

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

TAHOE TRUCKEE UNIFIED SCHOOL DISTRICT,

V.

PARENTS ON BEHALF OF STUDENT.

CASE NO. 2024020469

DECISION

AUGUST 2, 2024

On February 12, 2024, the Office of Administrative Hearings, called OAH, received a due process hearing request from Tahoe Truckee Unified School District, called Tahoe District, naming Student. On February 26, 2024, this matter was continued to April 9, 2024. Administrative Law Judge Christine Arden heard this matter via videoconference on April 9, 10, 11, 24, and 25, May 7, 8, 9, 21, 22, 23, 28, 29, and 30, and June 4, 5, and 6, 2024.

Attorneys Matthew Juhl-Darlington and Nicole Mirkazemi represented Tahoe District. Dr. Annamarie Cohen, Executive Director of Student Services for Tahoe District, attended all hearing days on Tahoe District's behalf. Mother represented Student. Both

Parents attended all hearing days on Student's behalf. Student attended the hearing on one day. A Spanish language interpreter provided English to Spanish and Spanish to English interpretation services throughout the hearing for Parents, whose primary language is Spanish. American Sign Language, called ASL, interpreters provided ASL interpretation services to Student while he testified and during the day he attended the hearing, and to one other witness who testified at the hearing.

At the parties' request the matter was continued to July 22, 2024, to allow time for the parties to submit their written closing argument briefs. The record was closed, and the matter was submitted on July 22, 2024. A free appropriate public education is called a FAPE. An individualized education program is called an IEP.

ISSUE

Did the IEP developed on September 21, 2023, and continued on October 11, 2023, offer Student a FAPE, such that Tahoe Truckee Unified School District may implement that IEP without Parents' consent?

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JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.)

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

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

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a free appropriate public education, referred to as FAPE, to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) In this case Tahoe District requested the hearing and,

therefore, had 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 16 years old and in tenth grade at the time of hearing. Student resided within Tahoe District's geographic boundaries at all relevant times. Student was eligible for special education under the primary eligibility category of Deafness, and the secondary eligibility category of Speech or Language Impairment. (Cal. Code Regs., tit. 5, § 3030 (b)(3) & (11).)

ISSUE: DID TAHOE DISTRICT OFFER STUDENT A FAPE IN THE IEP DEVELOPED ON SEPTEMBER 21, 2023, AND CONTINUED ON OCTOBER 11, 2023?

Tahoe District contends the IEP developed on September 21, 2023, and continued on October 11, 2023, called the September 2023 IEP, was based upon the results of appropriately conducted, comprehensive assessments in all of Student's areas of suspected disability. Tahoe District also contends the September 2023 IEP offered accurate present levels of performance, and appropriately identified Student's needs. Tahoe District further contends the September 2023 IEP offered Student appropriate measurable goals, placement in the least restrictive environment, related services, accommodations, special factors and equipment, and all other elements necessary to constitute a FAPE for Student as of October 11, 2023, the date it was finalized by the IEP team. Tahoe District further contends it materially complied with all substantive and procedural requisites in connection with the development of the September 2023

IEP. Tahoe District additionally contends that, based upon all of the district's above-mentioned contentions, OAH should issue an Order finding the September 2023 IEP constitutes a FAPE, and can be implemented by Tahoe District without Parents' consent.

Student contends the September 2023 IEP denied him a FAPE because it did not guarantee he would receive only individually delivered ASL interpretation services while he was participating in general education classes and extracurricular activities. Student further contends the September 2023 IEP denied him a FAPE because it did not offer him only individual speech and language services. Student also contends the September 2023 IEP denied him a FAPE because the offers of interpretation services and speech and language services were not sufficiently clear because Tahoe District failed to specify how much of Student's ASL interpretation services, and speech and language services, would be delivered to him individually, and how much would be in a small group setting. Student further contends the September 2023 IEP failed to offer Student appropriate transportation services to and from school. Student additionally contends Parents did not timely receive a copy of the complete September 2023 IEP translated into Spanish. Student further contends the offer of a FAPE in the September 2023 IEP was inappropriate because it was based upon the results of Student's three-year-review assessments, and some of those assessment results were not valid.

AN IEP MUST REASONABLY ADDRESS A CHILD'S NEEDS BY OFFERING A PROGRAM THAT ALLOWS THE CHILD TO ACCESS THE CURRICULUM

A FAPE means special education and related services that meets state educational standards and which are available at public expense to an eligible child 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.)

The 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. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320 (a)(1).) An IEP must contain a statement of the special education and related services and supplementary aids and services to be provided to the pupil. The IEP must also describe the program modifications or supports which school personnel will provide to enable the child to advance appropriately toward attaining his annual goals. The program and supports outlined in an IEP should enable a child to be involved and make progress in the regular education curriculum. The program, services and supports offered in an IEP should enable the child to also participate in nonacademic activities, and to be educated and participate with other individuals with exceptional needs and nondisabled pupils. (20 U.S.C. § 1414(d)(1)(A)(i)(IV); Ed. Code, § 56345, subd. (a).)

In developing the IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child and the academic, functional, and developmental needs of the child. (20 U.S.C. § 1414(d)(3)(A).) For each area in which a special education student has an identified need, the IEP team must develop annual goals based upon the child's present levels of academic achievement and functional performance. (Ed. Code, § 56345, subd. (a)(2).) The IEP team is required to review a child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved. The IEP team must also at least annually revise

the IEP as appropriate to address any lack of progress toward the child's annual goals, the results of any reevaluation, information provided by the parents, the child's anticipated needs, and other matters. (20 U.S.C. § 1414(d)(4)(A).)

In general, a child eligible for special education must be provided access to specialized academic 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 [102 S.Ct. 3034] (*Rowley*); *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. 386, 402 [137 S.Ct. 988, 1000] (*Endrew F.*).

STUDENT'S BACKGROUND

Student was born bilaterally deaf and has cochlear implants. Consequently, he missed some language learning opportunities early in life, according to the testimony of Kelly Hamilton, speech-language pathologist with the Placer County Office of Education, called Placer COE, who provided Student with speech and language services for the 2023-2024 school year and conducted a speech and language assessment of Student in September 2023. A cochlear implant is surgically implanted in the ear and replaces the cochlea. The cochlear implants directly stimulate the auditory nerve, sending signals to the brain, which recognizes the signals as sounds. Once Student was fitted with cochlear implants, he was able to hear sounds. However, hearing through cochlear implants is different from normal hearing. It requires some learning and time to adapt.

Student was trilingual. He used Spanish, English, and ASL to communicate. Student's first language was Spanish, which was spoken in his home. Based upon results of assessments of Student, he was categorized as an "English Learner" at school at the

time of hearing because he continued to have some deficiencies in spoken English, which is not unusual for a deaf child, according to Hamilton. At the time of hearing Student also continued to improve his ASL skills.

Student's overall non-verbal cognitive skills fell in the average range. His skills in math and writing were strong. However, his English reading and listening comprehension skills were below average. Therefore, Student required various supports in order to access the portions of the curriculum and extracurricular activities delivered auditorily. Student is a creative, outgoing, social adolescent with many interests. Multiple witnesses confirmed Student frequently enjoyed chatting with friends and he was often part of a group of peers at school. Student primarily used his voice, rather than ASL, to communicate in conversations.

Student's English vocabulary was good. His verbal syntax, which is the appropriate order of spoken words, was very good. Student's pragmatic use of language was also good. Student had the skills to have effective social conversations. He had some minor articulation issues. Student could make all sounds required by the English language. However, he occasionally had difficulty articulating small sounds at the end of words, such as "ing," "s," and "ed," probably because he did not always hear them. Sometimes Student also substituted an incorrect vowel sound, such as a "d" for a "g," in the middle of a word. Student also occasionally had difficulty articulating consonant clusters in longer words, which is typical for deaf people, according to Hamilton. Student's speech could generally be understood. Hamilton testified that Student could learn to correct his articulation deficits with practice. Student's articulation skills were addressed during his speech and language services.

TAHOE DISTRICT CONTRACTED WITH PLACER COUNTY SELPA TO PROVIDE A PROGRAM FOR ITS DEAF AND HARD OF HEARING STUDENTS

Deafness is a “low incidence” disability, meaning that relatively few children with disabilities are deaf. Tahoe District is one of multiple school districts and charter schools that constitute the members of the Placer County Special Education Local Planning Area, called the Placer County SELPA. A SELPA is an entity that collectively provides certain special education programs and services to children on behalf of its members. Tahoe District’s geographic area is located in the Sierra Nevada Mountains within Nevada County, Placer County, and El Dorado County. Tahoe District contracted with the Placer County SELPA for a deaf and hard-of-hearing, called DHH, program. That DHH program served deaf and hard of hearing children residing within Tahoe District’s geographical boundaries.

Placer County Office of Education, called Placer COE, employed the special educators, related service providers, and other specialists and personnel who staffed the DHH class, which was hosted at Del Oro High School. Student was in the DHH class for two periods a day during the 2022-2023 and 2023-2024 school years when Student was in ninth and tenth grades, respectively. Student received both specialized academic instruction and English in his DHH class. In developing the September 2023 IEP, Student’s IEP team determined he could succeed in a general education English class.

Del Oro High was a comprehensive high school for ninth through twelfth grades located in Loomis, California. Del Oro High was a school within the Placer Union High School District. The one-way commute between Student’s home and Del Oro High was approximately 90 minutes long by car. If there was snowfall in the mountains where

Student's home was located, it might take even longer, or Student might not be able to get to school at all under those conditions. Parents drove Student to and from school in the 2023-2024 school year. Student had friends at Del Oro High and wanted to continue attending school there.

STUDENT DID WELL IN GENERAL EDUCATION CLASSES IN HIGH SCHOOL

Since ninth grade Student took classes on the track to earning a regular high school diploma. Student planned to attend college after graduating from high school. Student was unsure whether he would prefer to attend either a two-year, community college, or a four-year university or college, immediately following high school. Therefore, Student hoped to take the types of high school classes that would qualify him to be accepted to certain four-year colleges or universities immediately after his high school graduation. These types of college preparatory classes are commonly referred to in California as "A through G classes." Teachers familiar with Student who testified at hearing consistently opined Student had the ability to succeed in college preparatory high school classes, and to eventually attend and succeed at college.

It was important to both Student and Parents that Student graduate on time with his class from Del Oro High at the end of the 2025-2026 regular school year. Student was involved in the Future Farmers of America club at school. He convincingly testified he needed an ASL interpreter to accompany him to the club meetings to grasp all the content of the meetings. Despite following Placer COE protocols to obtain an ASL interpreter services for an extracurricular activity, Student was never able to obtain an

interpreter to accompany him to club meetings. Student hoped to study animal science, marine biology, or zoology in college. His career interests and plans required him to eventually earn a college degree.

TAHOE DISTRICT'S BURDEN OF PROOF

"Burden of proof" means the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court. The burden of proof may require a party to raise a reasonable doubt concerning the existence or nonexistence of a fact, or that he established the existence or nonexistence of a fact, by a preponderance of the evidence, by clear and convincing evidence, or beyond a reasonable doubt. Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence. (Evid. Code, § 115.) In this case, Tahoe District had the burden to establish all elements of its case by a preponderance of the evidence. Therefore, in order to prevail, Tahoe District had to prove the September 2023 IEP complied with both the substantive and procedural requisites of the IDEA and the California Education Code.

Where a local educational agency, such as Tahoe District, seeks to have OAH adjudicate whether it offered a student FAPE, the entirety of the IEP offer must be analyzed for both procedural and substantive compliance. First, the ALJ must determine if the district complied with the procedures set forth in the IDEA and the California Education Code. Second, the ALJ must decide whether the IEP developed through those procedures complied with the substantive FAPE standard. This requires the district to prove that the offered IEP was designed to meet the child's unique needs, and "reasonably calculated to enable the child to receive educational benefit." (*Rowley*,

supra, 458 U.S. at pp. 206-207.) The district must also prove the offered IEP was "reasonably calculated to enable the child to make progress appropriate in light of the child's circumstances." (*Endrew F.*, *supra*, 580 U.S. at p. 403.)

When, as in this case, the parents of a child receiving special education refuse to consent to the implementation of all or part of an IEP, Education Code section 56346 requires the district to prove in a due process hearing that its IEP, in its entirety, offered the child a FAPE. Section 56346 requires the district to:

- provide prior written notice pursuant to Education Code section 56500.4 before ceasing to provide any current IEP component no longer consented to (Ed. Code, § 56346, subd. (d)(1));
- continue to implement any components of the program to which the parent has consented (Ed. Code, § 56346, subd. (e)); and
- expeditiously initiate a due process hearing "in accordance with Section 1415(f) of title 20 of the United States Code." (Ed. Code, § 56346, subd. (f); (*I.R. v. Los Angeles Unified School Dist.* (9th Cir. 2015) 805 F.3d 1164, 1169 (*I.R.*).

An IEP is evaluated in light of information available to the district when it developed the IEP. It is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) An IEP is "a snapshot, not a retrospective." (*Ibid.*, citing *Fuhrmann v. East Hanover Board of Education* (3d Cir. 1993) 993 F.2d 1031, 1041.) It must be evaluated in terms of what was objectively reasonable when the IEP was developed. (*Ibid.*)

The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a FAPE to the child. (34 C.F.R. § 300.501(b).) Procedural violations of the IDEA can be harmless, but not if they interfere with the parents' opportunity to participate in the IEP formulation process, result in the loss of educational opportunity, or actually cause a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E).) Procedural violations that interfere with parental participation in the IEP formulation process undermine the very essence of the IDEA. (*Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 892.)

Courts must strictly scrutinize IEPs to ensure their procedural integrity, but it must be tempered by considerations of fairness and practicality. Procedural flaws do not automatically render an IEP legally defective. (*Roland M. v. Concord School Committee* (1st. Cir 1990) 910 F.2d 983, 994.) When confronted with the situation of complying with one procedural requirement of the IDEA or another, the agency must make a reasonable determination of which course of action promotes the purposes of the IDEA and is least likely to result in the denial of a FAPE. (*Doug C. v. Hawaii Dept. of Education* (9th Cir. 013) 720 F.3d 1038, 1046.) However, a hearing officer 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 IEP. (Ed. Code, § 56505, subd. (j); see also 20 U.S.C. § 1415(f)(3)(E)(i); 34 C.F.R. § 300.513(a).)

In a district-filed case, such as this one, the hearing officer shall not base a decision solely on non-substantive procedural errors, unless the ALJ finds such procedural errors caused the pupil to lose an educational opportunity, or interfered with the opportunity of the parent to participate in the formulation process of the IEP. (Ed. Code, § 56505, subd. (j).)

A DISTRICT IS REQUIRED TO CONVEY A CLEAR, WRITTEN, FORMAL OFFER OF A FAPE TO PARENTS

A formal, specific offer from a school district alerts the parents of the need to consider seriously whether the proposed placement, and other elements of the offered IEP, are appropriate under the IDEA. A formal offer of a FAPE also helps parents determine whether to reject or accept the offered placement with supplemental services. The IEP is a

“formal, written offer [that] creates a clear record that will do much to eliminate troublesome factual disputes ... about when placements were offered, what placements were offered, and what additional education assistance was offered to supplement a placement, if any.” (*Union School District v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1526 (*Union*).)

Although *Union* involved a district’s failure to produce any formal written offer, numerous judicial decisions have invalidated IEPs that, even though formal offers were made, were insufficiently clear and specific to permit parents to make intelligent decisions regarding whether to consent, consent with exceptions, or seek relief through a due process hearing. (See, e.g., *A.K. v. Alexandria City School Board* (4th Cir. 2007) 484 F.3d 672, 681; *Knable v. Bexley City School Dist.* (6th Cir. 2001) 238 F.3d 755, 768;

Glendale Unified School Dist. v. Almasi (C.D.Cal. 2000) 122 F.Supp. 2d 1093, 1108 (“Glendale”).) The holding in *Union* requires “a clear, coherent offer which [parent] reasonably could evaluate and decide whether to accept or appeal.” (*Ibid.*)

In California, if a parent does not consent to a proposed IEP component that the school district determines is necessary to provide a child with a FAPE, that district must initiate a due process hearing in accordance with 20 U.S.C. § 1415(f). (Ed. Code, § 56346, subd. (f).) Under that provision, once an impasse with the parent is reached, the school district must expeditiously file a due process complaint seeking an Order confirming its offer constituted a FAPE. The school district cannot instead opt to hold additional IEP team meetings or continue the IEP process in lieu of initiating a due process hearing. (I.R. *supra*, 805 F.3d at p. 1170.) The statute does not say that a school district is obligated to request a due process hearing “eventually” or “when the school district finally gets around to it.” If, in the school district’s judgment, the child is not receiving a FAPE, the district must act with reasonable promptness to correct that problem by adjudicating its disagreement with the parents regarding the proposed IEP. The reason for this urgency is that it is the child who suffers in the meantime. The obvious point of Education Code section 56346, subdivision (f) is to minimize the duration of the denial of a FAPE by requiring the school district, if it cannot reach agreement with the parents, to initiate the process to adjudicate the dispute. (I.R. *supra*, 805 F.3d at p. 1170.)

Education Code section 56346, subdivision (f) does not authorize a hearing officer to approve only the disputed components, or even multiple components of an offer of a FAPE. Instead, Education Code section 56346, subdivision (f) requires “a due process hearing shall be initiated in accordance with Section 1415(f) of Title 20 of the United States Code.” Consequently, when a school district files a due process complaint

seeking an Order finding its offer constituted a FAPE, that district has the burden to prove its entire proposed offered program will provide Student a FAPE, and that the district complied with procedural requisites in developing and offering a FAPE.

PARENTS DID NOT CONSENT TO THE IEPS OFFERED IN NINTH AND TENTH GRADES

When Student was in eighth grade Tahoe District offered Student a FAPE in the annual IEP dated May 17, 2022, called the May 2022 IEP. The May 2022 IEP placed Student in the DHH class, which is a special education class, for two periods per day, as well as two general education classes per day. Student's English class occurred during one of the two periods he was in the DHH class. Parents consented to the May 2022 IEP on June 1, 2022. That was the last IEP to which Parents consented. Consequently, the May 2022 IEP was implemented as of the time of hearing, even though that IEP was developed and offered two years earlier.

Once Student transitioned to high school, he performed so successfully in his two general education classes that the IEP team determined near the end of Student's ninth grade year it would be best for Student to spend only one class per day in the DHH class. This IEP change would allow Student to take three, rather than two, general education classes each school day. This would include a general education English class.

When Student was in ninth grade his annual IEP team meeting was held on May 27, 2023, called the May 2023 IEP. However, Parents did not consent to the May 2023 IEP. Therefore, Student's May 2022 IEP, which was developed when Student was in eighth grade, was implemented during both the 2022-2023 and 2023-2024

school years when Student was in ninth and tenth grades, respectively, at Del Oro High. The May 2022 IEP placed Student in the DHH class for two periods per day, and allowed Student to take two general education classes per school day.

According to Cohen, Student needed to enroll in and pass three general education classes each grading period in order to timely earn a regular high school diploma, and complete certain "A through G classes" by June 2026. Because the May 2022 IEP was implemented during Student's freshman and sophomore years, he was required to be in the DHH class for two periods per day, and he was only able to take two general education classes per day those school years. This limited Student's opportunity to timely earn a regular high school diploma, and pass the "A through G classes" he needed to obtain admission to a four-year college or university.

TAHOE DISTRICT SOUGHT AN ORDER FROM OAH CONFIRMING THE SEPTEMBER 2023 IEP CONSTITUTED A FAPE

On September 21, 2023, Tahoe District held an IEP team meeting for the purposes of reviewing the results of Student's three-year reevaluations, and to develop a new offer of a FAPE. Student and Parents attended that IEP meeting. Both Student and Mother raised their concern at the meeting that Student's communication needs were not being met in group speech and language services sessions, and that Student required all his speech and language service sessions to be individual. There was no evidence that the team discussed this concern raised by Mother and Student. Since some of Student's reevaluations were not yet completed, the IEP team meeting was continued to October 11, 2023. Within the next few weeks, the assessors completed all of Student's reassessments.

Parents and Student attended the October 11, 2023 IEP meeting. At that meeting the IEP team reviewed the results of the three-year reevaluations of Student. The IEP team noted Student continued to be eligible for special education under the primary category of Deafness, and the secondary category of Speech or Language Impairment. The IEP team identified Student's present levels of academic achievement and functional performance, and the effect of Student's disability on his involvement and progress in the general education curriculum. The IEP team also identified Student's areas of need.

The IEP team recognized Student needed visual and other supports to help him access sounds in the classrooms he could not hear, even with his cochlear implants. The IEP team determined the amount of time for Student's specialized academic instruction, which was delivered in his DHH class, should be reduced from two periods to one period so Student would have time to take three general education classes each school day. Because Student had performed well in his general education classes during the last two school years, the IEP team was convinced Student could succeed in this less restrictive program. Moreover, the reduction of Student's time in the DHH class would afford Student time to take the classes he needed to earn a regular high school diploma, and to complete "A through G classes." The IEP team developed an offer of a FAPE for the period starting on November 2, 2023, and ending on September 21, 2024, that included the following:

- Six total annual goals – Tahoe District offered Student one goal in articulation, and four goals in communication focused on improving Student's skills in: expressive English language, ASL role shift, ASL grammar, and listening comprehension. It also offered Student one

academic goal in reading comprehension. Student's first two goals would be monitored by the speech-language pathologist, and the last four goals would be monitored by the DHH class teacher.

- Specialized Academic instruction – Tahoe District offered Student 374 minutes of specialized academic instruction weekly to be delivered by a teacher of the deaf in the DHH classroom. The DHH class was also considered to be a study skills class.
- Audiological services – Tahoe District offered Student 90 minutes of audiological services yearly to be delivered by an audiologist outside of general education classes. The audiologist primarily dealt with maintaining the functionality of Student's hearing assistive technology system, called HAT, equipment.
- ASL interpreter services – Tahoe District offered Student 1,368 minutes weekly of ASL interpretation services to be delivered by an American sign language interpreter in general education classes in a small group. "Individual services provided as available in general education core curriculum classes" was additionally written in the September 2023 IEP offer of ASL interpreter services.
- Speech and language services – Tahoe District offered Student 120 minutes monthly of speech and language services to be delivered both in individual and small group therapy sessions by a speech - language pathologist in a separate classroom outside of general education classes. There was no indication regarding how many minutes of this service would be delivered in either a group setting,

or an individual setting. Also, there was no indication if Student would receive 30 minutes of speech and language therapy services weekly, or some other amount of services weekly.

- Health and nursing services – Tahoe District offered Student 30 minutes yearly of health and nursing consultation services to be provided by the school nurse in a separate class. Other than deafness and frequent nosebleeds, Student did not have any other chronic health conditions.
- Transportation services were acknowledged as being necessary. The notes from the September 21, 2023 IEP team meeting stated only that transportation was required, and “parents are providing transportation at this time.” There was no mention of any agreement between Tahoe District and Parents regarding transportation services.
- Special factors – Tahoe District offered Student the HAT system equipment. This equipment consisted of a microphone hung on a lavalier for a teacher to wear around his or her neck. The microphone paired with a receiver worn by Student. The HAT enabled Student to hear his teachers more clearly through his cochlear implants, but could prevent Student from hearing his peers when he was using the HAT.
- Tahoe District offered Student multiple accommodations, including
 - test taking in the DHH classroom,
 - preferential seating,
 - extended time to complete assignments,

- ASL interpretation,
 - open book tests,
 - use of notes on tests,
 - use of a calculator, and
 - use of specialized materials.
- No curriculum modifications were offered because Student was taking general education classes on the track to earn a regular high school diploma from Del Oro High.
 - Post-secondary transition plan - The transition plan Tahoe District offered Student included three post-secondary goals in the areas of training/education, employment, and independent living. The transition plan was based on Student's interests.
 - Student was not eligible for an extended school year program.
 - Tahoe District offered Student placement at Del Oro High with 21 percent of his school day spent outside of general education classes, and 79 percent of his school day spent in general education classes.

Parents did not consent to the September 2023 IEP. Tahoe District, with the assistance of Placer COE, tried to schedule further IEP team meetings in an effort to resolve the dispute with Parents regarding the September 2023 IEP. However, those efforts were unsuccessful. Parents did not attend an IEP team meeting after the October 21, 2023 IEP meeting. The IEP team met once in December 2023, without

Parents, who refused to attend further IEP meetings concerning the September 2023 IEP. During that meeting the team did not make any changes to the September 2023 IEP. The offer of a FAPE contained in that IEP remained the same.

On January 25, 2024, Tahoe District sent Parents a prior written notice explaining why the September 2023 IEP offered Student a FAPE. The prior written notice also explained Tahoe District's obligation to file a due process request with OAH if Parents did not consent to the September 2023 IEP. On February 12, 2024, Tahoe District commenced this case by filing a due process request with OAH. Tahoe District's complaint sought an Order confirming the September 2023 IEP offered Student a FAPE, and granting Tahoe District authority to implement that IEP without parental consent.

