

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015050710

DECISION

Parent on behalf of Student filed a due process hearing request (complaint) with the Office of Administrative Hearings, State of California, on May 1, 2015, naming Los Angeles Unified School District. The matter was continued for good cause on June 11, 2015.

Administrative Law Judge Chris Butchko heard this matter in Van Nuys, California, on September 8 through 10, 2015.

Jennifer Guze Campbell, Sean Pan, and Sarah Spacht, Attorneys at Law, represented Student. Student's parents attended the hearing.

Patrick Balucan, Attorney at Law, represented District. Patricia Tamez-Simplicio, Due Process Specialist, attended the first and third days of hearing on behalf of District. Mindy Weiss, Due Process Specialist, attended the second day of hearing on behalf of District.

A continuance of the hearing was granted for District to respond to an outstanding subpoena duces tecum. Following production of documents, Student filed a

statement on September 21, 2015, reporting that he did not request additional hearing time. On September 22, 2015, the ALJ issued an order directing that the record would remain open until October 2, 2015, to allow the parties to file closing briefs. Upon timely receipt of the written closing arguments, the record was closed and the matter was submitted for decision.

ISSUES

- 1) Whether Student was denied a free and appropriate public education in the 2014-2015 school year because:
 - a) District failed to appropriately address bullying of Student by Classmate;
 - b) District failed to provide a written response to Parent's request to change Student's educational placement, thereby significantly impeding Parent's opportunity to participate in the decision making process regarding Student's education; and
 - c) District failed to inform Parent of how to file a written request and failed to respond to Parent's written request for an individualized educational program team meeting, thereby significantly impeding Parent's opportunity to participate in the decision making process regarding Student's education.

SUMMARY OF DECISION

Student has not established that he was subjected to bullying at school or that he was denied access to a FAPE as a result of the sporadic violent acts inflicted upon him by a classmate. Likewise, Student has not established that Parent was significantly impeded in her ability to participate in making decisions regarding Student's education.

FACTUAL FINDINGS

1. Student is a 5-year-old male who resided in District at all relevant times,

and is eligible for special education under the category of autistic-like behaviors.

2. Mother was particularly concerned about Student's communication abilities, ability to read social cues, and safety awareness.

3. Student attended a general education transitional kindergarten class at Hancock Park Elementary school in the District taught by Laurel Hartman.

4. Classmate was also in Ms. Hartman's class, and was eligible for special education due to autism. Classmate was more severely impacted by his disability than Student.

5. Classmate was essentially non-verbal, and his inability to communicate with classmates was frustrating to him.

6. From Classmate's first week in school, Ms. Hartman was unsure that he should be in a general education classroom. She had "constant" conversations about Classmate with Ashley Parker, the Principal at Hancock Park. Ms. Hartman was told to use the resource class as a tool to manage Classmate's behaviors and relations with other students.

7. Classmate would pull the hair of the other students, bite them, or strike them in the stomach.

8. Student and Classmate became friends. They would seek each other out to play in class or on the recess yard. Student and Classmate were roughly the same size; although Classmate was older, Student was slightly larger.

9. On or about October 7, 2014, Student was punched in the eye by Classmate while they were playing in the kindergarten yard. Student had not provoked the attack.

10. Ms. Hartman was told about the incident by supervisors on the yard. They did not witness the blow, but brought the boys in from the yard. Ms. Hartman notified Principal Parker.

11. Ms. Parker spoke with Student, who appeared to be okay, although he had a mark from the blow. She sent Student to the nurse. Ms. Hartman tried to talk with Classmate, but very little communication was possible with him. She notified Student's Mother about the event, and assured her they were doing everything they could.

12. Ms. Parker discussed the event with Ms. Hartman and the yard supervisors, and instructed them to monitor more closely and try to keep the boys apart.

13. About a week later, Ms. Hartman told Mother that Classmate had hit Student in the stomach during snack time recess. This was again an unprovoked, unwitnessed attack in the play yard. Student did not have any ill effects afterwards. Mother told Student to stay away from Classmate after this event, and had Student's siblings reinforce that instruction with him. Ms. Hartman also tried to convince Student to stay away from Classmate.

14. Mother put a note or slip in the mailbox of Behnaz Valamehr, the Assistant Principal, Educational Instruction Services, to request an IEP meeting. Mother had been told she could submit any written notice to request a meeting. There was no response to this note by District, and no specific follow-up by Mother. Ms. Valamehr did not recall receiving the request.

