

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

SEQUOIA UNION HIGH SCHOOL
DISTRICT.

OAH Case No. 2017050461

DECISION

Parents, on behalf of Student, filed a due process hearing request with the Office of Administrative Hearings, State of California, on May 9, 2017, naming Sequoia Union High School District.

Administrative Law Judge Rebecca Freie heard this matter in Redwood City, California on July 6, 2017.

Thomas Beltran, Attorney at Law, represented Student. Father attended the entire hearing. Mother and Student attended the hearing for part of the morning.

Matthew Tamel, Attorney at Law, represented Sequoia.¹ Deborah Toups, Sequoia's Executive Director of Special Education, attended the hearing on its behalf.

The parties asked to file written closing arguments, and a continuance was

¹ In this Decision, Sequoia refers to the school district, not to Sequoia High School.

granted until July 24, 2017, to allow them to do so. Upon receipt of the written closing arguments, the record was closed and the matter was submitted for decision on July 24, 2017.

ISSUE

Did Sequoia deny Student a free appropriate public education because it refused to provide him with transportation to and from his high school as required by his individualized education program for the 2017-2018 school year?

SUMMARY OF DECISION

Student claims Sequoia denied him a FAPE because it refused to provide transportation to and from Woodside High School where an individualized education program team, which included Sequoia, had placed him in an Independent Living Skills special day classroom.² Sequoia did not refuse to provide Student transportation to Woodside. A formal offer of placement at Woodside and transportation to and from Woodside was made in an IEP developed at an IEP team meeting on May 19, 2017, and finalized at a meeting involving personnel from several school districts, including Sequoia, on June 8, 2017. Sequoia has offered to pick up Student each day at his home, transport him to Woodside with an aide, and then transport him home at the end of the school day for the 2017-2018 school year. There was no evidence that Sequoia refused to provide these services, although Parents have not yet consented to the offer, and therefore there is no denial of a FAPE.

² Unless otherwise specified, all references to "Woodside" that follow refer to the Independent Living Skills program special day class located on the campus of Woodside High School, a comprehensive high school that is part of Sequoia.

FACTUAL FINDINGS

JURISDICTION

1. Student resided with Parents in the Menlo Park City Elementary School District at the time of hearing and has done so at all times encompassed by this Decision. Student has been eligible for special education since the age of three under the category of multiple disabilities, with a secondary eligibility category of vision impairment. Student has been diagnosed with multiple medical conditions that have seriously impacted his health. As a result, he has endured multiple hospitalizations, and has both physical and developmental delays. He has an intellectual disability, a compromised immune system, issues with coordination and balance, and a genetic disorder that has caused him to go into organ failure three times, as well as other medical issues. He is vision impaired, and his hearing is also somewhat impaired due to multiple ear infections. Student is very short (the size of an eight or nine year old), although he was almost fifteen years old at the time of the hearing.

2. Student attended a special day class in the Menlo Park Elementary District from kindergarten until sixth grade. At that time, his IEP team observed that the students in the class were not as verbal as he was, so it was decided that a special day class at a middle school in the Las Lomas Elementary School District would be more appropriate for him.³ Both Menlo Park, and Las Lomas, are part of the same Special Education Local Plan Area. These elementary school districts serve students from kindergarten through eighth grade. They are “feeder” districts for Sequoia, which is a district comprised of several high schools that serve students from several San Mateo County elementary school districts.

³ All references to Menlo Park and Las Lomas that follow refer to the elementary school districts.

3. Student attended a special day class at in a Las Lomitas middle school from the 2014-2015 school year, when he was in sixth grade, through the 2016-2017 school year, when he was in eighth grade. He will transition into Sequoia at the beginning of the 2017-2018 school year as a high school student.

STUDENT'S NEED FOR TRANSPORTATION AS A RELATED SERVICE

4. It was a struggle for Parents to get Student to his middle school. He was resistant to getting into the car, and on occasion opened the door while the car was moving in an attempt to escape. When he arrived at school and his classroom, he would settle into the routine, with the assistance of his one-to-one paraprofessional. Student wore a harness to keep him in place when he was transported by school bus or van, and he was accompanied by a paraprofessional during the ride to school in the morning. There was no need for a paraprofessional to accompany Student on the ride home because Student knew he was going home, and wanted to be there. The bus ride facilitated his transition from home to school, and Parents believe he requires this mode of transportation to maximize his participation at school even now.

FALL 2016

5. In the fall of 2016, all families of eighth grade students residing within the boundaries of Sequoia, both general education and special education students, received a leaflet from Sequoia which contained a flow chart showing the process for enrolling their child in Sequoia for ninth grade. All students, whether they were general education or special education students, were required to go through this process. The first step required parents to complete an Address Verification Form, and to present the form, with independent verification of address, to Sequoia. The form would then be returned to the parent with the name of the high school the student would be expected to attend, based on where the family resided.

6. Every comprehensive high school within Sequoia's boundaries has an Independent Living Skills special day class. This is the logical program for students transferring into Sequoia high schools from special day classes such as the one Student attended in Las Lomas.

7. The Address Verification Form was returned to Parents, indicating that Student's school of residence was Menlo-Atherton High School.⁴ Student's special day class from Las Lomas toured the Woodside special day class, because Las Lomas is a feeder district for Woodside. Parents toured the Independent Living classrooms at both Woodside and Menlo-Atherton in December 2016, or January 2017, and decided that Student should attend Woodside's Independent Living Skills special day class. Parents believed the Woodside classroom was a better fit because the students in the Independent Living Skills classroom at Menlo-Atherton were all much larger than Student, and seemed to be more physically active. The Woodside Independent Living Skills classroom had more physically disabled students, including some in wheelchairs (which enabled Student to communicate with them eye-to-eye), and also appeared to be at an academic level better suited to Student. In addition, most if not all, of Student's Las Lomas special day class would be going to Woodside and he had very good relationships with these peers.

8. After deciding that Student should be placed in the Woodside special day class, Parents looked at the next step on the Sequoia enrollment flow chart. This step was labeled "optional" on the flow chart, and required parents to go online to enroll their child via the open enrollment process in the high school they selected. The second

⁴ Unless otherwise specified, all references to "Menlo-Atherton" that follow refer to the Independent Living Skills program special day class located on the campus of Menlo-Atherton High School, a comprehensive high school that is part of Sequoia.

step of this online open enrollment process required the parents of a student enrolling in a school that was not the school of residence to agree that they would not require Sequoia to provide round-trip home to school transportation for their child. Parents did not contact anyone at Sequoia to discuss this requirement, although IEP documents and the testimony of Father and other witnesses established that Parents have been active participants in the IEP development process. Student's current IEP provided for round-trip transportation as a related service, and therefore Parents believed that this step of the enrollment process was not applicable to Student. Accordingly, Parents discontinued the online open enrollment process.

IEP TEAM MEETING ON JANUARY 31, 2017

9. An IEP team meeting was held on January 31, 2017, which included Father, a representative from Menlo Park, and representatives from Las Lomitas.⁵ No one from Sequoia attended the meeting. Although Student represented in his complaint, at hearing, and in his closing brief, that the IEP document which resulted from this meeting formally placed him at Woodside for the 2017-2018 school year, and required Sequoia to transport him from home to school and back, this was not established by the evidence. The IEP documents from this meeting show that this was a continuation of Student's annual IEP team meeting held on May 5, 2016, and Father gave consent to this May 2016 IEP, at this meeting on January 31, 2017.

10. At the IEP team meeting on January 31, 2017, placement for the 2017-2018 school year was discussed, and the team agreed that the Woodside special day class was a better fit for Student than Menlo-Atherton. The team also discussed Student's need for transportation to and from Woodside as part of a placement offer.

⁵ It was unclear whether the IEP team meeting was convened by Menlo Park or Las Lomitas, or whether Parents asked for the meeting.

However, the IEP documents from that meeting that were introduced into evidence do not reflect a formal offer of placement of Student in the Woodside special day class for the 2017-2018 school year, and the related service of transportation to and from Woodside. The placement and services offered on the formal offer pages of the IEP show placement and services in a "[s]eparate classroom in public integrated facility," and show this placement and services ending in May, 2017, when Student's next annual IEP team meeting was due to be held. In addition, the IEP addendum of January 31, 2017, offers services Student would receive during the extended school year in Las Lomitas, and show this placement and services ending in July 2017. Woodside is not named on any of the offer pages; it is named only in the IEP notes of the meeting.

