BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: TAHOE TRUCKEE UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2018020394 ORDER DENYING MOTION TO NARROW ISSUE

FACTUAL BACKGROUND

Student is a fourth grade student who resides with parents (Parents) in the Tahoe Truckee Unified School District and is eligible for special education and related services as hearing impaired/deaf. Student attends a school with a deaf and hard of hearing program in Washoe County School District. Washoe is an adjoining school district to Tahoe Truckee and located in the state of Nevada.

Tahoe Truckee drafted an individualized educational program (IEP) dated October 12, 2017 addressing transportation. Washoe drafted an IEP dated October 12, 2017 addressing placement and related services except transportation. Tahoe Truckee entered into an agreement with Washoe whereby Tahoe Truckee agreed to pay for Student's costs to attend a Washoe school and also agreed to participate in IEP team meetings held at Washoe to develop Student's IEP. Tahoe Truckee provides transportation services to Student to attend the Washoe school. Parents consented to Washoe's IEP dated October 12, 2017 and refused consent to Tahoe Truckee's October 12, 2017 IEP related to transportation.

PROCEDURAL BACKGROUND

On February 8, 2018, Tahoe Truckee filed a due process complaint asking the Office of Administrative Hearings to determine whether Tahoe Truckee's offer to transport Student to and from Washoe provides Student with a free and appropriate public education (FAPE) and also requested permission to conduct social emotional and an augmented adaptive communication assessment of Student absent Parents' consent.

Prehearing Conference of February 26, 2018

A February 26, 2018 Prehearing Conference was held. At that time, it was determined that none of the documents filed with OAH had been provided to Parents in

Spanish, their primary language. A continuance of the Prehearing Conference was ordered to allow for translation. ALJ Ravandi's Order Following Prehearing Conference also stated that if a determination is to be made regarding whether a Student had been provided a FAPE, the entire IEP offer would need to be reviewed both procedurally and substantively even though Tahoe Truckee only sought a determination regarding whether its transportation offer constituted a FAPE.

During the Prehearing Conference, Tahoe Truckee asserted that it is only responsible for providing Student with a FAPE related to transportation services as designated in its October 2017 IEP and academic services are the responsibility of Student's district of attendance, Washoe, as described in their separate IEP. ALJ Ravandi noted in her Order Following Prehearing Conference that OAH does not have jurisdiction over a Nevada IEP.

Motion to Narrow Issues

On March 14, 2018, Tahoe Truckee filed a request to narrow hearing to adjudicate FAPE only as to the transportation issue. Tahoe Truckee contends that OAH lacks jurisdiction to adjudicate whether Student's entire special education program provides a FAPE because: (1) OAH cannot adjudicate issues outside of the disputed transportation issue and thus cannot require Tahoe Truckee to prove the remainder of the IEP provides a FAPE; and (2) Tahoe Truckee is not the local educational agency (LEA) responsible for developing Student's IEP goals, placement, or services under a variance agreement with Washoe and is only responsible for the related transportation service.

APPLICABLE LAW AND DISCUSSION

Tahoe Truckee is Responsible for Student's FAPE

Tahoe Truckee contends that it is not the LEA responsible for Student's IEP goals, placement, or services under a variance agreement with Washoe County School District in the State of Nevada but is the LEA responsible for Student's transportation services. Because of this, Student currently has two separate and contemporaneous IEP's from Tahoe Truckee and Washoe. Tahoe Truckee believes that it should only have to prove that the transportation offer in the Tahoe Truckee IEP was a FAPE.

A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's individualized education program. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).)

An IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

The IDEA requires a state to provide a free and appropriate public education to children with disabilities to those children "residing within the State." (20 U.S.C. § 1414(a)(1)(A).) The IDEA leaves it to each state to decide how it will allocate among its various state and local public agencies the responsibility for funding special education programs and providing a free and appropriate public education. (*Los Angeles Unified School Dist. v. Garcia* (2013) 58 Cal.4th 175, 184.)

Under Education Code section 48200, a school district is responsible for providing a FAPE to all eligible students between the ages of six and eighteen whose parent or legal guardian resides within the jurisdictional boundaries of the school district, subject to several specified exceptions. (*Id*. at pp. 186-187, citing *Union School District v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1525, fn. 1(*Union*) [Ed. Code § 48200 determines the local educational agency responsible for providing a special education program].) Here, there is no dispute that the Student resides with Parents within the jurisdictional boundaries of Tahoe Truckee under Educational Code section 48200.

There are exceptions to the requirement that the residence of the parent determines what LEA is responsible for a child's FAPE. (Ed. Code, §§§ 48204, 48645.2, 56325, subd. (c).) None of those exceptions apply to this situation and Tahoe Truckee does not contend any apply.

Instead, Tahoe Truckee claims that a variance with Washoe discharges it from responsibility for FAPE except for transportation services, despite the fact that Student and Parents reside in the Tahoe Truckee district. This argument is misguided. State educational agencies are ultimately responsible for ensuring that every child with a disability has access to FAPE. (Ed. Code § 48200.) Here, Tahoe Truckee has provided no authority supporting its contention that it is able to delegate its FAPE responsibility to a California resident by contract or otherwise to an out-of-state public school.

Assuming arguendo that authority exists allowing an LEA to delegate portions of its FAPE responsibility via contract to an out-of -state school district and simultaneously retain responsibility for only a related service, the variance that Tahoe Truckee submitted does not contract for such. The variance is wholly silent as to FAPE.

The variance offered by Tahoe Truckee is entitled "Tuition Agreement to Attend Washoe County School District." (Tuition Agreement) The document indicates that a signed variance form was already approved by both districts but the actual variance form was

not submitted as evidence in this matter by Tahoe Truckee. The Tuition Agreement that was submitted is an agreement between Washoe and Tahoe Truckee, not Student. It is a general contract between the agencies and not specific to Student. In fact, it is unclear if the Tuition Agreement applies to Student at all. It doesn't mention Student's name, his IEP or any detail of the type of services it will provide Student. It generally describes that it will provide educational facilities and services to students residing in the adjoining district when the adjoining district is unable to economically provide such educational facilities and services to residents within its district. Further, the agreement provides for "usual educational facilities and services, except transportation, to pupils residing in the adjoining district." The agreement also discusses services, payment and billing for its educational services to an adjoining district.

The Tuition Agreement submitted by Tahoe Truckee does not delegate its responsibility for FAPE, or the implementation of an IEP. The only mention of special education is in regard to how Tahoe Truckee will pay for a student's cost to attend a Washoe school. The document does not address special education, either as it relates to legal obligation or service implementation. Additionally, the Tuition Agreement indemnification clause is for *negligence*, not FAPE violations. The Tuition Agreement offered by Tahoe Truckee is unconvincing evidence to prove a FAPE responsibility transfer to Washoe, as Tahoe Truckee asserts.

Tahoe Truckee conflates an agreement to implement educational services with the legal obligation to offer and provide FAPE to Student as a resident. Districts routinely contract with outside providers to implement special education services. However, Tahoe Truckee has provided no authority that supports that an agreement to implement services absolves Tahoe Truckee of their legal FAPE responsibilities and liability under the IDEA and California law.

Tahoe Truckee, by its own admission, pays for the educational services provided to Student by Washoe through the Tuition Agreement and participates in Student's IEP team meetings conducted by Washoe. Although Student attends a Washoe school, Tahoe Truckee is legally responsible for Student's FAPE and has not demonstrated it either is legally able, or through the variance has attempted to contract its responsibility away. Tahoe Truckee's argument is contrary to the IDEA and California law. Thus, Tahoe Truckee is responsible for Student's FAPE in its entirety, including any placement or services provided by Washoe.

Determination of FAPE Requires an Examination of the Substantive and Procedural Elements In Their Entirety of Student's IEP

Tahoe Truckee argues that Parents did not consent to the October 12, 2017 IEP transportation offer, and it need only prove that the transportation offer to Student meets FAPE requirements in order to be entitled to relief.

If a parent will not consent to a proposed IEP component that the school district determines is necessary to provide a FAPE, the school district must initiate a due process

hearing. (Ed Code, § 56346, subd. (f).) Under that provision, the school district must file a request for due process hearing without undue delay once an impasse with the parent is reached. (*I.R. v. Los Angeles Unified School Dist.* (9th Cir. 2015) 805 F.3d 1164, 1170 (*I.R.*).)

Tahoe Truckee argues Education Code section 56346, subd. (f) and *I.R.* stand for the proposition that a single element of an IEP can be determined to provide a FAPE. While a portion of Tahoe Truckee's argument is correct in that one component of an IEP can be contested, neither Education Code section 56346, subd. (f) nor *I.R.* addresses the evidence necessary to prove that a contested component of the IEP provides a student a FAPE. Notably, Education Code section 56346, subdivision (f) does not authorize a hearing officer to approve one IEP component. Instead, the statute provides, "a due process hearing shall be initiated in accordance with Section 1415(f) of Title 20 of the United States Code." That section, in turn, provides that "a decision made by the hearing officer shall be made on substantive grounds based on a determination of whether the child received a free and appropriate public education." (20 U.S.C § 1415(f)(3)(E)(i).)

Furthermore, while a school district seeks due process to validate a single portion of an IEP under Education Code section 56346, there are, however, recognizable differences between asserting that a single component of an IEP denies a student a FAPE and asserting that a single component of an IEP offers student a FAPE. Parents may challenge a single element of their child's IEP because that parent is essentially asserting that student is being denied a *complete* FAPE due to one fatal defect. Such is not the situation where a school district seeks a finding of FAPE by analyzing only a portion of the program, because one component of a program cannot validate the whole.

In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program, the IEP. An IEP provides a FAPE if it offers a child access to an education that is reasonably calculated to "confer some educational benefit" upon the child. (*Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S. Ct. 3034, 73 L.Ed.2d 690].) It is an "individualized educational program," not some portion of it, which must be reasonably calculated to confer benefit. (*Ibid*.)

The Supreme Court described the IEP as the "modus operandi" of the IDEA; and "a comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs." (*School Comm. of Town of Burlington, Mass. V. Department of Educ.* (1985) 471 U.S. 359, 368 [105 S.Ct. 1996].) The IEP is the "centerpiece of the [IDEA's] educational delivery system for disabled children" and consists of a detailed written statement that must be developed, reviewed and revised for each child with a disability. (*Honig v. Doe* (1988) 484 U.S. 305, 311 [108 S.Ct.592, 98 L.Ed.2d 686]; 20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345.)

The court in *Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, (Gregory K.), acknowledged the need to evaluate the full educational program being offered to determine whether a student had been offered a FAPE. For a school district's offer of special education services to a disabled pupil to constitute a FAPE under the IDEA, a school district's offer must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the student with some educational benefit in the least restrictive environment. (*Ibid*.) These cases and their progeny consistently recognize the interrelationship of all of the elements of an IEP in providing FAPE and routinely determine whether a district provides a FAPE by looking at the IEP in its entirety.

Tahoe Truckee's argument that OAH may analyze solely the transportation offer to determine FAPE because it is the only IEP component in dispute is unpersuasive. A FAPE is not modular; it is a unitary whole and can be analogized to a completed puzzle which is made up of the various procedural and substantive elements of an IEP. When only one portion of an IEP is analyzed, FAPE cannot exist. Taken as a whole, it may enable a child to receive a FAPE. One cannot analyze a single element because it is the combination of all of the procedural and substantive elements present that results in a FAPE. Narrowing the analysis to a single component, as Tahoe Truckee proposes, is inconsistent with the IDEA and case law.

Tahoe Truckee cites OAH decisions to support its argument that a portion of an IEP can be found to constitute a FAPE and that OAH has the ability to order relief with only analyzing a portion of Student's program. OAH cases are not binding on later OAH decisions. (Cal. Code Regs., tit. 5, § 3085.) Even if they were, the decisions cited by Tahoe Truckee are distinguishable.

In *Del Mar Union School District v. Student* (OAH, March 15, 2012, No. 2011110310) (Del Mar), Del Mar filed a complaint on the issue of whether the school district's offer of placement and services contained in Student's IEP constituted a FAPE. While district prevailed, the decision held that the IEP in its entirety constituted a FAPE; it did not specify that the specific placement and/or services at issue constituted a FAPE.

Likewise, in *West Covina Unified School District v. Parent* (OAH, February 26, 2009, No. 2008090480) the district requested a ruling of whether the placement and services in Student's IEP constituted a FAPE. Student prevailed and the decision specified that parts of the proposed IEP were appropriate and other portions were not, suggesting a full IEP analysis.

Thus, the entire IEP offer, which it appears is drafted by both Tahoe Truckee and Washoe, must be analyzed to determine if Tahoe Truckee offered Student a FAPE. The law authorizes only implementation of an IEP without parental consent by determining if the entire IEP comported with legal requirements and offered Student a FAPE. Nothing in this order precludes Tahoe Truckee from seeking to establish that the Tahoe Truckee and Washoe IEP's collectively, both procedurally and substantively offered Student a FAPE. As a

proposed remedy, Tahoe Truckee can seek to implement the transportation offer without parental consent[1]

CONCLUSION

Tahoe Truckee did not establish that it is not the responsible LEA for Student's entire FAPE because Student is Tahoe Truckee's resident, no exceptions apply and agencies cannot contract out their legal FAPE responsibly. Moreover, the entire IEP offer must be analyzed in order to determine if Tahoe Truckee provided Student a FAPE for transportation services in compliance with the IDEA and California law.

ORDER

District's Motion To Narrow Issues At Hearing To Issues In Dispute is denied.

IT IS SO ORDERED.

DATE: April 24, 2018

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Cynthia Fritz
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CYNTHIA FRITZ
Administrative Law Judge
Office of Administrative Hearings

[1] While ALJ Ravandi noted in the February 27, 2018 Order Following Prehearing Conference that OAH does not have jurisdiction over a Nevada IEP, nothing prevents OAH from reviewing a program or agreement made by Tahoe Truckee with Washoe County to provide services so that Tahoe Truckee can provide Student a FAPE.