

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2022070377

PARENT ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL DISTRICT.

DECISION

February 24, 2023

On July 14, 2022, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parent on behalf of Student, naming Long Beach Unified School District, called Long Beach. On August 5, 2022, OAH granted a continuance of the due process hearing. Administrative Law Judge Marlo Nisperos heard this matter by videoconference on December 13, 14, 19, 20, and 21, 2022, and January 3, 4, and 11, 2023.

Parent represented Student. Student's adult sibling, who was also an educational rights holder, attended the hearing on multiple days on Student's behalf. Student did

not attend the hearing. OAH provided a Spanish language interpreter to Parent on all hearing days. On December 19, 2022, OAH opened the due process hearing to the public at Parent's request.

Cynthia Yount represented Long Beach. Dr. Rachel Heenan, Director of Special Education, Diana Zepeda-McZeal, Special Education Administrator, and Lauren Bouwman, district representative, attended the hearing on Long Beach's behalf on various days of hearing.

The matter was continued to January 23, 2023, for written closing briefs. Long Beach timely submitted a closing brief. Parent did not submit a closing brief. The record was closed, and the matter was submitted on January 23, 2023.

ISSUES

1. Did Long Beach deny Student a free appropriate public education, called FAPE, from July 14, 2020, through the end of the 2020-2021 school year by failing to:
 - a. offer services in the areas of
 - home hospital,
 - tutoring,
 - support to encourage Student to attend school,
 - transportation,
 - hearing aid,
 - how to use Chromebook,
 - device to complete homework, and
 - training to attend online school;

- b. offer home hospital placement; and
 - c. offer services delivered at school while Student was on home hospital placement?
2. Did Long Beach deny Student a FAPE during the 2021-2022 school year, through July 14, 2022, by failing to:
 - a. offer services in the areas of
 - home hospital,
 - tutoring,
 - support to encourage Student to attend school,
 - transportation,
 - hearing aid,
 - how to use Chromebook,
 - device to complete homework, and
 - training to attend online school;
 - b. offer home hospital placement;
 - c. offer services delivered at school while Student was on home hospital placement; and
 - d. hold an individualized educational program, called IEP, team meeting during the 2021-2022 school year?

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R.

§ 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.)

The main purposes of the Individuals with Disabilities Education Act, referred to as the IDEA, are to ensure:

- all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and
- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

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, assessment, or educational placement of the child, or the provision of a free appropriate public education to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511 (2006); Ed. Code, §§ 56501, 56502, and 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, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Here, Student requested the hearing and had the burden of proof on all issues. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was 17 years old and in the 11th grade at the time of hearing. Student was enrolled at Polytechnic High School but did not attend school during the two

years at issue in this hearing. Student was placed in a mild-to-moderate special day class. Student resided within Long Beach's geographic boundaries at all relevant times. Student had medical diagnoses of autism spectrum disorder, anxiety, and social phobia. Student was eligible for special education under the primary category of autism/autistic-like behaviors and secondary categories of emotional disability and other health impairment. Student qualified under other health impairment due to his medical diagnoses that adversely impact his education.

ISSUES 1(b), 1(c), 2(b), and 2(c): DID LONG BEACH DENY STUDENT A FAPE BY FAILING TO OFFER HOME HOSPITAL PLACEMENT AND BY FAILING TO OFFER SERVICES DELIVERED AT SCHOOL WHILE STUDENT WAS ON HOME HOSPITAL PLACEMENT?

Student contended that Long Beach denied him a FAPE by failing to offer home or hospital placement. Student argued that a doctor's note provided to his middle school principal supported that home or hospital was the required placement when he attended high school during the 2020-2021 and 2021-2022 school years.

Long Beach contended that Student failed to prove that he had a temporary disability that required home or hospital placement. Long Beach claimed that Student failed to provide the IEP team or district staff with an order by a doctor recommending he receive home or hospital placement during the two school years at issue. Long Beach further argued that no Long Beach member of the IEP team recommended home or hospital placement for Student during the 2020-2021 or 2021-2022 school years. Issues 1(b), 1(c), 2(b), and 2(c) regarding home or hospital placement will be analyzed together.

All students may receive individual instruction in their home, a hospital or other health facility when a temporary disability that makes attendance in a regular program impossible or inadvisable. (Ed. Code, § 48206.3.) An IEP team may recommend a student be provided special education and related services provided in the home or hospital based upon a student having a medical condition such as those related to surgery, accidents, short-term illness, or medical treatment for a chronic illness. (Cal. Code Regs., tit. 5, § 3051.4, subd. (a) & (c).)

When recommending placement for instruction in the home or hospital, the IEP team shall have in the assessment information a medical report from the attending physician and surgeon or the report of the psychologist, as appropriate, stating the diagnosed condition and certifying that the severity of the condition prevents the pupil from attending a less restrictive placement. The report shall have a projected calendar date for the pupils' return to school. (Cal. Code Regs., tit. 5, § 3051.4, subd. (d).) The IDEA uses the term "evaluation", while California Education Code uses the term "assessment". (20 U.S.C. § 1414; Ed. Code, § 56302.5.) As used in this Decision, the terms assessment and evaluation mean the same thing and are used interchangeably.

Student failed to establish that he had a temporary disability that required a home or hospital placement. No medical report recommending home or hospital placement for the school years in controversy was provided to Student's IEP team or other Long Beach staff. Student failed to show that a medical professional diagnosed him with a condition that made it impossible or inadvisable for Student to attend a regular school program during the 2020-2021 or 2021-2022 school years. As a result,

Student failed to meet his burden of proving Long Beach denied him a FAPE by failing to offer home or hospital placement during the 2020-2021 or 2021-2022 school years.

At hearing, Student failed to establish that he needed services delivered at school while on home or hospital placement. As discussed above, Student did not establish that he required home or hospital placement to receive a FAPE. Accordingly, Student failed to meet his burden of proof by a preponderance of the evidence that Long Beach denied him a FAPE during the 2020-2021 or 2021-2022 school years by failing to offer services delivered at school while he was on home or hospital placement.

ISSUES 1(a) and 2(a): DID LONG BEACH DENY STUDENT A FAPE BY FAILING TO OFFER SERVICES IN THE AREAS OF HOME HOSPITAL, TUTORING, SUPPORT TO ENCOURAGE STUDENT TO ATTEND SCHOOL, TRANSPORTATION, HEARING AID, HOW TO USE CHROMEBOOK, DEVICE TO COMPLETE HOMEWORK, AND TRAINING TO ATTEND ONLINE SCHOOL?

Student contended that Long Beach denied him a FAPE by failing to offer services that met his needs during the 2020-2021 and 2021-2022 school years. Student claimed that he needed

- home or hospital services,
- tutoring,
- support to encourage Student to attend school,
- transportation,
- a hearing aid,

- training on how to use a Chromebook,
- a device to complete his homework, and
- training to attend online school.

Long Beach contended that Student failed to offer any credible evidence that Student required these services. Accordingly, Long Beach asserted Student did not prove it failed to offer and make available a FAPE during the 2020-2021 and 2021-2022 school years.

A FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17 (2006).) Parents and school personnel develop an IEP for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a), and 56363, subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501 (2006).)

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204 [102 S.Ct. 3034, 3048-3050, 73 L.Ed.2d 690]; *Andrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. 386 [137 S.Ct. 988, 1000, 197 L.Ed.2d 335].)

An IEP must include a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent

practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child:

- to advance appropriately toward attaining the annual goals;
- to be involved in and make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and
- to be educated and participate with other children with disabilities and nondisabled children in the activities described in federal regulations. (34 C.F.R. § 300.320(a)(4) (2006).)

“Related services” are supportive services that a disabled student requires to benefit from special education. (34 C.F.R. § 300.34 (2006).) Related services include developmental, corrective, and supportive services, including transportation. (*Ibid.*)

The IDEA accords educators discretion to select from various methods for meeting the individualized needs of a student, provided those practices are reasonably calculated to provide him with educational benefit. (*R.P. v. Prescott Unified Sch. Dist.* (9th Cir. 2011) 631 F.3d 1117, 1122.)

The evidence established that Long Beach offered extended school year services in each of Student’s IEP’s. However, Student’s complaint did not specifically allege denials of FAPE during the 2020, 2021, and 2022 extended school years. As a result, this Decision does not make findings regarding whether Long Beach offered appropriate extended school years services.

Long Beach’s IEP offer of September 25, 2018, was the last IEP for which Parent provided consent. Student’s next annual IEP was due by September 24, 2019, but Long

Beach failed to make an IEP offer during the 2019-2020 school year. Parent did not consent to the IEP offered during the 2020-2021 school year on June 4, 2021. As discussed in Issue 2d, Long Beach did not hold an annual IEP team meeting or make an IEP offer during the 2021-2022 school year.

Typically, IEP team meetings are held and new IEP offers are made annually. (See 20 U.S.C. § 1414(d)(4)(A); see 34 C.F.R. § 300.324(b) (2006); see Ed. Code, § 56343, subd. (d).) In California, an IEP is not operative until it is consented to by the Parent or found to be a FAPE after an administrative determination. (See Ed. Code, § 56346, subd. (e) & (f).) In this case, since there is no allegation regarding the failure to hold an annual IEP team meeting and make a new annual offer during the 2020-2021 school year, that issue is not analyzed in this Decision.

Based on California's specific FAPE law, the September 25, 2018 IEP was the operative IEP throughout the entire time period alleged in this matter. Therefore, even though the services were intended to be offered for one year, because no new offer was consented to by Parent, the undersigned looked at the related services offered in the September 25, 2018 IEP to determine whether Student required more or different services in the areas alleged by Student.

Student was in the seventh grade when Parent partially consented to the September 25, 2018 IEP. On December 7, 2018, Parent consented only to the intensive behavior services offered in the September 25, 2018 IEP. Student did not attend school during the 2020-2021 and 2021-2022 school years, when Student was in the ninth and 10th grades.

LONG BEACH OFFERED APPROPRIATE SUPPORTS TO ENCOURAGE SCHOOL ATTENDANCE FROM APRIL 26, 2021, THROUGH THE END OF THE 2021-2022 SCHOOL YEAR

At hearing, Parent clarified that Student needed support to attend school when instruction was delivered in-person. Long Beach contended that Student did not present any credible evidence that it failed to offer appropriate supports to encourage Student's attendance during the 2020-2021 and 2021-2022 school years.

From September 1, 2020, through April 23, 2021, Long Beach schools were closed to in-person instruction due to the COVID-19 pandemic. During school closure, instruction was provided online to all students, called distance learning. Long Beach offered in-person instruction to all students beginning April 26, 2021. Accordingly, the analysis of whether Long Beach offered appropriate supports to encourage school attendance is limited to in-person attendance commencing April 26, 2021.

Student's September 25, 2018 IEP offered six hours per day of direct individual behavior intervention services and 10 hours per year of indirect consultation or supervision behavior intervention services. The September 25, 2018 IEP offered direct individual behavior intervention services for Student's entire school day. The direct individual services were supports for Student to attend school, to stay in class, and remain on campus.

The evidence established that Student had trouble getting ready for school and struggled to leave his bedroom and home to attend school. Student had difficulty transitioning to the school environment because Student's anxiety increased during

transportation to school. When Student arrived at school he needed a quiet place to relax and calm down before he started the school day. If Student could not calm down, Student would return home because his maladaptive behaviors resulting from his anxiety would prevent him from attending school.

Beginning in 2015, Parent brought Student to school only once per week to limit his exposure to school due to Student's school-based anxiety. In middle school, Student would attend approximately 22 minutes of class before asking to leave the classroom to go to a breakroom on campus with his behavior intervention services aide. With the help of the behavior intervention services aide, Student progressed from remaining on campus for 20 minutes to staying at school for up to three hours.

Student did not offer any evidence, beyond Parent's argument, to support that he required additional or different services from those in his September 25, 2018 IEP to encourage him to attend school in-person. Additionally, Long Beach demonstrated that it was ready, willing and able to implement the behavior services offered in Student's IEP of September 25, 2018. Long Beach had behavior intervention services providers present at school the two times that Student visited the campus during the 2020-2021 school year when school was in session in-person. The behavior service providers encouraged Student to attend classes and remain on campus. As a result, Student failed to prove by a preponderance of the evidence that Long Beach denied him a FAPE from April 26, 2021, through June 3, 2021, by failing to offer services to encourage him to attend school in-person.

On June 4, 2021, Student's IEP team convened an annual meeting. At the IEP team meeting, Long Beach offered to Student 1,850 minutes per week of direct individual behavior intervention services and 3,600 minutes per year of direct consultation or supervision behavior intervention services. The June 4, 2021 IEP offered direct individual behavior support that was intended to replicate the services that had previously been successful in helping Student attend school. Student did not present any evidence, beyond Parent's argument, that the June 4, 2021 IEP offer of supports for Student's school attendance was inappropriate. Long Beach's Behavior Intervention Supervisor Michelle Neilsen opined that Student needed supports to attend and remain in school. Neilsen also established that the services offered in the June 4, 2021 IEP provided the necessary support to encourage Student to attend school in-person and help him remain on campus.

Neilsen was a Behavior Intervention Supervisor for Long Beach since October 2010 and earned a bachelor's degree in therapeutic and community psychology and a master's degree in psychology. Neilsen conducted a behavior assessment reevaluation of Student in May 2021. Neilsen's assessment was based on reviewing Student's educational records, information gathered from Parent and service providers, and Student's demeanor when he attended school. Neilsen considered that Student was polite and behaved appropriately with others when he was on campus, and he did not display behaviors which demonstrated he was unable to attend school. Neilsen testified in a thoughtful and cautious manner and her opinion was given significant weight.

Therefore, Long Beach successfully rebutted Parent's unsupported argument that the behavior services to encourage school attendance offered in Student's June 4, 2021 IEP were insufficient. Accordingly, Student failed to meet his burden of proving by a preponderance of the evidence that Long Beach denied him a FAPE from June 4, 2021, through the end of the 2020-2021 school year, by failing to offer services to encourage Student to attend school in-person.

Long Beach's June 4, 2021 IEP offer to Student was applicable for the 2021-2022 school year. Student failed to establish that he needed different support services other than those offered in the June 4, 2021 IEP to encourage him to attend school. As a result, Student failed to prove by a preponderance of the evidence that Long Beach denied him a FAPE during the 2021-2022 school year by failing to offer services to encourage Student to attend school in-person.

LONG BEACH DENIED STUDENT A FAPE BY FAILING TO OFFER TRANSPORTATION SERVICES

Student contended that he required transportation services beginning April 26, 2021, when Long Beach opened schools for in-person instruction. Long Beach claimed it did not offer transportation services to Student because Parent chose to have Student attend Polytechnic High School, a school that was not Student's school of residence. Long Beach's policy prevented it from offering transportation services to a special education student, if the student chose to attend a school that was not his school of residence. Long Beach asserted that it advised Parent that transportation services would

not be offered because Polytechnic High School was not Student's school of residence, but the school of choice. Long Beach also contended that intradistrict transfer options, such as school of choice, have been upheld by prior OAH decisions and should be upheld in this matter.

The IDEA regulations define transportation as:

- i. travel to and from school and between schools;
- ii. transportation in and around school buildings; and
- iii. specialized equipment (such as adapted buses, lifts, and ramps), if required to provide transportation for a child with a disability.

(34 C.F.R. § 300.34(c)(16) (2006).) Decisions regarding such services are left to the discretion of the IEP team. (Analysis of Comments and Changes to 2006 IDEA Part B Regulations, 71 Fed. Reg. 46576 (August 14, 2006).)

Student required transportation services for in-person instruction because his disability significantly impacted his ability to safely access standard transportation. Parent credibly testified that Student required support and supervision when he traveled between home and school. Parent transported Student to middle school because of his disabilities. When Student attended middle school, he exhibited maladaptive behaviors and experienced anxiety during transportation. Student's anxiety would increase during transportation such that he was frequently unable to attend school once he arrived on campus due to his emotional status.

During the 2020-2021 school year, Parent accompanied Student when he visited Polytechnic High School because Student could not navigate his way to school by himself. Student exhibited maladaptive behaviors each time he went to Polytechnic High School. Student

- refused to remain on campus after he completed scheduled assessments,
- refused to visit classrooms when school was closed to students, and
- refused to stay on campus for more than 30 minutes when the school reopened, and students were present.

On one occasion, Parent and Student returned home while enroute to school due to Student becoming anxious about a woman that was on the public transit bus.

Long Beach offered transportation services to Student in the September 25, 2018 IEP, Student's operative IEP, because Student's disability significantly impacted his ability to safely access standard transportation at his home school or any other location. Parent did not consent to the implementation of transportation services offered in the September 25, 2018 IEP.

Long Beach held an informal meeting with Parent on January 15, 2019, outside of the IEP process, and offered Student curb-to-curb transportation with a bus aide to address Student's nonattendance. Parent accepted Long Beach's offer to transport Student to school with the support of an aide, but Parent elected to provide transportation home. The parties' oral agreement for transportation services with aide support was never memorialized in an amendment to Student's operative IEP of September 25, 2018. Long Beach never implemented transportation with aide services based on the oral agreement with Parent. Long Beach did not present any evidence that

Student's needs for transportation services changed, or that Student no longer required transportation as a related service when Long Beach returned to in-person learning in April 2021.

Long Beach's claim that it did not offer Student transportation services based on a policy that requires a parent to provide transportation if parent chose a school of attendance other than student's designated home school was not persuasive. The IDEA requires a local educational agency to provide services that will help student benefit from special education based upon a student's individual needs. (34 C.F.R. § 300.34 (2006).)

Long Beach cited three OAH decisions that it believed supported its denial of transportation services. First, OAH decisions are not binding authority on subsequent proceedings. (Cal. Code Regs., tit. 5, § 3085.)

Secondly, Long Beach's reliance on the three OAH decisions was misplaced. In *Student v. Garden Grove Unified School District* (OAH, December 3, 2009, No. 2009081095), the parent signed a document that informed him he was waiving transportation services in exchange for choosing a school other than student's school of residence. Long Beach cited *Student v. Temecula Valley Unified School District* (OAH, February 22, 2012, No. 2011110416), where parent specifically agreed to provide transportation as part of her request to have student attend a different school from student's home school. In *Student v. Long Beach Unified School District*, (OAH, February 22, 2019, No. 2018050736), the ALJ found no procedural violation when the district failed to provide prior written notice of its decision to withdraw transportation service in Student's IEP as a result of parent selecting placement at a school of choice.

In that matter, parent completed the school of choice application which informed parent that transportation would not be provided if parent selected a school other than student's school of residence.

This matter is distinguishable from the OAH matters cited by Long Beach. Here, the evidence is unclear how Student was enrolled at Polytechnic High School for the 2020-2021 school year. Parent testified credibly that Long Beach spoke to her about Student attending Polytechnic High School, however, Parent felt that the school was too large and wanted Student to attend a smaller school due to Student's school-based anxiety and social phobia. Long Beach offered no evidence that showed Parent chose or enrolled Student in Polytechnic High School. In fact, it is undisputed that Student never attended Polytechnic High School. The evidence showed that the first time Long Beach offered placement at Polytechnic High School was in the June 4, 2021 IEP, four weeks before the end of the 2020-2021 school year. For the purposes of this case, it does not matter how Student was enrolled in Polytechnic High School because school of choice was Long Beach's defense to Student's claim that it failed to offer transportation services. Contrary to Long Beach's contentions, the evidence did not establish that Parent chose Polytechnic High School. Long Beach did not show that it provided Parent an application or information related to the school of choice program. As a result, Long Beach failed to establish that Parent waived Student's right to transportation services in exchange for him attending Polytechnic High School.

Student needed transportation services to access the special education curriculum delivered at school. At hearing, Parent requested for Student to be provided an aide during transportation services because she believed Student needed a support person with him at all times due to his disability. This Decision does not address whether

Student was denied a FAPE based on a failure to offer an aide during transportation services because that issue was not specifically pled in the complaint. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) Accordingly, Student proved by a preponderance of the evidence that Long Beach denied him a FAPE from April 26, 2021, through the end of the 2020-2021 school year, by failing to offer transportation services.

Student continued to need transportation services during the 2021-2022 school year based on his disability. Although Long Beach's June 4, 2021 IEP offered placement at Polytechnic High School, Parent did not consent to the June 4, 2021 IEP. Long Beach did not provide information to Parent about the school of choice program related to placement for the 2021-2022 school year. Parent did not waive Student's right to transportation for the 2021-2022 school year in exchange for placement at Polytechnic High School. Student established his ongoing need for transportation and Long Beach did not prove otherwise. Long Beach's June 4, 2021 IEP offer did not include transportation services based on its policy regarding school of choice. Long Beach was required to offer Student transportation services so Student could benefit from special education. (34 C.F.R. § 300.34(a) & (c)(16) (2006).) Student proved by a preponderance of the evidence that Long Beach denied him a FAPE by failing to offer transportation services for the 2021-2022 school year.

STUDENT DID NOT NEED HOME HOSPITAL SERVICES

As discussed above in Issues 1(b), 1(c), 2(b), and 2(c), Student did not need home or hospital placement to receive a FAPE. Student failed to establish he needed home or hospital services during the 2020-2021 or 2021-2022 school years to benefit from

special education. As a result, Student failed to prove Long Beach denied him a FAPE by failing to offer home or hospital services during the 2020-2021 or 2021-2022 school years.

STUDENT DID NOT NEED TUTORING TO ACCESS SPECIAL EDUCATION

Student failed to show that tutoring for the purpose of earning credits towards graduation at an accelerated rate was a special education related service. (34 C.F.R. § 300.34 (2006).) At hearing, Parent explained that Student required tutoring so he could earn or make-up the credits he needed to graduate in an appropriate timeframe. Long Beach argued that Student failed to meet his burden of proving that it denied him a FAPE by not offering tutoring services.

Student did not establish that he needed tutoring to help him access or benefit from his special education curriculum. Student requested tutoring services to help make-up the credits he had not earned based upon his failure to attend school. As a result, Student did not meet his burden of proving Long Beach denied him a FAPE by failing to offer tutoring services during the 2020-2021 or 2021-2022 school years.

STUDENT DID NOT NEED A HEARING AID

At hearing, Parent clarified that Student required noise canceling headphones, not a hearing aid. Long Beach contended that Student failed to prove he required a hearing aid to receive a FAPE.

Student did not offer evidence to support that he needed a hearing aid. Student failed to establish he required a hearing aid to benefit from special education. This Decision does not make findings regarding noise canceling headphones because that

issue was not pled in Student's complaint and Long Beach did not consent to address it at hearing. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) Student failed to prove that Long Beach denied him a FAPE during the 2020-2021 and 2021-2022 school years by failing to offer a hearing aid.

TRAINING TO ATTEND ONLINE SCHOOL

Student did not attend school September 1, 2020, through April 23, 2021, when Long Beach delivered instruction via distance learning. Parent testified credibly that Student's attitude toward schoolwork was that schoolwork should only be completed at school, not at home. Student's refusal to complete schoolwork at home caused a significant barrier to Student's participation in online school. Student told the school psychologist that he refused to log into his distance learning classes because "it doesn't feel right".

Student failed to offer any credible evidence, other than Parent's conclusory argument, that training was a needed service to address Student's failure to attend school during distance learning. Whether or not Student required different supports and services to attend distance learning other than training are not at issue in this decision. Accordingly, the analysis here is limited to training. Student failed to prove by a preponderance of the evidence that Long Beach denied him a FAPE from September 1, 2020, through April 23, 2021, by failing to offer training to attend online school.

The evidence established that Long Beach resumed in-person instruction and services on April 26, 2021. Student failed to show that his classes or related services were delivered online from April 26, 2021, through the end of the 2021-2022 school year. As a result, Student did not establish he needed training on how to attend online

school when the curriculum and services were delivered in-person. Student failed to prove that Long Beach denied him a FAPE from April 26, 2021, through the end of the 2021-2022 school year by failing to offer training to attend online school.

STUDENT DID NOT NEED A DEVICE TO COMPLETE HOMEWORK

Assistive technology is any item, piece of equipment or product system used to increase, maintain, or improve the functional capabilities of individuals with disabilities. (20 U.S.C. § 1401(1); 34 C.F.R. 300.5 (2006).) Schools must use assistive technology devices and services if needed to maximize accessibility for children with disabilities. (20 U.S.C. § 1400(c)(5)(H).)

Student failed to establish he needed a device to help him complete homework. The evidence showed that Student did not like homework and refused to do any work outside of school based on his rigid belief that schoolwork is done at school, not at home. The evidence at hearing did not support Parent's claim that Student needed a device to help him complete words or phrases. Student failed to define or describe the type of device that he needed to complete homework. The evidence did not support that any device would have overcome Student's refusal to complete homework based on his rigid beliefs. Additionally, Student's prior IEP's did not evidence a weakness or need for assistance with spelling or completing words or phrases. As a result, Student failed to meet his burden of proving by a preponderance of the evidence that Long Beach denied him a FAPE by failing to offer a device to complete homework during the 2020-2021 or 2021-2022 school years.

HOW TO USE A CHROMEBOOK

Student did not demonstrate that he was unable to use a Chromebook such that it prevented him from engaging in services delivered online. At the beginning of the 2020-2021 school year, Student's speech and language service provider, Heather Niedwick, sent Parent and Student log-in instructions for Student to participate in speech and language services online using the Chromebook provided by Long Beach. In October and November 2020, Niedwick continued to send Parent and Student emails reminding them of the scheduled services delivered online. Parent did not express any concerns about Student's inability to use a Chromebook to access distance learning or online services at the November 12, 2020 IEP team meeting, or on any occasion.

Student did not attend speech and language services sessions delivered online from September 2020, through January 2021. In early February 2021, Niedwick reminded Parent of the upcoming scheduled speech and language services session. Student did not attend the scheduled service due to problems with the internet and Chromebook. However, the following week, Student participated in the online speech and language services session, demonstrating his ability to use the Chromebook to access related services.

Student's participation in online speech and language services varied for the remainder of the 2020-2021 school year. In March 2021, Student used the Chromebook to attend teletherapy with his mental health provider and met with the school psychologist in preparation for the in-person psychoeducational assessment. The evidence supported that Student was capable of accessing his special education related services using a Chromebook without any training. Accordingly, Student failed

to prove by a preponderance of the evidence that Long Beach denied him a FAPE during the 2020-2021 school year by failing to offer services on how to use a Chromebook.

Student failed to establish that he needed training on how to use a Chromebook after in-person instruction and services resumed in April 2021. The evidence showed that a Chromebook was necessary during distance learning, but not for in-person instruction and services. As a result, Student failed to prove that Long Beach denied him a FAPE during the 2021-2022 school year by failing to offer training on how to use a Chromebook.

ISSUS 2(d): DID LONG BEACH DENY STUDENT A FAPE BY FAILING TO HOLD AN IEP TEAM MEETING DURING THE 2021-2022 SCHOOL YEAR?

Student contended that Long Beach denied him a FAPE by failing to hold an IEP team meeting during the 2021-2022 school year. Long Beach conceded that it did not convene an annual IEP team meeting. Long Beach argued that despite its failure to hold an IEP team meeting, Student failed to prove the error resulted in the loss of any educational opportunity to Student or interfered with the opportunity of Parent to meaningfully participate in the IEP formulation process.

An IEP team meeting must be held at least annually. (Ed. Code, § 56343.). A school district must ensure that the IEP team revises the IEP, as appropriate, to address “any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate.” (20 U.S.C. § 1414 (d)(4)(A); 34 C.F.R. § 300.324(b)(2) (2006).) California law provides that an IEP team “shall meet” whenever “[t]he pupil demonstrates a lack of anticipated progress.” (Ed. Code, § 56343, subd. (b).)

Long Beach convened Student's last annual IEP team meeting on June 4, 2021. The June 4, 2021 IEP offered services through June 3, 2022. Student's next annual IEP team meeting was due by June 3, 2022. Long Beach admitted that it failed to convene an IEP team meeting during the 2021-2022 school year. Therefore, it was undisputed that Long Beach failed to timely hold Student's annual IEP team meeting which is a procedural violation. Long Beach alleged that Parent refused to convene the IEP team meeting, but it failed to offer credible evidence to establish its claim. Further, Long Beach was not absolved of its duty under the IDEA to hold an annual meeting and make a FAPE offer even if Parent refused to meet with the IEP team. (*Bellflower Unified School District v. Jimenez* (February 17, 2021) (C.D. California) 2021] WL 1055198, at 15 citing *Anchorage Sch. Dist. v. M.P.* (9th Cir. 2012) 689 F.3d 1047, 159-60.)

A procedural violation does not automatically require a finding that a FAPE was denied. (*Amanda J. ex rel. Annette J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 892.). A procedural violation results in a denial of a FAPE only if the violation:

- impeded the child's right to a FAPE;
- significantly impeded the parent's opportunity to participate in the decision-making process; or
- caused a deprivation of educational benefits.

(20 U.S.C. § 1415(f)(3)(E)(ii); see Ed. Code, § 56505, subd. (f)(2); see *W.G., et al. v. Board of Trustees of Target Range School District, etc.* (9th Cir. 1992) 960 F.2d 1479, 1484, superseded in part by statute on other grounds ["... procedural inadequacies that result in the loss of educational opportunity, [citation], or seriously infringe the parents' opportunity to participate in the IEP formulation process, [citations], clearly result in the denial of a FAPE."].)

Student did not establish that Long Beach's failure to hold the annual IEP team meeting caused a deprivation of educational benefit to Student. However, Student showed that Long Beach's failure to hold an IEP team meeting by June 3, 2022, significantly impeded Parent's opportunity to participate in the decision-making process. Parent did not have an IEP offer with updated information including Student's present levels of performance, needs, goals, and services to consider. Long Beach's denial of FAPE continued through the time period alleged by Student, to July 14, 2022. Long Beach's denial of FAPE was ongoing because Student was entitled to a FAPE so long as Student received special education. Accordingly, Student proved by a preponderance of the evidence that Long Beach denied him a FAPE from June 3, 2022, through July 14, 2022, by failing to hold an annual IEP team meeting during the 2021-2022 school year.

CONCLUSIONS AND PREVAILING PARTY

As required by 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.

ISSUE 1(a):

Long Beach did not deny Student a FAPE by failing to offer services in the areas of

- home hospital,
- tutoring,
- support to encourage Student to attend school,
- hearing aid,
- how to use a Chrome book,

- device to complete homework, and
- training to attend online school.

Long Beach denied Student a FAPE by failing to offer transportation services.

Student partially prevailed on Issue 1(a).

ISSUE 1(b):

Long Beach did not deny Student a FAPE by failing to offer home hospital placement.

Long Beach prevailed on Issue 1(b).

ISSUE 1(c):

Long Beach did not deny Student a FAPE by failing to offer services delivered at school while Student was on home hospital placement.

Long Beach prevailed on Issue 1(c).

ISSUE 2(a):

Long Beach did not deny Student a FAPE by failing to offer services in the areas of

- home hospital,
- tutoring,
- support to encourage Student to attend school,
- hearing aid,
- how to use a Chromebook,

- device to complete homework, and
- training to attend online school.

Long Beach denied Student a FAPE by failing to offer transportation services.

Student partially prevailed on Issue 2(a).

ISSUE 2(b):

Long Beach did not deny Student a FAPE by failing to offer home hospital placement.

Long Beach prevailed on Issue 2(b).

ISSUE 2(c):

Long Beach did not deny Student a FAPE by failing to offer services delivered at school while Student was on home hospital placement.

Long Beach prevailed on Issue 2(c).

ISSUE 2(d):

Long Beach denied Student a FAPE from June 3, 2022, through July 14, 2022, by failing to hold an annual IEP team meeting.

Student prevailed on Issue 2(d).

REMEDIES

Student partially prevailed on Issues 1(a) and 2(a), and prevailed on Issue 2(d). As remedies, Student requested compensatory education, home hospital placement while Student reintegrates into a school campus, and assessments.

ALJ's have broad latitude to fashion appropriate equitable remedies for the denial of a FAPE. (*School Comm. of Burlington v. Department of Educ.* (1985) 471 U.S. 359, 370 [105 S.Ct. 1996, 85 L.Ed.2d 385]; *Parents of Student W. v. Puyallup Sch. Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496.) In remedying a FAPE denial, the student is entitled to relief that is "appropriate" in light of the purposes of the IDEA. (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3) (2006).)

The authority a district court has to order relief extends to hearing officers. (*Forest Grove Sch. Dist. v. T.A.* (2009) 557 U.S. 230, 243-244, fn. 11. [129 S.Ct. 2484, 2494, 174 L.Ed.2d 168].) An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student's needs. (*Reid v. District of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 524.) The award must be fact specific. (*Ibid.*)

School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Student W. v. Puyallup School Dist.* (9th Cir. 1994) 31 F.3d 1489, 1496.) These are equitable remedies that courts may employ to craft "appropriate relief" for a party. An award of compensatory education need not provide a "day-for-day compensation." (*Ibid* at pp. 1496-1497.) The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Ibid* at p. 1496.)

Compensatory education is a prospective award of educational services designed to catch the student up to where he should have been absent the denial of FAPE. (*Brennan v. Regional Sch. Dist. No. 1* (D. Conn. 2008) 531 F.Supp.2d 245, 265.) Parents may also be entitled to reimbursement for the costs of placement or services that they independently obtained for their child when the school district failed to provide a FAPE. (*School Committee of Town of Burlington, Mass. v. Department of Educ. of Mass.* (1985) 471 U.S. 359, 374 [105 S.Ct. 1996, 2004, 85 L.Ed.2d 385]; *Puyallup, supra*, 31 F.3d at p. 1496.)

As to Issues 1(a) and 2(a), Student was denied a FAPE from April 26, 2021, through the end of the 2021-2022 school year based upon Long Beach's failure to offer transportation services. The evidence established that Student needed transportation services to receive a FAPE when Long Beach returned to in-person learning on April 26, 2021. Long Beach's failure to offer transportation services exacerbated Student's disabilities because he was already exhibiting significant anxiety and school refusal when attending middle school. Long Beach's denial of FAPE caused Student to be without transportation services for one school year and eight weeks.

Based on the denial of FAPE under Issues 1(a) and 2(a), Long Beach is ordered to conduct a transportation assessment and hold an IEP team meeting within 60 days of the date of this Decision to determine Student's comprehensive transportation needs. The assessment shall include Student's need for an aide during transportation services. The evidence established that Long Beach offered Student curb-to-curb transportation with aide support in January 2019. However, that offer was made outside of and not incorporated into Student's IEP. Long Beach did not dispute that Student needed transportation as a related service. Rather, it was not offered because of the incorrect assumption that Student lost that entitlement if not attending his home school.

Student established that he required this related service to help him attend school. A transportation assessment will determine Student's current needs since it has been more than four years since Long Beach offered transportation services with aide support.

In the interim, for the remainder of the 2022-2023 school year, including extended school year, as compensatory education, Long Beach shall provide transportation services with the support of a one-to-one transportation aide. The transportation service with a transportation aide shall commence within five school days of the date of this Decision.

Student proved that he needed transportation services to attend school because his disability significantly impacted his ability to safely access standard transportation. The evidence established that Student's need for transportation continues to be an obstacle to accessing his education. Although this Decision did not make a finding of whether Long Beach denied Student a FAPE by failing to offer transportation with an aide, because Parent did not plead that issue in the complaint, the evidence established that offering transportation services as compensatory education without an aide, would be a meaningless remedy. The evidence showed that Student continued to exhibit maladaptive behavior related to his anxiety diagnosis, especially while being transported to Polytechnic High School. Based on the evidence that Student's anxiety during transportation is heightened and he is not familiar with Polytechnic High School, Student needs the additional support of an aide during transportation to help Student return to school after not having attended in more than two-and-a-half school years.

As to Issue 2(d), Long Beach denied Student a FAPE by failing to convene an IEP team meeting during the 2021-2022 school year. The evidence established that failing

to hold an IEP team meeting significantly impeded Parent's opportunity to participate in the decision-making process. Long Beach administrators and staff failed to recognize that an IEP team meeting must be held annually and an IEP offer made to a student who qualifies for special education and related services. (Ed. Code, § 56343.) There was no finding, however, that this failure negatively impacted Student. Therefore, compensatory education or services would not be an appropriate remedy.

Training for school district personnel is also an appropriate remedy, as the IDEA does not require compensatory education services to be awarded directly to a student. (*Park, ex rel. Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1034 [student, who was denied a FAPE due to failure to properly implement his IEP, could most benefit by having his teacher appropriately trained to do so].) Appropriate relief in light of the purposes of the IDEA may include an award that school staff be trained concerning areas in which violations were found, to benefit the specific student involved, or to remedy procedural violations that may benefit other students. (*Ibid.*)

The evidence in this case established that training is warranted for Long Beach's special education administrators and teachers at Polytechnic High School, who are responsible for overseeing timely IEP team meetings are scheduled, regarding their duty to hold annual IEP team meetings. Long Beach shall provide a two-hour training to its special education administrators and staff from an independent third party unaffiliated with Long Beach. The training shall address the legal requirements and best practices for holding annual IEP team meetings, and how to proceed if a parent is unwilling to meet with the IEP team or consent to an IEP offer.

ORDER

1. Within five school days of this Decision, Long Beach shall provide Student curb-to-curb transportation services with the support of a transportation aide. The transportation services with the support of a transportation aide shall be provided for the remainder of the 2022-2023 school year, including extended school year, if Student attends in-person. Parent may elect at any time to reject all or part of the transportation services.
2. Long Beach shall conduct a transportation assessment and hold an IEP team meeting to discuss the type of transportation services Student needs within 60 days of this Decision. The transportation assessment shall evaluate whether Student needs transportation as a related service and whether Student requires the assistance of aide support during transportation services.
3. Within 60 days from the date of this Decision, Long Beach shall contract with an independent third party with special education expertise, unaffiliated with Long Beach, to conduct a two-hour training for special education administrators and teachers at Polytechnic High School who are responsible for scheduling timely annual IEP team meetings. The training shall address the requirements and best practices for holding annual IEP team meetings, and how to proceed if a parent is unwilling to meet with the IEP team or consent to an IEP offer. The training shall be completed no later than the end of the 2022-2023 school year.
4. All of Student's other requested relief is denied.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

Marlo Nisperos

Administrative Law Judge

Office of Administrative Hearings