

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2019070571

PARENT ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL DISTRICT.

DECISION

APRIL 9, 2020

On July 15, 2019, Student filed a due process hearing request with the Office of Administrative Hearings, State of California, naming Long Beach Unified School District. The Office of Administrative Hearings will be called OAH. Long Beach Unified School District will be called Long Beach. On August 21, 2019, September 23, 2019, and January 30, 2020, OAH continued the case for good cause.

Administrative Law Judge Tara Doss presided over the hearing in Long Beach, California, on January 28, 29, and 30, 2020, and February 19, and 20, 2020. Attorney Carol Churchill represented Student. Parent attended on the first day and the last day of

hearing on behalf of Student. Student did not attend the hearing, but appeared as a witness on the last day of hearing. Attorney Debra Ferdman represented Long Beach. Wendy Rosenquist, Special Education Administrator, attended on all days of hearing on behalf of Long Beach.

At the request of the parties, OAH granted a continuance to March 9, 2020, to file written closing briefs. OAH closed the record, and submitted the case for decision on March 9, 2020.

ISSUES

1. Did Long Beach deny Student a free appropriate public education, called a FAPE, in the February 27, 2019 individualized education program, called an IEP, by failing to offer appropriate:
 - a. goals;
 - b. supports;
 - c. speech and language services; and
 - d. placement?
2. Did Long Beach deny Student a FAPE in the February 27, 2019 IEP, by failing to offer digital educational equipment?
3. Did Long Beach deny Student a FAPE by:
 - a. failing to timely respond to Parent's requests, from January 2019, through June 2019, for testing and meetings; and
 - b. providing Parent with misleading report cards?

JURISDICTION

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 main purposes of the Individuals with Disabilities Education Act, called IDEA, are to ensure:

- 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
- the rights of children with disabilities, and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter related to the identification, assessment, 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, and 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, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Here, Student filed the complaint and has the burden of proof on all issues. The factual statements below constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was 12 years old and in the seventh grade at the time of hearing. Student resided with Parent within Long Beach's attendance boundaries at all relevant times. Student attended a public middle school within Long Beach. Student was eligible for special education under the category of autism, sometimes called autistic-like behaviors. Harbor Regional Center diagnosed Student with autism as a young child. Autism, a spectrum disorder, is a developmental disability that can cause significant adaptive, behavioral, communication, and social challenges. Student's autism was severe. The disorder significantly impacted Student's cognitive and communication abilities, which limited Student's academic achievement. At the time of hearing, Student attended a special day class program for students with moderate to severe disabilities.

ISSUE 1(A): DID LONG BEACH DENY STUDENT A FAPE IN THE FEBRUARY 27, 2019 IEP, BY FAILING TO OFFER APPROPRIATE GOALS?

Student argued Long Beach failed to offer goals in all areas of Student's academic and functional needs, in the February 27, 2019 IEP. Specifically, Student argued Long Beach should have offered additional goals in the areas of academics, speech and language, and adaptive skills. Long Beach argued the goals offered in Student's February 27, 2019 IEP, reflected all areas of Student's unique needs. Long Beach further argued the additional goals Parent requested were not areas of need for Student.

A FAPE means special education and related services that are available to an eligible child that meets state educational standards, at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Parents and school personnel develop an IEP for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14) and (26), and 1414(d)(1)(A); Ed. Code, §§ 56031, 56032, 56345, subd. (a), and

56363, subd. (a); 34 C.F.R. §§ 300.17, 300.34, and 300.39; Cal. Code Regs., tit. 5, § 3001, subd. (p).)

In general, a child eligible for special education must be provided access to specialized instruction and related services that are individually designed to provide educational benefit through an IEP reasonably calculated to enable the child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176; *Endrew F. v. Douglas County School District* (2017) 580 U.S. ____ [137 S.Ct. 988, 1000]; *E.F. v. Newport Mesa Unified School District* (9th Cir. 2018) 726 Fed.Appx. 535.)

Whether an IEP offers a student a FAPE is assessed in light of information available at the time the IEP was developed, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) An IEP "is a snapshot, not a retrospective;" it must be evaluated in terms of what was objectively reasonable when the IEP was developed. (*Ibid.* (quoting *Fuhrmann v. East Hanover Board of Education* (3rd Cir. 1993) 993 F.2d 1031, 1036.)

An IEP must contain a statement of measurable academic and functional annual goals, designed to meet the child's needs so that the child can be involved in, and make progress in the general education curriculum; and to meet each of the child's other educational needs that result from a disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2)(i); Ed. Code, § 56345, subd. (a)(2).) The IEP must show a direct relationship between the present levels of performance, the goals, and the specific educational services to be provided. (Cal. Code Regs., tit. 5, § 3040, subd. (b).) Annual goals should describe what a child with a disability can reasonably be expected to accomplish within a 12-month period in the child's special education program. (*Letter*

to Butler, 213 IDELR 118 (OSERS 1988); Notice of Interpretation, Appendix A to 34 C.F.R., part 300, Question 4 (1999 regulations).)

