BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA
IN THE MATTER OF:
PARENT ON BEHALF OF STUDENT,
V.
LONG BEACH UNFIED SCHOOL DISTRICT.
OAH CASE NUMBER 2019010601

DECISION

Student filed a due process hearing request with the Office of Administrative Hearings, State of California, on January 16, 2019, naming Long Beach Unified School District. The Office of Administrative Hearings is referred to as OAH. The matter was continued for good cause on February 21, 2019.

Administrative Law Judge Christine Arden heard this matter in Long Beach, California, on June 11 and 12, 2019.

Mother represented Student and attended the hearing on June 11 and 12, 2019. Student did not attend the hearing.

Debra Ferdman, Attorney at Law, represented Long Beach. Wendy Rosenquist, special education administrator, attended the hearing on behalf of Long Beach.

A continuance was granted for the parties to file written closing arguments and the record remained open until July 15, 2019. Upon receipt of the written closing arguments, the record was closed on July 15, 2019, and the matter was submitted for decision.

ISSUES

The issues set forth below have been redefined in accordance with J.W. v. Fresno Unified School Dist. (9th Cir. 2010) 626 F. 3d 431, 442-443. No substantive changes have been made.

1. Did Long Beach deny Student a free appropriate public education, commonly referred to as a FAPE, from the beginning of the 2017-2018 school year by failing to hold monthly clinic meetings?

2. Did Long Beach deny Student a FAPE from the beginning of the 2018-2019 school year by refusing to allow Parent to record monthly clinic meetings?

SUMMARY OF DECISION

Student did not prove Long Beach was obligated to hold monthly clinic meetings that included his behavioral service providers from a nonpublic agency and Parents during the 2017-2018 school year. Student appeared to have made appropriate educational progress with the behavior supervision and consultation hours offered in his individualized education programs, as neither party presented evidence to the contrary. An individualized education program is referred to as an IEP. Specific clinic meetings were not offered or required to be implemented pursuant to Student's IEPs.

Student did not prove Parent was entitled to record clinic meetings without the consent of all the meeting participants. Student asserted that Parent should be able to record clinic meetings without the consent of the participants because California law authorizes parents to record IEP team meetings. However, clinic meetings were not the same as IEP team meetings. There is no authority which permits parents to record non-IEP team meetings if all participants do not consent to being recorded.

FACTUAL FINDINGS

At the time of hearing Student was eleven years old and in sixth grade. He resided within the geographic boundaries of Long Beach and attended Long Beach schools at all relevant times. He was eligible for special education under the autism category. Student's primary educational challenges were behavioral. He had particular difficulties with attention, executive functioning, and peer relations.

Student first started receiving intensive behavioral intervention services at home when he was about three years old from Autism Behavior Consultants, a nonpublic agency specializing in behavioral services. Student later received intensive behavioral intervention services from Autism Behavior Consultants at school, pursuant to his IEPs. Long Beach contracted with Autism Behavior Consultants to provide those behavioral services to Student during the 2017-2018 and 2018-2019 school years.

Ms. Cheryl Stroll, a board certified behavior analyst, worked for Autism Behavior Consultants for 12 years. She started providing supervisory and consultation behavioral services to Student when he was about three years old. She continued to provide behavioral services to him through the time she testified at hearing. Ms. Stroll supervised Student's aides at school, collected and graphed data on his behaviors, drafted monthly reports interpreting that data, designed his behavior intervention plan, and consulted with his teachers, service providers, and Parents regarding his progress on behavior goals. Mother expressed her confidence in Ms. Stroll's expertise.

Before Ms. Stroll worked for Autism Behavior Consultants, she worked for Autism Partnership for 8 years as a clinical supervisor. She had attended hundreds of IEPs. Ms. Stroll was a very knowledgeable and experienced behavioral professional, who testified convincingly at hearing. Her testimony was candid, honest, forthright and credible, and, therefore, given significant weight.

CLINIC MEETINGS AT STUDENT'S HOME FROM 2008 THROUGH 2016

The practice of holding periodic clinic meetings began with nonpublic agencies providing in-home behavior intervention services. The meetings usually included the agency employees who directly provided behavioral intervention services to the child, the behavioral intervention services supervisor, and parents. Clinic meetings were customarily held in homes because the meetings primarily concerned behavioral services provided at home. Over time, some behavioral services agencies expanded

clinic meetings to address behavioral services provided to children in schools.

From 2008 through 2016, Ms. Stroll held clinic meetings monthly at Student's home to review her reports interpreting the most recent data collected on Student's behaviors. The meetings lasted one hour. During these meetings Ms. Stroll, the Autism Behavior Consultants' employees who acted as Student's school-based aides, and Parents, reviewed the report and discussed Student's progress on his IEP behavior goals. Student occasionally participated in the clinic meetings.

According to Mother, Long Beach's policy precluded parents from independently contacting their children's aides. The clinic meetings created an opportunity for Mother to significantly interact with Student's school-based aides.

A Long Beach representative did not attend the clinic meetings. Neither Ms. Stroll, nor any other person, issued formal notices of the meetings. Meetings were not formally documented in the same manner as IEP team meetings, did not include mandatory members of IEP team meetings, and did not address Student's educational program as a whole. Ms. Stroll held informal in-home clinic meetings as a courtesy to parents. She could also review collected data, obtain observations from aides and parents, consult with school staff, and otherwise supervise behavioral programs from her office, during school visits, and in telephone conversations.

Attendees at clinic meetings conferred about Student's behaviors over the previous month. Ms. Stroll credibly opined that the most important element of each clinic meeting was her report interpreting recently collected data. The clinic meetings were not required by Student's IEPs. The meetings were held solely at Ms. Stroll's discretion as part of the time allotted in the IEP for behavior supervisory and consultation services.

In February, 2017, Parents commenced divorce proceedings. After that, clinic meetings were suspended because Father was not allowed to enter the family's home.

Clinic meetings were not held for the rest of the 2016-2017 school year.

STUDENT'S PROGRAM AT LONG BEACH

During the 2017-2018 and 2018-2019 school years Student was enrolled in general education classes. He received resource specialist program services, speech therapy, and occupational therapy. Student had goals in the areas of speech and language, behavior, mathematics, and social and peer interaction. Student was supported throughout his school day by a behavioral aide from Autism Behavior Consultants. Ms. Stroll supervised the two Autism Behavior Consultants' employees who alternately served as Student's aides, and provided behavioral consultation services.

The IEP implemented during most of the 2017-2018 school year was not offered as evidence at hearing. No other evidence established the amount of time Ms. Stroll provided aide behavioral supervision and consultation services during most of the 2017-2018 school year. Student's annual IEP dated April 18, 2018, which was implemented at the end of the 2017-2018 school year and for most of the 2018-2019 school year, provided six hours per month for Ms. Stroll's behavioral supervision and consultation services. The offers of a FAPE in Student's IEPs did not specify that clinic meetings be held.

Ms. Stroll and Student's aides regularly collected data on Student's behaviors to track his progress on behavior goals. Every month Ms. Stroll graphed the data, and drafted a report interpreting the significance of the data. Ms. Stroll provided these reports to Parents. Ms. Stroll's monthly reports were not assessments, but summaries and interpretations provided as part of her supervisory duties.

Ms. Stroll acknowledged that clinic meetings were not required to implement a school-based behavioral program, and in her experience, were not referred to in IEPs as a component of the behavior services offered. Clinic meetings could be held as part of the supervisory and consultation hours allocated to a behavior program, as necessary

and at the discretion of the behavior supervisor. According to Ms. Stroll, non-behavior service providers were not invited to, or necessary at, behavior clinic meetings. No school psychologist, speech therapist, occupational therapist, assistive technology provider, physical education teacher, or adaptive physical education teacher, ever attended a clinic meeting for Student.

Student's assessments were not discussed at clinic meetings. Goals in areas other than behavior were not discussed at clinic meetings. Ms. Stroll credibly opined it was not necessary for Mother to record clinic meetings in order for Student's behavior program to be effectively implemented, because Mother received a copy of Ms. Stroll's reports, and was present during discussions of that information.

Long Beach's master contract with Autism Behavior Consultants dictated that a maximum of twenty percent of the time contracted for consultation and supervisory services could be used for work that did not involve the service provider's direct contact with, or observation of, the child. The manner in which a behavior supervisor used such twenty percent of the time allotted in an IEP for supervision and consultation was totally up to the supervisor's discretion.

In Student's case, Ms. Stroll exercised her discretion to use one hour per month of the time available for Student's behavioral supervision and services either consulting with Long Beach instructional staff, in team meetings with the aides, or in clinic meetings that also included Parents. Ms. Stroll never told Mother clinic meetings were required as part of Student's behavioral program.

POLICY CHANGE REGARDING CLINIC MEETINGS

Shortly before the start of the 2017-2018 school year, Long Beach changed its policy regarding meetings between nonpublic agencies and parents. Long Beach mandated that such meetings had to be held at schools, and include a Long Beach representative. Before the 2017-2018 school year began, Dennis Sweningson, Long

Beach's behavior intervention manager, informed Autism Behavior Consultants of this new policy.

Long Beach assigned a case carrier to each child with an IEP. The case carrier was usually the student's special education teacher. The case carrier was responsible for managing a child's IEP and issuing notices of IEP meetings. The preferred Long Beach representative to attend meetings between nonpublic agencies and parents was the child's case carrier.

2017-2018 SCHOOL YEAR

In the 2017-2018 school year Student attended fifth grade at Bixby Elementary. Student's case carrier that school year was Ingrid Ingram, his resource specialist program teacher. Ms. Ingram was unavailable to attend meetings after school. Since Ms. Ingram was not available to attend meetings outside of the school day, Ms. Stroll did not hold clinic meetings with Parents during the 2017-2018 school year. Instead, she held internal monthly clinic meetings at Autism Behavior Consultant's office with Student's aides. At the clinic meetings they discussed Ms. Stroll's report and Student's progress on behavior goals.

Ms. Stroll provided both Parents with copies of her monthly reports during the 2017-2018 school year, even though clinic meetings were not held. Parents had Ms. Stroll's contact information and were able to contact her at any time if they had questions about the report. During the 2017-2018 school year Ms. Stroll communicated with Parents at least a few times every month.

Mother thought Student may have made less behavioral progress in the 2017-2018 school year because Parents were not able to give their input at monthly clinic meetings. This testimony was speculative and not corroborated by any evidence. There was no evidence that Student failed to make satisfactory progress on his behavior goals that school year. Therefore, Mother's testimony that Student may have made less

progress because Parents did not attend clinic meetings was given little weight.

2018-2019 SCHOOL YEAR

In the 2018-2019 school year, Student attended sixth grade at Marshall Arts Academy. Ms. Catherine Wombold, Student's resource specialist program teacher, was his case carrier that school year.

Ms. Wombold, who testified credibly at hearing, worked at Long Beach as a resource specialist program teacher for six years. She had teaching credentials authorizing her to teach special education mild to moderate classes, and general education classes from kindergarten through twelfth grade. She also had an autism teaching credential and an autism certification, which she earned after completing training in applied behavior analysis. Ms. Wombold, who had attended about 400 IEP meetings and about 100 behavior clinic meetings, testified credibly that written parental procedural rights were never offered or distributed at clinic meetings, and changes to a student's program, goals, and IEP could not be made at a clinic meeting.

In the 2018-2019 school year Ms. Stroll scheduled clinic meetings to be held after school at Marshall Arts Academy. She invited Parents, Ms. Wombold, and Autism Behavior Consultant's employees who served as Student's aide to attend. Ms. Wombold attended about five clinic meetings for Student that year. Ms. Wombold was not required to attend Student's clinic meetings held after school, but did so voluntarily. Mr. Sweningson testified that Long Beach teachers were not required to attend clinic meetings if they occurred outside of work hours authorized by the contract between Long Beach and its teachers.

Ms. Stroll testified persuasively that the most important element of each clinic meeting was her report. She further testified convincingly that, because she regularly provided her reports to Parents, and was available to confer with Parents regarding any questions they had about the reports, and about their concerns regarding Student's

progress on his behavior goals, the clinic meetings were not necessary in order for Student's behavioral program to be implemented. Due to her candor and extensive professional education and experience as a behavioral supervisor and consultant, Ms. Stroll's testimony was given significant weight.

MOTHER'S REQUEST TO RECORD CLINIC MEETINGS

In the 2018-2019 school year Mother wanted to record clinic meetings for two reasons. Firstly, she wanted potential evidence for future due process hearings in the event someone at a clinic meeting raised the possibility of reducing Student's services or changing his placement. Secondly, she wanted to record clinic meetings in order to obtain evidence of Father's bad behavior, if any occurred. Mother claimed that, because she was not allowed to record clinic meetings, Father had an opportunity to act badly at those meetings. No evidence indicated Father had behaved improperly at clinic meetings. Mother testified candidly about her reasons for wanting to record clinic meetings.

Mother preferred to have monthly IEP meetings, instead of monthly clinic meetings, so that she would be permitted to record the meetings. She was willing to waive the attendance of the Long Beach IEP team members not involved in behavioral services at the clinic meetings if such meetings would be treated as IEP meetings. This practice was not acceptable to Long Beach.

About November 15, 2018, Mother wrote an email to Wendy Rosenquist, a Long Beach special education administrator, asking if Mother could record clinic meetings. Mother informed Ms. Rosenquist that an order had been issued in Parents' pending divorce proceeding which permitted her to record Father. Ms. Rosenquist responded by requesting a copy of the court order. Mother did not provide Long Beach with the court order. The order, which, according to Mother, was issued in October 2018, was not offered as evidence at hearing.

On one or two occasions in the 2018-2019 school year, Mother asked Ms. Wombold if she would consent to Mother recording clinic meetings. Ms. Wombold did not consent. Mr. Sweningson advised Ms. Wombold she was not obligated to consent to being recorded in clinic meetings.

In Parents' divorce proceeding the California Superior court ordered on January 2, 2019, that Parents could video and audio record each other. That court order, which was admitted into evidence at hearing, applied only to Parents and their minor children, including Student. The order did not waive any other person's right to refuse to consent to being recorded by Parents. Long Beach was not a party to that court order.

AN IEP CANNOT BE CHANGED AT CLINIC MEETINGS

Ms. Wombold and Mr. Sweningson testified consistently that Long Beach staff were not permitted to unilaterally revise a child's goals, services, accommodations, or placement at clinic meetings. Changes to those elements of an IEP could only be accomplished by the IEP team at IEP meetings. IEP team meetings were held at least annually to review a child's progress, and could be convened with notice at any time to address concerns of parents, teachers, or service providers.

Mr. Sweningson, who testified very credibly at hearing, is a board certified behavior analyst who was employed with Long Beach since 2004 in various positions within the special education department. He was the administrator in charge of the special education programs at six Long Beach schools. He had attended about 450 IEP meetings each year since 2004. He was Long Beach's behavior intervention manager from 2007. Mr. Sweningson had also served as a coordinator and supervisor of autism services at Long Beach.

Mr. Sweningson held a master's degree in teaching with a specialization in applied behavior analysis. He also worked for Autism Partnership, a nonpublic agency specializing in behavioral services, for two years as a program specialist. He was the

autism project coordinator for the Regional Center of Orange County for one year. Additionally, he taught a special day class for students with autism in the Newport-Mesa Unified School District. Mr. Sweningson had extensive knowledge of behavioral services provided to autistic children. His testimony that clinic meetings were not required for Student or other children with IEPs enrolled at Long Beach, was candid, informed, forthright, and persuasive.

LEGAL AUTHORITIES AND CONCLUSIONS

INTRODUCTION: LEGAL FRAMEWORK UNDER THE IDEA

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (20 U.S.C. §1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The Individuals with Disabilities Education Act is referred to as the "IDEA." 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 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).)

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. It is developed under the IDEA's procedures. Parents and school personnel participate in developing the IEP. An IEP describes the child's needs, and academic and functional goals related to those needs. The IEP also includes a statement of the special education, related services, and program modifications and accommodations that will be provided for the child. The IEP's purpose is to allow the child to advance in attaining 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).)

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 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.)

