

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2020090441

PARENT ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL DISTRICT.

DECISION

May 6, 2021

On September 15, 2020, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student, naming Long Beach Unified School District. OAH continued the matter for good cause on October 22, 2020. Administrative Law Judge Linda Johnson heard this matter via videoconference in San Diego, California on March 9, 10, 11, 17, and 18, 2021.

Tania Whiteleather represented Student. Parents attended all hearing days on Student's behalf. OAH provided a Spanish interpreter for Mother. Debra Ferdman

represented Long Beach. Dr. Seema Paul, Special Education Program Administrator, attended all hearing days on Long Beach's behalf.

At the parties' request, OAH continued the matter to April 5, 2021 for closing briefs. Briefs were timely received, the record was closed, and the matter was submitted on April 5, 2021.

ISSUES

A free appropriate public education is referred to as FAPE. An individualized education program is referred to as an IEP. At the start of the hearing, prior to opening statements, Student requested a modification to Issue 1 and withdrew Issue 7. Student requested Issue 1 reflect an IEP team meeting date of February 18, 2020, not May 20, 2020. Long Beach's objection was overruled, and the issue was modified to reflect the correct IEP team meeting date. Long Beach did not object to Student withdrawing Issue 7. The issues have been renumbered accordingly. There have been no other changes to the issues.

1. Did Long Beach timely conclude Student's IEP that commenced on February 18, 2020?
2. 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?
3. Did Long Beach deny Student a FAPE from March 2020 through September 2020, by not providing Student with educational services that Student could meaningfully access?

4. Did Long Beach deny Student a FAPE from March 2020 through September 2020, by failing to provide Student with a computer with which he could meaningfully access online instruction?
5. 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?
6. Did Long Beach deny Student a FAPE from September 2019 through September 2020, by failing to provide Student with assistive technology and accommodations described in his IEP?
7. Did Long Beach deny Student a FAPE from September 2019 through September 2020, by denying him the opportunity for mainstreaming with non-disabled peers?

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 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 was the petitioning party and 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).)

Student was 13 years old and in seventh grade at the time of hearing. Student resided within Long Beach's geographic boundaries at all relevant times. Student was eligible for special education under the category of autism.

ISSUE 1: DID LONG BEACH TIMELY CONCLUDE STUDENT'S IEP THAT COMMENCED ON FEBRUARY 18, 2020?

Student contends that Long Beach should have scheduled an IEP team meeting in March or April of 2020 to conclude the IEP team meeting that commenced on February 18, 2020. Student further contends that he is owed compensatory education because of the delay in completing his IEP.

Long Beach contends it completed Student's IEP in a timely manner. Long Beach contends the IEP team meeting process took an extended time because the team had to

review independent educational evaluations and have an interpreter present. Long Beach further contends any delay in completing the IEP did not deny Student a FAPE but rather ensured parental participation.

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

In general, a child eligible for special education must be provided access to specialized instruction and related services which 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; *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. ____ [137 S.Ct. 988, 1000].)

An IEP meeting must be held at least annually (Ed. Code, § 56343.). A school district must ensure that the IEP team revises the IEP, as appropriate, to address "any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate." (20 U.S.C. § 1414 (d)(4)(A); 34 C.F.R. § 300.324(b)(2).) California law provides that an IEP team "shall meet" whenever "[t]he pupil demonstrates a lack of anticipated progress." (Ed. Code, § 56343, subd. (b).)

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);

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).)

Long Beach held Student's annual IEP team meeting over five days in 2020. The IEP team meeting commenced on February 18, 2020. The subsequent IEP team meetings were held on February 28, 2020, May 20, 2020, October 16, 2020, and November 12, 2020. The October and November 2020 IEP team meetings and subsequent FAPE offer are not at issue in this case. There was an IEP team meeting scheduled for March 13, 2020, however, Long Beach canceled that meeting because the interpreter was ill. Long Beach was on summer break from June 11, 2020, through August 31, 2021. Each of the five IEP team meetings lasted for two hours. Student's attorney was present at every meeting, as was a Spanish interpreter for Mother.

At the February 18, 2020 IEP team meeting, the team reviewed independent educational evaluations in the areas of vision and speech and language. The IEP team continued the meeting to February 28, 2020, to review the psychoeducational independent educational evaluation. In addition to reviewing the psychoeducational evaluation at the February 28, 2020 IEP team meeting, the team also discussed Student's progress in physical education, speech and language, and behavior. The team continued the meeting and reconvened on May 20, 2020. At the May 20, 2020 IEP team meeting, the team discussed behavior goals, speech and language goals and Parents' concerns. Once again, the IEP team ran out of time and needed to reconvene the meeting.

A procedural error does not automatically require a finding that a FAPE was denied. A procedural violation results in 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 regarding the provision of a FAPE to the parents' child; or
3. caused a deprivation of educational benefits.

(20 U.S.C. § 1415(f)(3)(E)(ii); see Ed. Code, § 56505, subd. (f)(2); *W.G. v. Board of Trustees of Target Range School Dist. No. 23 (Target Range)* (9th Cir. 1992) 960 F.2d 1479, 1484.)

Long Beach afforded Parents the opportunity to participate in the IEP team meetings. Parents and their attorney asked questions and requested revisions to the goals. Student's special day class teacher and case manager, Tiffany Lockshaw, was responsible for scheduling the IEP team meetings. Scheduling the IEP team meetings was difficult for Lockshaw because she had to invite many people to each IEP team meeting. Student's own psychoeducational independent assessor, Dr. Helena Johnson, opined that an IEP team meeting with an interpreter and multiple independent evaluations to review would take an extended amount of time.

Student requested compensatory education as a result of the delay in completing the IEP process. However, Student first did not prove Long Beach failed to timely conclude the IEP process. Secondly, Student failed to provide any evidence as to the specialized academic instruction or services he was denied between March 2020 and September 2020. During that time period, Long Beach continued to implement Student's September 7, 2018 IEP, which was the last agreed upon and consented to IEP. Additionally, while not at issue in this case, Long Beach's offer of placement and services at the November 12, 2020 IEP team meeting was substantially similar to that in the

September 7, 2018 IEP. Student did not provide any evidence demonstrating that the delay in completing the IEP denied him a FAPE.

Therefore, Student did not prove that the extended conclusion of his IEP impeded his right to a FAPE or significantly impaired Parents' opportunity to participate in the IEP development process. Nor did Student provide evidence of unmet educational needs that impeded his ability to access his education during the time the IEP team considered his IEP. Student failed to meet his burden of proving he was denied FAPE due to the delay in concluding the IEP process between February 18, 2020, and September 2020.

ISSUE 2: 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?

Student contends Long Beach was aware he had sensory and occupational therapy concerns from September 2019 to September 2020 but failed to assess him in occupational therapy. Long Beach contends Student did not exhibit occupational therapy or sensory integration needs and it had no reason to suspect it should assess Student in those areas. Long Beach further contends the terms in the August 2019 settlement agreement were a compromise and Long Beach did not suspect that occupational therapy was an area of need.

A school district's failure to conduct appropriate assessments or to assess in all areas of suspected disability may constitute a procedural violation, resulting in a denial

of a FAPE. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1031-1033 (Park).) A disability is “suspected,” and a child must be assessed, when the district is on notice that the child has displayed symptoms of that particular disability or disorder. (*Timothy O. v. Paso Robles Unified School Dist.* (9th Cir. 2016) 822 F.3d 1105, 1119.)

Long Beach did not assess Student for occupational therapy between September 2019 and September 2020. Student was last assessed for occupational therapy by Cornerstone Therapies on April 13, 2018. Cornerstone’s assessment was not school based and was not an independent educational evaluation. Parents provided the Cornerstone report to Lowell Elementary, the school Student attended for the 2018-2019 school year. Student did not establish he asked for an occupational therapy or sensory integration assessment when he provided the assessment report to Lowell, or that Parents informed Lowell that they were concerned about occupational therapy or sensory integration. Student did not prove that Long Beach observed any occupational therapy or sensory integration issues. Parents attended an IEP team meeting on September 18, 2018, at Lowell. Parents did not raise concerns about occupational therapy or sensory processing, nor did they raise the Cornerstone report at that meeting.

Long Beach and Parents signed a settlement agreement on August 6, 2019, resolving all prior special education claims except for occupational therapy. Student did not provide any evidence that Long Beach was required to follow up with an occupational therapy or sensory integration assessment as a result of the settlement agreement or that Long Beach agreed that occupational therapy and sensory integration were areas of concern.

Dr. Johnson conducted an independent psychoeducational evaluation for Student on November 25, 2019. Dr. Johnson found Student had a primary disability of specific learning disability and a secondary disability of autism. Dr. Johnson recommended small group instruction, intensive reading intervention, behavior consultation, and academic goals. Dr. Johnson also recommended a speech and language assessment and a comprehensive auditory processing assessment but not an occupational therapy or sensory integration assessment.

Student failed to meet his burden 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.

ISSUES 3, 4, and 6: DID LONG BEACH DENY STUDENT A FAPE FROM MARCH 2020 THROUGH SEPTEMBER 2020, BY NOT PROVIDING HIM WITH EDUCATIONAL SERVICES AND A COMPUTER WITH WHICH HE COULD MEANINGFULLY ACCESS ONLINE INSTRUCTION, AND FROM SEPTEMBER 2019 THROUGH SEPTEMBER 2020, BY FAILING TO PROVIDE HIM WITH ASSISTIVE TECHNOLOGY AND ACCOMMODATIONS DESCRIBED IN HIS IEP?

Student contends he was unable to access his online instruction between March 2020 and September 2020 because he did not have his one-to-one aide, he was unable to complete work, and what he did complete was illegible. Student also contends he had connectivity issues with the computer Long Beach provided as it was so unreliable Parents had no choice but to purchase a new laptop for Student. Student further contends he did not have access to his assistive technology that was necessary for him to access his education. Student contends Long Beach failed to provide him the C-Pen Reader between February 2020 and September 2020. Student also contends Long Beach did not instruct Parents on how to use the Bookshare assistive technology therefore he did not have access to it between March 2020 and September 2020.

Student alleged in his complaint that Long Beach denied him a FAPE between September 2019 to September 2020 by failing to provide him with the accommodations listed in his IEP. Student did not provide any evidence or testimony regarding accommodations other than assistive technology. Nor did Student argue in his closing brief that Long Beach failed to provide him accommodations aside from assistive technology. Consequently, any failure to provide accommodations except for assistive technology will not be addressed in this decision as Student failed to meet his burden of proof on the issue.

Long Beach contends Student had meaningful access to his education and did well academically between March 2020 and September 2020. Long Beach further contends Student failed to prove he could not meaningfully access his education or that the absence of his one-to-one aide denied him a FAPE. Long Beach contends Student was able to access his online learning with the district provided laptop and minor connectivity issues did not amount to a FAPE denial. Long Beach further contends Student did not prove that any failure to provide the assistive technology amounted to a denial of FAPE.

A school district is obligated to provide eligible students with a FAPE by delivering special education and related services in conformity with the student's IEP. (20 U.S.C. § 1401(9)(D).) IEPs are clearly binding under the IDEA, and the proper course for a school that wishes to make material changes to an IEP is to reconvene the IEP team and not to decide on its own no longer to implement part or all of the IEP. (*Van Duyn v. Baker School Dist. 5J* (9th Cir. 2007) 502 F. 3d 811, 821) (*Van Duyn*) (citing 20 U.S.C § 1414(d)(3)(F), 1415(b)(3).) A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP. (*Id.* at p. 815)

The obligation to provide a FAPE lies with the local educational agency, not the parent. (See *Anchorage School Dist. v. M.P.* (9th Cir. 2012) 689 F.3d 1047, 1054.) A local education agency must meet its obligations under the IDEA, regardless of whether it anticipates parental cooperation. (*Ibid.*) Only material failures to implement an IEP constitute violations of the IDEA. (*Van Duyn, supra* 502 F.3d. 811, 822, citing 20 U.S.C. § 1401(9)(D), 1415(f)(3)(E)(i).) There is no statutory requirement of perfect adherence to the IEP and there is no reason rooted in statutory text to view minor implementation failures as a denial of FAPE. (*Ibid.*) The materiality standard does not require that the

child suffer demonstrable educational harm to prevail, but the child's educational progress, or lack of it, may be probative of whether there has been more than a minor shortfall in the services provided. (*Ibid.*)

ONE-TO-ONE AIDE SUPPORT

Long Beach transitioned to distance learning on March 16, 2020 due to the Covid-19 pandemic. During distance learning Student received virtual instruction in his special day class and virtual instruction in two general education classes. Student did not, however, receive his one-to-one aide support for the first eight weeks of virtual instruction. Student established that Long Beach did not provide the services necessary for Student to access his online education from March 16, 2020 to May 15, 2020.

Between March 16, 2020, and May 15, 2020, Student did not receive his one-to-one aide support. Long Beach was on spring recess from April 10, 2020, through April 17, 2020. Student's aide service resumed the week of May 18, 2020. There were a total of 39 school days that Student did not receive his one-to-one aide service. Student struggled to maintain focus and access his education without his one-to-one aide. However, when Student's one-to-one aide service resumed, he performed well academically.

Overall, Lockshaw saw a dramatic improvement in Student's behavior and academics during virtual learning. Lockshaw specifically noted Student started volunteering to read out loud, something he had not done in the classroom environment. Additionally, the evidence established Student was engaged and focused during instruction. Parent disputed reports of Student's academic improvement during virtual instruction. However, while Mother did not observe Student volunteering to read out loud, she was not with Student all day as Lockshaw was.

Parents raised a concern at the May 20, 2020 IEP team meeting that Lockshaw told them Student's work was not being completed and was illegible. Lockshaw did not recall making that comment. Aside from the May 20, 2020 IEP team meeting notes, Student did not provide any evidence that he was not completing work or that his work was illegible. Student did not provide any work samples or assignment grades to show incomplete assignments.

Student established that Long Beach denied him a FAPE from March 16, 2020, through May 15, 2020, by not providing his one-to-one aide during for 39 school days. Aside from that eight-week period that Student did not receive services from his aide, Long Beach provided Student the services in his IEP and Student was able to access his education. Long Beach denied Student a FAPE from March 16, 2020, through May 15, 2020, by not providing his one-to-one aide.

LAPTOP COMPUTER

Long Beach provided Student two different Chromebook laptop computers so he could access virtual instruction. Student failed to prove that Long Beach did not provide adequate equipment for him to access his online instruction.

Long Beach provided Student with a Chromebook laptop so he could access online instruction. Student received the same type of Chromebook that all other Long Beach students received. Parents reported significant connectivity issues with the Chromebook stating Student lost his connection the virtual learning platform two to three times a day. According to Parents, it routinely took 10 to 20 minutes for Student to reconnect to the virtual classroom. Father sometimes called Student's school to help troubleshoot the connectivity issues and reported that sometimes the school was able to assist. Parents exchanged the first Chromebook and received a second Chromebook

around May 5, 2020. Parents purchased a new computer for Student around Labor Day 2020.

Lockshaw acknowledged Student had some connectivity issues, but not to the extent Parents reported. Lockshaw recalled Student lost connectivity a few times but Student could reconnect within a few minutes. Lockshaw's testimony was more persuasive than Parents as Lockshaw was Student's teacher and with Student in the virtual classroom at all times. Father worked nights and often ran errands during the day, so he was not consistently with Student during the virtual school day. Similarly, although Mother was at home with Student, she was not always in the same room with Student during the virtual school day. Student did not prove Long Beach denied him a FAPE by failing to provide him with a computer that could reliably connect to the distance learning classroom.

ASSISTIVE TECHNOLOGY

Student's last consented to IEP, dated September 7, 2018, provided Student with access to audio books with text highlighting and a handheld text to speech tool for access to printed material. Student's independent reading level was around the kindergarten level. Student required either assistive technology to read material or someone to read material to him to access his education.

Long Beach provided Student with a C-Pen Reader to access printed material. The C-Pen Reader was a handheld tool that read printed material out loud. The C-Pen Reader would not read material from a computer screen. Student's C-Pen Reader stopped working in February 2020. Student offered no evidence establishing that he was denied access to his education from the date his C-Pen stopped working in February 2020 to March 16, 2020, when Long Beach transitioned to virtual learning in

response to the Covid-19 pandemic. Long Beach was not able to replace the C-Pen Reader until September 2020. However, Student was not assigned or required to complete any written materials during virtual learning, which continued through September 2020. Although Long Beach failed to provide Student with the C-Pen Reader from February 2020 through September 2020, that procedural violation did not amount to a FAPE denial as Student failed to prove that the lack of the C-Pen impeded his access his education. (*Target Range, supra*, 960 F. 2d at p.1484.)

Long Beach provided Student with access to audio books through the Bookshare program. Student accessed the Bookshare program through a website and the program read books, including textbooks, out loud to Student. Student had access to Bookshare in the classroom from September 2019 through March 13, 2020. From March 16, 2020, through September 2020, Student could access Bookshare through his Chromebook from home. Bookshare was an assistive technology Long Beach started using with Student in 2016. When Student's Bookshare account was first created Parents had to access the program to create the account. The evidence established that Parents initially set up Student's Bookshare account. However, Parents did not remember how to access it, nor were they able to help Student access it during virtual learning. Student may have been able to access Bookshare himself, or with Lockshaw's assistance or his one-to-one aide's assistance. The evidence was not clear if Student used Bookshare to access his textbooks, or if his one-to-one aide read the material to him. Either way, the evidence established that Student was able to access his education and made progress during virtual learning. Although Long Beach did not ensure Student had access to the Bookshare program during virtual learning, Student did not prove that the lack of access to Bookshare was a material failure to implement the IEP. (*Van Duyn, supra* 502 F.3d. 811.) Long Beach did not deny Student a FAPE from September 2019 through

September 2020 by failing to provide Student with the assistive technology described in his IEP.

Student proved Long Beach denied him FAPE by failing to provide his one-to-one aide between March 16, 2020, and May 15, 2020. Student did not prove Long Beach denied him a FAPE from May 15, 2020 through September 2020, by not providing him with educational services which he could meaningfully access. Student failed to prove Long Beach denied him a FAPE from March 2020 through September 2020, by not providing him with and a computer with which he could meaningfully access online instruction. Student also failed to prove Long Beach denied him a FAPE from September 2019 through September 2020, by failing to provide him with assistive technology and accommodations described in his IEP.

ISSUE 5: DID LONG BEACH DENY STUDENT A FAPE FROM FEBRUARY 2020 THROUGH SEPTEMBER 2020, BY FAILING TO PROVIDE STUDENT WITH THE VISION THERAPY SERVICES RECOMMEND BY DR. IKEDA?

Student contends Dr. Ikeda recommended an additional vision therapy assessment to determine the amount of vision therapy Student required. Student contends he followed up with Dr. Ikeda to obtain the second assessment, but Dr. Ikeda was unable to provide an additional assessment without a new contract from Long Beach. Student further contends he contacted Long Beach to coordinate the second assessment, but Long Beach did not generate a new contract.

Long Beach contends that Dr. Ikeda did not recommend vision therapy and it was not obligated to provide vision therapy even if he had. Long Beach further contends

Dr. Ikeda did not need a second contract to provide a follow up visit, and Parents were responsible for scheduling the second visit.

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).) 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).)

Dr. Ikeda conducted a vision therapy independent educational evaluation for Student on October 7, 2019. Dr. Ikeda reviewed the results of the evaluation at during an IEP team meeting on February 18, 2020. Dr. Ikeda did not specifically recommend vision therapy. Dr. Ikeda recommended that Student wear vision support glasses and return for a follow-up appointment to check visual status. Student failed to prove he required vision therapy services or that Dr. Ikeda recommended vision therapy services.

Student's argument that he was prevented from obtaining the second assessment because Long Beach failed to provide Dr. Ikeda with a second contract was not persuasive. During the IEP team meeting Dr. Ikeda explained that the length and duration of any vision therapy services would be determined with further testing. Parents did not tell the IEP team, or Dr. Ikeda, that Student already had glasses. Nor did Parents ask Dr. Ikeda if the glasses Student already wore were the same as the vision support glasses Dr. Ikeda recommended.

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.

ISSUE 7: DID LONG BEACH DENY STUDENT A FAPE FROM SEPTEMBER 2019 THROUGH SEPTEMBER 2020, BY DENYING HIM THE OPPORTUNITY FOR MAINSTREAMING WITH NON-DISABLED PEERS?

Student contends the IEP team did not discuss mainstreaming opportunities at the February or May 2020 IEP team meetings despite Parents request to consider more general education time for Student. Long Beach contends the issue for hearing was whether Student was provided the opportunity for mainstreaming, not whether Student should receive more than two periods per day of mainstreaming. Long Beach contends Student was provided with two periods of general education per day.

Long Beach provided Student with two periods a day of general education in the classroom setting from September 2019 through March 2020, and the same during virtual learning from March 2020 through September 2020. Long Beach provided

Student with mainstreaming opportunities with non-disabled peers. Student argued in his closing brief that Parents brought up mainstreaming at the February 18, 2020 IEP team meeting but Long Beach did not discuss mainstreaming opportunities for Student at that meeting or any of the subsequent IEP team meetings.

Although the IEP team did not get to a discussion about general education and mainstreaming during the first three IEP team meetings Long Beach held in 2020, Student failed to prove Long Beach denied him the opportunity for mainstreaming with non-disabled peers. Any discussions in the October and November 2020 IEP team meetings are not at issue in this case. Between September 2019 and September 2020, Long Beach continued to implement Student's IEP and provided mainstreaming opportunities for Student with non-disabled peers in two general education classes. Neither Parents nor Lockshaw opined that it would be appropriate for Student to have general education academic classes. Moreover, Dr. Johnson recommended Student receive individual instruction, not more time in general education classes. Student did not prove Long Beach denied him a FAPE from September 2019 through September 2020, by denying him the opportunity for mainstreaming with non-disabled peers.

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 timely concluded Student's IEP that commenced on February 18, 2020. Long Beach prevailed on Issue 1.

Issue 2: Long Beach did not 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. Long Beach prevailed on Issue 2.

Issue 3: Long Beach denied Student a FAPE from March 16, 2020 through May 15, 2020, by not providing his one-to-one aide service. Long Beach did not deny Student a FAPE from May 18, 2020, through September 2020, by not providing Student with educational services that Student could meaningfully access. Student partially prevailed on Issue 3 and Long Beach partially prevailed on Issue 3.

Issue 4: Long Beach did not deny Student a FAPE from March 2020 through September 2020, by failing to provide Student with a computer with which he could meaningfully access online instruction. Long Beach prevailed on Issue 4.

Issue 5: Long Beach did not deny Student a FAPE from February 2020 through September 2020, by failing to provide Student with the vision therapy services recommend by Dr. Ikeda. Long Beach prevailed on Issue 5.

Issue 6: Long Beach did not deny Student a FAPE from September 2019 through September 2020, by failing to provide Student with assistive technology and accommodations described in his IEP. Long Beach prevailed on Issue 6.

Issue 7: Long Beach did not deny Student a FAPE from September 2019 through September 2020, by denying him the opportunity for mainstreaming with non-disabled peers. Long Beach prevailed on Issue 7.

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] (*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, fn. 11 [129 S.Ct. 2484, 174 L.Ed.2d 168].)

In remedying a FAPE denial, the student is entitled to relief that is appropriate in light of the purposes of the IDEA. (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3) (2006).) The purpose of the IDEA is to provide students with disabilities a free appropriate public education which emphasizes special education and related services to meet their unique needs. (*Burlington, supra*, 471 U.S. 359, 374.) Appropriate relief means relief designed to ensure that the student is appropriately educated within the meaning of the IDEA. (*Student W. v. Puyallup School Dist.* (9th Cir. 1994) 31 F.3d 1489, 1497 (*Puyallup*).) The award must be fact-specific and be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place. (*Reid ex rel. Reid v. District of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524.)

A school district may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*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; *Orange Unified School Dist. v. C.K.* (C.D.Cal. June 4, 2012, No. SACV 11–1253 JVS(MLGx)) 2012 WL 2478389, *12.) An award of compensatory education need not provide a day-for-day compensation. (*Puyallup, supra*, 31 F.3d 1489, 1496-1497.)

Long Beach denied Student a FAPE from March 16, 2020, through May 15, 2020, by not providing his one-to-one aide service. Student did not provide any evidence as to the amount and duration of compensatory education he required to account for the missed hours of one-to-one aide service. Student was in school for 39 days from March 16, 2020 through May 15, 2020. Therefore, it is equitable to award Student 39 hours of compensatory services not to exceed \$100 an hour. Student may utilize a California certified nonpublic agency of Parent's choice to provide the hours in specialized academic instruction or behavior intervention. Student is entitled to utilize those services through June 2022.

ORDER

1. Parent shall select a California certified nonpublic agency to provide the compensatory services and notify Long Beach of that decision. Within 30 days of being notified of Parents' selection, Long Beach shall contract with the nonpublic agency of Parent's choice to provide 39 hours of specialized academic instruction or behavior services, not to exceed \$100 an hour. Any compensatory services not used by June 30, 2022, shall be forfeited.
2. All Student's other requests 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/

Linda Johnson

Administrative Law Judge

Office of Administrative Hearings