

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

v.

HIGH TECH LOS ANGELES CHARTER HIGH SCHOOL.

CASE NO. 2023110186

DECISION

APRIL 18, 2024

On November 6, 2023, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student, naming High Tech LA Charter as respondent. OAH granted the first continuance in this case on December 5, 2023. Administrative Law Judge Claire Yazigi heard this matter virtually on February 8, 13, 14, and 15, 2023.

Robert Burgermeister and Peter Collisson represented Student. Parent attended all hearing days on Student's behalf. Lisa Corr and Ashley DeVance represented High Tech. Colleen Molina, Principal, attended all hearing days on High Tech's behalf.

The matter was continued to March 11, 2024, for written closing briefs. The record was closed, and the matter was submitted on March 11, 2024.

ISSUES

The party requesting the hearing is limited to the issues alleged in the complaint. (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] (*Schaffer*); and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Student's complaint did not assert that the statutory period of the present case should be extended.

Both federal and California law contain a two-year statute of limitations for special education administrative actions that requires a finding of when the parent knew of the facts which form the basis of the claim. (20 U.S.C. § 1415(b)(6)(B); 34 C.F.R. §300.507(a)(2); Ed. Code, § 56505, subd. (l).) At the beginning of hearing, the undersigned clarified with the parties that the statutory period for the present complaint began two years prior to the date Student filed it, or November 6, 2021. Neither party objected to the clarification at the beginning of hearing.

In Student's closing brief, Student untimely argued that the statute of limitations should be extended. The argument was untimely, not noticed in the complaint, and was raised after the conclusion of hearing. As such, Student's allegation that the statute of limitations should be extended is not considered here.

The issues have been reordered from the January 26, 2024 Order Following Prehearing Conference to facilitate analysis in this Decision, but no substantive change to the issues has been made. Clarification is within the discretion of the Administrative Law Judge. (*M.C. v. Antelope Valley Union High Sch. Dist.* (9th Cir. 2017) 858 F.3d 1189.) In this Decision, a free appropriate public education will be called a FAPE, and an individualized education program will be called an IEP.

ISSUES FOR HEARING:

1. Did High Tech deny Student a FAPE from November 6, 2021, through the remainder of the 2021-2022 school year by failing to:
 - a. Offer a goal in math;
 - b. Offer a goal in vocational skills;
 - c. Offer a legally compliant annual goal in academics, specifically, reading;
 - d. Offer a legally compliant annual goal in academics, specifically, writing;
 - e. Offer legally compliant annual goals in speech and occupational therapy;
 - f. Offer legally compliant annual goals in college and career awareness;
 - g. Offer college and career awareness services;
 - h. Convene IEP team meetings at Parents' request; and
 - i. Address Student's regression?

JURISDICTION

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

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

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

- all children with disabilities have available to them a 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, supra*, 546 U.S. 49, 57-58, 62; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) As the filing party, Student bears 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 19 years old and had already graduated from High Tech Los Angeles Charter High School with a regular high school diploma at the time of hearing. Student

resided within the Los Angeles Unified School District's geographic boundaries at all relevant times. Student was eligible for special education under Other Health Impairment.

ISSUES 1.a. AND 1.b.: DID HIGH TECH DENY STUDENT A FAPE BY FAILING TO OFFER GOALS IN MATH AND VOCATIONAL SKILLS?

Student asserts that High Tech failed to offer goals in math or vocational skills. Student's primary contention, however, is that no goals were offered, legally compliant or otherwise, after September 25, 2020, through the end of the 2021-2022 school year when Student graduated. Student contends that a September 25, 2020 IEP was the parties' last complete IEP. Student acknowledges that the parties held an IEP team meeting on September 30, 2021, but argues that the IEP remained in draft form and that no IEP offer was made. Therefore, Student argues, no legally compliant goals in the asserted areas of need were offered. Accordingly, whether or not the September 30, 2021 meeting resulted in an IEP offer is a threshold question.

Student pled no issue, made any argument, or presented evidence at hearing to support extending the two-year statute of limitations. As such, no findings are made regarding the September 25, 2020 IEP because it falls outside the applicable statutory period.

Student's closing brief is also replete with several other claims not pled in the complaint, like High Tech's predetermination of FAPE offers, the failure to allow Parent meaningful participation in the IEP development process, High Tech's failure to assess

Student, and procedural violations. Because those claims were not in the complaint, raised during the Prehearing Conference, or addressed at hearing when the issues were reviewed, they will not be addressed in this Decision.

High Tech contends that an IEP was developed and offered at the September 30, 2021 IEP team meeting. It asserts that it offered measurable and appropriately ambitious goals in all identified areas of need.

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 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 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 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 (*Endrew*).)

HIGH TECH'S SEPTEMBER 2, 2021 DOCUMENT CONSTITUTED AN IEP OFFER

Student had been eligible for special education since May 1, 2008. High Tech provided Parents a draft IEP document dated September 2, 2021. As explained more

fully below, this document constituted an IEP offer that High Tech made on September 30, 2021. This offer was the pending IEP offer at the beginning of the statutory period on November 6, 2021. Accordingly, Student does not prevail on the threshold argument that High Tech made no IEP offer, and therefore offered no legally compliant goals, on September 30, 2021.

Student's IEP team met during February 2021, and reconvened on September 30, 2021, to discuss Student's Individual Transition Plan. High Tech provided Parents with a draft IEP document prior to the September 2, 2021 IEP meeting, and the draft was dated September 2, 2021. The IEP team meeting actually occurred on September 30, 2021. The draft document included the names of anticipated IEP team meeting participants that did not ultimately attend the meeting on September 30, 2021, namely, Student and Father. The draft also bore a watermark that said "Worksheet - Not an Official Document," which meant that the electronic IEP document was still editable.

High Tech did not update the September 2, 2021 document for the September 30, 2021 meeting. Instead, Colleen Molina, Principal at High Tech, worked from the September 2, 2021 draft during the September 30, 2021 meeting.

The September 30, 2021 IEP team meeting concluded at the end of the scheduled time. The IEP discussion was still underway, but some High Tech team members had other scheduling commitments so the meeting ended. Student argues that because of this, Mother was not afforded a complete opportunity to discuss the proposed IEP. But Mother did not share that concern with High Tech's IEP team members as the meeting was ending. Rather, it was Molina that offered to schedule a continuation meeting, and Mother accepted. After the meeting but before another one was scheduled, Molina asked Parents to accept and sign the draft document. Molina's

conduct, then, established that High Tech intended to make Student an IEP offer. Mother did not agree with all components of the offer, but testified at hearing that she granted partial consent, specifically to implement services.

The next IEP team meeting was held on May 6, 2022, and the evidence did not establish that any other IEP team meeting occurred between September 30, 2021, and May 6, 2022. The evidence did not establish that Parents independently requested another IEP team meeting between September 30, 2021, and May 6, 2022.

An IEP must contain a statement of the program modifications or supports that will be provided for the student to advance appropriately toward attaining annual goals and to be involved in and make progress in the regular education curriculum, and a statement of any individual accommodations that are necessary to measure the student's academic achievement and functional performance. (20 U.S.C. § 1414(d)(1)(A)(i)(IV), (VI)(aa); Ed. Code, § 56345, subds. (a)(4), (6)(A).)

The IEP is the centerpiece of the IDEA's education delivery system for disabled children and consists of a detailed written statement that must be developed, reviewed, and revised for each child with a disability. (*Honig v. Doe* (1988) 484 U.S. 305, 311 [108 S.Ct. 592, 98 L.Ed.2d 686]; 20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345.) The IEP is the "modus operandi" of the IDEA, that contains a comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs. (*School Comm. of Burlington v. Department of Educ.* (1985) 471 U.S. 359, 370 [105 S. Ct. 1996, 85 L. Ed. 2d 385 (*Burlington*).)

