

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2022020732

PARENTS ON BEHALF OF STUDENT

v.

LOS GATOS-SARATOGA UNION HIGH SCHOOL DISTRICT.

DECISION

JUNE 09, 2022

On February 23, 2022, Student filed a due process hearing request with the Office of Administrative Hearings, called OAH, naming Los Gatos-Saratoga Union High School District, called Los Gatos-Saratoga. On April 4 and 25, 2022, OAH continued the due process hearing, for good cause.

Administrative Law Judge Clifford H. Woosley heard this matter in a videoconference hearing, on May 10, 2022.

Parent represented Student. Attorney Jan Tomsy represented Los Gatos-Saratoga Union High School District. Heath L. Rocha, Assistant Superintendent, attended on Los Gatos-Saratoga's behalf.

The parties agreed the matter was continued until May 24, 2022, for submission of written closing briefs, at which time the briefs were filed, the record closed, and the matter submitted for decision.

ISSUES

A free appropriate public education is called a FAPE. An individualized education program is called an IEP.

1. Did Los Gatos-Saratoga deny Student a FAPE by failing to implement extended school year in the summer of 2020 as required in Student's October 19, 2017 IEP?
2. Did Los Gatos-Saratoga deny Student a FAPE by failing to implement Student's October 19, 2017 IEP in the summer of 2021 by only providing six hours of speech and language?

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R.

§ 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.)

The main purposes of the Individuals with Disabilities Education Act, referred to as the IDEA, are to ensure:

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

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a free appropriate public education, referred to as FAPE, to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.)

The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Here, Student filed the complaint and has the burden of proving the issues raised by the complaint. The factual statements included in this decision constitute the findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Saratoga Union School District, called Saratoga Union, found Student eligible for special education placement and services under the category of autism in 2009.

Saratoga Union serves elementary and middle school children. Student enrolled in the Los Gatos-Saratoga Union High School District, and attended Los Gatos High School, beginning in August 2019. Student was 17 years old and in the 11th grade at the time of hearing.

ISSUE 1: DID LOS GATOS-SARATOGA DENY STUDENT A FAPE BY FAILING TO IMPLEMENT EXTENDED SCHOOL YEAR IN THE SUMMER OF 2020 AS REQUIRED IN STUDENT'S OCTOBER 19, 2017 IEP?

Student contended that Los Gatos-Saratoga was required to implement Student's October 19, 2017 IEP from Saratoga Union by providing extended school year, and the associated related services, in the summer of 2020. Parents did not claim that Los Gatos-Saratoga had to include extended school year in Student's IEP in order to provide Student with a FAPE. Instead, Parents contended that Parents never agreed to eliminate extended school year after the October 2017 IEP. Therefore, Parents assert that Los Gatos-Saratoga was obligated to provide Student with extended school year in 2020 pursuant to Student's October 2017 IEP.

Los Gatos-Saratoga contended it was not obligated to implement an almost three-year-old IEP, written by another school district. Los Gatos-Saratoga made an offer of FAPE to Student in September 2019, which did not include extended school year for the summer of 2020. Los Gatos-Saratoga asserted that Parents consented to Los Gatos-Saratoga's IEP offer, and that if Parents believed that extended school year was

necessary for Student to receive a FAPE, Parents should have filed a due process request within the two-year statute of limitation following the September 2019 IEP offer. They did not.

A HIGH SCHOOL DISTRICT DEVELOPS A NEW IEP WHEN A STUDENT TRANSITIONS FROM AN ELEMENTARY SCHOOL DISTRICT TO THE NEW DISTRICT DURING THE SUMMER

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, § 56505 subd. (d).) This is referred to as “stay put.” For purposes of stay put, the current educational placement is typically the placement called for in the student’s individualized education program, which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.) However, there was no due process stay put in place for the summer of 2020 because there was no pending due process hearing against Los Gatos-Saratoga. Therefore, Los Gatos-Saratoga was not required to implement the 2017 IEP because of stay put.

Los Gatos-Saratoga did not have to implement the October 2017 IEP because Student transitioned to Los Gatos-Saratoga during the summer. When a special education student transfers to a new school district in the same academic year, the new district must adopt an interim program that approximates the student’s old IEP as closely as possible for 30 days until the old IEP is adopted or a new IEP is developed. (20 U.S.C. § 1414(d)(2)(C)(i)(1); 34 C.F.R. § 300.323(e); Ed. Code, § 56325, subd. (a)(1); see *Ms. S. ex rel. G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1134, 20

U.S.C. § 1414(d)(1)(B).) However, IDEA and state law do not expressly provide that students who transfer school districts between academic years, as here, are entitled to a comparable placement. (See *Ibid.*)

In 2006, the United States Department of Education considered the responsibilities of a transferee school district to a child with special needs, in response to the 2006 revised version of the IDEA's enabling regulations. In doing so, the Department of Education declined to change title 34 Code of Federal Regulations section 300.323(e) by adding specific provisions relating to transfers between school years. In its Comments to the 2006 regulations, the Department of Education noted that, in the case of transfers between school years, the IDEA provided that the new school district was required to have an IEP in place for each eligible child at the beginning of the school year. However, the Comments did not specify that the new district was required to adopt the child's prior IEP or model the new IEP based on the child's IEP from the prior school district. Similarly, Congress did not change the regulations to require transferee districts to afford a child the right to stay put based on the prior district's IEP, when the transfer was between school years. (71 Fed.Reg. 46682 (2006).)

