

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENTS ON BEHALF OF STUDENT,

and

ETIWANDA SCHOOL DISTRICT,

OAH CASE NUMBER 2023080819

OAH CASE NUMBER 2023070494

ORDER CONFIRMING ISSUES AT DUE PROCESS HEARING

FEBRUARY 2, 2024

On January 12, 2024, Administrative Law Judge Judith Pasewark, Office of Administrative Hearings, convened a prehearing conference and issued an Order Following Prehearing Conference for Hearing by Videoconference, setting forth the issues for the consolidated due process hearing. An Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC. The Order Following Prehearing Conference required any party who asserted the Order did not reflect the party's understanding of the issues as clarified at the PHC to immediately file a written objection.

On January 22, 2024, Student filed an Amended and Corrected List of Issues and Resolutions. Student asserted he was withdrawing certain issues in Student's amended complaint and correcting one omission from the January 12, 2024, Order Following Prehearing Conference.

On January 23, 2024, ALJ Kara Hatfield of OAH commenced the due process hearing by videoconference. Henry Tovmassian, Attorney at Law, appeared on behalf of Student. Sundee Johnson, Attorney at Law, appeared on behalf of Etiwanda School District. The due process hearing was recorded.

Based upon discussion with and agreement of the parties on the record on January 23, 2024, the ALJ clarified which issues Student withdrew, clarified the statement of some remaining issues for the due process hearing, and reorganized the issues as allowed by the holdings in *J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443, and *Ford v. Long Beach Unified School Dist.* (9th Cir. 2002) 291 F.3d 1086, 1090. No change in substance has been made. On February 1, 2024, the ALJ reviewed the clarified and reorganized statement of the issues and the parties agreed on the record to the enumeration and statement of the issues listed below.

This Order is issued to provide the parties written confirmation of the Issues at the due process hearing, to facilitate their submission of written closing arguments.

ISSUES

A FAPE means free appropriate public education. An IEP is an individualized education program. An IEE is an independent educational evaluation. The issues remaining at the due process hearing, as alleged in Student's amended complaint, and Etiwanda's complaint, and clarified by the parties and the ALJ at the start of the due process hearing are:

STUDENT'S ISSUES

1. Did Etiwanda School District deny Student a FAPE from the start of the 2022-2023 school year through the date of filing the amended complaint on December 5, 2023, by failing to appropriately assess Student in all areas of suspected disability, specifically:
 - a. Intellectual functioning;
 - b. Academic functioning;
 - c. Language and communication;
 - d. Attention, concentration, and executive functioning;
 - e. Information processing including language processing, development, and use;
 - f. Visual perceptual skills;
 - g. Memory functioning, including verbal and non-verbal memory;
 - h. Gross and fine motor functioning;
 - i. Sensory integration;
 - j. Social-emotional functioning;
 - k. Vision;
 - l. Auditory processing;
 - m. Student's need for assistive technology and augmentative communication; and
 - n. Behavioral deficits?
2. Did Etiwanda School District deny Student a FAPE from the start of the 2022-2023 school year through the date of filing the amended complaint on December 5, 2023, by failing to assess Student in all areas of suspected disability, specifically:
 - a. Vision; and

- b. Auditory processing?
3. Did Etiwanda School District deny Student a FAPE in the September 30, 2022, IEP by:
- a. Failing to develop appropriate statements of present levels of performance;
 - b. Failing to offer measurable annual goals;
 - c. Failing to offer appropriate placement;
 - d. Failing to offer appropriate related services;
 - e. Failing to properly consider parental input at the September 30, 2022, IEP team meeting;
 - f. Failing to allow meaningful parental participation at the September 30, 2022, IEP team meeting;
 - g. Failing to consider the full continuum of placements and services at the September 30, 2022, IEP team meeting;
 - h. Predetermining the September 30, 2022, IEP; and
 - i. Failing to make a formal, specific offer of FAPE for placement and services?
4. Did Etiwanda School District deny Student a FAPE in the December 15, 2022, IEP by:
- a. Failing to timely conduct each assessment Etiwanda used to determine Student was no longer eligible for special education and related services;
 - b. Failing to determine Student continued to be eligible for special education and related services;
 - c. Failing to develop appropriate statements of present levels of performance;

- d. Failing to offer measurable annual goals;
 - e. Failing to offer appropriate placement;
 - f. Failing to offer appropriate related services;
 - g. Failing to properly consider parental input at the IEP team meetings at which the December 15, 2022, IEP was developed;
 - h. Failing to allow meaningful parental participation at the IEP team meetings at which the December 15, 2022, IEP was developed;
 - i. Failing to consider the full continuum of placements and services at the IEP team meetings at which the December 15, 2022, IEP was developed;
 - j. Predetermining the December 15, 2022, IEP; and
 - k. Failing to make a formal, specific offer of FAPE for placement and services?
5. Did Etiwanda School District deny Student a FAPE in the October 25, 2023, IEP by:
- a. Failing to timely conduct each assessment Etiwanda used to determine Student was no longer eligible for special education and related services;
 - b. Failing to timely hold an IEP team meeting for the purpose of considering Dr. Papazyan's assessment report;
 - c. Failing to properly consider Dr. Papazyan's assessment report at an IEP team meeting;
 - d. Failing to determine Student continued to be eligible for special education and related services;
 - e. Failing to develop appropriate statements of present levels of performance;

- f. Failing to offer measurable annual goals;
- g. Failing to offer appropriate placement;
- h. Failing to offer appropriate related services;
- i. Failing to properly consider parental input at the October 25, 2023, IEP team meeting;
- j. Failing to allow meaningful parental participation at the October 25, 2023, IEP team meeting;
- k. Failing to consider the full continuum of placements and services at the October 25, 2023, IEP team meeting;
- l. Predetermining the October 25, 2023, IEP; and
- m. Failing to make a formal, specific offer of FAPE for placement and services?

ETIWANDA'S ISSUES

- 6. Was Etiwanda's February 1, 2022, educationally related mental health service assessment report in conjunction with the November 2022 psychoeducational assessment report appropriate and did it assess Student in all areas of suspected disability related to mental health and social-emotional well-being, such that Etiwanda is not required to provide an educationally related mental health IEE at public expense?
- 7. Was Etiwanda's November 2022 psychoeducational assessment report in conjunction with the November 2022 academic specialist's summary, November 29, 2022 speech and language assessment report, December 8, 2022 occupational therapy assessment, and December 26, 2022 health assessment, appropriate and did it assess Student in all areas of suspected disability, including autism and auditory processing, such that

Etiwanda is not required to provide IEEs in the areas of psychoeducation, auditory processing, functional vision, and autism at public expense?

8. Was Etiwanda's November 29, 2022, speech and language assessment report appropriate such that Etiwanda is not required to provide an IEE in speech and language at public expense?
9. Was Etiwanda's December 5, 2022, functional behavior assessment report appropriate such that Etiwanda is not required to provide a functional behavior IEE at public expense?
10. Was Etiwanda's December 8, 2022, occupational therapy assessment report appropriate such that Etiwanda is not required to provide an occupational therapy IEE at public expense?
11. May Etiwanda exit Student from special education and related services as proposed in the December 15, 2022, IEP, without parental consent?

IT IS SO ORDERED.

Kara Hatfield

Kara Hatfield

Administrative Law Judge

Office of Administrative Hearings