

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2022040671

PARENT ON BEHALF OF STUDENT,

v.

CAPISTRANO UNIFIED SCHOOL DISTRICT.

DECISION

December 9, 2022

On April 21, 2022, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student, naming Capistrano Unified School District. On May 26, 2022, Student filed an amended complaint. On June 28, 2022, OAH granted a hearing continuance. Administrative Law Judge Rita Defilippis heard this matter on October 18, 19, and 20, 2022.

Attorney Timothy Adams represented Student. Law clerk and Paralegal Andrea Blair was present for hearing on all days. Parents attended all hearing days on Student's

behalf. Attorney Daniel Harbottle represented Capistrano Unified School District. Kathy Purcell, executive director for alternative dispute resolution and compliance, attended hearing on October 18 and 19, 2022, and Kim Gaither, Capistrano's legal specialist, attended hearing on October 20, 2022, on Capistrano's behalf.

At the parties' request the matter was continued to November 10, 2022, for written closing briefs. The record was closed, and the matter was submitted on November 10, 2022.

ISSUES

1. Did Capistrano deny Student a free appropriate public education, called FAPE, during the 2021-2022 school year, from December 17, 2021, by:
 - a. failing to permit Parents and the in-home licensed vocational nurse, called LVN, to meaningfully participate in the training of its new LVN;
 - b. failing to provide transportation for community-based instruction and class trips; and
 - c. failing to develop new goals for physical therapy, occupational therapy, speech and language, assistive technology, communication, and academics, at the May 9, 2022 individualized education program, called IEP, team meeting?

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, called IDEA, 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 IDEA are to ensure:

- all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living, and
- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511 (2006); 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 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).)

Student was 16 years old and in 11th grade at the time of hearing. Student resided within Capistrano's geographic boundaries at all relevant times. Student qualified for special education under the categories of multiple disabilities, intellectual disability, and orthopedic impairment. Student has a medical diagnosis of cerebral palsy with dystonia and spastic quadriplegia. Student requires a gastronomy tube, called a G-tube, for feeding, and has gastroesophageal reflux and asthma. Student is dependent on a one-to-one LVN for all of her personal care needs. Student wears a diaper and must be physically transferred to her changing table using a Hoyer mechanical lift. Student is nonverbal and needs assistive technology devices to communicate.

ISSUE 1a: DID CAPISTRANO DENY STUDENT A FAPE DURING THE 2021-2022 SCHOOL YEAR, FROM DECEMBER 17, 2021, BY FAILING TO PERMIT PARENTS AND THE IN-HOME LVN TO MEANINGFULLY PARTICIPATE IN THE TRAINING OF ITS NEW LVN?

Student contends that to receive a FAPE, Student requires the participation of both the in-home LVN, and Parents, in the training of Capistrano's new LVN, to protect Student's health and safety and access her educational services. Student acknowledges that Capistrano allowed for some participation of Parents and the in-home LVN in the training of the new LVN but argues that more training by Parents and the in-home LVN was required to provide Student a FAPE.

Capistrano asserts that Parents agreed to the parental involvement, and not the private in-home LVN, in training Capistrano's new LVN, under the express settlement agreement language executed by the parties on December 17, 2021. Further, Capistrano asserts that the settlement agreement expressly prohibits Parents from

asserting that any lack of implementation of the agreement denied Student a FAPE. Therefore, Capistrano argues that Issue 1(a) of Student's complaint should be dismissed, for lack of OAH jurisdiction.

Lastly, Capistrano contends that, although the settlement agreement did not require the private in-home LVN to participate in training the new LVN, it nonetheless facilitated the reasonable participation of both Parents and the private in-home LVN in training the new LVN, and offered more training opportunities to Parents, which Parents declined.

OAH JURISDICTION

Parents have the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) OAH has jurisdiction to hear due process claims arising under the IDEA. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029 (*Wyner*).)

This limited jurisdiction does not include jurisdiction over claims alleging a school district's failure to comply with a settlement agreement. (*Id.* at p. 1030.) In *Wyner*, the parties reached a settlement agreement during a due process hearing in which the district agreed to provide certain services. The hearing officer ordered the parties to abide by the terms of the agreement. Two years later, the student initiated another due process hearing involving six issues as to the school district's alleged failure to comply with the earlier settlement agreement. The California Special Education Hearing Office (SEHO), OAH's predecessor in hearing IDEA due process cases, found that the issues pertaining to compliance with the earlier order were beyond its jurisdiction. This ruling

was upheld on appeal. The *Wyner* court held that “the proper avenue to enforce SEHO orders” was the California Department of Education’s compliance complaint procedure (Cal. Code Regs., tit. 5, § 4600, et. seq.), and that “a subsequent due process hearing was not available to address ... alleged noncompliance with the settlement agreement and SEHO order in a prior due process hearing.” (*Wyner, supra*, 223 F.3d at p. 1030.)

In *Pedraza v. Alameda Unified Sch. Dist.* (N.D. Cal. 2007, No. C 05-04977 VRW) 2007 WL 949603, the District Court held that OAH has jurisdiction to adjudicate claims alleging a FAPE denial resulting in a mediated settlement agreement violation, as opposed to “merely a breach” of the mediated settlement agreement that could be addressed by the California Department of Education’s compliance complaint procedure or a breach of contract action in state or federal court. The settlement agreement in *Pedraza* expressly stated that the agreement was intended to provide the student with a FAPE.

Settlement agreements are interpreted using the same rules that apply to contract interpretation. (*Vaillette v. Fireman’s Fund Ins. Co.* (1993) 18 Cal.App.4th 680, 686, citing *Adams v. Johns-Manville Corp.* (9th Cir. 1989) 876 F.2d 702, 704.) “Ordinarily, the words of the document are to be given their plain meaning and understood in their common sense; the parties’ expressed objective intent, not their unexpressed subjective intent, governs.” (*Id.* at p. 686.) If a contract is ambiguous, i.e., susceptible to more than one interpretation, then extrinsic evidence may be used to interpret it. (*Pacific Gas & Electric Co. v. G. W. Thomas Drayage & Rigging Co.* (1968) 69 Cal.2d 33, 37-40.) Even if a contract appears to be unambiguous on its face, a party may offer relevant extrinsic evidence to demonstrate that the contract contains a latent ambiguity; however, to

demonstrate an ambiguity, the contract must be “reasonably susceptible” to the interpretation offered by the party introducing extrinsic evidence. (*Dore v. Arnold Worldwide, Inc.* (2006) 39 Cal.4th 384, 391, 393.)

OAH LACKS JURISDICTION OVER THE ENFORCEMENT OF THE DECEMBER 17, 2021 SETTLEMENT AGREEMENT

OAH lacks jurisdiction to enforce the parties’ previous settlement agreement. Student and Capistrano entered into a settlement agreement dated December 17, 2021, to resolve a prior due process complaint filed by Parents.

In the settlement agreement, the parties agreed that Capistrano may re-commence implementation of Student’s last consented to IEP dated November 12, 2020, as amended on March 24, April 22, and September 1, 2021. The parties agreed to the settlement agreement’s determination as to how Student’s IEP LVN services would be implemented for the 2021-2022 school year, including the training of the new LVN. Parents agreed that the settlement agreement did not modify Student’s November 12, 2020 IEP as amended.

Furthermore, unlike the agreement in *Pedraza*, which expressly stated that the agreement constituted a FAPE, here, the settlement agreement expressly stated that the settlement agreement represented a compromise in lieu of a FAPE, and that in no time in the future would Parents allege that the lack of implementation of Capistrano’s obligations in the agreement denied Student a FAPE.

The parties also agreed that interpretation or enforcement of the agreement must be made under the laws of California, in a state or federal court of competent jurisdiction.

Based on the express language of the December 17, 2021 settlement agreement, the limited *Pedraza* exception allowing OAH jurisdiction to determine whether a lack of implementation of a settlement agreement resulted in a FAPE denial is not applicable here. Based on the clear and unambiguous settlement agreement language, OAH does not have jurisdiction to enforce the December 17, 2021 settlement agreement.

OAH HAS JURISDICTION TO DETERMINE WHETHER STUDENT
REQUIRED PARENTS AND THE PRIVATE IN-HOME LVN TO
PARTICIPATE IN TRAINING CAPISTRANO'S NEW LVN TO
RECEIVE A FAPE

Issue 1(a) of Student's due process complaint does not expressly seek to enforce the December 17, 2021 settlement agreement. Issue 1(a) asserts that Capistrano denied Student a FAPE by failing to permit Parents' and the in-home LVN's meaningful participation in training Capistrano's new LVN, without reference to the December 17, 2021 settlement agreement.

