

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2022010703

PARENT ON BEHALF OF STUDENT,

v.

WASHINGTON UNIFIED SCHOOL DISTRICT.

DECISION

MAY 5, 2022

On January 25, 2022, Parent on behalf of Student filed a due process hearing request with the Office of Administrative Hearings, called OAH, naming Washington Unified School District. The matter was continued for good cause on February 28, 2022.

Administrative Law Judge Rommel P. Cruz heard this matter by videoconference on March 16 and 17, 2022.

Parent represented Student. Advocate Kristine Allott assisted Parent. Student did not attend the hearing.

Attorney Matthew Tamel represented Washington Unified. Special education coordinator Karla Salvo attended both hearing days on Washington Unified's behalf.

At the parties' request, the matter was continued to April 1, 2022, for the parties to submit written closing briefs. The record was closed, and the matter was submitted for decision on April 1, 2022.

ISSUE

On March 16, 2022, following the parties' opening statements and the introduction of evidence and testimony, Student moved to dismiss Issue 1 as set forth in the March 7, 2022 Order Following Prehearing Conference for Hearing by Videoconference. OAH dismissed Issue 1 with prejudice. (Code Civ. Proc., § 581, subd. (e).)

On March 17, 2022, Student moved to dismiss Issue 2 as set forth in the March 7, 2022 Order. OAH dismissed Issue 2 with prejudice. (Code Civ. Proc., § 581, subd. (e).) The remaining issue to be decided, as clarified by the parties and the Administrative Law Judge, is as follows:

Did Washington Unified deny Student a free appropriate public education, called FAPE, by failing to provide Parent with Student's educational records within five days of Parent's requests on November 18, 2021, December 3, 2021, December 8, 2021, and December 21, 2021?

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).) Here, Student requested the hearing and had the burden of proof as to the remaining issue. 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 nine years old and in fourth grade at the time of hearing. Student resided within Washington Unified's geographic boundaries at all relevant times and was eligible for special education under the category of other health impairment.

ISSUE: DID WASHINGTON UNIFIED DENY STUDENT A FAPE, BY FAILING TO PROVIDE PARENT WITH STUDENT'S EDUCATIONAL RECORDS WITHIN FIVE DAYS OF PARENT'S RECORDS REQUESTS ON NOVEMBER 18, 2021, DECEMBER 3, 2021, DECEMBER 8, 2021, AND DECEMBER 21, 2021?

Student contends Washington Unified's untimely response to Parent's records requests in November and December 2021, adversely effected Student's education. Washington Unified contends the records sought by Parent on November 18, December 3, and December 8, 2021, were not records Washington Unified was required to maintain in Student's educational file. Therefore, Washington Unified argues it did not deny Student a FAPE when Washington Unified did not provide Parent the records Parent requested on November 18, December 3, and December 8, 2021. Furthermore, Washington Unified contends it did not deny Student a FAPE when Washington Unified responded to Parent's December 8, 2021 records request on January 7, 2022.

In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 205-206 [102 S.Ct. 3034, 73 L.Ed.2d 690], the Supreme Court recognized the importance of adherence to the procedural requirements of the IDEA. Among the most important procedural safeguards are those that protect the parents' right to be involved in the development of their child's educational plan. (*Doug C. v. Hawaii Dept. of Educ.* (9th Cir. 2013) 720 F.3d 1038, 1043-1044.) 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 a free appropriate public education to the child. (34 C.F.R. § 300.501(b); Ed. Code, § 56304, subd. (a).)

A school district is required to conduct not just an individualized education program, called IEP, team meeting, but also a meaningful IEP team meeting. (*W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1485 (*Target Range*); *Fuhrmann v. East Hanover Bd. of Educ.*, (3d Cir. 1993) 993 F.2d 1031, 1036 (*Fuhrmann*).) The IEP team shall consider the concerns of the parent for enhancing the student's education and information on the student's needs provided to or by the parent. (20 U.S.C. § 1414(d)(3)(A) & (d)(4)(A)(ii); 34 C.F.R. § 300.324(a)(1)(ii) & (b)(1)(ii)(C); Ed. Code, § 56341.1, subds. (a)(2), (d)(3) & (f).) A parent has meaningfully participated in the development of an IEP when the parent is informed of the child's problems, attends the IEP meeting, expresses disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann, supra*, 960 F.2d at p. 1036 [parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way].)