11. Following the IEP team meeting on January 31, 2017, Ginnie Maiwald, a Menlo Park representative on Student's IEP team, telephoned Dr. Toups, Sequoia's Executive Director of Special Education and left her a telephone message. She then sent an email to Dr. Toups advising her that an IEP team meeting had just ended concerning Student and she had left Dr. Toups a telephone message and wanted to speak to Dr. Toups in person. In the email Ms. Maiwald told Dr. Toups that Parents had visited both schools' programs and the IEP team concurred with them that "LRE [least restrictive environment] for [Student] is the program at Woodside."

12. Dr. Toups responded to Ms. Maiwald's email a few minutes later and first said she was sending a copy of the email to the Woodside special education staff member who handled the details for special education students placed there so that person could help Ms. Maiwald. Dr. Toups then wrote:

Since Woodside is not the SOR [school of residence], the parent will have to apply for Open Enrollment which ends Friday. We do not place students at other sites through the IEP unless we do not have that service at their SOR. Since all

of the sites have ILS [Independent Life Skills] classes, a parent would need to go through OE [open enrollment]. If she chooses OE then regardless of what is on the IEP, the student is not eligible for transport to Woodside, only to MA [Menlo Atherton]."

13. Dr. Toups responded in this manner because she did not understand that Parents and the IEP team had specific reasons related to Student's unique needs for wanting him to attend Woodside rather than Menlo-Atherton. Sometimes special education students are placed in programs at a school which is not the school of residence, and transportation is provided. For example, a student who was the victim of bullying at his school of residence was placed at another school and transportation was provided. The evidence established that this email from Dr. Toups was not a final decision by Sequoia that it would not provide transportation to Student if he attended Woodside, rather than Menlo-Atherton.

14. Parents received a copy of Dr. Toups's email the day it was sent. They took no further steps to complete the open enrollment process for Student to attend Woodside. The testimony of witnesses and IEP documents demonstrated that Parents, particularly Father, were active and knowledgeable participants in the IEP development process, but they did not contact anyone at Sequoia to discuss the transportation issue, should Student enroll at Woodside, nor did they ask anyone from Menlo Park or Las Lomas to do so. Instead Student filed his complaint naming Sequoia on May 9, 2017.

ANNUAL IEP TEAM MEETINGS IN MAY 2017

15. Student's last annual IEP team meeting had been held May 5, 2016, although it was not consented to until the January 31, 2017 IEP team meeting. Therefore, Menlo Park was required to convene an annual IEP team meeting by May 4,

2017. The IEP at issue in this matter has this date, although Parents did not attend an IEP meeting on this date. Instead, unnamed team members attended a meeting on this date to review completed triennial assessments of Student, and to discuss his present levels of performance. The timeliness and attendance at the meeting on May 4 is not at issue in this case.

16. Menlo Park then convened a second IEP team meeting on May 19, 2017, to plan for the 2017-2018 school year. The IEP team consisted of Parents; Jennifer Lutton, Parents' advocate, who had also been one of Student's sixth-grade teachers at Las Lomas; a representative from Menlo Park; representatives from Las Lomas; four staff members from Menlo-Atherton; and Jennifer Roberts, a Sequoia program specialist.

17. The Sequoia IEP team members were at the May 19, 2017 IEP team meeting, since this was not only Student's annual IEP, but also the meeting where a transition IEP would be developed for him to transition into Sequoia for high school. It was customary for Sequoia personnel to attend IEP team meetings that were held at the end of every February or later for special education eighth grade students in feeder schools who would be transitioning into Sequoia for the following school year.

18. Student's triennial assessments were discussed at the May 19, 2017 IEP team meeting, and goals were proposed related to those assessments. However, there was not time for every assessment to be discussed, nor was there time for a formal placement offer to be made.

19. During the IEP team meeting, Parents explained to the IEP team why they, Menlo Park, and Las Lomas team members believed Woodside was a better fit for Student than Menlo-Atherton, why Woodside was better suited to meet Student's unique needs, and why transportation by Sequoia to and from this placement was necessary. Although the transcribed notes for that IEP team meeting do not reflect the

transportation discussion, Father, Ms. Roberts, and Ms. Lutton all testified credibly that this occurred.⁶

20. Ms. Roberts attended the IEP team meeting as the administrative designee for Sequoia. She had arranged for special education personnel from Menlo-Atherton to attend because that was Student's school of residence. Like Woodside, Menlo-Atherton had its own Independent Living Skills program and special day class. Ms. Roberts was unaware that Parents, Menlo Park, and Las Lomas wanted and expected Student to attend Woodside as an IEP placement, because it met his unique needs, not because Parents chose Woodside as their personal preference for Student. If Parents had chosen Woodside for personal reasons they would have been required to go through the open-enrollment process, and then a transportation waiver would have been required.

21. Sometime after the IEP team meeting on May 19, 2017, Ms. Roberts met with Dr. Toups and told her about the placement and transportation discussion that occurred at that IEP team meeting. Ms. Roberts's testimony was given great weight. She came to testify at the hearing after a morning in the emergency room where her significant other was being treated following a traffic accident, but her testimony was clear and direct, and obviously unrehearsed. The testimony of Father and Ms. Lutton corroborated much of Ms. Roberts's recollections of the conversation during the IEP team meeting. Based on this discussion, Dr. Toups and Ms. Roberts determined that Woodside could better meet Student's needs, and agreed that Sequoia should provide student with transportation to and from this placement.

22. The IEP team meeting of May 19, 2017, ended before the team had

⁶ Two Las Lomas staff members took notes for the May 2017 IEP team meeting. Usually, IEP notes were handwritten and then subsequently transcribed by a special education secretary at Las Lomas.

reviewed all of the triennial assessment reports. Therefore, the team made no formal offer of placement for the 2017-2018 school year. A tentative date of June 2, 2017, was discussed for a continuation of the meeting, but not all team members were able to attend on this date, so a tentative date of June 8, or 9, 2017, was then discussed. Father notified Las Lomitas on June 2, 2017, via email, that he was unavailable for either date, but questioned whether Parents' presence was really necessary since they had reviewed the written assessment reports that had not previously been discussed. Specifically he wrote, "Is it possible to do the remainder by written report (and get proposed goals in the areas that we hadn't covered), or otherwise, kindly suggest other approaches." Therefore, on June 8, 2017, Dr. Toups, and staff from Menlo Park and Las Lomitas met and developed a final draft IEP with a formal offer of placement and services for the 2017-2018 school year. The IEP offer stated that Woodside would be Student's placement, and also stated that transportation would be provided. Dr. Toups notified the enrollment office that Student was enrolling at Woodside pursuant to his IEP on June 14, 2017, and he would not be enrolling at Menlo-Atherton.

23. On June 14, 2017, Dr. Toups also wrote a letter to Parents. In the first paragraph of the letter, she informed them that Student was placed at Woodside for the 2017-2018 school year. In the letter she also stated that Sequoia would be providing transportation for that placement, as well as providing aide support for Student on the bus in the morning, as was provided when Student attended middle school.

24. Before sending the letter, Dr. Toups discovered that no one had sent Parents a copy of the final IEP draft from June 8, 2017, so she decided to enclose it with the letter. The last paragraph of the letter informed Parents that the final IEP document was enclosed, and Dr. Toups told them that the IEP needed to be signed so it could be implemented when school started on August 16, 2017.

25. Parents did not receive Dr. Toups's letter until June 28, 2017. After

receiving the letter, they reviewed the enclosed IEP. They were concerned that the IEP did not provide Student with aide services on the bus. However, the previous IEP from May 2016, as amended on January 31, 2017, merely stated that Menlo Park would provide transportation to Student for middle school, and said nothing about aide support for transportation purposes.

26. Father testified at hearing that Parents did not agree with the IEP developed in May and June 2017, but was not specific as to which parts they disagreed. Parents interpreted the last paragraph of Dr. Toups's June 14, 2017 letter, as imposing a condition that they had to agree to the IEP in its entirety for Student to be placed at Woodside. However, a plain reading of the letter, and specifically the last paragraph of the letter, does not confirm this mistaken belief. In addition, the box on the page of the IEP document where parents sign to show consent or lack of consent to a proposed IEP also contains a space where they can sign consent to an IEP and write in exceptions to the consent for certain parts of the IEP.

LEGAL CONCLUSIONS

INTRODUCTION: LEGAL FRAMEWORK UNDER THE IDEA⁷

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 et seq. (2006);⁸ 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

⁷ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

⁸ All citations to the federal regulations are to the 2006 version.

education and related services designed to meet their unique needs and prepare them for further education, 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 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 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)(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.

4. In *Endrew F. ex rel., Joseph F. v. Douglas County School Dist.* (2017) 580

U.S. ___, 137 S.Ct. 988, 996, the Supreme Court clarified that “for children receiving instruction in the regular classroom, [the IDEA’s guarantee of a substantively adequate program of education to all eligible children] would generally require an IEP ‘reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.’” For a case in which the student cannot be reasonably expected to “progress smoothly through the regular curriculum,” the child’s educational program must be “appropriately ambitious in light of [the child’s] circumstances” (*Ibid.*) The IDEA requires “an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” (*Id.* at 1001.) Importantly, “[t]he adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.” (*Ibid.*)

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) & (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. 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387];.) In this matter, Student had the burden of proof on the sole issue decided.

IS SEQUOIA REFUSING TO PROVIDE STUDENT WITH TRANSPORTATION TO AND FROM WOODSIDE, THUS DENYING HIM A FAPE?

6. Student contends that the IEP addendum of January 31, 2017, was an offer of placement at Woodside, and transportation to and from Woodside was to be provided as a related service. However, Student argues, Dr. Toups’s email of January 31,

2017, unequivocally denied Student transportation to Woodside, pursuant to Sequoia's policy, because his school of residence also had an Independent Living Skills program with a special day class. Student claims that Sequoia is obligated to implement the IEP of January 31, 2017 as an offer of placement at Woodside with the related service of transportation. He also chafes against the request that Parents sign the IEP developed on May 19, and June 8, 2017, in part because Parents did not attend the June 8, 2017 meeting. When he testified, Father also complained that this IEP reduces services to Student. Finally, Student argues that two motions to dismiss his complaint filed by Sequoia also show a refusal to provide transportation, but this conflation of Sequoia's legal strategies with the matter at issue is meritless.

7. Sequoia, like Student, claims that the IEP of January 31, 2017, constituted an offer of placement at Woodside with transportation. It argues that until that time, Woodside was a choice of placement Parents were making which required enrollment via the open enrollment process, and thus Sequoia would not be obligated to provide transportation. Once Woodside became an IEP team placement, not a parent-choice placement, Sequoia acknowledged that it would be required to provide transportation, and Sequoia never refused to transport Student to Woodside under those circumstances. Sequoia also claims that it did not require Parents to sign consent to the IEP developed in May and June 2017, as a condition of placing Student at Woodside, and providing him with round-trip transportation.

Transportation as a Related Service

8. Related services must be provided if they are required to assist the child in benefiting from special education. (Ed. Code, § 56363, subd. (a).) The term "related services" includes transportation and other developmental, corrective, and supportive services as may be required to assist a child to benefit from education. (20 U.S.C. § 1401(26); Ed. Code, § 56363.) An educational agency satisfies the FAPE standard by

providing adequate related services such that the child can take advantage of educational opportunities. (*Park, ex rel. Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1033.)

9. The IDEA regulations define transportation as: (i) travel to and from school and between schools; (ii) travel in and around school buildings; and (iii) specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide transportation for a child with a disability. (34 C.F.R. § 300.34(c)(16).) The IDEA does not explicitly define transportation as door-to-door services. Decisions regarding such services are left to the discretion of the IEP team. (Analysis of Comments and Changes to 2006 IDEA Part B Regulations, 71 Fed.Reg. 46576 (August 14, 2006).)

10. A school district must provide transportation to disabled students if it provides transportation to non-disabled students. If a school district does not provide transportation to non-disabled students, “the issue of transportation to students with disabilities must be decided on a case-by-case basis. If a [school district] determines that a disabled student needs transportation to benefit from special education, it must be provided as a related service at no cost to the student and his or her parents.” (*Letter to Smith*, (23 IDELR 344 [23 LRP 3398].)