Therefore, although OAH lacks jurisdiction to enforce the settlement agreement, the question remains as to whether Student's disability related needs are such that they require the meaningful participation of Parents and the in-home LVN in the training of Capistrano's new LVN, to receive a FAPE.

Student's closing brief also includes argument that Capistrano's new LVN lacked the training to be able to meet Student's needs. However, that question is beyond the scope of the issues presented here.

Therefore, no analysis or finding is reached in this decision as to the appropriateness of the Capistrano's training of the new LVN.

CAPISTRANO WAS NOT REQUIRED TO PERMIT PARENTS AND STUDENT'S PRIVATE IN-HOME LVN TO PARTICIPATE IN TRAINING CAPISTRANO'S NEW LVN TO PROVIDE STUDENT A FAPE

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 (2007), 300.321 (2007).)

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 Sch. Dist. v. Rowley* (1982) 458 U.S. 176, 201-204; *Endrew F. v. Douglas County Sch. Dist. RE-1* (2017) 580 U.S. 386 [137 S.Ct. 988, 1000].)

The "educational benefit" to be provided to a child requiring special education is not limited to addressing the child's academic needs, but also social and emotional

needs that affect academic progress, school behavior, and socialization. (*County of San Diego v. California Special Educ. Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467.)

A child's unique needs are to be broadly construed to include the child's

- academic,
- social,
- health,
- emotional,
- communicative,
- physical, and
- vocational needs. (*Seattle Sch. Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500, citing H.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2106), reversed in part on other grounds by *Schaffer, supra*, 546 U.S. 49, 56-58.)

Student's disability needs and unique circumstances are complex, and her educational services require highly trained service providers to protect Student's very life during Student's school day. It is undisputed that Student's medical and physical limitations resulting from her multiple disabilities require the services of a one-to-one LVN throughout her school day to ensure that Student is maintaining a clear airway to breathe, for her personal care, feeding, physical movement, and academic needs. Student can never be left unattended. It is also undisputed that Student requires all these services to receive a FAPE. Capistrano is the local educational agency responsible for Student's specialized and crucial special education services upon which Student's life depends.

A FAPE requires school districts to provide appropriate educational services at no cost to parents. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17 (2006).) For that reason, FAPE

cannot be conditioned on parental participation as a component of an IEP or to meet the local educational agency's responsibility to provide a student a FAPE. A school district has the right to select a program and service provider for a special education student, so long as the program and provider can meet the student's needs; IDEA does not empower parents to make unilateral decisions about programs funded by the public. (See, *N.R. v. San Ramon Valley Unified Sch. Dist.* (N.D. Cal. 2007) 2007 U.S. Dist. Lexis 9135; *Slama ex rel. Slama v. Indep. Sch. Dist. No. 2580* (D. Minn. 2003) 259 F. Supp.2d 880, 885; *O'Dell v. Special Sch. Dist.* (E.D. Mo. 2007) 47 IDELR 216). Nor must an IEP conform to a parent's wishes to be sufficient or appropriate. (*Shaw v. Dist. of Colombia* (D.D.C. 2002) 238 F.Supp.2d 127, 139 [IDEA does not provide for an "education ... designed according to the parent's desires."], citing *Rowley*, supra, 458 U.S. at p. 207; *Swanson v. Yuba City Sch. Dist.*, 2016 WL 6039024 (E.D. Cal. Oct 14, 2016).)

Capistrano's FAPE provision to Student cannot require Parents' participation without violating the requirement that a FAPE is at no cost to Parents. Additionally, Capistrano is not obligated to let Parent choose their preferred providers, as Capistrano has the authority to select and train Student's nursing service provider presuming the nursing services provider can meet Student's needs. Student did not present any persuasive legal authority to support their contention that participation of parents or a parent's chosen provider, is required for a student to receive a FAPE.

Parents are integral members of Student's IEP team and parental participation in the development of Student's IEP is of high importance. However, if Student prevailed on this issue, Capistrano would not only be dependent on Parents' willingness to participate in training providers, but it would also be at the mercy of the participation of

professionals not employed or controlled by Capistrano to provide Student a FAPE. Such a finding would unreasonably impede Capistrano's ability to make administrative staffing decisions necessary to provide Student a FAPE.

It is completely understandable and reasonable for Parents to want to do everything in their power to provide Capistrano with the maximum amount of information to avoid any risks of potential life-threatening incidents during Student's school day. However, Student failed to sustain the burden to prove that Parents' and the in-home LVN's participation was required to provide Student a FAPE. Thus, Student failed to demonstrate that Capistrano denied Student a FAPE from December 17, 2021, through the 2021-2022 school year by failing to permit Parent and the private in-home LVN to meaningfully participate in training of its new LVN.

ISSUE 1b: DID CAPISTRANO DENY STUDENT A FAPE DURING THE 2021-2022 SCHOOL YEAR, FROM DECEMBER 17, 2021, BY FAILING TO PROVIDE TRANSPORTATION FOR COMMUNITY-BASED INSTRUCTION AND CLASS TRIPS?

Student generally contends that between December 17, 2021, and the end of the 2021-2022 school year, Student was not invited to some community-based instruction activities and field trips because of Student's medical, physical, and personal care needs. There was also some evidence presented at hearing that there may have been an agreement, outside the IEP process, between Parent and Capistrano as to which community-based instruction activities and field trips Student would participate in.

However, Capistrano's alleged failure to invite Student to participate in community-based instruction activities, as well as the appropriateness of any agreements made between Capistrano and Parents, are outside the scope of the narrow issue presented here. Accordingly, no analysis or findings are made in this decision regarding the failure to include Student in community-based instruction activities for reasons other than Capistrano's alleged failure to provide transportation.

In Student's Issue 1(b), Student contends that Capistrano denied Student round-trip bus transportation for a March 4, 2022 community-based instructional mall trip because Student had to leave early to accommodate Student's disability needs. Student asserts that the failure to provide such transportation denied Student a FAPE because Capistrano conditioned Student's March 4, 2022 trip participation on Parent providing Student's return trip transportation.

Capistrano asserts that Student's IEP does not include transportation to community-based instructional trips and such transportation is not specifically enumerated in Student's last consented to IEP.

Capistrano maintains that it worked collaboratively with Parent regarding the appropriate degree of Student's participation in community-based instruction, which included Parent's agreement to pick Student up early from the mall on March 4, 2022, so that Student's medical orders and disability related accommodations could be facilitated. Capistrano contends that Student's participation in community-based instruction was limited only by Student's required medical accommodations and personal care needs, and not by any failure of Capistrano to provide transportation.

Transportation is a related special education service which includes travel to and from school and between schools; travel in and around school buildings; and specialized

equipment, such as special or adapted buses, lifts, and ramps, if required to provide special transportation for a disabled child. (34 C.F.R. § 300.34(c)(16) (2006).) The IEP team is responsible for determining if transportation is required to assist a disabled child to benefit from special education and related services and how the transportation services should be implemented. (20 U.S.C. § 1414(d)(1)(A)(i)(IV).)

Student's last consented to IEP requires Capistrano to provide transportation for Student due to Student's cognitive and physical needs. Transportation includes transport of Student to and from school, and between schools. This necessarily includes travel to and from community-based instruction sites and school during the school day.

Student's IEP team determined that Student requires

- specialized related transportation services including a temperature-controlled bus that can transport Student in her wheelchair to school;
- the services of a LVN to accompany Student on the bus;
- the ability to facilitate stops, if needed, to
 - reposition Student to protect Student's health and safety in the event her breathing is compromised; and to
 - facilitate Student's transport for trips no longer than 40 minutes in duration.

Student's operative IEP expressly requires round-trip transportation. Accordingly, Capistrano's assertion that Student's IEP did not require transportation to community-based instruction activities is unpersuasive.

Student's complex disability needs also required Capistrano to provide related services and multiple accommodations according to Student's medical orders and IEP.

Specifically, Student's IEP required Student to be in her wheelchair no longer than an hour and a half to two hours, due to the risk of friction sores and need to stretch. Student also had an IEP goal to stand in her stander 40 minutes, twice a day. Student required regular opportunities to stretch and relax and receive diaper changes, which necessitated using a mechanical Hoyer lift to move from her wheelchair to her stander or to her adjustable changing table with flip down-side rails. Student was unable to be changed while out in the community due to her weight and positioning needs. Student also required feeding and medications using a gastroonomy tube.

