BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENTS ON BEHALF OF STUDENT, v. BRENTWOOD UNION SCHOOL DISTRICT,	OAH Case No. 2018010683
BRENTWOOD UNION SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT.	OAH Case No. 2017120966 ORDER GRANTING REQUEST FOR RECONSIDERATION; GRANTING IN PART REQUEST TO REFRAME ISSUE NUMBER 3(A) AS CONTAINED IN THE PREHEARING CONFERENCE ORDER; AND CORRECTING TYPOGRAPHICAL ERROR

On March 6, 2018, the undersigned administrative law judge issued an order following the March 5, 2018 prehearing conference delineating the issues for hearing. On March 27, 2018, Student filed a motion for clarification of Issue Number 3(a). This motion is deemed a request for reconsideration. On March 28, 2018, Brentwood Union School District filed a response requesting that Student's motion be denied.

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. (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 disagrees with the framing of Issue Number 3(a), and asserts that the amended complaint included facts that should also be incorporated into the issues for hearing. Based on Student's assertion that the factual allegations contained in her complaint justifies reframing of an issue to include such facts, reconsideration is granted.

The Order Following Prehearing Conference incorporates Issue 3(a) as drafted by Student in both her amended complaint filed on February 22, 2018, and her PHC statement filed February 28, 2018. Student's Issue 3 begins with an overview of the entire issue, and then lists the various components as sub-issues (a) through (f). Specifically, Student's Issue Number 3, as framed in her amended complaint and her PHC statement, states:

The District continues to deny a [free appropriate public education] to [Student] during the third grade (2017-2018 school year) through failing to appropriately or meaningfully update the operational definitions of her [behavior intervention plans], non-existent progress in her [individualized education program] goals, services not reasonably calculated to meet her unique needs, [District]'s attempt to remove her based on pretext, and the District's failure to reimburse Dr. Leaf's [independent educational evaluation].

A. The District Denied [Student] a FAPE by failing to appropriately or meaningfully update the operational definitions of her [behavior intervention plans].

B. [Student] made virtually no progress on her IEP goals.

C. The District denied [Student] a FAPE by offering her Turner as placement based merely on its "enclosed" campus, then withdrawing the offer without sufficient explanation.

D. The District denied Petitioners a FAPE by misrepresenting the services provided to [Student], and who provided them. Moreover, the [District] did not provide sufficient services to provide [Student] a FAPE.

E. The District denied [Student] a FAPE by unreasonably denying reimbursement for her requested [independent educational evaluation] despite her unique circumstances and the lack of appropriately qualified and lower-cost alternative assessors.

F. The District failed to provide [Student] a FAPE by offering her insufficient [occupational therapy] services during the 2017-18 school year.

Framed as a question, the PHC Order identifies Student's Issue Number 3 as follows:

Issue 3: Does Brentwood continue to deny Student a FAPE during the 2017-2018 school year by:

a. failing to appropriately update the operational definitions[1] of her behavior intervention plans;

b. failing to ensure Student's progress on her IEP goals;

c. failing to offer services reasonably calculated to meet her unique needs;

d. failing to offer sufficient occupational therapy services;

e. attempting to remove Student to Turner Elementary School based merely on its "enclosed" campus and then withdrawing this offer without sufficient explanation;

f. misrepresenting the services provided and who provided them; and

g. unreasonably denying reimbursement for Student's requested independent educational evaluation by Dr. Leaf.

During the PHC, when questioned by the undersigned, Student's counsel agreed that this framing of the issue captured the entirety of Student's Issue Number 3. During the PHC, there was extensive discussion of each of Student's Issues and several objections posed by Brentwood. Neither party wished to be heard as to Issue Number 3(a) as contained in the PHC Order.

Now, more than three weeks after the PHC, and one week prior to the scheduled hearing, Student asserts that Issue Number 3(a), based on specific factual references in her amended complaint, should be amended to include denials of FAPE for the 2017-2018 school year with regards to her behavior intervention plans as follows:

> "failing to appropriately update the behavior intervention plans (including but not limited to the operational definitions), provide appropriate and predictable responses for each listed maladaptive behavior, instruct Student how to communicate and replace maladaptive behaviors, offer instructional methodology to reinforce replacement behaviors, and provide appropriate guidance how to collect data regarding Student's maladaptive behaviors."

Student's amended complaint specifically enumerates separate issues for hearing for each involved school year, including an alleged failure to update the operational definitions in Student's behavior plans during the 2017-2018 school year. Student's amended complaint does not identify the other allegations, specified in Student's proposed paragraph above, as discrete issues or sub-issues for hearing. Nonetheless, it is clear from a reading of the complaint as a whole, in conjunction with Issue Number 1 and Issue Number 2, that Student

[1] The undersigned notes that the March 6, 2018 Order contains a typographical error in that it failed to make the word "definition" plural. This Order corrects that error.

is alleging Brentwood's failure to offer and implement an appropriate behavior intervention plan continued through the 2017-2018 school year. Student's Issue 1(b)(i) alleges Brentwood's failure during the 2015-2016 school year to offer an appropriate behavior intervention plan and behavior services. Student's Issue 2(b)(i) similarly alleges Brentwood's failure during the 2016-2017 school year to again offer an appropriate behavior intervention plan and behavior services. Additionally, Student's Issue 2(d) alleges Brentwood's May 2017 functional behavior assessment of Student was deficient and resulted in the development of inappropriate behavior intervention plans. As currently framed, the PHC Order does not capture Student's broader allegation that Brentwood's behavior intervention plans, stemming from the May 2017 functional behavior assessment, continued to deny Student a FAPE during the 2017-2018 school year.

While this clarification should have been sought during the PHC, based on the framing of Student's Issues 1 and 2, and the amended complaint as a whole, Brentwood has been on notice that Student is alleging that Brentwood's failure to offer and implement an appropriate behavior intervention plan continued to deny Student a FAPE during the current school year. Student's request to redraft Issue 3(a) is granted in part. Student's Issue 3(a) shall now read:

Does Brentwood continue to deny Student a FAPE during the 2017-2018 school year by:

a. failing to appropriately update the operational definitions of her behavior intervention plans and failing to offer and implement an appropriate behavior intervention plan;

Student's request to further reframe the issue to include additional factual assertions is DENIED.

ORDER

1. Student's Motion for Reconsideration is Granted.

2. Student's request to redraft Issue 3(a) is Granted in Part.

3. Student's Issue 3(a) is corrected to make the word "definition" plural.

4. Student's Issue 3(a) is reframed as follows:

Does Brentwood continue to deny Student a FAPE during the 2017-2018 school year by:

a. failing to appropriately update the operational definitions of her behavior intervention plans and failing to offer and implement an appropriate behavior intervention plan.

5. Student's request to further reframe Issue Number 3(a) is Denied.

IT IS SO ORDERED.

DATE: March 29, 2018

DocuSigned by:
Theresa Ravandi
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THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings