BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2021030090

PARENTS ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL DISTRICT.

DECISION

DECEMBER 07, 2021

On March 1, 2021, Parents on behalf of Student filed a due process hearing request with the Office of Administrative Hearings, called OAH, naming Long Beach Unified School District. On August 16, 2021, OAH granted Student's request to amend the complaint.

Administrative Law Judge Paul H. Kamoroff heard this matter by videoconference in California on October 12, 13, 19, 20, 21, 26, and 27, 2021.

Attorney Tania L. Whiteleather, assisted by attorney Michelle A. Becker, represented Parents and Student. Father attended the hearing. Student did not attend

the hearing. OAH provided a Spanish language interpreter on October 26, 2021, for Mother's testimony.

Attorney Debra K. Ferdman represented Long Beach Unified School District. Wendy Rosenquist, Ed.D., Long Beach Unified School District's Program Administrator, attended the hearing.

At the parties' request, OAH continued the matter to November 29, 2021, for written closing briefs. The record was closed and the matter was submitted on November 29, 2021.

ISSUES

The issues have been reorganized for clarity. The ALJ has authority to renumber and redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

1. Did Long Beach fail to timely fund an independent educational evaluation, or file a request for due process hearing to prove the legal sufficiency of its own assessment, after August 19, 2019, when Parent requested an independent educational evaluation in the area of occupational therapy, including sensory processing?
2. Did Long Beach deny Student a free appropriate public education, called FAPE, within the last two years, by failing to review reports from Pride Learning Center?
3. Did Long Beach deny Student a FAPE within the last two years, by failing to provide an appropriately ambitious reading program?

4. Did Long Beach deny Student a FAPE, beginning February 2020, by failing to obtain a second vision therapy evaluation by Dr. Eric Ikeda?
5. Did Long Beach deny Student a FAPE within the last two years, by failing to provide educational records when requested by Parent?
6. Did Long Beach deny Student a FAPE, by failing to provide services during the 2020 extended school year?

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, 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, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Student, as the petitioning party, had the burden of proof on all issues. 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).)

RES JUDICATA AND COLLATERAL ESTOPPEL

Federal and state courts have traditionally adhered to the related doctrines of res judicata and collateral estoppel. (*Allen v. McCurry* (1980) 449 U.S. 90, 94 (*Allen*); *Levy v. Cohen* (1977) 19 Cal.3d 165, 171 [collateral estoppel requires that the issue presented for adjudication be the same one that was decided in the prior action, that there be a final judgment on the merits in the prior action, and that the party against whom the plea is asserted was a party to the prior action]; see 7 Witkin, California Procedure (4th Ed.), Judgment § 280 et seq.) Under the doctrine of res judicata, a final judgment on the merits of an action precludes the parties or their agents from relitigating issues that were or could have been raised in that action. (*Allen*, *supra*, 449 U.S. at p. 94.) Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case. (*Ibid.*; *Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341; see also *Migra v. Warren City School Dist. Bd. of Ed.* (1984) 465 U.S. 75, 77, n. 1 [104 S.Ct. 892, 79 L.Ed.2d 56]; federal courts use the term "issue preclusion" to describe the doctrine of collateral estoppel.) Collateral estoppel applies to final

administrative decisions of OAH in special education matters, including final administrative decisions that are pending on appeal. (*Loof v. Upland Unified School Dist.* (C.D. Cal., Sept. 10, 2021, Case No. EDCV 21-556 JGB (SPx)) 2021 WL 4974797, **4-5.)

On September 15, 2021, OAH denied Long Beach's motion to dismiss issues based upon res judicata or collateral estoppel. However, the hearing illustrated that Student's Issues 1 and 4 were substantially similar to issues included in OAH Case No. 2020090441, which was filed by Student against Long Beach on September 15, 2020, heard by OAH on March 9, 10, 11, 17, and 18, 2021, and decided by OAH on May 6, 2021. (*Student v. Long Beach Unified School District* (2021) OAH Case No. 2020090441.) To prevent relitigation of issues and inconsistent findings, this Decision takes judicial notice of the Decision for OAH Case No. 2020090441. (*Student v. Long Beach Unified School Dist*. (2019) OAH Case No. 2018050736.)

THE STUDENT

Student was 13 years old and in eighth grade at the time of hearing. Student resided within Long Beach's geographic boundaries during the relevant time period. On July 24, 2021, Student moved to Huntington Beach, California, within the boundaries of the Huntington Beach City School District. From May 3, 2021, through the hearing, Student attended the Davidson Learning Center, a private school in Huntington Beach, California.

Since 2011, Student was eligible for special education and related services under the eligibility category Autism, a developmental disorder. As a result of his disability,

Student had difficulty with speech and language, behavior, and academics, particularly in the area of reading.

ISSUE 1: FAILING TO TIMELY "FUND OR FILE" FOLLOWING PARENTS' REQUEST FOR AN INDEPENDENT EDUCATIONAL EVALUATION IN THE AREA OF OCCUPATIONAL THERAPY, INCLUDING SENSORY PROCESSING

Student contends that Long Beach failed to timely fund an independent educational evaluation in the area of occupational therapy, including sensory processing, after August 19, 2019, when Parents allegedly requested the independent educational evaluation, or to timely file a due process complaint to defend its own assessment in this area. Long Beach responds that it was not obligated to fund an independent educational evaluation or to file for due process.

Failure to assess is a procedural issue. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d. 1025, 1031-1033 (*Park*).) A procedural violation of the IDEA constitutes a denial of a FAPE "only if the violation: (1) impeded the child's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision making process; or (3) caused a deprivation of educational benefits." (Ed. Code, § 56505(f)(2); W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23, Missoula, Mont. (9th Cir. 1992) 960 F.2d 1479, 1484.)

Long Beach did not assess Student in the area of occupational therapy and Student did not allege or attempt to prove that he was denied a FAPE because Long Beach did not assess him in this area. None of the 12 witnesses who testified during the hearing, including Student's experts Helena Johnson, Ph.D. and Christine Davidson, Ph.D., supported that Student required an assessment or services in the area

of occupational therapy, including sensory processing. None of the various assessments reviewed during the hearing, including three independent educational evaluations by Student-selected psychologists, recommended occupational therapy or an occupational therapy assessment, including in the area of sensory processing. None of the various IEPs reviewed during the hearing, including copious IEP meeting notes, identified occupational therapy as an area of suspected disability or contained a request from any IEP team member for an occupational therapy assessment, including sensory processing. Neither Parents, their representatives and experts, nor teachers or school staff, suggested during any IEP team meeting that Student required occupational therapy or an occupational therapy assessment. Consequently, it is not possible to find that Long Beach denied Student a FAPE by failing to assess in occupational therapy, including sensory processing.

Rather, Student asserts a hyper-technical issue. Student asserts that Long Beach was obligated to "fund or file" with regard to an occupational therapy independent educational evaluation. "Fund or file" refers to a school district's obligation to, without unnecessary delay, fund an independent educational evaluation or file a due process complaint to defend its own assessment, when a student disagrees with a school assessment and requests an independent evaluation. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502(b)(1) & (2) (2006); Ed. Code, §§ 56329, subd (b), 56506, subd (c).)

The procedural safeguards of the IDEA provide that under certain conditions, a student is entitled to obtain an independent evaluation at public expense. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502 (a)(1) (2006); Ed. Code, §§ 56329, subd. (b), 56506, subd. (c).) "Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question." (34 C.F.R. § 300.502(a)(3)(i) (2006).) To obtain an

independent educational evaluation, the student must disagree with an evaluation obtained by the public agency and request an independent evaluation. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502(b)(1) & (2) (2006); Ed. Code, §§ 56329, subd. (b); 56506, subd. (c).)

As noted above, the provision of an independent evaluation is not automatic. Following the student's disagreement with a public agency's assessment and request for an independent evaluation, the public agency must, without unnecessary delay, either: (i) file a due process complaint to request a hearing to show that its evaluation is appropriate; or (ii) ensure that an independent evaluation is provided at public expense. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502(b)(1) & (2) (2006); Ed. Code, §§ 56329, subd. (b), 56506, subd. (c).) This statutory requirement is sometimes referred to as "fund or file" and forms the basis of Student's Issue 1.

Student's argument fails as none of the required elements for "fund or file" were met. As detailed below, Parents did not disagree with an occupational therapy assessment obtained by Long Beach nor request an independent educational evaluation for occupational therapy outside of settlement discussions, and there was no Long Beach assessment for Long Beach to defend by filing a complaint for due process.

First, Student did not prove that Parents requested an occupational therapy independent educational evaluation. To prove this element, Student relied entirely upon settlement discussions related to an August 6, 2019 settlement agreement for a prior matter, OAH Case No. 2019030626. During the formulation of the settlement agreement for that case, Student's attorney privately emailed Long Beach's attorney a request for an independent education evaluation for occupational therapy. As part of an offer to settle claims and not part of a FAPE offer, Long Beach responded by offering

to fund an occupational therapy independent educational evaluation and proposed four different independent evaluators. Student refused each assessor and an occupational therapy independent evaluation was not agreed upon in the August 6, 2019 settlement agreement.

Evidence failed to show that Parents requested an occupational therapy independent educational evaluation following the discussions for the August 6, 2019 settlement agreement, including after August 19, 2019. None of the various assessments reviewed during the hearing, including three independent educational evaluations by Student-selected psychologists, recommended an occupational therapy assessment of any sort. None of the various IEPs reviewed during the hearing included a request from any IEP team member, including Parents or their representatives, for an independent educational evaluation by an occupational therapist. Dozens of pages of email correspondence and letters between Parent, Student's attorney, and Long Beach representatives failed to include a request for an occupational therapy independent educational evaluation, outside of the August 6, 2019 settlement agreement negotiations.

During the hearing, Father testified that he requested an occupational therapy independent educational evaluation during an IEP team meeting held on February 18, 2020. However, a review of this IEP did not support Father's testimony and he later admitted he may not have requested the evaluation at the IEP team meeting. Overall, Father was able to recall very little of Students IEP's or educational program while at Long Beach. Mother's testimony was brief, during which she failed to support that Student requested services or an assessment, from either an independent or school assessor, in the area of occupational therapy, including sensory processing. Mother was unable to recall many details of Student's educational program and failed to support

any issues for this matter. For these reasons, Parents were not reliable witnesses and little weight was given to their testimony for any issue.

More importantly, Long Beach was not obligated to fund an occupational therapy independent educational evaluation even if Parents had requested the evaluation. The provision of an independent evaluation is not based solely upon a request for an independent evaluation. Rather, Student must first disagree with an occupational therapy assessment provided by Long Beach. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502(b)(1) & (2) (2006); Ed. Code, §§ 56329, subd. (b), 56506, subd. (c).) Parents did not disagree with an occupational therapy assessment obtained by Long Beach prior to requesting an independent evaluation, as Long Beach had not assessed Student for occupational therapy.

There was no evidence submitted that showed Long Beach assessed Student for occupational therapy, including in the area of sensory processing, or that Parent disagreed with an occupational therapy assessment obtained by Long Beach. To the contrary, evidence established that Parents never requested for Long Beach to conduct an occupational therapy assessment nor requested such an assessment by Huntington Beach City School District, despite having moved to that school district in July 2021. Moreover, Student's expert witnesses Dr. Davidson and Dr. Johnson did not recommend an assessment by an occupational therapist during their testimony or in their assessment reports. Parents did not request occupational therapy or an assessment by an occupational therapist during the various IEP team meetings they attended. Outside of the hearing, Parents were not concerned by Student's occupational therapy needs.

Hence, Student did not disagree with an occupational therapy assessment provided by Long Beach, as required by the above statute. Long Beach was therefore

unable to file a due process complaint to show that its assessment was appropriate, as there was no assessment to defend. There was no basis to Student's "fund or file" issue.

Notably, the Decision for OAH Case No. 2020090441 analyzed a similar issue, "Did Long Beach fail to assess Student in the area of Occupational Therapy, including sensory integration, from September 2019 through September 2020, such that Student is entitled to an independent educational evaluation at public expense?" OAH found:

> Student failed to meet his burden [of] proving Long Beach had information warranting an assessment of any educationally related occupational therapy or sensory integration need, or that either Parents or a teacher requested an occupational therapy assessment. (20 U.S.C. § 1414 (a)(2)(A).) Student failed to prove that Parents ever raised concerns about occupational therapy outside of the August 6, 2019 settlement agreement. Furthermore, Student's own independent psychoeducational assessor did not include the need for an occupational therapy assessment in her list of further assessments that should be explored to fully assess Student's needs. The evidence established that Student did not raise occupational therapy or sensory integration as an area of need during the relevant time period outside of the mediation and settlement agreement context. Student is not entitled to an occupational therapy or sensory integration independent educational evaluation at public expense. (*Student v. Long Beach Unified School District* (2021) OAH Case No. 2020090441 (p. 10).)

In light of the holding in OAH Case No. 2020090441, and the similar evidence submitted for this matter, there was no substantive or procedural basis for Student's

Issue 1. Issue 1 lacked any merit whatsoever and it was unreasonable for Student to continue litigating this issue.

Based upon the foregoing, Student failed to show by a preponderance of the evidence that he was denied educational rights by Long Beach's failure to fund an independent educational evaluation in the area of occupational therapy, including sensory processing.

ISSUE 2: DID LONG BEACH DENY STUDENT A FAPE, BY FAILING TO REVIEW REPORTS FROM PRIDE LEARNING CENTER?

Student asserts he was denied a FAPE over the past two years because Long Beach failed to review reports from Pride Learning Center, a nonpublic agency. Long Beach claims it reviewed the reports.

The parents of a child with a disability 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. (34 C.F.R. § 300.501(b) (2006); Ed. Code, § 56500.4.) School districts are required to take whatever action is necessary to ensure that the parent is given the opportunity to attend and understands the proceedings of the IEP team meeting. (34 C.F.R. § 300.322(a)-(c) (2006).)

The local educational agency must consider an independent educational evaluation that a parent obtains and gives to the agency in any decision made with respect to the provision of FAPE to the child, so long as the evaluation meets agency criteria. (34 C.F.R. § 300.502(c) (2006); Ed. Code, § 56329, subd. (c).) An independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in

question. (34 C.F.R. § 300.502(a)(3)(i) (2006).) When presented with an independent educational evaluation by a student, a school district need only review and consider the report; it need not follow its recommendations. (*G.D. v. Westmoreland School Dist*. (1st Cir. 1991) 930 F.2d. 942, 947 (*G.D.*).)

On August 6, 2019, Parents and Long Beach executed a settlement agreement to resolve a prior case, OAH Case No. 2019030626. A term of the agreement stated: "For settlement purposes only, not part of Students' IEP, or subject to stay put," Long Beach would provide 135 hours of individual reading intervention services through Pride Learning Center. The agreement did not call for an independent educational evaluation from Pride, nor was one requested or provided outside of the agreement. As part of its service, Pride provided Parents and Long Beach an initial report dated September 12, 2019, and a progress report dated March 18, 2020. Student failed to prove the Pride reports were independent educational evaluations provided to Long Beach by Parents, which would have triggered Long Beach's obligation to consider the reports. Student also failed to show that Long Beach did not consider the Pride reports.

Long Beach held Student's annual IEP team meeting over five days, on February 18 and 28, May 20, October 16, and November 12, 2020. Parents attended each meeting, along with Student's representative. All necessary IEP team members were present, including a Spanish language interpreter for Mother. During the IEP team meetings, the IEP team reviewed independent educational evaluations in the areas of vision, speech and language, and psychoeducation. The participants at Student's annual IEP team meetings thoroughly discussed the independent evaluations and Student's present levels of performance and academic and behavior progress. The IEP team collaboratively developed goals in the areas of behavior, speech and language, and academics. Parents and their attorney asked questions and requested revisions to the

goals. Parents meaningfully participated during the development of Student's educational program.

Long Beach ensured that Parents were timely provided the Pride reports. However, during the hearing, Father testified the Pride reports were not considered during any IEP team meeting. Nonetheless, Father failed to suggest that alleged oversight denied Parents the ability to meaningfully participate during the IEP team meetings or in the development of Student's educational program. Mother was unable to recall any details regarding the IEP team meetings, despite having attended the meetings with a representative and interpreter. Consequently, Student's issue is based solely on Father's allegation that Long Beach failed to consider the Pride reports during an IEP team meeting.

However, Father's testimony was inconsistent with a preponderance of the evidence submitted for this matter. For example, Long Beach special education teacher Tiffany Lockshaw persuasively testified the Pride reports were considered during IEP team meetings. Lockshaw was a credentialed and experienced special education teacher who taught a mild-moderate special day class at Long Beach for seven years. Lockshaw was Student's teacher during the 2019-2020 and 2020-2021 regular school years. Lockshaw was familiar with Student, his IEPs, and educational program. Lockshaw recalled that Student's reading needs were discussed during the various IEP team meetings, including progress related to the Pride reports and reading services.

Lockshaw's testimony was corroborated by the written notes from the February 18 and 28, May 20, October 16, and November 12, 2020 IEP document, which directly reflected a conversation between IEP team meeting participants, including Student's attorney, regarding the Pride reports and progress related to the Pride reading

program. This evidence established that Long Beach considered the Pride reports during an IEP team meeting.

Based upon the foregoing, Student failed to show by a preponderance of the evidence that he was denied a FAPE, by Long Beach failing to review the Pride reports.

ISSUE 3: LONG BEACH'S FAILURE TO PROVIDE AN APPROPRIATE READING PROGRAM

Student claims that Long Beach denied him a FAPE, within the last two years, by failing to provide an appropriately ambitious reading program. Long Beach responds that it provided Student appropriate services.

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 (2006).) 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), and 56363, subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501 (2006).)

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 a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the*

Hendrick Hudson Central School Dist. v. Rowley (1982) 458 U.S. 176, 201-204 (*Rowley*); *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. ____ [137 S.Ct. 988, 1000] (*Endrew F.*).)

There was merit to Student's Issue 3. As discussed below, Student failed to make more than de minimis progress in reading while at Long Beach and Long Beach failed to modify Student's IEP, as necessary, to appropriately address Student's reading needs.

Student's last agreed-upon IEP was dated September 7, 2018. While Long Beach offered annual IEPs each year thereafter, each offer of placement and services was substantially similar to the educational program contained in the September 7, 2018 IEP. For Student, that included placement in a mild-moderate special day class, speech and language services three times weekly, an individual behavior aide throughout the school day, and direct and consultative behavior services. The special day class placement was identified in later IEPs as specialized academic instruction throughout the school day.

Student was severely delayed in reading and Parents requested help for reading at each IEP team meeting. Long Beach IEP team members agreed that Student was severely delayed in reading and attempted to address his reading deficits through the IEP goals.

At first glance, progress towards IEP goals provided some evidence that Student progressed in reading while at Long Beach. For example, the September 2018 annual IEP showed that Student met a reading comprehension goal and progressed towards goals for reading decoding, sight words, and spelling. Goals for the 2019-2020 and 2020-2021 school years, Student's sixth and seventh grades, were similar to previous IEP

goals for reading, and demonstrated similar results. For example, Student's October 16, 2020 IEP showed that Student met or progressed towards goals in reading decoding, reading foundational skills, spelling, and writing.

However, each IEP goal for reading was at a kindergarten grade level, when Student was in the fifth, sixth, and seventh grades, respectively. Moreover, during hearing, Lockshaw admitted that Student could not independently meet any reading goal while at Long Beach. Progress towards reading goals was measured with the assistance of Student's individual aide. Therefore, progress towards Student's reading goals was not a reliable reflection of Student's abilities. Based upon Lockshaw's testimony and Student's IEPs, a preponderance of the evidence established that Student did not progress beyond a kindergarten reading level while at Long Beach, despite having received special education and related services since January 2011.

Lockshaw was a caring and experienced teacher, however, she was unable to describe any discernable reading program that Student received during the 2019-2020 and 2020-2021 regular school years. Although Student's IEPs called for small group instruction, Lockshaw occasionally provided Student individual reading instruction. However, the individual instruction Lockshaw provided was not consistent or inclusive of a research-based reading program.

Student's reading problems and lack of progress continued throughout his enrollment in Long Beach and were documented in his IEPs. For example, the April 29, 2019 IEP team meeting notes reflected Parents' concerns regarding Student's lack of reading progress. In the same IEP document, the special education teacher stated

Student's reading program was not appropriate to meet Student's needs. Yet, Long Beach continued providing the same reading program following this IEP team meeting.

By letter on April 12, 2021, Parents unilaterally withdrew Student from Long Beach, near the end of Student's seventh grade year. Parents were frustrated with Student's lack of progress and properly informed Long Beach of their intent to seek reimbursement for privately incurred educational expenses. Long Beach promptly offered to hold another IEP team meeting following their receipt of the April 12, 2021 letter. Parents did not agree to the IEP team meeting, and moved outside of Long Beach's boundaries shortly thereafter, on July 24, 2021.

To defend its reading program, Long Beach called Rochelle Martin, its curriculum specialist. Martin clarified that a research-based reading program was available at Long Beach, titled College and Career Ready. College and Career Ready used a combination of different research-based reading methods and was automatically implemented in each Long Beach mild-moderate special day class, 50 minutes daily, in a small group. Martin was an experienced educator who previously taught special education. However, there were some problems with Martin's testimony. For example, Martin had not met, assessed, or observed Student. Martin was unfamiliar with Student and his IEPs. Martin testified that the College and Career Ready program required 18 hours of training, and that she trained, or supervised the training of, each mild-moderate special education teacher at Long Beach for this program. Yet, Martin could not recall if Lockshaw had been trained for this program. Martin could not confirm if the College and Career Ready program was implemented with fidelity, or at all, for Student. Finally, Martin had no opinion regarding Student or why he failed to

progress in reading, even if Long Beach had implemented the College and Career Ready program. Martin's testimony also demonstrated that Long Beach made no attempt to bolster or modify Student's reading program in light of his unique needs or demonstrated inability to benefit from the program over several years.

Student's experts Drs. Davidson and Johnson testified in support of Student's issue. Each supported Lockshaw's testimony that Student was unable to independently read at a kindergarten level when he left Long beach in May 2021. Student's experts also established that Student, who was not cognitively impaired, had the ability to progress in reading if provided appropriate services.

Dr. Davidson was a licensed educational psychologist since 1993. Dr. Davidson held various certificates and credentials related to education, including a multiple subject teaching credential and an administrative services credential. Dr. Davidson was previously the Director of Special Education and Assistant Superintendent of the Tustin Unified School District. At present, Dr. Davidson had a private practice where she provided independent psychoeducational assessments. Dr. Davidson was also the owner and director of the Davidson Learning Center, a small, private school for children with learning disabilities.

Parents enrolled Student at the Davidson Learning Center on May 3, 2021. Upon initial observation, Dr. Davidson saw that Student was unable to read or write any words other than his name.

On May 7, 2021, Dr. Davidson administered several standardized tests to determine Student's abilities and deficits. The Kaufman Brief Intelligence Test, a brief measure of verbal and nonverbal abilities, revealed that Student had a significant discrepancy between his nonverbal abilities, with a score of 97 for nonverbal ability, in

the average range, and a verbal score of 72, in the delayed range. Student's overall intelligence quotient was 82. With average intelligence scores ranging from 85 to 115, Student's overall intellectual ability was just below average.

The Woodcock-Johnson Tests of Cognitive Abilities, Fourth Edition, measured Student's general intellectual ability, and identified delays in the areas of short-term working memory, processing speed, auditory processing, auditory memory, number facility, and vocabulary. The Woodcock-Johnson Test of Oral Language, Fourth Edition, measured Student's language abilities and identified delays in all areas, including oral language, listening comprehension, phonetic coding, auditory memory span, and vocabulary.