During the 2021-2022 school year, Student was placed in a functional life skills program which included a real-world functional curriculum designed to develop Student's communication, social skills, independent living skills, and self-advocacy. All academics were geared toward developing life skills including money, banking, budgeting, and reading functional sight words including words Student would encounter in the community.

Student's class went on weekly community outings on Fridays to practice the life skills learned in the classroom. The evidence is undisputed, including the testimony of Student's teacher, the in-home LVN, and Parent, that Student enjoyed and successfully participated in community-based instruction, limited only by her disability related personal and physical care needs. Community-based instruction was an integral part of Student's placement.

On March 3, 2022, Parent texted Student's teacher to ask if Student could participate in her class community-based instructional mall outing the following day on March 4, 2022. Initially, Student's teacher informed Parent that she wished that Student could go on the outing, but Student would unfortunately not be able to participate as the

trip would require Student to be in her chair for four hours. Parent asked if transportation could be provided so Student could participate in the community-based instructional mall outing and leave early. Student's teacher explained that Student could ride the bus with the class to the mall but would have to be picked up early by Parent. Parent agreed to pick Student up from the mall so Student could participate in the outing.

As it turned out, Student rode the bus to the mall with her class on March 4, 2022. Shortly after arriving at the mall, Student required an immediate diaper change. Student's temporary LVN contacted Parent by phone, and Parent picked up Student and the LVN.

Student required specialized transportation to access and participate in her offered placement which included Capistrano's March 4, 2022 community-based instructional mall outing. Student was unable to participate in the community-based instruction unless provided round-trip specialized transportation. Capistrano failed to implement Student's round-trip transportation on March 4, 2022, as required by her November 12, 2020 IEP, and amendment IEP's.

A FAPE means special education services that are provided at public expense, in conformity with a Student's IEP. (20 U.S.C. § 1401(9)(A) and (D).) 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 Sch. Dist.* (9th Cir. 2007) 502 F.3d 811, 815, 822. (*Van Duyn*).) However, "[T]he materiality standard does not require that the child suffer demonstrable educational harm in order to prevail." (*Ibid.*) The *Van Duyn* court emphasized that IEPs are clearly binding under the IDEA,

and the proper course for a school that wishes to make material IEP changes is to reconvene the IEP team under the statute, and “not to decide on its own to no longer to implement part or all of the IEP.” (*Van Duyn*, at p. 822.)

Capistrano’s failure to provide transportation for Student’s return trip from the March 4, 2022 community-based mall instruction was a material failure to implement Student’s IEP. Community-based instruction was a key component of Student’s offered placement in a functional life skills program. Undisputed testimony at hearing established that without such transportation, Student was required to remain at school in another classroom, while her peers enjoyed their community mall trip. Given Student’s need for multiple IEP accommodations requiring specialized staff and equipment to facilitate trips in the community, these community-based opportunities were especially important contributors to Student’s daily living skill development and quality of life. Therefore, although this was a single community-based instruction trip, for Student, Capistrano’s failure to provide round-trip transportation for the March 4, 2022 trip was material and denied Student a FAPE.

Student’s transportation must be provided at no cost to Parent for Student to receive a FAPE. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17 (2006).) Therefore, contrary to Capistrano’s contention, Parent’s willingness to voluntarily provide transportation to allow Student’s participation in her community-based instruction did not relieve Capistrano of its’ responsibility to provide such transportation.

Additionally, Capistrano’s contention in its closing brief that Student’s IEP did not provide for transportation related to community-based instruction is rejected as unpersuasive and inconsistent with the IDEA’s definition of transportation, as well as Capistrano’s specialized transport of Student and her classmates to the March 4, 2022

community-based instruction site. Thus, Student proved that Capistrano denied Student a FAPE on March 4, 2022, when it failed to provide transportation for a community-based instruction mall trip.

ISSUE 1c: DID CAPISTRANO DENY STUDENT A FAPE DURING THE 2021-2022 SCHOOL YEAR, FROM DECEMBER 17, 2021, BY FAILING TO DEVELOP NEW GOALS FOR PHYSICAL THERAPY, OCCUPATIONAL THERAPY, SPEECH AND LANGUAGE, ASSISTIVE TECHNOLOGY, COMMUNICATION, AND ACADEMICS, AT THE MAY 9, 2022 IEP TEAM MEETING?

Student contends that Capistrano denied Student a FAPE by failing to develop new physical therapy, occupational therapy, speech and language, assistive technology, communication, and academic IEP goals for Student at the May 9, 2022 annual IEP team meeting. Accordingly, although the issue is pled as commencing in December 2021, Student only challenges goals in relation to the May 9, 2022, IEP offer. Specifically, Student argues because Student met most of her prior IEP goals, new IEP goals in the same areas were required to be developed at that meeting and were not.

Capistrano asserts that it was required to identify Student's present levels of functioning and develop IEP goals for Student, but Parents obstructed its multiple attempts to complete the assessment and goal development process by refusing to cooperate in the assessment and IEP process. Capistrano asserts that the May 9, 2022 IEP team reviewed Student's prior goals and identified Student's needs and proposed goals based on the information available to service providers. Accordingly, Capistrano

argues that it worked diligently to complete the IEP process and that any alleged failure to develop or refine IEP goals at the May 9, 2022 IEP team meeting was due to Parents' lack of cooperation and obstruction of both the assessment and IEP process.

Federal and State law specify in detail what an IEP must contain. Among other things, it must include a statement of the student's present levels of academic achievement and functional performance, including the way the student's disability affects student's involvement and progress in the regular education curriculum. (20 U.S.C. § 1414(d)(1)(A)(i)(I); 34 C.F.R. § 300.320(a)(1) (2007); Ed. Code, § 56345, subd. (a)(1).)

The IEP must contain a statement of measurable annual goals designed to meet the student's needs that result from the disability to enable the student to be involved in and progress in the general curriculum and meet each of the child's other educational needs that result from the disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. § 300.320(a)(2) (2007); Ed. Code, § 56345, subd. (a)(2).) The IEP team develops measurable annual goals that address the student's areas of need and which the student has a reasonable chance of attaining within a year. (Ed. Code, § 56344; Letter to Butler (OSERS Mar. 25, 1988); U.S. Dept. of Educ., Notice of Interpretation, Appendix A to 34 C.F.R., part 300, 64 Fed. Reg. 12,406, 12,471 (1999 regulations). The purpose of goals is to assist the IEP team in determining whether the student is making progress in an area of need. As such, the IEP must also contain a statement of how the student's goals will be measured and when the parent will receive periodic reports on the student's progress towards his goals. (20 U.S.C. § 1414(d)(1)(A)(i)(III); 34 C.F.R. § 300.320(a)(3) (2007); Ed. Code, § 56345, subd. (a)(3).) The IEP must show a direct relationship between the present levels of performance, the goals, and the offered educational services. (Cal. Code Regs., tit. 5, § 3040, subd. (b).)

Student failed to sustain the burden of proof as to this issue. An IEP is required to include measurable goals to meet Student's needs. Student did not allege Capistrano failed to

- identify her needs,
- accurately report her present levels of academic achievement and functional performance, or
- to develop measurable goals to meet those needs.

Nor did Student claim she had additional needs for which Capistrano failed to offer goals. Rather, Student's Issue 1(c) simply asserts that Capistrano failed to develop "new" goals in specified areas because Student had met most of her prior goals. Accordingly, no analysis or findings are included in this decision regarding the appropriateness or measurability of the May 9, 2022. IEP goals.

The May 9, 2022, IEP was admitted as evidence at hearing. The evidence established that Student's IEP team reviewed the last consented to IEP goals and determined that Student met most of those goals.

The only goal that was not indicated as met was Student's physical therapy goal "to demonstrate improved tolerance to upright positioning by participating in two bouts of standing in her stander each day for 40 minutes per bout, on 4 of 5 days over a 2-week period." The IEP expressly identified the standing goal as a needed and continuing IEP goal in Student's May 9, IEP, noting that present levels and progress would have to be updated when additional information became available.

Student had not been able to safely access her stander at school because she did not fit in the stander. Several scheduled appointments at school with a third-party

vendor for the stander, to resolve the stander problems, had been cancelled. The physical therapist explained to Parents at the May 9, 2022 IEP team meeting that she needed additional baseline information regarding Student's ability to use her stander. Parents responded that they were still waiting for the vendor to come to the home.

