

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SACRAMENTO CITY UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014030365

DECISION

Student filed a due process hearing request with the Office of Administrative Hearings, State of California, on March 10, 2014, naming Sacramento City Unified School District. Student's complaint was amended on April 28, 2014.

Administrative Law Judge Margaret M. Broussard heard this matter in Sacramento, California, on June 3, 2014.

Mother represented Student. Student and Student's mental health counselor were present at all times during the hearing.

Daniel Osher, Attorney at Law, represented Sacramento. Rebecca Bryant, Sacramento's Director of Special Education, was present at all times during the hearing.

ISSUE

Did Sacramento deny Student a free appropriate public education by failing to schedule a follow-up individualized education program team meeting pursuant to Parent's February 24, 2014, request?

SUMMARY OF DECISION

Sacramento did not deny Student a FAPE by failing to hold an IEP team meeting pursuant to parental request on February 24, 2014, because Student did not establish that Parent requested another IEP team meeting be held.

FACTUAL FINDINGS

BACKGROUND AND JURISDICTION

1. Student is an 11-year-old girl who currently resides within the geographical boundaries of Sacramento. Student transferred from the Folsom-Cordova Unified School District into Sacramento on or about October 17, 2013. Student was eligible for special education while at Folsom-Cordova under the eligibility category of emotional disturbance and had an individual education program that placed her in a special day class for students with emotional disturbance.

2. When Student enrolled, Sacramento offered her a comparable placement in a Sacramento special day class. Mother did not consent to this placement and Student enrolled as a general education student at James Marshall Elementary School.

3. For reasons not relevant to this decision, Mother revoked consent for special education on December 5, 2013, and, on the same day, requested an assessment from Sacramento to determine whether Student was eligible for special education. Mother was given an assessment plan and she signed consent for the assessment on December 6, 2013.

4. The District assessed Student, and an IEP team meeting was held on February 12, 2014. The IEP team determined that Student was eligible for special education as a student with emotional disturbance and developed a 28-page IEP document. The IEP document from that meeting is thorough and complete, and

includes present levels of performance, goals, accommodations and modifications, a behavior intervention plan, meeting notes, and an offer of services and placement.

5. The IEP notes indicate that Mother asked to see the placement offered before making a decision about consenting to the IEP. Mother contends that the IEP team meeting was in "recess" until she saw the placement and that the IEP team had agreed that the team would reconvene. Sacramento contends that the IEP team meeting had concluded and all that was needed was consent from Mother, for which no meeting was necessary.

6. Lisa Friend, program specialist for Sacramento, and Marla Vanlaningham, Principal at James Marshall Elementary School, attended the February 12, 2014, IEP team meeting. Both testified credibly that the IEP meeting concluded on February 12, 2014, and that there was not a continued meeting scheduled, or contemplated, by Sacramento. All required components of the IEP were included in the document, discussed at the meeting, and documented on the IEP forms. The IEP was completed on February 12, 2014, and the IEP was not in "recess," as Mother contends.

7. Mother was scheduled to visit the proposed IEP placement at Hollywood Park School on February 20, 2014. This visit never took place. On February 19, 2014, Sacramento's Director of Student Hearing and Placement, Stephan Brown, held a meeting because Student violated several sections of the education code for fighting, bullying, and disruptive and defiant behavior. Since arriving at Sacramento in October 2013, Student was suspended four times for a total of eight days.

8. As a result of the meeting on February 19, 2014, Student's general education school of attendance was changed to Success Academy from James Marshall Elementary School and a behavioral contract was put in place. The meeting profile notes show that Mother was informed that the IEP placement offer at Hollywood Park Elementary School was still available for her to accept.

9. Mother did not believe Student would be safe at Success Academy and has not sent Student to school since that time. Mother believes that the general education placement change from James Marshall to Success Academy somehow superseded the IEP team's placement offer of the SDC class at Hollywood Park Elementary School. However, the evidence showed that the IEP offer at Hollywood Park remains available for Mother to accept to this day.

REQUEST FOR A FOLLOW-UP IEP TEAM MEETING

10. Mother often sent emails to Sacramento personnel. Student's evidence contained an email from February 24, 2014, allegedly sent by Mother to Ms. Vanlaningham, requesting that another IEP team meeting be held for Student. Ms. Vanlaningham credibly testified that she never received the email. Mother never addressed the email in her testimony and did not even mention in her testimony that she requested a follow-up IEP team meeting.

11. The email Mother purported to send was in the middle of a string of emails sent back and forth between Mother and various District employees. The email, supplied by Mother at hearing, is entitled to little weight. The email is embedded in a sequence of emails that begin on February 24, 2014, at 3:26 p.m. with an email from Mother to Mr. Stephan Brown. Mr. Brown responded at 7:04 p.m. that same day. Mr. Brown indicated that he would welcome a call from Mother to discuss the results of the February 19, 2014, meeting. He also asked Mother whether she had given additional thought to the IEP offer of Hollywood Park and asked her whether she had questions about either the Hollywood Park placement or the general education school attendance change to Success Academy. Mother responded to Mr. Brown's email on February 25, 2014, at 9:53 a.m. and did not ask any questions about either school placement or reference a supposed earlier request for another IEP team meeting. All three of these

emails contain the subject heading "Re: Hello [Mother] Here...." They seem clearly to be emails sent to reply to one another.

12. However, the next email in the string is not to Mr. Brown and has a different subject heading. It was allegedly sent on February 24, 2014, at 7:45 a.m. The subject of the email is: "RE: Request for IEP." The email in evidence has a header that looks different from all of the other email headers in evidence from Parent, as the address that the email is from is on the same line as the words "original message". In every other email, the words "original message" appear alone on the line above the "from" line.

13. The next few emails in the string are from Mother to Mother from one of her email addresses to another. Finally, the last email is to Ms. Friend and Mr. Brown on May 1, 2014, forwarding the string of emails to them for their records and asking them to send them to their attorney. The email purporting to ask for a follow-up IEP team meeting is not consistent with the other correspondence in evidence. Mother never testified under oath that she sent the email to Sacramento, and there was no evidence that established that the email was actually sent to Sacramento.

14. At no time and in no other document did Mother reference the purported request for an IEP team meeting made on February 24, 2014. Sacramento claims that it was not aware that Mother wanted another IEP team meeting until Mother made this claim in the April 28, 2014, prehearing conference when she amended her complaint in this matter.

15. On April 29, 2014, Ms. Bryant sent Mother an email stating that Sacramento had not received an earlier request for an IEP team meeting for Student and sent an IEP team meeting notice scheduling a meeting for May 16, 2014. Mother responded to Ms. Friend on May 1, 2014, that she was rescinding her request to reconvene the IEP team meeting. Ms. Friend responded on May 2, 2014, that the

meeting was canceled but informed Mother that she could request another IEP team meeting be scheduled.

16. Sacramento's attorney followed up with a letter to Mother on May 5, 2014. This letter clarified that Mother could consent to Student's IEP at any time and it would be implemented. The letter also indicated that Sacramento was willing to promptly schedule another IEP team meeting should Mother desire one. Mother did not respond to this letter. The irregularities in the email, Mother's failure to reference her "request" for another IEP team meeting, and her refusal to attend another IEP team meeting once Sacramento offered one, show that Mother did not ask Sacramento for another IEP team meeting at any time before the April 28, 2014, prehearing conference.

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA¹

1. This hearing was held under the Individuals with Disabilities Education Act (IDEA), its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006)² et seq.; Ed. Code, § 56000, et seq.; Cal. Code. Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them

¹ Unless otherwise indicated, the legal citations in the introduction and in the sections that follow are incorporated by reference into the analysis of each issue decided below.

² All subsequent references to the Code of Federal Regulations are to the 2006 version.

for further education, employment, and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to Parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; Cal. Code Regs., tit. 5, § 3001, subd. (p).) "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) [In California, related services are also called designated instruction and services.].) In general, 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.)

3. In *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] (*Rowley*), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services, which are individually designed to provide educational benefit to" a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to "maximize the potential" of each special needs child and "commensurate with the opportunity

provided” to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to “confer some educational benefit” upon the child. (*Id.* at pp. 200, 203-204.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 (*Mercer*) [In enacting the IDEA . . . , Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.]) Although sometimes described in Ninth Circuit cases as “educational benefit,” “some educational benefit,” or “meaningful educational benefit,” all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.*, at p. 950, fn. 10.)

4. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3) (C), (D).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) Here, Student bears the burden of proof.

DID SACRAMENTO FAIL TO HOLD A FOLLOW-UP IEP TEAM MEETING?

5. Student contends that Sacramento was required to reconvene the IEP team meeting pursuant to her request on February 24, 2014. Sacramento contends that it received no such request.

6. An IEP team meeting requested by a parent shall be held within 30 days, not counting days between the pupil's regular school sessions, terms, or days of school vacation in excess of five school days, from the date of receipt of the parent's written request. (Ed. Code, §56343.5.)

7. In this case, Student did not establish that she asked for another IEP team meeting on February 24, 2014. Mother did not testify that she sent the email to anyone at Sacramento. Moreover, the email purportedly sent by Mother did not look consistent with the other emails entered into evidence because the "from line" was located next to the "original message" line. The email was located in a string of emails but was not sequential in time in the string. The email had a different subject heading than the other emails in the string. Mother never referenced her purported request for an IEP team meeting with anyone from Sacramento at any time until she amended her complaint during the prehearing conference to add the allegation. Finally, when Sacramento was notified that Mother wanted another IEP team meeting and when Sacramento offered to convene one, Mother refused to attend. Mother did not meet her burden to show that she requested an IEP team meeting for Student on February 24, 2014. Therefore, there was no denial of FAPE to Student for this reason.

ORDER

All of Student's requests for relief are denied.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Sacramento prevailed on the only issue heard and decided.

RIGHT TO APPEAL

This Decision is the final administrative determination and is binding on all parties. (Ed. Code, § 56505, subd. (h).) Any party has the right to appeal this Decision to a court of competent jurisdiction within 90 days of receiving it. (Ed. Code, § 56505, subd. (k).)

Dated: June 17, 2014

/s/

MARGARET BROUSSARD

Administrative Law Judge

Office of Administrative Hearings