However, a procedural error does not automatically require a finding that a FAPE was denied. A procedural violation results in a denial of FAPE only if it impedes the child's right to a FAPE, significantly impedes the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child, or causes a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).); see *Target Range, supra*, 960 F.2d at p. 1484.)

California Education Code section 56504 states in relevant part, "The parent shall have the right and opportunity to examine all school records of his or her child and to receive copies ... within five business days after the request is made by the parent, either orally or in writing." An education record under the IDEA is defined by the implementing regulations of the Family Educational Rights and Privacy Act, called

FERPA. (34 C.F.R. § 300.611(b) (2006).) An education record under FERPA includes records, files, documents, and other materials which “(i) contain information directly related to a student; and (ii) 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).) The United States Supreme Court defined the word “maintained” in this context by its ordinary meaning “to keep in existence or continuance”, to “preserve,” or “retain,” and the Supreme Court reasoned that “[t]he word ‘maintain’ suggests FERPA records will be kept in a filing cabinet in a records room at the school or on a permanent secure database” *Owasso Indep. Sch. Dist. No I-011 v. Falvo* (2002) 534 U.S. 426, 432-33 [122 S.Ct. 934, 151 L.Ed.2d 896].)

In addition, a business day means Monday through Friday, except for federal and state holidays. (34 C.F.R. § 300.11(b) (2006).) In comparison, a school day is any day, including a partial day, that children attend school for instructional purposes. (34. C.F.R. § 300.11(c) (2006).)

Pupil records are

any item of information directly related to an identifiable pupil, other than directory information, that is maintained by a school district or required to be maintained by an employee in the performance of his or her duties whether recorded by handwriting, print, tapes, film, microfilm, or other means. (Ed. Code, § 49061, subd. (b).)

“Pupil records does not include informal notes related to a pupil compiled by a school officer or employee that remain in the sole possession of the maker and are not accessible or revealed to any other person except a substitute.” (*Ibid.*) A substitute is a

person who performs the duties of the individual who made the notes on a temporary basis, and does not refer to a person who permanently succeeds the maker of the notes in his or her position. (*Ibid.*)

Certain pupil records must be permanently maintained by a school district. (Cal. Code Regs., tit. 5, § 432, subd. (b)(1).) These records include:

- the pupil's legal name;
- the date of birth;
- the method of verification of birth date, sex of pupil, place of birth, names and address of a parent of a minor pupil;
- the dates of each school year and summer session when the pupil leaves and enters;
- the subjects taken during each year, half-year, summer session, or quarter;
- the marks or credits given;
- the verification or exemption for required immunizations; and
- the date of high school graduation or equivalent. (*Ibid.*)

Mandatory interim pupil records are those records which schools are required to compile and maintain for stipulated periods of time and are then destroyed in accordance with California statute or regulations. (Cal. Code Regs., tit. 5, § 42, subd. (b)(2).) Such records include a log or record identifying:

- those persons or organizations requesting or receiving information from the record;
- health information;

- participation in special education programs including required tests, case studies, authorizations, and actions necessary to establish eligibility for admission or discharge;
- language training records;
- progress slips and/or notes required under Education Code sections 49066 and 49067;
- parental restrictions regarding access to directory information or related stipulations;
- parent or adult pupil rejoinders to challenged records and to disciplinary action;
- parental authorizations or prohibitions of pupil participation in specific programs; and
- results of standardized tests administered within the preceding three years. (*Ibid.*)

Pupil records which school districts may maintain, but are not required to, may include :

- objective counselor and/or teacher ratings;
- standardized test results older than three years;
- routine discipline data;
- verified reports of relevant behavioral patterns;
- all disciplinary notes; and
- attendance records not covered in the Administrative Code section 400.
(Cal. Code Regs., tit. 5, § 42, subd. (b)(3).)

