

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT.

CASE NO. 2023090342

DECISION

APRIL 3, 2024

On September 11, 2023, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student, naming Los Angeles Unified School District. On October 23, 2023, the matter was continued. Administrative Law Judge June R. Lehrman heard this matter via videoconference on January 23, 24, 25, and February 21, 2024.

(This space is intentionally left blank. Text continues on the following page.)

Father represented Student. Mother attended on January 23 and 25, February 21, and attended part of the day on January 24, 2024. Kendra Tovey represented Los Angeles Unified School District. Research Resolution Specialist Juan Tajoya attended on January 23, 24, and 25, 2024 on Los Angeles's behalf. Director of Due Process Department Diana Massaria attended on February 21, 2024, on Los Angeles's behalf.

At the parties' request, the matter was continued to March 8, 2024, for written closing briefs. The record was closed, and the matter was submitted on March 8, 2024.

ISSUES

1. Did Los Angeles deny Student a free appropriate public education, or FAPE, from September 17, 2021, through October 26, 2021, by denying Student access to his teacher through distance learning in violation of Los Angeles's stay put obligations?
2. Did Los Angeles deny Student a FAPE from September 27, 2021, through October 26, 2021, by unilaterally disenrolling Student in violation of Los Angeles's stay put obligations?

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.) All

subsequent references to the Code of federal Regulations pertain to the 2006 edition unless otherwise noted. 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).) In this matter, Student bore the burden of proof. 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 12 years old and in sixth grade at the time of hearing. Student resided within the Los Angeles's geographic boundaries at all relevant times. Student has a genetic mutation causing hearing loss. Student was eligible for special education under the category for hearing impairment.

ISSUES 1 AND 2: DID LOS ANGELES DENY STUDENT A FAPE FROM SEPTEMBER 17, 2021, THROUGH OCTOBER 26, 2021, BY DENYING STUDENT ACCESS TO HIS TEACHER THROUGH DISTANCE LEARNING, AND BY UNILATERALLY DISENROLLING HIM ON SEPTEMBER 27, 2021 IN VIOLATION OF LOS ANGELES'S STAY PUT OBLIGATIONS?

In Issue 1, Student contends that he was denied a FAPE when Los Angeles denied him access to his teacher through distance learning from September 17, 2021, through October 26, 2021, in violation of Los Angeles's "stay put" obligations. In Issue 2, Student contends that he was denied a FAPE when, starting on September 27, 2021, Los Angeles disenrolled him in violation of its "stay put" obligations. Los Angeles contends that it did not violate its stay put obligations because, once ordered to do so, it complied. Los Angeles further argues that the distance learning plan contained in Student's IEP was operative only during the COVID-19 pandemic emergency and was no longer operative when Los Angeles returned to in-person learning at the beginning of the 2021-2022 school year. Los Angeles argues that Student was not "effectively disenrolled" and continued to receive access to some of his schoolwork. Los Angeles further argues that Student was, in any event, not denied a FAPE because he suffered no deprivation of educational benefits.

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.) 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); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a), and 56363 subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501.)

In general, a child eligible for special education must be provided access to specialized instruction and related services that are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204 (*Rowley*); *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. 386, 399 [137 S.Ct. 988, 1000].)

Under certain circumstances, the IDEA provides for "maintenance of current educational placement." Specifically, the law provides that with certain exceptions not pertinent here, "during the pendency of any proceedings conducted pursuant to this section ... the child shall remain in the then-current educational placement of the child." (20 U.S.C. § 1415.) This is referred to as "stay-put." (*Honig v. Doe* (1988) 484 U.S. 305, 308 ["Among [the IDEA's procedural] safeguards is the so-called 'stay-put' provision, which directs that a disabled child 'shall remain in [his or her] then current educational placement' pending completion of any review proceedings"].)

PRIOR 2020-2021 SCHOOL YEAR

During the 2020-2021 school year, Student was enrolled in a general education program at Encino Charter Elementary School, within Los Angeles Unified School District. Student's last agreed-upon and implemented IEP was dated March 4, 2021. The March 4, 2021 IEP provided placement in the general education classroom at Encino with related services. The related services offered in the IEP were 120 minutes a year of consultative audiology services and 1,320 minutes a year of direct deaf and hard of hearing services.

Due to the COVID-19 pandemic, the IEP also included a distance learning plan to be implemented during emergency conditions. The distance learning plan called for Student's academic instruction, related services, and supplementary aids and supports to be provided using

- teacher-posted lessons,
- virtual class meetings,
- personalized learning tools,
- teacher appointments,
- email check-ins, and
- virtual office hours.

Parents provided written consent to the March 4, 2021 IEP on July 28, 2021.

Due to the pandemic, Student did not attend in-person instruction at Encino for the 2021-2022 school year.

BEGINNING OF THE 2021-2022 SCHOOL YEAR

Los Angeles returned to in-person learning in August 2021 at the beginning of the 2021-2022 school year. For students who did not wish to return to in-person learning yet, it offered an independent study program called City of Angels.

Parents were concerned that Student's genetic mutation made Student more susceptible to COVID-19, which might potentially worsen his hearing loss. COVID-19 vaccines were not yet available for children under age 12. Parents therefore disenrolled Student from Encino in the summer of 2021 to explore private school options, but they became unsatisfied with those options. They therefore re-enrolled Student at Encino on or about July 28, 2021, prior to the beginning of the 2021-2022 school year.

The first day of instruction for the 2021-2022 school year was August 16, 2021. Student was enrolled at Encino at the start of the 2021-2022 school year and was assigned to a fourth-grade class taught by Alexander Zwick. The enrollment is not reasonably in dispute. Mother's credible testimony established that she was informed the re-enrollment was successful. In addition, the hearing testimony of Office Technician Mary Mannon established that, because Student had been enrolled the prior year, re-enrollment might not have even been necessary. Finally, the most persuasive evidence that Student was successfully enrolled at the beginning of the 2021-2022 school year was the fact that his name appeared typed into the written roster for Zwick's fourth-grade class. The roster was generated by Encino's computerized rostering system for enrolled students. Thus, there is no reasonable dispute that Student was enrolled at Encino in Zwick's fourth-grade class at the beginning of the 2021-2022 school year.

Parents remained concerned about the pandemic, and therefore kept Student out of school. They felt there was no good plan in place to get children back to school safely. Mother was made aware of the City of Angels independent study program, but there was a lack of information about it. Also, in or around August 2021, Mother was notified that enrollment at City of Angels was oversubscribed and was limited to those students whose IEPs called for that placement. Parents therefore requested an IEP team meeting, which took place on August 19, 2021, discussed below. Meanwhile, Mother went to the school and retrieved Student's books, laptop, and other materials, to enable him to use them at home.

From the first day of school, August 16, 2021, Encino provided Student with access to an online platform called Schoology, on which assignments, quizzes, homework, projects, and classwork were posted, and on which the teacher could comment and grade work. Student completed lessons through Schoology. Zwick provided Student weekly physical packets of classroom assignments, which Parents picked up from Zwick. From the first day of school, August 16, 2021, until September 17, 2021, Student had access to his computer, his school assignments, and quizzes. Mother and Zwick agreed to this arrangement to prevent Student from falling behind. Mother went to the school two to three times per week to pick up assignments for Student from Zwick and dropped off Student's completed homework. Certain class sessions were made available on Zoom, and Student attended all the ones that were made available to him. In addition, Student completed and submitted assignments to Zwick. Zwick accepted and graded Student's assignments.

AUGUST 19, 2021 IEP TEAM MEETING

An IEP team meeting was held on August 19, 2021. The IEP document itself was not submitted into evidence, however Parents' credible testimony established that at this IEP team meeting, no one thought City of Angels would provide Student with a FAPE. The district members of the IEP team thought that to receive a FAPE, Student should return to school. No evidence was submitted to establish whether Los Angeles formalized that option in a written IEP or prior written notice as an offer of FAPE. Whether the option to return to school was formal or informal, or written or unwritten, Parents declined that option due to their continuing health concerns.

On August 19, 2021, Los Angeles staff told Mother that should Student remain absent from school, he would not be considered truant. In addition, at a meeting on August 20, 2021, between the Acting Principal of Encino Ms. Choe and a group of concerned parents, Choe informed this group of concerned parents that their children's absences from in-person instruction were excused due to parents' concerns over the risk of COVID-19 to students' health. In other words, Los Angeles assured Parents that they could, without penalty, keep Student out of school due to COVID-19-related health concerns.

FRIDAY SEPTEMBER 17, 2021 DIRECTIVE FROM VICE PRINCIPAL

On or around Friday September 17, 2021, Vice Principal Myron Breitstein, without notifying Parents, instructed Zwick to stop grading Student's assignments until Student attended in-person instruction. At hearing, Los Angeles proffered no explanation for Breitstein's action.

Zwick emailed Mother that he had been instructed not to grade Student's assignments, and that if questions arose, she should direct them to Breitstein. In response to Zwick's email, Mother called Zwick who said he had been instructed not to even speak with Student. Zwick stated he could still provide packets of schoolwork. However, he could no longer grade them.

Mother wrote a concerned email to members of Student's IEP team and administration asking for further information. Parents then requested another IEP team meeting, which occurred on Thursday, September 23, 2021.

SEPTEMBER 23, 2021 IEP TEAM MEETING

No documents pertaining to the September 23, 2021 IEP team meeting were moved into evidence. The audio recording of the IEP team meeting revealed that Breitstein stated at the IEP team meeting that Zwick should not have been grading Student's work because the school district and the teachers' union did not provide for that service after the expiration of the COVID-19 pandemic emergency, except in instances of documented illness. Breitstein stated that Student's options were to return to school in-person or attend the City of Angels independent study program. He and other Los Angeles representatives at the meeting revealed to Parents that according to a written school district policy, and post-COVID-19 teachers' union negotiations, Student could not be graded or participate in his education except by participating in an independent study option or by physically coming into class. Parents requested a copy of the written policy providing for those two options only, but Los Angeles representatives did not have or provide a copy.

Breitstein also stated that Student's enrollment in Zwick's class without being physically present, in-person, on the first day of school had been an error. The error was being researched at the district level and not at the school level and was "outside the scope" of the IEP team meeting. Breitstein was vague about whether Student was or was not considered enrolled, and stated the issue was being researched at a higher or different level of authority, outside the IEP, and he had no further information to share at that time. Breitstein reiterated that Student's options were to come to school physically or attend City of Angels.

Parents insisted on clarity on the issue of Student's enrollment, but Los Angeles did not provide any such clarity, and continued to state the issue was outside the scope of the IEP team meeting and was being handled at a higher level of authority. Los Angeles representatives continued to insist that only two options were available, City of Angels or Student's physical presence in school for the full school day and week.

Breitstein concluded the meeting by stating that Los Angeles's offer of FAPE was in-person placement. No evidence was submitted to establish whether Los Angeles formalized that option as an offer of FAPE in a written IEP document or prior written notice. Whether the option to return to school was formal or informal, Parents declined that option due to their continuing health concerns.

FRIDAY SEPTEMBER 24 THROUGH TUESDAY, SEPTEMBER 28, 2021

Because Student had not attended in person, Student's attendance on Zwick's roster had been marked as "absent" each school day of the 2021-2022 school year beginning on August 16, 2021. As discussed above, the absences were excused. The day after the September 23, 2021 IEP team meeting was Friday, September 24, 2021. On

that date, Zwick completed the attendance sheet by writing in a question mark instead of marking Student as absent. Zwick was under the impression as of that date that the school administration had begun to monitor Student's attendance. Zwick continued to write the question mark for the remainder of the dates on that page of his roster, which continued into the Monday and Tuesday of the following week, September 27 and 28, 2021. Office Technician Mannon was later told to, and did, write, in handwriting, the words "no show" for the dates September 24 through 28, 2021.

The Monday following the September 23, 2021 IEP team meeting was September 27, 2021. On that day, when Student attempted to log onto Schoology to obtain his assignments, his online access was denied. Mother notified Zwick, who was unaware of the issue or why it had occurred. Zwick thought this might be caused by a technical computer issue and he attempted to obtain technical support to resolve it. Mother also called the Acting Principal who said, "It appears [Student] has been un-enrolled."

During telephone conversations with school administration on September 27 or 28, 2021, Father was told Student was not enrolled. Father then requested another IEP team meeting, which was then scheduled for October 22, 2021.

WEDNESDAY SEPTEMBER 29, 2021

The printed attendance roster sheets for each week ran from Wednesdays to the following Tuesdays. Therefore, the next weekly printed roster sheet after the events described above commenced on Wednesday September 29, 2021. From that date onward, and for each of the following weekly rosters for the three weeks up until October 20, 2021, Student's name disappeared from the printed roster.

There is no reasonable doubt, then, that as of September 24, 2021, the day following the September 23, 2021 IEP team meeting, Student became disenrolled. This fact is reflected in the handwritten question marks and the "no show" notation on the roster sheet for September 24 through 28, 2021, on which Student's name still appeared, and most persuasively in the disappearance of Student's name from the written roster sheets the following week commencing September 29, 2021. It was further confirmed by the administrators' statements made to Parents at the time. It is further confirmed by judicial admissions made by Los Angeles in OAH Case Number 2021100192, discussed in further detail below. Parents filed that matter on October 7, 2021, almost immediately following the events described above, and moved for stay put. In its October 11, 2021 Opposition to Motion for Stay Put, Los Angeles stated, "On or about September 24, 2021, Petitioner was removed from enrollment at [Encino] because he was a 'no show.'"

No competent evidence refutes the conclusion that Los Angeles disenrolled Student. Zwick stated at hearing that he was unaware of what the administration's stance was on Student and, had Student entered his classroom, Zwick would have permitted him to participate. Office Technician Mannon also stated that she was never told to enter the letter "L" on the handwritten roster, which normally would have been entered when a student left the district. These two pieces of evidence are insufficient to contradict the plain fact that Los Angeles made notations starting September 24, 2021, to reflect "no show," removed Student's access to Schoology or any other educational services on or around September 27, 2021, and entirely removed him from the roster on September 29, 2021. Los Angeles argues that Student was not "effectively disenrolled"

because Zwick could still provide packets of schoolwork without grading them. The argument is highly unpersuasive, given that Student's access to his teacher was discontinued as of September 17, 2021.

OCTOBER 7 THROUGH 26, 2021

Parents hired an attorney and filed for due process on October 7, 2021, in OAH Case Number 2021100192. They also filed their Motion for Stay Put. On October 14, 2021, OAH granted the motion.

The October 14, 2021 Order directed Los Angeles to re-enroll Student at Encino and reassign Student to Zwick's class. It ordered Los Angeles to provide Student access and lessons through Schoology and other online programs and provide Student with weekly packets of classroom assignments. It ordered Encino to accept and grade the assignments submitted by Student. It ordered that Parents and Student would be permitted to communicate with Student's teacher by email, and to participate in videoconference lessons if made available by Student's teacher. It also ordered Los Angeles to provide Student the related services called for in the March 4, 2021 IEP, to be delivered either in-person or virtually.

Because of the October 14, 2021 Order, Mannon was instructed to enter Student's name in handwriting and the letter "E" on the roster on Monday October 18, 2021, which meant "entered." Student's name reappeared on the written roster on Wednesday October 20, 2021.

According to Mother's uncontradicted testimony, Student's access to the placement and services ordered by OAH did not fully resume until October 26, 2021.

Because Student was still unvaccinated, Parents continued to keep him out of school until December 2021 when vaccines became available for children under 12 years old, after which he returned to school in person.

ANALYSIS

The same facts, law, and reasoning apply equally to Issues 1 and 2, which are therefore addressed together. As determined in the October 14, 2021 Order Granting Stay Put in OAH Case Number 2021100192, from the first day of school, August 16, 2021, until September 17, 2021, the March 4, 2021, IEP was not being implemented as designed. Student neither attended in-person instruction at Encino, nor received distance learning as contemplated by the IEP's distance learning plan with consistent, synchronous, virtual class meetings. Rather, Encino provided Student a form of an independent study program with direction, supervision, and support from Zwick. Encino provided Student access to online lessons using Schoology. Zwick provided Student textbooks and weekly learning materials. Zwick also provided Student lesson plans and checked in on Student by email. Encino also permitted Student to participate in lessons by videoconference when available. Encino permitted Student to engage in this form of independent study without requiring Student to attend in-person instruction. This form of independent study was implemented and agreed to by Parents, Student, and Encino for more than a month since the start of the 2021-2022 school year. As previously determined in the October 14, 2021 Order, this agreed-to and implemented program was the educational placement that constituted Student's stay put program during the pendency of OAH Case Number 2021100192.

