

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

v.

SAN JUAN UNIFIED SCHOOL DISTRICT.

CASE NO. 2023030665

DECISION

June 22, 2023

On March 21, 2023, Parent on behalf of Student filed a due process hearing request with the Office of Administrative Hearings, called OAH, naming San Juan Unified School District. Administrative Law Judge Marlo Nisperos heard this matter by videoconference on May 9, 10, and 11, 2023.

Attorneys Robert Burgermeister, Leroy Sumter, and Lynda Williams represented Student on various days of hearing. Parent attended all hearing days on Student's behalf. Attorneys Dee Anna Hassanpour and Lucy Nadzharyan represented San Juan Unified School District, called San Juan. Robert Morgan, Assistant Director of Special Education attended all hearing days on San Juan's behalf.

At the parties' request, OAH continued the matter to May 30, 2023, for written closing briefs. OAH closed the record and the matter was submitted on May 30, 2023.

ISSUES

The timeframe for each issue begins May 3, 2022, consistent with Student's complaint, rather than March 21, 2021, as misstated in OAH's Prehearing Conference Order. At the commencement of the hearing, OAH granted San Juan's request to correct this misstatement. The ALJ has authority to reframe a party's issues, so long as no substantive changes are made from the complaint. (*J.W. ex rel J.E.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

1. Did San Juan deny Student a free appropriate public education, called FAPE, from May 3, 2022, through the end of the 2021-2022 school year, pursuant to a May 3, 2022 individualized education program, called IEP, by:
 - a. Failing to offer goals in all areas of need, specifically college and career awareness;
 - b. Failing to offer appropriate goals to meet Student's need in the area of reading comprehension;
 - c. Failing to offer services in the areas of college and career awareness, transition services, and one-to-one aide services;
 - d. Failing to address Student's regression in reading, writing, and math, by failing to offer extended school year for summer 2022;
 - e. Failing to have a list of the participants that attended the May 3, 2022 IEP team meeting;

- f. Predetermining Student's May 3, 2022 IEP offer by not addressing Parent's concerns;
- g. Failing to hold an IEP team meeting to discuss the June 2, 2022 IEP offer; and
- h. Failing to inform Parent at the May 3, 2022 IEP team meeting that Student's services could continue from age 19 to 22?

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 et seq. (2006); 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 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 ex. rel. 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 had the burden of proof for 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 18 years old at the time of hearing. Student was 17 years old during the 2021-2022 school year, the time period at issue. Student resided with Parent within San Juan's attendance boundaries at all relevant times. Student graduated with a regular high school diploma on June 7, 2022. Before graduating, Student was eligible for special education under the category specific learning disability.

ISSUE 1f: PREDETERMINING STUDENT'S MAY 3, 2022 IEP

Student contended the IEP offer of May 3, 2022, was predetermined because it failed to address Parent's concerns. San Juan contended that it did not predetermine Student's May 3, 2022 IEP. San Juan argued Student failed to prove that it was unequivocally firm in the goals and services it included in the IEP or that they reflected a "take it or leave it" approach in their determination. San Juan claimed it provided Student a FAPE at all times.

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 individualized education program, referred to as an IEP, for an eligible student based upon State law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); 34 C.F.R. §§ 300.320, 300.321 (2007), and 300.501 (2006); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a), and 56363, subd. (a).)

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 Educ. of Hendrick Hudson Central School Dist., Westchester County v. Rowley* (1982) 458 U.S. 176, 201-204 [102 S.Ct. 3034; 73 L.Ed.2d 690]; *Endrew F. ex. rel. Joseph F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. 386 [137 S.Ct. 988, 1000, 197 L.Ed.2d 335].) An IEP team must review a student's IEP at least once a year to review the student's progress, including whether the annual goals are being achieved, the appropriateness of the placement, and to make any necessary revisions. (Ed. Code, § 56043, subds. (d) & (j).)

Any State or local educational agency that receives assistance under the IDEA, must establish procedures to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a FAPE by such agencies. (20 U.S.C. § 1415(a); Ed. Code, § 56342.5.) Educational agencies are required to provide an opportunity for the parents of a child with a disability to participate in meetings with respect to the identification, evaluation, educational placement, and the provision of a FAPE to the child. (20 U.S.C. § 1415(b).) Accordingly, IEP team meetings must include the parents of a child with a disability. (20 U.S.C. § 1414(d)(1)(B)(i); 34 C.F.R. § 300.321(a)(1) (2007); Ed. Code, § 56341, subd. (b)(1).)