For students transferring from an elementary school district to a high school district, California Code of Regulations, title 5, section 3024, subdivision (b), governs the transfer and requires the elementary school district to invite the high school district to a transition IEP meeting, which shall specify the appropriate high school placement. If the transition meeting does not take place, the high school district must make an interim placement in accordance with Education Code section 56325 or shall immediately convene an IEP team meeting.

LOS GATOS-SARATOGA WAS NOT REQUIRED TO IMPLEMENT THE OCTOBER 2017 IEP

On October 19, 2017, Saratoga Union convened Student's annual IEP team meeting. Student was 13 years old and in seventh grade at Redwood Middle School. Saratoga Union offered extended school year for Student, with specialized academic instruction, speech and language services, and intensive individualized services. Parents consented to the October 2017 IEP. Parents did not sign another IEP, or otherwise agree, to change or remove Student's extended school year while in Saratoga Union.

Saratoga Union convened a transition amendment IEP meeting on May 28, 2019 in preparation for Student's transition to high school. Student was 15 years old and in eighth grade. Saratoga Union invited representatives from Los Gatos-Saratoga to the IEP team meeting to discuss the placement and services which Student's high school would implement in August 2019. (Cal. Code Regs. Tit. 5 § 3024(b).) Assistant superintendent Heath L. Rocha, along with a program specialist and a speech and language pathologist, attended the IEP team meeting on behalf of Los Gatos-Saratoga. Rocha had been Los Gatos-Saratoga's assistant superintendent for six years, overseeing special education and student services district wide. He testified at the hearing. Rocha had a master's degree in counseling, specializing in school psychology, and was credentialed as an educational administrator and a school psychologist.

Rocha and his special education staff attended about 130 transition IEP team meetings each year, which were convened by various elementary and middle schools for eighth-grade students who were transferring to Los Gatos-Saratoga for high school.

These meetings ensured that Los Gatos-Saratoga was prepared to implement a special education student's IEP placement, accommodations, and services when a student started high school.

During the May 2019 transition IEP meeting, Parents, Student's brother, the Saratoga Union IEP team members, and the Los Gatos-Saratoga representatives discussed Student's placement, services, and accommodations to be implemented when Student began at Saratoga High School in August 2019. The IEP team outlined Student's anticipated ninth grade schedule. Los Gatos-Saratoga was made aware of Student's services, goals, and accommodations that Student was receiving, pursuant to the October 2017 IEP, at the May 2019 transition IEP.

The Los Gatos-Saratoga team, consisting of Rocha, the program specialist, and the speech pathologist, were then excused from the IEP team meeting. The Saratoga Union IEP team members and Student's family remained and discussed extended school year for 2019 and some disputes regarding the delivery of prior years' services. Rocha was not concerned about addressing extended school year on behalf of Los Gatos-Saratoga at the May 2019 transition IEP team meeting because Rocha was aware that Los Gatos-Saratoga would convene Student's annual IEP in September 2019. Los Gatos-Saratoga would then make its FAPE offer for the following school year and extended school year for summer 2020, if applicable.

Parents and Saratoga Union continued to have disputes regarding the proper implementation of services over the previous two school years, following the May 2019 transition IEP team meeting. Parents filed a June 19, 2019, due process hearing request with OAH against Saratoga Union, which the parties settled on July 30, 2019. Also on

July 30, 2019, Parents signed and disagreed with the May 2019 IEP regarding speech services and intensive individualized services. Los Gatos-Saratoga was not involved in the due process proceeding.

On August 15, 2019, Student transitioned to and started at Los Gatos High School as a freshman. Los Gatos-Saratoga properly implemented Student's IEP services, as discussed at the May 2019 transition IEP, until Student's annual IEP. Parents did not register any objection to Student's placement and services when he started high school.

Los Gatos-Saratoga convened Student's annual IEP on September 25, 2019. Student would be 16 years old before his next IEP and Los Gatos-Saratoga included Student's postsecondary transition plan in the IEP. Parent and Student attended the IEP team meeting and participated in the discussions and review of the IEP, regarding placement, services, accommodations, goals, the transition plan, and Student's high school schedule.

Los Gatos-Saratoga made its FAPE offer for the 2019-2020 school year and the beginning of the 2020-2021 school year. The September 2019 IEP's extended school year work page found that Student would not regress in critical skills or otherwise not benefit from his educational program without extended school year, and therefore did not require extended school year. Los Gatos-Saratoga's offer did not include extended school year for the summer of 2020. On October 24, 2019, Parent consented to the IEP, except for noting on the IEP that extended school year was not articulated or discussed. This statement did not put Los Gatos-Saratoga on notice that Parents disagreed with the offer of FAPE and Parents did not thereafter assert that extended school year was

necessary for Student to receive a FAPE. Los Gatos-Saratoga implemented Student's September 2019 annual IEP. Parents did not sign and agree to any IEPs after the September 2019 IEP and before this hearing.