During the 2018-2019 school year, Student's sixth grade year, Long Beach held an annual IEP team meeting over the course of two days, February 27, 2019, and April 3, 2019. The meetings will collectively be referred to as the February 27, 2019 IEP team meeting. The purpose of the meeting was to conduct Student's three-year review, and to discuss psychoeducational, occupational therapy, speech and language, and functional behavior assessments Long Beach staff conducted in November, and December 2018.

Parent, Student's Harbor Regional Center service coordinator, and Student's attorney attended the February, and April 2019 IEP team meetings. Several Long Beach staff attended both meetings, including Student's special day class teacher, and the school psychologist, speech and language pathologist, and behavior supervisor who conducted assessments of Student. Long Beach's attorney attended the February 2019 IEP team meeting.

At the beginning of the February 2019 IEP team meeting, Student's attorney gave the Long Beach team members an 11-page document that contained several goals, services, and supports Parent wanted Long Beach to include in Student's IEP. The Long Beach IEP team members reviewed Parent's requests, and considered them when discussing Student's present levels of performance, and when proposing new IEP goals.

Parent requested 12 goals in the areas of academics, speech and language, and adaptive skills. The first goal was for Student to learn to tell time on an analog and digital clock. The second goal was for Student to independently add up the cost of 10 items purchased in a store, and calculate the amount of change to be returned. The

third goal was for Student to independently read and follow three-step sequential instructions. The fourth goal was for Student to write or type five sentences with correct capitalization, punctuation, and grammar, after reading a grade-level appropriate book with at least 10 pages. The fifth goal was for Student to learn 200 vocabulary words. The sixth goal was for Student to answer who, what, where, and when questions after reading third grade text.

The seventh goal was for Student to learn to type using a color-coded keyboard. The eighth goal was for Student to write a five-to-eight-word sentence with correct spelling, grammar, and punctuation. The ninth goal was for Student to add and subtract three-digit numbers, and being trained to use a calculator. The 10th goal was for Student to accurately and clearly pronounce sentences with at least seven words after reading a book at fourth grade level. The 11th goal was for Student to clearly and verbally communicate needs, like going to the bathroom, or requesting a snack. The 12th goal was for Student to clearly and verbally communicate personal information, including name, address, and Parent's telephone number.

The school psychologist reviewed the results from Student's January 2019 psychoeducational assessment. Student's estimated cognitive ability was in the significantly below average range. Student's verbal abilities were below the first percentile when compared to same-aged children. Student's nonverbal reasoning was in the second percentile. Student's academic scores were significantly below average. Student's reading, writing, and math scores were below the first percentile, and equivalent to the performance of a first grader.

Student read second grade text with some fluency. Student wrote kindergarten level sight words, and copied sentences from a model. Student typed sentences from a

model with adult assistance. Student gave one-word answers to comprehension questions after reading one sentence, and answered using a complete sentence with prompting from an adult. Student added and subtracted double-digit numbers without regrouping. Student used a calculator to solve three-digit addition problems. Student memorized multiplication facts for zero, one, five, and ten, and could use a chart to solve multiplication facts for numbers up to 12. Student identified and sorted money by name and value.

Student's adaptive skills at school were not a concern. Student independently and safely navigated the classroom and campus. Student did not need help with eating, using the restroom, or changing clothes for physical education. Student followed classroom rules and routine, transitioned well from one activity to another, and independently made choices.

As part of the assessment, the school psychologist observed Student in the special day classroom. Student was attentive, and completed all assigned tasks. Student worked independently, read aloud and answered questions with adult prompting, read quietly, and counted money. The school psychologist recommended continued placement in Student's special day class program.

The speech and language pathologist reviewed the results from Student's December 2018 speech and language assessment, as revised on February 4, 2019. On standardized tests, Student's receptive and expressive vocabulary skills, and articulation, were significantly below average, and below the first percentile when compared to same-aged children. Student mostly spoke in one-to-four-word sentences, but used up to seven words. Student used pronouns, present progressive action verbs, and simple prepositions. Student often needed time to process before

answering a question, and was sometimes off-topic. Student showed the most independent language skills when requesting wants, and when responding to simple who and what questions during a structured activity.

Student was making progress in communication skills but still had significant language deficits. Student had difficulty consistently speaking in complete sentences. Student sometimes needed prompting to take turns and have a back-and-forth conversation. Student had articulation errors typically mastered by age eight. Student's strengths were following directions, participating in activities during speech sessions, and showing communicative intent to gain attention and make requests. The pathologist recommended Student continue to receive speech and language services.

The occupational therapist reviewed the results from the November 2018 occupational therapy assessment, but did not recommend services or propose goals for Student.

Next, the team reviewed Student's progress on previous annual IEP goals, and proposed new goals. In academics, Student had previous goals in reading comprehension, writing, addition, subtraction, and multiplication. Student's comprehension goal was to read text with pictures, and answer who, what, and where questions, using complete sentences. Student made slow progress on this goal, and answered who, what, and where questions with one-word answers after listening to, or reading one sentence. When prompted, Student responded using a complete sentence. The proposed comprehension goal was for Student to read a passage with four to five sentences and a picture, and then answer simple who, what, where, and when questions. This goal addressed Student's ongoing needs to read with understanding, and to

increase verbal responses. This goal was related to Parent's proposed goal of Student answering who, what, where, and when questions after reading a third grade text.

Student's writing goal was to write a complete sentence with correct spacing, punctuation, and high frequency words. Student did not make progress on this goal. Student copied a complete sentence from a model, but did not write sentences independently. The proposed writing goal was for Student to construct a sentence with correct capitalization, spelling, and punctuation, using a sentence starter and word bank. This goal addressed Student's need to learn foundational writing skills, including writing a complete sentence. This goal was related to Parent's proposed goal of Student writing or typing five sentences with correct spelling, grammar, and punctuation.

Student's addition and subtraction goals were to correctly solve multi-digit word problems by using manipulatives and writing a number sentence. Student made progress on these goals, and added and subtracted double-digit numbers using manipulatives, and solved three-digit problems using a calculator. Student's multiplication goal was to solve multiplication facts from zero to 12. Student made progress on this goal, and used a multiplication chart to solve the problems. The proposed math goal was for Student to independently count coins, when given a mixed group of coins up to one dollar. This goal addressed Student's need to acquire functional money skills, and was related to Parent's proposed goal of Student adding up the cost of items to purchase from a store.

In speech and language, Student had previous goals in expressive language and a speech production. The expressive language goal was to independently use six or more words to describe or comment about a topic. Student made progress on the goal, and used six or more words half the time. The proposed expressive language goal was

for Student to use five to six words to describe a multi-step social or hygiene routine in sequential order, using visual and verbal prompts. This goal addressed Student's need to speak in complete sentences, and related to Parent's proposed goal of Student verbally communicating needs. The speech production goal was to produce the /th/ and /r/ phonemes, or sounds, in all word positions given moderate cues and models. Student met the goal with respect to the /th/ sound, but still had difficulty with the /r/ sound. The proposed articulation goal was for Student to self-monitor and correctly produce the /th/, /r/, and r-blend sounds in all word positions, with modeling. This goal addressed Student's continued difficulty producing some sounds correctly.

The speech and language pathologist proposed additional goals in pragmatic or social language, and combined expressive and receptive language. The pragmatic language goal was for Student to consistently greet school staff and peers, take turns, gain attention, and ask questions by verbally saying the name of the person, with visual prompting. This goal addressed Student's social skills deficits, and specifically, Student's need to increase turn-taking and back-and-forth conversations. The combined expressive and receptive language goal was for Student to use five to eight words to request wants and needs, respond to who, what, where, and when questions, describe pictures, make comments on basic topics, and recite personal information, with visual and verbal prompting. This goal addressed Student's need to speak in complete sentences, and improve responses to who, what, where, and when questions. This goal also related to Parent's proposed goals of Student verbally communicating needs, and reciting personal information.

Behaviorally, Student met the previous goal of asking for help when a peer acted inappropriately. The proposed goal was for Student to wait in line, or for directions,

without pressing on eyes or face. This goal addressed Student's self-stimulatory behavior, as identified in the December 2018 functional behavior assessment.

Student did not prove Long Beach failed to offer Student goals in all areas of need, or that Student required additional goals to receive a FAPE. The goals were measurable, and designed to meet Student's needs so that Student could make progress on the curriculum used in the moderate to severe special day class program. There was a direct relationship between Student's academic, speech and language, and behavior needs, and the proposed goals. Student's needs were identified in the psychoeducational, speech and language, and functional behavior assessments, and discussed at the February 27, 2019 IEP team meeting.

The proposed IEP goals related to several areas of concern identified in Parent's proposed goals. Long Beach did not incorporate some of Parent's proposed goals, either because Student would not achieve the goal in a 12-month period, or because Student already completed the skills identified in the goal. For instance, Student's teacher testified Student would not, in a 12-month period, learn 200 vocabulary words, read at a third or fourth grade level, or independently write or type multiple sentences. Additionally, the teacher testified Student already told time on a digital clock, followed three-step sequential instructions, typed on a keyboard, and used a calculator to solve three-digit addition and subtraction problems.

Student's teacher had worked as a special education teacher for more than 10 years, with nine of those years spent in Student's moderate to severe special day class. The teacher had extensive experience teaching children with autism, and children with needs similar to Student's. The teacher demonstrated personal knowledge regarding Student's needs, Student's IEP goals, and the moderate to severe special day

class program. Therefore, the teacher's testimony and opinions referenced throughout this Decision, were credible and persuasive.

Long Beach offered appropriate goals in the February 27, 2019 IEP, based on the information the IEP team had available at the time. Therefore, Student did not prevail on this issue.

ISSUE 1(B): DID LONG BEACH DENY STUDENT A FAPE IN THE FEBRUARY 27, 2019 IEP, BY FAILING TO OFFER APPROPRIATE SUPPORTS?

Student argued Long Beach should have offered a one-to-one aide in the February 27, 2019 IEP, to help improve Student's academic and language skills. Long Beach argued the February 27, 2019 IEP offered appropriate supports to address Student's unique needs. Specifically, Long Beach argued Student did not require a one-to-one aide because Student performed independently in the special day class program.

In Student's closing brief, Student argued for the first time that in the February 27, 2019 IEP, Long Beach failed to offer appropriate behavior interventions to address Student's autism-related deficits, and that Long Beach unilaterally reduced Student's specialized academic instruction. These issues were not in Student's complaint, were not raised at the prehearing conference, and at no time did Long Beach consent to amending the complaint to add them. Therefore, these issues are not addressed in this Decision. (Ed. Code, § 56502, subd. (i) [party requesting the due process hearing may not raise issues at hearing that were not alleged in the complaint unless the responding party agrees].)

The IEP must include a statement of the program modifications or supports that will be provided to the student, to allow the student to advance appropriately toward

attaining the annual goals; to be involved in, and make progress in the general education curriculum; and to participate in extracurricular activities and other nonacademic activities. (34 C.F.R. § 300.320(a)(4)(i)-(ii); Ed. Code, § 56345, subds. (a)(4)(A), and (B).)

During the 2018-2019 school year, Student's moderate to severe special day classroom had approximately 17 students, one teacher, four classroom aides, and four one-to-one aides assigned to students for behavior or health reasons. When discounting the four one-to-one aides and the students they supported, there were five adults to support 13 students, or approximately one adult for every two to three students. The classroom aides helped the teacher implement instruction and work on IEP goals, and provided modeling and prompting to the students as needed. The aides did not have teaching credentials, and could not teach students in place of the teacher. The aides also could not provide speech and language services in place of the speech and language pathologist.

The IEP team reviewed and discussed Parent's request for a one-to-one aide. Based on the information available to the team, including results from the psychoeducational, speech and language, and functional behavior assessments, and the teacher's daily observations of Student, Long Beach determined a one-to-one aide was not appropriate for Student. The teacher credibly and persuasively testified Student did not require a one-to-one aide because Student independently followed the classroom routine, engaged in assigned activities without frequent prompting, and was making progress on IEP goals.

Similarly, the school psychologist and speech and language pathologist, testified Student did not require a one-to-one aide. In the school psychologist's opinion, a

one-to-one aide was too restrictive because Student already had classroom aides available to help with academic tasks, as needed. In the speech and language pathologist's opinion, a one-to-one aide was not necessary for Student to work on communication skills because Student practiced skills during speech and language sessions, and during the pathologist's frequent visits to Student's classroom, during which, the pathologist helped Student generalize the skills learned in the sessions. The school psychologist's and pathologist's opinions were well-reasoned and supported by other evidence regarding Student's needs, and therefore, were credible and persuasive.

Student did not present any evidence that contradicted the opinions of the Long Beach staff, or that proved Student required a one-to-one aide to make progress on annual goals and in the moderate to severe special day class program, or to participate in nonacademic activities. Specifically, Student did not show how the addition of a one-to-one aide to Student's program would increase Student's progress in academics and communication. Parent's testimony was not persuasive. In Parent's opinion, a one-to-one aide would help Student academically and with communication, but Parent did not explain the basis for that opinion. Moreover, Parent had never visited Student's class, was not familiar with the curriculum taught in the class, or aware that there were already aides present in the classroom to help Student.

Student did not prove Long Beach failed to offer appropriate supports in the February 27, 2019 IEP. Therefore, Student did not prevail on this issue.

ISSUE 1(C): DID LONG BEACH DENY STUDENT A FAPE IN THE FEBRUARY 27, 2019 IEP, BY FAILING TO OFFER APPROPRIATE SPEECH AND LANGUAGE SERVICES?

Student argued Long Beach should have offered individual speech and language services to address Student's articulation deficits, in the February 27, 2019 IEP. Long Beach argued Student made progress in articulation, and benefited from group speech and language services, where Student could model peers and practice social skills.

Related services may be provided to individuals or to small groups in a specialized area of educational need, and throughout the full continuum of educational settings. (Cal. Code Regs., tit. 5, § 3051, sub. (a)(1).) Related services, when needed, are determined by the IEP team. (Cal. Code Regs., tit. 5, § 3051, sub. (a)(2).)

The February 27, 2019 IEP offered group speech and language services eight times a month, for 25 minutes each session; and consultation between the speech and language pathologist and Student's teacher two times a month, for 15 minutes each session. This was an increase in services from Student's previous IEP, adding one 25-minute group session, and the consultation services. The speech and language pathologist increased the services in response to Parent's concerns about Student's slow progress, and because the pathologist proposed two more goals than were in the previous IEP.

The February 27, 2019 IEP offered four speech and language goals in articulation, expressive language, pragmatic or social language, and combined expressive and receptive language. The articulation goal was to correctly produce certain sounds. The speech and language pathologist recommended group speech and language services to

help Student make progress towards meeting all the goals, including articulation. The pathologist testified group services were more beneficial to Student than individual services because it offered a more natural environment where Student could learn from peer models, and it allowed Student to practice social skills, which was an area of need. Additionally, Student made progress on the previous articulation goal through participation in group services.

The speech and language pathologist had over 20 years of experience working as a speech and language pathologist in schools. The pathologist had worked with more than 500 students with autism, with most of those students being severely impacted by the disability. The pathologist's duties included conducting assessments, developing and implementing IEP goals, attending IEP team meetings, providing direct services to students with speech and language needs, and collaborating with parents, teachers, and other related service providers. The pathologist provided group speech and language services to Student during the 2018-2019 school year. The pathologist demonstrated personal knowledge of Student's speech and language needs, Student's IEP goals, and Student's special day class program. Therefore, the pathologist's testimony and opinions were credible and persuasive.

Student did not present any evidence, such as expert testimony or a private speech and language assessment, that contradicted the speech and language pathologist's opinion. Parent's opinion that Student would focus more, and respond better in an individual setting, was not as persuasive as the speech and language pathologist's opinion because Parent was not a speech and language pathologist, and did not have any specialized knowledge regarding Student's communication needs. Therefore, Student did not prove Long Beach failed to offer appropriate speech and language services in the February 27, 2019 IEP, and Student did not prevail on this issue.

ISSUE 1(D): DID LONG BEACH DENY STUDENT A FAPE IN THE FEBRUARY 27, 2019 IEP, BY FAILING TO OFFER APPROPRIATE PLACEMENT?

Student argued Student's placement in a special day class program for students with moderate to severe disabilities was not the least restrictive environment. Student argued Student should be placed in a special day class program for students with mild to moderate disabilities, for at least part of the school day. Student argued Student would benefit from socializing with students with less severe disabilities, and that Student could model their communication and behavior. Student also argued Student's independence and ability to follow the class routine supported placement in a less restrictive environment. Further, Student argued that Student's academic deficits should not automatically bar Student from placement in a less restrictive environment. Finally, Student argued Student could be successful in a mild to moderate special day class, with a one-to-one aide providing academic support.

Long Beach argued Student was appropriately placed in a special day class program for students with moderate to severe disabilities. Long Beach argued the special day class program for students with mild to moderate disabilities was not appropriate for Student because the curriculum used was above Student's academic and developmental skill levels, and because there was not enough adult support in the classroom to allow Student to make progress on goals or receive an educational benefit.

The IEP team is charged with the duty of reviewing assessment results, determining eligibility, determining the contents of an IEP, and making recommendations regarding a student's program and placement. (Ed. Code, § 56342.) In determining the educational placement of a child with a disability, a school district must ensure the placement decision is made by a group of persons, including the

parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and takes into account the requirement that children be educated in the least restrictive environment. (34 C.F.R. § 300.116(a).)

School districts must make available a continuum of placement options. (20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.115.) In California, this includes instruction in general education programs, resource specialist programs, designated instruction and services, special classes, and nonpublic, nonsectarian school services, among others not at issue here. (Ed. Code, § 56361.) Placement must be in the least restrictive environment, which means school districts must ensure, to the maximum extent appropriate, that children with disabilities are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the general educational environment occurs only when the nature and the severity of the disability of the child is such that education in regular classes, with the use of supplementary aids and services, cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a); Ed. Code, § 56031.)

In resolving the question of whether a school district offered a FAPE, the focus must be on the adequacy of the student's program. (*Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1307, 1314.) In order for a student's placement to constitute a FAPE, it must be designed to provide educational benefit through an IEP reasonably calculated to enable the student to make progress appropriate in light of student's circumstances. (*Rowley, supra*, 458 U.S. at pp. 206-207; *Endrew F., supra*, 580 U.S. ____ [137 S.Ct. 988, 1000].)

When analyzing whether a school district complied with the IDEA's least restrictive environment requirements, OAH must consider:

1. the educational benefits available in the general education classroom, supplemented with appropriate aids and services, as compared with the educational benefits of the special education classroom;
2. the nonacademic benefits of interaction with children without disabilities;
3. the effect the student's presence would have on the teacher, and other students in the general education classroom; and
4. the cost of placing the student in a general education classroom.

(*Sacramento City Unified School District, Board of Education v. Rachel H., et. al.* (9th Cir. 1994) 14 F.3d 1398, 1400-1401.)

If it is determined that a child cannot be educated in a general education environment, then the least restrictive environment analysis requires a further determination of whether the child has been mainstreamed to the maximum extent appropriate in light of the continuum of program options. (*Daniel R.R. v. State Board of Education* (5th Cir. 1989) 874 F.2d 1036, 1050.) Mainstreaming is a term used to describe opportunities for disabled students to engage in activities with nondisabled students. (*M.L. v. Federal Way School District* (9th Cir. 2005) 394 F.3d 634, 640, fn. 7.)

At the February 27, 2019 IEP team meeting, the IEP team reviewed recent psychoeducational, speech and language, occupational therapy, and functional behavior assessments. The team discussed Student's academic, speech and language, behavioral, and functional needs, as identified in the assessments, and as observed by Student's teacher, the speech and language pathologist, and Parent. The team proposed annual

goals to address Student's needs, as well as supports and related services to help Student make progress on the goals, and to receive an educational benefit. Finally, the team offered placement in a special day class program for students with moderate to severe disabilities, for 86 percent of Student's school day. The team offered mainstreaming in general education physical education, and during lunch, recess, and passing periods.

When considering Student's placement, the team discussed the differences between a special day class program for students with mild to moderate disabilities, and a special day class program for students with moderate to severe disabilities. The team considered the IDEA's mandate that children with disabilities be educated, to the maximum extent appropriate, with children without disabilities, and determined the least restrictive environment for Student was in the moderate to severe special day class program for most of the school day, with mainstreaming opportunities.

STUDENT'S PROGRAM

Student was in a moderate to severe special day class program during the 2018-2019 school year, when Long Beach held the February 27, 2019 IEP team meeting. The moderate to severe special day class program taught students using a modified curriculum that taught functional academics and daily living skills, based on state standards. Students in the program were not on track to receive a regular high school diploma, and were generally performing academically at the kindergarten to second grade level. As discussed, Student's class had significant adult support, with four classroom aides to assist the teacher and students, as needed. The program allowed Student to work on the curriculum and IEP goals, at a pace appropriate for Student.

Student had significant deficits in all academic areas, and was performing at the kindergarten to second grade level. Student's progress on academic skills was slow, but Student made progress on IEP goals commensurate with the progress Student's teacher expected in the moderate to severe program. Student's communication skills were even more impaired. Student did not speak in complete sentences without prompting, and needed adult reminders to consistently engage in conversation with peers.

Student was successful in, and seemed to enjoy the moderate to severe special day class program. Student independently ate, used the restroom, and changed clothes for physical education. Student communicated wants and needs, had friends, and actively participated in classroom lessons and activities. Student did not have any disruptive behaviors, followed the classroom routine, and completed assigned tasks without constant prompting. In the teacher's opinion, the moderate to severe special day class program was appropriate because Student independently participated in the program, and the curriculum was at Student's instructional level.

LEAST RESTRICTIVE ENVIRONMENT

When considering the factors set forth in *Rachel H.* and *Daniel R.R.*, Student's placement in the moderate to severe special day class program was the least restrictive environment for Student, and Long Beach offered mainstreaming opportunities appropriate for Student. The focus of both parties' arguments was whether the moderate to severe special day class program was more appropriate for Student than the mild to moderate special day class program. Neither party presented evidence regarding the appropriateness of a general education placement, so it is unnecessary to analyze it here. Since there was no dispute that Student was appropriately educated in

a special education classroom, the least restrictive environment analysis must focus on whether Student was mainstreamed to the maximum extent appropriate.

As discussed, Student was mainstreamed for 14 percent of the school day. In the physical education class, Student played successfully with general education peers, with assistance from a special day class aide, other students in the class, or the physical education teacher. There was no evidence presented showing that the IEP team considered additional mainstreaming opportunities, or that Student required, or would benefit from, additional mainstreaming opportunities.

PARENT'S REQUESTED PROGRAM

During the 2018-2019 school year, the mild to moderate special day class program had approximately 18 students, one teacher, and one classroom aide. The teacher taught students using the general education curriculum, but at a slower pace. Generally, the students in the program were on track to receive a high school diploma, and were performing at the third to fifth grade level. In Student's teacher's opinion, the mild to moderate special day class program was not appropriate for Student, even with the support of a one-to-one aide, because the teacher would have to make significant modifications to the curriculum, Student's academic skills were far below those of the other students in the class, and Student would be overwhelmed by the content and faster pace of the class. The speech and language pathologist and school psychologist agreed Student would be overwhelmed in the mild to moderate special day class program.

Parent had never observed either the moderate to severe special day class, or mild to moderate special day class programs, at Student's school. Moreover, Parent was unfamiliar with the curriculum used, and the supports available in the different

programs. Student's regional center coordinator observed Student's class for 40 minutes one week before the February 27, 2019 IEP team meeting, but had never observed a mild to moderate special day class at Student's school. In the coordinator's opinion, Long Beach should have evaluated Student to determine whether placement in a mild to moderate special day class was appropriate. The coordinator admitted to not having the credentials or expertise to make placement recommendations. Neither Parent, nor the regional center coordinator, demonstrated personal knowledge regarding Student's academic and functional needs at school, or the special day class programs at Student's school. Therefore, their opinions regarding Student's placement were not persuasive.

Student did not prove Student's placement in the moderate to severe special day class program was inappropriate. Student received educational benefit from the program, and made progress in light of Student's circumstances. Moreover, the moderate to severe special day class program was the least restrictive environment based on Student's unique needs. Therefore, Student did not prevail on this issue.

ISSUE 2: DID LONG BEACH DENY STUDENT A FAPE IN THE FEBRUARY 27, 2019 IEP, BY FAILING TO OFFER DIGITAL EDUCATIONAL EQUIPMENT?

Student argued Long Beach should have offered Student an iPad equipped with educational applications, a digital dictionary, and a calculator. Student argued these items would increase Student's communication and academic skills. Long Beach argued Student did not require any digital educational equipment to receive a FAPE.

A school district is required to provide any assistive technology device that is necessary to provide a FAPE to a child with a disability. (20 U.S.C. § 1412(a)(12)(B)(i);

34 C.F.R. § 300.105; Ed. Code, § 56341.1, subd. (b)(5).) An IEP team must consider whether a child requires assistive technology devices or services. (20 U.S.C. § 1414(d)(3)(B)(v); 34 C.F.R. § 300.324 (a)(2)(v); Ed. Code, § 56341.1, subd. (b)(5).) An assistive technology device is any piece of equipment that is used to increase, maintain, or improve the functional capabilities of individuals with disabilities. An assistive technology service is any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. (20 U.S.C. § 1401(1); Ed. Code, § 56020.5.)

The methodology used to implement an IEP is left up to the school 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, supra*, 195 F.3d at pp. 1149-1150; *T.B. v. Warwick School Committee* (1st Cir. 2004) 361 F.3d 80, 84 (citing *Roland M. v. Concord School Committee* (1st Cir. 1990) 910 F.2d 983, 992.)

At the February 27, 2019 IEP team meeting, Parent requested an iPad equipped with electronic educational applications, a digital dictionary, and a calculator. In making the request for the iPad, Parent relied on a recommendation in the speech and language assessment report that Student use various educational applications to increase communication skills. At the IEP team meeting, the pathologist explained to Parent that the recommended applications were a suggested tool for Parent to use at home with Student. The pathologist did not recommend that an iPad, or the suggested applications be included as supports in Student's IEP, or that Student required an iPad or educational applications to make progress on annual goals, or to receive an educational benefit from Student's program.

With respect to Student's requests for a digital dictionary and calculator, Student's teacher credibly and persuasively testified that Student had access to both items at school. Moreover, Student did not require either device to make progress towards the math or language arts goals, or receive an educational benefit from Student's program. Parent believed Student would benefit from the requested electronic supports because Student was good with technology, sent text messages on a smart phone, and searched for YouTube videos on the internet. However, Long Beach had the discretion to select the methodology used to implement Student's IEP, and did not deny Student a FAPE by refusing to provide Parent's preferred supports.

Student did not prove Long Beach should have offered digital educational equipment in the February 27, 2019 IEP. The IEP team considered Parent's request, and also considered whether Student required assistive technology to benefit from Student's program. After considering all available information, the Long Beach team members determined the electronic devices already available at school met Student's needs, and reasonably denied Parent's requests. Therefore, Student did not prevail on this issue.

ISSUE 3(A): DID LONG BEACH DENY STUDENT A FAPE BY FAILING TO TIMELY RESPOND TO PARENT'S REQUESTS, FROM JANUARY 2019, THROUGH JUNE 2019, FOR TESTING AND MEETINGS?