An education agency's predetermination of an IEP seriously infringes on parental participation in the IEP process, which constitutes a procedural denial of FAPE. (*Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004) 392 F.3d 840, 858.) Predetermination occurs when an educational agency has made its determination prior to the IEP team meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives. (*H.B. ex. rel P.B. v. Las Virgenes Unified School Dist.* (9th Cir. 2007) 239 Fed.Appx. 342, 344; see also, *Ms. S. ex rel. G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131 [A school district violates IDEA procedures if it independently develops an IEP, without meaningful parental participation, then simply presents the IEP to the parent for ratification.]) The IEP team must consider the concerns of the parent throughout the IEP process. (20 U.S.C. §§ 1414(c)(1)(B), (d)(3)(A)(ii), and (d)(4)(A)(ii)(III); 34 C.F.R. §§ 300.303(a)(2) & (b)(1)-(2) (2006), 300.305(a)(1)(i), (a)(2), (d)(1)(ii), and (d)(2) (2007), 300.306(c)(1)(i) (2016); Ed. Code, § 56341.1, subd. (a)(2).)

For a child whose eligibility terminates due to graduation from secondary school with a regular diploma, a public agency must provide the child with a summary of the child's academic achievement and functional performance, including recommendations on how to assist the child in meeting the child's postsecondary goals. (20 U.S.C. § 1414(c)(5)(B); 34 C.F.R. § 300.305(e)(3) (2007); Ed. Code, § 56381, subd. (i)(2).) The IDEA does not otherwise specify the information that must be included in the summary. Rather, State and local officials have flexibility to determine the appropriate content to be included in a child's summary of performance, based on the child's individual needs and postsecondary goals. (*Questions and Answers on Secondary Transition*, 57 IDELR 231 (OSERS 2011); *Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities*, 71 Fed. Reg. 46,645 (Aug. 14, 2006).)

The purpose of the summary of performance is to provide the child a summary of the child's academic achievement and functional performance in order to assist the child to transition beyond high school. (*Questions and Answers on Secondary Transition, supra*, 57 IDELR 231.) Failure to provide a summary of performance constitutes a procedural violation of the IDEA.

When a student with a disability is expected to graduate with a regular high school diploma, the school district should hold an IEP team meeting at an appropriate time before graduation, to ensure the student has met graduation requirements and IEP goals and objectives have been achieved. (*Letter to Richards*, 17 IDELR 288 (OSERS 1990).) While the IEP team is charged with reviewing a student's progress on goals and objectives at the IEP team meeting, the IDEA does not require the student to achieve all goals as a prerequisite to graduation. (*Ibid.*)

A procedural violation results in a denial of a FAPE only if the violation

- impeded the child's right to a FAPE;
- significantly impeded the parent's opportunity to participate in the decision-making process; or
- caused a deprivation of educational benefits. (20 U.S.C. § 1415 (f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2) (2006); Ed. Code, § 56505, subds. (f)(2) & (j); *W.G. v. Board of Trustees of Target Range School Dist. No. 23, Missoula, Mont.* (9th Cir 1992) 960 F.2d 1479, 1484, superseded in part on other grounds by 20 U.S.C. § 1414(d)(1)(B); *L.M. v. Capistrano Unified School Dist.* (9th Cir. 2009) 556 F.3d 900, 910.)

Student's complaint alleged denials of FAPE based on the IEP team meeting held during his final year of high school on May 3, 2022. The May 3, 2022 IEP governed Student's education program for 23 school days. San Juan held Student's last annual IEP team meeting the previous school year on November 6, 2020.

San Juan took some steps to hold an IEP team meeting on-time during Student's senior year. Student's case manager and resource teacher, Aaron Brown, began contacting Parent in November 2021, through March 2022 to schedule a meeting. On November 3, 2021, Brown sent Parent an email asking to schedule an IEP team meeting. Parent responded the same day and provided dates and times that Parent was available to attend a meeting. Despite Parent providing dates in which he was available to convene an IEP team meeting, Brown never scheduled one. On March 2, 2022, San Juan sent Parent an email asking for his availability to schedule a meeting in the month of March. Parent responded on March 16, 2022, with the dates and times he was available.

On March 29, 2022, Brown sent an email to Parent informing him that Brown was unable to find coverage for his classes on the dates Parent had suggested. Brown proposed holding an IEP team meeting on April 8, 2022. Parent did not respond to Brown's email and instead asked Student to tell Brown that Parent needed at least a month's notice to schedule a meeting based on Parent's work schedule and other responsibilities. Without notifying Parent, Brown held an IEP team meeting on May 3, 2022.

On May 3, 2022, Brown and Caleb Champion, Student's English teacher, convened an impromptu meeting to develop Student's IEP. Brown did not invite Parent, Student, or the other required IEP team members to the meeting. After the

two teachers met, Brown wrote Student's May 3, 2022 IEP. If the May 3, 2022 meeting were a true IEP team meeting, it would have been the last meeting before Student graduated from high school with a regular diploma.

After the unplanned meeting on May 3, 2022, Brown called Parent to inform him of the IEP the two teachers had created. During the telephone conversation, Brown offered Parent two options: to discuss with Brown the contents of the IEP or for Parent to review the IEP document independently. After Brown told Parent that Student was graduating in a few weeks with a diploma, Parent decided to review the document on his own.

On May 3, 2022, San Juan held a defective IEP team meeting, 23 school days before Student's graduation on June 7, 2022. The May 3, 2022 meeting was late, held more than one year after the last IEP team meeting on November 6, 2020.

The May 3, 2022 IEP offer was predetermined. Brown held the meeting with no intention of offering new annual goals or services because it would have only been implemented for a few weeks.

The May 3, 2022 IEP did not address Parent's concerns because Parent was not at the meeting. San Juan wrote the May 3, 2022 IEP so Student's school record reflected an IEP team meeting was held during his senior year. After the two-person meeting concluded, Brown presented the May 3, 2022 IEP to Parent for approval.

The IEP document stated that Parent's concerns were discussed during the IEP team meeting but it did not specify what concerns Parent had. However, because Parent did not attend the meeting or participate in the development of the IEP, it was not possible for the IEP team to adequately consider Parent's concerns. Parent was

concerned about Student's reading abilities because he observed Student reading at a fourth or fifth grade level. Parent was also concerned about Student's behavior at home and he thought Student was not ready to graduate. Parent was worried that Student did not know how to budget or pay his own cellular telephone bill. Parent persuasively established that his various concerns regarding Student's education program were not addressed by the May 3, 2022 IEP team.

Because this was Student's final IEP team meeting, San Juan was required to review Student's IEP goals, and to provide a summary of performance to help Student with his postsecondary educational and vocational goals.

The written IEP document was subsequently provided to Parent with a take it or leave it attitude by San Juan 23 days before Student graduated. San Juan knew that Parent would be unable to schedule an IEP team meeting to discuss the May 3, 2022 IEP because Parent needed one month's notice to schedule time off work to attend a meeting. San Juan held Student's last IEP team meeting one month before Student graduated. Student proved by a preponderance of the evidence that San Juan committed a procedural violation by predetermining the May 3, 2022 IEP, by not addressing Parent's concerns.

San Juan's predetermination of the May 3, 2022 IEP significantly impeded Parent's opportunity to participate in the decision-making process because Parent was not invited to and did not attend the meeting. Parent was denied the opportunity to ask questions or voice his concerns about Student's readiness to graduate. Parent was deprived the opportunity to speak with the IEP team about Student's academic progress. Accordingly,

Student met his burden of proving San Juan denied Student a FAPE from May 3, 2022, through the end of the 2021-2022 school year by predetermining Student's May 3, 2022 IEP offer, by not addressing Parent's concerns.

ISSUE 1a THROUGH 1d: THE MAY 3, 2022 IEP GOALS, SERVICES, AND EXTENDED SCHOOL YEAR

Student contended San Juan denied him a FAPE, from May 3, 2022, through the end of the 2021-2022 school year, pursuant to the May 3, 2022 IEP based on several grounds. Specifically, by

- failing to offer goals for college and career awareness, and appropriate reading comprehension goals,
- failing to offer services for college and career awareness, transition, and a one-to-one aide, and by
- failing to offer extended school year for summer 2022.

San Juan contended it offered Student appropriate goals and services and Student did not require extended school year services.

As found in issue 1f, San Juan's predetermination of the May 3, 2022 IEP denied Student a FAPE, and rendered the IEP procedurally defective. The May 3, 2022 meeting was held on the cusp of Student's graduation from high school and was Parent and Student's last opportunity to meet with the IEP team before Student's eligibility for special education services ended. San Juan's predetermination of the May 3, 2022 IEP was egregious and prevents an equitable review of the IEP offer, as it was formulated without Parent's input. It is therefore unnecessary to determine if the IEP offer of goals,

services, and extended school year, was appropriate, as the IEP was defective. However, as Student's areas of need at the time may relate to the remedy in this matter, there are findings below on issues 1a through 1d.

COLLEGE AND CAREER AWARENESS GOALS

San Juan committed a procedural violation by predetermining Student's May 3, 2022 IEP. Student credibly testified that during the time period at issue, he was interested in playing football at a community college or four-year college. Student established that he needed help on how to apply for college because he did not know how. Student showed that San Juan's failure to offer goals in the area of college and career awareness in the May 3, 2022 IEP deprived Student educational benefits. Student proved by a preponderance of the evidence that San Juan denied him a FAPE from May 3, 2022, through the end of the 2021-2022 school year by failing to offer goals in the area of college and career awareness in the May 3, 2022 IEP.

COLLEGE AND CAREER AWARENESS SERVICES

Student's May 3, 2022 IEP was procedurally defective and San Juan's failure to offer services in the IEP in the area of college and career awareness resulted in a denial of FAPE. Student established he needed college and career awareness services to support his goals as described above. The evidence showed that San Juan provided college and career awareness services in an elective class that Student participated in during the first three years of high school. But Student did not take the elective class

that provided these services during his senior year. The persuasive evidence at hearing established that college and career awareness services were only offered to Student via this elective class. As a result, Student showed that he was not offered college and career awareness services during the timeframe at issue for hearing. San Juan's failure to offer college and career awareness services deprived Student of educational benefits. Student proved that San Juan denied him a FAPE from May 3, 2022, through the end of the 2021-2022 school year by failing to offer college and career awareness services in the May 3, 2022 IEP.

