BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2015030347

PARENT ON BEHALF OF STUDENT,

v.

MANHATTAN BEACH UNIFIED SCHOOL DISTRICT.

DECISION AFTER REMAND

MARCH 17, 2020

Student filed his due process complaint with the Office of Administrative Hearings, called OAH, on March 5, 2015, naming Manhattan Beach Unified School District. After a due process hearing in June 2015 before Administrative Law Judge Robert Helfand, OAH issued a Decision on July 31, 2015.

On May 20, 2019, the Court of Appeal, State of California, Second Appellate District reversed the OAH Decision and remanded the case to OAH. The Court of Appeal's May 20, 2019 Opinion resulted in a partial remand to make a "determination of appropriate relief in addition to Parents' recovery of travel-related expenses." (*B.H. v. Manhattan Beach Unified School Dist.* (2019) 35 Cal.App.5th 563, 589.)

On August 19, 2019, OAH set a remand hearing for September 4, 2019. At Student's request, OAH continued the remand hearing to October 15, 2019. On September 23, 2019, OAH granted the parties' request for a continuance for good cause. Administrative Law Judge Linda Johnson heard this matter on remand in Manhattan Beach, California on February 4, 2020.

Attorney David Grey represented Student. Parent S attended the hearing on Student's behalf. Student did not attend the hearing nor did Parent E. Attorney Christopher Fernandes represented Manhattan Beach. Dr. Irene Gonzalez-Castillo, Manhattan Beach's Assistant Superintendent of Student Services, attended the hearing on Manhattan Beach's behalf.

At the parties' request, OAH continued the matter to February 19, 2020, for closing briefs. The record was closed, and the matter submitted on February 19, 2020. On February 20, 2020, Student filed an objection to newly introduced evidence in Manhattan Beach's closing brief. Student specifically objected to nine statements Manhattan Beach made in its closing brief and asked that OAH strike them from the record. Student's motion to strike is denied as Manhattan Beach's closing brief is purely argument as to its view of the evidence presented at hearing.

ISSUE

What relief is Student entitled to, in addition to Parents' recovery of travel-related expenses, as a result of Manhattan Beach's failure to implement the November 10, 2014 individualized education program?

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 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 free appropriate public education, referred to as 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. The factual statements in this Decision 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).)

At the time of the remand hearing Student was 21 years old and no longer a Student at Manhattan Beach. Student held his own educational rights, however, Mr. Grey represented both Student and Parents.

The issue for the initial due process hearing in 2015 was whether Manhattan Beach was the local education agency responsible for providing Student with a special education program and services. At the time of the 2015 due process hearing, Student was placed at True to Life Counseling, Child and Family Services residential treatment center and attended Journey nonpublic school, which will collectively be referred to as TLC Journey. OAH determined Manhattan Beach was not responsible for providing Student with a special education program and services and did not award Student a remedy. The Court of Appeal reversed OAH's decision, determined that Manhattan Beach was responsible for implementing Student's November 10, 2014 individualized education program, referred to as an IEP, and remanded the case to OAH for a remedy consistent with its determination.

ISSUE: WHAT RELIEF IS STUDENT ENTITLED TO, IN ADDITION TO PARENTS' RECOVERY OF TRAVEL-RELATED EXPENSES, AS A RESULT OF MANHATTAN BEACH'S FAILURE TO IMPLEMENT THE NOVEMBER 10, 2014 INDIVIDUALIZED EDUCATION PROGRAM?

Student contends Parents are entitled to reimbursement of $955.52 for the amount they paid to Vista nonpublic school for his tuition from November 10, 2014, through November 21, 2014. Student also contends Parents are entitled to reimbursement of $7,692.37 for all of their travel expenses between Manhattan Beach and the residential treatment facility he was placed at in Sonoma County, not just the $2,288.89 they had occurred at the time of the initial hearing.

Manhattan Beach contends the issue on remand is if Student is entitled to compensatory education, not additional reimbursement. Manhattan Beach contends Parents are not entitled to reimbursement in addition to the $2,288.89 ordered by the Court of Appeal because Parents did not seek the additional reimbursement during the appeal process, therefore they are barred from raising the request now. Additionally, Manhattan Beach argues Student did not prove that any of the additional travel was made pursuant to an IEP team or therapeutic recommendation. Manhattan Beach also contends Student is not entitled to reimbursement for his Vista tuition for the two weeks in November 2014 because he dismissed his claims relating to Vista prior to the initial due process hearing and he did not prove he was entitled to reimbursement for Vista as compensatory education.

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), 1414(d)(1); and see Ed. Code, §§ 56031,56032, 56341, 56345, subd. (a), 56363 subd. (a); 34 C.F.R. §§ 300.320, 300.321, 300.501.)

Courts have broad equitable powers to remedy the failure of a school district to provide a FAPE to a disabled child. (20 U.S.C. § 1415(i)(1)(C)(iii); Ed. Code, § 56505, subd. (g); see *School Committee of the Town of Burlington, Massachusetts v. Dept. of Education* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996, 85 L.Ed.2d 385] (*Burlington*).) This broad equitable authority extends to an Administrative Law Judge who hears and decides a special education administrative due process matter. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 244, n. 11.)

When a school district fails to provide a FAPE to a student with a disability, the student is entitled to relief that is "appropriate" in light of the purposes of the IDEA. (*Burlington, supra*, 471 U.S. at p. 369-371.) Parents may be entitled to reimbursement for the costs of placement or services that they have independently obtained for their child when the school district has failed to provide a FAPE. (*Ibid*; *Student W. v. Puyallup School Dist.* (9th Cir. 1994) 31 F. 3d 1489, 1496.) A school district also may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Ibid*.) Compensatory education is a prospective award of educational services designed to catch-up the student to where the student should have been absent the denial of a FAPE. (*Brennan v. Regional School Dist. No. 1* (D.Conn. 2008) 531 F.Supp.2d 245, 265; *Orange Unified School Dist. v. C.K.* (C.D.Cal. June 4, 2012, No. SACV 11–1253 JVS(MLGx)) 2012 WL 2478389, *12.)

Here, the Court of Appeal, State of California, Second Appellate District already determined Manhattan Beach was responsible for implementing Student's November 10, 2014 IEP and it failed to do so. Manhattan Beach held Student's initial IEP team meeting on November 10, 2014, and offered Student a residential treatment center placement. Parent S provided uncontroverted testimony that Manhattan Beach specified would assume responsibility for Student's tuition at Vista nonpublic school until he was able to begin at TLC Journey. Parents provided Manhattan Beach with an invoice for Student's tuition at Vista for the period of November 10, 2014, to November 21, 2014. Manhattan Beach did not pay Student's tuition at Vista for the period of November 10 through 21, 2014. Parents eventually paid $955.22 to Vista for Student's tuition. Manhattan Beach did not reimburse Parents for Student's tuition.

Manhattan Beach's argument that Parents are barred from seeking reimbursement because Student dismissed the claims regarding Vista prior to the initial due process hearing is not persuasive. Although the Court of Appeal pointed out that Parents requested reimbursement from Manhattan Beach for the time Student attended Vista and that was not an issue on appeal, the Court of Appeal also opened the door to any additional relief to which Student may be entitled. Any relief to which Student may be entitled was limited to Manhattan Beach's failure to implement the November 10, 2014 IEP. The Court of Appeal could have determined that Parents were only entitled to reimbursement of the $2,288.89 in travel-related expenses and not remanded the case back to OAH. However, the Court of Appeal did not do that and instead asked OAH to determine to what additional relief Student may be entitled. As such, Student's request for reimbursement for $955.52 for his nonpublic school tuition at Vista Del Mar from November 10, through 21, 2014, is reasonable. Student's request was limited to the time period he attended Vista after Manhattan Beach created the November 10, 2014 IEP and was responsible for implementing the IEP. Therefore, Parents are entitled to such reimbursement.

The Court of Appeal determined Parents were entitled to reimbursement of $2,288.89 in travel expenses they incurred on Student's behalf from December 2, 2014, until he left TLC Journey in December 2015. The Court of Appeal determined that "all other expenses had been paid or reimbursed." (*Manhattan Beach, supra,* 35 Cal.App.5th at p. 580.) The $2,288.89 in travel expenses included Parents' trip to TLC Journey on December 1, 2014, Student's trip home on December 23, 2014, Parents' trip to TLC Journey on February 26, 2015, Parents' trip to TLC Journey on April 5, 2015, and Student's trip home on May 4, 2015.

In addition to the $2,288.89 Student requested in reimbursement at the initial due process hearing, Student requested an additional $5,403.48 in travel reimbursement. The new amount included an additional $63.34 from the April 5, 2015 trip, which included $33.34 in food and a $30 pet charge for the hotel room that was not initially accounted for. The additional $5,403.48 in travel expenses included Parents' trip to TLC Journey on June 12, 2015, Student's trip home on July 1, 2015, Parents' trip to TLC Journey on August 13, 2015, Student's trip home on September 5, 2015, Parents' trip to TLC Journey on September 16, 2015, Student's trips home on October 25, 2015, November 5, 2015, and November 24, 2015, and Parents' last trip to TLC Journey on December 18, 2015, to bring Student home. Parents' trip to TLC Journey on August 13, 2015, included $333 in plane fare from Cleveland, Ohio to Las Vegas, Nevada then to Oakland, California. Parents did not provide any explanation of why they traveled to TLC Journey through Ohio and Nevada nor did they provide a breakdown for the individual cost of each flight. Therefore, Parents are not entitled to reimbursement of the $333 for the flight to Oakland through Ohio and Nevada.

Student argued Parents are entitled to the additional amount in travel expenses because they had not incurred the costs at the time of the initial hearing and were precluded from requesting the additional amount because of OAH's Decision. Student's trips home coincided with school breaks and holidays when most students left TLC Journey. Parent S provided uncontroverted testimony during the remand hearing that every one of Student's trips home were approved by TLC Journey. Parents' trips to TLC Journey were for treatment team meetings, to foster family reunification, for family days, or meetings to determine next steps. Manhattan Beach argued the trips were not made at the therapeutic recommendation of the IEP team and therefore not

reimbursable. Parent S's testimony that all of the visits were approved and encouraged by TLC Journey was persuasive. TLC Journey encouraged visits and most of Student's visits home coincided with times when he would have been alone at TLC Journey. Manhattan Beach's argument that the visits needed to be based on recommendations in conjunction with the IEP team is not persuasive as Manhattan Beach was responsible for implementing the IEP, however it failed to do so. It is disingenuous for Manhattan Beach to say that the IEP team needed to be involved in recommending visits when it denied responsibility for Student's placement at TLC Journey.

Manhattan Beach also argued Sonoma County Office of Education prepared an IEP for Student on November 20, 2015, therefore, Sonoma was responsible for any travel after that date. Parents were not reimbursed for any of the travel expenses by Manhattan Beach or Sonoma County Office of Education. Moreover, the Court of Appeal determined Manhattan Beach was responsible for implementing Student's November 10, 2014 IEP, not Sonoma County Office of Education. The Court of Appeal did not determine that once Sonoma County Office of Education created an IEP for Student, Manhattan Beach ceased to be responsible. Sonoma County Office of Education did not reimburse Parents for any travel expenses and Manhattan Beach continued to be responsible for implementing Student's November 10, 2014 IEP, therefore, Sonoma County Office of Education's November 20, 2015 IEP did not relieve Manhattan Beach of its responsibility.

The Court of Appeal determined that it was "undisputed that all expenses incurred on [Student's behalf] from December 2, 2014 until he left TLC Journey in December 2015 ha[d] been paid or reimbursed. (*Manhattan Beach, supra,*

35 Cal.App.5th at p. 580). The Court of Appeal also determined Student only sought $2,288.89 in reimbursement of travel expenses. *Id.* Manhattan Beach argued that pronouncement precluded Student from requesting any additional reimbursement for travel-related expenses. Student proved Parents did have additional travel-related expenses and his argument that he was precluded from asking for reimbursement for the additional expenses because they occurred after the initial due process hearing is more persuasive. Manhattan Beach was responsible for implementing Student's November 10, 2014 IEP, which included reimbursing Parents for their travel-related expenses between TLC Journey and Student's home. Manhattan Beach's argument that because Student did not bring up the additional expenses on appeal he is precluded from now asking for them is not persuasive because the Court of Appeal remanded this case to OAH to determine if additional relief was warranted. In reading the Court of Appeal's May 20, 2019 Opinion as a whole, it would be counterintuitive to limit Parents' reimbursement to the amount listed in the Opinion when Student proved Parents expended more on travel as a result of the November 10, 2014 IEP. Therefore, Parents are entitled to reimbursement for the full amount they spent on travel from November 10, 2015, through December 2015 when Student returned home, less the $333 in unexplained plane fare to Oakland by way of Ohio and Nevada.

CONCLUSIONS AND PREVAILING PARTY

As required by 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. Student prevailed on only issue decided.

Parents, on behalf of Student, are entitled to $6,026 in reimbursement in addition to Parents' recovery of $2,288.89 in travel-related expenses, as a result of Manhattan Beach's failure to implement the November 10, 2014 individualized education program.

ORDER

Within 45 days of this Decision, Manhattan Beach shall reimburse Parents $8,314.89, which includes $955.52 for the cost of Student's tuition at Vista for the period of November 10, 2014, through November 21, 2014, $2,288.89 in travel related expenses ordered by the Court of Appeal, and $5,070.48 in additional travel expenses for Parents' and Student's travel between home and TLC Journey. No further proof of payment is required as sufficient proof was submitted at hearing.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

/s/
Linda Johnson
Administrative Law Judge
Office of Administrative Hearings