

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

LONG BEACH UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

CASE NO. 2024080420

DECISION

JANUARY 30, 2025

On August 9, 2024, the Office of Administrative Hearings, called OAH, received a due process hearing request from Long Beach Unified School District, naming Student. On August 26, 2024, OAH granted Long Beach's motion for continuance. Administrative Law Judge Cole Dalton heard this matter on November 13, 2024 and December 3, 4, 5, 10, 11, and 12, 2024.

Attorney Megan Kinsey represented Long Beach Unified School District. Susan Caskey, director of special education attended all hearing days on Long Beach's behalf. Attorneys Tania Whiteleather and Tamiel Holloway represented Student. Mother, Paralegal Hadassah Foster, and her assistant Seraphina Rose attended all dates of hearing on Student's behalf.

At the parties' request, the matter was continued to January 10, 2025, for written closing briefs. The record was closed, and the matter was submitted on January 10, 2025.

Throughout this Decision, a free appropriate public education is referred to as a FAPE and an individualized education program is referred to as an IEP.

ISSUE

Did Long Beach offer Student a FAPE in the September 25, 2023 IEP, as amended on May 28, 2024, such that it may implement the IEP without Parents' consent?

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, referred to as the IDEA, 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 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).)

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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 issue 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).) Long Beach had the burden of proof on the issue brought to hearing. 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 seven years old and in second grade at the time of hearing. He resided within Long Beach's geographic boundaries at all relevant times. Student was eligible for special education as a child with autism and, secondarily, speech or language impairment. Student engaged in self-stimulatory behaviors such as jumping, rapid hand movements, and vocalizations.

At the beginning of the 2023-2024 school year, Student attended a general education classroom with his full-day one-to-one behavior aide. The behavior aide addressed Student's elopement, aggression, and tantrum behaviors and implemented goals in

- peer interaction,
- compliance with individual and group directives,
- functional communication to meet needs,

- making choices,
- responding to his name, and
- task completion.

Student also had several accommodations addressing behavior, sensory needs, attention, and access to academics.

Student received speech and language therapy to address needs in articulation, due to a lisp, and pragmatic language for conversation with peers and adults. Student received occupational therapy to address pre-writing and letter and sound formation.

Long Beach convened Student's annual IEP on September 25, 2023, and October 23, 2023, and held an amendment meeting, to review independent educational evaluations, on May 28, 2024. The term 2023 annual IEP refers collectively to the annual and amendment IEP. Some documentary evidence reflects a meeting date of October 25, 2023, which the Parties stipulated should read October 23, 2023.

Long Beach brought this hearing for a determination that the 2023 annual IEP offered Student a FAPE. At hearing, Student contested many components of the 2023 annual IEP. However, his disagreement largely surrounded Long Beach's recommendation of a change of placement to a collaborative co-teaching classroom, taught with both general and special education teachers.

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ISSUE 1: DID LONG BEACH OFFER STUDENT A FAPE IN THE SEPTEMBER 25, 2023 IEP, AS AMENDED ON MAY 28, 2024, SUCH THAT IT MAY IMPLEMENT THE IEP WITHOUT PARENTS' CONSENT?

Long Beach argues it complied with all procedural requirements in the development of the 2023 annual IEP. Specifically, Long Beach contends it

- held properly noticed IEP team meetings on mutually agreeable dates,
- obtained attendance of all required team members,
- provided Parents with notice of their rights and procedural safeguards,
- provided Parents the opportunity to meaningfully participate in the IEP team meetings,
- considered the opinions of independent evaluators, and
- developed a clear written offer of FAPE based upon recent assessments and Parent input.

Substantively, Long Beach argues that it offered Student a FAPE in the least restrictive environment appropriate for him, specifically, a collaborative co-teaching program, taught by one general and one special education teacher. Long Beach argues that Student would benefit from receiving specialized academic instruction working with typically developing peers in whole group, small groups, and individually in his regular classroom. Long Beach argues that the collaborative class was less restrictive than offering a resource specialist program in either a push-in or pull-out model.

Student argues that Long Beach did not make a clear written offer of FAPE because Long Beach did not offer a specific school campus on which the collaborative co-teaching class would be located. Student argues that Long Beach failed to assess Student in the areas of sensory processing or integration, vision therapy, and central auditory processing disorder, making the offered change of placement premature. Substantively, Student argues he should remain in general education as the least restrictive environment. Student argues he can continue to develop intellectually and socially by remaining in a general education classroom with typically developing peers. Student also argues that Long Beach failed to offer resource specialist program services before offering a change in placement. Student argues he made progress behaviorally and that he did not need to keep pace with typically developing peers to remain in general education.

When a school district seeks to demonstrate that it offered a FAPE to a particular student, it must first show that it complied with the procedural requirements of the IDEA. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S.176, 206-207)(*Rowley*.) Second, the school district must show that the IEP developed through those procedures was designed to meet the child's unique needs and was reasonably calculated to enable the child to make progress appropriate in light of their circumstances. (*Ibid.*; *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. 386 [137 S.Ct. 988, 998-999])(*Endrew F.*)

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LONG BEACH COMPLIED WITH ALL PROCEDURAL REQUIREMENTS IN DEVELOPING THE 2023 ANNUAL IEP

The evidence demonstrated that Long Beach complied with procedural requirements in the development of the 2023 annual IEP. Long Beach scheduled IEP team meetings with appropriate notice for mutually agreeable dates and times, and provided Parents

- copies of IEPs,
- several notices of parental rights and procedural safeguards, and
- prior written notices seeking consent to and providing clarification of the 2023 annual IEP.

Long Beach provided Student with a clear written offer of FAPE. Mother attended each IEP team meeting with counsel, provided input, asked questions that Long Beach answered, and sought and received changes to various aspects of the 2023 annual IEP. Mother also participated in IEP team meetings regarding reviews of Long Beach's assistive technology assessment and independent educational evaluations in the areas of psychoeducation, functional behavior, and occupational therapy.

Accordingly, Long Beach complied with the procedural requirements.

SCHEDULING, ATTENDANCE, AND PROVISION OF NOTICES AND COPIES OF IEP DOCUMENTS

Long Beach provided timely and appropriate notice of each IEP team meeting, and Mother attended each meeting with counsel and sometimes with Grandmother. (20 U.S.C. § 1414(d)(1)(B)(i); 34 C.F.R. § 300.322; Ed. Code, § 56341.5.) On September 8,

2023, Long Beach sent Parents notice of an annual IEP team meeting scheduled for September 25, 2023, also held to review an assistive technology assessment and discuss a possible change in placement. On September 14, 2023, Mother signed the meeting notice agreeing to attend, with a behavior specialist and director, Whiteleather, and Student's Grandmother. Mother requested the meeting be recorded but did not record the meeting. California law requires at least 24 hours' notice when a parent wishes to record an IEP team meeting. (Ed. Code, § 56341.1, subd. (g)(1). The law does not require a school district to record the meeting on a parent's behalf and Long Beach did not do so.

On September 26, 2023, Long Beach sent notice of the reconvened annual IEP team meeting scheduled for October 23, 2023. Long Beach notified Parents that a possible change of placement would be discussed at the meeting. On October 20, 2023, Mother signed the meeting notice agreeing to attend with Whiteleather and Grandmother.

On March 19, 2024, Long Beach sent Parents notice of an amendment IEP team meeting to occur on April 9, 2024, or, alternatively, May 28, 2024, to review the independent psychoeducational evaluation of Helena Johnson, independent occupational therapy evaluation of Richard Furbush, and independent functional behavior assessment of Vanessa Ocampo, from Behavior and Education. The notice also informed Parents that the team would consider a possible change of placement. Mother signed the notice agreeing to attend the meeting on May 28, 2024, and indicated that Whiteleather, Johnson, and Furbush would accompany her.

Long Beach timely convened an annual review of Student's IEP, on September 25, 2023. (20 U.S.C. 1414(d)(4)(a); Ed. Code, § 56341.1, subd. (d).)

All necessary IEP team members attended each meeting. Each of the IEP team meetings included

- Parent,
- a general education teacher,
- a special education teacher,
- a Long Beach representative with knowledge of district programs,
- individuals to interpret the instructional implications of the assessment results presented at the meetings, and,
- at Parents' discretion, individuals with knowledge or special expertise regarding Student, as required by law. (34 C.F.R. § 300.321(a); Ed. Code, § 56341, subds. (a), (b).)

On September 25, 2023, the following people attended the meeting:

- Mother,
- Whiteleather,
- assistive technology assessor Jamie Nichols,
- special education and resource specialist teacher Ari Langman,
- special education teacher and behavior supervisor Michelle Ly,
- occupational therapist Jane Goodsell,
- speech and language pathologist and case carrier Heidi Hardy,
- principal Monica Manipon,
- special education administrator Norman Salguero,
- general education teacher Jeanette Luzzi,
- Behavior Frontiers clinical director Shawna Barrios,

- Behavior Frontiers behavior supervisor Marilyn Grajeda,
- Kinsey, and
- Grandmother.

On October 23, 2023, Long Beach attorney and assessor Nichols did not attend. A student intern in speech pathology, Kitt Pied, attended. All other team members from the September 25, 2023 IEP team meeting attended.

On May 28, 2024, the following people attended the meeting:

- Langman,
- Manipon,
- Salguero,
- Hardy,
- Goodsell,
- Luzzi,
- Barrios,
- Grajeda,
- Mother,
- Whiteleather,
- Behavior and Education program director Adrian Esparza, and
- school psychologist Brechael Walker.

Ocampo, Furbush, and Johnson attended and reviewed their independent educational evaluations.

Long Beach provided Mother with notice of procedural safeguards in her native language of English at each of the IEP team meetings. (Ed. Code, § 56500.1.) Long Beach offered to answer any questions regarding the procedural safeguards. Student

presented no evidence that the notice of procedural safeguards provided to Mother had any deficiencies. Long Beach complied with legal obligations regarding provision of the statutorily required procedural rights to Mother.

Long Beach provided Mother a copy of each IEP resulting from the three meetings. At hearing, Mother denied receiving a copy of the IEP, for meetings held in September and October 2023, until January 10, 2024, when Long Beach both emailed and hand delivered it to her. However, the weight of the evidence demonstrated the IEP was provided to Student in October 2023, after the reconvened annual meeting. In late October 2023, Hardy provided Luzzi a copy of the IEP in a sealed envelope. Hardy asked Luzzi to hand deliver the IEP to Mother when Mother picked Student up from school. Luzzi hand delivered the IEP to Grandmother, who picked Student up that day. Grandmother told Luzzi she would give the envelope to Mother. Mother claimed she never received the IEP from Grandmother.

On October 27, 2023, special education administrator Norman Salguero sent prior written notice to Mother regarding the annual IEP. Salguero worked as an administrator, teacher on special assignment, and special education teacher for Long Beach for over 10 years at the time of hearing. On special assignment, he worked as an itinerant resource specialist program teacher and collaborative co-teaching teacher. He had also worked as a special education teacher for another educational agency for several years. He worked as an individual and group therapist for many years, in addition to his teaching experience. Salguero testified directly, without exaggeration, and was unimpeached. Based upon his knowledge, experience, and demeanor, his testimony was found credible and given due weight.

At the October 23, 2023 IEP team meeting, Student asked for an additional explanation of the collaborative co-teaching class, which Salguero said he would put in writing. In the letter, Salguero discussed the offer of placement and services, explained the collaborative co-teaching class, and described how the team considered the placement less restrictive than resource specialist services. Salguero offered Mother a tour of the placement. Salguero received no response from Mother. Mother did not ask to observe the offered placement. Mother did not ask for a copy of the IEP. Mother did not tell Long Beach that she never received a copy of the IEP in response to the October 2023 prior written notice regarding the IEP. At hearing, when asked if she received the email or letter of prior written notice, Mother stated that it looked like an email with her address so Long Beach must have sent it.

The evidence demonstrated that Parents inconsistently responded to Long Beach's communications by telephone, email, or mail. Parents had a history of denying receipt of documents and notices, prompting Long Beach to use multiple delivery and communication methods. At hearing, Mother confirmed that prior written notice letters sent from Long Beach, including one containing a copy of the complaint, contained Parents' correct email and physical addresses. A letter correctly addressed and properly mailed is presumed to have been received in the ordinary course of mail. (Evid. Code, § 641.)

Moreover, the statute requiring a local educational agency to provide a copy of an IEP to parent at no cost does not contain a mandated timeline. (Ed. Code, § 56341.5, subd. (j).) Long Beach complied with the statute by providing Mother with a copy of the IEP. More importantly, the weight of the evidence demonstrated that Long Beach provided Mother with a copy of the IEP in late October 2023.

In summary, Long Beach provided Student with timely and appropriate notice of IEP team meetings, scheduled the meetings on mutually agreeable dates and times, such that Mother attended each meeting, providing notice of procedural safeguards, and copies of IEP documents.

CONSIDERATION OF STUDENT'S NEEDS

When developing a child's IEP, the IEP team shall consider the following:

- The strengths of the pupil.
 - The concerns of the parents or guardians for enhancing the education of the pupil.
 - The results of the initial assessment or most recent assessment of the pupil.
 - The academic, developmental, and functional needs of the child.
- (Ed. Code, § 56341.1, subd. (a).)

Specifically, the team must consider the results of any reassessments of a student completed by the school district. (Ed. Code, § 56341.1, subd. (d)(2).)

Long Beach IEP team members considered Student's strengths and Mother's concerns for enhancing her child's education. The team described Student as a kind boy who demonstrated the ability to accurately identify and name various colors and spell his own name with confidence. Mother expressed concern regarding having Student receive all assessments needed. During the 2022-2023 and 2023-2024 school years, the IEP teams had reviewed Long Beach assessments in

- psychoeducation,
- functional behavior,

- occupational therapy,
- speech and language, and
- assistive technology.

The teams also reviewed independent educational evaluations in psychoeducation, occupational therapy, and functional behavior.

At the meetings, Mother expressed wanting to learn how the team could work with Student in classroom settings, provide incentives to stay on task, and reach his best ability. She wanted Student to get what he needed academically so he could function at the best level possible.

Long Beach identified Student's academic, developmental, and functional needs. Luzzi taught Student's general education first-grade class during the 2023-2024 school year. Luzzi worked as a general education teacher in Long Beach for nearly 30 years at the time of hearing. She worked with student teachers as a master teacher. She created and led an enrichment classroom, a parent read aloud program, and a buddy reading program. At hearing, she demonstrated compassion and care for Student and dedication and commitment to her profession. She testified candidly, with an appropriate demeanor, and stated uncertainty when needed. Based upon her training, experience, and familiarity with Student, her testimony was found credible and given great weight.

Luzzi had a class of approximately 30 students. She regularly had help from a parent volunteer who worked with children in small groups or individually. Luzzi looked forward to having Student in her class. She thought she could meet him at his level by providing differentiated instruction and working with him one-to-one as needed. She developed rapport with Student quickly and determined, based upon classroom

assessments, that he required more assistance than typically developing peers in her class. Luzzi modified Student's work so that his behavior aide could work with him at his own level and pace. Neither Luzzi nor her classroom volunteers nor the behavior aide were special education teachers. As the school year progressed, Luzzi determined that Student required more intensive support by a special education teacher.

Student functioned below the level of typically developing first-grade peers. Results from a foundational reading skills assessment showed that Student demonstrated emerging kindergarten level in English language arts. He scored significantly below all other children in his class and could not answer any of the questions correctly. He demonstrated significant needs in phonemic awareness, phonological awareness, and high-frequency word acquisition skills.

Student tested at the kindergarten level in math. He could not correctly answer any basic addition fact problems with sums up to 10, without assistance. He more often pointed to answers on tests rather than providing verbal responses and haphazardly provided some correct answers. Student had difficulty with fine motor skills such as using scissors and handwriting.

Luzzi provided Student with approximately one hour per school day of individual instruction, breaking down work at Student's level into smaller pieces and using repetition to help him learn. Her class volunteer would provide an additional one to one and one-half hours of daily individual instruction, using the same techniques. To address Student's English language arts deficits, Luzzi focused on teaching Student five letters each week. Student had difficulty retaining knowledge of letters learned during previous weeks.

Student had difficulty retaining information in math, learning numbers one through 10. By contrast, Luzzi's other students worked on adding numbers to sums of 10, then 20, and eventually double-digit addition and subtraction and then went on to degrees and measurements. In science, Student guessed answers.

In writing, Student told Luzzi what he wanted to say. Luzzi wrote down the information in highlighter and had Student trace it. Student struggled with copying what he had just traced.

Student had difficulty sharing in group discussions. He could sometimes share information with a peer, when helped by his behavioral aide.

Socially, Luzzi established that Student made some progress during the 2023-2024 school year. He formed some great relationships with a few other children and played well with them. He got frustrated with others because he did not understand the meaning of things like being tapped on the shoulder. He loved the color red, so he sat on the red square during floor time activities, like story time. If another child sat on the red square before him, he went back to his desk and cried, pushed them off or hit them. He also liked to be the first child in line, for example, coming back from recess. If another child stood first in line, Student pushed them out of the way to be in front. Some children were afraid of Student because of the pushing. Luzzi incorporated lessons on how to be kind to others. She had Student's behavior aide repeat the lesson for him. Though Student's social interactions improved somewhat during the 2023-2024 school year, many witnesses confirmed Student in class sitting next to peers but not interacting with them.

Student threw tantrums at the beginning of the school year that lessened over time. Sometimes the aide took Student out of the classroom. Other times, Luzzi had to escort the other children out of the classroom, while the behavior aide helped Student calm down. This happened approximately twice weekly through October 2023 and lessened toward the end of the school year. The tantrums involved Student hitting or kicking Luzzi or classmates, yelling, or throwing items. The tantrums involving class removal lasted around 35 minutes, taking a significant amount of time away from Student's instruction and also diminishing the instruction of other children in the classroom.

Luzzi redirected students to a new task approximately every 15 minutes. Student had difficulty with these transitions. Luzzi provided Student with a choice board to

- take a brain break,
- use a tablet,
- color,
- play with Legos, or
- use fidget spinners.

Student's tantrums made other children lose time from instruction by having to leave class or focus on Student's behavior rather than their work. Working individually with Student meant that Luzzi could not focus on other children.

Student engaged in self-stimulatory behaviors including verbal noises, scripting familiar stories or phrases, making rapid hand motions in his lap or against his body, and jumping. Student required frequent redirection to task. Student also demonstrated needs organizing his materials, opening bananas and other items at snack time, and wiping while using the restroom.

Hardy was Student's case manager and a very experienced speech and language pathologist. Hardy had worked with Student for at least two school years at the time of hearing. Hardy answered questions candidly, directly, and without embellishment. Hardy made a credible witness whose testimony was given due weight.

Hardy described Student's progress on previous goals at the September 2023 IEP team meeting. Student made some progress on one articulation goal, met the second articulation goal, and made good progress on his pragmatic language goal. Student needed to continue improving conversational exchanges and question answering as well as articulation in phrases and sentences.

Behaviorally, Hardy sometimes observed Student in her speech room and in the hallway near her class kicking the door, screaming, and crying. Student had difficulty transitioning from recess to the classroom and from speech class back to his general education class. She rewarded him with stickers before he went back to his class. If he were dysregulated, she ignored him until he calmed down and would then take him back to class. He enjoyed speech and did not want it to end.

Socially, Hardy observed Student in Luzzi's classroom sitting at his desk, not communicating. He fidgeted with his hands, would rock forward and look at his hands, and script words under his breath. She did not observe Student interacting with his peers.

Board-certified behavior analyst Grajeda supervised Student's behavior aide, developed an annual report charting Student's progress, and used this information, and the May 16, 2023 functional behavior assessment, to develop Student's September 19, 2023 behavior intervention plan. At hearing, neither party presented the functional behavior assessment.

Grajeda held a Master of Science in applied behavior analysis and worked as a case manager at nonpublic agency Behavior Frontiers. Long Beach contracted with Behavior Frontiers for provision of Student's behavior aide and aide supervisor Grajeda. Grajeda had nearly a decade of experience providing applied behavior analysis therapy to children with autism and other disabilities and collecting and analyzing data for use in behavior therapy. Grajeda demonstrated a depth of knowledge regarding use of data to develop behavior reports and graphs, behavior goals, and behavior intervention plans. In combination with her knowledge of Student, Grajeda's education and experience underscored the credibility of her testimony, which was given significant weight.

Grajeda observed Student in Luzzi's classroom in September and October of 2023. Student demonstrated maladaptive behaviors consisting of elopement, aggression, and tantrum. Student would try to leave his classroom, try to leave school, or go see the school nurse. He would cry, refuse to work, and protest by saying "I don't want to." Grajeda developed a behavior intervention plan and goals to decrease Student's behaviors that impeded his learning and that of others. At the September 2023 IEP team meeting, Grajeda discussed data from Student's annual progress report and behavior intervention plan. At hearing, Grajeda thoroughly discussed data collection and development of the annual progress reports and behavior charts, and behavior intervention plan in a manner supporting the validity and appropriateness of each.

Grajeda identified Student's needs as

- compliance with group and individual directives,
- functional communication,

- making choices,
- responding to his name, and
- task completion.

At the October 23, 2023 IEP team meeting, Goodsell shared Student's progress on occupational therapy goals. Goodsell held a doctorate degree in occupational therapy, provided occupational therapy for nearly 30 years, and conducted hundreds of occupational therapy assessments. Goodsell answered all questions at hearing in a direct way, with an appropriate demeanor, and without overreaching. She readily acknowledged when questions were asked outside of her area of expertise. For these reasons, Goodsell's testimony was found credible and given much weight.

Goodsell, at hearing, described her observations of Student in Luzzi's classroom. Student used a sit and move cushion for posture and additional movement opportunities. He had appropriate sitting posture. He had fine motor needs requiring modification of written work. His behavior aide would model words for him to fill in blanks and traced words because of his difficulty copying. He also worked on using scissors and cutting skills. Student demonstrated the ability to use both hands together and both sides of his body together. Goodsell explained that such functioning demonstrated visual motor or eye-hand coordination.

In occupational therapy sessions, Student positioned his pencil correctly, needing verbal reminders 20-percent of the time. He used a static four-finger grasp. He could write his first name independently. He copied 11 of 26 lower-case letters, seven of 26 upper-case letters, and two numbers. He demonstrated sustained attention in occupational therapy sessions. He asked for help when needed and

showed willingness to try activities with encouragement. He used different colors when coloring and drawing different parts of a picture and took pride in his work.

In summary, Long Beach IEP team members correctly identified Student's strengths and considered Mother's concerns for enhancing Student's education. Long Beach considered the results of Luzzi's informal academic assessments, and Grajeda's analysis of behavior data collection. Long Beach correctly identified Student's academic, developmental, and functional needs, described at the meetings by Luzzi, Hardy, Grajeda, and Goodsell.

CONSIDERATION OF RECENT DISTRICT ASSESSMENTS

Long Beach considered the results of recent assessments of Student in development of the September 2023 annual IEP. The team reviewed Long Beach's assistive technology assessment during the September 25, 2023 IEP team meeting. The team also considered independent education evaluations in functional behavior, psychoeducation, and occupational therapy at the May 28, 2024 IEP amendment meeting.

Long Beach considered Student's needs for assistive technology devices and services. (Ed. Code, § 56341.1, subd. (b)(5), (c).) Long Beach's assistive technology specialist Jamie Nichols reviewed her September 13, 2023 assessment report at the September 25, 2023 IEP team meeting. Nichols had worked as an assistive technology specialist for Long Beach for 10 years at the time of hearing. She spent several years working as a special education teacher, including as a resource specialist program teacher. Nichols held national certifications in teaching and assistive technology. The latter allowed her to work in educational, rehabilitative, and hospital settings to provide

assistive technology for academics, motor needs, and communication needs. Nichols had the education, training, and experience appropriate to assess Student and render opinions regarding his need for assistive technology at the September 25, 2023 IEP team meeting. Moreover, Nichols testified unwaveringly and in a straightforward manner. Her report and testimony at hearing remained uncontradicted and were given much weight.

Nichols conducted the assistive technology assessment at the request of Parent to determine whether reading, writing, and access tools would increase Student's progress in the classroom. Nichols reviewed Student's academic present levels of performance and Parent concerns from his September 22, 2022 IEP. Nichols interviewed Student, his teacher, and Mother. She observed Student in class using a Chromebook and iPad to engage in reading and writing activities, with the assistance of his aide. Nichols used various testing instruments to determine whether assistive technology tools, other than those embedded in his classroom, would help him access his education.

Nichols concluded, in her assessment and at hearing, that Student did not require additional assistive technology tools to access his education. Student used universal design for learning supports, meaning supports built into the general education classroom, available to all students. All Long Beach classrooms had Chromebooks with embedded technology. Student's classroom used iReady for English language arts and ST Math. When Student tried typing his name instead of handwriting, he struggled to recognize letters. Nichols conducted a trial using Google text features, such as speech-to-text, text-to-speech, and word prediction software. Nichols also tested Student with an iPad, but Student's work product did not significantly improve with use of a

touchscreen option. She tried a CPen reader, another text-to-speech option, which scanned printed words on a paper. None of this assistive technology helped Student's comprehension, writing, or ability to answer questions.

At hearing, Student questioned whether visual processing or sensory processing issues would affect Student's use of assistive technology. Nichols opined that assistive technology tools were matched to a child's needs. Nichols discussed Student's sensory issues with his occupational therapist and provided various options for Student to use, none of which improved his access to academics.

Nichols persuasively demonstrated that Student had access to technology embedded in his classroom and that he did not require additional assistive technology devices, services, or supports in order to access his education. Student produced no persuasive evidence to the contrary.

CONSIDERATION OF INDEPENDENT EDUCATIONAL EVALUATIONS

Long Beach appropriately considered the results of independent educational evaluations at the May 28, 2024 IEP amendment team meeting. (34 C.F.R. § 300.502(c)(1); Ed. Code, § 56329, subds. (b) & (c).)

Long Beach considered the results of Johnson's independent psychoeducational evaluation, conducted in November and December 2023. The report, admitted into evidence, carried little evidentiary value as Johnson did not testify at hearing to explain

testing instruments used, discrepancies in test results, her opinions, or recommendations. Moreover, Johnson's report contained information that further diminished the reliability of information it contained.

For example, Johnson conducted the nonverbal test of intelligence, fourth edition. She elicited a score of 87, which fell within the below average cognition range. For an unexplained reason, Johnson consulted a standard conversion table, also undescribed, which she claimed placed Student in the low average range. She could not obtain testing results using the universal nonverbal intelligence test, second edition. She attributed that to inattention, distractibility, and intense stimulatory behavior. Nonetheless, she concluded that her testing resulted in what may be an underestimate of his true intellectual functioning. Notably, Student's providers consistently described his academic performance as below average compared to typically developing peers. Johnson also referenced Long Beach's psychoeducational evaluation of September 29, 2023, not presented by either Party at hearing. Long Beach administered the developmental profile, fourth edition, a checklist provided to an unidentified Parent and teacher. The results of both reporters placed Student in the below average and well below average range for cognitive ability.

Next, Johnson concluded that Student may have a learning disability but had not conducted academic assessments, completed testing to obtain what she considered a true reflection of Student's cognitive ability, or determined whether Student had a disorder of one or more of the basic psychological processes, which were all necessary to reach this conclusion. (34 C.F.R. § 300.309; Ed. Code, § 56337, subd. (a).) At hearing, Student did not produce evidence that Student was eligible for special education as a child with specific learning disability.

Johnson did not recommend assessments in developmental optometry, or vision therapy, or in central auditory processing disorder. Student argued he required these two assessments before being offered a change in placement. Student did not proffer persuasive evidence that Student had needs in either area that impacted his access to education.

Student's IEP team considered Johnson's evaluation at the May 28, 2024 IEP team meeting. The team indicated he required more academic support and only recently began receiving services from his behavior aide. Mother opined that student was able to work on grade-level curriculum but had a specific learning disability. No credible evidence supported either opinion.

Finally, Johnson recommended that Student be provided with clinic-based individual full-day applied behavioral analysis programming by the most highly trained applied behavior analysis professionals for a minimum of three to six months. The goal of such intensive intervention was to greatly reduce Student's stimulatory behavior and develop attention and motivation to complete tasks. At hearing, no witness agreed that Student should be placed in such a restrictive setting.

Long Beach also considered the results of Ocampo's independent functional behavior evaluation at the May 28, 2024 IEP amendment meeting. Neither Barrios nor Ocampo testified at hearing. Ocampo's results largely mirrored those of Frontier Behavior reporting, Student's at school providers. Student engaged in self-stimulatory or stereotypy, refusal, tantrum, and aggression. The team discussed behavior goals and the behavior intervention plan. At the IEP team meeting, Mother asked questions,

shared information, and asked for changes to the reporting. Mother discussed Student's major tantrums as occurring five to six times per school year and lasting 30 to 36 minutes.

Long Beach also considered Furbush's independent occupational therapy evaluation at the May 28, 2024 IEP amendment meeting. This Decision discusses Furbush's assessment results and sensory integration needs in the accommodation section, below.

In summary, Student's 2023 annual IEP team considered

- student strengths,
- Mother's concerns for enhancing Student's education,
- recent assessment results from Long Beach and independent evaluators, and
- Student's academic, developmental, and functional needs.

LONG BEACH OFFERED APPROPRIATE ANNUAL GOALS

An annual IEP must contain a statement of measurable annual goals related to meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum and meeting each of the child's other educational needs that result from the child's disability. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320(a)(1), (2); Ed. Code, § 56345, subd. (a)(1), (2).) The IEP must also contain a statement of how the goals will be measured. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320(a)(3); Ed. Code, § 56345, subd. (a)(3).) The IEP must show a direct relationship between the present levels of performance, the goals, and the educational services to be provided. (Cal. Code Regs, tit. 5, § 3040, subd. (c).)

Annual goals are statements that describe what a child with a disability can reasonably be expected to accomplish within a 12-month period in the child's special education program. (*Letter to Butler*, U.S. Dept. of Education, Office of Special Education and Rehabilitative Services, March 25, 1988); Notice of Interpretation, Appendix A to 34 C.F.R., part 300, Question 4 (1999 Regulations).)

Based upon recent assessments, review of progress on prior goals, and input from Long Beach staff and Mother, the IEP team determined that Student had ongoing needs in

- academics,
- speech and language,
- occupational therapy,
- behavior, and
- socialization.

Long Beach witnesses Luzzi, Hardy, Goodsell, and Grajeda credibly and persuasively demonstrated that Long Beach drafted appropriate goals based upon Student's present levels of academic achievement and functional performance that were measurable, and which Student could be expected to meet or make appropriate progress towards within a year's time. Long Beach witnesses also testified the goals could be appropriately implemented in a collaborative co-teaching placement. The goals in the IEP had a direct relationship to Student's present levels of performance and educational needs.

Special education and resource specialist teacher Langman also provided credible and persuasive testimony regarding the appropriateness of academic goals and described how the goals were appropriate to implement in the collaborative co-teaching classroom.

Langman had several years of experience as a teacher. Langman worked for Long Beach as a special education teacher since 2020. Based upon Langman's training, experience, and demeanor, their testimony was found credible and given significant weight.

In academics, Luzzi drafted academic goals tying Student's present levels of performance to state standards in a manner appropriate to meet Student's needs. She demonstrated how the goals were to be measured, by whom, and during what reporting periods.

Luzzi drafted goals to meet Student's needs in writing his first and last name, identifying letter names for upper- and lower-case letters, and producing primary phonetic sounds for letters. In fall 2023, Student could write his first name. Typically developing peers were able to write their first and last names. Luzzi based the goals on kindergarten standards for knowing and applying grade-level phonics and word analysis skills in decoding.

Luzzi drafted two mathematics goals based on Student's need to recognize, count, and show the number of objects between the numbers one through 20. In fall 2023, Student could only recognize five such numbers. Luzzi based the goals on kindergarten standards to solve addition and subtraction word problems, and add and subtract numbers within 10, by using objects or drawings to represent the problem.

Luzzi drafted a third mathematics goal for Student to add and subtract numbers between one and 10. She based this goal on a kindergarten standard to represent addition and subtraction with

- objects,
- fingers,

- mental images,
- drawings,
- sounds such as claps,
- acting out situations,
- verbal explanations,
- expressions, or
- equations.

At the time, Student could not complete simple addition or subtraction.

Langman's testimony supported Luzzi's opinions and persuasively demonstrated that the goals could be appropriately implemented in the collaborative co-teaching program. Because Student performed far below grade-level standards, he required instructional strategies provided in a classroom with the embedded support of a special education teacher.

Hardy drafted Student's goals for speech and language to address Student's needs in articulation and pragmatic language. Hardy drafted the articulation goal based on first-grade speech and language standards for describing people, places, things, and events with relevant details, expressing ideals and feelings clearly. She adapted the standard to address Student's present levels of performance, working on specific letter blends in words and phrases.

In pragmatic language, Hardy drafted a goal based on Student's ability to engage in two conversational turns with peers or adults, given verbal cues, sometimes staying on topic. Hardy adapted the first-grade standard for collaborative conversations with

diverse partners about grade one topics and texts to Student's needs. Hardy developed precise means for measuring speech goals by identifying who would measure them, how they would be measured, and when progress would be reported.

Goodsell developed appropriate occupational therapy goals by linking Student's needs to first-grade standards in text type and purpose and letter and number formation. For example, she drafted a fine motor goal for Student to demonstrate improved bilateral hand skills, or using two hands together, when cutting various shapes along given lines.

Goodsell demonstrated the measurability of occupational therapy goals by explaining who would measure them, how progress would be measured, and over what reporting periods. For example, in letter formation, Student could write his first name and copy 11 of 26 lower-case letters, seven of 26 upper-case letters, and two numbers. The new goal required Student to copy 90-percent of upper- and lower-case letters with legible formation across two trials, at least 46 of 52 letters, without verbal cues.

Grajeda drafted appropriate goals addressing Student's behavior needs in

- peer interaction,
- compliance with individual and group directives or instructions,
- functional communication to get needs and wants met,
- making choices,
- responding to his name, and
- task or assignment completion.

Grajeda credibly demonstrated the relationship between Student's needs and the new goals by identifying Student's progress toward previous goals and data collection.

Grajeda explained measurability of the goals by identifying who would measure them, how they would be measured, and when. For example, Student's goal for task or assignment completion would be measured by informal assessments and observations by Long Beach and nonpublic agency staff. The goal required Student to complete an assignment or task with no more than one verbal prompt in an average of 90-percent opportunities across two consecutive school weeks. Grajeda's other behavior goals were written with similar clarity and measurability.

The collective opinions of these credible and well-qualified professionals provided persuasive evidence that Long Beach offered appropriate, measurable annual goals to address Student's needs. Moreover, the weight of the evidence established that the goals could be appropriately implemented within the offer of placement and services made to Student in the 2023 annual IEP. Student did not produce persuasive evidence to the contrary.

In summary, Long Beach's annual 2023 IEP contained a statement of annual goals related to Student's needs resulting from his disability, which enabled Student to be involved in and make progress in the general education curriculum. The goals met each of Student's other educational needs resulting from his disability. The goals identified staff responsible for measuring Student's progress on goals, how that progress would be measured, and provided progress reporting periods.

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LONG BEACH OFFERED APPROPRIATE SUPPLEMENTAL AIDS, PROGRAM MODIFICATIONS, AND SERVICES

In considering a child's academic, developmental, and functional needs, an IEP must include a statement of the special education and related services that will be provided to the student. (20 U.S.C. § 1414(d)(1)(A)(i)(IV); 34 C.F.R. § 300.320(a)(4); Ed. Code, § 56345, subd. (a)(4).) That includes a statement of supplementary aids and services and other supports that are provided in education-related settings to enable the student to be educated with nondisabled children to the maximum extent appropriate. (20 U.S.C. § 1401(33); 34 C.R.F. § 300.42; Ed. Code § 56033.5.) Accommodations and modifications necessary for the student to receive a FAPE must also be included in the IEP. (Ed. Code § 56341.1, subd. (c).)

To assist Student in meeting his goals, the IEP team offered accommodations addressing Student's needs, related services speech and language, occupational therapy, a full-time behavior aide, and placement in a collaborative co-teaching classroom with six hours of specialized academic instruction, as more fully addressed below. The team developed the supplementary aids and services on their review of

- recent assessments,
- review of progress toward annual goals,
- teacher reports,
- related service provider reports, and
- Mother's input.

The evidence demonstrated that Long Beach offered appropriate supplementary aids and services.

As accommodations, Long Beach offered:

- Provision of consistent structures and routines
- Provision of a token board for longer or non-preferred tasks
- Picture supports when possible
- Multi-modal presentation of information
- Limiting the amount of print or other distractions on paper, such as masking off portions of papers
- Use of first-then when reinforcing pairing of preferred with non or less preferred tasks
- Encouragement or provision of movement breaks and alternating seated activities with movement opportunities
- Offering structured choices
- Breaking larger tasks or instruction into smaller, manageable chunks
- Pairing with peers to model appropriate communication and social skills
- Providing frequent positive praise for specific behaviors with a five-to-one ratio
- Repeated, rephrased, or clarified directions and instructions, giving first item as an example

- Prime, reinforce for approximation of behavior, reinforce for success
- Weighted pencil and/or weighted pencil grip as needed
- Access to sensory fidgets and sensory breaks as needed, such as air-filled seat cushion, standing at desk

In Mother's January 12, 2024 response to the September and October 2023 annual IEP offer, she disagreed with accommodations for testing. She did not specify disagreement with any of the offered accommodations identified above. However, she did comment, regarding sensory accommodations, "[w]hat are his sensory needs?" Throughout the hearing, Student suggested through testimony of Mother and Furbush, that Long Beach did not know Student's sensory needs and, therefore, could not offer an appropriate program. The weight of the evidence demonstrated otherwise.

Long Beach witnesses described differences between Student's maladaptive behaviors and sensory needs, which sometimes overlapped. Goodsell determined Student's sensory needs through skilled observation in the occupational therapy setting, teacher questionnaire, Parent interview, and by using a testing instrument called the sensory processing measure in her prior occupational therapy assessment. Neither party presented the assessment as evidence.

Goodsell explained that sensory integration or processing consisted of how individuals process information from their environment through their senses, meaning what they see, hear, smell, taste, and touch. Sensory processing also involved movement and proprioception, meaning information or feedback from within one's muscles and joints. Sensory integration involved creating motor responses or

appropriate sensory responses to regulate the information being received through the senses. For example, if Student felt overwhelmed by his classroom environment, meaning noise, lights, hearing academic demands, he may try to regulate that feeling by running from his seat, rapid hand movements, or scripting.

Student also regularly fidgeted and sometimes wrote with too much or not enough pressure. At the same time, Student often tolerated musical activities well and enjoyed engaging in arts and crafts, which involved hearing and tactile sensory integration, respectively. Student generally engaged in appropriate classroom posture and enjoyed movement activities during recess. Goodsell found Student not overly active nor overly sedentary in class. Goodsell persuasively opined that every person has sensory needs and preferences that they can learn to manage, just like Student.

Grajeda, at hearing, described the difference between sensory needs and maladaptive behaviors. She collected antecedent-behavior-consequence data to determine the function of Student's behaviors. For example, Luzzi asked Student to put away his Chromebook, the antecedent, and Student hit Luzzi, the behavior. The function of Student's behavior was being denied access to the Chromebook, a preferred activity. The consequence was what happened afterwards, such as Luzzi asking Student to use his words and Student saying he wanted more time with the Chromebook. The consequence determined what behavior was being reinforced. Asking Student to use his words reinforced the positive behavior of Student asking for more time with the preferred activity. Giving Student back the Chromebook reinforced the negative behavior of hitting or another type of protest behavior.

In contrast, Grajeda described sensory-based behaviors as providing automatic reinforcement, meaning they do not serve a function but create their own rewards. Student regulated excessive sensory input by engaging in sensory output, such as rapid hand movements. Much like going for a run helps alleviate stress levels. Student would engage in sensory-seeking behaviors even without having demands placed on him or seeking access to a particular item.

To address sensory needs, Long Beach offered Student the following accommodations:

- Fidgets
- Air-filled seat cushion
- Weighted pencil grip
- Standing at desk
- Movement breaks
- Visual supports
- Multi-modal presentation of information, for example verbally, visually, through manipulatives
- Breaking larger tasks into smaller portions

Student's behavior goals for functional communication and making choices also addressed sensory needs. His functional communication goal provided opportunities to have his needs met in a more appropriate manner. For example, he could ask to take a movement break outside or choose a preferred activity to help him self-regulate. Student's behavior aide, teachers, and other service providers implemented these goals across settings, enabling him to generalize learned skills.

Grajeda and Goodsell persuasively demonstrated that the 2023 annual IEP addressed Student's sensory needs by providing goals, accommodations, and services designed to help Student increase his tolerance of sensory information. Moreover, Student did not persuasively challenge the appropriateness of offered accommodations, goals, or behavior services in addressing Student's sensory needs.

At hearing, Mother testified that Long Beach should have conducted sensory integration testing before offering a change of placement to a collaborative co-teaching classroom. Student's own occupational therapy witness, Richard Furbush, did not make placement recommendations based upon his sensory integration testing. Furbush testified that Student's sensory processing and other issues would exist and could improve regardless of placement.

Furbush conducted an independent occupational therapy evaluation, along with his wife, Susanne Smith Roley, and colleague Angie Winslow. Only Furbush testified at hearing. On March 8, 2024, Furbush conducted testing with Student. On April 10, 2024, Winslow conducted an hour-long observation of Student in his classroom. Subsequently, Smith Roley reviewed the report resulting from the observation and testing. Furbush conducted the sensory processing measure but did not compare his results with Goodsell's results from the previous school year or with Student's private occupational therapy report. He listed various Student records in the report but did not include a summary of records reviewed. Furbush obtained input from Luzzi and Parent for the adaptive behavior assessment system and sensory processing measure. However, Furbush had no communication with Goodsell regarding Student's present levels of performance or progress on goals in school-based occupational therapy.

Overall, Furbush's determination of Student's occupational therapy and sensory needs were consistent with those found by Long Beach and identified in Student's 2023 annual IEP, specifically needs Furbush reported as:

- Self-regulation
- Vestibular-proprioceptive related functions
- Fine motor and visual motor skills
- Praxis or planning and executive function

Long Beach witnesses disagreed that Student demonstrated balance issues, lack of postural control, or fatigue during visual motor tasks, which Furbush described as being within the second and third categories, above. The weight of the evidence supported Long Beach witnesses on this point.

Furbush recommended six goals in the areas of:

- Self-regulation and participation
- Work productivity
- Handwriting and visual spatial organization
- Task initiation
- Organizational skills
- Multistep activities and planning

Long Beach had already offered goals, accommodations, and services addressing the same areas of need but in ways Long Beach witnesses demonstrated were more appropriate for Student. For self-regulation and participation, Long Beach offered a goal for functional communication and making choices. Long Beach also offered goals and accommodations supporting Student's work productivity, handwriting including visual spatial organization, and task completion. Student's behavior aide and service

providers helped Student in the remaining proffered goal areas of task initiation, organizational skills, and multistep activities and planning. Student did not persuasively demonstrate that Furbush's goals were necessary for Student to receive a FAPE. An IEP need not contain every goal from which a student may benefit. (*Capistrano Unified School Dist. v. S.W.* (9th Cir. 2021) 21 F.4th 1125, 1133.)

At the May 28, 2024 IEP team meeting, Furbush recommended assessments in developmental vision and central auditory processing disorder, both outside his area of expertise. Mother opined, at hearing, that Long Beach's offer of placement was premature because these assessments may shed more light on Student's needs. Mother conceded that Long Beach offered assessment plans for both areas, after Furbush's recommendations at the May 28, 2024 IEP team meeting. Mother disagreed with whether district assessors would test the same areas as independent evaluators.

Nothing in the law required Long Beach to postpone the 2023 annual offer of FAPE, pending completion of the recently requested assessments. Moreover, the weight of the evidence did not demonstrate that Long Beach failed to identify areas of need and that such failure meant that Long Beach could not offer Student a FAPE. Long Beach offered a change of placement based upon extensive knowledge of Student's then existing needs. The determination of FAPE regarding Long Beach's placement offer must be evaluated based upon what was objectively reasonable at the time of the offer, not in retrospect. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (*Adams*)). Any determination that Long Beach's placement offer was premature in May 2024 was, at best, speculative. Indeed, considering new assessments at IEP team meetings contemplates that any newly discovered needs may result in a change to the child's educational program.

ACCOMMODATIONS FOR DISTRICT AND STATE TESTING

Mother disagreed with the proposed accommodations for district and Statewide assessments. Student argued at hearing that such accommodations meant that Student was not able to demonstrate his actual abilities and that he would not have such accommodations outside of the school setting. Student presented no evidence that using testing accommodations meant that his actual abilities would not be appropriately tested.

The United States Department of Education defined testing accommodations as changes in testing materials or procedures that ensure an assessment measures a child's knowledge and skills rather than their disabilities or English proficiency. (*Standards and Assessments Guidance*, Title I, Part A, U.S. Dept. of Ed., March 10, 2003.) Accommodations from the *Assessments Guidance* generally fall within four categories:

- Presentation, such as repeating directions or reading aloud
- Response, such as marking answers in book or using reference aids
- Setting, such as separate room, study carrel, special lighting
- Timing or scheduling, such as extended time frequent breaks

Testing accommodations offered by Long Beach are within the categories described in the federal guidance. For example, federal guidance allowed Students access to multiple testing accommodations for each test, which Long Beach offered. The purpose of testing accommodations, according to federal guidance, was to make sure that the scores of individuals with disabilities accurately reflect the child's aptitude or achievement level or whatever skill the exam seeks to measure. Effectively, testing accommodations level the playing field between children with disabilities and their

typically developing peers because they measure their abilities, rather than the impact of their disabilities. Student's argument against testing accommodations fails, given the lack of an evidentiary or legal basis.

RELATED SERVICES

Long Beach offered specialized academic instruction, speech and language, occupational therapy, a one-to-one behavior aide, and transportation services:

- Specialized academic instruction in a collaborative co-teaching classroom for six hours per school day
- Behavior aide services, individually, full-time
- Behavior supervision services, 40 hours per school year
- Speech and language services, pull out, group, 25-minute sessions, seven times, monthly
- Occupational therapy services, pull out, individual, 25-minute session, one time, weekly

Long Beach also offered transportation to the collaborative co-teaching class, as the placement was not located on his home school campus. The IEP team described transportation as being from Student's home school to his new school, but that Parents could seek door-to-door transportation.

At the May 28, 2024 IEP amendment meeting, Long Beach added extended school year services with behavior intervention and supervision services. Student attended summer school with behavior services, instead. Luzzi discussed summer

school with Mother, indicating that Student could continue working with Luzzi. Luzzi believed Student would benefit from attending summer school with her because Student already worked well with her and would not have to get used to a new teacher. Mother sent Student to summer school. Luzzi had six children in her summer school classroom and provided small group and individual support.

Grajeda, Luzzi, Langman, Goodsell, and Hardy persuasively established the services offered in their respective areas was appropriate to implement related goals and help Student make progress in his education. Student did not successfully contravene Long Beach's evidence on this issue.

Furbush, in his report and at hearing, recommended two hours of weekly individual pull-out occupational therapy. He opined that the therapist should have post graduate training in sensory integration in a clinic meeting fidelity to Ayres Sensory Integration. Furbush opined that treatment needs to be conducted in a specialized therapy environment with a swing, mats, and other movement-related equipment. Furbush described Ayres Sensory Integration as a methodology used by his wife's company, as well as others. Furbush also recommended 30-minutes of weekly individual or group occupational therapy, either push in or pull out, 60-minutes of monthly collaboration with team members, and reevaluation after one year. Furbush conceded that Student could make progress regardless of whether he used the Ayres method.

The IDEA does not require IEPs to include specific educational methodologies, unless a child requires the methodology to receive a FAPE. (34 C.F.R. § 300.320(a)(4); 71 Fed. Reg 46,665 (2006); *J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938,

952.) The school district ultimately decides which methodology to use, even if parents prefer a specific methodology or program. (*Carlson v San Diego Unified School Dist.* (9th Cir. 2010) 380 F.App.'x 595.)

Here, the weight of the evidence demonstrated the appropriateness of the 25-minutes of weekly pull-out occupational therapy offered. Goodsell persuasively demonstrated that she could appropriately implement Student's goals in occupational therapy given the amount of therapy time recommended. Anecdotally, Student presented evidence of his September 2024 progress on occupational therapy goals, which demonstrated that he met one and progressed toward the other two. Student's evidence did not contravene the appropriateness of Long Beach's offer of occupational therapy service for 25-minutes, weekly.

The evidence did not demonstrate that Student required two hours of weekly occupational therapy to make progress on his goals. The evidence did not demonstrate that working on Student's sensory integration issues outside the classroom, rather than in his natural setting, would be required for Student to access his education. Neither party believed Student required less time in a general education environment to derive appropriate educational benefit. They only disagreed on what that general education environment should include.

The 2023 annual IEP included a start and end date for services and modifications and identified the frequency, location, and duration of all services offered. (20 U.S.C. § 1414(d)(1)(A)(i)(VII); 34 C.F.R. § 300.320(a)(7); Ed. Code, § 56345, subd. (a)(7).) Accordingly, Long Beach's formal written offer created a clear record of

the placement and services offered. (*Union School Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1526.) Parent expressed no confusion regarding the IEP offer during the meeting.

Nonetheless, at hearing, Student argued the offer of specialized academic instruction was confusing because he did not know whether the offer was for related services or placement. Student also argued the placement offer was unclear as Long Beach offered a program rather than placement at a particular location or school.

Long Beach explained the offer of specialized academic instruction in the collaborative co-teaching classroom in IEP team meetings. Long Beach further explained the placement in a prior written notice letter sent to Parents on October 31, 2023, through email and first-class mail, to their confirmed email and physical addresses. Mother toured the collaborative co-teaching programs at more than one school campus the previous school year.

In Mother's January 12, 2024 response to the September and October 2023 IEP team meetings, Mother did not express confusion regarding the offer of specialized academic instruction for six hours daily, which matched the length of the instructional day. Mother did not express confusion that the specialized academic instruction would be provided by a special education teacher, co-teaching in a collaborative co-teaching classroom.

On January 26, 2024, Long Beach further clarified the offer and Parents' consent in a prior written notice sent to Parents at their confirmed email and physical addresses. Long Beach clarified that Parents consented to the annual IEP except for the collaborative co-teaching classroom, accommodations, and distance learning plan. Long Beach also

clarified it would implement behavior intervention and supervision services, speech and language services, and occupational therapy, as specified in the IEP. Mother never purported to consent to implementation of six-hours of daily specialized academic instruction as she did not consent to placement in the collaborative co-teaching classroom in which such instruction would take place. Again, Mother did not express confusion regarding the offer of specialized academic instruction in the collaborative co-teaching classroom and could not reasonably have been confused by the offer.

Student also argued that not offering a specific placement made the 2023 annual IEP unclear. However, the IEP offered placement at a particular school, Riley. As Long Beach explained at the IEP team meetings, in their prior written notices, and at hearing, if Riley were no longer available the program would be offered on the campus closest to Student's home, which Parents would then have an opportunity to tour. Even if Riley had not been identified, here, Student was offered a particular program that did not significantly differ from campus to campus. These facts are distinguished from cases where a similar special day class differed from campus to campus so much so that providers could not recommend all special day class programs but only those on specific campuses. (*Bookout v Bellflower Unified School Dist.* (CA. C.D. March 21, 2014) 2014 W.L. 1152948.)

DISTANCE LEARNING PLAN

Long Beach offered Student an emergency conditions plan, which it called a distance learning plan, in the 2023 annual IEP. The team discussed the plan at the October 23, 2023 IEP team meeting. Mother expressed disagreement with the plan. In her January 12, 2024 response to the IEP, Mother wrote that she did not consent to what she called the "predetermined" plan.

An IEP must provide a description of how the IEP will be provided under emergency conditions in which instruction or services, or both, cannot be provided to a student either at school or in person for more than 10 school days. (Ed. Code, § 56345, subd. (a)(9)(A).) The description shall include all the following:

- Special education and related services.
- Supplemental aids and services.
- Transition services, as defined in Section 56345.1.
- Extended school year services pursuant to Section 300.106 of Title 34 of the Code of Federal Regulations.

Student did not require transition services because of his age. (Ed. Code, § 56345, subd. (a)(8).) Long Beach offered the following in relation to emergency conditions, which it described sufficiently in the IEP:

- Student would receive specialized academic instruction virtually, as much as practicable
- Student would receive speech and language services in 20-minute session, online
- Student would receive occupational therapy online

Long Beach witnesses confirmed that the emergency conditions plan could be updated at an IEP team meeting should the need for implementation arise. They explained that instruction would occur remotely, and that Student would continue to have access to typically developing peers. Student produced no evidence demonstrating the distance learning plan was not appropriate as offered. Student only presented Mother's testimony that she did not consent to the "predetermined distance learning plan."

Student presented no evidence that Long Beach failed to consider Mother's input regarding the plan or offered the plan in a take it or leave it fashion. At hearing, Mother simply reiterated her contention that she did not consent to the "predetermined distance learning plan." The contention, without more, failed to overcome Long Beach's evidence that it discussed the plan at the October 23, 2023 IEP team meeting.

Predetermination occurs when district members of an IEP team unilaterally decide a student's educational placement in advance of an IEP team meeting. (*Deal v Hamilton County Board of Ed.* (6th Cir. 2004) 546 U.S. 936 (*cert. denied*).) In *Deal*, parents requested that district fund an applied behavior analysis program. The IEP team refused, citing a policy that prevented it from considering a program other than the one that it invested in. Here, Student made no showing of a take it or leave it offer by Long Beach.

The evidence demonstrated that Long Beach discussed and offered an emergency conditions plan as required by state law. The plan addressed Student's need for specialized academic instruction and related services in speech and language and occupational therapy, as required by law. In light of the information known at the time the IEP was drafted, the distance learning, or emergency conditions, plan was appropriate as drafted.

PARENTAL PARTICIPATION

Long Beach afforded Mother the opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of Student and the provision of a FAPE to the Student. (34 C.F.R. § 300.501(a); Ed. Code, § 56500.4.) A parent who has an opportunity to discuss a proposed IEP and whose concerns are

considered by the IEP team has participated in the IEP process in a meaningful way. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann v. East Hanover Board of Education* (3rd Cir. 1993) 93 F.2d 1031, 1036) (*Fuhrman*).)

Mother attended each IEP team meeting during which the 2023 annual IEP was developed, was informed of Student's needs, provided input, and expressed disagreement with Long Beach's various portions of the IEPs, as discussed above. Discussions regarding changes to the IEP continued after Mother expressed disagreement and concerns in her January 12, 2024 response to the IEP.

In Long Beach's January 26, 2024 prior written notice, Long Beach addressed Mother's handwritten notes regarding disagreement with various goals. In response, Long Beach agreed to change some of the goals and provided further information regarding its unwillingness to change other goals. Long Beach addressed Mother's request for clarification for the goal requiring Student to respond to his name being called and regarding testing accommodations embedded in classroom assessments.

Moreover, the IEP documents reflect that Mother asked questions, provided input, and obtained changes to the 2023 IEP. The evidence also demonstrated that Mother, through counsel, conferred with Grajeda regarding the annual behavior report and goals and that Grajeda made various requested changes.

In summary, Mother had the opportunity to discuss the 2023 annual IEP during three meetings and through correspondence and conversations had outside of the meeting process. Long Beach considered and addressed Mother's concerns. Long Beach made various requested changes to the 2023 annual IEP and provided

clarification for changes it did not make. The evidence overwhelmingly demonstrated that Mother participated in a meaningful way in the development of the 2023 annual IEP. (*W.G. v Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484 (superseded by statute on other grounds).)

That the parties disagreed regarding placement in a collaborative co-teaching class, the distance learning plan, and other aspects of the IEP, as addressed above, does not undermine Mother's meaningful participation.

Applying the *Rowley* standard, as restated and affirmed in *Endrew F.*, the weight of the evidence established that the supplemental aids, program modifications, and special education and related services offered in the 2023 annual IEP were designed to meet Student's unique needs and reasonably calculated to enable him to make progress appropriate in light of his circumstances. Student's IEP could be appropriately implemented in the offered collaborative co-taught classroom.

CHANGE OF PLACEMENT AND LEAST RESTRICTIVE ENVIRONMENT

Long Beach argues it offered Student a FAPE in the least restrictive environment appropriate for him. Long Beach argues that Student required placement in the collaborative co-teaching program as he required support from a special education teacher to help him access the curriculum. Student argues that he benefitted from exposure to typically developing peer models of speech and language, socialization, and behavior. Student also argues that Long Beach did not attempt to use resource specialist services, which he argues were less restrictive.

Substantively, an IEP must offer access to an education that is sufficient to confer some educational benefit upon a child. (*Rowley*, supra, 458 U.S. 176, 200.) An IEP is evaluated in light of the information available to the IEP team at the time it was developed and not judged in hindsight. (*Adams*, supra, 195 F.3d 1141, 1149.) "An IEP is a snapshot, not a retrospective." (*Id.*, citing *Fuhrman*, supra, 993 F.2d 1031, 1041.) Whether a student was denied a FAPE is ultimately evaluated in terms of what was objectively reasonable at the time the IEP was developed. (*Adams*, 195 F.3d 1141, 1149.)

The IDEA expresses a clear policy preference for inclusion to the maximum extent appropriate as an aspiration for all children with special needs. (See 20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. §§ 300.114 & 300.116; Ed. Code, § 56031.) School districts are required to provide each special education student with a program in the least restrictive environment, with removal from the regular education environment occurring only when the nature or severity of the student's disabilities is such that education in regular classes with the use of supplementary aids and services could not be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114; Ed. Code, § 56031.)

California defines a special education placement as that unique combination of facilities, personnel, location, or equipment necessary to provide instructional services to a child with exceptional needs, as specified in the IEP, in any one or a combination of public, private, home and hospital, or residential settings. (5 Cal. Code Regs. § 3042(a).)

Long Beach witnesses offered credible evidence from experienced practitioners regarding the components of the collaborative co-teaching program and its appropriateness for Student. Salguero and Langman's testimony was particularly helpful because of their familiarity with the program and experience as special education teachers. Long Beach offered Student placement in a collaborative

co-teaching program taught by a general and a special education teacher, in a placement as close as possible to Student's home. The program offered a general education setting with specialized academic instruction and supports embedded within the classroom. The program consisted of classes teaching approximately 25 to 30 children with 70-percent general education and 30-percent special education students. The collaborative co-teaching program offered an integrated placement, meaning that students with disabilities were fully included in the general education classroom.

Collaborative co-teachers used behavior and instructional strategies designed with the benefit of a special education teacher's knowledge and experience working with children with special needs. Instructional strategies included use of kinesthetic and visual supports, multi-modal teaching strategies, and class-wide accommodations. During whole group instruction, one teacher would walk the room providing more in depth help to children as needed. The teachers also placed children into smaller groups, at times, based upon their needs, all working on the same curriculum but at their own instructional level. The teachers also used small groups and individual instruction, as appropriate to students' needs, to work on goals. The classes used strategies of scaffolding, breaking assignments into smaller chunks, and slowing down the presentation of information as needed. These techniques, the evidence demonstrated, would benefit Student to access his education.

Students in the general education collaborative co-teaching program received grade-level instruction, just as any other regular education classroom. The fact that special education children were fully included in the collaborative classroom did not mean the curriculum changed.

Mother preferred maintaining Student's placement at Carver Elementary School. She had another child at the school, making transportation more difficult if Student changed the location of his program to a different campus. At the time of the 2023 annual IEP offer, Long Beach had an opening in the collaborative co-teaching program at Riley Elementary School, the available placement location closest to Student's home school. Long Beach offered transportation services to support the change in placement. The IDEA mandates that a placement be able to offer a child FAPE, placing a greater emphasis on an appropriate program in the least restrictive environment over geographic location. Although there may be a resource program available at Carver, the law places a greater emphasis on access to peers in a less restrictive setting than on the closeness to a child's home.

Student argued that he made progress on many goals and met or exceeded others. Student argued that he need not keep pace with general education peers to be included in a general education classroom. Both of Student's arguments were accurate. At the same time, Long Beach argued that Student required the interventions that could only be provided by someone with the training and experience of a special education teacher. Long Beach's argument was also true. The real area of disagreement laid in how the parties viewed the collaborative co-teaching program versus a resource specialist program on the continuum of placement options.

A continuum of program options must be available for special education students. (Ed. Code, § 56360.) The continuum of program options shall include, but not necessarily limited to:

- Regular education programs
- A resource specialist program

- Designated instruction and services
- Special classes
- Nonpublic, nonsectarian school services
- State special schools
- Instruction in settings other than classrooms where specially designed instruction may occur
- Itinerant instruction in classrooms, resource rooms, and settings other than classrooms where specially designed instruction may occur
- Instruction using telecommunication, and instruction in the home, in hospitals, and in other institutions. (Ed. Code, § 56361.)

The law defines a general, or regular, education program as less restrictive on the continuum of program options than resource specialist programs, irrespective of the opinions of the Parties, here. (*Id.*) The collaborative co-teaching program offers a general education placement with embedded specialized academic instruction. This type of placement constitutes a less restrictive placement than a resource specialist program for many reasons. First, a resource pull-out program is more restrictive because it involves pulling a child away from their typically developing peers and into a separate class to work either one-to-one or in a small group on goals offered in their IEPs. Second, a push-in resource program is more restrictive as it would isolate Student within his classroom, with someone who is not one of his teachers, working on his goals while other children worked toward the general education curriculum. A resource

specialist providing push-in services comes into the general education classroom, bringing various materials to work with a student, separated from peers, on IEP goals.

Long Beach witnesses persuasively demonstrated that Student required several hours of resource specialist support, up to a half day, making either push-in or pull-out support even more restrictive. While Student received resource support, he would miss out on the general education instruction being provided to other students, which would ensure he fell further behind academically. He would also be deprived of the non-academic benefits of being education with his typically developing peers.

On the other hand, the collaborative co-teaching program offered Student specialized instruction he required along with his typically developing peers. Student would receive instruction from his teachers followed, as needed, by small group or individualized support. Student would remain in his general education environment and be exposed throughout the day to general education curriculum and typically developing peer role models for language, socialization, behavior, and academics.

Student argued that Long Beach should have tried a resource specialist program before offering the collaborative co-teaching program. Student made the argument on the faulty assumption that a resource program constituted a less restrictive placement.

Even if it did, the law did not require a school district to place a child in a less restrictive environment and fail before moving to a more restrictive one. (*Poolaw v. Bishop* (9th Cir. 1995) 67 F.3d 830, pp. 835-836.)

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When determining whether a placement is the least restrictive environment appropriate for a child with a disability, four factors must be evaluated and balanced:

- the educational benefits of full-time placement in a regular classroom,
- the non-academic benefits of full-time placement in a regular classroom,
- the effects the presence of the child with a disability has on the teacher and children in a regular classroom, and
- the cost of placing the child with a disability full-time in a regular classroom. (*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1404 (*Rachel H.*))

As to the first *Rachel H.* factor, the evidence demonstrated that Student made limited academic progress in his first-grade class, causing a widening of the gap between him and his typically developing peers. While other children were reading, writing informative text, and solving math problems, Student continued to struggle, even with his teacher, volunteer, and behavior aide providing substantial support. Student made zero to 50-percent progress on academic readiness goals by the time of his September and October 2023 annual IEP team meetings. He could only write his first name, knew fewer than 10 letters of the alphabet and could not make any letter sounds. "Very, very limited progress" would fall under the description of "little or no academic benefit from placement in a regular education class." (*Rachel H.*, *supra*, 786 F. Supp. 874, 878.) For example, Langman described typically developing first graders as knowing all the letters of the alphabet and counting to 100. Maintaining Student's

placement in a general education classroom without embedded special education supports would allow Student to fall further behind. Student made slow progress and required repetitive practice.

Annual progress reports demonstrated that Student continued to struggle into the 2024-2025 school year with copying numbers and letters. Typically developing peers worked on writing informative or explanatory texts, including introducing a topic, using facts and definitions to develop points, and providing a concluding statement. Student required crucial instruction in basic academic areas of reading, writing, and math to make appropriate educational progress in light of his circumstances.

Testimony from experienced and credible professionals demonstrated that Student required more instructional strategies in whole group and opportunities for small group instruction than were offered in a general education program. Luzzi persuasively demonstrated that, as hard as she tried, she could not provide Student with the instruction he needed while also doing justice to each other child in her general education classroom. She acknowledged that a special education teacher would have the expertise required to specially design instruction for Student on an ongoing basis. Langman corroborated Luzzi's experience. They explained that a general education teacher could not be expected to use scaffolding in every activity because of the demands already being on a single teacher in a general education classroom. However, the teachers in the collaborative co-teaching program developed lessons, scaffolding, and other supports to provide the classroom throughout the instructional day. Moreover, Student would have opportunities to learn with his general education peers in smaller groups. Long Beach witnesses persuasively demonstrated that

Student was offered appropriate supports and services but required the additional help of a special education teacher. Student's progress, academically, weighed in favor of placement in the collaborative co-teaching program, at a minimum.

As to the second *Rachel H.* factor, the evidence did not demonstrate that Student obtained meaningful non-academic benefit from his general education classroom. He did not significantly develop communication, social skills, or improved self-confidence. While he did make some progress, inclusion in the fully integrated collaborative co-teaching program would provide Student with greater opportunities to engage with typically developing peers. In that setting, he would have opportunities to work on communication and interaction goals in a natural setting. Being better able to access general education instruction would improve opportunities to participate in classroom activities. Working in small groups with his peers would provide more opportunities to engage in appropriate communication, work on turn taking, respond to his name, and develop social interactions and friendships. The second *Rachel H.* factor weighs in favor of Student's placement in the collaborative co-teaching program.

As to the third *Rachel H.* factor, Student impacted negatively on his general education teacher and classmates. The evidence demonstrated that Student engaged in tantrum behaviors five to six times during the school year, which lasted for approximately 35-minutes. During these tantrums, either Student or his classmates had to be removed from class. This meant his teacher could not instruct other children who, in turn, missed out on instruction. Some children feared being around Student because of his aggressive behaviors of hitting and pushing when he did not get what he wanted.

Moreover, Student had an impact on his teacher and classmates regarding his need for differentiated instruction. Luzzi credibly explained that the time she spent working individually with Student meant that other children did not receive the attention they deserved. Luzzi did not have the expertise of a special education teacher who could regularly provide Student with the support he required.

At the same time, Student made progress on, met, and sometimes exceeded his behavior goals. Behavior goals reflected Student's ongoing needs in following individual and group directives, completing assigned tasks, functional communication, and making choices around needs and wants. Behaviors continued even with the support of a full-time behavior aide with doctoral level supervision. Student continued to engage in behaviors that impeded his learning and that of others. Progress on behavior goals, alone, did not support continued placement in a regular education program without the embedded supports Student needed to access his education.

Johnson was the only assessor who opined that Student required a more restrictive environment, indeed much more restrictive, outside of a regular school setting. Long Beach, on the other hand, argued that Student continue to be educated with his general education peers, albeit with special education support embedded throughout his school day. Long Beach reasoned that the teachers in the collaborative program applied class-wide behavior techniques, which they thought were more appropriate than Student's behavior intervention services, standing alone. Moreover, the evidence demonstrated that Student had some difficulty with transitions. Educating Student in the same classroom throughout the day meant fewer transitions between services and no transition with an outside provider coming into the classroom to provide resource services.

In the collaborative co-teaching classroom, the general and special education teachers took turns providing instruction and both worked in smaller groups or individually with various children. The additional support from credentialed teachers meant that all children in the classroom would benefit from greater support, including Student. The third *Rachel H.* factor weighs in favor of Student's placement in the collaborative co-teaching classroom.

Neither party presented evidence on the costs of a change in placement, making the fourth *Rachel H.* factor moot.

On balance, the *Rachel H.* factors weigh in favor of Student's placement in the collaborative co-teaching program. The evidence demonstrated that Student required specialized academic instruction and would benefit from more differentiated instruction, multi-modal learning and other teaching strategies available in the collaborative co-teaching program. Having such instruction presented to Student in a natural learning environment with typically developing peers constituted a less restrictive environment than other options on the continuum of placements.

Student demonstrated lower academic skills compared to other children in his general education first-grade and second-grade classrooms. He had below average or low average cognition. Student deserves, and the IDEA requires, that he be provided with instruction and services designed to allow him to make progress in light of his circumstances. He was only in first grade at the time of the 2023 annual IEP and should be provided the opportunity for continued development through typically developing peer role models while obtaining the additional special education support he required.

The evidence demonstrated the offer of placement in a collaborative co-teaching classroom was appropriate at the time Long Beach made the offer. (*Adams*, supra, 195 F.3d 1141, 1149.)

Long Beach offered a program that most closely aligned with a general education full-inclusion placement, but with the added benefit of specialized academic instruction with a credentialed special education teacher. Such placement would continue to provide Student with the social, behavioral, communication, and academic benefits of full inclusion without the detriment of falling further behind typically developing peers.

The IEP team, a group of knowledgeable team members, made a placement decision based upon recent assessments, after detailed discussions of Student's needs. The team considered the potential harmful effects on Student and classmates of continued placement in general education without the support of a special education teacher. The team considered the supports and services necessary to place Student in the least restrictive environment appropriate to meet his needs and offered a placement minimizing the time Student would spend outside of general education.

In summary, the evidence demonstrated that the 2023 annual IEP offering Student placement in a collaborative co-taught general education classroom, with supports and services, offered Student a FAPE in the least restrictive environment appropriate for him.

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:

The September 25, 2023 IEP, as amended on May 28, 2024, offered Student a FAPE.

Long Beach prevailed on the sole Issue.

ORDER

Long Beach may implement the 2023 annual IEP, developed on September 25, 2023 and October 23, 2023, as amended on May 28, 2024, without parental 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.

COLE DALTON

Administrative Law Judge

Office of Administrative Hearings