Despite the need for more current baseline information, the May 9, 2022, IEP did contain what is considered a new physical therapy goal as it was intended to be worked on throughout the new IEP's duration.

In addition to Student's continuing physical therapy standing goal, the May 9, 2022 IEP contained additional new goals. New goals were developed which expanded on the prior met goals. These included goals in

- occupational therapy,
- speech and language,
- assistive technology,
- communication, and
- academic skill development.

They were more demanding than Student's prior goals in the same areas of need.

In the area of occupational therapy, Student's new goal required Student to engage in specific self-calming strategies when overstimulated. Assistive technology skill development was incorporated in many of Student's new goals which required Student to use total communication, including nonverbal communication and communication through the use of eye gaze and assistive technology devices. Communication and speech and language skill development was also incorporated in many new goals requiring Student to increase from one conversation exchange to four

or five exchanges with friends, and to comment, answer questions, and express opinions to her peers during structured tasks. New academic goals were developed to increase Student's ability to work on independent tasks from 20 minutes to 45 minutes; to use visual schedules, clocks, timers, and calendars to communicate and sequence daily events; to read and answer comprehension questions and identify site words and use them in sentences. Annual goals were developed at the May 9, 2022 IEP team meeting based on Student's needs in all of the areas Student alleged Capistrano failed to develop goals.

Although all of Student's May 9, 2022 IEP goals, except for Student's standing goal, were new, Student did not provide any legal authority to support the contention that IEP goals are required to be new. Instead, the decision to develop new goals or retain prior goals, is the role of a student's IEP team based on student's needs. Annual IEP goals were developed and offered in the May 9, 2022 IEP for all of the areas asserted by Student, based on Student's needs as determined by the information known to the IEP team at the time. Accordingly, Student failed to sustain the burden of proof on this issue.

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(a):

Capistrano did not deny Student a FAPE in the 2021-2022 school year from December 17, 2021, by failing to permit Parents and the in-home LVN to meaningfully participate in the training of Capistrano's new LVN.

Capistrano prevailed on Issue 1(a).

ISSUE 1(b):

Capistrano denied Student a FAPE by failing to provide transportation for community-based instruction on March 4, 2022.

Student prevailed on Issue 1(b).

ISSUE 1(c):

Capistrano did not deny Student a FAPE during the 2021-2022 school year from December 17, 2021, by failing to develop IEP goals for physical therapy, occupational therapy, speech and language, assistive technology, communication, and academics at the May 9, 2022 IEP team meeting.

Capistrano prevailed on Issue 1(c).

REMEDIES

Student proved in issue 1(b) that Capistrano denied Student a FAPE by failing to provide round-trip transportation for Student's March 4, 2022 community-based mall

instruction. Student requested training for Capistrano's teachers and staff on accommodating students with limited mobility for community-based instruction and field trips, as a proposed resolution.

An order for staff training is an appropriate remedy under the IDEA. (*Park v. Anaheim Union High Sch. Dist.* (9th Cir. 2006) 464 F.3d 1025, 1034, [finding teacher training an appropriate remedy for the school district's failure to implement the student's IEP].)

Here, Capistrano denied Student a FAPE by conditioning Student's participation in the March 4, 2022 community-based instruction on Parents providing return trip transportation. It is concerning that Student's teacher and case carrier informed Parent that because Student could not tolerate the entire length of the community-based instruction due to her medical and physical accommodations, Student would not be able to participate in the community-based instruction unless Parent picked Student up early. Therefore, training is an appropriate equitable remedy to avoid a similar denial of transportation in the future.

For Capistrano's conduct, and FAPE denial to Student, Capistrano must fund a two-hour training for Capistrano's special education administrators and Student's 2022-2023 school year special education teachers, case manager, and aides, on the implementation of IEP's with fidelity, including ensuring that such implementation is not conditioned on a requirement of parental involvement or participation. All of Student's other requests for relief are denied.

ORDER

1. Capistrano must fund one two-hour staff training for its special education administrators and special education staff, by an outside attorney not under contract with Capistrano, as detailed above, by June 30, 2023.

RIGHT TO APPEAL THIS DECISION

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

Rita Defilippis

Administrative Law Judge

Office of Administrative Hearings