It became clear to Tahoe District about mid-December 2023, that the parties were at an impasse regarding the September 2023 IEP. By that time Parents had refused to consent to the September 2023 IEP, and refused to attend further IEP team meetings to consider the September 2023 IEP. Therefore, Tahoe District acted with reasonable promptness and timely commenced this lawsuit on February 12, 2024.

THE SEPTEMBER 2023 IEP CONTAINED ERRORS

Multiple witnesses testified that the September 2023 IEP contained multiple errors, which could be corrected by one or more IEP amendments. Some of those errors were minor and merely typographical, and some errors were material. For example, Michelle Sumner, Placer COE program coordinator, and supervisor of its Deaf and Hard of Hearing, called DHH, program, testified that the minutes on the service page of the September 2023 IEP offered for specialized academic instruction was wrong. The offer on the September 2023 IEP was for 374 minutes weekly. Sumner stated the actual number of specialized academic instruction minutes offered weekly was 400.

The error in the number of minutes offered for specialized academic instruction was likely related to Del Oro High's unique block schedule on Mondays. The result was an error in the number of weekly minutes Tahoe District offered Student for specialized academic instruction. This error was material because it could reasonably mislead or confuse Parents regarding how much time Student would spend in the DHH class pursuant to the September 2023 IEP. Moreover, such error could also result in the percentages of time Student would be in each of special education (21 percent) and general education (79 percent), as set forth in the September 2023 IEP, to also be incorrectly calculated and misstated. If so, this could also confuse Parents about the offered program.

Sumner noted there was also an error in the September 2023 IEP as to the date Student should meet his short-term objective on his second communication goal. That date was identified on the September 2023 IEP as being December 22, 2024. This date should have been listed as December 22, 2023. However, this error was merely typographical and less likely to confuse Parents about the offered program.

The multiple errors in the September 2023 IEP would all have to be corrected by one or more IEP amendments. A district cannot amend or otherwise edit an IEP, even to correct an unintentional mistake in the IEP, or to offer additional services, without re-opening the IEP process and giving the parent an opportunity to participate in the revision of the IEP. (*M.C. v. Antelope Valley Union High School Dist.* (9th Cir. 2017) 858 F.3d 1189, 1197–1198 (*M.C.*)) At hearing Tahoe District's attorney asked multiple employees of Tahoe District and Placer COE if various errors contained in the September 2023 IEP could be corrected in the future by an amendment. Those witnesses all answered "yes" to that question.

However, any necessary corrections to the multiple errors contained in the September 2023 IEP should have been made by IEP amendments before Tahoe District filed this lawsuit. In a district-filed case, such as this one, where a school district seeks an Order finding a specific IEP offered a FAPE, the IEP identified in the due process request and introduced into evidence at hearing is deemed to be the final IEP that the ALJ will either approve or disapprove in total as being substantively and procedurally compliant with the law, and appropriate to meet Student's needs. An ALJ cannot approve an IEP that requires amending before it would be legally compliant or appropriate for a child.

THE SEPTEMBER 2023 IEP FAILED TO OFFER STUDENT RELATED SERVICES HE NEEDED TO ACCESS THE GENERAL EDUCATION CURRICULUM, AND THE OFFERS OF SERVICES WERE UNCLEAR

Most of the Tahoe District and Placer COE personnel who testified at hearing stated they did not know why Parents did not consent to the September 2023 IEP. However, after Student and Mother testified at hearing it was evident Student and Mother believed Student needed individual ASL interpretation services, and individual speech and language services in order to access his curriculum. The September 2023 IEP failed to unambiguously offer either of those individual services. The notes of the September 2023 IEP corroborated Mother's and Student's testimony that they shared their concerns regarding these necessary individual services with the IEP team. Therefore, the evidence was clear that Tahoe District was aware Student and Mother thought Student was not adequately supported by either group ASL interpreter services, or group speech and language services.

Student also needed transportation to and from Del Oro High, which was a significant distance from Student's home. However, the transportation service does not appear to have been discussed by the IEP team at either the September 21, 2023 or the October 11, 2023 IEP meeting. The only mention of transportation services in the September 2023 IEP was a statement that Student needed transportation to the DHH program, and Parents were presently transporting Student to school. Moreover, the offers for all three related services (ASL interpreter, speech and language, and transportation) were ambiguous.

DISTRICT DID NOT OFFER STUDENT INDIVIDUAL ASL INTERPRETER SERVICES HE NEEDED FOR A FAPE

The IEP team correctly concluded Student needed ASL interpretation services when he was in general education classes. Placer COE Director of Student Services, Stacy Barsdale, testified that the September 2023 IEP offered Student ASL interpreter services to be delivered only in a small group model for 1,368 minutes weekly when Student was in general education classes. Barsdale did not testify that the September 2023 IEP offered Student any ASL interpretation services to be delivered to Student individually. Barsdale never worked with Student, and only knew about him because she supervised some of the Placer COE personnel who worked with Student. Barsdale did not attend either the September 21, 2023, or the October 11, 2023 IEP team meetings, and had no first-hand knowledge of Student and his needs. Consequently, Barsdale's opinions regarding the appropriateness for Student of group ASL interpretation services and various other program elements offered in the September 2023 IEP were given little weight.

Sumner, the Placer COE special education program coordinator who oversaw the DHH program, testified that the September 2023 IEP offered Student ASL interpreter services when he was in general education academic classes and when he socialized with non-hearing people. Sumner further testified Student needed support when he was in a crowd. However, the September 2023 IEP did not offer Student ASL interpretation services outside of general education classes when he was socializing with non-hearing people at school. In opining that Student's needs should be met by group ASL interpretation services, Sumner failed to specifically address Student's complaint that he missed content in his general education classes through group ASL interpreter services.

One of the central disputes between Student and Tahoe District concerned whether Student's needs could be met by individual ASL interpretation services, versus small group interpretation services. Student very convincingly testified he needed individually delivered ASL interpreter services during his general education classes because he missed portions of his teachers' presentations when he received small group ASL interpreter services. Student said the ASL interpreters were often distracted when they delivered ASL interpreter services to a group of pupils. Student stated that the ASL interpreters sometimes failed to interpret some of the teachers' speech, which left Student confused and unable to access his curriculum. Student shared this concern with the IEP team at the October 11, 2023 IEP meeting.

Moreover, there was no evidence that the IEP team even considered offering Student individual ASL interpretation services, even though Student and Mother both told the team Student needed only individual ASL interpreter services. The notes of the IEP meetings and the testimony about what occurred at the meetings, did not reflect that the IEP team considered or discussed Student's and Mother's concerns that Student

was not supported appropriately by group ASL interpreter services. The notes to the October 11, 2023 IEP team meeting state that the “PS shares that interpreter services are on his IEP and he is receiving them throughout his day.” PS is assumed to be a member of the IEP team that was present, possibly Placer COE school psychologist, Holly Gennuso. This note circumvents the core of the problem raised by Student, and recognizes only that Student was offered group ASL interpreter.

There was no evidence that the team considered or discussed whether or not Student’s and Mother’s requests for only individual ASL interpreter services should be granted or denied. Moreover, Tahoe District failed to introduce persuasive evidence countering Student’s claims he missed content in his general education classes when he received group ASL interpreter services. If the IEP team had discussed Student’s concerns that he missed class content while receiving group ASL interpreter services, the team might have come up with some potential solutions to the problem. Therefore, Tahoe District failed to meet its burden to prove Student’s needs were met by group ASL interpreter services. Additionally, Education Code section 56345, subdivision (d) mandates that when considering appropriate services for a deaf child, the IEP team “... shall consider the related services and program options that provide the pupil with an equal opportunity for communication access.” In this case the IEP team failed to consider the related service options which would provide Student with an equal opportunity for communication access, as required by Education Code section 56345, subdivision (d).

There is a shortage of available ASL interpreters who can deliver “in person” services. Virtual ASL interpretation services are much more available. However, it was uncontested that Student could not access his education through virtual ASL interpreter services. At the October 11, 2023 IEP meeting Mother provided the IEP team with a

letter dated October 9, 2023, from Colleen Holloway, a physician's assistant Student had recently seen. That letter explained Student experienced frequent headaches on days he did not have an ASL interpreter. Student's teachers and service providers testified it was rare that Student did not have an ASL interpreter during his general education classes. Holloway's letter requested an ASL interpreter be provided to Student daily to see if his headaches then subsided. However, there was no evidence that Student's possible medical need for consistent ASL interpretation services was considered by the IEP team at the October 11, 2023 IEP team meeting.

Additionally, the September 2023 IEP failed to offer Student any ASL interpreter services when he participated in extracurricular activities as required by Education Code § 56345, subd. (d)(4). Sumner testified it was not necessary to include an offer of ASL interpreter services during extracurricular activities in the September 2023 IEP because it was the policy of the Placer COE DHH program to provide those ASL interpreter services to children in the DHH program. However, Tahoe District was not excused from offering ASL interpreter services to Student during extracurricular activities in the September 2023 IEP merely because it was the policy of the DHH program to provide pupils with ASL interpreters for extracurricular activities.

Sumner further testified that the Placer COE protocols required Student to fill out a form requesting an ASL interpreter to accompany him to an extracurricular activity. Sumner acknowledged it was typically difficult to get an ASL interpreter at the last minute for extracurricular activities because the Del Oro High staff ASL interpreters did not work after school hours. Instead, an external agency for ASL interpreters staffed those requests, if possible. However, Student testified every time he completed the requisite form requesting ASL interpretation services for an extracurricular activity, his

request was always denied. Student noted he missed content presented in Future Farmers of America meetings because he did not have an ASL interpreter with him at club meetings.

Moreover, the IEP team was required to specifically discuss Student's communication needs, consistent with "Deaf Students Education Services Policy Guidance" (57 Fed. Reg. 49274-01, 1992 WL 312127 (F.R.), October 30, 1992), including "[s]ervices necessary to ensure communication-accessible academic instructions, school services, and extracurricular activities consistent with the federal Vocational Rehabilitation Act of 1973 (29 U.S.C. Sec. 794 et seq.) and the federal Americans with Disabilities Act of 1990 (42 U.S.C. sec. 12101 et seq.)." (Ed. Code, § 56345, subd. (d) and (d)(4).) The IEP team did not do this because it failed to seriously consider Student's request for individual ASL interpretation services. Consequently, Tahoe District denied Student a FAPE by failing to offer Student individual ASL interpretation services during general education classes and extracurricular activities in the September 2023 IEP.

THE OFFER OF INDIVIDUAL ASL INTERPRETER SERVICES "AS AVAILABLE" WAS UNCLEAR

A school district must make a clear, formal, written offer of a FAPE. A clear offer facilitates parents' understanding of the details regarding the offered program, placement, services, accommodations, et. cetera. Moreover, an IEP must specify the anticipated frequency, location, and duration of related services offered. (20 U.S.C § 1414(d)(1)(A)(i)(VII).)

On the "Services" page of the September 2023 IEP, in the bottom line of the entry offering small group ASL interpreter services during general education, the following language was written: "Individual services provided as available in general education core curriculum classes." This language makes it unclear as to when Student would receive group ASL interpretation services, and when Student would receive individual ASL interpretation services, if ever. Gauthier testified that the language in the September 2023 IEP offering individual ASL interpretation services "as available" was unclear. Gauthier opined that, in order for the offer to be clear, the words "as available" should have been deleted from the description of when the individual interpretation services were offered. However, the IEP team elected to make a vague offer of individual ASL interpreter services "when available," likely in an attempt to try to avoid liability if Tahoe District found it impossible to provide Student with individual ASL interpreter services.

Lallement, Student's DHH class teacher and case manager from October 2023 through the end of the 2023-2024 school year, also testified that the language offering individual ASL interpretation services "as available" rendered the offer "totally confusing." Moreover, Hamilton, Student's most recent speech and language service provider, testified she did not know what was meant by individual interpreting services to be provided "as available." The testimony of these three witnesses, as well as a common-sense application of the language "as available," established this offer of individual ASL interpretation services "as available" was fatally ambiguous. It fails to sufficiently inform Parents regarding how often Student would receive individual ASL interpretation services, if ever. Therefore, this unclear offer of individual ASL

interpretation services “as available” is unclear. It denied Student a FAPE because the vague service offer interfered with Parents’ opportunity to participate in the decision-making process regarding the program offered in the September 2023 IEP.

DISTRICT DID NOT OFFER STUDENT INDIVIDUAL SPEECH AND LANGUAGE SERVICES HE NEEDED FOR A FAPE

Because Student was deaf, Tahoe District had an obligation to “consider the related services and program options that provide the pupil with an equal opportunity for communication access.” (Ed. Code, § 56345, subd. (d)(4).) Student and Mother both testified credibly at hearing that at the September 21, 2023 IEP team meeting they each expressed their concerns to the IEP team that Student needed only individual speech and language therapy sessions. Mother and Student explained to the team that in group speech and language service sessions Student did not get adequate attention from the speech and language pathologist to address his communication needs. Student confidently and persuasively testified he could only receive the support he needed from the service provider in individual speech and language sessions. Student specifically noted he needed individual help with learning how to pronounce and comprehend new vocabulary words introduced in his general education classes. Student had sought this help from Lallement, but she did not have enough knowledge regarding the meaning or application of some of the new technical vocabulary words to provide Student with the support and guidance he needed.

Tahoe District did not prove the IEP team even considered Student’s and Mother’s requests that all of Student’s speech and language services be delivered to him in individual sessions, rather than in small group sessions. In fact, Hamilton testified that Cohen instructed Hamilton not to respond to Mother’s request for individual speech and

language service sessions during the September 21, 2023 IEP team meeting. Cohen's instruction to an IEP team member to not discuss Mother's concern about speech and language services is inconsistent with the intention of the IDEA to engage parents in the development of IEPs.

Student very persuasively testified he did not get the support he needed on his communication needs in small group speech and language sessions. Student acknowledged he needed speech and language services, but stated that only the individual speech and language service sessions were helpful to him. Moreover, throughout the entire 2023-2024 school year Student received only three individual speech and language therapy sessions at school. The balance of Student's speech and language service sessions in the 2023-2024 school year were all conducted in the small group format. Student testified convincingly that the small group speech and language sessions were a waste of his time, and that he needed the individual attention of the speech and language pathologist in order to address his articulation and expressive communication deficits.

Hamilton testified Student had an articulation goal because the speech and language assessment conducted in fall 2023 indicated he could articulate multi-syllabic words with only 60 percent accuracy. Hamilton acknowledged Mother told the IEP team that Mother wanted all of Student's speech and language services to be individual, not group services. Hamilton did not respond to Mother's concern because Cohen, Tahoe District's Executive Director of Student Services, told Hamilton not to do so at the September 21, 2023 IEP team meeting. Hamilton conceded flexibility was built into the offer for both individual and group speech and language services without any designation as to how many minutes would be devoted to either one each month. Hamilton admitted it might be difficult to make up a missed individual speech and

language service session without significant flexibility for the providers. Mother even sent an email to the IEP team informing them she wanted Student to have only individual speech and language service sessions. However, Hamilton never responded to that email.

Tahoe District failed to prove Student's significant communication needs could be met with a combination of group and individual speech and language service sessions for 120 minutes per month. Therefore, the offer of speech and language services in the September 2023 IEP denied Student a FAPE.

THE OFFER OF A COMBINATION OF INDIVIDUAL AND SMALL GROUP SPEECH AND LANGUAGE SERVICES FOR 120 MINUTES A MONTH WAS UNCLEAR

The September 2023 IEP's offer of both individual and small group speech and language services for a total of 120 minutes a month was not sufficiently specific. It failed to inform Parents about how many minutes per week Student would receive any speech and language services, either individually, or in a group. This offer of speech and language services was not sufficiently specific. See, *Los Angeles Unified School District v. A.O.* (9th Cir. 2024) 92 F.4th 1559, 1669 (*LAUSD v. A.O.*).

In light of Student's and Mother's requests that Student receive only individual speech therapy sessions because group sessions were not effective for Student, it was necessary for the IEP team to clearly define the number of minutes of speech and language services would be either in an individual setting, or a small group setting. When Hamilton was asked at hearing why the weekly number of minutes for speech and language services was not offered in the IEP, Hamilton responded that the larger monthly total of minutes gave the service providers more flexibility, so they "can play

around with the schedule.” She also stated the lack of specificity in the offer gave the service provider increased scheduling flexibility and the ability to accommodate service sessions to the school schedule, as well as to a child’s needs.

A proposed IEP that is vague regarding the frequency and duration of offered related services is not sufficiently specific. A vague offer of services interferes with parents’ ability to understand and assess the school district’s offer of a FAPE. (See, *LAUSD v. A.O. supra*, 92 F.4th at p. 1169-1170.) A federal regulation requires that the written offer of a FAPE include the “... anticipated frequency, location, and duration of those services and modifications.” (34 C.F.R. § 300.320(a)(7).) The weekly frequency and duration of each of individual speech and language services and small group speech and language services was improperly omitted from the September 2023 IEP.

Lallement testified the offer of speech and language services in the September 2023 IEP was unclear because it did not state how many service minutes would be delivered individually, and how many minutes would be delivered in a group setting. The vague offer of 120 minutes of monthly speech and language services in some unspecified combination of individual and small group settings was so vague that Parents were not adequately informed about what type of speech services were going to be provided to Student if Parents consented to the September 2023 IEP. Therefore, the vague offer of speech and language services made in the September 2023 IEP interfered with Parents’ opportunity to participate in the formulation of the IEP. Consequently, Student was denied a FAPE due to the unclear offer of speech and language services included in the September 2023 IEP.

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THE IEP TEAM IMPROPERLY ASSUMED PARENTS WOULD TRANSPORT STUDENT TO AND FROM SCHOOL, AND THE OFFER OF TRANSPORTATION SERVICES WAS UNCLEAR

Every child with exceptional needs who is eligible to receive special education instruction and related services is entitled to receive that instruction and those services at no cost to the child or parents. (34 C.F.R. § 300.17.) Special education transportation is defined in a federal regulation as a related service. (34 C.F.R. § 300.34(c)(16).) Transportation is required to be provided as a related service if it is needed to assist a child with a disability to benefit from special education. (34 C.F.R. § 300.34(a). In addition, as required for any special education program, the service must be provided to meet the criteria for a FAPE as it defined by federal regulation. (34 C.F.R. § 300.17.)

The parents' ability to provide transportation does not relieve Tahoe District of its responsibility to transport a child to and from school. A school district must ensure any transportation service included in a student's IEP as a related service is provided at public expense and at no cost to the parents. (34 C.F.R. § 300.39.) The California Department of Education website includes a document entitled "Special Education Transport Guidelines." These guidelines give IEP teams advice about when a school district is required to offer an eligible child transportation services. The guidelines specifically state:

"Specialized transportation, as a related service, must be written on the pupil's IEP with specificity and should be approved by the transportation administrator. It is recommended that services be described in sufficient

enough detail to inform the parties of how, when and from where-to-where transportation will be provided and, where arrangements for the reimbursement of parents are required, the amount and frequency of reimbursement."

The September 2023 IEP addressed the offer of transportation service with merely a box checked "yes" adjacent to the printed term "Special Education Transportation." This checked box was not on the IEP page that offered other related services. The only other information in the September 2023 IEP about transportation services was the following included in the notes for the October 11, 2023 IEP meeting: "Transportation is required in order for [Student] to attend his specialized program; parents are providing transportation at this time." There was no indication that transportation was discussed by the IEP team during either the September 21, 2023, or October 11, 2023 IEP meetings. Moreover, there was no statement regarding why Parents, instead of Tahoe District, were transporting Student to school. There was also no mention of any agreement between the parties regarding Parents' provision of Student's transportation to and from school, and Tahoe District's reimbursement of Parents' costs.

Cohen at first testified she understood Parents were providing transportation pursuant to an agreement between the parties entered into before 2022, when Cohen was initially hired by Tahoe District. Cohen testified on direct examination she had heard about, but had never seen, an agreement between Parents and Tahoe District regarding transportation. However, later in the hearing when Cohen testified a second time as a rebuttal witness, she admitted she had now reviewed the agreement between Parents and Tahoe District regarding Student's transportation. Cohen said that agreement was from 2019. Cohen further testified the term of the agreement was for one year, and subject

to renewal. This agreement was not introduced into evidence at hearing, and did not appear to have been discussed with Parents, or with the IEP team in connection with the development of the September 2023 IEP.

Cohen said she understood that in 2019, Tahoe District was having difficulty hiring drivers to transport children to and from school. Cohen also testified Tahoe District was now able to employ drivers to transport children to and from school. Since the commute from Student's home to school was so long, it was wrong for Tahoe District to assume Parents would continue to provide transportation without any discussion or current agreement between them regarding that related service. If the parties entered into an agreement regarding transportation services, the terms of that agreement should have been addressed in the September 2023 IEP.

The IEP team clearly erred in not explaining to Parents that Tahoe District had an obligation to transport Student to and from Del Oro High. If Tahoe District wanted to enter into a renewed agreement with Parents to transport Student to and from school, it should have asked Parents to do so. Moreover, Tahoe District failed to comply with procedural requisites for a clear formal offer of a FAPE by merely checking a box on the IEP indicating Student needed transportation services, and summarily stating in the IEP notes that Parents were presently transporting Student to school.

Tahoe District was obligated to either ask Parents if they wanted to enter into another agreement to transport Student to and from Del Oro High, and identify the terms of such agreement in the IEP, or to offer Student transportation services provided by Tahoe District. If Parents preferred Tahoe District transport Student to Del Oro High, the IEP team had an obligation to specifically state in the IEP the location of the "pick up" and "drop off" locations, such as at Student's residence or neighborhood school. Tahoe District's offer of transportation in the September 2023 IEP did not meet Student's needs.

Moreover, the offer of transportation services was unclear and did not sufficiently inform Parents about the terms of the offer for transportation services. Consequently, the offer of transportation in the September 2023 IEP failed to offer Student a FAPE.

THE PARTIES' CLOSING ARGUMENT BRIEFS

This case was filed by Tahoe District on the sole issue of whether the September 2023 IEP offered Student a FAPE, and whether district can implement it without Parents' consent. Student's closing argument brief included 33 requests for awards of various kinds of relief. These requests included: a new IEP with certain provisions; an independent educational evaluation in academics; new personnel for certain staff and administrative positions; individual ASL interpreter services; individual speech and language therapy services; and reimbursement of expenses Parents incurred during the 17-day due process hearing for Parent's lost wages, meals purchased at restaurants, and clerical supplies used at hearing. Student's closing argument brief also requested:

- changes in annual goals;
- changes in Student's class schedule;
- improved communications with Parents about Student's classes and related services;
- an ASL interpreter during extracurricular activities;
- freedom for Student to enroll in classes he selects during the upcoming school year; and
- reimbursement of Parents' expenses incurred when they transport Student to and from school.

However, because this is a district-filed case, it would be improper to order any relief to Student in this Decision.

Moreover, attached to Student's closing argument brief were some receipts and a portion of a wage statement. When instructing the parties at hearing regarding the parameters of the closing argument briefs, the ALJ told the parties not to attach any documents to their closing briefs. Student did not follow that instruction. The ALJ cautioned the parties that any documents improperly attached to closing argument briefs would not be considered. Therefore, none of the documents attached to Student's closing argument brief were considered.

Tahoe District's closing brief asserted Parents were historically uncooperative and unreasonably critical of staff members working with Student. Even if this were true, Tahoe District was still required to discuss and consider each of Parents' concerns and requests, including their requests for individual ASL interpreter services, and individual speech and language services. A school district cannot excuse its failure to satisfy the IDEA's procedural requirements by blaming uncooperative parents. *Anchorage School Dist. v. M.P.* (9th Cir. 2012) 689 F.3d 1047, 1055, citing *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir.1992) 960 F.2d 1479, 1485 (superseded on other grounds by 20 U.S.C. § 1414(d)(1)(B)). It would be antithetical to the IDEA's purposes to penalize parents and disabled children for exercising the rights afforded to them under it. See 20 U.S.C. § 1400(d)(1)(B) (explaining that one of the IDEA's purposes is "to ensure that the rights of children with disabilities and parents of such children are protected"). *Anchorage School Dist. v. M.P.*, *supra*, 689 F.3d at 1056. Therefore, even if Parents had been uncooperative, Tahoe District's obligations under the IDEA and the California Education code would still not be excused.

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CONCLUSION: TAHOE DISTRICT FAILED TO MEET ITS BURDEN OF PROOF

This decision does not address every disagreement between the parties. It also does not analyze or address every element of a FAPE included in the September 2023 IEP for which Tahoe District had the burden of proof in this matter. For the reasons set forth above, Tahoe District failed to meet its burden of proof in this case.

CONCLUSION 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:

The IEP developed on September 21, 2023, and continued on October 11, 2023, did not offer Student a FAPE, and Tahoe Truckee Unified School District may not implement that IEP without Parents' consent.

Student prevailed on the Issue.

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ORDER

1. Tahoe Truckee Unified School District's request to have the IEP developed on September 21, 2023, and continued on October 11, 2023, declared as constituting a FAPE for Student is denied. The IEP developed on September 21, 2023, and continued on October 11, 2023, shall not be implemented without Parents' consent.

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.

Christine Arden

Administrative Law Judge

Office of Administrative Hearings