BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

COVINA-VALLEY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023110809

# ORDER FURTHER CLARIFYING ISSUES AT DUE PROCESS HEARING

MAY 17, 2024

On May 10, 2024, Administrative Law Judge Jennifer Kelly, Office of Administrative Hearings, issued an Order Clarifying Issues at Due Process Hearing. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The ALJ instructed the parties to file a written objection with OAH if the issues described in the Order Clarifying Issues at Due Process Hearing did not reflect the party's understanding of the clarified issues.

On May 16, 2024, Student filed a Response to Order Clarifying Issues at Due Process Hearing. Based upon further discussion with and agreement of the parties on the record at the due process hearing on May 16, 2024, the ALJ further clarified the

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. 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 a free appropriate public education. An IEP is an individualized education program.

The issues at the due process hearing, as alleged in the complaint and clarified by the parties and the ALJ at the due process hearing are:

1. Did Covina-Valley deny Student a FAPE by failing to provide Student's IEP documents after IEP team meetings held on:
    a. December 8, 2021; and
    b. May 20, 2022?
2. Did Covina-Valley deny Student a FAPE during the 2021-2022 regular and extended school year, beginning November 28, 2021, by failing to timely assess Student in preparation for Student's three-year evaluation, specifically in:
    a. speech and language;
    b. occupational therapy;
    c. functional behavior;
    d. assistive technology; and
    e. recreational therapy?
3. Did Covina-Valley deny Student a FAPE in a December 8, 2021, IEP by;

a. denying Parents full and effective participation in the IEP process;
b. failing to consider the recommendations from an October 25, 2021 independent educational evaluation in functional behavior;
c. failing to consider the recommendations from a September 2021 independent educational evaluation in occupational therapy;
d. failing to offer appropriate services in:
    i. specialized academic instruction;
    ii. trained and qualified aide support;
    iii. speech and language;
    iv. occupational therapy;
    v. behavioral support;
    vi. assistive technology;
    vii. recreational therapy;
    viii. counseling; and
    ix. transportation;
e. failing to develop a behavior intervention plan;
f. failing to offer Student research based behavioral and instructional methodologies;
g. predetermining Student's placement offer; and
h. failing to make a clear placement offer?

4. Did Covina-Valley deny Student a FAPE in a May 20, 2022, IEP by:
    a. denying Parents full and effective participation in the IEP process;
    b. failing to ensure all necessary IEP team members attended the IEP team meeting;
    c. failing to consider the findings from an independent educational evaluation in psychoeducation dated April 7, 2022;

d. failing to offer appropriate services in:
    i. specialized academic instruction;
    ii. trained and qualified aide support;
    iii. speech and language;
    iv. occupational therapy;
    v. behavioral support;
    vi. assistive technology;
    vii. recreational therapy;
    viii. counseling; and
    ix. transportation;
e. failing to develop a behavior intervention plan;
f. failing to offer Student research based behavioral and instructional methodologies;
g. predetermining Student's placement offer; and
h. failing to make a clear placement offer?

5. Did Covina-Valley deny Student a FAPE in a June 1, 2022, IEP by:
    a. denying Parents full and effective participation in the IEP process;
    b. failing to ensure all necessary IEP team members attended the IEP team meeting;
    c. failing to consider the findings from an independent educational evaluation in psychoeducation dated April 7, 2022;
    d. failing to accurately state Student's present levels of performance in:
        i. social/emotional/behavior;
        ii. fine and visual motor skills;
        iii. communication development; and
        iv. gross motor skills;

e. failing to develop measurable goals in:
    i. prevocational/commenting or asking questions;
    ii. attention;
    iii. auditory filtering;
    iv. executive functioning;
    v. fine motor skills;
    vi. gross motor skills;
    vii. social skills; and
    viii. pragmatics/social inference;
f. failing to make an appropriate offer of services, specifically in:
    i. specialized academic instruction;
    ii. trained and qualified aide support;
    iii. speech and language;
    iv. occupational therapy;
    v. behavioral support;
    vi. assistive technology;
    vii. recreational therapy;
    viii. counseling; and
    ix. transportation;
g. failing to develop a behavior intervention plan;
h. failing to offer Student research based behavioral and instructional methodologies;
i. failing to offer extended school year services for the 2021-2022 extended school year, specifically in:
    i. specialized academic instruction;
    ii. trained and qualified aide support;

iii. speech and language services;

iv. occupational therapy services;

v. behavioral support, including a behavior intervention plan;

vi. assistive technology;

vii. recreational therapy;

viii. counseling; and

ix. transportation;

j. predetermining Student's placement offer; and

k. failing to make a clear placement offer?

6. Did Covina-Valley deny Student a FAPE during the 2022-2023 regular and extended school year, continuing through November 21, 2023, by failing to appropriately assess Student in all areas of suspected disability, specifically in:

a. psychoeducation;

b. academics;

c. speech and language;

d. occupational therapy;

e. assistive technology;

f. functional behavior;

g. recreational therapy; and

h. adapted physical education?

7. Did Covina-Valley deny Student a FAPE during the 2022-2023 regular and extended school year by failing to provide Student a school environment free from harassment and bullying, specifically regarding events occurring on or around:

a. September 12, 2022; and

b. October 5, 2022?

8. Did Covina-Valley deny Student a FAPE in a June 1, 2023, IEP by:
    a. denying Parents full and effective participation in the IEP process;
    b. failing to ensure all necessary IEP team members attended the IEP team meeting;
    c. failing to accurately state Student's present levels of performance in:
        i. social/emotional/behavior;
        ii. preacademic/academic/functional skills;
        iii. communication development;
        iv. gross/fine gross development;
        v. vocational;
        vi. adaptive/daily living skills; and
        vii. health;
    d. failing to develop measurable goals in:
        i. reading comprehension;
        ii. mathematics;
        iii. receptive/expressive language; and
        iv. social emotional;
    e. failing to make an appropriate offer of services, specifically in:
        i. specialized academic instruction;
        ii. trained and qualified aide support;
        iii. speech and language;
        iv. occupational therapy;
        v. behavioral support;
        vi. assistive technology;
        vii. recreational therapy;
        viii. counseling; and

ix. transportation;

f. failing to develop a behavior intervention plan;

g. failing to offer Student research based behavioral and instructional methodologies;

h. failing to offer extended school year services for the 2022-2023 extended school year, specifically in:

i. specialized academic instruction;

ii. trained and qualified aide support;

iii. speech and language services;

iv. occupational therapy services;

v. behavioral support, including a behavioral intervention plan;

vi. assistive technology;

vii. recreational therapy;

viii. counseling; and

ix. transportation;

i. predetermining Student's placement offer; and

j. failing to make a clear placement offer?

9. Did Covina-Valley deny Student a FAPE during the 2023-2024 regular and extended school year by failing to timely review an assistive technology assessment dated July 17, 2023?

IT IS SO ORDERED.

*Jennifer Kelly*

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings