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 CLARIFYING ISSUES AT DUE PROCESS HEARING

MAY 10, 2024

On May 7, 2024, Administrative Law Judge Jennifer Kelly, Office of Administrative Hearings, commenced the due process hearing by videoconference. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH.

Attorneys Mark Woodsmall and Abigail Lombardo appeared on behalf of Student. Attorney Amy Rogers appeared on behalf of Covina-Valley Unified School District. The due process hearing was recorded.

On May 6, 2024, Student filed a request to dismiss certain issues and a request for amendment of issues, seeking to change language from the April 29, 2024 Order Following Prehearing Conference for Hearing by Videoconference. Based upon discussion with and agreement of the parties on the record on May 7, 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. 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. The issues at the due process hearing, as alleged in the complaint and clarified by the parties and the ALJ at the start of the due process hearing are:

1. Did Covina-Valley District deny Student a FAPE by failing to provide Student's IEP documents after IEP team meetings held on:
    a. December 8, 2021;
    b. May 20, 2022;
    c. June 1, 2022; and
    d. June 1, 2023?
2. Did Covina-Valley deny Student a FAPE during the 2021-2022 regular and extended school year, beginning November 28, 2021, by failing to:
    a. timely assess Student in preparation for Student's three-year evaluation held in May 2022; and
    b. appropriately assess Student in all areas of known or suspected needs in preparation for Student's three-year evaluation held in May 2022, specifically in recreational therapy and adapted physical education?

3. Did Covina-Valley deny Student a FAPE in a December 8, 2021, IEP by:
    a. failing to allow Parents the opportunity to meaningfully participate in the IEP team meeting;
    b. failing to include the goals recommended in 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?
2. Did Covina-Valley deny Student a FAPE in a May 20, 2022, IEP by:
    a. failing to allow Parents the opportunity to meaningfully participate in the IEP team meeting;

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?

3. Did Covina-Valley deny Student a FAPE in a June 1, 2022, IEP by:
    a. failing to allow Parents the opportunity to meaningfully participate in the IEP team meeting;
    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 behavioral 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?

4. Did Covina-Valley deny Student a FAPE during the 2022-2023 school year, including extended school year, by failing to appropriately assess Student in all areas of suspected disability, specifically in:

a. recreational therapy; and

b. adapted physical education?

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

a. September 12, 2022; and

b. October 5, 2022?

6. Did Covina-Valley deny Student a FAPE in a June 1, 2023, IEP by:
    a. failing to allow Parents the opportunity to meaningfully participate in the IEP team meeting;
    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. fine and visual motor skills;
        iii. communication development; and
        iv. gross motor skills;
    d. 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;
    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?

7. Did Covina-Valley deny Student a FAPE during the 2023-2024 school year, including extended school year, by failing to appropriately assess Student in all areas of suspected disability, specifically in:

a. recreational therapy; and

b. adapted physical education?

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

A party must immediately file a written objection with OAH if the issues as described above do not reflect the party's understanding of the issues as clarified at the start of the due process hearing on May 7, 2024. The ALJ will address any objections at the start of day four of the due process hearing on May 14, 2024.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly
Administrative Law Judge
Office of Administrative Hearings