born on April 5, 1993. He is a non-conserved adult, currently 22 years old. When Student turned age 18, he was an 11th grader,

attending Santa Monica High School,<sup>1</sup> receiving special education services pursuant to an individualized education program, dating back to 2009.<sup>2</sup> It was undisputed that when Student reached the age of 18 years, he was competent and all educational rights accorded to his parents transferred to him.

#### STUDENT'S MAY 3, 2012 IEP (12TH GRADE)

2. On May 3, 2012, the District convened an IEP team meeting to conduct Student's annual review, and discuss transition services. At that time, he was a 19-year-old, 12th grader, attending Santa Monica High School. Student informed District that he was not going to attend the meeting because he disagreed with District's selection of its IEP team participants. District proceeded with the IEP team meeting without Student. The May 3, 2012 IEP indicates that Student was eligible for special education services under the category of speech or language impairment due to significant delays in his expressive and receptive language ability.

3. Student did not consent to the May 3, 2012 IEP. The IEP recommended that Student graduate with a regular high school diploma by July 31, 2012. According to District, Student only needed to complete the first semester (Fall 2011) of English 12 A to satisfy District's requirements for a regular high school diploma. While the IEP included a proposed graduation date, it also

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<sup>1</sup> The nickname for Santa Monica High School is "SAMOHI." That name was occasionally used in correspondence and during testimony at hearing.

<sup>2</sup> District was implementing services from an old 2009 IEP, because either Student's parent, when he was a minor, or Student, when he became an adult, did not provide full written consent to an updated IEP.

offered specialized academic instruction and speech and language services through May 3, 2013.

4. Although Student did not attend the May 3, 2012 IEP team meeting, he knew that District recommended that he graduate with a regular high school diploma upon his completion of English 12 A. Student also knew that if he graduated with a regular high school diploma, then District intended to terminate his eligibility for special education services. Although Student wanted to eventually graduate from high school with a regular high school diploma, he disagreed with District's recommendation that he complete only one course. Student believed that he had unique needs in the areas of academics, auditory processing, visual processing, and communication that still needed to be addressed before he would be prepared to graduate. Student credibly testified that he did not want to drop out of high school.

5. Student's last day of attendance at Santa Monica High School was June 11, 2012. After that date, he never re-enrolled in the District, because he disagreed with District's May 3, 2012 IEP. District "dropped" him from its list of enrolled students at Santa Monica High School when he did not re-enroll within the first 30 days of the 2012 – 2013 school year, which is its practice for students with and without disabilities. District did not assess Student, invite him to any IEP meetings or provide any educational services to him. As of June 11, 2015, the first day of hearing, Student had not earned a regular high school diploma from any institution.

#### STUDENT'S REQUESTS AND DISTRICT'S RESPONSES BETWEEN MARCH 2013 AND MARCH 2015

6. The basic facts in this matter regarding Student's written requests for IEP meetings and revisions to his special education program, and District's

written responses between March 2013 and March 2015, were not in dispute.

#### 2012-2013 School Year

7. While Student did not re-enroll or attend any District school during the 2012-2013 school year, he sent a detailed letter, dated May 8, 2013, to Sara Woolverton, Ph.D., District's Director of Special Education, which she received on May 13, 2013. The letter, written with assistance from Student's father, expressed Student's disagreement with his previous IEP's. The letter stated in relevant part:

Now I do the petition to you, for emergency I.E.P.  
meeting with you and new I.E.P. team to talk about  
Economics, Algebra 2 and English class from 12th  
grade also objectives/goals for the academic areas,  
speech/language services of what is still owed also  
reading comprehension that is not at grade level and  
age level too. Also talk about restarting the school as  
soon as possible because I have the right to be at  
school until the age of 22.

8. Student suggested that if District did not have a new IEP team available to conduct the meeting, then he would attend an IEP meeting with just Dr. Woolverton. Student also expressed his concern that he was denied an "appropriate comprehensive assessment for processing disorder including vision & (*sic*) auditory processing."

9. On or about May 15, 2013, Dr. Woolverton responded to Student via correspondence, referencing District's previous correspondence, dated May 24, 2012, which explained options available to Student to complete the requirements for his high school diploma. Dr. Woolverton's May 15, 2013 letter

stated in relevant part:

On May 24, 2012, you were sent a letter from Santa Monica High School informing you of your options for completing your English coursework in order to earn a diploma.

- If you continue to remain a resident of Santa Monica you may exercise the option of enrolling in an English class at the high school or the adult school, as explained in the enclosed letter [dated May 24, 2012].
- Once you enroll and begin attending an English class, you will be provided IEP services consistent with your last IEP.
- Within 30 days, an IEP team meeting will be convened to develop a new IEP for you.

10. The letter also directed Student to contact Santa Monica High School Advisor Judith Hinojosa-Rieseck for assistance with enrollment procedures and provided a telephone number for her. At hearing, Dr. Woolverton corroborated District's position that Student needed to re-enroll in the District before he could attend class, receive special education services, and participate in an IEP meeting to develop a new IEP.

11. In response, Student sent another detailed letter, dated June 6, 2013, to Dr. Woolverton, received by District on June 7, 2013, which restated Student's concerns and requests as set forth in his May 8, 2013 correspondence.

12. On or about June 20, 2013, Dr. Woolverton responded to Student's second letter, restating District's response from its May 13, 2013 correspondence. District's position was clear: "[O]nce you have enrolled in a program and begun attending an English class, the services in your last IEP will be provided, and an IEP meeting will be held within 30 days of your first day of attendance to create a new IEP."

13. There were no further communications between the parties during the 2012-2013 school year, including over the summer of 2013.

#### 2013-2014 School Year

14. On or about June 6, 2014, Student sent a detailed letter to District Superintendent Sandra Lyon, which District received on June 9, 2014, expressing his disagreement with his previous IEP's, and his desire to "finish high school with services and education appropriate that be require *[sic]* for my disabilities & needs." Student then listed multiple requests, including a new IEP team, placement in a new school for the 2014-2015 school year, related services, a transition plan, assessments, repetition of the 12th grade, and compensatory education.

15. On or about June 11, 2014, District Special Education Coordinator Darci Keleher responded to Student via correspondence, referencing District's previous correspondence, dated May 24, 2012, which explained options available to Student to complete the requirements for his high school diploma. Ms. Keleher restated District's position:

Once you enroll and begin attending an English class, you will be provided services consistent with your last IEP. Within 30 days of your attendance at school, an IEP team meeting will be convened to develop a new IEP for you.

16. Ms. Keleher directed Student to contact Santa Monica High School Advisor Judith Hinijosa for assistance with enrollment. Student did not contact Ms. Hinojosa or any other District representative to complete the enrollment process, because Student believed that it was District's responsibility to send him



the paperwork and procedures for enrollment.

#### 2014-2015 School Year

17. On or about February 10, 2015, Student wrote a letter to Ms. Hinojosa, referencing Ms. Keleher's June 11, 2014 letter regarding enrollment, which District received on February 11, 2015. Student asked for Ms. Hinojosa's help "to enroll at school quickly for finish the 12th grade and to obtain my diploma that is still pending," including enrollment in English 12 A, Algebra 2, Economics and Chemistry. Student did not request any assessments, an IEP meeting or any special education services.

18. On or about February 20, 2015, Ms. Hinojosa responded to Student via correspondence, restating District's position that Student only needed to complete English 12 A to graduate with a regular high school diploma. Ms. Hinojosa offered Student two options to complete the English 12 A course: enrollment at District's Off Campus Learning Center at Olympic High School or enrollment at District's Adult School. As to the Off Campus Learning Center, the letter included a scheduled appointment on February 26, 2015, for Student to complete enrollment. As to the Adult School, the letter provided a telephone number for Student to call to schedule an appointment. Student received the letter on February 28, 2015. He could not recall whether he contacted the Learning Center or Adult School.

19. Student chose not to re-enroll in District during the 2012-2013, 2013-2014, and 2014-2015 school years, because he disagreed with District's proposal that he complete the English 12 A course and graduate with a regular high school diploma. Student knew that if he enrolled in the District, and completed the English 12 A course, District would have granted him a regular

high school diploma and terminated his eligibility for special education. Student wanted an opportunity to participate in an IEP team meeting with different IEP team members to discuss a new IEP for him, including extending his graduation date by one year.

## LEGAL CONCLUSIONS

### INTRODUCTION: LEGAL FRAMEWORK UNDER THE IDEA<sup>3</sup>

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et seq.; 34 C.F.R. § 300.1 (2006) et seq.<sup>4</sup>; 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 free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); 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, which meet state educational standards, and conform to the child's individualized education program. (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

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<sup>3</sup> Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

<sup>4</sup> All references to the Code of Federal Regulations are to the 2006 version.

disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) “Related services” are transportation and other developmental, corrective and supportive services 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 that 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 District 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, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to “confer some educational benefit” upon the child. (*Id.* at pp. 200, 203-204.) 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. 951, fn. 10.)

#### BURDEN OF PROOF

4. In an administrative proceeding, the burden of proof is ordinarily on the party requesting the hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].) Student requested the hearing and, therefore, Student has the burden of proof related to the issues of FAPE. However, as to the issue of District’s FAPE obligation, which arose from an affirmative defense raised by District, District bears the burden of proof.

#### STATUTE OF LIMITATIONS

5. Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3)(C), (D); Ed. Code § 56505, subd. (I).) There are two exceptions which may require an extension of the time for filing a complaint. One is a misrepresentation by a school district which led the complaining party to believe disputed issues had been resolved. (20 U.S.C. § 1415(f)(3)(D)(i); Ed. Code § 56505, subd. (I)(1).) The second exception is withholding information from the parent, or student if student holds educational rights, that the district was required to provide. (20 U.S.C. § 1415(f)(3)(D)(ii); Ed. Code § 56505, subd. (I)(2).)

6. Student filed his complaint on March 27, 2015. Student did not allege any exceptions to the two-year statute of limitations, nor present evidence at hearing as to any exception. Therefore, Student is barred from alleging any FAPE claims that accrued before March 27, 2013, which includes any claims relating to Student's May 3, 2012 IEP up to and including its expiration date of May 3, 2013.

#### TRANSFER OF EDUCATIONAL RIGHTS

7. In California, a person who is 18 years or older is an adult. (Fam. Code, § 6501.) When a student who has been receiving special education services reaches the age of 18, all educational rights are transferred to the student, and the district shall notify the student and the parent of the transfer of rights. (Ed. Code, § 56041.5.) If no guardian or conservator has been appointed for the student, the student becomes a "parent" for purposes of special education law. (Ed. Code, § 56028, subd. (a)(2).) The local educational agency shall provide any required notice of procedural safeguards to both the student and the student's parents. (34 C.F.R. § 300.517(a); Ed. Code, § 56041.5.)

8. There was no dispute that Student was a non-conserved adult, who was responsible for educational decision-making since April 5, 2011, when he turned 18 years of age.

#### ISSUE: DISTRICT'S DUTY TO PROVIDE A FAPE TO STUDENT

9. District contends that it had no responsibility for Student's special education program, beginning March 27, 2013, to March 27, 2015, because at the beginning of the 2012-2013 school year, when Student was a non-conserved, 19-year-old, 12th grader, he voluntarily withdrew from, and never returned to, the District. District contends that Student needed to re-enroll to trigger District's

FAPE obligations.

10. Student contends that he did not voluntarily withdraw from the District at the beginning of the 2012-2013 school year. Student contends that he was not ready to graduate in June 2012, that he diligently submitted written requests regarding a new FAPE between March 2013 and March 2015, and District unlawfully conditioned the scheduling of IEP meetings, and receipt of special education services upon his re-enrollment in the District. Student contends that his residency, his previous eligibility, and interest in a prospective FAPE were sufficient to trigger District's FAPE obligations regardless of whether he actually enrolled in the District.

11. In May 2013 and June 2014, District offered to implement Student's last agreed upon and implemented IEP upon his re-enrollment in the District, which dated back to his 2009 IEP. Student failed to re-enroll and avail himself of any services, despite receiving District's correspondence in May 2013 and June 2014 offering to implement his last IEP. District could not implement Student's old IEP unless Student re-enrolled in the District. Therefore, District was not obligated to implement Student's last agreed upon and implemented IEP during the time period of May 4, 2013 through March 27, 2015.

12. Under the IDEA, a "free appropriate public education is available to all children with disabilities residing in the State between the age of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school." (20 U.S.C. § 1412(a)(1)(A); Ed. Code, § 56040, subd. (a).) A local educational agency is responsible for "providing for the education of children with disabilities within its jurisdiction." (20 U.S.C. § 1413(a)(1); 34 C.F.R. § 300.101(a).) In California, an individual with exceptional needs includes an individual between the ages of 19 and 21 years who has been identified by an IEP

team as a child with a disability, whose impairment requires instruction and services which cannot be provided with modification of the regular school program, and who "is enrolled in or eligible for a program under this part [Education Code, Part 30] or other special education program prior to his or her 19th birthday; and has not completed his or her prescribed course of study or who has not met proficiency standards or has not graduated from high school with a regular high school diploma." (Ed. Code, §§ 56026, subd. (a),(b), (c)(4).) A school district's "obligation to deal with a child in need of services, and to prepare an IEP, derives from residence in the district, not from enrollment." (*James v. Upper Arlington School District* (6th Cir. 2000) 228 F.3d. 764, 768, cert. den'd, 532 U.S. 995, 121 S.Ct. 1655, 149 L.Ed. 2d 637 [rejecting school district's argument that a child would need to be re-enrolled before it would be obligated to prepare an IEP].)

13. There was no dispute that Student resided within District's jurisdiction between May 2013 and February 2015. District mailed four letters to Student between May 2013 and February 2015, using the same address District relied on to determine Student's residency during the 2011-2012 school year. Student received District's letters, and credibly testified that he still lived with his parents at the same address District used to determine his residency when he attended Santa Monica High School.

14. District contends that since Student was an adult who only needed one more course to graduate with a regular high school diploma, and compulsory education laws no longer applied to him, District had no control over Student's decision not to return to school. While it is true that District could not compel Student to attend school, the issue is whether District still had an obligation to *make* a FAPE *available* to him. Under California law, school districts

must still make a FAPE available to adult students with disabilities if they are eligible for special education services. Therefore, Student's age of majority is not dispositive of District's FAPE obligation. Similarly, District's assumption that Student only needed one more course to graduate with a regular high school diploma, and thereby relieve District of its FAPE obligation, was also not dispositive, because there was a disagreement between the parties as to whether Student satisfied the requirements for a high school diploma.

15. Prior to Student's 19th birthday on April 5, 2012, he was eligible for, and enrolled in, a special education program at Santa Monica High School. While Student did not re-enroll in the District after his last day of school in June 2012, he made specific written requests regarding his special education, which were received by District. District assumed that Student had an affirmative duty to re-enroll before it was obligated to schedule an IEP team meeting or prepare a new IEP. In *Upper Arlington, supra*, the Sixth Circuit Court of Appeals addressed whether a school district was required to prepare a pre-enrollment IEP for a child who had previously received special education services in the school district, but had been unilaterally placed in a private school for six years. While the child attended private school, the parents approached the school district, and requested a new IEP. The school district informed the parents that the child would need to be re-enrolled before it would be obligated to prepare a new IEP for him. The Sixth Circuit rejected the school district's argument, holding that the refusal to prepare a pre-enrollment IEP violated the IDEA, because:

To hold otherwise would allow the school to slough off any response to its duty until the parents either performed the futile act of enrolling their son for one day and then withdrawing him as soon as the IEP was



complete, or, worse, leaving the child in an arguably inadequate program for a year just to establish his legal rights. Neither action seems to be compelled by the statutory scheme or the case law.

(*Id.* at p. 768.) Here, as in *Upper Arlington*, District conditioned the scheduling of an IEP meeting and any further discussions regarding Student's FAPE on his re-enrollment in violation of the IDEA. District's duty to determine whether Student was still eligible for special education services was triggered on May 13, 2013, and June 9, 2014, when it received Student's correspondence, requesting a prospective FAPE.

16. This Decision makes no findings or conclusions as to whether Student was, in fact, eligible for special education and, if so, whether Student needed any supports and services beyond completing English 12 A.

## ORDER

1. District's motion to dismiss Student's complaint is granted in part and denied in part.

2. District's motion is granted as to any FAPE claims arising between March 27, 2013, and May 3, 2013, due to being barred by the two-year statute of limitations.

3. District's motion is granted as to any FAPE claims arising between May 4, 2013, and March 27, 2015 as to District's duty to provide a FAPE by *implementing* Student's last agreed upon and implemented IEP.

4. District's motion to dismiss Student's complaint is denied as to its duty to make a new FAPE available to Student, beginning on May 13, 2013, to March 27, 2015.

5. Student's case shall proceed to hearing on August 4 and 5, 2015, as to the issues for hearing in the June 5, 2015 order, as modified by this Decision.

PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that the hearing decision indicate the extent to which each party has prevailed on each issue heard and decided. District and Student partially prevailed on the only issue heard and decided.

## RIGHT TO APPEAL THIS DECISION

This is a final administrative Decision, and all parties are bound by this Decision. 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 90 days of receipt of this Decision. A party may also bring a civil action in the United States District Court. (Ed. Code, § 56505, subd. (k).)

DATE: July 15, 2015

/s/

CAROLINE A. ZUK

Administrative Law Judge

Office of Administrative Hearings