School districts shall not compile any other pupil records except mandatory or permitted records. (Cal. Code Regs., tit. 5, § 431, subd. (b).)

NOVEMBER 18, DECEMBER 3, AND DECEMBER 8, 2021 RECORDS REQUESTS

The evidence did not establish that Washington Unified failed to provide Parent with Student's pupil records pursuant to Parent's requests for records on November 18, December 3, and December 8, 2021. On November 18, 2021, Parent emailed Washington Unified requesting a "full accounting of hours as per the IEP medication [s/c] agreement to have 90 minutes of Executive Function per week and the days and times of the 90 minutes Push In Services per week and by whom." Parent also requested updated data related to goals and the "status of EACH of the interventions ..." Student's operative IEP at the time provided Student with 90 minutes a week of specialized academic instruction pushed into the classroom. The IEP did not offer any other related services. Washington Unified did not provide Parent with pupil records with the information as requested.

On December 3, 2021, Parent filed with Washington Unified, a complaint against Washington Unified special education coordinator Karla Salvo and another staff member, alleging Salvo and the other staff member failed to respond to Parent's November 18, 2021 records request. The complaint described the records sought as a "full accounting" of hours, dates, and the names of staff that provided "push in" services and "exec function". Parent testified that the December 3, 2021 complaint operated as a separate records request apart from the request made on November 18, 2021. On December 8, 2021, Parent emailed Washington Unified stating, "I STILL have not gotten the information that I am LEGALLY entitled to." However, the December 3, 2021 complaint and the December 8, 2021 email, related back to, but did not expand upon the request made in the November 18, 2021 email.

The evidence failed to demonstrate that the dates and hours of specialized academic instruction, and a list of staff members that provided Student with specialized academic instruction, were records required to be collected and maintained by Washington Unified, either permanently or in the interim. Student failed to prove that the information sought through Parent's requests on November 18, 2021, December 3, 2021, and December 8, 2021, were proper "pupil records" that were, or should have been, maintained in Student's file. In sum, Student failed to show that Parent's November 18, 2021 email was a records request within the meaning of California Education Code section 56504, or that the December 3, 2021 complaint, or December 8, 2021 email, expanded the request.

Furthermore, the evidence did not demonstrate the absence of any of the information Parent sought on November 18, December 3, and December 8, 2021, denied Student a FAPE. Parent meaningfully participated in an IEP team meeting held on December 6, 2021. The IEP team reviewed the results of assessments. Parent emailed questions for the assessors in advance of the meeting, which the assessors answered at the meeting. Parent also had the opportunity to ask the assessors additional questions during the meeting.

In addition, Parent questioned Washington Unified's IEP team members about Student's poor academic testing scores and lack of homework completion at the December 6, 2021 IEP team meeting. Parent was also concerned that Student was performing below grade level. Washington Unified's IEP team members answered Parent's questions, considered Parent's concerns, and explained that Student was performing at grade level. A preponderance of the evidence demonstrated that Parent meaningfully participated during the IEP team meeting.

Student did not establish that Parent required the requested information, even if it existed, to meaningfully participate in Student's educational decision-making process, or that Student was denied an educational benefit as a result. Accordingly, Student failed to meet his burden of proving Washington Unified significantly impeded Parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to Student, deprive Student of an educational benefit, or impede Student's right to a FAPE, by failing to provide Parent with information as requested by Parent on November 18, 2021, December 3, 2021, and December 8, 2021, of the dates, hours, and names of individuals who provided Student with special education services.