Los Angeles argues that the determination in that Order was a preliminary ruling and not a final adjudication of what Student's stay-put rights were, and therefore not

binding here. However, based on all the evidence presented in this matter, including the authenticated copy of the March 4, 2021 IEP, and the sworn testimony of Mother and Zwick, the Order granting Stay Put correctly determined what Student's stay-put placement was, and is adopted in whole by this Decision.

October 7, 2021, the day Student filed for due process in OAH Case Number 2021100192, was the date Student's stay-put rights commenced. The IDEA provides for the maintenance of the current educational placement "during the pendency of any proceedings conducted pursuant to this section." (20 U.S.C. § 1415.) Federal regulations implementing this statute make it explicit that the right to the maintenance of the current educational placement exists "during the pendency of any administrative or judicial proceeding regarding a due process complaint notice." (34 C.F.R. § 300.518.)

The Ninth Circuit has specifically held that the IDEA's stay put provision may only be invoked during the pendency of due process proceedings, and "[a]ccordingly, the stay put provision does not apply unless and until a request for a due process hearing is filed." (*K.D. v. State of Hawaii* (2011) 665 F.3d 1110, 1117.) California law is in accord, providing that the pupil's right to remain in his or her present placement exists "during the pendency of the hearing proceedings." (Ed. Code, § 56505, subd. (d).)

Student contends that his stay-put rights commenced the moment a dispute arose, arguably on or before September 17, 2021. Student misconstrues the operative date these rights accrued, which was the date due process was filed, October 7, 2021.

Other procedural rights that exist irrespective of, and prior to, the filing of a due process hearing request, were not alleged here. Specifically, Education Code section 56346, subdivision (e), states that those portions of an IEP that have been consented to must continue to be implemented. Student's complaint, however, did not allege any

claim arising under the Education Code for implementation failures. Rather, Student specifically alleged only that his “stay put” rights were violated, and insisted at two prehearing conferences and at hearing, that his stated issues be adjudicated as he worded them. Therefore, Student’s stated issues pertain only to “stay put,” which began only upon the October 7, 2021, filing of his due process complaint, and not before.

For the same reason, Student’s other legal arguments first stated in his March 8, 2024 reply brief, are not determined here because they were not pleaded in the complaint. “The party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the [complaint], unless the other party agrees otherwise.” (20 U.S.C. § 1415(f)(3)(B); Ed. Code § 56502, subd. (i).)

Specifically, Student newly contended in his closing briefs that:

- Los Angeles denied Student a FAPE by failing to provide prior written notice of its intent to disenroll Student;
- Los Angeles predetermined its September 23, 2021 IEP offer; and
- Los Angeles failed in its duty to file for due process to establish the appropriateness of its September 23, 2021 IEP offer.

None of these claims were pleaded, or raised in an amended complaint, and therefore they are not addressed here.

On the other hand, Los Angeles argues that Student’s stay-put rights did not commence until OAH issued its October 14, 2021 Order. Thus, Los Angeles argues that it “did not have any stay put obligations under state or federal law before October 14, 2021, when the Stay Put Order was issued.” That argument is unpersuasive. The operative date for the commencement of Student’s rights to his stay put placement

was “during the pendency of any administrative or judicial proceeding regarding a due process complaint notice,” not the date stay put was ordered. (34 C.F.R § 300.518; Ed. Code, § 56505, subd. (d).)

According to Mother’s uncontradicted testimony, Los Angeles did not fully comply with OAH’s Order Granting Stay Put until October 26, 2021. There was no contrary evidence that Los Angeles complied with the Order earlier. For these reasons, Los Angeles violated Student’s right to stay put starting on October 7, 2021, and lasting until October 26, 2021, a total of 20 calendar days. According to the school calendar, within that time span there were 12 school days.