15. Mother also requested an assessment of Student at that time. Mother understood that her request for assessments would cause an IEP team meeting to be held to discuss the results of the assessments. Ms. Valamehr contacted Mother regarding the assessment request. District prepared an assessment plan and presented it to Mother. The assessments were discussed at an IEP team meeting on February 3, 2015.

16. In mid-November 2014, Student was waiting in line when Classmate came over to him, grabbed Student's clothing, and threw him to the ground. Ms. Harman reported the event to Mother, but District did not take any action in response to it.

17. Mother tried to explain that Classmate was a danger to Student, but Student insisted that Classmate was his friend and told her that Classmate wasn't a bad kid. Ms. Hartman also attempted at this time to direct Student away from Classmate following instruction to do so by Ms. Parker.

18. Mother believed Student's personality and behavior began to change at this time, and he became distant to her and would have tantrums.

19. Another incident occurred on January 14, 2015. Student was playing with leaves in the recess yard when Classmate became upset and hit Student in the head. Student was sent to the nurse and given an ice pack. Ms. Hartman and Ms. Parker both met with Classmate to try to correct his behavior.

20. Ms. Hartman told Mother about this when Mother came to pick him up at the end of the day. Student was not behaving normally. He was lying on the floor staring at the ceiling. He was lethargic, not talkative, and threw up in a store that evening. Mother took him to the emergency room to be examined, but he was released after being observed for a while when he seemed to recover himself.

21. On February 3, 2015, Student had an IEP team meeting at which Mother raised her concerns about Student being bullied by Classmate. No agreement was reached on Student's IEP at this meeting.

22. At the IEP team meeting, District did not agree with Mother that Student was being bullied. District expressed the belief that the current classroom was safe, that the boys could be kept separate, and that Classmate's one-to-one aide was sufficient for classroom safety.

23. At this time, Student was adamant that Classmate was his friend and would initiate contact with him. Mother told Student to stay away from Classmate.

24. On February 9, 2015, during class, Classmate walked over to Student and hit him in the head with a wooden block. Ms. Hartman believed that this incident made

Classmate's placement in her class unacceptable.

25. After this incident, Classmate was moved to another class. Student and Classmate would no longer be at recess at the same place and time due to the transfer.

26. Mother's legal counsel wrote a letter to District dated February 9, 2015, in response to this incident, which requested that Student be immediately placed at The Help Group, a non-public school with an autism program, to ensure his safety. In the interim, counsel requested a one-to-one aide to protect Student and to ensure Student's safety.

27. The IEP team met again on February 17, 2015. At this meeting, Student's advocates requested a non-public school placement for Student. Ms. Hartman expressed the opinion that there was no need for a new placement for Student, as he was doing well in class. Ms. Parker did not believe that Classmate was bullying Student, as he was not demonstrating anger or being mean, and Student had no fear of Classmate. District did not offer a non-public school placement, and no agreement was reached on the IEP.

28. Mother believed that Student suffered continuing effects from his treatment by Classmate. By the end of the 2014-2015 school year, Student became increasingly aggressive towards his cousin in protecting his baby sister and used aggressive language.

29. By April and May, 2015, Student would bully his relatives, throw things when in the car, and began to refuse to go to school. He acquired a nervous habit of scratching himself behind his ear. One time, Student told Mother "I don't want to go to school. [Classmate] hit me in the head." Toward the end of the school year, Student became unwilling to do his homework.

30. Mother did not believe it was possible that Student was upset by being separated from Classmate. Mother felt that Student was prevented from achieving his

IEP safety goals by the continued presence of Classmate. Mother believed that a private school placement was necessary for Student to advance toward his academic and safety goals.

31. Mother was a credible witness. She was clearly concerned about her son's education and safety. The conclusions she drew concerning the effects of the incidents on Student are the natural product of her concern for his safety.

32. The District employee witnesses were less emotionally invested, but possessed an inferior grasp of the facts. Ms. Parker, Ms. Hartman, and Ms. Valamehr were sometimes unclear on the chronology or details of the events between the two boys.

33. However, Ms. Hartman was highly credible concerning the details of her class. Her testimony conflicted with Mother's as to whether Classmate targeted Student for violent acts or whether he was a problem with other students. Mother testified that Ms. Hartman said that Student was the only one Classmate hit, but Ms. Hartman was clear and consistent on the difficulties she faced by having Classmate in her class.

34. Ms. Hartman, Ms. Parker, and Student's witness Dr. Karen Enyedi, Director of Admissions and Chief Psychologist at The Help Group, agreed that a major educational project for children in Student's age group is to be taught to keep their hands to themselves. They each stated that children in kindergarten would strike other students frequently. Ms. Hartman said kindergarten students would hit others "daily."

35. Ms. Hartman believed that Classmate tended to express himself physically due to his language limitations. She was aware of Classmate's background and IEP plan, and that affected her view of his actions. She believed that Classmate was trying to befriend Student. Ms. Hartman has had children in her kindergarten class that she considered to be bullies, but she did not believe that Classmate was a bully.

36. Ms. Hartman would have been outraged if Student was her child and he

was hit by a fellow Classmate more than once. However, she believed that Student had met all of his safety awareness goals and had “surpassed [her] expectations.” His academic performance did not decline over the course of the year and he displayed no anxiety in her classroom. She did not closely monitor her class’s homework packets because she did not believe in homework in kindergarten.

37. Student presented Dr. Enyedi, who holds a bachelor of arts degree in psychology, a master’s degree in Family and Marriage counseling, and Ph.D. in Counseling Psychology. Dr. Enyedi handles serious bullying incidents at The Help Group. Her view was that bullying is generally committed by verbal taunting or harassment, while hitting usually represents aggression. For autistic children, hitting usually arises out of frustration, especially in younger children where the child has a communication deficit.

LEGAL CONCLUSIONS

INTRODUCTION: LEGAL FRAMEWORK UNDER THE IDEA¹

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)² et seq.; 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

¹ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

² All subsequent references to the Code of Federal Regulations are to the 2006 version.

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, 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; Cal. Code Regs., tit. 5, § 3001, subd. (p).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective and supportive services 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 California, related services are also called designated instruction and services].) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel 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)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a).)

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.)

4. 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) & (f); 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. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387] (*Schaffer*); see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].)

BURDEN OF PROOF

5. Student, as the party petitioning for relief, has the burden of proving the essential elements of its claim. (*Schaffer, supra*, 546 U.S. 49, at p. 62.)

BULLYING

6. If the bullying of a student with a disability causes the student not to receive meaningful educational benefit, it can constitute a denial of a FAPE under the IDEA. (*Dear Colleague Letter*, Office of Special Education and Related Services (OSERS) (August 20, 2013) 61 IDELR 263.) It does not matter whether the bullying is related to the student's disability. (*Id.*, at p. 2.) Therefore, a determination of whether bullying has denied a student a FAPE requires a two-step analysis: (i) whether bullying occurred, and (ii) whether the bullying resulted in the student not receiving educational benefit within the meaning of *Rowley*. There is a "strong likelihood" that bullying of a disabled student will result in the denial of a FAPE. (*Dear Colleague Letter*, OSERS (October 21, 2014) 464 IDELR 115 *2.)

7. Bullying is not defined within the IDEA. Bullying is defined under the California Education Code for purposes of finding grounds for suspension or expulsion of a student as "any severe or pervasive physical or verbal act or conduct by a pupil or group of pupils, and including one or more acts committed by a pupil or group of pupils as defined in Section 48900.2, 48900.3, or 48900.4, directed toward one or more pupils that has or can be reasonably predicted to have the effect of one or more of the following:

- (a) fear of harm to her person or property;
- (b) a substantially detrimental effect on her physical or mental health;
- (c) a substantial interference with her academic performance; or
- (d) a substantial interference with her ability to participate in or benefit from the

services, activities, or privileges provided by a school.” (Ed. Code, § 48900, subd. (r).)

The three internally-cited sections of the Education Code dealing with sexual harassment, hate, and intimidation, exempt students in grades kindergarten through third grade from its application.

8. “Bullying is characterized by aggression used within a relationship where the aggressor(s) has more real or perceived power than the target, and the aggression is repeated, or has the potential to be repeated, over time.” (*Dear Colleague Letter*, OSERS (August 20, 2013) 61 IDELR 263 *1.) Confrontations between students that are not characterized by an imbalance in power generally do not constitute bullying. (*A.L. v. Jackson County Sch. Bd.*, 64 IDELR 173 (N.D. Fla. 2014) (an isolated instance of rough play between peers did not amount to bullying).) The Journal of the American Medical Association defines bullying as “a specific type of aggression in which (1) the behavior is intended to harm or disturb, (2) the behavior occurs repeatedly over time, and (3) there is an imbalance of power, with a more powerful person or group attacking a less powerful one.” (Tonja R. Nansel et al., *Bullying Behaviors Among US Youth: Prevalence and Association with Psychosocial Adjustment*, 285 JAMA 2094, 2094 (2001).)