An IEP is a written document for each child with a disability that includes a statement of the child's present levels of academic achievement and functional

performance, including how the child's disability affects the child's involvement and progress in the general education curriculum. (20 U.S.C. § 1414(d)(1)(A)(i)(I); 34 C.F.R. § 300.320(a)(1); Ed. Code, § 56345, subd. (a)(1).) In developing the IEP, the IEP team must consider

- the strengths of the child,
- the concerns of the parents for enhancing the child's education,
- the result of the most recent evaluation of the child, and
- the academic, developmental, and functional needs of the child.

(20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. §§ 300.324 (a).)

Information about a child's present levels may derive from a variety of sources, including IEP team members, assessment reports, work samples, and grades. (See, *J.L.N. v. Grossmont Union High School* (S.D. Cal., Sept. 30, 2019, No. 17-CV-2097-L-MDD) 2019 WL 4849172, at p. 8.)

The document dated September 2, 2021, that was discussed and reviewed during the September 30, 2021, contained present levels, goals, services, and placement. Parents had the right to consent to some or all of the IEP. Mother ultimately did so by consenting to implementation of services, which obligated High Tech to implement the agreed-upon components. Accordingly, the document dated September 2, 2021, that was discussed and reviewed during the September 30, 2021 IEP team meeting constituted High Tech's IEP offer and included the legally required components of an IEP.

MATH

Student contends in Issue 1(a) that High Tech denied Student a FAPE by failing to offer a math goal. Student's contention is analyzed consistent with the ruling regarding

the statutory period at issue and the threshold determination that the September 30, 2021 document was an IEP. High Tech asserts that Student did not need a math goal because Student was not taking a math class his senior year.

Mother testified that Student had needs in math and required a goal. There was much evidence and argument regarding the utility of a math goal given Student was not taking a math class. Additionally, High Tech asserted that Student availed himself to a COVID-related math exemption that permitted him to graduate without completing all required math courses. This dispute does not need to be resolved, however, because Student's challenge to the lack of a math goal is time barred.

California has a two-year statute of limitations for the filing of IDEA claims. (Ed. Code, § 56505, subd. (l).) The two-year period begins to run when a parent knew or should have known of the facts giving rise to the claimed violation. (*Ibid.*) Parents knew what the IEP contained when it is offered to them. Here, Student's request for due process hearing was filed on November 6, 2023, making claims arising before November 6, 2021, time barred. Here, Parents were aware of any lack of math goal in the September 30, 2021 IEP, on its face, yet waited more than two years to challenge it. According to the weight of authority, Student's challenge to the lack of a math goal in the September 30, 2021 IEP is therefore barred by the statute of limitations. High Tech prevailed on Issue 1(a).

VOCATIONAL SKILLS GOAL

Student contends in Issue (1)(b) that High Tech denied Student a FAPE by failing to offer a vocational skills goal in the September 30, 2021 IEP. High Tech asserts that it did offer Student a vocational skills goal. Student's Issue 1(b) fails as a matter of law because

it is also barred by the statute of limitations. Even if Student's allegation was not time barred, Issue 1(b) would also fail as a matter of fact because the evidence established that High Tech did offer Student a vocational skills goal in the September 30, 2021, IEP. High Tech prevailed on Issue 1(b).

ISSUE 1.e.: DID HIGH TECH DENY STUDENT A FAPE BY FAILING TO OFFER LEGALLY COMPLIANT GOALS IN SPEECH AND OCCUPATIONAL THERAPY?

Student contends in Issue 1(e) that High Tech did not offer "legally compliant" goals in speech or occupational therapy. Student's contention is analyzed consistent with the ruling regarding the statutory period at issue and the threshold determination that the September 30, 2021 document was an IEP. The evidence established that High Tech did not offer any speech or occupational therapy goals in that IEP. The September 30, 2021 offer was in effect at the beginning of the statutory period in November 2021. While the IEP team met on May 6, 2022, neither side established that new or different goals were developed or actually offered pursuant to the May 6, 2022 meeting.

As such, Student's issue can be more broadly interpreted to allege that High Tech denied Student a FAPE by not offering any speech or occupational therapy goals in the September 30, 2021 IEP. High Tech contends that Student's present levels, including assessments and teacher observations, indicated that Student did not need any speech or occupational therapy goals.

Here, Parents were aware of any lack of speech or occupational therapy goals in the September 30, 2021 IEP, on its face, yet waited more than two years to challenge

it. According to the weight of authority, Student's challenge to the lack of speech or occupational therapy goals in the September 30, 2021 IEP is therefore barred by the statute of limitations.

Even if Student's allegation was not time barred, Issue 1(e) would also fail as a matter of fact because Student did not establish any occupational therapy or speech language needs specific to the statutory period. Student did not introduce any evidence, and thus did not prevail, on the allegation that High Tech denied Student a FAPE by failing to offer any speech or occupational therapy goals. High Tech prevailed on Issue 1(e).

ISSUES 1.c. AND 1.d.: DID HIGH TECH DENY STUDENT A FAPE BY FAILING TO OFFER LEGALLY COMPLIANT GOALS IN ACADEMICS, SPECIFICALLY, READING AND WRITING?

READING AND WRITING GOALS

To the extent Student's issues allege a failure to offer any reading or writing goals at all, such a claim fails as a matter of law because it is time barred, as discussed above. Student's argument would also fail as a matter of fact because the evidence established that High Tech did offer reading and writing goals in the September 30, 2021 IEP. Giving Student the broadest interpretation of his pled issues, it could be read to seek a finding regarding whether the September 30, 2021 IEP offered legally compliant reading and writing goals. High Tech asserts generally that the goals offered on September 30, 2021, were measurable and appropriately ambitious.

An annual IEP must contain a statement of measurable annual goals designed both to meet the student's disability-related needs to enable the pupil to be involved in and make progress in the general curriculum; and meet each of the pupil's other educational needs that result from disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); 34 C.F.R. §300.320(b); Ed. Code, § 56345, subd. (a)(2).) In addition, the IEP must include a description of how the child's progress toward meeting the annual goals will be measured, and when periodic reports on progress will be provided. (20 U.S.C. § 1414(d)(1)(A)(III); 34 C.F.R. § 300.320(b)(4); Ed. Code, § 56345, subd. (a)(3).) To provide a FAPE, annual goals must be appropriately ambitious in light of the student's circumstances. (*Endrew F.*, *supra*, 580 U.S. 386, 402.) The purpose of annual goals is to permit the IEP team to determine whether the student is making progress in an area of need. (Ed. Code, § 56345, subd. (a).) To be legally compliant, then, a goal must be measurable and designed to meet Student's disability-related needs to enable Student to be involved in and make progress in the general curriculum.

A goal is either measurable or not on the day it is drafted and offered. Here, Student's reading and writing goals were offered during the IEP team meeting on September 30, 2021. The statutory time at issue in this case only extends back to November 2021. As noted, Student did not plead nor prove that the statute of limitations should be extended. Accordingly, whether Student's reading or writing goals were measurable falls outside that time period. No findings are reached regarding whether Student's reading or writing goal was measurable as this claim is time barred.

Whether the reading and writing goals were designed both to meet the student's disability-related needs and to enable Student to be involved in and make progress in the general curriculum is a more dynamic question. Offered goals are to be implemented throughout the entire year. Unlike measurability that can be

determined at a fixed point in time, namely, when offered, Student can challenge the appropriateness of the goals beginning on the first day of the statutory period. For that reason, Student was permitted to litigate whether his reading and writing goals were appropriate beginning in November 2021 through the end of the 2021-2022 school year. Despite such a liberal interpretation of the issues, Student still failed to meet his burden.

Student presented no evidence from teachers or experts asserting Student's reading and writing goals were not designed to meet his disability-related needs or did not enable him to be involved in and make progress in the general curriculum. Mother was the only witness called to address such. She offered no testimony regarding Student's reading goal other than a general challenge that because the IEP team discussion finished early, she was not involved in the development of such. This argument was not persuasive.

Regarding writing, Mother was concerned because the annual writing goal sought 70 percent accuracy it was not appropriately ambitious. In her view, 70 percent represented the bare minimum. Mother may have been referring to a previous IEP, because the annual writing goal in the September 30, 2021 IEP sought 80 percent accuracy. The present level of performance in writing listed in the September 30, 2021 IEP described Student's challenge in incorporating textual evidence and quotes to support Student's analysis. Given this need, the writing goal was appropriately ambitious.

Student failed to meet his burden to establish that his reading and writing goals were not designed to meet Student's disability-related writing need and enable him to

be involved in and make progress in the general curriculum. Accordingly, Student did not prove the reading and writing goals offered were not legally compliant. High Tech prevailed on Issues 1(c) and 1(d).

ISSUES 1.f. AND 1.g.: DID HIGH TECH DENY STUDENT A FAPE BY FAILING TO OFFER COLLEGE AND CAREER AWARENESS GOALS AND SERVICES?

Student contends that Student was not offered any college or career awareness service because no official IEP team meeting occurred or offer made. That question was resolved in High Tech's favor. High Tech's September 30, 2021 IEP did include a transition plan.

High Tech contends it offered Student legally compliant transitional services and even if the transition plan was in any way procedurally deficient, it did not result in a loss of educational opportunity nor deny Student a FAPE. High Tech contends that it provided Student with comprehensive services in college and career awareness during the relevant time period.

The IEP in effect when a student reaches 16 years of age must include appropriate measurable post-secondary goals based upon age-appropriate transition assessments related to training, education, employment and, where appropriate, independent living skills. (Ed. Code, §§ 56043, subd. (g)(1); 56345, subd. (a)(8).) The IEP must also offer transition services, including courses of study, needed to assist the student in reaching those goals. (34 C.F.R. § 300.320(b); Ed. Code, § 56345, subd. (a)(8).)

Transition services are defined as a coordinated set of activities designed within a results-oriented process, focused on improving the academic and functional achievement

of the individual to facilitate movement from school to post-school activities, including post-secondary education, vocational education, and integrated employment, including

- supported employment,
- continuing and adult education,
- adult services,
- independent living, or
- community participation.

Transition services are to be based upon individual needs, taking into account individual strengths, preferences, and interests. Transition services include

- instruction,
- related services,
- community experiences,
- development of employment and other post-school adult living objectives, and, if appropriate,
- acquisition of daily living skills and provision of a functional vocational evaluation.

Transition services may be special education, if provided as specially designed instruction, or related services. (20 U.S.C. § 1401(34); 34 C.F.R. § 300.43; Ed. Code, § 56345.1.)

Transition plans help students gain skills they will need when they graduate from high school or age out of special education at age 22. Transition services emphasize the acquisition of functional skills and hands-on knowledge, enabling students to enter the workforce or continue their education or training. Such services also prepare students to eventually live as autonomously as possible, given the extent of their disabilities.

Transition goals vary from other annual goals. Transition goals reflect the desires and plans of the student. (20 U.S.C. § 1401(34); Ed. Code, § 56345.1, subd. (a)(2).) In contrast, other annual goals state measurable standards by which the district's program for the child will be measured by the end of the next twelve months. (20 U.S.C. § 1414(d)(1)(A)(i)(II).) Transition goals also address a child's career or post-secondary education after graduation. For this reason, progress on post-secondary goals cannot be measured while a child is still in high school.

The adequacy of the transition plan and services must be viewed as an aggregate in light of the child's overall needs. The test is whether the IEP, taken in its entirety, is reasonably calculated to enable the child to garner educational benefit. (*Lessard v. Wilton-Lyndeborough Cooperative School Dist.* (1st Cir. 2008) 518 F.3d 18, 30.)

The September 30, 2021 IEP offer included an Individualized Transition Plan. Student does not challenge the entirety of the transition plan, only the adequacy of the college and career goals and services components of the plan.

The evidence established that Student participated in two college tours organized by Nicole Miramontes, also known as Nicole Dorfler, who was High Tech's Director of College Advising. Student participated in a one-day college bus tour of California State University Los Angeles and University of Southern California in the Spring of 2019. Student also participated in a one-day college bus tour of Chapman University and University of California, Irvine in either February or early March of 2020, before COVID-19 closures took effect. Student also met with Miramontes in August of Student's senior year during one of Student's English class periods to discuss college and career options. Student also completed a transition survey and questionnaire during the 11th grade, which informed the transition plan portion of the September 30, 2021 offer.

Student expressed interest in drawing, playing video games, and doing impressions. To this end, Student had joined the Game Club. Student also represented that he had worked with Father and had work experience with metal sheeting and “prepping” amplifiers.

Based on these interests, one goal in the transition plan was for Student to participate in an apprenticeship. The plan listed an activity in furtherance of this goal, specifically, that Student, with the help of Parents, the career advisor, and special education teacher, would research potential occupational centers for career development.

Another goal was to enroll in a two- or four-year college. The plan listed an activity in furtherance of this goal, which was that Student, with the help of Parents and special education teacher, would meet with a college advisor to discuss post-secondary educational goals like occupational centers. The transition plan also included the email contact information for Miramontes so that Student could contact her with any college-related questions.

Pursuant to the plan, Miramontes met with Student again in October of Student’s senior year in an individual appointment in her office. Miramontes also believes she met one additional time with Student during January of his senior year. Miramontes remembers Student being interested in welding and sword making. Pursuant to her conversations with Student, Miramontes agreed that an occupational center certificate or community college would be a path to that end.

Additionally, on April 10, 2022, Paiva and Student worked together to complete a “Summary of Performance.” The summary was a personalized resource for Student that contained contact information Student could use to pursue his post-high school goals.

The goals listed in the Summary were consistent with the goals articulated in Student's transition plan. For example, the summary contained contact information for the District Office of Transition Services, as well as contact information where Student could obtain a copy of his transcripts and special education documentation. The summary also included Molina's contact information in case Student needed a letter of recommendation, as well as contact information for an employment agency and Pierce College. The summary listed the above contact information within one document to facilitate Student's job search and college enrollment.

The IEP facilitated movement from school to post-school activities, including post-secondary education, vocational education, and integrated employment. It took into account Student's individual strengths, preferences, and interests. It included development of employment and other post-school adult living objectives. The goals reflected Student's desires and plans. It therefore complied with the legal requirements for transition plans and did not deny Student a FAPE. High Tech prevailed on Issues 1(f) and (g).

ISSUE 1.h.: HIGH TECH DID NOT FAIL TO CONVENE IEP TEAM MEETINGS AT PARENT'S REQUEST

Student contends that no official IEP team meeting was held during the period at issue. Student contends that High Tech made attempts to hold an IEP team meeting on November 2, 2021, but that the meeting never occurred due to the unavailability of High Tech team members. Student contends that Student's triennial IEP was due in May of 2022, but that High Tech declined to hold the IEP team meeting because Student was to graduate shortly thereafter.

High Tech contends that it made ongoing efforts to convene IEP team meetings despite Mother's lack of responsiveness and meeting cancellations. The parties agree that they also met on May 6, 2022. No finding is made regarding whether this meeting resulted in a new IEP offer.

An IEP team shall meet at least annually to review a pupil's progress, the individualized education program, including whether the annual goals for the pupil are being achieved, the appropriateness of the placement, and to make any necessary revisions. (Ed. Code, § 56043, subd. (j).) An IEP team meeting requested by a parent shall be held within 30 calendar days from the date of receipt of the parent's written request. (*Ibid.*, subd. (l).)

The evidence established Student's annual IEP team meeting was held on September 30, 2021. Student did not introduce any evidence or testimony to establish that High Tech failed to convene an IEP team meeting based on any independent request made by Parent after November 6, 2021.

Rachel Garber, also known as Rachel Miller, was the private education consultant with whom High Tech contracted at High Tech during the year in question. Garber's job was to ensure that all necessary parties attended an IEP team meeting. Garber testified to the responsibilities and standard procedures of her job consistently and without hesitation and was credible. Garber explained that she was responsible for contacting families to schedule IEP team meetings, and did this through emails, telephone calls, texts, and letters. Typically, Garber initiated contact with High Tech parents to schedule an IEP team meeting through email. If Garber was unsuccessful in reaching parents that way, she would follow up with a text, and then a telephone call. After that, Garber

would send a “three-date letter,” setting forth three potential meeting dates. When High Tech parents would request an IEP team meeting, the school would refer to Garber for a response.

Garber emailed Parents and Student on April 12, 2022, to schedule an IEP team meeting for May 2, 2022, at 9:15 a.m. prior to Student’s upcoming graduation. The evidence established this was initiated by High Tech and not in response to parental request. The email requested that Parents indicate whether they planned on attending the meeting. Garber followed up with Parent by text on April 18, 2022. The text also invited Parent to propose another date and time for the meeting if Parent was unable to attend the date and time High Tech proposed. On May 2, 2022, Parent replied by email to Garber asking for a Zoom link to the IEP team meeting. Garber called Parent on May 2, 2022, and Garber and Parent spoke for 11 minutes. Garber remembered having difficulty rescheduling the May 2, 2022 meeting because Parent was preoccupied with discussing her grievances regarding the IEP. Garber did not recall whether Parent suggested other dates or times for the meeting. No evidence established that Parent did so. Later that day, Garber emailed a Zoom link to Parent for an IEP team meeting scheduled four days later for Friday, May 6, 2022. Parent attended the IEP team meeting on May 6, 2022, but had to end the IEP team meeting early because Parent had to pick up another child. At the end of the meeting, Parent asked that the team finish the IEP meeting another day.

Molina promised to have Garber coordinate another day for the IEP team to reconvene to complete the discussion. On May 16, 2022, Garber emailed Parent with the new Zoom link for an IEP team meeting on May 17, 2022, at 11:00 a.m. On May 17, 2022, Parent responded to Garber stating that she was unable to attend the meeting.

Parent requested an IEP team meeting for later that day. The following day, Garber texted Parent suggesting meeting on either May 24, 2022, at 1:00 p.m. or May 26, 2022, and offered a selection of potential meeting times on that day. Garber and Parent agreed to schedule an IEP team meeting for May 24, 2022, at 1:00 p.m. The evidence did not establish if this meeting ultimately occurred.

The period at issue in the present case spans from November 6, 2021, though the remainder of the 2021-2022 school year. Student did not introduce any evidence that would suggest that at any time during that period, Parents made an independent request for an IEP team meeting that did not occur. When, at the conclusion of the appointed time for the May 6, 2022 IEP team meeting, Parent asked that the team reconvene to complete the IEP meeting that High Tech initiated, High Tech scheduled a conclusion meeting on May 24, 2022, and confirmed the same with Parent. Student did not introduce any evidence or testimony to establish that the May 24, 2022 follow up meeting did not occur due to High Tech's failure.

Student did not establish that Parent made an independent request for an IEP team meeting during the period at issue, or that High Tech failed to honor such a request. High Tech prevailed on Issue 1(h).

ISSUE 1.i.: STUDENT DID NOT EXPERIENCE REGRESSION DURING HIS SENIOR YEAR

Student contends that High Tech knew that Student was prone to regression based on Student's poor attendance as well as Student's poor academic performance in previous years that necessitated Student's retaking some classes during the 11th grade, and that High Tech failed to address regression in Student's senior year.

High Tech contends that it provided Student with an educational program that facilitated Student's notable progression in school, culminating in Student's timely graduation from high school, and that no regression services were needed.

On March 12, 2020, OSERS issued guidance that IEP teams would be required to make an individualized determination as to whether compensatory services were needed to make up for any skills that may have been lost during school closure due to the COVID-19 pandemic. (Office of Special Education and Rehabilitative Services, Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak, Answer to Questions A-1, A-2, and A-3 (March 12, 2020).) OSERS reiterated this in additional guidance on March 16, 2020. (Office of Special Education and Rehabilitative Services, Fact Sheet Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students (March 16, 2020).)

On March 20, 2020, CDE issued guidance that stated: "[o]nce the regular school session resumes, local educational agencies should plan to make individualized determinations, in collaboration with the IEP team, regarding whether or not compensatory services may be needed for a student." (Cal. Dept. of Educ., Special Education Guidance for COVID-19, COVID-19 School Closures and Services to Students with Disabilities, Answer to Question 3 (March 20, 2020).) On March 21, 2020, OSERS issued further guidance that stated:

"[w]here, due to the global pandemic and resulting closures of schools, there has been an inevitable delay in providing services ... IEP teams ... must make an individualized determination whether and to what extent compensatory services may be needed when schools resume normal operations." (Office of Special Education and Rehabilitative Services,

Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities, pp. 2-3 (March 21, 2020).)

Neither party introduced evidence as to whether such a determination was made. The evidence introduced does, however, suggest that Student not only suffered no regression during his senior year but improved academically. Student did not meet his burden in proving otherwise. Rather, the evidence established that Student's senior year was the first year he had passed all of his classes, earning As, Bs, and Cs.

Student was in Paiva's class, which was a study hall where Paiva helped Student work on assignments from other classes. Paiva noticed that, over time, Student became more adept at prioritizing assignments worth more points over those worth fewer points, which is how Student was able to mitigate the effect of his absences. Student's grade in this class was based on work habits, and he earned As in this class.

Mercedez Vasquez was a High Tech school counselor, credentialed to do school counseling for students from Kindergarten through 12th grade. Vasquez worked with Student during his 11th and 12th-grade years. Vasquez's work with Student centered around his academic success. She observed that Student's writing improved during Student's 12th-grade year because he was motivated to graduate. Vasquez also observed Student in class and opined that he improved and had better organization and time management his senior year. As a person who worked with Student on his academic success over the course of two school years, Vasquez was uniquely situated to make this observation, and was credible.

Student did not provide any evidence of regression during the period at issue and failed to rebut evidence that demonstrated Student's progression, culminating in Student's timely graduation with a high school diploma. Student did not prove that High Tech denied Student a FAPE by failing to address regression. High Tech prevailed on Issue 1(i).

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(a):

High Tech did not deny Student a FAPE from November 6, 2021, through the remainder of the 2021-2022 school year by failing to offer a goal in math.

High Tech prevailed on Issue 1(a).

ISSUE 1(b):

High Tech did not deny Student a FAPE from November 6, 2021, through the remainder of the 2021-2022 school year by failing to offer a goal in vocational needs.

High Tech prevailed on Issue 1(b).

ISSUE 1(c):

High Tech did not deny Student a FAPE from November 6, 2021, through the remainder of the 2021-2022 school year by failing to offer a legally compliant annual goal in the area of reading.

High Tech prevailed on Issue 1(c).

ISSUE 1(d):

High Tech did not deny Student a FAPE from November 6, 2021, through the remainder of the 2021-2022 school year by failing to offer a legally compliant annual goal in the area of writing.

High Tech prevailed on Issue 1(d).

ISSUE 1(e):

High Tech did not deny Student a FAPE from November 6, 2021, through the remainder of the 2021-2022 school year by failing to offer legally compliant annual goals in the areas of speech and occupational therapy.

High Tech prevailed on Issue 1(e).

ISSUE 1(f):

High Tech did not deny Student a FAPE from November 6, 2021, through the remainder of the 2021-2022 school year by failing to offer legally compliant annual goals in the areas of college and career awareness.

High Tech prevailed on Issue 1(f).

ISSUE 1(g):

High Tech did not deny Student a FAPE from November 6, 2021, through the remainder of the 2021-2022 school year by failing to offer college and career awareness services.

High Tech prevailed on Issue 1(g).

ISSUE 1(h):

High Tech did not deny Student a FAPE from November 6, 2021, through the remainder of the 2021-2022 school year by failing to convene IEP team meetings at Parents' request.

High Tech prevailed on Issue 1(h).

ISSUE 1(i):

High Tech did not deny Student a FAPE from November 6, 2021, through the remainder of the 2021-2022 school year by failing to address Student's regression.

High Tech prevailed on Issue 1(i).

REMEDIES

Student did not prevail on any issue. All Student's requests for relief are denied.

RIGHT TO APPEAL THIS DECISION

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

Claire Yazigi

Administrative Law Judge

Office of Administrative Hearings