READING COMPREHENSION GOALS

Because San Juan predetermined Student's May 3, 2022 IEP, the evidence established a procedural violation. San Juan denied Student a FAPE by failing to offer appropriate reading comprehension goals in the May 3, 2022 IEP.

The evidence showed that Student struggled with reading comprehension throughout high school. Student's IEP's of October 19, 2019, November 6, 2020, and May 3, 2022, stated that he had a need in the area of reading comprehension. But Student's May 3, 2022 IEP did not offer a goal in this area. Student struggled with writing an essay based on a novel he read in his English class. Student sought help from his teachers to complete the essay because it was a graduation requirement. During his senior year, Student also had difficulty reading the food orders at his part-time job at a fast-food restaurant.

San Juan's failure to offer appropriate reading comprehension goals denied Student an educational benefit because he had an ongoing need in this area. As a result, Student proved that San Juan denied him a FAPE from May 3, 2022, through the end of the 2021-2022 school year by failing to offer appropriate goals in the area of reading comprehension in the May 3, 2022 IEP.

TRANSITION SERVICES

Although San Juan predetermined Student's May 3, 2022 IEP, San Juan did not deny Student a FAPE based on failing to offer transition services, other than the college and career awareness services analyzed earlier in this Decision. San Juan offered Student transition services as part of the 935 minutes of weekly specialized academic instruction.

Student's expert, Judith Imperatore, was a transition specialist with specialized knowledge and skill in the area of secondary transition services for individuals with disabilities. The evidence showed that Imperatore was not familiar with Student's educational program or the services offered in the May 3, 2022 IEP. Imperatore did not review Student's IEP of November 6, 2020, that was operative during the time period at issue. Imperatore credibly testified that she could not recommend a program to support Student's individual postsecondary transition needs because she did not understand Student's academic functioning. Imperatore opined that Student's transition services were weak and not robust, but she did not explain on what information she was basing her opinion.

Imperatore's opinion was given little weight because the evidence showed she lacked knowledge and understanding of Student's program and services offered in the May 3, 2022 IEP.

Student failed to meet his burden of proof by a preponderance of the evidence to show that the transition services offered in the May 3, 2022 IEP, other than the failure to offer college and career awareness services,

- impeded his right to a FAPE,
- significantly impeded Parent's opportunity to participate in the decision-making process, or
- caused Student a deprivation of educational benefits.

Accordingly, Student failed to prove San Juan denied him a FAPE from May 3, 2022, through the end of the 2021-2022 school year based on failing to offer transition services in the May 3, 2022 IEP.

ONE-TO-ONE AIDE SERVICES

Although the evidence showed the May 3, 2022 IEP was predetermined, Student did not show that he was denied a FAPE based on San Juan's failure to offer one-to-one aide services.

Parent testified credibly that he thought a one-to-one aide would have been helpful to Student. However, Parent did not have background, training or experience in education, so his lay opinion did not establish that Student had a need for one-to-one aide services to access his education.

Student's teachers were experts in education and they credibly opined that Student did not require a one-to-one aide to access his education. Their opinions were supported by their training and experience, their knowledge of Student's academic abilities, and based on Student's grades, which were three A's, two C's, and one D, during this timeframe, and his overall grade point average of 3.04.

Student presented no credible or persuasive evidence to support the argument that his grades were inflated and did not accurately reflect his ability. Student's teachers established that he worked hard and earned the grades for academics and citizenship.

Student's teachers established that one-to-one aide services were necessary if a student had significant behavior issues, or a physical or cognitive disability. Student did not exhibit any of these types of difficulties. Student failed to show that San Juan

- impeded his right to a FAPE,
- impeded Parent's opportunity to participate in the decision-making process, or
- caused a deprivation of educational benefits based on failing to offer one-to-one aide services.

As a result, Student failed to prove by a preponderance of the evidence that San Juan denied him a FAPE from May 3, 2022, through the end of the 2021-2022 school year by failing to offer one-to-one aide services in the May 3, 2022 IEP.

EXTENDED SCHOOL YEAR SERVICES

San Juan's procedurally defective May 3, 2022 IEP offer did not result in a denial of FAPE based on its failure to offer extended school year services during summer 2022.

Student was not eligible to receive special education services after he graduated with a regular high school diploma on June 7, 2022. (34 C.F.R. § 300.102(a)(3)(i) (2017); Ed. Code, § 56026.1.) Student did not provide authority that showed San Juan had a duty to provide special education services after his eligibility for special education ended due to graduation with a regular high school diploma. As a result, Student failed to prove that San Juan denied him a FAPE from May 3, 2022, through the end of the 2021-2022 school year by failing to offer extended school year in June 2022 pursuant to the May 3, 2022 IEP.

ISSUE 1e: LIST OF PARTICIPANTS THAT ATTENDED THE MAY 3, 2022 IEP

Student contended San Juan denied him a FAPE by failing to have a list of participants that attended the May 3, 2022 IEP team meeting. San Juan contended there is no known legal requirement that a district provide a list of participants who attend an IEP team meeting.

Education code section 56341 lists the required members of an IEP team. (Ed. Code, § 56341, subd. (b)(1)-(7).) A required team member may be excused from attending an IEP meeting if parents give their written consent to the excusal before the meeting. (34 C.F.R. § 300.321(e)(1)-(2) (2007); see Ed. Code, § 56341, subds. (f)-(h).)

There is no law that requires a district to list the participants of an IEP team meeting. In his closing brief, Student argued that as a result of San Juan's failure to list the names of the meeting participants, it is unknown whether the mandatory IEP team members attended the entire meeting or just part of it. But Student failed to plead in

the complaint the issue that he argued in his brief. The claim pled in the complaint failed to place San Juan on notice that Student was challenging whether San Juan invited required IEP team members to the May 3, 2022 IEP team meeting.

As a result, Student failed to prove San Juan denied Student a FAPE by failing to list the attendees of the May 3, 2022 IEP team meeting.

ISSUE 1h: SPECIAL EDUCATION SERVICES FROM AGE 19 TO 22

Student contended San Juan denied him a FAPE based on the May 3, 2022 IEP because San Juan did not inform Parent about the possibility to continue special education services for Student from age 19 to 22.

San Juan contended that it did not deny Student a FAPE by failing to inform Parent that Student's services could continue from age 19 to 22 because Student met all the requirements to graduate with a regular high school diploma.

A student who requires special education and related services to receive a FAPE remains eligible for those services up to the age of 22, under certain circumstances, unless the student has completed the prescribed course of study, met proficiency standards, or graduated with a regular high school diploma. (Ed. Code, § 56026, subd. (c)(4).) A regular high school diploma means a diploma conferred on a student who has met all local and state high school graduation requirements. (Ed. Code, § 56026.1, subd. (b).) A regular high school diploma does not include an alternative degree that is not fully aligned with the state academic standards, such as a certificate or a general educational development credential, called GED. (Ed. Code, § 56026.1, subd. (c).)

The IDEA does not speak to high school graduation requirements, or the circumstances under which a student will receive a regular high school diploma or an alternative degree, like a certificate of completion. Each State determines the standards for awarding high school diplomas.

In California, Education Code section 51225.3 prescribes the courses required for a student to obtain a high school diploma. In accordance with State guidelines, local school districts in California develop high school graduation requirements that include courses of study designed to provide the skills and knowledge required for adult life, and to prepare students for admission to state colleges and universities and career technical training. (Ed. Code, § 51224.) If a student meets the graduation requirements of their school district, they are eligible to receive a regular high school diploma.

A school district cannot deny a regular high school diploma to a student who meets the district's graduation requirements simply because that student has a disability. (*Letter to Anonymous*, 22 IDELR 456 (OSEP 1994).) Further, the IDEA does not require a student to achieve all IEP goals before being eligible to graduate with a regular high school diploma. (*Letter to Richards*, 17 IDELR 288 (OSERS 1990).) Instead, California law requires school districts to award a diploma to students receiving special education if that student completes the prescribed course of study designated in the student's IEP. (Cal. Code Regs., tit. 5, § 3070.)

The Every Student Succeeds Act allows states to adopt alternate academic achievement standards for students with the most significant cognitive disabilities, provided those standards are aligned with state academic content standards and promote access to the general education curriculum consistent with the IDEA. (Pub.L. No. 114-95 (Dec. 10, 2015) 129 Stat. 1824.) California has adopted alternate

academic achievement standards for students with disabilities who cannot achieve state academic content standards or meet the requirements necessary to receive a regular high school diploma. California school districts typically offer a certificate of completion to students who have completed the high school course of study or reached the age of 22, but who have not successfully completed all graduation requirements.

San Juan was not required to inform Parent that Student's services could continue from age 19 to 22. At the May 3, 2022 meeting, Student was on track to complete all courses required to graduate on June 7, 2022, with a regular high school diploma. In fact, Student completed a total of 225 units, five units more than he needed to graduate, and he received a cumulative grade point average of 3.04. As discussed above in issues 1a through 1d, the evidence established that Student earned the grades he received, and Student's grades were not inflated.

Christina Williams was Student's teacher for all four years of high school and she taught him in elective and core classes. For three years, Williams taught Student's study hall elective class. At the November 6, 2020 IEP team meeting, Williams spoke with Student and Parent about whether Student would take the study hall class in his last year of high school. Parent and Student decided Student did not need the study hall class because he was doing well and passing classes with A's and B's. Williams credibly opined that Student should not have received a certificate of completion because he was able to complete general education and special education classes with the accommodations listed in his IEP.

The evidence showed that throughout high school, Student's IEP team helped him work towards his goal of graduating with a diploma. Services are offered to students from age 19 to 22 in the case a student is unable to meet graduation requirements in four years.

The evidence showed Student earned the requisite credits, and otherwise met all graduation requirements to receive a diploma. Accordingly, Student failed to meet his burden of proving that San Juan denied him a FAPE by failing to inform Parent at the May 3, 2022 IEP team meeting that Student's services could continue from age 19 to 22.

ISSUE 1g: THE JUNE 2, 2022 PRIOR WRITTEN NOTICE

Student contended that San Juan denied him a FAPE by changing Student's placement by sending a template letter dated June 2, 2022, and without holding an IEP team meeting.

San Juan contended it met all procedural requirements related to the June 2, 2022 prior written notice. San Juan argued that Student failed to prove that an IEP team meeting needed to be held to discuss the June 2, 2022 prior written notice.

A school district must provide a parent with prior written notice in a reasonable time before the school district proposes, or refuses, to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(3); 34 C.F.R. § 300.503(a) (2006); Ed. Code, § 56500.4.) Failure to do so is a procedural FAPE violation. The notice must be provided so that parents have enough

time to fully consider the change and respond to the action before it is implemented. (*Letter to Chandler*, 59 IDELR 110 (OSEP 2012).) Prior written notice must include:

- a description of the action proposed or refused by the school district;
- an explanation of why the school district proposes or refuses to take the action;
- a description of each assessment procedure, test, record, or report used as a basis for the proposed or refused action;
- a description of any other factors relevant to the school district's proposal or refusal;
- a statement that the parents have protection under the procedural safeguards of IDEA; and
- sources for the parents to contact to obtain assistance. (20 U.S.C. § 1415(c); 34 C.F.R. § 300.503(b) (2006); Ed. Code, § 56500.4.)

The IEP may serve as the school district's prior written notice if it meets all the legal prior written notice requirements. (*OSERS, Analysis of Comments and Changes to 2006 IDEA part B Regulations*, 71 Fed. Reg. 46591, 46691 (Aug. 14, 2006).) Graduation with a regular high school diploma constitutes a change in placement requiring prior written notice. (34 C.F.R. § 300.102(a)(3)(iii) (2017); Ed. Code, § 56500.5.)

San Juan's June 2, 2022 prior written notice was not sent within a reasonable time before the change of placement was implemented on June 7, 2022. Student's graduation from high school with a diploma was a change of placement that terminated his eligibility for special education services. San Juan was required to give Parent prior written notice a reasonable time before a proposed change to Student's educational placement was implemented.

On Thursday, June 2, 2022, San Juan sent Parent correspondence informing Parent that Student's placement would change on June 7, 2022, the following Tuesday. San Juan's five days' notice was not a reasonable time to inform Parent that Student's special education services would end upon graduation. San Juan knew since March 2022 that Parent needed one month's notice to schedule an IEP team meeting based on Parent's work schedule. When San Juan sent the notice on June 2, 2022, it knew that Parent did not have adequate time to request an IEP team meeting to discuss the change of placement before Student's eligibility for special education terminated. San Juan's short notice did not give Parent reasonable time to fully consider the change and respond to the action before it was implemented and was a procedural violation.

San Juan's procedural violation significantly impaired Parent's opportunity to participate in the decision-making process. As discussed in issue 1f, Parent was concerned about Student's readiness to graduate from high school and he wanted to speak with the IEP team about his concerns. San Juan deprived Parent of the opportunity to schedule an IEP team meeting to discuss the prior written notice because San Juan informed him of the change of placement only five days before it was implemented. Accordingly, Student proved by a preponderance of the evidence that San Juan denied him a FAPE by failing to hold an IEP team meeting to discuss the June 2, 2022 prior written notice.

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 1a:

San Juan denied Student a FAPE from May 3, 2022, through the end of the 2021-2022 school year, pursuant to the May 3, 2022 IEP, by failing to offer goals in the area of college and career awareness.

Student prevailed on issue 1a.

ISSUE 1b:

San Juan denied Student a FAPE from May 3, 2022, through the end of the 2021-2022 school year, pursuant to the May 3, 2022 IEP, by failing to offer appropriate goals in the area of reading comprehension.

Student prevailed on issue 1b.

ISSUE 1c:

San Juan denied Student a FAPE from May 3, 2022, through the end of the 2021-2022 school year, pursuant to the May 3, 2022 IEP, by failing to offer services in the area of college and career awareness. San Juan did not deny Student a FAPE from May 3, 2022, pursuant to the May 3, 2022 IEP, through the end of the 2021-2022 school year by failing to offer other transition services and one-to-one aide services.

Student partially prevailed on issue 1c.

ISSUE 1d:

San Juan did not deny Student a FAPE from May 3, 2022, through the end of the 2021-2022 school year, pursuant to the May 3, 2022 IEP, by failing to address Student's regression in reading, writing, and math by failing to offer extended school year in 2022.

San Juan prevailed on issue 1d.

ISSUE 1e:

Juan did not deny Student a FAPE from May 3, 2022, through the end of the 2021-2022 school year by failing to have a list of the participants that attended the May 3, 2022 IEP team meeting.

San Juan prevailed on issue 1e.

ISSUE 1f:

San Juan denied Student a FAPE from May 3, 2022, through the end of the 2021-2022 school year by predetermining Student's May 3, 2022 IEP offer, by not addressing Parent's concerns.

Student prevailed on issue 1f.

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ISSUE 1g:

San Juan denied Student a FAPE from May 3, 2022, through the end of the 2021-2022 school year by failing to hold an IEP team meeting to discuss the June 2, 2022 prior written notice.

Student prevailed on issue 1g.

ISSUE 1h:

San Juan did not deny Student a FAPE from May 3, 2022, through the end of the 2021-2022 school year by failing to inform Parent at the May 3, 2022 IEP team meeting that Student's services could be continued from age 19 to 22.

San Juan prevailed on issue 1h.

REMEDIES

Student prevailed on issues 1a, 1b, 1c, 1f, and 1g. As remedies, Student requested a

- comprehensive transition assessment,
- neuropsychological evaluation,
- one to three years of adult transition services for at least 15 hours per week,
- assistive technology and reading comprehension assessments,
- one-to-one aide services, extended school year services, and
- training for the district.

ALJ's have broad latitude to fashion appropriate equitable remedies for the denial of a FAPE. (*School Committee of Town of Burlington, Mass. v. Department of Educ. of Mass.* (1985) 471 U.S. 359, 370 [105 S.Ct. 1996, 85 L.Ed.2d 385]; *Parents of Student W. v. Puyallup School Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496.) 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 authority a district court has to order relief extends to hearing officers. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 243-244, fn. 11 [129 S.Ct. 2484; 174 L.Ed.2d 168].) An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student's needs. (*Reid ex. rel. Reid v. District of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 524.) The award must be fact specific. (*Ibid.*)

School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Parents of Student W., supra*, 31 F.3d at p. 1496.) These are equitable remedies that courts may employ to craft "appropriate relief" for a party.

An award of compensatory education need not provide a "day-for-day compensation." (*Id.* at p. 1496-1497.) The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Id.* at p. 1496.) Compensatory education is a prospective award of educational services designed to catch the student up to where he should have been absent the denial of FAPE. (*Brennan v. Regional School Dist. No. Bd. of Educ.* (D. Conn. 2008) 531 F.Supp.2d 245, 265.)

SAN JUAN MUST PROVIDE A SUMMARY OF PERFORMANCE

As a remedy for denying Student a FAPE in issues 1f and 1g, San Juan must provide Student a summary of academic achievement and functional performance, including recommendations to assist Student in meeting postsecondary goals. (20 U.S.C. § 1414(c); 34 C.F.R. § 300.305(e)(3) (2007); Ed. Code, § 56381, subd. (i)(2).) The evidence at hearing showed that Student was unable to articulate that he had a disability involving challenges with reading. Student was unaware of accommodations that he needed or was entitled to in educational or work settings. A summary of performance would have addressed this lack of knowledge and helped prepare Student for education or work after high school.

In addition to qualified San Juan staff, Student, Parent and up to two other qualified individuals selected by Student, shall be part of the group that creates the summary of performance. The additional two members may be San Juan administrators or staff. Within 45 days of this Decision, the group shall meet to discuss Student's past and current academic achievement and functional performance, including recommendations on how to assist Student in meeting his postsecondary goals. San Juan will then provide Student a written document that memorializes the discussion and recommendations of the group. The document shall include a list of accommodations that would benefit Student in postsecondary education or work environments. The document shall be provided to Student within 15 days of the final meeting.

COMPENSATORY EDUCATION IS NOT AN APPROPRIATE REMEDY

The time period at issue for hearing, May 3, 2022, through June 7, 2022, was a total of 23 school days. Although Student was denied a FAPE in issues 1a, 1b, and 1c, compensatory education was considered and determined to not be an appropriate remedy for the reasons described below.

Student failed to present persuasive evidence regarding the amount or type of compensatory education warranted for Student. Student called one expert during the hearing, Imperatore. Imperatore's testimony in this area was not given much weight because she had an incorrect understanding of Student's educational program, needs, strengths, and because she contradicted herself during testimony. Imperatore's opinions were based on speculation and unreliable information. Imperatore did not consider Student's operative IEP, in place for more than a year, including the time period at issue. As a result, Imperatore's opinions and recommendations were disregarded. Student's expert's testimony was unreliable, so no services are being recommended with Imperatore as the service provider.

Student received his diploma more than one year ago and was living with family members to take time to reflect on what he would like to do next in his life. At the time of hearing, Student had been living in another state for eight months and had secured a part-time job working at a fast-food restaurant for one month. Parent believed that Student would return home in the next several months to discuss Student's future plans. Student did not express a current desire to pursue postsecondary education or vocational training.

Based on the foregoing, it would not be appropriate to order compensatory education for the 23 days of school for which Student was denied a FAPE in this matter. The undersigned considered a variety of remedies that would place Student in the same position as if he received FAPE for the time it was denied. Based on the evidence at hearing, compensatory education is not an appropriate remedy for Student given his current circumstances.

Student argued that he was entitled to a transition assessment and services as compensatory education for a period of not less than one year, but up to three years, specifically in the area of college and career awareness and independent living. However, Student did not allege a failure to conduct a transition assessment or challenge the transition plan offered in the May 3, 2022 IEP. Additionally, Student's complaint established a denial of FAPE for only 23 school days by failing to offer college and career awareness services, not based on a failure to offer other transition services. It was not reasonable to provide Student the amount of services he requested based on a denial of FAPE for that short period of time. Student failed to show one to three years of compensatory services was necessary to compensate for a denial of FAPE for 23 days based on failing to offer college and career awareness services.

Student's requests for independent educational evaluations in the areas of reading comprehension, neuropsychological, and assistive technology, and one-to-one aide services are not appropriate remedies based on the evidence at hearing. The evidence showed that Student did not want to return to school once he had received his diploma. Student did not have plans to attend school and he had not engaged in postsecondary education after he graduated. There was no evidence that an award of this equitable remedy would be appropriate relief for Student based on his current educational and vocational goals.

Student failed to provide authority to show he was entitled to extended school year services after he graduated. The evidence showed that Student graduated with a regular high school diploma on June 7, 2022, thereby terminating his eligibility to receive special education and related services. (Ed. Code, § 56026.1; 34 C.F.R. § 300.102(a)(3)(i) (2017).) Student's IEP team determined he did not need extended school year services in his October 31, 2019, or November 6, 2020 IEP's because he maintained learned skills without it. The appropriate remedy to compensate Student for the denial of FAPE, based on the evidence presented at hearing, is for San Juan to develop the summary of performance. The evidence established that San Juan was in the best position to provide Student with this valuable information that would be appropriate compensatory services based on San Juan's denial of FAPE during the 23 school days at issue.

TRAINING FOR SAN JUAN STAFF IS AN APPROPRIATE REMEDY

Training for school district personnel is also an appropriate remedy, as the IDEA does not require compensatory education services to be awarded directly to a student. (*Park, ex rel. Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1034 [student, who was denied a FAPE due to failure to properly implement his IEP, could most benefit by having his teacher appropriately trained to do so].) Appropriate relief in light of the purposes of the IDEA may include an award that school staff be trained concerning areas in which violations were found, to benefit the specific student involved, or to remedy procedural violations that may benefit other students. (*Ibid.*)

As found in issue 1f, Student's May 3, 2022 IEP was not developed pursuant to an IEP team meeting that met procedural requirements. As a result, training for staff and administrators at Mira Loma High School is an appropriate remedy. San Juan shall

provide two hours of training to staff and administrators responsible for ensuring that IEP's are not predetermined and requirements for an exit IEP team meeting when a student graduates with a regular high school diploma. San Juan shall contract with an independent third party unaffiliated with San Juan to provide this training. The training shall be completed by December 31, 2023.

ORDER

1. Within 10 days of this Decision, San Juan shall send notice to Student in writing to initiate the process of developing a summary of performance. Within 10 days of San Juan sending notice, Student shall respond in writing with the names of the individuals he is requesting be members of the group. If Student does not respond to San Juan within 10 days of San Juan sending written notice, Student's entitlement to the summary of performance is forfeited.
 - a. Within 45 days of this Decision, the group shall meet to discuss Student's summary of performance. The meeting shall be held by telephone, videoconference, or in-person based on Student's preference.
 - b. San Juan shall provide to Student a written summary of performance within 15 days of the final meeting.
 - c. The summary of performance shall include a summary of Student's academic achievement and functional performance to help Student transition beyond high school. It shall also list accommodations that would benefit Student in postsecondary educational or work

environments. The document will memorialize the discussion and recommendations of the group and may include other information that will support Student's postsecondary goals.

2. Within 45 days of this Decision, San Juan shall contract with an independent third party with special education expertise, unaffiliated with San Juan, to conduct a two-hour training for Mira Loma High School special education administrators and staff regarding predetermination and exit IEP team meetings for students graduating with a regular high school diploma. The training shall be completed by December 31, 2023.
3. All of Student's other requested claims for relief are denied.

RIGHT TO APPEAL THIS DECISION

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

Marlo Nisperos
Administrative Law Judge
Office of Administrative Hearings