BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. GILROY UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018051153

DECISION

Parents filed a due process hearing request with the Office of Administrative Hearings on May 21, 2018, naming Gilroy Unified School District.[1]

Administrative Law Judge Rita Defilippis heard the matter in Gilroy, California, on July 17, 2018.

Student's father represented Student. Student's mother was present at hearing. OAH provided a Mandarin language interpreter for Parents. Student did not attend the hearing.

Anna Pulido, Director of Student Services, represented Gilroy.

OAH granted a continuance at the parties' request to submit written closing arguments. The parties timely submitted written closing arguments and the record was closed on July 24, 2018.

[1] District filed its response to Student's complaint on July 12, 2018, which permitted the hearing to go forward. (*M.C. v. Antelope Valley Unified Sch. Dist.* (9th Cir.) 858 F.3d 1189, 1199-1200.)

ISSUE

Did Gilroy Unified School District deny Student a free appropriate public education, by failing to implement the June 23, 2017 individualized education program travel agreement by:

a. refusing to reimburse Parents for the cost of round trip airfare for both Parents to attend the Student parent conference; and refusing to reimburse Parents for the cost of rental car tolls to attend the Student parent conference?[2]

SUMMARY OF DECISION

Student proved by a preponderance of the evidence that Gilroy failed to implement the June 23, 2017 IEP travel agreement, by failing to reimburse Parents for the cost of their two round trip plane tickets to attend Student's February 2018 parent conference. Student failed to prove that Gilroy was required by the June 23, 2017 IEP travel agreement to reimburse Parents for eToll car rental fees.

FACTUAL FINDINGS

JURISDICTION

1. Student was an 18-year-old young woman whose parents resided within Gilroy's boundaries during the applicable time frame. Student was found eligible for special education and related services at her IEP team meeting on June 5, 2017, under the eligibility category of emotional disturbance. Pursuant to her IEP, Student was

[2] The issues were reworded for clarity. The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (J.W. v. Fresno Unified School Dist. (9th Cir. 2010) 626 F.3d 431, 442-443.)

placed in a nonpublic, out of state, residential school for the 2017 summer session and the 2017-2018 school year. Parents consented to and signed the IEP.

2. The residential placement was discussed by the IEP team on June 5, 2017. Gilroy offered to provide transportation to and from school, and to create a transportation agreement with Parents. Parents were given the travel agreement, at issue in this case, at the June 5, 2017 IEP meeting. Parents executed the IEP agreement, and it was dated June 23, 2017. The travel agreement is an addendum to the June 5, 2017 IEP. The travel agreement detailed the travel costs for Student and Parents that Gilroy agreed to fund as part of Student's IEP placement.

JUNE 23, 2017 IEP TRAVEL AGREEMENT

3. The relevant portions of the June 23, 2017 IEP travel agreement, items four and five, are set forth below:

Item 4. One (1) parent visit for Fall Family Weekend in October 2017, and one (1) parent visit for Parent conferences in February 2018:

a. (2) Round trip plane tickets for parents not to exceed $600.00 each;
b. (4) Days Rental Car not to exceed $85.00 per day. A $40.00 dollar gas allowance is included;
c. (4) Nights lodging not to exceed $220.00 per night;
d. Airport parking not to exceed $15.00 per day at San Jose Airport; and
e. Round trip mileage to San Jose Airport reimbursed at the IRS rate.

Item 5. One (1) parent round trip for end of school year, and one (1) one-way plane ticket for Student to return home.

a. (2) Round trip plane tickets for parents not to exceed $600.00 each;
b. (1) One-way plane ticket for Student not to exceed $400.00;
c. (4) Days Rental Car not to exceed $85.00 per day. A $40.00 dollar gas allowance is included;

d. (3) Nights lodging not to exceed $220.00 per night;

e. Airport parking not to exceed $15.00 per day at San Jose Airport; and

f. Round trip mileage to San Jose Airport reimbursed at the rate established by United States Internal Revenue Service.

4. Father testified at hearing regarding Parents' and Student's travel and the reimbursements paid by Gilroy pursuant to the travel agreement. His testimony was persuasive and given great weight because he was logical, consistent, and sincere.

5. There was no disagreement regarding Gilroy's travel reimbursements to Parents from summer 2017, up to February 2018. Parents traveled together and were reimbursed for all trips taken, including both of their round trip tickets and car rental charges including eToll expenses. All prior trips reimbursed Parents for two to four days lodging and three to four days of car rentals each.

6. Only the travel reimbursement for expenses incurred by Parents to attend the February 2018 parent conferences, addressed in item four above, is at issue in this case. There is no dispute between the parties that each of the Parent visits to Student's school, referenced in item four, was four days in length. Parents were fully reimbursed for the October Fall Family Weekend, including two round trip tickets and four days of lodging and rental car, including eToll fees.

7. In February 2018, Parents attended Student's parent conference, which was the other trip referenced in item four. To attend the parent conference, Parents purchased round-trip air fare for both of them to travel to Student's school. The tickets for the plane trip to Student's school were $158.20 each, and plane tickets returning home were $248.30 each, for a total air fare cost of $813.00. Parents also rented a car for $180.63. Travel to Student's school required Parents to pay a one dollar toll, which could only be paid electronically through the use of a toll device in the rental car. In addition to the dollar toll, the rental agency also charged Parents an eToll convenience fee of

$15.80. Parents paid both the car rental fee and the toll fees, which were charged separately by the car rental agency.

8. Parents submitted a reimbursement form to Gilroy and documentation of their payment of expenses following their February 2018 trip, which included their request for reimbursement of the two round trip tickets, the car rental, the dollar toll and convenience eToll fee, gas, lodging, a resort fee, and mileage to-and-from the airport. Gilroy reimbursed all requested charges, except Gilroy subtracted $406.50, the cost of one Parent's round trip air fare; $16.80, the cost of a $1.00 toll and a $15.80 eToll convenience fee; and the $6.00 resort fee. Only the deduction of the round trip ticket and the eToll fees are disputed in the present case.

9. After Parents were denied reimbursement for two round trip plane tickets for the February 2018 parent conference, they filed the present case to seek reimbursement. On May 29, 2018, Parents sent an email to Ms. Pulido, Director of Student Services, to clarify whether Gilroy was also going to claim that only one Parent's round trip was going to be reimbursed for the June 2018 end of year trip, reflected in item five a-e of the travel agreement, to pick Student up from her placement. Ms. Pulido sent a response email the same day, claiming that item five also provides for only one parent round trip for the end of the school year.

10. Ms. Pulido testified at hearing. Ms. Pulido was not the director at the time of the June 5, 2017 IEP team meeting, or when the travel agreement was drafted. However she was the director at the time of all of the travel agreement reimbursements to Parents. Ms. Pulido's responses to Parent's questions pertaining to her interpretation of the travel agreement were evasive, inconsistent, and were not corroborated by any other evidence presented at hearing. For those reasons, Ms. Pulido's testimony was not persuasive and was given little weight.

11. Ms. Pulido relied on the initial language of the main headings of item four

and item five of the agreement, to support her conclusion that Gilroy did not intend to fund more than one parent to travel in any given trip to Student's school under the agreement. Item four states, "One (1) parent visit for Fall Family Weekend and One (1) parent visit for Parent conferences in February of 2018". Ms. Pulido testified that item four, subsections a-e are totals of the allowable travel reimbursements for the two trips described in item 4, namely the October Fall Family Weekend and the February Parent Conferences. Therefore, she concluded that a total of two round trip tickets for Parents, four days of car rentals, and four nights of lodging would be reimbursed for the October and February trips combined. Item five states, "One (1) parent round trip for end of school year…". Item five, subsection a states, "(2) Round trip tickets for parents not to exceed $600.00 each."

12. Ms. Pulido had no reasonable explanation for why Gilroy already approved and reimbursed Parents for three round trip tickets and eight days of car rentals and lodging for the two trips in Item four, if Gilroy only intended maximum reimbursement for two parent round trip tickets and four days of car rentals and lodging. Ms. Pulido could also not explain why item five, subsection a reads, "(2) Round trip plane tickets for parents not to exceed $600.00 each", if the travel agreement only allowed for one round trip ticket for one parent. Ms. Pulido mistakenly believed that two round trip tickets meant one round trip ticket. Ms. Pulido's claim that only one Parent's travel expenses per trip were reimbursable under the agreement is therefore rejected as not reasonable and not supported by the express language of the agreement.

13. The express language of the June 23, 2018 IEP travel agreement, consistent with the reimbursements paid to Parents up to the date of the disputed reimbursements, establishes that the word "parent" when used in the main heading of items four and five of the travel agreement referred to both parents. Item four of the agreement combined the Fall Family Weekend visit and the February parent conference

visit because they were each four days in length. That eliminated the need to repeat the details in a separate item. Item four allowed for reimbursement for one parent visit, including both parents, for the Fall Family Weekend and one parent visit, including both parents, for the February parent conference. Subsections a-e of item four set forth the agreed maximum reimbursements for each trip. Subsections a-f of item 5 set forth the maximum reimbursements for the end of the year trip in June, which includes travel expenses for both parents.

LEGAL CONCLUSIONS

LEGAL FRAMEWORK UNDER THE IDEA[3]

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.; Ed. Code, § 56000, et seq.; Cal. Code. Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for higher 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 a parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9)(A-D); 34 C.F.R. § 300.17.) "Special education" is instruction specially designed to meet the unique needs of a child with a

[3] Unless otherwise indicated, the legal citations in this section are incorporated by reference into the analysis of each issue decided below.

disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031, subd. (a).) "Related services" are transportation and other developmental, corrective and supportive services that are required to assist the child to benefit 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 specifies 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 (*Mercer Island*) [In enacting the IDEA, Congress was presumed to be aware of the *Rowley* standard and could have expressly

changed it if it desired to do so.].) Although sometimes described in Ninth Circuit cases as "educational benefit," "some educational benefit," or "meaningful educational benefit," all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 950, fn. 10.)

4. 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.'" Put another way, "[f]or a child fully integrated in the regular classroom, an IEP typically should, as *Rowley* put it, be 'reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.'" (*Id.* at 999 (citing *Rowley*, *supra*, 458 U.S. at pp. 203-204).) The Court went on to say that the *Rowley* opinion did not "need to provide concrete guidance with respect to a child who is not fully integrated in the regular classroom and not able to achieve on grade level." (*Id.* at 1000.) 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,

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).) As the petitioning party, Parents have the burden of proof by a preponderance of the evidence on all issues in this case. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].)

PARENTS HAVE INDEPENDENT ENFORCEABLE RIGHTS UNDER IDEA

6. IDEA grants parents independent enforceable rights which are not limited to certain procedural and reimbursement related matters but which encompass the entitlement to a free appropriate public education for the parents' child. (*Winkleman v. Parma City School Dist.* (2007) 550 U.S. 516, 533 [127 S.Ct. 1994, 167 L.Ed.2d 904].). Parents are entitled to prosecute IDEA claims on their own behalf. (*Id.* at p. 535.) In this case, Parents are able to proceed on their own behalf even though Student is 18. Parents seek only to enforce a right granted to them under the IEP, specifically reimbursement for their travel expenses.

REIMBURSEMENT FOR TRAVEL

7. Parents contend that the June 23, 2017 IEP travel agreement requires Gilroy to reimburse Parents for expenses incurred for their February trip to Student's school to attend Student's parent conference, including two round trip plane tickets and the cost of rental car tolls. Gilroy contends that the travel agreement requires reimbursement for only one round trip plane ticket for one parent to attend the February parent conferences at Student's out of state school. Gilroy also asserts that the travel agreement required Gilroy to reimburse the cost of a rental car but not toll fees, which are incidental expenses which were not a part of the travel agreement.

LEGAL PROVISIONS RELATING TO IEP IMPLEMENTATION

8. 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.) The IDEA requires that an IEP contain a projected date for the beginning of special education services and modifications, and "the anticipated frequency, location, and duration of those services and modifications." (20 U.S.C. § 1414(d)(1)(A)(VII); see also 34 C.F.R. § 300.320(a)(7) ; Ed. Code, § 56345, subd. (a)(7).)

9. A school district violates the IDEA if it materially fails to implement a child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP. (Van Duyn v. Baker School Dist. (9th Cir. 2007) 502 F.3d 811, 815, 822 (*Van Duyn*).) However, "[T]he materiality standard does not require that the child suffer demonstrable educational harm in order to prevail." (*Ibid.*) The *Van Duyn* court emphasized that IEPs are clearly binding under the IDEA, and the proper course for a school that wishes to make material changes to an IEP is to reconvene the IEP team pursuant to the statute, and "not to decide on its own no longer to implement part or all of the IEP." (*Ibid.*)

10. Parents proved by a preponderance of the evidence that the only reasonable interpretation of the June 23, 2017 IEP travel agreement that is consistent with the express language of the agreement required reimbursement for Parents' expense of their *two* round trip tickets to attend the February 2018 parent conference. At the time that the agreement was drafted, Gilroy's decision to use four days as the amount for car rental and lodging reimbursement establishes that Gilroy anticipated two, four day Parent visits to Student for the Fall Family Weekend and the February 2018 parent conference. Two days lodging and two days of car rentals per visit, as suggested

by Ms. Pulido, would not accommodate the time needed for travel to the school, participation in the school functions, and visitation with Student. Even the Parent trips to accompany Student to her new school in the summer of 2017, and to accompany her home at the end of the year in June 2018, provided reimbursement for two to three days lodging and three to four days of car rentals for each trip.

11. The evidence established that the travel agreement combined two visits in item four of the IEP travel agreement. Item four, subsections a-e contain the reimbursable amounts that Gilroy agreed to pay *per visit*, not for all visits. Moreover, Gilroy actually reimbursed Parents consistently with this interpretation on several prior occasions, including for Parents' trip to accompany Student to school for the 2017 summer session, shortly after the agreement was signed; the reimbursements paid by Gilroy for the October 2017 Fall Family Weekend, and the partial reimbursement for lodging and car rental for Parents' February visit to attend Student's parent conference. The language of the IEP travel agreement as well as the reimbursements already paid to Parents are not consistent with Ms. Pulido's interpretation of the IEP travel agreement, which would render the express language of the agreement, specifically item five subsection a, meaningless.

12. Gilroy's refusal to reimburse Parents for two round trip tickets to attend the February 2018 parent conferences at Student's school was a material change to the June 23, 2017 IEP travel agreement. This was a failure to implement Student's IEP and constitutes a denial of FAPE.

13. The June 23, 2017 IEP travel agreement requires Gilroy to reimburse Parents $813.00, which is the amount that Parents paid for their two round trip plane tickets to attend the February 2018 parent conferences.

REIMBURSEMENT OF ETOLL CAR RENTAL FEES

14. Parents did not sustain their burden of proof that Gilroy is required to pay

the cost of car rental toll fees based on the June 23, 2017 IEP travel agreement. The travel agreement is silent as to toll fees and expressly agrees only to reimburse Parents for the cost of renting a car for four days, not to exceed $85.00 a day and a $40.00 gas allowance. The fact that the toll fees and the car rental were charged separately by the car rental agency supported Gilroy's position that toll fees are separate from the actual costs of renting the car.

15. The June 23, 2017 IEP travel agreement does not require Gilroy to reimburse Parents for the $1.00 eToll and $15.80 convenience eToll fee. No other legal or equitable basis for reimbursement of the eToll fees was argued by Parents or is decided herein.

REMEDIES

1. School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Parents of Student W. v. Puyallup School Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496.) These are equitable remedies that courts may employ to craft "appropriate relief" for a party. (*Ibid.*) An award of compensatory education need not provide a "day-for-day compensation." (*Id.* at p. 1497.) The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Id.* at p. 1496.) An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student's needs. (*Reid v. District of Columbia*, (D.D.C. Cir. 2005) 401 F.3d 516, 524.) The award must be fact-specific and be "reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." (*Ibid.*)

2. Student prevailed on Issue 1(a), by proving that Gilroy failed to reimburse Parents for the cost of two round trip plane tickets to attend the February 2018 parent conferences at Student's out of state placement.

3. As a remedy, Student requests Gilroy to reimburse Parents $813.00 total for (2) round trip plane tickets to attend the February 2018 parent conferences at the cost to them of $406.50 each. Gilroy has reimbursed Parents for the cost of one round trip plane ticket to the February parent conference. Parent's requested reimbursement of $406.50 for their cost of the other Parent's round trip plane ticket to attend the October parent conferences is granted.

ORDER

1. Within 30 days of this order, Gilroy shall reimburse Parents $406.50 for the remaining costs of Parent's transportation to Student's out of state placement.

2. No additional documentation regarding the plane ticket cost need be provided.

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, Student prevailed on issue 1(a) and Gilroy prevailed on Issue 1(b).

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: August 3, 2018

/s/

RITA DEFILIPPIS

Administrative Law Judge

Office of Administrative Hearings