

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

UPLAND UNIFIED SCHOOL DISTRICT.

OAH Case No. 2017100459

---

DECISION

Parent on behalf of Student filed a due process hearing request (complaint) with the Office of Administrative Hearings, State of California, on October 4, 2017, naming Upland Unified School District. District filed its response to Student's complaint on October 12, 2017, which permitted the hearing to go forward. (*M.C. v. Antelope Valley Unified Sch. Dist.* (9th Cir. 2017) 858 F.3d 1189, 1199-1200.) OAH granted the parties' request for a continuance on November 1, 2017.

Administrative Law Judge Alexa J. Hohensee heard this matter in Upland, California on January 10, 2018.

Student's mother (Parent) appeared on behalf of and represented Student.

Jonathan P. Read, Attorney at Law, represented District. Mary Bevernick, District's Interim Special Education Director, and Royal Lord, Program Manager of West End Special Education Local Plan Area, attended the hearing on behalf of District.

Maria G. Meza provided Spanish to English and English to Spanish interpretation throughout the hearing.

At the parties' request, OAH granted a continuance until January 22, 2018, for the

parties to file written closing arguments. Upon timely receipt of the written closing arguments, the record was closed and the matter was submitted for decision.

## ISSUES

1. Did District deny Student a free appropriate public education at the individualized education program team meeting of September 19, 2017, by failing to develop an IEP that included:

- a. Annual goals;
- b. Accommodations for state testing;
- c. Transportation services;
- d. Extended school year services; or
- e. Occupational therapy?

## SUMMARY OF DECISION

Student was a young man of average cognitive ability and average academic achievement, who no longer exhibited inattention or maladaptive behavior in the school setting due to his attention deficit hyperactivity disorder (ADHD). His only area of educational need was in seeking clarification of information, which was appropriately addressed by a self-advocacy goal and specialized academic instruction. Student made no showing of need for disability-related accommodations on state testing. Student did not require transportation to and from his home school, which Parent sought for her own convenience. The September 19, 2017 IEP team reasonably deferred a decision on extended school year services to Student's annual IEP team meeting in May 2018, which would include a review of pending assessments and Student's educational progress during the 2017-2018 regular school year. Student had grade-appropriate penmanship, good typing skills, and did not need occupational therapy. The IEP offered consultation between an occupational therapist and Student's teachers to ensure that any emerging

difficulties in Student's visual motor processing, fine motor skills, or sensory functioning would be timely brought to the attention of the IEP team.

The evidence did not establish that District made the procedural or substantive errors alleged, and Student failed to prove that the September 19, 2017 IEP denied him a FAPE. District prevailed on all issues.

## FACTUAL FINDINGS

1. Student was a 12-year-old young man at the time of the hearing. Student resided with his Parents within District boundaries at all times relevant to this proceeding.

2. Student has been eligible for special education and related services since 2013 under the eligibility category of other health impairment due to his ADHD.

3. On July 11, 2017, Parent and District entered into a settlement agreement on a prior dispute, which included a waiver of claims. At hearing, the parties stipulated on the record that this due process proceeding was limited to claims arising after July 11, 2017.

### 2017-2018 SCHOOL YEAR

4. Pursuant to the July 11, 2017 settlement agreement, Student was placed in seventh grade in general education classes for the 2017-2018 school year. Also pursuant to that agreement, Student received one period per day of specialized academic instruction and 450 minutes per year of consultation between an occupational therapist and Student's teachers. Student attended classes at his school of residence.

5. Student transitioned well to junior high school. He was attentive in class, well behaved, completed his classwork and homework, and participated in class when called upon. Student rushed through his work and did not check for errors, which was consistent with his diagnosis of ADHD, but otherwise his academic performance was

consistent with his general education peers. Student had excellent attendance, and his grades after the first month in this program were an A in Math, a C- in Science, a B in English, an A in Physical Education, and an A+ in Directed Studies (specialized academic instruction).

#### SEPTEMBER 19, 2017 IEP

6. On September 19, 2017, as required by the settlement agreement, District convened an IEP team meeting to develop an IEP for the 2017-2018 school year. Parent attended with a friend. Parent's primary language was Spanish, and District provided a Spanish language interpreter. District team members included Student's general education English teacher Annie Schaumleffel, Student's Directed Studies special education teacher Nora Brooks, occupational therapist Diana Montano, school psychologist Christy Bock, the junior high school assistant principal, and a special education administrator.

7. Parent told the team that it was hard for Student to understand his schoolwork. She added that Student's writing looked like that of a third grader, that he could only write with his left hand, that he was dyslexic, and that he was on medication for ADHD.

8. Student's English teacher, Ms. Schaumleffel, had gathered reports from Student's general education teachers and special education teacher, and presented them to the team. Student's performance was average in English and Math, and both the History and Science teachers reported that Student was doing well and they had no concerns. Student demonstrated some hesitation with new math operations, but many students in his Math class did. Student arrived at Ms. Brook's specialized academic instruction period having studied on his own, and was organized and proactive. The teachers reported that Student had good work habits, good behavior, took notes, followed instructions, was focused and motivated in class, and learning collaboratively

with his peers. Several teachers mentioned that Student was shy, although he interacted well with his peers. Every teacher opined that Student was appropriately placed in their classroom.

9. Because Student was new to junior high, the IEP team reviewed his sixth grade spring 2017 teacher reports, which stated that Student performed at or above grade level standards in reading, writing and math, although Student was quiet and rarely volunteered to participate. Those teachers noted that Student often neglected to use the classroom tools that were provided to guide students through their work, which would have improved Student's performance. Student had earned B's and C's in sixth grade.

10. Ms. Schaumleffel summarized Student's present levels of performance scores on a standardized test. Student met or was near grade level standards in English language arts, writing, speaking and listening, research and inquiry, overall math, and problem solving and data analysis. Student scored below grade level standards in reading, math concepts and procedures, and communication reasoning. However, both the 2017 teacher reports and Ms. Schaumleffel noted that Student read at grade level and comprehended what he read, but sometimes read too fast and made accuracy errors. The spring 2017 reports in math indicated that Student made careless errors by not checking his work or using classroom tools available to all students, but could perform work correctly when asked to go back over his work.

11. Student communicated well with peers and adults, although he was shy, particularly with adults. Student was social with his peers, participated in class when called upon, and generally exhibited a good attitude. Student was healthy, and had passed both the vision and hearing screenings in 2016.

12. In light of Student's current grade level performance and teacher reports that Student was studying, organized, and displaying good work habits in the new

school year, Ms. Schaumleffel and the other District team members did not believe that Student required special education supports to improve his academics. However, Ms. Schaumleffel reported that Student only asked clarifying questions when information was unclear 50 percent of the time, and she proposed an annual self-advocacy goal for Student to ask clarifying questions 80 percent of the time, as measured by weekly teacher observation and records. Clarification of instructions and information would improve Student's classroom performance and test scores.

13. Ms. Montano, an occupational therapist, reported on her observations of Student during classroom consultation with his teachers. Student demonstrated average classroom skills and handwriting. She spoke with all of Student's teachers, and none relayed concerns with Student's fine or gross motor skills or expressed concern with Student's sensory processing, attention, or focus in the classroom. Ms. Montano reviewed occupational therapy consultation reports from spring 2017, which were consistent with her observations and current teacher reports. She reviewed with the team a District occupational therapy assessment from December 2016 that found Student was average and above average in visual motor, visual spatial, fine motor skills, and typical in sensory processing. Student had performed well above grade level in keyboarding skills, and the assessor had not recommended occupational therapy services. The assessor had concluded that Student's functional skills in the classroom were appropriate and recommended that Student be exited from occupational therapy services.

14. Ms. Montano was a licensed and qualified occupational therapist. Her demeanor at hearing was calm and professional, and her testimony thoughtful and responsive. Ms. Montano observed that Student held a pencil with a functional grasp and had legible work samples. In light of her observations, recent assessments, and teacher reports that his penmanship was satisfactory, Ms. Montano opined to the IEP

team and at hearing that Student did not require occupational therapy services in September 2017. The settlement agreement required District to offer occupational therapy consultation for the 2017-2018 school year, which would ensure that any problems with visual motor processing, fine motor skills, or sensory functioning would be brought to her attention in a timely manner. Ms. Montano was the only occupational therapist to testify, and her opinion that Student did not need occupational therapy to access the curriculum was given substantial weight.

15. Ms. Bock, a school psychologist and IEP team member, prepared for the IEP team meeting by reviewing Student's prior assessments, including his January 2017 triennial transdisciplinary assessment. In that assessment, Student scored in the average to low average range for academic achievement. Student's cognitive ability score was lower than in the past, which the examiners concluded was due to a combination of test fatigue and his apparent lack of interest in performing well on those tests. On a behavior scale, Student did not score as exhibiting behaviors consistent with attention deficit in the classroom. The triennial assessors concluded that Student's cognitive ability was in the average range, that Student's average academic scores were commensurate with his ability, and that Student did not display an attention deficit interfering with his access to the curriculum.

16. Ms. Bock also reviewed an educationally related mental health services assessment completed in October 2014 in which Student's social emotional functioning was within the normal range, and no social, emotional, or behavioral problems affected his ability to participate in or access the curriculum. Student's assessment records were replete with references to Student being well-behaved and capable of performing grade level work, but making careless errors by not using classroom tools or timely seeking clarification that resulted in lower test scores and classroom grades.

17. Ms. Bock was a licensed and well-qualified school psychologist, with 20

years of experience in diagnosing students with learning disabilities. She was familiar with Student because she had consulted with the 2017 triennial assessors, met him during a classroom observation, and spoke with Student's seventh grade teachers as well as reviewed his records prior to participating in the IEP team meeting. Student was friendly but reserved with adults, participated in class when called upon, did average work, and was able to keep up with his classes. Ms. Bock shared with the team, and at hearing, her opinion that Student was performing at or near his cognitive ability with passing grades in his general education classes, and did not need special education or related services to access the general education curriculum. In her opinion, Student was a typical student and did not have processing issues or academic deficits that required more than the embedded accommodations available to all students. Ms. Bock was the only psychologist to testify, and her opinions regarding Student's ability to access his education were given substantial weight.

18. The District members of the IEP team did not believe that Student was eligible for special education or required special education or related services. Nonetheless, in accordance with the July 11, 2017 settlement agreement, District offered one period each day of specialized academic instruction in the Directed Studies classroom, and 450 minutes per year of occupational therapy consultation between an occupational therapist and Student's teachers (10 sessions for 45 minutes). District team members adopted the annual self-advocacy goal and offered Student accommodations for organization including: preferred seating; regular notebook checks by teacher; regular weekly planner checks; opportunities to redo essays; opportunities to retake tests; and active encouragement from teachers for Student to participate in the classroom. Team members believed the supports in the IEP would assist Student in developing strategies for self-advocacy and seeking clarification, so that he could avoid mistakes due to incomplete information.



19. District team members did not include accommodations for statewide testing in the IEP, as Student did not have processing issues or academic deficits indicating a need for such accommodations. Student's teachers reported that Student was attentive, did not appear distracted, and did not present with attention deficits.

20. Parent requested transportation for Student because it was inconvenient for her or Student's adult brother to pick Student up after school, and Parent believed that the distance was too far for Student to walk. Student was attending his school of residence, and District team members did not see any need for transportation due to a disability. District team members declined to offer that service.

21. Parent requested that Student attend extended school year classes, but District team members deferred that decision until the annual review IEP team meeting due in May 2018. As part of the settlement agreement, District had agreed to conduct assessments to be completed in spring 2018, and District team members wanted to discuss whether Student required services over the summer at the same time they discussed the assessments and Student's progress over the 2017-2018 school year.

22. The IEP team meeting concluded, and the IEP notes taken during the meeting were read and interpreted for Parent. The meeting was adjourned.

23. Parent wrote onto the September 19, 2017 IEP that Student's parents did not agree that the IEP offered a FAPE and requested a due process hearing.

#### ADDITIONAL TESTIMONY AND EVIDENCE AT HEARING

24. At the due process hearing, Ms. Schaumleffel testified that Student's performance in her class through January 10, 2018, was average, and he had earned a grade of C+. She did not have any difficulty reading Student's handwriting. She reviewed samples of Student's writing from other classes tendered by Parent and opined that Student's penmanship was average for seventh grade. Ms. Schaumleffel cleared up Parent's misunderstanding that Ms. Schaumleffel gave Student the answers

to tests he had failed so that he could retake and pass them. In fact, Student had not failed any test in Ms. Schaumleffel's class, and the correct answers written on Student's tests were written by other students after the tests were exchanged and graded as a classroom activity. Ms. Schaumleffel also explained that it was common for students to have to redo essays, and that 20 of her seventh grade students had recently been required to do an essay rewrite. She noted that Student's penmanship did not affect his grade in her class, as her students completed their work on the computer. Student was not unusual in using less than all of his fingers to type, as many of her students did not type with all 10 fingers.

25. Student offered into evidence an April 2012 psychological test report by a clinical psychologist finding Student to have attention deficit and dyslexia. The report recommended that the school develop either an IEP or a general education "504 plan,"<sup>1</sup> suggesting that the problems identified could be addressed without special education interventions. Notes from Student's pediatricians from June and August 2012 requested occupational therapy for Student's "reported" difficulties with writing and visual motor coordination, indicating that these diagnoses were not the result of their own assessments of Student, and leaving the bases for these opinions to speculation. Accordingly, these notes were accorded little to no weight. Student submitted two assessment reports recommending vision therapy, one from May 2012 and another from December 2013, but there was no evidence offered regarding whether Student had received vision therapy or not, and whether such therapy was recommended in September 2017.

26. There was evidence that Student was prescribed medication for ADHD in

---

<sup>1</sup> A section 504 accommodations plan is one developed under section 504 of the Rehabilitation Act of 1972 (29 U.S.C. § 701, et seq.)

2013, although Student had reported in January 2017 that he no longer took that medication. Regardless, Student's teachers in September 2017 consistently reported to the IEP team that, with or without medication, Student was attentive and focused in class.

## LEGAL AUTHORITIES AND CONCLUSIONS

### INTRODUCTION: LEGAL FRAMEWORK UNDER THE IDEA<sup>2</sup>

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et seq.; 34 C.F.R. § 300.1 (2006) et seq.;<sup>3</sup> Ed. Code, § 56000, et seq.; Cal. Code. Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, 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

---

<sup>2</sup> Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

<sup>3</sup> All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

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. The Supreme Court revisited and clarified the *Rowley* standard in *Endrew F. v. Douglas County School Dist.* (March 22, 2017) 580 U.S. \_\_ [137 S.Ct. 988] (*Endrew F.*). It explained that *Rowley* held that when a child is fully integrated into a regular classroom, a FAPE typically means providing a level of instruction reasonably calculated to permit advancement through the general education curriculum. (*Id.*, 137 S.Ct. at pp. 1000-1001, citing *Rowley*, 458 U.S. at p. 204.) As applied to a student who was not fully integrated into a regular classroom, the student’s IEP must be reasonably calculated to enable the student to make progress appropriate in light of his or her circumstances. (*Endrew F.*, 137 S.Ct. at p. 1001.)

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. 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) In this matter, Student had the burden of proof on the issues decided.

#### ISSUE 1(A): ANNUAL GOALS

5. Student contends that he was denied a FAPE because the September 19, 2017 IEP did not include annual goals. District contends that the self-advocacy goal addressed Student's educational needs.

6. An IEP must include a statement of measurable goals, including academic and functional goals, designed to (i) meet the child's needs resulting from the child's disability to enable the child to be involved in and make progress in the general education curriculum, and to (ii) meet the child's other educational needs that result from the child's disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); Ed. Code, § 56345, subd. (a)(2); 34 C.F.R. § 300.320(a)(2)(i).) The IEP must contain annual goals that the child has a reasonable chance of attaining within a year, based upon the child's present levels of academic achievement and functional performance, and a statement of how the goals will be measured. (Ed. Code, §§ 56344 and 56345, subd. (a)(3).) The IEP must show a direct relationship between present levels of performance, the goals, and the educational services to be provided. (Cal. Code Regs., tit. 5, § 3040, subd. (c).)

7. Here, Parent failed to identify an area of need resulting from Student's disability for which a goal should have been designed to enable Student to be involved

in and make progress in the general education curriculum, or to meet other educational needs of Student, but was not.

8. The assessments performed over the preceding year, the teacher reports from spring 2017, and the present levels of performance developed by Ms. Schaumleffel in September 2017, provided sufficient information for the September 19, 2017 IEP team to identify Student's areas of need. Student was producing grade level work, demonstrating an understanding of grade level concepts, and earning passing grades in all of his general education classes. Student's penmanship was average, his typing skills were better than most of his peers, and he had no visual integration, fine motor skill or sensory processing deficits. Student communicated his thoughts and ideas to peers and adults, participated in class when called upon, and was well-behaved. Student did not display any social/emotional or attention difficulties that impacted his access to the curriculum, beyond a reluctance to ask for clarification when needed. Student did not have educational needs resulting from his disability in the areas of academics, occupational therapy, speech and language, or social emotional functioning. His only educational need was in the area of attention, that is, in gathering the clarification needed to understand instructions and information, rather than racing forward and completing work incorrectly. The September 19, 2017 IEP team acknowledged that Student finished his work without clear instructions and made careless mistakes by failing to use classroom tools which impacted his grades. Accordingly, the self-advocacy goal to seek clarification was reasonably designed to address Student's need to gather the information needed to perform correctly and perform at his academic level.

9. Student had a reasonable chance of attaining the self-advocacy goal within a year as the goal was based upon his present levels of academic achievement and functional performance, and the goal stated how it would be measured. Ms. Bock and Ms. Schaumleffel testified convincingly that the supports in the IEP would enable

Student to learn self-advocacy and increase his requests for clarification, rather than making mistakes due to incomplete information, from 50 percent of the time to 80 percent of the time over the course of the 2017-2018 school year. In accordance with the settlement agreement, the team offered Student one period per day in the Directed Studies classroom, where Student could practice information requests during specialized academic instruction and learn self-advocacy skills that would transition to the general education classroom. Accommodations included checks of Student's weekly planner and notebooks to ensure accuracy. Therefore, the self-advocacy goal had a direct relationship between Student's present level of performance and the educational services provided.

10. Student produced no persuasive evidence that he had other educational needs that required annual goals. The documentary evidence that Student had vision therapy needs was not based on current levels of performance, and in fact was many years old. Student did not need an academic goal, as he scored in the average range on tests of academic achievement, was earning passing grades, and advancing from grade to grade. Parent wanted Student to get better grades, write neatly, and type with all fingers. However, the IDEA does not require a school district to maximize a student's potential. (*Rowley*, 458 U.S. at p. 200).

11. Student failed to meet his burden of proving by a preponderance of the evidence that Student was denied a FAPE because District did not develop an IEP with annual goals on September 19, 2017. District prevailed on Issue 1(a).

#### ISSUE 1(B): ACCOMMODATIONS FOR STATE TESTING

12. Student contends that the September 19, 2017 IEP should have included accommodations for state testing. District contends that Student did not demonstrate a need for accommodations on statewide testing.

13. An IEP must include a statement of any individual appropriate

accommodations that are necessary to measure the academic achievement and functional performance of the child on state and districtwide assessments. (34 C.F.R. § 300.320(a)(6); Ed. Code, § 56345, subd. (a)(6).)

14. The weight of the evidence did not establish that District failed to provide Student with necessary and reasonable accommodations for state and districtwide testing. Ms. Bock testified convincingly that Student did not have processing or academic deficits that required accommodations for state testing outside of those available to all students. Ms. Schaumleffel was very knowledgeable regarding Student's test taking abilities, as she was one of Student's teachers and a member of the September 19, 2017 IEP team. She persuasively opined that Student performed well on tests in her classroom and did not need accommodations for state testing.

15. Student did not present evidence of the type of accommodations he contends were required on statewide tests. He did not establish that accommodations such as those made at the classroom level, including retaking the tests, would not invalidate Student's state test results. The September 19, 2017 IEP team meeting notes clearly indicated that statewide testing accommodations were discussed, and that the IEP team explained to Parent that typical classroom accommodations such as taking test materials to another room were not appropriate for statewide testing.

16. Student failed to meet his burden of proving by a preponderance of the evidence that Student was denied a FAPE because District did not include accommodations for state testing in the September 19, 2017 IEP. District prevailed on Issue 1(b).

#### ISSUE 1(C): TRANSPORTATION

17. Parent contends that Student should have been offered transportation between home and school because she and her adult son did not have time to transport Student and it was too far for Student to walk. District contends that Student attended



his home school, and that his disability did not require transportation.

18. A student's IEP team is responsible for determining whether transportation between school and other locations is necessary in order for the student to receive a FAPE. (Analysis of Comments and Changes to 2006 IDEA Part B Regulations, 71 Fed. Reg. 46576 (August 14, 2006).)

19. The IDEA regulations define transportation as: (i) travel to and from school and between schools; (ii) transportation in and around school buildings; and (iii) specialized equipment (such as adapted buses, lifts, and ramps), if required to provide transportation for a child with a disability. (34 C.F.R. § 300.34(c)(16).)

20. In deciding whether a student with disabilities may require specialized transportation as a related service, school districts should determine whether the student's disabilities make it problematic to get to school in the same manner as nondisabled students. (*Letter to Hamilton* (OSEP 1996) 25 IDELR 520.) The IDEA requires transportation of a disabled child only to address his educational needs, not to accommodate a parent's convenience or preference. (*Fick v. Sioux Falls School Dist.* 49-5 (8th Cir. 2003) 337 F.3d 968, 970; *Student v. Los Angeles Unified School Dist.* (2010) OAH Case No. 2009080646.)

21. Although the Ninth Circuit has not specified criteria for determining whether a child needs transportation as a related service, other Circuits have indicated some guidelines that are useful in evaluating this case. Relevant factors include, (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, supra*, 337 F.3d at p. 970, citing *Timothy H. v. Cedar Rapids Cmty. School Dist.* (8th Cir. 1999) 178 F.3d 968, 973.)

22. Parent requested transportation for Student because it was inconvenient for her or Student’s brother to transport Student to and from school, and Parent believed that it was too far for Student to walk. Student was a 12-year-old young man of average health and cognitive ability. Student attended his school of residence. There was no evidence of the distance between Student’s home and school, that Student would be unable to walk that distance, that the route was difficult or dangerous, that public transportation was not available, that Parent could not make private arrangements for Student to get home (such as a carpool), or that Student was not capable of waiting for Parent or his brother at school or a safe location such as the local library. Student’s disability of ADHD did not manifest as lack of attention or inappropriate behavior in the classroom, and there was no evidence that his disability required Student to be transported to and from school in a manner different from his nondisabled peers.

23. Parent worked and her adult son attended college. Parent’s testimony focused on the inconvenience to Parent and the adult son of transporting Student, and not on Student’s disability-related needs. Parent’s disagreement with District over transportation was based upon her own schedule, and not services necessary for Student to receive a FAPE. Parent’s scheduling conflicts and child care needs may be valid, but they are not addressed or remedied by the IDEA.

24. Student failed to meet his burden of proving by a preponderance of the evidence that Student was denied a FAPE because District did not include transportation

in the September 19, 2017 IEP. District prevailed on Issue 1(c).

#### ISSUE 1(D): EXTENDED SCHOOL YEAR SERVICES

25. Parent contends Student was denied a FAPE because he was not offered extended school year services in the September 19, 2017 IEP. District contends that Student did not require 2018 extended school year services, and that the IEP team properly deferred review of the need for summer services to a meeting near the end of the 2017-2018 school year.

26. Under the IDEA, schools are required to provide extended school year services as necessary in order to provide a child with a FAPE. (34 C.F.R. § 300.309(a).) Extended school year services “are only necessary to a FAPE when the benefits a disabled child gains during a regular school year will be significantly jeopardized if he is not provided with an educational program during the summer months.” (*N.B. v. Hellgate Elementary School District* (9th Cir. 2008) 541 F.3d 1202, 1211-1212 (*N.B.*), quoting *MM ex rel. DM v. Sch. Dist. of Greenville County* (4th Cir.2002) 303 F.3d 523, 537-538.) A student is eligible for extended school year services if interruption of the student’s educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her handicapping condition. (Cal. Code Regs. tit. 5, § 3043.)

27. Student presented no evidence that the educational benefits accrued during the regular school year would be significantly jeopardized if Student were not provided with additional weeks of instruction during the summer break.

28. More importantly, the IEP team reasonably deferred a determination of whether Student would require extended school year services to Student’s annual IEP review due in May 2018. At that time, the IEP team would have information on how Student was progressing with the level of supports in place, as well as the benefit of

additional assessments agreed upon in the July 11, 2017 settlement agreement. Student was not denied a FAPE because extended school year services were not discussed and offered within the first 30 days of the 2017-2018 school year, but deferred to an IEP team meeting required to be held before the end of the regular school year by annual review timelines, and to review assessment results.

29. Student failed to meet his burden of proving by a preponderance of the evidence that Student was denied a FAPE because District did not offer extended school year services in the September 19, 2017 IEP. District prevailed on Issue 1(d).

#### ISSUE 1(E): OCCUPATIONAL THERAPY

30. Student contends he was denied a FAPE because he was not offered direct occupational therapy in the September 19, 2017 IEP. District contends that Student did not need such services.

31. For a school district's offer of special education services to a disabled pupil to constitute a FAPE under the IDEA, a school district's offer of educational services and placement must be designed to meet the student's unique needs. (*Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1307, 1314; 20 U. S.C. § 1401(9).) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Ibid.*) The IEP need not conform to a parent's wishes in order to be sufficient or appropriate. (*Shaw v. Dist. of Columbia* (D.D.C. 2002) 238 F.Supp.2d 127, 139 [The IDEA does not provide for an "education . . . designed according to the parent's desires"], citing *Rowley, supra*, 458 U.S. at p. 207; see also *Miller v. Bd. of Education of the Albuquerque Public Schools* (D.N.M. 2006) 455 F.Supp.2d 1286, 1307-1309; *aff'd on other grounds, Miller v. Bd. of Education of the Albuquerque Public Schools* (10th Cir. 2009) 565 F.3d 1232.)

32. The weight of the evidence did not demonstrate that District should have offered Student occupational therapy. Parent worried that Student's penmanship was

poor, that he could not write with his right hand, and that he did not type with all of his fingers, and she requested one-on-one occupational therapy for Student to remediate these perceived problems. However, Student's penmanship was average and legible, being left-handed was not a deficit, and Student demonstrated good typing speed and accuracy.

33. Ms. Montano testified convincingly that typical children and adults sometimes have messy writing, but that does not by itself warrant occupational therapy. Her opinion that Student had a functional pencil grasp, demonstrated adequate visual motor processing for classroom tasks and fine motor manipulation, had no sensory processing deficits, and therefore did not have any occupational therapy needs impacting his access to the curriculum, was persuasive and without contradiction by another occupational therapist. The consultation between an occupational therapist and Student's teachers offered in the September 19, 2017 IEP, which averaged out to approximately 45 minutes per month, was reasonably calculated to monitor Student's visual motor, fine motor, and sensory functioning across classroom settings, alert the IEP team to any problems that might arise, and provide Student's teachers with strategies to assist him as the first line of support.

34. Student failed to meet his burden of proving by a preponderance of the evidence that Student was denied a FAPE because District did not offer occupational therapy in the September 19, 2017 IEP. District prevailed on Issue 1(e).

## ORDER

All of Student's requests for remedies are denied.

## PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard

and decided. Here, District prevailed on all issues.

## 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: February 28, 2018

/s/

---

ALEXA J. HOHENSEE

Administrative Law Judge

Office of Administrative Hearings