DECEMBER 21, 2021 RECORDS REQUEST

The evidence demonstrated that Washington Unified failed to timely respond to Student's December 21, 2021 records request. However, the evidence did not establish Washington Unified's untimely response denied Student a FAPE. On December 21, 2021, Parent emailed Washington Unified requesting records from Student's kindergarten year, through December 21, 2021. Parent's December 21, 2021 records request sought

emails (to/from and teacher, administration, school, principals, vice principals, aids, case manager, yolo county [sic] department of education etc.) documents, assessment, evaluations, requests for help, grades, IEP, 504, interventions, handwritten notes, health aid notes, transcripts, phone logs, notes from attorney, an legal documents, etc. in preparation for the OAH proceedings that have Anything [sic] to do directly with [Student]-any and all transactions relating to his time at Stonegate and his education, discipline, actions, interventions, and details.

This email fell within the scope of a records request pursuant to California Education Code section 56504, thereby triggering Washington Unified's duty to provide the requested pupil records within five business days.

Salvo received Parent's December 21, 2021 records request and reviewed the request with Washington Unified's attorney. Salvo testified during the hearing. As a special education coordinator for Washington Unified, and a program specialist prior, Salvo reviewed and processed over 100 student records requests. Salvo explained the records Parent sought involving:

- handwritten notes;
- emails between teachers, administrators, and Yolo County Office of Education;
- phone logs;
- attorney notes; and
- documents related to OAH proceedings

were not the type of records maintained in a pupil's school records. Therefore, Salvo opined the records requested were not the type of records provided to a requesting party pursuant to a pupil records request in accordance with California Education Code section 56504.

Through its attorney, Washington Unified emailed Parent on December 30, 2021, explaining which items of information sought by Parent were pupil records and which were not. Washington Unified also explained that a number of Student's records, such as assessments, IEP documents, grades, and transcripts, had been provided to Parent pursuant to prior records request. Therefore, Washington Unified sought clarification

from Parent regarding if Parent was requesting Washington Unified resend those same records to Parent. Parent did not respond to the December 30, 2021 email.

On January 7, 2022, Salvo emailed Parent with Student's pupil records attached. Parent testified that he could not open some of the email attachments, but failed to identify which documents he could not open. No evidence was offered, and no testimony given, regarding which pupil records Parent sought that Washington Unified failed to provide to Parent.

The evidence established that Washington Unified failed to timely respond to Parent's records request. Washington Unified's students were on winter break from December 20, 2021, through January 4, 2022, with Washington Unified's teachers returning to work on January 4, 2022. Washington Unified remained open for business during the winter break with the exceptions of holidays. Therefore, Washington Unified was required to provide Parent with copies of Student's pupil records no later than December 29, 2021, accounting for the Christmas holiday. Washington Unified did not provide Parent with copies of Student's pupil records until January 7, 2022, in violation of Education Code section 56504's five business day procedural requirement.

However, despite Washington Unified's procedural violation in failing to timely respond to Parent's December 21, 2021 records request, the evidence did not establish that the procedural violation denied Student a FAPE. Parent meaningfully participated in the IEP team meeting held on January 12, 2022. Parent attended the meeting, questioned the school's IEP team members about Student's instruction, homework, behaviors, and interventions, and expressed concerns about Student's poor assessment scores, and questioned the teacher's ability to effectively respond to Student's behaviors. Washington Unified's IEP team members answered Parent's questions and

considered Parent's concerns. A preponderance of evidence showed that Parent meaningfully participated during the IEP team meeting. Student failed to demonstrate that the provision of pupil records on January 7, 2022, rather than December 29, 2021, significantly impeded Parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to Student, or deprived Student of an educational benefit.

Student failed to prove Washington Unified's responses to Parent's records requests in November and December 2021, significantly impeded Parent's ability to meaningfully participate in Student's IEP process, deprive Student of an educational benefit, or impede Student's right to a FAPE. Accordingly, Student failed to meet his burden of proving Washington Unified denied him a FAPE, by failing to provide Parent with Student's educational records within five days of Parent's November 18, December 3, December 8, and December 21, 2021 records requests.

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. This Decision finds that Washington Unified did not deny Student a FAPE, by failing to provide Parent with Student's educational records within five days of Parent's requests on November 18, 2021, December 3, 2021, December 8, 2021, and December 21, 2021. Washington Unified prevailed on the single issue decided.

ORDER

All of Student's 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.

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Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings