

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

v.

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT.

CASE NO. 2023020910

DECISION

JULY 19, 2023

Parent on behalf of Student filed an expedited due process hearing request, called a complaint, with the Office of Administrative Hearings on February 10, 2023, naming Sacramento City Unified School District, also known as Sacramento City. The complaint was formally entered into the docket on February 24, 2023 once a proof of services was provided. The Office of Administrative Hearings is called OAH. The complaint contained expedited and non-expedited hearing claims. OAH set the expedited and non-expedited matters for separate hearings.

The expedited claims proceeded to hearing with no continuances. (34 C.F.R. § 300.532(c)(2)) and an expedited decision was issued on April 19, 2023. OAH continued the non-expedited matter for good cause on March 27, 2023. Administrative Law Judge Brian H. Krikorian heard the non-expedited due process issue by videoconference on May 9 and 10, 2023.

Parent represented Student. Parent attended all hearing days on Student's behalf. Attorney Kaitlyn Tucker represented Sacramento City Unified School District. Attorney Katherine Woznick observed the hearing. Geovanni Linares, Sacramento City's Special Education Local Plan Area Director, attended all hearing days on Sacramento City's behalf.

At the parties' request, OAH continued the matter to June 8, 2023, for written closing arguments. The record was closed, and the matter was submitted for decision on June 8, 2023.

ISSUE

A free appropriate public education is referred to as FAPE. An individualized education plan is referred to as an IEP.

1. Did Sacramento City fail to implement Student's May 2022 IEP for the 2021-2022 school year?

JURISDICTION

The ALJ held the hearing 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 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; 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).)

In this hearing, Student has the burden of proving the issues raised by the complaint Student filed. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).) 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).)

Student was 15 years old and in 10th grade at the time of hearing. Student resided within Sacramento City's geographic boundaries at all relevant times. Student was eligible for special education under the categories of specific learning disability and other health impairment from May 24, 2022, through January 21, 2023.

ISSUE 1: DID SACRAMENTO CITY FAIL TO IMPLEMENT STUDENT'S MAY 2022 IEP FOR THE 2021-2022 SCHOOL YEAR?

Parent contends Student was eligible for special education services in the fall of 2021. Parent argued that she requested a special education assessment in the early months of the fall semester and Sacramento City delayed the assessment process and implementation of the IEP until the end of the 2021-2022 school year. Parent also argued Student did not receive the compensatory education Sacramento City promised to provide him.

Sacramento City contends Parent did not ask for a special education assessment for Student prior to November 9, 2021. Sacramento City argues it

- conducted a risk and threat assessment of Student's behaviors,
- held a student study team,
- called SST, meeting to discuss Student's concerning behaviors, and
- timely offered a special education assessment plan on December 1, 2021.

Sacramento City argued that Parent delayed signing the assessment plan until January 19, 2022, and limited access to Student during the next 60 days. Sacramento City contends it ultimately assessed Student, timely held an initial IEP team meeting, and that Student's inappropriate behavior caused any other delays. Sacramento City argued Parent did not establish, by a preponderance of the evidence, that it denied Student a FAPE.

Under the IDEA and California law, a school district has an affirmative, continuing obligation to identify, locate, and evaluate all children with disabilities residing within its boundaries. (20 U.S.C. § 1412(a)(3); Ed. Code, § 56300 et seq.) The duty is not dependent on any action or inaction by parents; the district must “actively and systematically seek out all individuals with exceptional needs who reside in the district.” (Ed. Code, § 56300.) In addition, the district must develop and implement “a practical method” to locate those individuals. (Ed. Code, § 56301.) Before any action is taken with respect to the initial placement of an individual with exceptional needs in special education instruction, an individual assessment of the pupil’s educational needs shall be conducted, by qualified persons in accordance with testing requirements set forth in Education Code section 56320 subds. (a) through (i). (Ed. Code §§ 56320 & 56322.).

In general, a child eligible for special education must be provided access to specialized instruction and related services individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204; *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. 386 [137 S.Ct. 988, 1000].)

Student began attending ninth grade at Kennedy High in person at the start of the 2021-2022 school year. Prior to this time, Student received virtual, distance learning instruction beginning March of 2020, due to the Covid-19 pandemic. This was his first in-person instruction since that time.

On September 16, 2021, Student looked at inappropriate material on his computer and phone during class. Jesse Garza, a school psychologist, contacted Parent to inform her of the matter, and suggested Student may need some counseling. Parent acknowledged Student's conduct and agreed to set up counseling for Student.

Over the next two months Kennedy High monitored Student and deemed him a "medium risk, harm to others." On November 1, 2023, Kennedy High held an SST meeting. While Student had not committed any overt act which would be viewed as a danger to others or himself, the SST team felt it necessary to monitor and assist Student to avoid any actual events that may harm Student or others.

On November 9, 2021, Kennedy High held a second SST meeting. At the end of the meeting, the team recommended that Student be assessed for special education. Parent agreed to the assessment, so long as Student was not pulled out of class for assessments. At this point, Student had not received any personal or educational counseling services.

There was no clear evidence beyond Mother's testimony that she formally requested a special education assessment prior to December 1, 2023. Sacramento City appeared to be pro-active leading up to the November 2021 SST meeting. Neither Student nor Sacramento City provided any documentary evidence that Mother had formally requested a special education assessment prior to the November 9, 2021 meeting, and there was no evidence of a specific date of a request. The evidence showed that leading up to the November 9, 2021 SST meeting, both Parent and the SST team worked to address Student's inappropriate behavior, and that the first time a formal assessment for special education services was brought up was at that meeting.

Accordingly, Student did not prove by a preponderance of the evidence that Sacramento City delayed in offering an assessment plan prior to November 9, 2021.

SPECIAL EDUCATION ASSESSMENT

A proposed assessment plan shall be developed within 15 calendar days of referral for assessment, not counting calendar days between the pupil's regular school sessions or terms or calendar days of school vacation more than five school days, from the date of receipt of the referral, unless the parent or guardian agrees in writing to an extension, pursuant to Education Code section 56321, subdivision (a). (Ed. Code § 56043, subd. (a).) Once a child has been referred for an initial assessment to determine whether the child is an individual with exceptional needs, an IEP team meeting shall occur within 60 days of receiving parental consent for the assessment. (Ed. Code §56043, subd. (c).)

On December 1, 2021, Sacramento City provided Parent with a proposed assessment plan. Sacramento City proposed to assess Student in the areas of

- academic achievement,
- health,
- intellectual development,
- motor development,
- social emotional and behavior, and
- educationally related mental health services.

The plan was delivered to Parent 22 days after the November 9, 2023 SST meeting. A parent has at least 15 calendar days from the receipt of the proposed plan to decide. (Ed. Code §56043, subd. (b)). Parent signed the assessment plan on January 19, 2022.

School psychologist, Garza, testified at the hearing. Garza began the assessment process shortly after the plan was signed by Parent. Although Garza did not provide extensive details, he testified that the assessment was delayed in part due to Parent not wanting Student removed from class.

On March 7, 2022, Student brought a comb that was in the shape of a knife to class. This was confiscated and resulted in further disciplinary concerns. Student was suspended because of this incident and Garza was unable to complete the remainder of his assessment and tests according to the notes of the May 24, 2022 IEP. Even though the assessment was incomplete, Sacramento City held an initial IEP team meeting on March 11, 2022, to make an attempt to comply within the 60-day time period. The meeting was tabled so the assessment tests could be completed.

There was no dispute that the assessment was not completed within 60 days of January 19, 2022. Parent testified that she did not dispute that she had asked the assessors not to remove Student from his classes for assessment purposes. In addition, Student had significant behavioral problems and concerns, including threats made by Student to other students and staff and the resulting suspension from school, that caused Garza to stop the assessments. While these issues delayed the process, Sacramento City did not sufficiently explain why they could not have used alternative means and scheduling to complete the assessment within the 60 day timeline.

Because of the severity of Student's behavioral issues, during the March 11, 2022 IEP team meeting, the special education program specialist suggested Student be placed in diagnostic placement for 30 days, at a different campus, to allow his assessments to be

completed. Parent disagreed with this recommendation because she believed Student liked being in school and this would be detrimental to him. Parent indicated she would disenroll Student if he was placed at another school.

At the conclusion of the March 11, 2022 IEP team meeting, the team agreed that a second meeting would be held once the assessment was completed.

Sacramento City convened a second IEP team meeting on May 24, 2022, to review the completed psychoeducational assessment. There was no evidence presented, beyond the assessment delays and Student's behavior, why the meeting was scheduled over two months later. Parent raised numerous concerns at this meeting. First, she indicated that Student had been suspended for acts he felt he were not his fault, and that this caused Student not to turn in homework assignments. Parent also raised concern that she had asked for special education services in the fall, and now they were approaching the end of the school year. As addressed above, there was no evidence that a formal assessment request occurred before the November 9, 2021 SST meeting.

The team members acknowledged that, even though a March 11, 2022 IEP team meeting was held, Sacramento City did not complete the assessment within the 60-day timeline. However, Sacramento City offered to provide compensatory education for the time lost during the delay. Student was present during the meeting and indicated he felt retaliated against by the school administration and mocked by other Students. This provoked his behavior and conduct at times. Parent indicated that Student was taking some anger management therapy with the family.

The IEP team then reviewed the psychoeducational assessment. Student qualified under specific learning disability in visual processing. He also met eligibility

in other health impairment in attention. Sacramento City drafted mathematics, English language arts, and behavior goals for Student. Sacramento City offered specialized academic instruction in Math totaling 220 minutes weekly, and college and career awareness services for 20 minutes per year each. Parent consented to the proposed IEP at the IEP team meeting.

IEP IMPLEMENTATION

Before Sacramento City could implement Student's May 24, 2022 IEP, Student was arrested and placed at the Sacramento County Probation Youth Detention Facility. During the month of May 2022, Student was accused of directing racial epithets to another student. Kennedy High administrators learned Student was creating false social media accounts and sending threatening messages and posts to other students. As a result of Student's threatening messages and conduct, he was arrested and enrolled at a El Centro Jr. and Sr. High School located within the Youth Detention Facility.

Shortly after the May 2022 IEP team meeting, the Sacramento County Office of Education, who now held responsibility for Student, conducted a Manifestation Determination meeting. At the Manifestation Determination meeting, the team decided that the above conduct was the direct result of a failure to implement the IEP, which had just been developed. An additional assessment plan was presented to Parent by the Sacramento County SELPA for a behavioral intervention plan as well as speech and language assessment, and she signed the assessment plan.

Student reenrolled with Sacramento City on July 1, 2022. Linares sent Parent a letter on July 15, 2022, offering Student compensatory education. Linares testified at the hearing. In that letter, Sacramento City calculated that Student had theoretically

been deprived of services for nine weeks and two days due to the delay in finalizing the IEP. Linares offered to provide Student 16.5 hours of Math Support and 8.25 hours of English Support as compensatory education. Sacramento City proposed that the services be made up during the summer, from July 22, 2022, to August 12, 2022. Both Linares and Parent testified that Student received those make-up services during that period.

Student argued that Sacramento City's delay in assessing Student until 2022 resulted in an IEP that was not implemented prior to the end of the school year. Sacramento City also delayed presenting the assessment plan for seven days after the November 9, 2021 SST meeting. Both delays amounted to a procedural violation of the IDEA. In matters alleging a procedural violation, a due process hearing officer may find that a child did not receive a FAPE only if the procedural violation did any of the following:

- Impeded the right of the child to a free appropriate public education.
- Significantly impeded the opportunity of the parent to participate in the decision making process regarding the provision of a free appropriate public education to the child of the parent.
- Caused a deprivation of education benefits. (20 U.S.C. §1415(f)(3)(E); Ed. Code, §56505, subd. (f)(2).)

A hearing officer also shall not base a decision solely on non-substantive procedural errors unless the hearing officer finds that the non-substantive procedural errors resulted in the loss of an educational opportunity to the pupil or interfered with the opportunity of the parent or guardian of the pupil to participate in the formulation process of the individualized education program. (Ed. Code, § 56505, subd. (j)). In

certain circumstances a parent's lack of cooperation can become so problematic as to excuse a district's procedural violations of the IDEA. See *Ms. S. ex rel. G. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1133 (9th Cir. 2003) ("We hold that where the school district has repeatedly provided the parent with the opportunity to participate meaningfully in the IEP process, the school district has not violated its obligations ..."), superseded by statute on other grounds as stated in *G.M. ex rel. Marchese v. Dry Creek Joint Elementary Sch. Dist.*, 595 F. Appx. 698 (9th Cir. 2014); *E.P. v. San Ramon Valley Unified Sch. Dist.*, No. C05-01390 MJJ, 2007 WL 1795747, at *11 (N.D. Cal. June 21, 2007) (parents' lack of cooperation in scheduling an IEP team meeting excused parental attendance at meeting).

Addressing the seven day delay, the extenuating circumstances surrounding Student's behavior and subsequent discipline in the 2021-2022 school year, as well as Parent's delay in signing the assessment plan and her request that Student not be pulled out of class to be assessed, contributed to the delays in having a final IEP prepared and implemented within the 60-day time period. In light of Parents' own delays and actions limiting access to Student, the seven day delay taken alone did not deny Student educational benefits or deprive Parent of participation rights. This violation did not rise to the level of a substantive violation of the IDEA.

Turning to the delay in finishing the assessment and timely implementing the IEP, this deprived Student of an educational benefit. Based upon the findings at the manifestation hearing, the lack of implementation further resulted in the exacerbation of Student's inappropriate behaviors. Further Sacramento City acknowledged both in the IEP and in subsequent letters, that it delayed completing the IEP process. While it was laudable that Sacramento City was proactive and addressed the delay by immediately providing remedial education, that does not excuse the actual violation.

As such, Student proved by a preponderance of the evidence that Sacramento City denied him a FAPE by not timely assessing him or implementing the IEP in the 2021-2022 school year.

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:

Sacramento City failed to implement Student's May 2022 IEP for the 2021-2022 school year.

Student prevailed on the only issue heard and decided in this case.

REMEDIES

As the prevailing party, Student is entitled to a remedy for the denial of a FAPE.

ALJ's have broad latitude to fashion appropriate equitable remedies for FAPE denials. (*School Comm. of Burlington v. Department of Educ.* (1985) 471 U.S. 359, 370 [105 S.Ct. 1996, 85 L.Ed.2d 385] (*Burlington*); *Parent of Student W. v. Puyallup Sch. Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496 (*Puyallup*).) 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).) Appropriate relief means "relief designed to ensure that the student is appropriately educated within the meaning of the IDEA." (*Puyallup, supra*, 31 F.3d. at p. 1497.)

Compensatory education is an equitable remedy that depends upon a fact-specific and individualized assessment of a student's current needs. (*Puyallup, supra*, 31 F.3d at p. 1496; *Reid v. District of Columbia* (D.C.Cir. 2005) 401 F.3d 516, 524 (*Reid*)). The award must be "reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place" (*Reid, supra*, 401 F.3d at p. 524; *R.P. ex rel. C.P. v. Prescott Unified Sch. Dist.* (9th Cir. 2011) 631 F.3d 1117, 1125.) However, hour-for-hour relief for a denial of FAPE is not required by law. (*Puyallup, supra*, 31 F.3d at p. 1497.) "[E]quitable considerations are relevant in fashioning relief." (*Burlington, supra*, 471 U.S. at p. 374.)

Sacramento conceded there were delays in completing the assessment and finalizing the IEP once Parent signed the assessment plan. In response to these delays, Sacramento City offered compensatory education to remedy the potential denial of a FAPE to Student. Student's argument that Sacramento City failed to provide promised compensatory education was without merit. The evidence clearly established, and Parent testified, that Student attended summer classes and received the compensatory education. Although the delay in time between the March 11, 2022 meeting and completing of the IEP was a violation of the IDEA, Sacramento City provided remedial instruction in light of any delays, rectifying any potential denial of FAPE.

Because Sacramento City provided sufficient compensatory education prior to the hearing, the ALJ finds that no additional remedy is required.

ORDER

Although Sacramento City denied Student a FAPE, it has already provided compensatory education. Student is not entitled to a remedy.

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.

Brian H. Krikorian

Administrative Law Judge

Office of Administrative Hearings