The Woodcock Johnson Tests of Achievement, Fourth Edition, a comprehensive test that measured Student's academic achievement, indicated that Student was at the pre-kindergarten to kindergarten grade level in reading, including broad reading, basic reading, reading comprehension, reading fluency, and reading rate. Student had just completed the seventh grade at the time of this testing.

Based upon Student's delays in all areas of reading, coupled with auditory and memory delays, Dr. Davidson recommended an intensive reading program, including Lindamood Bell instruction. Lindamood Bell was a research-based program designed to help students with reading and other learning disorders. Dr. Davidson was trained and experienced in providing Lindamood Bell instruction, and offered that program at the Davidson Learning Center, among other learning programs. Dr. Davidson also recommended auditory and phonological processing programs to help Student learn to read.

Parents agreed to Dr. Davidson's recommendations and funded Student's placement at the Davidson Learning Center from May 2021, through October 2021. On October 5, 2021, Dr. Davidson measured Student's reading progress using Common Core, first grade standards. Student was able to independently meet 30 of 81 first grade Common Core reading standards, demonstrating progress while at the Davidson Learning Center.

Parents incurred costs of $65 per hour for placement and instruction at the Davidson Learning Center, with a total tuition cost of $24,895, for the period May 3, 2021, to October 5, 2021. The tuition included curriculum outside of Student's reading program, with 60 percent of the costs, $14,937, related to remediating Student's reading needs.

Dr. Johnson also testified in support of Student's issue. Dr. Johnson was a licensed psychologist since 2006, and had vast experience conducting independent psychoeducational assessments. Dr. Johnson comprehensively assessed Student in September 2019. Dr. Johnson's assessment included a records review, school observation, rating scales, and various standardized tests.

Overall, Dr. Johnson's findings mirrored Dr. Davidson's. Similarly, Dr. Johnson found that Student had average nonverbal cognitive abilities, delayed verbal abilities, and an overall intelligence quotient of 82, just below average. Student was seriously delayed in all academic areas when Dr. Johnson tested Student, including reading scores at the kindergarten or prekindergarten level. Dr. Johnson compared her standardized reading scores in 2019, to standardized reading scores obtained in September 2015, and found that Student regressed in reading, from a mid-kindergarten level to a low-kindergarten level, during that time.

Like Dr. Davidson, Dr. Johnson persuasively opined that Student had the ability to perform grade level work, if provided an appropriate reading program. Dr. Johnson persuasively testified that an intensive Lindamood Bell reading program was appropriate for Student, in light of Student's severe reading delays and difficulty with memory, phonological processing, and auditory processing.

Long Beach witnesses failed to impugn the testimony of Dr. Davidson or Dr. Johnson. Long Beach called Karen Freidhoff, Ph.D., an experienced licensed psychologist and school administrator, exclusively to rebut the testimony of Drs. Davidson and Johnson. However, Dr. Freidhoff's testimony failed to discredit the testimony of Dr. Davidson or Dr. Johnson, or their recommendations.

In sum, evidence established that Student had a severe reading disorder that required specialized intervention. A school district is generally permitted to select methodologies. (*Rowley*, *supra*, 458 U.S. at p. 208.) However, a school district is also required to modify a student's IEP when it becomes clear the program is not effective. Here, a snapshot of Student's reading levels at the time IEPs were held during the 2019-2020 and 2020-2021 school years clearly showed that Student was not progressing appropriately and required a more intensive reading program. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149).) Long Beach was therefore obligated to ensure that Student's IEP was individually designed to provide him more than de minimis educational benefit yet failed to do so. (*Endrew F.*, *supra*, 580 U.S. ____ [137 S.Ct. at p. 1000].) Reading is fundamental to a child's educational development and it was unreasonable for Long Beach to offer substantially the same program, year after year, while Student languished at a kindergarten reading level.

Based upon the foregoing, a preponderance of the evidence established that Long Beach denied Student a FAPE, during the 2019-2020 and 2020-2021 school years, by failing to provide an appropriately ambitious reading program.

ISSUE 4: FAILURE TO FUND DR. IKEDA'S SECOND ASSESSMENT

Student complains that Long Beach denied him a FAPE, beginning February 2020, by failing to fund a second vision therapy assessment by Eric Ikeda, O.D. Long Beach responds that it would have funded a second vision assessment had it been completed by Dr. Ikeda, and that a second vision assessment was not necessary to provide Student a FAPE.

The local educational agency must consider an independent educational evaluation that parent obtains and gives to the agency in any decision made with respect to the provision of FAPE to the child, so long as the evaluation meets agency criteria. (34 C.F.R. § 300.502(c) (2006); Ed. Code, § 56329, subd. (c).) When presented with an independent educational evaluation, a school district need only review and consider the report; it need not follow its recommendations. (*G.D.*, *supra*, 930 F.2d at p. 947.)

As part of the August 6, 2019 settlement agreement, Long Beach agreed to fund an independent visual processing assessment by Dr. Ikeda, a private, licensed optometrist. The agreement provided that Long Beach was not bound to the results or recommendations of the assessment.

Dr. Ikeda assessed Student on October 7, 2019. Based upon his testing, Dr. Ikeda did not identify a learning disability related to vision or recommend that Student receive vision therapy services. In a brief written report also dated October 7, 2019, Dr. Ikeda

recommended that Student be prescribed accommodative support glasses for the classroom, and a follow-up office visit after Student began wearing the support glasses. Parents failed to schedule the follow-up office visit for Dr. Ikeda to examine Student following his receipt of the support glasses.

On February 18, 2020, Dr. Ikeda shared the results of his assessment during an IEP team meeting. Along with Dr. Ikeda, Parents, their attorney, and all necessary IEP team members participated during the IEP team meeting. Per the August 6, 2019 settlement agreement, Long Beach fully funded Dr. Ikeda's independent educational evaluation through an individual services agreement, along with his participation during the IEP team meeting to review the assessment report.