9. “The label used to describe an incident (e.g., bullying, hazing, teasing) does not determine how a school is obligated to respond. Rather, the nature of the conduct itself must be assessed for civil rights implications.” (Office for Civil Rights (OCR) 2010 *Dear Colleague Letter on Harassment and Bullying*, <http://www.ed.gov/ocr/letters/colleague-201010.pdf>, at page 3.) “The definition of bullying includes a non-exclusive list of specific behaviors that constitute bullying, and specifies that bullying includes intentional efforts to harm one or more individuals, may be direct or indirect, is not limited to behaviors that cause physical harm, and may be verbal (including oral and written language) or non-verbal.”

<http://www.stopbullying.gov/laws/key-components/index.html> (United States Department of Education interagency bullying resource website.)

10. "Although there are no hard and fast rules regarding how much change in academic performance or behavior is necessary to trigger the school's obligation to convene the IEP team or Section 504 team, a sudden decline in grades, the onset of emotional outbursts, an increase in the frequency or intensity of behavioral interruptions, or a rise in missed classes or sessions of Section 504 services would generally be sufficient." (*Dear Colleague Letter*, OSERS (October 21, 2014) 464 IDELR 115*3.)

11. In *M.L. v. Federal Way School District* (9th Cir. 2005) 394 F.3d 634 (M.L.), the Ninth Circuit addressed whether a student who was subject to teasing was denied a FAPE. There, the fact that parents removed the student from school after only five days did not allow the district a reasonable opportunity to prevent or address the teasing. Further, the parents failed to demonstrate that the teasing affected the student, interfered with his education, or resulted in the loss of an educational benefit. "If a teacher is deliberately indifferent to teasing of a disabled child and the abuse is so severe that the child can derive no benefit from the services that he or she is offered by the school district, the child has been denied a FAPE." (*M.L.*, *supra*, 394 F.3d 634, 650-651 citing *Davis v. Monroe County Bd. of Educ.* (1999) 526 U.S. 629, 633 [119 S.Ct. 1661, 143 L.Ed.2d 839]. [holding that to violate Title IX "harassment ... [must be] so severe, pervasive, and objectively offensive that it effectively bars the victim's access to an educational opportunity or benefit."].)

ISSUE 1(A): DISTRICT'S RESPONSE TO STUDENT'S TREATMENT BY CLASSMATE

12. Student established five acts of violence against him by Classmate in the 2014-2015 school year: a punch to the eye on October 7th, a punch to the stomach approximately a week later, being thrown to the ground in Mid-November, being again

struck in the head on January 14th, and being struck in the head with a wooden block on February 9th.

13. Both Student and Classmate were kindergarten students. As such, a significant part of their educational and social growth is learning that aggressive physical contact is an unacceptable means of communication. All the educators that testified made clear that children at that age need to be taught to use words and not their hands to gain someone's attention. Physical contact that is unacceptable in higher grades and which would be grounds for suspension is commonplace in kindergarten.

14. Classmate's more severe degree of autism prevented him from being able to express himself with words. The impact of Classmate's autism was such that Ms. Hartman did not believe he should be educated in a general education classroom. He expressed himself by improper behaviors such as biting, pulling, and hitting.

15. Student and Classmate were friends, even after Student had been the recipient of violent acts by Classmate. Student's teacher, his Principal, his Mother, and his siblings were all unable to get him to avoid Classmate. Student believed Classmate was his friend and a good kid. He continued to seek out Classmate, despite Classmate's conduct toward him.

16. The physical acts committed on Student meet the definition of bullying which appears in the suspension section of the Education Code, in that repeatedly being struck by another person could reasonably be predicted to cause a fear of harm. However, rote application of the definition does not resolve the matter. Although present in the Education code, the definition is not clearly intended to apply to all analyses of bullying behavior.

17. Other definitions in use in the educational setting require more to establish that certain behaviors constitute bullying. One element cited by OSERS and the American Medical Association is that there be a power imbalance between the bully, or

group of bullies, and the victim. Testimony established that Student and Classmate were roughly equal in size.