In Endrew F. v. Douglas County School Dist. (2017) 580 U.S. ____ [137 S.Ct. 988, 1000] (Endrew F.), the Supreme Court held that a child's "educational program must be appropriately ambitious in light of his circumstances." "Every child should have a chance to meet challenging objectives." (Ibid.) Endrew F. explained that "this standard is

markedly more demanding than the 'merely more than de minimis' test… The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." (Id. at pp. 1000-1001.) The Court noted that "any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal." (Id. at p.999.) However, the Supreme Court did not define a new FAPE standard in Endrew F. The Court acknowledged that Congress had not materially changed the statutory definition of a FAPE since Rowley was decided and so declined to change the definition itself. The Ninth Circuit affirmed that its FAPE standard comports with Endrew F. (E.F. v. Newport Mesa Unified School Dist. (9th Cir. 2018) 726 Fed. Appx. 535.)

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 request for due process, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) Generally, a party is limited to filing a request for due process two years from the date the person knew or should have known of the facts which form the basis for the request for a due process hearing. (20 U.S.C. § 1415(f)(3)(C), (D); Ed. Code, § 56505, subd. (l).)

At the hearing, the party filing the request for due process has the burden of persuasion by a preponderance of the evidence. (Schaffer v. Weast (2005) 546 U.S. 49, 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].) Here, Student requested the hearing and, therefore, had the burden of proof on the issues.

ISSUE 1: FAILURE TO HOLD MONTHLY CLINIC MEETINGS

Student contends Long Beach denied him a FAPE by failing to offer or hold monthly behavior clinic meetings during the 2017-2018 school year. Long Beach contends it was not required to offer or hold monthly clinic meetings because such meetings were not offered in Student's IEP or necessary to provide him with a FAPE. Long Beach further contends clinic meetings were held, if at all, at the discretion of the behavioral supervisor as part of supervision and consultation services offered in Student's IEPs.

In developing an IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the child's education, the results of the most recent evaluations of the child, and the academic, developmental, and functional needs of the child. (20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. §§ 300.324 (a).) In resolving the question of whether a school district has offered a FAPE, the focus is on the appropriateness of the school district's proposed program. (See Gregory K. v. Longview Sch. Dist, 811 F.2d 1307, 1314.) 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.) An IEP is evaluated in light of information available at the time it was developed; it is not judged in hindsight. (Adams v. State of Oregon (9th Cir. 1999) 195 F.3d 1141, 1149.) An IEP is "a snapshot, not a retrospective." (Ibid., citing Fuhrmann, supra, 993 F.2d at p. 1041.) It must be evaluated in terms of what was objectively reasonable when the IEP was developed. (Id.)

A school district must implement all components of a student's IEP. (20 U.S.C. § 1414(d)(2)(A); 34 C.F.R. § 300.323(c).) When a student alleges the denial of a FAPE based on the failure to implement an IEP, in order to prevail, the student must prove that any failure to implement the IEP was "material," which means that the services provided to a disabled child fall "significantly short of the services required by the child's IEP." (Van

Duyn v. Baker School Dist. 5J (9th Cir. 2007) 502 F.3d 811, 822.)

The methodology used to implement an IEP is left up to the district's discretion so long as it meets a student's needs and is reasonably calculated to provide meaningful educational benefit to the child. (Rowley, supra, 458 U.S. at p. 208; Adams v. State of Oregon (9th Cir. 1999) 195 F.3d 1141,1149-1150; Pitchford v. Salem-Keizer School Dist. (D. Or. 2001) 155 F.Supp.2d 1213, 1230-32; T.B. v. Warwick School Committee (1st Cir. 2004) 361 F.3d 80, 83 (citing Roland M. v. Concord School Committee (1st Cir. 1990) 910 F.2d 983, 992.)) Parents, no matter how well motivated, do not have a right to compel a school district to provide a specific program or employ a specific methodology in providing education for a disabled student. (Rowley, supra, 458 U.S. at pp. 207-208.)

Long Beach was not required to provide monthly clinic meetings that included Parents because Mother preferred it. Mother did not prove that holding clinic meetings without Parents, as part of the supervision and consultation hours offered in Student's IEPs, denied Student a FAPE. There was no evidence to suggest that the time allotted for behavioral supervision and consultation services in Student's IEPs applicable in the 2017-2018 and 2018-2019 school years was insufficient to meet Student's needs.