Federal and state special education law did not require Los Gatos-Saratoga to adopt or implement Student's prior school district's IEP because Student transferred to a high school district between school years. Instead, as the receiving school district, Los Gatos-Saratoga needed to have IEP placement and services in place before the start of the Student's first year in the new district. (34 C.F.R. § 300.323(a); Cal. Code Regs. tit. 5 § 3024(b).) Los Gatos-Saratoga's attendance and participation at Student's transition May 2019 IEP assured that Los Gatos-Saratoga had an IEP program in place for Student at the beginning of his ninth-grade school year.

Further, as Student's new school district, Los Gatos-Saratoga made an offer of FAPE at the September 2019 annual IEP team meeting. Parents consented to the IEP. Student's September 2019 IEP was therefore the operative IEP and Student's current educational placement as of summer 2020, rendering the 2017 IEP from Saratoga Union irrelevant. The September 2019 IEP did not include extended school year for the summer of 2020. Los Gatos-Saratoga was not required to provide Student with extended school year for the summer of 2020.

Student failed to meet his burden of proof, by a preponderance of the evidence, that Los Gatos-Saratoga denied Student a FAPE by not implementing Student's October 2017 IEP's extended school year in the summer of 2020. Los Gatos-Saratoga prevailed on Issue 1.

ISSUE 2: DID LOS GATOS-SARATOGA DENY STUDENT A FAPE BY FAILING TO IMPLEMENT STUDENT'S OCTOBER 19, 2017 IEP IN THE SUMMER OF 2021 BY ONLY PROVIDING SIX HOURS OF SPEECH AND LANGUAGE?

Student claimed that Los Gatos-Saratoga denied Student a FAPE by failing to implement Student's October 2017 IEP's extended school year in the summer of 2021 by only providing six hours of speech and language services. Los Gatos-Saratoga asserted it was not obligated to implement Student's October 2017 IEP. Further, it did not attempt to provide extended school year in the summer of 2021.

Los Gatos-Saratoga convened a number of IEP's during the 2019-2020 school year to address Parents' concerns. For example, a January 15, 2020 IEP team meeting addressed concerns regarding fading Student's aide during art class and reassignment of a new case manager. Parent claimed she asked Rocha about extended school year at the meeting. However, the IEP document's notes confirmed Rocha's testimony that extended school year was not discussed at the January 2020 IEP.

In November 2021, Los Gatos-Saratoga conducted triennial evaluations of Student and convened Student's triennial IEP meeting. Extended school year was not part of Los Gatos-Saratoga's triennial IEP offer. Student did not demonstrate that extended school year was requested or discussed at the triennial IEP team meeting. Parents did not consent to the triennial IEP but, instead, requested three independent educational evaluations. Rocha granted Parents' request, hoping to build a measure of trust with Parents.

Los Gatos-Saratoga convened IEP team meetings in May 2021 to review the three independent educational evaluations. Part of the discussion included transition services

for Student. Student failed to demonstrate that Parents requested extended school year in the May 2021 IEP team meetings, although Los Gatos-Saratoga and Parents discussed other changes to Student's IEP program. Parent also claimed at the hearing that she discussed extended school year at a June 16, 2021 meeting with Rocha. Parent contended Rocha attempted to implement extended school year by offering six hours of speech services. But this view was not supported by corroborating documentary or testimonial evidence while Rocha's testimony, that extended school year was not discussed, was supported by his contemporaneous email to staff. Student failed to demonstrate that Los Gatos-Saratoga ever offered, or attempted to implement, extended school year during the 2019-2020 or 2020-2021 school years.

As discussed in Issue 1, the September 2019 IEP was Student's operative IEP. Since Parents had not agreed to another IEP, the September 2019 IEP remained Student's operative IEP for the summer of 2021. The September 2019 IEP did not include extended school year. Los Gatos-Saratoga was therefore not obliged to provide Student with extended school year for Summer 2021.

Student failed to meet his burden of proof, by a preponderance of the evidence, that Los Gatos-Saratoga denied Student a FAPE by failing to implement Student's October 19, 2017 IEP in the summer of 2021 by only providing six hours of speech and language. Los Gatos-Saratoga prevailed on Issue 2.

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:

Los Gatos-Saratoga did not deny Student a FAPE by not implementing Student's October 2017 IEP's extended school year in the summer of 2020.

Los Gatos-Saratoga prevailed on Issue 1.

ISSUE 2:

Los Gatos-Saratoga did not deny Student a FAPE by failing to implement Student's October 19, 2017 IEP in the summer of 2021 by only providing six hours of speech and language.

Los Gatos-Saratoga prevailed on Issue 2.

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.

/s/

Clifford H. Woosley

Administrative Law Judge

Office of Administrative Hearings