18. Similarly, the frequency of the bullying events is material. The Education Code, OSERS, and the American Medical Association all include the characterization that the bullying be "repeated." Student argues that he has been subjected to "five months" of bullying and "multiple" attacks. The record initially contained two blows in October and a take-down in November. The next event was a punch to the head in January. Following that event, Parent raised the issue of bullying at the February 3, 2015 IEP team meeting and was told that District would keep Student safe and that there was no need to remove Classmate from the class. Less than a week later, Classmate struck Student with a block, and was moved out of Student's class.

19. Ms. Hartman and Ms. Parker intervened with both boys following the October incidents. The record indicates that Ms. Hartman handled the November incident herself. No further incidents occurred until mid-January, when Student was hit again. Ms. Hartman and Ms. Parker again met with Classmate. District separated Classmate from Student following the final incident in February.

20. Incidents between Student and Classmate were not frequent. Two punches occurred in succession and were followed fairly quickly by the line incident in November. Although the third incident is different in nature and relatively minor, at this point a pattern may be indicated. However, approximately two months went by without incident. When a fourth event takes place, staff intervenes and, at a previously-scheduled IEP meeting, Parent raises the issues of bullying and safety. District took appropriate action when a further incident occurred after a month after the last one.

21. Five incidents in six months of school do not amount to "frequent", and the sporadic nature of the events prevents a finding that the assaults were "regular and repeated." None of the acts were particularly severe, aside from possibly the final hit,

which was delivered with a wooden block and which prompted District to act.

22. Student argues that the intent of the perpetrator does not matter to a determination of whether bullying took place. Student is correct only so far as he is arguing it does not matter to a finding of whether a disabled student was denied a FAPE whether or not the bullying was related to the student's disability. (OSERS letter, 61 IDELR 263 *2) Although the suspension section of the Education Code lacks an intent requirement, the Department of Education and the American Medical Association require intent to harm or disturb the victim.

23. Classmate was essentially non-verbal, and was of an age where he was just learning that striking others for any reason was unacceptable. The evidence at hearing established that it was typical for such children to resort to physical means to get the attention of others. No evidence was presented indicating that Classmate intended to harm, intimidate, control, or otherwise assert himself against Student. Unable to express his feelings verbally, Classmate would inappropriately strike or pull Student.

24. Student did not perceive Classmate as threatening. Mother's testimony established that Student did not see Classmate as dangerous, and that Student wished to be allowed to continue to play with Classmate. Student believed that Classmate was a good kid and his friend.

25. Classmate did not bully Student. It is not at issue here whether District made an adequate response to Mother's legitimate concerns for her son's safety, but whether the District allowed bullying to take place. District staff did not ignore bullying.

26. Further, Student has not carried his burden to show that Classmate's actions interfered with his education. To the extent that Student did not meet his safety goals, the attraction of Classmate was a symptom of that shortcoming, not a cause. Student did not suffer adverse educational consequences as a result of the alleged bullying.

27. Ms. Hartman credibly testified that Student made substantial academic progress and met his IEP safety goals. She saw no decline in his behavior over the year and no change in his academic achievement.

28. Mother reported a different scenario at home. She believed that Student became aggressive, anxious, and unwilling to do homework or go to school over the course of the year. The specific behaviors she described, however, manifested themselves mostly in April and May, after Classmate was moved from Student's class. Although it is not impossible that they were caused by lingering trauma from his treatment by Classmate, the other facts and Student's reported behaviors during the relevant time period makes that unlikely. Again, Student's classroom performance was unchanged.

29. One reported event appears to tie Classmate's acts to Student's unwillingness to go to school: his statements in the car toward the end of the 2014-2015 school year that he did not want to go to school and that Classmate had hit him. This, however, does not show that Student was unwilling to go to school because he was afraid of being bullied. The risk of assault by Classmate had by that time had long been removed, and it is equally possible that Student did not want to go to school because he could not play with his friend, who had been taken away because he had hit Student.

30. Student has not established by a preponderance of the evidence either that he was bullied at school or that District failed to react appropriately to bullying, thereby interfering with his education or resulted in the loss of an educational benefit so as to deprive him of a FAPE.

PROCEDURAL VIOLATIONS

31. Procedural violations of the IDEA only constitute a denial of FAPE if they: (1) impeded the student's right to a FAPE; (2) significantly impeded the parent's

opportunity to participate in the decision making process; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2); *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.)

PRIOR WRITTEN NOTICE

32. The IDEA contains a procedural notice provision that requires an educational agency to provide "prior written notice" whenever the agency proposes or refuses to initiate or change "the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education." (20 U.S.C. §1415(b)(3); see also 34 C.F.R. § 300.503(a); Ed. Code, § 56500.4, subd. (a).) An appropriate prior written notice must contain (1) a description of the action proposed or refused by the agency, (2) an explanation for the action, and (3) a description of the assessment procedure or report which is the basis of the action. (34 C.F.R. § 300.503(a); Ed. Code, § 56500.4, subd. (b).) An IEP document can serve as prior written notice as long as the IEP contains the required content. (71 Fed.Reg. 46691 (Aug. 14, 2006).) The procedures relating to prior written notice "are designed to ensure that the parents of a child with a disability are both notified of decisions affecting their child and given an opportunity to object to these decisions." (*C.H. v. Cape Henlopen School Dist.* (3rd Cir. 2010) 606 F.3d 59, 70.)

ISSUE 1(B): NO WRITTEN RESPONSE TO PARENT'S REQUEST TO CHANGE STUDENT'S EDUCATIONAL PLACEMENT

33. Parent's counsel made a written request to District on February 9, 2015, to place Student at The Help Group and assign him a classroom aide for his safety. Parent informed the District that she believed these changes were necessary to provide Student a FAPE. No written reply was received by her to this request from the District. Parent

contends that the failure of District to respond in writing caused her to lack certainty of District's rejection of her request for a non-public school placement and deny her the opportunity to unilaterally change Student's placement.

34. Following Parent's written request, District held an IEP meeting on February 17, 2015, to discuss Student's services, safety, and placement. Parent, counsel, and Student's advocates thereby had full opportunity to discuss those issues with District and challenge the adequacy of District's response. The IEP team did not agree to place Student at The Help Group or other non-public school. To the extent that the resulting IEP offer document was not a procedurally sufficient written response to those requests, any violation caused thereby was not sufficient to impede Student's right to a FAPE, significantly impede Parent's opportunity to participate in the decision making process, or cause a deprivation of educational benefits. Parent knew at the end of February 17, 2015 IEP team meeting that District was not going to offer the requested placement and its reasons for the decision.

REQUESTS FOR IEP TEAM MEETINGS

35. An IEP team meeting requested by a parent shall be held within 30 days, not counting days between the pupil's regular school sessions, terms, or days of school vacation in excess of five school days, from the date of receipt of the parent's written request. (Ed. Code, §56343.5.) If a parent makes an oral request, the local educational agency shall notify the parent of the need for a written request and the procedure for filing a written request. (*Ibid.*) Failure to do so is a procedural violation of the IDEA.

ISSUE 1(C): NO RESPONSE TO PARENT'S REQUEST FOR AN IEP MEETING

36. Parent asserted that she was not informed how to make a written request for an IEP meeting. She has presented no evidence that she made an oral IEP request which was denied or that her written request was denied because of some inadequacy.

37. The record indicates that Parent's written request for an IEP team meeting was not received by Ms. Valamehr. It appears the request was lost or mishandled. However, Mother made a contemporaneous request to Ms. Valamehr to have Student assessed for a disability, which Mother knew would trigger an IEP team meeting. The assessment request was received, responded to, and did in fact cause District to convene an IEP team meeting without undue delay, which occurred on February 3, 2015, in which Parent's concerns about Classmate, which prompted the November 2014 IEP team request, were discussed.

38. To the extent that any failure to respond to Parent's written request for an IEP meeting is the fault of District, any procedural violation committed thereby was not sufficient to impede Student's right to a FAPE, significantly impede Parent's opportunity to participate in the decision making process, or cause a deprivation of educational benefits. Given that Mother was in active contact with District staff during that time regarding holding an IEP meeting and that District convened a meeting to discuss the assessment results and other concerns Parent had regarding Student's education not long after any IEP team meeting would have been held in response to Parent's request, any likelihood that any harmful delay was caused by District's failure to respond is remote.

ORDER

All relief sought by Student is denied.

PREVAILING PARTY

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

RIGHT TO APPEAL

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

DATED: November 5, 2015

/s/

CHRIS BUTCHKO

Administrative Law Judge

Office of Administrative Hearings