In this matter Student's IEPs did not offer him monthly clinic meetings and such meetings were not required to provide Student with a FAPE. No evidence established that clinic meetings were an essential element to Student's behavior program. Therefore, Student did not prove Long Beach failed to implement his IEP in the 2017-2018 school year when clinic meetings were not held. The evidence did not establish that Long Beach materially failed to provide Student the services required by his IEP. (Van Duyn v. Baker School Dist. 5J (9th Cir. 2007) 502 F.3d 811, 822.)

No evidence was introduced that Student was unable to access his educational program during the 2017-2018 school year when clinic meetings including Parents were not held. Mother's speculation that Student may have made more progress on his

behavior goals during the time clinic meetings were suspended was not persuasive. Parents had ample opportunities to communicate with Ms. Stroll and offer their input on Student's progress on his behavior goals.

Student did not prove that Long Beach failed to implement Student's IEP by not holding clinic meetings after school hours. All witnesses with experience in applied behavior analysis and behavioral intervention testified uniformly that the supervision and consultation hours offered were provided, and that use of those hours was appropriately left to the discretion of Student's behavioral program supervisor. No evidence was introduced that Student failed to make adequate progress on his behavior goals during the time clinic meetings were suspended. Consequently, Student did not meet his burden of proof on the first issue.

ISSUE 2: FAILURE TO ALLOW PARENT TO RECORD MONTHLY CLINIC MEETINGS

Student contends Long Beach denied him a FAPE by failing to allow Mother to record clinic meetings during the 2018-2019 school year. Long Beach contends it was not legally required to permit Mother to record monthly clinic meetings because all meeting participants did not consent to Mother's request to record. Long Beach further contends that the provision in the IDEA which authorizes parents to record IEP meetings did not apply to clinic meetings.

The California Legislature has found electronic recording devices to be a serious threat to the exercise of personal liberties that cannot be tolerated in a free and civilized society. (Pen Code § 630). Penal Code, section 632, makes it a crime to intentionally audio record a confidential communication without the consent of all parties, and the violation is subject to punishment by fines and imprisonment. The two Superior Court orders issued in the divorce proceeding which allowed Parents to record each other did not authorize Mother to record other people in non-IEP meetings who did not consent to being recorded simply because Father was also present.

The California Education Code expressly provides that, notwithstanding Penal Code 632, parents and school districts have the right to audio record IEP team meetings. (Ed. Code §56341.1, subd. (g)(1).) Before exercising this right, the parents or the school district "shall notify the members of the individualized education program team of his, her or its intent to audio record a meeting at least 24 hours prior to the meeting." (Ibid.). If the school district initiates the notice, and parents refuse to attend if the meeting is recorded, the meeting may not be recorded. (Ibid.)

Other than the express exception allowing parents to record IEP meetings pursuant to Education Code §56341.1, subdivision (g)(1), nothing in the law authorizes a parent to record any other school-related meetings without the consent of all participants. There is no legal authority which allowed Mother to record a clinic meeting without the consent of all the participants.

Student argued that clinic meetings were the same as IEP meetings because data was discussed, which might lead to introduction of a new goal, and the case carrier attending communicated with Student's other teachers. Student also claimed that review of behavior data at a clinic meeting was similar to review of a formal assessment. Student took the position that clinic meetings equated to IEP meetings, and the statutory provision allowing parents to record IEP meetings also applied to clinic meetings. This position is not supported by either evidence or legal authority.

IEP meetings have many formal requisites, including, frequency, mandatory participants, agenda items, offering procedural rights, written notices and waivers, and documentation of who attended and what occurred. In contrast, clinic meetings are informal meetings without any of the extensive legal requirements of IEP meetings. Ms. Stroll's informal reports interpreting recently collected behavior data, which were discussed at clinic meetings, did not constitute formal assessments of the type required to be reviewed at IEP meetings.

Student failed to present persuasive legal authority or evidence to support his position that discretionary clinic meetings were the same as IEP meetings. Therefore, Parents' statutory right to record IEP meetings does not reasonably extend to clinic meetings. Consequently, Student failed to meet his burden of proof on the second issue.

ORDER

All of Student's requests for relief 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. Long Beach prevailed on both issues presented.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56506, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

DATED: August 16, 2019

/S/
CHRISTINE ARDEN
Administrative Law Judge
Office of Administrative Hearings