During the IEP team meeting, Dr. Ikeda was not aware if Student had received the accommodative support glasses, as he had not seen Student since the October 2019 assessment. As such, when questioned if Student required vison therapy services, Dr. Ikeda explained that he would need to conduct a follow-up assessment to make that determination. This comment formed the basis of Student's Issue 4. In sum, Student claims that based on Dr. Ikeda's single statement during the February 18, 2020 IEP team meeting, Long Beach was then obligated to fund a second vision therapy assessment by Dr. Ikeda.

During hearing, Father testified that Student obtained the support glasses through Parent's insurance in December 2019. Father admitted that Student did not have a follow-up visit after receiving the support glasses, as recommended in Dr. Ikeda's assessment. While Parents did not try to schedule a follow-up visit prior to the February 2020 IEP team meeting, Father testified Parents made several attempts to schedule a

second vision assessment with Dr. Ikeda following the February 2020 IEP team meeting. Father believed Dr. Ikeda refused to schedule a second assessment because he required another contract with Long Beach to reassess Student.

Dr. Ikeda's testimony was not consistent with Father's testimony. To the contrary, Dr. Ikeda testified Parents did not contact him after the February 2020 IEP team meeting to schedule a second assessment. Had Parents done so, Dr. Ikeda would have contacted Long Beach to obtain a second individual services agreement. Yet, neither Parents nor Dr. Ikeda contacted Long Beach to request a second contract for the second assessment. During hearing, Dr. Rosenquist confirmed Dr. Ikeda's testimony that neither he nor Parents contacted Long Beach for a second contract. Dr. Rosenquist also persuasively testified that Long Beach did not require a second individual services agreement to fund the second vision assessment. Long Beach would have funded the second assessment had Dr. Ikeda conducted the assessment.

Dr. Ikeda also testified that he would not have recommended a second vision assessment during the February 2020 IEP team meeting had Parents brought Student in for a follow-up visit after he received the support glasses, as recommended in his October 2019 report. Moreover, Dr. Ikeda would not have recommended vision services after a second assessment, had one been done following the February 2020 IEP team meeting, because he believed he needed to review Student's next triennial evaluations, set for September 2021, before making any school-based therapy recommendations.

Finally, there was no evidence provided during hearing that showed Student required vision therapy services, or a second vision assessment, to receive a FAPE. Parents did not request vision therapy services and Dr. Ikeda did not recommend vision therapy services for Student. There was no testimony from any witness, or

recommendation in any assessment received for this matter, that suggested Student required vision therapy to access or benefit from his education. Consequently, there was no basis for a second vision therapy assessment.

While Parents made clear during the hearing that they wanted Long Beach to fund a second vision therapy assessment by Dr. Ikeda, that does not mean Long Beach was required to fund that assessment. A student's educational program need not conform to a parent's wishes to be sufficient or appropriate. (*Shaw v. District of Colombia* (D.D.C. 2002) 238 F.Supp.2d 127, 139 [The IDEA does not provide for an "education designed according to the parent's desires."].) The IDEA does not empower parents to make unilateral decisions about programs funded by the public. (*Slama v. Independent School District Number 2580* (D.Minn. 2003) 259 F. Supp.2d 880, 885 [refusal to assign service providers of parent's choice does not result in a denial of a FAPE]; *N.R. v. San Ramon Valley Unified School District* (N.D.Cal. January 25, 2007, No. C 06-1987 MHP) 2007 WL 216323, at *7 [parents are not entitled to their preferred provider].) Parents, no matter how well-motivated, do not have a right to compel a school district to provide a specific program or provider for a disabled child. (*Rowley*, *supra*, 458 U.S. at p. 208.) Given that there was no evidence provided during hearing that showed Student required vision therapy services, Long Beach was not obligated to fund a second vision assessment by Dr. Ikeda, just four months after his first vision assessment.

In sum, there was no merit to Student's Issue 4. This was also Student's second attempt to litigate this issue.

The Decision for OAH Case No. 2020090441 analyzed a materially identical issue between the same parties, with substantially the same witnesses, evidence, and results:

"Did Long Beach deny Student a FAPE from February 2020 through September 2020, by failing to provide Student with the vision therapy services recommended by Dr. Ikeda?" In May 2021, OAH found:

> "Long Beach considered the vision therapy independent educational evaluation at the February 18, 2020 IEP team meeting with Parents. Long Beach did not dispute that Dr. Ikeda recommended vision support glasses and a follow up appointment. Long Beach argued that it was Parents' responsibility to schedule a second appointment and the contract it provided was sufficient to cover the entire vision therapy independent educational evaluation, including a second assessment. Regardless of who should have followed up regarding a second assessment, Student failed to prove he required vision therapy to access his education. Student also failed to prove Dr. Ikeda recommended vision therapy. Therefore, Long Beach did not deny Student a FAPE by failing to provide Student with vision therapy." (*Student v. Long Beach Unified School District* (2021) OAH Case No. 2020090441 (p. 18).)

Based upon this holding and the identical evidence submitted for the present case, it was unreasonable for Student to protract litigation for this issue.

Consequently, Student failed to prove by a preponderance of the evidence that Long Beach denied Student a FAPE by failing to obtain a second vision therapy evaluation by Dr. Ikeda.

ISSUE 5: FAILING TO PROVIDE EDUCATIONAL RECORDS

Student asserts that Long Beach denied him a FAPE, over the last two years, by failing to provide educational records when requested by Parent. Long Beach responds that it timely responded to Parent's requests for school records.

In general, there is no right to prehearing discovery in due process proceedings under the IDEA. Rather, the IDEA provides parties with the right to present evidence and compel the attendance of witnesses at "a hearing conducted pursuant to subsection (f) or (k)" of section 1415 of title 20 of the United States Code. (20 U.S.C. § 1415(h).) California provides a similar right to present evidence and compel the attendance of witnesses in due process proceedings, but does not confer the right to prehearing discovery. (Ed. Code, § 56505, subd. (e).)

The legislative and regulatory framework of these proceedings afford prehearing access to two types of documents: (1) parents have the right to request and receive the pupil's education records within five business days at any time (Ed. Code, § 56504), and (2) the parties are entitled to receive copies of all the documents the other party intends to use at hearing not less than five business days prior to the hearing, as well as "all assessments completed by that date and recommendations based on the assessments that the parties intend to use at the hearing." (Ed. Code, § 56505, subd. (e)(7).)

Education records under the IDEA are defined by the federal Family Educational Rights and Privacy Act, called the FERPA, to include "records, files, documents, and other materials" containing information directly related to a student, other than directory information, which "are maintained by an educational agency or institution or by a person acting for such agency or institution." (20 U.S.C. § 1232g(a)(4)(A); Ed. Code,

§ 49061, subd. (b); 34 C.F.R. § 99.3 (2006).) Pupil or education records do not include "records of instructional, supervisory, and administrative personnel…which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute." (20 U.S.C. § 1232g(a)(4)(B)(i); Ed. Code, § 49061, subd. (b); 34 C.F.R. § 99.3 (2006).)

On March 26, 2021, Student's attorney requested various administrative and educational records pertaining to Student from Long Beach. In response, Ariana Zambada, Long Beach's secretary for special education elementary schools, gathered all of the documents in Student's school file and contacted each teacher and IEP team member to obtain any additional Student records that were not part of Student's school file. She then compiled all of the records, along with administrative records, and sent them to Student's attorney on April 5, 2021. The records included 12 files of documents.

On April 6, 2021, Student's attorney sent Long Beach an email verifying receipt of Student's educational records, including attendance logs from May 2011, through March 2021. Student's attorney was dissatisfied with the attendance records that Long Beach provided because they identified days absent instead of days attended. Student's attorney requested additional attendance records, registration records, Student's work product, service records, and "evidence of a reading program."

In response, Zambada again copied Student's entire educational file and again requested Student's records from Long Beach staff. On April 13, 2021, Zambada sent to Student's attorney Student's file along with any additional records she was able to collect from Student's teachers and therapists.

Student's attorney was still dissatisfied with the records provided by Long Beach. On April 16, 2021, Student's attorney sent Long Beach another request for registration

and attendance records. Student's attorney stated these records were needed in preparation for litigation and part of a public records act request. On August 13, 2021, Long Beach's attorney responded that Student was not entitled to records in preparation for litigation.

Nonetheless, on August 16, 2021, Zambada again sent Student's attorney any and all school records and documents regarding Student, including all attendance and administrative records. Student's attorney acknowledged receipt of the records on the same day and requested additional records.

On August 25 2021, Zambada again provided Student's attorney any and all available school records, including records that exceeded Student's educational file, such as records kept solely by Student's teachers and administrative records.

During the hearing, Zambada persuasively testified that she sent any and all available records and documents pertaining to Student to Student's attorney, on several occasions, and in response to each records request. Zambada's testimony was supported by various emails and was not impeached by any witness.

During the hearing, Student was unable to identify any records, files, documents, and other materials that contained information directly related to Student that were maintained by Long Beach, or by a person acting for Long Beach, that was not provided in response to any of Student's records requests. (20 U.S.C. § 1232g(a)(4)(A); Ed. Code, § 49061, subd. (b); 34 C.F.R. § 99.3.) While Student may be dissatisfied with the manner that Long Beach maintained educational records or recorded attendance, that does not mean Long Beach failed to provide Student's educational records upon request.

Finally, Student fails to understand that pupil or education records do not include "records of instructional, supervisory, and administrative personnel…which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute." (20 U.S.C. § 1232g(a)(4)(B)(i); Ed. Code, § 49061, subd. (b); 34 C.F.R. § 99.3 (2006).) Any records that fell outside of Student's educational file, as defined by the foregoing statues, could only have been obtained by Student through a subpoena duces tecum, which Student failed to issue for this matter.

Based upon the foregoing, Student failed to show by a preponderance of the evidence that Long Beach denied him A FAPE, over the last two years, by failing to provide educational records.

ISSUE 6: FAILING TO PROVIDE SERVICES DURING THE 2020 EXTENDED SCHOOL YEAR

Student complains that Long Beach denied him a FAPE, by failing to provide services during the 2020 extended school year. Long Beach responds that Student was provided all services during that time period.

California Code of Regulations, title 5, section 3043, provides that extended school year services shall be provided for each individual with exceptional needs who requires special education and related services in excess of the regular academic year. Students to whom extended programming must be offered under section 3043:

> "… shall have disabilities which are likely to continue indefinitely or for a prolonged period, and interruption of the pupil's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will

attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her disabling condition."

Here, there was no dispute that Student met the requirements for special education and related services during the extended school year. There was also no dispute that Long Beach offered Student special education and related services for the extended school year. Rather, Student asserts Long Beach failed to implement services during the extended school year.

A school district violates the IDEA if it materially fails to implement a child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP. (*Van Duyn v. Baker School Dist.* (9th Cir. 2007) 502 F.3d 811, 815, 822.) However, "the materiality standard does not require that the child suffer demonstrable educational harm in order to prevail." (*Ibid.*)

Student's last agreed-upon IEP was dated September 7, 2018. The IEP offered extended school years services for summer 2019. Extended school year services included specialized academic instruction, four hours daily, and speech and language services, four times during the extended school year, at 25 minutes per session. Long Beach did not dispute that it was obligated to provide similar extended school year services for summer 2020.

Student failed to present any argument or evidence regarding the provision of speech and language services during the 2020 extended school year. Therefore, Student's issue was limited to Student's claim that Long Beach failed to provide a classroom placement, and therefore specialized academic instruction, during the 2020 extended school year.

Student's claim was ill-conceived. For example, Student argued that Student did not receive a classroom placement during the 2020 extended school year because Parents did not enroll him in the extended school year school program, and blamed Long Beach for this failure. In support of this argument, Father testified that Long Beach failed to inform Parents how to enroll Student for the 2020 extended school year. However, this testimony was inconsistent with a preponderance of the evidence. For example, Lockshaw persuasively testified that she described to Parents how to enroll Student for the 2020 extended school year, either through a virtual school site or by telephone to the school's special education department. On June 12, 2021, Lockshaw sent Father an email confirming this information. The email was addressed to Father's correct email and contained enrollment instructions for the 2020 extended school year, including the special education middle school office telephone number and contact information for enrollment.

In addition, Father's testimony that Parents did not enroll Student in the 2020 extended school year program was impeached by school telephone and registration records that showed Father enrolled Student in the 2020 extended school year program, by telephone, on June 9, 2020.

Finally, Parents testified that Long Beach did not provide Student a classroom placement during the 2020 extended school year, ostensibly, because of Parents' failure to enroll Student. However, Long Beach provided Student a classroom placement during the 2020 extended school year. The 2020 extended school year classroom and services were provided remotely because of school closures related to the COVID-19 global pandemic. Despite Student's claim that he did not receive a classroom placement, Father and Mother each testified they saw Student attending a remote classroom during the 2020 extended school year.

Parents did not closely monitor Student while he attended school remotely by computer. Yet, each Parent recalled seeing Student's individual behavior aide, Justin Arcangle, remotely assisting Student during the 2020 extended school year, when they happened to walk by Student's computer.

However, Parents testified they did not see a classroom teacher during the few times they walked by Student's computer screen, which forms the basis of Student's Issue 6. In sum, Student asserts he was not provided a classroom teacher during the 2020 extended school year, and therefore did not receive specialized academic instruction, because Parents did not notice a teacher on screen the few times they glanced at Student's computer screen during the 2020 extended school year.

Notwithstanding Parents' suspicion that Student's remote classroom lacked a teacher, a preponderance of evidence showed that Long Beach provided Student a special day class, with specialized academic instruction, taught by a special education teacher, during the 2020 extended school year.

After registration, Long Beach assigned Student to a special day class taught by Jennifer Santo, a teacher at Lumberg Middle School, a Long Beach school. Santo had over 20 years of teaching experience and taught mild-moderate special day classes at Long Beach for ten years, including during the extended school year. Santo persuasively testified that she taught Student's remote special day class during the 2020 extended school year, including providing specialized academic instruction. Santo's extended school year class consisted of specialized English instruction, two hours daily, a break, and then two hours daily of specialized math instruction. All work was completed virtually with the assistance of classroom aides. Santo recalled that Student was accompanied by an individual aide during the 2020 extended school year.

Arcangel was Student's individual aide while Student attended Santo's class during the 2020 extended school year. Arcangel was a behavior aide for Autism Behavior Consultants, a nonpublic agency hired by Long Beach to provide services for Student during the 2020 extended school year. Arcangel persuasively testified that he provided individual aide services for Student during the 2020 extended school year.

Long Beach's program administrator, Dr. Rosenquist, also persuasively testified that Student received specialized academic instruction in Santo's special day class during the 2020 extended school year. Dr. Rosenquist directly observed Santo and Student in the virtual classroom during the 2020 extended school year. Additionally, Dr. Rosenquist persuasively explained the school would not have hired an individual behavior aide for Student unless Student was attending a classroom during that time.

Finally, school attendance records showed that Student attended all but two days of the 2020 extended school year.

To prove Issue 6, Student submitted mostly conjecture and little countervailing evidence. Only Mother and Father testified in support of this issue, and their testimony was not reliable. For example, Mother was unable to independently recall Student's educational program for any issue. Father also had difficulty recalling Student's educational program, required significant prompting, and was frequently impeached by other evidence.

Given the foregoing, Student was unable to show by a preponderance of the evidence that Long Beach failed to provide services during the 2020 extended school year.

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.

Issue 1: Long Beach did not fail to timely fund an independent educational evaluation in the area of occupational therapy, including sensory processing, after August 19, 2019, when Parents requested the independent educational evaluation, or to timely file a due process complaint to defend its own assessment in this area. Long Beach prevailed on this issue.

Issue 2: Long beach did not deny Student a FAPE, within the last two years, by failing to review reports from Pride Learning Center. Long Beach prevailed on this issue.

Issue 3: Long Beach denied Student a FAPE, within the last two years, by failing to provide an appropriately ambitious reading program. Student prevailed on this issue.

Issue 4: Long Beach did not deny Student a FAPE, beginning February 2020, by failing to obtain a second vision therapy evaluation by Dr. Eric Ikeda. Long Beach prevailed on this issue.

Issue 5: Long Beach did not deny Student a FAPE, within the last two years, by failing to provide educational records when requested by Parent. Long Beach prevailed on this issue.

Issue 6: Long Beach did not deny Student a FAPE, by failing to provide services during the 2020 extended school year. Long Beach prevailed on this issue.

REMEDIES

Under federal and state law, courts have broad equitable powers to remedy the failure of a school district to provide 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].) 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, fn. 11 [129 S.Ct. 2484, 174 L.Ed.2d 168].)

An Administrative Law Judge can award compensatory education as a form of equitable relief. (*Park*, *supra*, 464 F.3d at p. 1033.) Compensatory education is a prospective award of educational services designed to catch-up the student to where he 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.)

Long Beach denied Student a FAPE by failing to provide an appropriate reading program. During hearing, Drs. Davidson and Johnson credibly testified Student required an intensive reading program, like the Lindamood Bell instruction provided at the Davidson Learning Center. It was therefore reasonable for Parents to incur costs related to a private reading program, and to seek reimbursement for those costs from Long Beach as compensatory education. Evidence established that Parents incurred $14,937 for reading-related services provided at the Davidson Learning Center. As a compensatory remedy, Long Beach shall reimburse Parents for those costs.

ORDER

1. As a compensatory remedy, Long Beach shall reimburse Parents $14,937 for expenses they incurred for reading-related services provided by the Davidson Learning Center. No additional documentation is required for Long Beach to make this payment, and payment shall be made within 60 calendar days of this Decision.
2. Student's other 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 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

/s/

Paul H. Kamoroff
Administrative Law Judge
Office of Administrative Hearings