

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

COMPTON UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021090098

ORDER GRANTING REQUEST FOR RECONSIDERATION
AND GRANTING IN PART AND DENYING IN PART
REQUEST TO AMEND ISSUES IN ORDER FOLLOWING
PREHEARING CONFERENCE

NOVEMBER 9, 2021

On November 3, 2021, the undersigned Administrative Law Judge issued an order Following Prehearing Conference. On November 4, 2021, Student filed a Motion for Reconsideration Regarding Framing of Issues. The Office of Administrative Hearings did not receive a response from Compton Unified School District.

APPLICABLE LAW

The Office of Administrative Hearings will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time, generally within ten days. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

DISCUSSION

Student offers new facts, circumstances or law to support reconsideration. Student asserted that some issues discussed during the Prehearing Conference were changed by the Administrative Law Judge when the issues were restated and reorganized in the Order Following Prehearing Conference. Student made an effort to use the same format as the Orders Following Prehearing Conference and proposed the issues be reframed.

Student's request in Issues 1(c) and 2 (c) of the Order Following Prehearing Conference to replace "transition assessment" with "transition independent educational evaluation report" is granted. Student's requested language clarifies the description of the assessment at issue.

Student's motion for reconsideration Issue 2(a) requests that Issue 1(e) in the Order Following Prehearing Conference remove the statement "prior to be beginning of the school year". Student's request is granted as the timeframe at issue is consistent with the modification requested by Student.

Student's motion for reconsideration Issue 2(c) proposes a modification of Issue 1(g) in the Order Following Prehearing Conference. Student requests to add the words "timely offer and" to the allegation "failing to timely offer and materially implement the service minutes . . .". Student's request is granted as this issue was discussed at Prehearing Conference in relationship to Issue 3(b) in Student's Prehearing Conference Statement. At the Prehearing Conference, it was clarified that the allegation was a failure to offer the service minutes by failing to make a written offer before October 29, 2019, and an allegation that the service minutes were not materially implemented. Student's proposed change is consistent with the discussion at the Prehearing Conference.

Student's motion for reconsideration Issue 2(e), is a proposal that Issue 1(i) in the Order Following Prehearing Conference add the words "offered in the October 29, 2019 IEP" is granted. Student's proposed language narrows the issue for hearing.

Student's motion for reconsideration Issue 1(h) requests that Issues 1(l) and 2(k) of the Orders Following Prehearing Conference be modified to include the term "resulting in a failure to materially implement the October 29, 2010 IEP". Student's proposed language further clarifies and narrows the issue for hearing and is granted.

Student's motion for reconsideration Issue 1(i) proposes an allegation related to the 2019-2020 school year "failing to offer appropriate placement in June 8, 2020 IEP". This issue is similar to Issue 1(m) in the Orders Following Prehearing Conference which states "failing to offer appropriate placement for the 2019-2020 extended school year based upon the June 8, 2020 IEP". This was listed as Issue 8 in Student's Prehearing Conference Statement and discussed at the Prehearing Conference. At the Prehearing Conference, Student stated that all of sub-issues in Issue 8 related to the 2019-2020 extended school year and the 2020-2021 school year. During the discussion of the

timeframe at issue for this allegation, Student did not allege this occurred during the 2019-2020 regular school year. As a result, Student's request to extend this allegation to the 2019-2020 regular school year is denied. Student may raise the issue of failing to offer an appropriate placement during the 2019-2020 school year in a different complaint. However, based upon Student's motion to withdraw the allegation at Prehearing Conference, Compton Unified was on notice that this claim was not being made during the 2019-2020 school year.

Student's motion for reconsideration Issue 1(l) proposes changes to Issues 1(p) and 2(p) of the Orders Following Prehearing Conference. Student proposes that the allegation add the words "in the June 8, 2020 IEP". Student's request is granted as it further narrows and clarifies the issue.

Student's motion for reconsideration 2(d) alleges a denial of FAPE during the 2019-2020 school year, excluding school days before September 2, 2019 by denying Parents right to meaningfully participate in the IEP process by failing to provide Parent with a final copy of the October 29, 2019 IEP. This issue is the same as Student's Issue 10(b) in Student's Prehearing Conference Statement. At Prehearing Conference, Student's motion to withdraw Issues 10(b) and 10(c) was granted. As a result, Student's motion for reconsideration Issue 2(d) is denied as the issue was withdrawn at the Prehearing Conference.

Student's motion for reconsideration requested that OAH adopt Student's proposed statement of issues. There were issues in the Orders Following Prehearing Conference that were not addressed in Student's Motion for Reconsideration. Because the following issues were not raised in Student's Motion for Reconsideration they are considered withdrawn: Issues 2(f), 2(h), 2(l), 2(q), and 2(u) from the Order Following Prehearing Conference.

ORDER

On reconsideration, the following will be the issues for due process hearing:

1. Did Compton Unified School District deny Student a free appropriate public education, called FAPE, from September 2, 2019, through the end of the 2019-2020 school year by:
 - a. failing to timely consider the January 1, 2020 speech and language independent educational evaluation report;
 - b. failing to consider the August 26, 2019 augmentative or alternative communication/assistive technology independent educational evaluation report;
 - c. failing to consider the January 1, 2020 transition independent educational evaluation report;
 - d. failing to assess in all areas of need, specifically social emotional functioning and orientation and mobility;
 - e. failing to make a written placement offer to the non-public school agreed upon in the settlement agreement, based upon Compton's FAPE obligation
 - f. failing to make a clear written offer of FAPE indicating the placement at the commencement of the school year;
 - g. failing to timely offer and materially implement the service minutes, that the parties agreed was FAPE, in the August 22, 2019 settlement agreement, specifically physical therapy, occupational therapy, specialized vision services, speech and language, adaptive and augmentative communication services and assistive technology services, and a trained 1:1 aide;

- h. failing to offer assistive technology and adaptive and augmentative communication systems;
- i. failing to implement related services and supplementary supports and services offered in the October 29, 2019 IEP, specifically physical therapy, adaptive physical education, occupational therapy, and 1:1 aide services;
- j. failing to provide agreed upon equipment during remote learning, specifically a laptop or tablet, magnification device or visual assistance device; adapted toileting system, gait trainer, and adapted stander;
- k. failing to implement the October 29, 2019 individualized education program, referred to as IEP, based upon Student's inability to access services in the virtual format;
- l. failing to implement the in-person in-home aide service during remote learning resulting in a failure to materially implement the October 29, 2019 IEP;
- m. failing to offer appropriate placement for 2019-2020 extended school year based upon the June 8, 2020 IEP;
- n. reporting inaccurate present levels of performance in the June 8, 2020 IEP, during the 2019-2020 extended school year;
- o. offering inappropriate goals in the June 8, 2020 IEP, specifically in the areas of reading, writing, math, speech and language, and occupational therapy, during the 2019-2020 extended school year;
- p. offering an inappropriate individual transition plan in the June 8, 2020 IEP, during the 2019-2020 extended school year;
- q. denying Parent's right to meaningfully participate in the IEP process by failing to timely provide Parent with a copy of the June 8, 2020 IEP; and

- r. denying Parent's right to meaningfully participate in the IEP process by implementing the June 8, 2020 IEP without parental consent?
- 2. Did Compton Unified School District deny Student a FAPE during the 2020-2021 school year by:
 - a. failing to timely consider the January 1, 2020 speech and language independent educational evaluation report;
 - b. failing to consider the August 26, 2019 augmentative or alternative communication/assistive technology independent educational evaluation report;
 - c. failing to consider the January 1, 2020 transition independent educational evaluation report;
 - d. failing to consider the July 7, 2020 occupational therapy independent educational evaluation report;
 - e. failing to assess in all areas of need, specifically social emotional functioning and orientation and mobility;
 - f. failing to offer assistive technology and adaptive and augmentative communication systems;
 - g. failing to provide agreed upon equipment during remote learning, specifically a laptop or tablet, magnification device or visual assistance device; adapted toileting system, gait trainer, and adapted stander;
 - h. failing to implement the October 29, 2019 IEP based upon Student's inability to access services in the virtual format;
 - i. failing to implement the in-person in-home aide service during remote learning resulting in a failure to materially implement the October 29, 2019 IEP;
 - j. failing to offer an appropriate placement in the June 8, 2020 IEP;

- k. reporting inaccurate present levels of performance in the June 8, 2020 IEP;
- l. offering inappropriate goals in the June 8, 2020 IEP, specifically in the areas of reading, writing, math, speech and language, and occupational therapy;
- m. offering an inappropriate individual transition plan in the June 8, 2020 IEP;
- n. denying Parent's right to meaningfully participate in the IEP process by failing to timely provide Parent with a copy of the June 8, 2020 IEP;
- o. denying Parent's right to meaningfully participate in the IEP process by implementing the June 8, 2020 IEP without parental consent;
- p. denying Parent's right to meaningfully participate in the IEP process by failing to provide prior written notice in response to a request for in-person services, or in-home aide at the February 22, 2021 IEP team meeting; and
- q. failing to timely hold an annual IEP team meeting?

All dates set in this matter are confirmed.

IT IS SO ORDERED.

Marlo Nisperos

Marlo Nisperos

Administrative Law Judge

Office of Administrative Hearings