In Student's closing brief, Student argued for the first time that Long Beach failed to timely complete Student's three-year review assessments, and hold an IEP team meeting to review the assessments, following Parent's request for assessments in August 2018. This issue was not in Student's complaint, was not raised at the prehearing conference, and at no time did Long Beach consent to amending the complaint to add it. Again, issues raised for the first time in Student's closing brief, are

not addressed in this Decision. (Ed. Code, § 56502, subd. (i).) Accordingly, this Decision will consider only Parent's requests for testing and meetings from January 2019, to June 2019.

Student did not put forth any arguments that Long Beach failed to timely respond to Parent's requests for testing and meetings from January 2019, to June 2019. Long Beach argued Parent did not request any IEP team meetings between January 2019, and June 2019, and that it timely responded to Parent's request for an assistive technology assessment.

Student did not prove Long Beach failed to timely respond to any Parent requests for testing and meetings between January 2019, and June 2019. There was no evidence that Parent requested an IEP team meeting within the designated timeframe. While Parent did request an augmentative and alternative communication assessment at the February 27, 2019 IEP, Student did not put forth any arguments that Long Beach failed to timely respond to that request, and Long Beach denied the request at the April 3, 2019 IEP team meeting. Therefore, Student did not prevail on this issue.

ISSUE 3(B): DID LONG BEACH DENY STUDENT A FAPE BY PROVIDING PARENT WITH MISLEADING REPORT CARDS?

Student argued Student's November 2018 report card misled Parent into believing Student was achieving well in school, and that Student was not in need of additional special education supports or services. Long Beach argued Student's November 2018 report card was not misleading, and that Parent's misunderstanding of the report card did not result in a denial of FAPE.

Student's teacher issued a report card in November 2018. Student received As in practical living, functional English language arts, mathematics development, and mobility and transportation. Student received a B in physical education, and a P, or pass, in the advisory period. Per the report card, an A meant Student's performance was superior, and a B meant Student's performance was better than average. Student's grades were based on participation and attendance, and not academic performance. Instead, academic performance was reported through Student's progress on IEP goals.

Parent was not knowledgeable about Student's special day class program, or the modified curriculum used. Parent did not know what functional academics were, and believed Student was learning from the sixth grade general education curriculum. Based on Student's grades in the November 2018 report card, Parent believed Student was performing well in class. It was not until Parent received the psychoeducational and speech and language assessment reports, which indicated Student was significantly below average in intellectual ability, academic skills, and communication, that Parent questioned whether Long Beach was meeting Student's educational needs. This concern led Parent to believe the report card incorrectly reported Student's academic skills.

Parent never contacted anyone from Long Beach, including Student's teacher, to discuss concerns about Student's report card, or to learn more about the special day class curriculum. Moreover, Parent attended both the February, and April 2019 IEP team meetings, and did not raise any concerns about Student's report card at either meeting. Parent's belief that Student was performing well on sixth grade general education curriculum was contradicted by other evidence.

According to Parent's interview in the January 2019 psychoeducational assessment, Parent reported Student was behind in all academic subjects, lacked independence, did not complete a task unless supervised and repeatedly prompted, and did not follow multi-step directions. It was not credible that Parent believed Student could perform superior work at the sixth grade level with these significant deficits. Moreover, Student did not present any evidence that proved Parent's misunderstanding of the November 2018 report card, or how Student's teacher calculated the grades, resulted in a denial of FAPE. Therefore, Student did not prevail on this issue.

CONCLUSIONS AND 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 all issues heard and decided. Specifically:

1. On Issue 1:
 - a. Student did not prove Long Beach denied Student a FAPE in the February 27, 2019 IEP, by failing to offer appropriate goals.
 - b. Student did not prove Long Beach denied Student a FAPE in the February 27, 2019 IEP, by failing to offer appropriate supports.
 - c. Student did not prove Long Beach denied Student a FAPE in the February 27, 2019 IEP, by failing to offer appropriate speech and language services.
 - d. Student did not prove Long Beach denied Student a FAPE in the February 27, 2019 IEP, by failing to offer appropriate placement.

2. On Issue 2, Student did not prove Long Beach denied Student a FAPE in the February 27, 2019 IEP, by failing to offer digital educational equipment.
3. On Issue 3:
 - a. Student did not prove Long Beach denied Student a FAPE by failing to timely respond to Parent's requests from January 2019, through June 2019, for testing and meetings.
 - b. Student did not prove Long Beach denied Student a FAPE by providing Parent with misleading report cards.

ORDER

All of Student's claims for relief are denied.

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.

/s/
Tara Doss
Administrative Law Judge
Office of Administrative Hearings