

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2020021270

PARENT ON BEHALF OF STUDENT,

v.

SANTA CRUZ CITY SCHOOLS.

DECISION

AUGUST 4, 2020

On February 26, 2020, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parent, naming Santa Cruz City Schools and Mission Hill Middle School as respondents. On March 17, 2020, all but one of Student's claims were dismissed, and on April 3, 2020, Mission Hill was dismissed. OAH continued the matter for good cause on March 18, 2020, by General Order due to the Covid-19 Pandemic, and on May 8, 2020, OAH continued the matter for good cause. Administrative Law Judge, Claire Yazigi, heard this matter by videoconference on July 14, 2020. Presiding Judge Joy Redmon observed a portion of the hearing in a supervisory capacity for OAH.

Parent appeared on behalf of Student. Attorneys Elizabeth Schwartz and Laurie Reynolds represented Santa Cruz. Dr. Stacy O'Farrell, PhD, Special Education Director, appeared on behalf of Santa Cruz. The parties presented oral closing argument, the record was closed and the matter was submitted on July 14, 2020.

ISSUE

Did Santa Cruz deny Student a free appropriate public education at Student's March 23, 2018 individualized education program team meeting by failing to allow Parent to meaningfully participate in the IEP process?

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, referred to as the IDEA, are to ensure:

- all children with disabilities have available to them a free appropriate public education, referred to as FAPE, 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 relating 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, 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, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. §1415(i)(2)(C)(iii).) Student had the burden of proof as the filing party. 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, sec. 56505, subd. (e)(5).)

Student was 16 years old and in 11th grade at the time of hearing. Student resided within Santa Cruz's geographic boundaries at all relevant times. In October 2018, Student was first found eligible for special education and related services under the eligibility category of specific learning disability.

ISSUE: DID SANTA CRUZ DENY STUDENT A FAPE AT STUDENT'S MARCH 23, 2018 INDIVIDUALIZED EDUCATION PROGRAM, OR IEP, TEAM MEETING BY FAILING TO ALLOW PARENT TO MEANINGFULLY PARTICIPATE IN THE IEP PROCESS?

Parent contends that he was not given an opportunity to participate in a March 23, 2018 initial IEP team meeting in which school district members of the IEP

team concluded that Student was not eligible for special education. Parent asserts that the district IEP team members ignored his concerns about Student's school difficulties. Parent further alleged that the other team members wrongly focused on the number of Student's absences without addressing Parent's concerns that the reason for those absences were the very challenges that could give rise to special education eligibility. Specifically, Parent contends school challenges, health, and emotional issues caused Student's absences. It was these unaddressed areas of need that, Parent asserts, required special education and related services. Parent seeks an order requiring that Santa Cruz train its special education staff regarding working with parents of special needs children, especially single parents and parents struggling with personal setbacks.

Santa Cruz contends that it complied with applicable state and federal law relating to parent participation in the March 23, 2018 IEP team meeting. Santa Cruz contends that Parent's concerns were considered and addressed during the IEP team meeting. Santa Cruz further contends that its IEP team members explained to Parent why Student was found ineligible for special education and related services. According to Santa Cruz, Parent was given the opportunity to meaningfully participate in the March 23, 2018, IEP development process and, although disappointed with the outcome, signed the IEP voluntarily.

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 individualized education program, referred to as an IEP, for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see

Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a) and 56363 subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501.)

An IEP team must include the parents of the child with a disability. (20 U.S.C. § 1414(d)(1)(B)(i); 34 C.F.R. § 300.321(a)(1) (2007).) Procedurally, the parents must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.501(b)(1) and (c) (2006); 34 CFR § 300.116(a)(1) (2006).) A procedural violation results in a denial of FAPE if it impedes the child's right to a FAPE, significantly impedes the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child, or causes a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).

The Supreme Court has stressed that the IDEA's structure relies on parental participation to ensure the substantive success of the IDEA in providing quality education to disabled students. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 205-206.) "[T]he informed involvement of parents" is central to the IEP process. (*Winkelman v. Parma City School Dist.* (2007) 550 U.S. 516, 524 [127 S. Ct. 1994].) Id.) Protection of parental participation is "[a]mong the most important procedural safeguards" in the Act. (*Amanda J. ex rel. Annette J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 882. (*Amanda J.*)). Parents not only represent the best interests of their child in the IEP development process, but also "provide information about the child critical to developing a comprehensive IEP and which only they are in a position to know." (*Ibid.*) "Procedural violations that interfere with parental participation in the IEP formulation process undermine the very essence of

the IDEA." (*Id.* at p. 892; see also, *W.G., et al. v. Board of Trustees of Target Range School Dist., etc.* (9th Cir. 1992) 960 F.2d 1479, 1484, superseded in part by statute on other grounds ["...procedural inadequacies that result in the loss of educational opportunity, [citation], or seriously infringe the parents' opportunity to participate in the IEP formulation process, [citations], clearly result in the denial of a FAPE."].)

In order to fulfill the goal of parental participation in the IEP process, the school district is required to conduct a meaningful IEP team meeting. (*Amanda J., supra*, 267 F.3d 877, 891.) A parent has meaningfully participated in the development of an IEP when the parent is informed of the child's problems, attends the IEP meeting, expresses disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693 (*Knox County*); *Fuhrmann v. East Hanover Board of Education* (3d Cir. 1993) 993 F.2d 1031, 1036 [parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way] (*Fuhrmann*).)

While parent participation is essential in ensuring the safeguards afforded by the IDEA, the IDEA does not give parents the right to control or veto any individual IEP provision. (*Ms. S ex rel. G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131 (superseded by statute on other grounds as recognized in *M.L. v. Fed. Way School Dist.* (9th Cir. 2003) 341 F.3d 1052).) The mandate to consider parent input does not require acquiescence to parent's position. The IDEA does not require school districts "simply to accede to parents' demands without considering any suitable alternatives." (*Blackmon v. Springfield R-XII School Dist.* (8th Cir. 1999) 198 F.3d 648, 657.)

MARCH 23, 2018 IEP TEAM MEETING

Parent began noticing Student struggling in school when Student was in sixth grade. By the time Student was in the eighth grade during the 2017-2018 school year, Parent was concerned with Student's difficulty learning and retaining information, as well as Student's anxiety during test taking. Parent enrolled Student in afterschool programs but saw no improvement in academics. Parent sought special education and related services to address Student's issues so that Student would be better prepared to begin high school.

Kristina Cabrera, then-resource specialist for Santa Cruz, and Santa Cruz school psychologist Marie Stephen conducted a multidisciplinary psychoeducational assessment in March 2018. The purpose of the assessment was to provide information to the IEP team so that it could make a determination on whether Student was eligible for special education and related services within the eligibility category of specific learning disability. The assessment included an interview with Parent where Parent shared information about Student's health history and personality. Parent also shared several observations and concerns about Student's academic struggles, including her difficulty with learning in large groups, retaining what was taught in class, and anxiety during test taking. Also included in the assessment was Parent's rating of Student's executive function behaviors on a "Behavior Rating Inventory of Executive Function 2" questionnaire. The assessment team prepared a written report dated March 23, 2018. The report did not make any conclusion regarding Student's eligibility for special education and related services.

An initial IEP team meeting was convened on March 23, 2018 to review the assessment report and to make a determination on Student's eligibility for special

education and related services. Present at the meeting were: Parent, Ms. Cabrera, Ms. Stephen, and then-assistant principal Kat McElwee, as well as other general education teachers. Santa Cruz gave Parent a copy of the multidisciplinary assessment report as well as a document detailing parents' rights and procedural safeguards.

As of March 23, 2018, Student had missed close to 300 days of school since kindergarten. At the IEP team meeting, Parent expressed his concern that Student's excessive absences were the result of unaddressed needs. The Santa Cruz IEP team members responded to this concern. They explained that Student's poor school attendance and the resulting lack of exposure to academics could not be ruled out as the reason for Student's gaps in learning. As a result, the Santa Cruz members of the IEP concluded that Student did not have a specific learning disability, and that she was not eligible for special education and related services.

Parent disagreed with the school district's determination that Student was not eligible for special education and related services. Parent felt strongly that Student had a disability and that the school district had not provided Student with the supports she needed to be successful. Parent felt blamed for Student's excessive absences and that his parenting was being judged at the IEP team meeting. Some IEP team members suggested that Parent should be more strict with Student in regards to her school attendance. Parent felt that the school district's conclusion was unfair because the team did not inquire further into the stressors giving rise to Student's absences. At hearing, Parent explained that he ultimately signed the IEP because he felt a pressure to do so. Parent did not allege, nor did the evidence establish, that any IEP team member forced him to sign the IEP.

The validity of the psychoeducational assessment and the March 23, 2018 IEP is not at issue here. Whether Student was denied a FAPE based on Parent being denied a meaningful opportunity to participate in the March 23, 2018 IEP team meeting is the sole and narrow question addressed by this decision. Student did not prove that she was denied a FAPE by failing to allow Parent to meaningfully participate in the IEP process. The evidence failed to establish that Santa Cruz significantly impeded Parent's opportunity to participate in the decision-making process.

Here, Parent attended the March 23, 2018 IEP team meeting which lasted almost two hours. Santa Cruz provided Parent with a copy of the multidisciplinary assessment report as well as parent's procedural safeguards, and discussed Student's progress with Parent. The IEP team reviewed Student's assessment report, which included an entire portion dedicated to Parent's concerns regarding Student's academics. At the meeting, Parent asked questions and voiced concerns about the outcome of the assessment and the IEP. Santa Cruz IEP team members listened to and considered Parent's concerns. Additionally, district team members explained to Parent they based their ineligibility determination on the inability to rule out Student's excessive absences as the cause for her difficulty in school.

Parent's frustration with the outcome of the IEP team meeting was evident. He asked to be connected to a social worker and informed one IEP team member that he intended make a complaint. He also attempted to continue the conversation after the IEP team meeting had ended. However, that Parent vehemently disagreed with the IEP team's ineligibility finding does not mean that Parent did not meaningfully participate in the March 23, 2018 IEP team meeting. Further, the parent participation analysis is independent of whether a parent signed or agreed to the IEP.

While Parent pointed out that he was not accompanied by a social worker or support person at the IEP team meeting, he did not allege, nor did the evidence establish, that Santa Cruz prohibited him from bringing someone with him to the meeting.

Consistent with the factors set forth in *Knox County* and *Fuhrmann*, Santa Cruz afforded Parent an opportunity to make comments, ask questions, provide input, and express disagreement at the March 23, 2010 IEP team meeting, and Parent did so. Santa Cruz's IEP team members responded to Parent's questions and comments, and explained the reasons why Student did not qualify for special education and related services at that time. Parent's concerns were addressed during the meeting and documented in the IEP.

Santa Cruz did not deny Student a FAPE at the March 23, 2018 IEP team meeting by failing to allow Parent to meaningfully participate in the IEP process.

CONCLUSIONS AND PREVAILING PARTY

As required by the 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. Santa Cruz did not deny Student a FAPE at Student's March 23, 2018 IEP team meeting by failing to allow Parent to meaningfully participate in the IEP process. Santa Cruz prevailed on the sole issue heard and decided.

ORDER

All relief sought by Student is 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/

Claire Yazigi

Administrative Law Judge

Office of Administrative Hearings