Student prevailed on Issues 1 and 2 for this time period, commencing on October 7, 2021. Student did not prevail for the time period preceding October 7, 2021. Remedies are discussed below.

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 Angeles denied Student a FAPE from October 7, 2021, through October 26, 2021, by denying Student access to his teacher through distance learning in violation of Los Angeles’s stay put obligations. Los Angeles did not

deny Student a FAPE from September 17, 2021, through October 6, 2021, by denying Student access to his teacher through distance learning in violation of Los Angeles's stay put obligations.

Student partially prevailed on Issue 1.

ISSUE 2:

Los Angeles denied Student a FAPE from October 7, 2021, through October 26, 2021, by unilaterally disenrolling Student in violation of Los Angeles's stay put obligations. Los Angeles did not deny Student a FAPE from September 27, 2021, through October 6, 2021, by unilaterally disenrolling Student in violation of Los Angeles's stay put obligations.

Student partially prevailed on Issue 2.

REMEDIES

Remedies under the IDEA are based on equitable considerations and the evidence established at hearing. (*School Committee of Town of Burlington, Mass. v. Department of Educ. of Mass.* (1985) 471 U.S. 359, 374.) 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. v. Puyallup School Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496.) The conduct of both parties must be reviewed and considered to determine whether relief is appropriate. (*Id.* at p. 1496.) These are equitable remedies that courts may employ to craft "appropriate relief" for a party. An award need not provide a "day-for-day compensation." (*Id.* at p. 1497.) An award to compensate for past violations must be fact-specific and 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 ex rel. Reid v. District of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 524.) 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.” (*Ibid.*)

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 pupil involved, or to remedy procedural violations that may benefit other pupils. (*Park v. Anaheim Union High School District, et al.* (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].)

Student contends that

“LAUSD’s outrageous conduct ... left [Parents] with no realistic choice but to remove [Student] from the LAUSD and place him in private school for middle school. ... [Student’s] new school is a private school—Chaminade—and ... is not free.”

However, Student remained at Encino for the entire remainder of his 2021-2022 fourth-grade, and the entire 2022-2023 fifth-grade years. Parents did not remove Student from Los Angeles until the current school year, 2023-2024, which is his sixth-grade year, two years after the relevant fourth-grade year. There is therefore no reasonable nexus between the middle school private school tuition and the alleged denial of FAPE two years before.

Moreover, Student seeks not only the tuition for the current sixth-grade year, but also for two years into the future, seeking that Los Angeles should reimburse Parents now for amounts not yet expended. Moreover, Student put on no evidence, or even argument, specifying what the costs were for Chaminade, arguing only that “[i]ts tuition is undisputed and subject to judicial notice.” For all these reasons, Student’s requested remedy is unreasonable and, given the fact that Student was denied only 12 days of his stay-put placement, grossly out of proportion. Payment for private middle school, either in the short or long term, is therefore not an equitable remedy.

During the time actually in question here, Parents expended some funds for tutoring and educational classes for Student. However, Student supplied no documentary evidence of any reimbursable expenses. OAH’s Order Following Prehearing Conference explicitly stated:

“Any party seeking reimbursement for expenditures shall present admissible evidence of these expenditures, or a stipulation to the amount of the expenditures. A party seeking compensatory education should provide evidence regarding the type, amount, duration, and need for any requested compensatory education. Documents offered as evidence to support a request for reimbursement must be separated by vendor.”

The only evidence concerning Parents’ out-of-pocket expenditures was Mother’s testimony which, while credible, lacked sufficient detail to support an award of reimbursement.

Student seeks other remedies that are outside the jurisdiction of OAH. Student sought to introduce evidence of the attorneys’ fees Parents expended in bringing OAH Case Number 2021100192, and in obtaining the Order Granting Stay Put. However,

under the IDEA, attorney's fees are awardable only after a prevailing party seeks them in court. (20 U.S.C. § 1415(i)(3).) Since Student dismissed OAH Case Number 2021100192 once stay put was ordered, there was no prevailing party in that matter. And, had there been, the attorneys' fees expended would have been within the jurisdiction of federal district court or state court and not OAH.

Most importantly, the 12 days Student was out of school did not cause him any cognizable deprivation of educational benefits. The operative IEP dated March 4, 2021, contained three goals.

Goal one was in the area of need of self-advocacy. It stated that Student would independently and appropriately demonstrate self-advocacy skills in all listening situations by utilizing all the hearing equipment available to him.

Goal two was also in the area of need of self-advocacy. It stated that when presented with oral directions for independent work and homework assignments, Student would review the assignment and ensure his own understanding of the directions by asking questions or seeking clarification.

Goal three was in the area of need of auditory feedback. It stated Student would independently continue to develop his auditory feedback loop in order to monitor his speech and language production, volume level, and intelligibility. The goals aimed for 80% success in four out of five trials as measured by teacher-charted observations.

Senior Educational Audiologist Simon Devilly was Student's provider of educationally-related audiological services since preschool. Student's IEP called for 120 minutes per year of audiological services, to be broken down into intervals that could be front-loaded at the beginning of the year and checked on periodically

thereafter. Thus, the minutes were offered on an annual basis, rather than weekly or monthly. When Student ultimately returned to school in-person on December 7, 2021, Devilly provided training to Zwick and helped him to connect to the microphone that was part of Student's accommodations. Between December 8, 2021, and February 4, 2022, Devilly provided all 120 yearly minutes of services the March 4, 2021 IEP called for. He trained Zwick and observed Student using the equipment in the classroom. Student demonstrated awareness and understanding of the equipment, which indicated that he had already met his goal concerning it. Thus, all the service minutes were provided, Student met the IEP goals Devilly implemented and there was no deprivation of educational benefits.

Devilly admitted that services scheduled for the beginning of the 2021-2022 school year in late August and September 2021 did not occur. However, all Student required when he returned to school in-person in December 2021 was a quick re-introduction. From what Devilly observed and what he learned from Student's teachers, there was no loss of educational benefit and no justification for compensatory education.

Deaf and Hard of Hearing Itinerant teacher Heather Goldstein was assigned to provide Student 1,320 minutes yearly, to be delivered flexibly through 10 to 40 yearly sessions. The purpose of this delivery model was to front-load services, and Parents consented. These services were intended to support Student's goal to advocate for himself in all listening situations by utilizing microphones and other hearing technology provided for him, and to ensure his understanding of oral directions and assignments.

Goldstein admitted to not providing all the service minutes owed for the year. While Student was out of school, scheduled services did not occur on August 17, nor on

September 9, 16, or 23, 2021, amounting to 180 missed minutes. Based on her service logs, Goldstein resumed providing regular services beginning on November 4, 2021, and continued through June 2, 2022. Although Student did miss 180 service minutes while he was out of school, once he returned Goldstein noticed no need for additional services nor any regression, based on Student's classroom performance. In other words, the fact that Student did not receive Goldstein's services from August 16 until November 4, 2021, did not impact his progress on his IEP goals, he did not regress, and he made progress in the general education curriculum. Compensatory education of these 180 missed service minutes is not warranted, because Student progressed appropriately despite missing them.

When Student did return to school, he either met or exceeded grade-level standards. He

- consistently communicated clearly,
- worked collaboratively,
- listened to and interpreted information,
- respected others,
- solved problems,
- explained himself,
- exhibited creativity,
- worked independently but appropriately,
- asked for help when needed,
- followed rules, and
- was organized and productive.

Student was bright, hardworking, took pride in excelling, was at or above grade level, and earned straight A's. During the 2021-2022 school year, the subsequent 2022-2023 school year, and in the current 2023-2024 school year, Student performed at or above grade level. Thus, he suffered no loss of educational benefit as a result of the 12 school days he was denied his right to a stay-put placement pending a due process hearing.

Mother contends that assessments conducted in 2019 and 2022 indicated regression, but the evidence did not support that contention. Goldstein, who conducted the assessments, explained that Mother was referring to certain subtests of the Test for Auditory Comprehension of Language. This is an individually administered measure of understanding spoken words and phrases. It measures comprehension of spoken vocabulary, grammatical morphemes, and elaborated phrases and sentence. On the grammatical morphemes subtest, which tested for comprehension of spoken prepositions, noun number and case, verb number and tense, noun-verb agreement, pronouns, and other language structures, Student scored above average in 2019 and average in 2022. The same was true for the scores in elaborated phrases and sentences, which measured

- auditory comprehension of questions,
- negative sentences,
- active and passive voice,
- direct and indirect objects, and
- other phrases and sentences.

Goldstein explained that the "above average" and "average" scores on these subtests compared for 2019 and 2022 did not indicate regression. Student progressed and showed growth above his chronological age on both administrations. And, on

other assessment tools administered in 2022, Student “maxed out,” performing better than the age range that the test was normed against. Thus, on the Test of Auditory Processing Skills, which measured auditory processing skills of children ages four through 18 years, Student’s age equivalency was greater than the maximum 18 years 11 months. On the Oral Expression Subtest for Oral and Written Language Scales, second edition, Student’s spoken expression performance was better than the maximum 21 years 11 months against which the test was normed.

Mother also contended that standardized testing before the pandemic, when Student was in the second grade, placed him as “highly gifted,” but upon his return to school his placement tests had rated him only as “gifted.” However, she submitted no documents corroborating this contention, and admitted that the placement tests may have used different testing instruments. Without evidence of the particular tests performed, Mother’s testimony did not establish that Student lost any educational benefit, or why.

Although Mother acknowledged that Student performed at or above grade level, she nevertheless thought he regressed by not advancing as far or as fast as he should have been expected to. But, Parents supplied no expert testimony, or any assessment documents, nor grade or placement reports, or other evidence to substantiate their opinion that Student suffered learning loss. Thus, Student did not establish that Los Angeles’s actions caused any deprivation of educational benefit.

However, training is an appropriate remedy here because Los Angeles violated its stay-put obligations, denied Student’s access to his teacher, disenrolled him, and denied Parents their right to participate in the decision making process concerning what would constitute a FAPE for Student. From the audio recording of the September 23, 2021 IEP

team meeting, it is apparent that Breitstein had been informed of a district-wide, post-COVID-19 strategy permitting only two options, either independent study or in-person attendance. As he applied that strategy to Student, it resulted in a disenrollment from one day to the next without notice, and a deprivation of parental involvement in developing Student's IEP.

It is an appropriate equitable remedy to order training here concerning stay-put rights, duties and timelines, and concerning parental procedural rights. ((*Rowley, supra*, 580 U.S. at 205-6

[“When the elaborate and highly specific procedural safeguards embodied in 1415 are contrasted with the general and somewhat imprecise substantive admonitions contained in the Act, we think that the importance Congress attached to these procedural safeguards cannot be gainsaid. It seems to us no exaggeration to say that Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process, as it did upon the measurement of the resulting IEP against a substantive standard.”].)

Training on these topics for Breitstein and the members of the administration and IEP team who were involved in the decision to disenroll Student is an appropriate remedy. The evidence at hearing established that Breitstein and administrators Denise Collier and Sarah Bobertz, among others, were involved in the decision to disenroll Student. These individuals, as well as the other Los Angeles and Encino Charter Elementary School participants in the September 23, 2021 IEP team meeting shall be subject to the training ordered below.

ORDER

1. Los Angeles shall provide no less than two hours of training for all currently employed Los Angeles and/or Encino Charter Elementary School personnel who were involved in the decision to disenroll Student, including Myron Breitstein, Sarah Bobertz, Denise Collier, Alexander Zwick, and any other Los Angeles and/or Encino Charter Elementary School members of the September 23, 2021 IEP team, concerning the law of stay put and the law of parental procedural rights under the IDEA and California special education laws. This training shall not be provided by a Los Angeles employee or by an employee of the attorneys' office representing Los Angeles. Rather, it must be provided by an independent expert in state and federal special education laws, who shall be directed to read this Decision prior to conducting the training and shall tailor the training to the facts presented herein. This training shall be arranged and completed by June 30, 2024.

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.

June R. Lehrman

Administrative Law Judge

Office of Administrative Hearings