11. Although the Ninth Circuit has not specified criteria for determining whether a child needs transportation as a related service, other Circuits have offered some guidelines that are useful in evaluating this case. Relevant factors include, at least: (1) the child’s age; (2) the distance the child must travel; (3) the nature of the area through which the child must pass; (4) the child’s access to private assistance in making the trip; and (5) the availability of other forms of public assistance in route, such as crossing guards or public transit. (*Donald B. By and Through Christine B. v. Board of School Com’rs of Mobile County, Ala.* (11th Cir. 1997) 117 F.3d 1371, 1375.) The Eighth Circuit has twice considered requests for transportation for students with disabilities and

twice concluded that “a school district may apply a facially neutral transportation policy to a disabled child when the request for deviation from the policy is not based on the child’s educational needs, but on the parents’ convenience or preference.” (*Fick ex rel. Fick v. Sioux Falls School Dist.* 49-5 (8th Cir. 2003) 337 F.3d 968, 970, citing *Timothy H. v. Cedar Rapids Cmty. School Dist.* (8th Cir. 1999) 178 F.3d 968, 973; see also *Anchorage School Dist. v. N.S. ex rel. R.P.* (D. Alaska, Nov. 8, 2007) 2007 WL 8058163, at *10 [district responsible for pushing student’s wheelchair from the curb to the front door of his home because door-to-door service was not “based on the guardians’ mere convenience of [sic] preference” where “[b]oth guardians work full time . . . and are unavailable to push [the student] up the ramp at the end of his day.”].)

IEP’s and Placement Offers

12. The IEP is the “centerpiece of the [IDEA’s] education delivery system for disabled children” and consists of a detailed written statement that must be developed, reviewed, and revised for each child with a disability. (*Honig v. Doe* (1988) 484 U.S. 305, 311 [108 S.Ct. 592, 98 L.Ed.2d 686]; 20 U.S.C. §§ 1401 (14), 1414 (d)(1)(A); Ed. Code, §§ 56032, 56345.) It is the “modus operandi” of the IDEA, “a comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs.” (*School Comm. of Town of Burlington, Mass. v. Department of Educ.* (1985) 471 U.S. 359, 368 [105 S.Ct. 1996].)

13. An IEP is a written statement that includes a statement of the present performance of the student, a statement of measurable annual goals designed to meet the student’s needs that result from the disability, a description of the manner in which progress of the student towards meeting the annual goals will be measured, the specific services to be provided, the extent to which the student can participate in regular educational programs, the projected initiation date and anticipated duration, and the procedures for determining whether the instructional objectives are achieved. (20 U.S.C.

§ 1414 (d)(1)(A)(i),(ii); 34 C.F.R. § 300.320(a)(2), (3); Ed. Code, § 56345, subds. (a)(2), (3).) In *Union School Dist. v. Smith* (1994) 15 F. 3d 1519, cert. den., 513 U.S. 965 (*Union*), the Ninth Circuit held that a district is required by the IDEA to make a clear, written IEP offer that parents can understand.

Analysis

14. Student's contentions are unmeritorious and he did not meet his burden of demonstrating that Sequoia refused to provide him with transportation to Woodside, and his requests for relief are denied.

15. The Sequoia brochure outlining the enrollment process that Parents received at the beginning of the 2016-2017 school year was designed to inform families how to ensure their eighth grade children would be enrolled in a Sequoia high school for ninth grade, whether they were enrolled in general education or special education. Parents determined in the fall and winter of the 2016-2017 school year that they wanted Student to attend Woodside, rather than Menlo-Atherton, Student's school of residence. After Parents went online to attempt to enroll Student at Woodside via the intra-district enrollment process, and read the requirement that transportation be waived for intra-district transfer students, they made no effort to directly contact Sequoia to find out if this requirement applied to students with IEP's who were being placed at a school other than the school of residence pursuant to an IEP. Instead, Father and members of the IEP team from Las Lomitas and Menlo Park discussed placement at Woodside at the IEP team meeting on January 31, 2017, and Parents then assumed that reference to this discussion in the notes of the meeting contained in the IEP, actually constituted a formal offer of placement at Woodside. Sequoia came to believe this also, once it reviewed the January 31, 2017 IEP, even though Sequoia had not been invited to and had not participated in that IEP team meeting

16. The IEP of January 31, 2017, did not place Student at Woodside, or at any

other Sequoia high school. No such placement is reflected on the offer pages that are part of the IEP document. Further, with the exception of extended school year services, which ended in July 2017, the end date for placement and all services on the offer pages ended in May 2017, when Student's next annual IEP team meeting would be held.

17. Every Sequoia high school contains an Independent Living Skills special day class. Therefore, most of the students who required such a placement could attend the special day class with this program at their school of residence. Dr. Toups testified that when she wrote the email of January 31, 2017, she believed Woodside was recommended based on Parent choice, not on Student's needs. Dr. Toups testified in an open and transparent manner and gave answers that were reasonable and spontaneous. Her testimony was very credible. Dr. Toups's January 31, 2017, email explained the general policy for Students (even with IEP's) who chose to attend a school other than their school of residence, are not provided with transportation, and must waive it in the open-enrollment process. However, this policy did not apply to a student who is placed by way of an IEP at a high school not the school of residence because that school can meet the student's unique needs.

18. The IEP documents admitted into evidence, as well as Father's testimony and that of other witnesses, established that Parents were active and knowledgeable participants in the IEP process. However, Parents made no effort to contact Sequoia to determine if there was an exception to the transportation waiver if a student was placed at a school that was not the school of residence pursuant to an IEP, because the other school better met the student's unique needs. Nor did they ask someone from Las Lomitas or Menlo Park to do so. Instead, more than three months after seeing the copy of Dr. Toups's email of January 31, 2017, Parents filed their request for due process with OAH.

19. The IEP team meeting of May 19, 2017, was not only Student's annual IEP

meeting, but also the transition IEP team meeting at which student's placement as a Sequoia student for the upcoming school year would be discussed. Transition IEP team meetings for students transferring into Sequoia from a feeder elementary school district do not begin to take place until the end of February. Ms. Roberts was unaware before the meeting that Parents believed the program at Woodside would meet Student's needs better than Menlo-Atherton, Student's school of residence, so she arranged for Menlo-Atherton special education staff to attend the IEP team meeting, rather than staff from Woodside.

20. When the May 19, 2017 IEP team meeting ended, no decision had been made concerning placement of Student. After the IEP team was unable to reconvene on June 2, 2017, as discussed on May 19, 2017, Father effectively consented to the IEP draft document being finalized without Parents being present in his email of June 2, 2017. After the IEP team meeting of May 19, 2017, Ms. Roberts met with Dr. Toups and conveyed her opinion that, based on Parents' input at the IEP team meeting, Student should be placed at Woodside, not Menlo-Atherton, and that transportation be provided. Therefore, the final IEP document finished on June 8, 2017, reflects an offer of placement at Woodside, and transportation as a related service. Dr. Toups notified the Sequoia enrollment office that Student was placed at Woodside on June 14, 2017, and Student is enrolled now as a Woodside pupil.

21. Other than Father's testimony, there was no evidence to support Student's contention that placement at Woodside was contingent on Parents consenting in full and without reservation to the IEP developed in May and June 2017. Further, if Parents disagreed with certain provisions of that IEP, the space on the IEP for consent to be given specifically allows parents to sign consent with exceptions.

22. Student has been offered a placement at Woodside pursuant to the IEP developed on May 19, and June 8, 2017. Sequoia has agreed to provide transportation,

and that is stated in the IEP. Aide support in the morning has been guaranteed by Dr. Toups in her letter of June 14, 2017. Student did not meet his burden of persuasion that Sequoia refused, and continues to refuse, to place him at Woodside, and to transport him to and from school there. Student did not meet his burden of persuasion that Sequoia deprived him of a FAPE.

ORDER

All of the 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, Sequoia prevailed on the sole issue heard in this case.

RIGHT TO APPEAL THIS DECISION

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: August 8, 2017

/s/

REBECCA FREIE

Administrative Law Judge

Office of Administrative Hearings