



Due Process Decisions 2021 through 2023

Volume 2

by Adam Wasserman

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Student v. HACIENDA LA PUENTE UNIFIED SCHOOL DISTRICT

CASE NO. 2022110091

Student v. HACIENDA LA PUENTE UNIFIED SCHOOL DISTRICT

Counsel for Student: Alexis Casillas and Jennifer Chang

Counsel for District: Jennifer Chamberlain and Savannah Skelton

Representative for District: Dr. Kitty Louie

ALJ: June R. Lehrman

Date of Decision: June 28, 2023

Significant areas of law: Failure to appropriately respond to family's request for assessment is denial of FAPE.

ISSUES:

- Did District deny Student a FAPE by failing to appropriately respond to the family's request for a visual processing assessment?

FACTS OF THE CASE:

- Student was thirteen (13) years old and was eligible for special education under the primary eligibility category of specific learning disability, and the secondary eligibility category of speech or language impairment.

CONCLUSION:

- District DENIED Student a FAPE by failing to appropriately respond to the family's request for a visual processing assessment.

Rationale:

- Upon parent request, the local educational agency must conduct a reassessment, even when the school determines that no additional data is needed to determine the student's educational needs. (20 U.S.C. § 1414 (a)(2)(A)(ii); Ed. Code, § 56381, subds. (a)(1) & (d); 34 C.F.R. § 300.303 (a)(2).)
- Education Code, section 56043 provides that within 15 days after a "referral for assessment" a proposed assessment plan "shall" be developed. A "referral for assessment" means any written request for assessment made by persons including a parent. (Ed. Code, § 56029.) If the request is oral not written, "staff of the school district, SELPA, or county office shall offer assistance to the individual in making a request in writing and shall assist the individual if the individual requests such assistance." (C.C.R., § 3021.)

- A parent must be provided “written prior notice” when a school district proposes, or refuses, to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. 20 U.S.C. § 1415(b)(3); Ed. Code, § 56500.4.)
- District procedurally violated the IDEA by not providing an assessment plan in response to the family’s request for a visual processing disorder assessment. If the request was oral only, District procedurally violated the regulation that required it to offer assistance to put it into writing.
- The failure to assess Student in the area of visual processing as requested interfered with the opportunity of the parent or guardian to participate in the formulation process of the IEP by depriving parent and the rest of the IEP team of potentially pertinent information about Student’s needs.

REMEDIES/ORDER:

- District shall within 15 days of this Decision to provide Parent with an assessment plan in the area of visual processing and augmentative and alternative communication. Assuming Parent consents, District is then ordered to follow all applicable timelines concerning the assessment and the convening of an IEP team meeting to review the results.
- District shall within 15 days of the date of this Decision to reimburse Parent a total of \$9,300 (nine thousand, three hundred dollars).

Student v. MT. DIABLO UNIFIED SCHOOL DISTRICT

CASE NO. 2023010234 2022120477

Student v. MT. DIABLO UNIFIED SCHOOL DISTRICT

Counsel for Student: Mother

Counsel for District: Deborah Ettinger and Christine Huntoon

Representative for District: Ivanna Huthman

ALJ: Robert G. Martin

Date of Decision: June 20, 2023

Significant areas of law: Failure to appropriately consider Student's private evaluations, during IEP, results in denial of FAPE.

ISSUES:

- Did District deny Student a FAPE by failing to consider, revise Student's IEP and implement the recommendations from Student's private evaluations?

FACTS OF THE CASE:

- Student was eleven (11) years old and was eligible special education and related services under the categories of autism and speech and language impairment.

CONCLUSION:-

- District DENIED Student a FAPE by failing to consider, revise Student's IEP and implement the recommendations from Student's private evaluations.

Rationale:

- If a parent obtains an independent assessment at public expense, or shares with the school district an evaluation obtained at private expense, the results of the evaluation must be considered by the school district, if it meets agency criteria, in any decision made with respect to the provision of a FAPE. (34 C.F.R. § 300.502(c)(1); Ed. Code §§ 56341.1, subd. (b)(1) and 56381, subd. (b).)
- Evidence that district IEP team members have considered a private evaluation include a lengthy discussion of the evaluation at an IEP team meeting (Michael P., supra, at p. 1066), proposals by the IEP team to conduct further assessments in an area of need identified in the evaluation (B.S. v. PlacentiaYorba Linda Unified School District (C.D. Cal., Aug. 1, 2007, No. SACV06847CJMLGX) 2007 WL 9719115, at *3-4), or alteration of IEP provisions in response to suggestions made by the private assessor. (Ibid.)

- As per Student's private Feeding Assessment report, Student exhibited high anxiety, distress, and aversion to food. He had extreme sensory sensitivities to food textures, temperature, flavor, and appearance. The assessor noted that Student's recess time would be important for his mental health, sensory regulation, and peer interactions, and should not be reduced to allow more time for eating.
- As per Student's clinic-based neuropsychological evaluation, Student was diagnosed with attention deficit and hyperactivity disorder, and autism spectrum disorder. The assessor recommended that Student must be provided a one-on-one aide in a school environment, along with occupational therapy, feeding therapy, adaptive life skills education and support, transportation, adapted physical education, social and emotional therapies, and strategies for managing symptoms arising from his ADHD and autism.
- As per Student's occupational therapy assessment Student was found to have anxiety, attention challenges, sensory challenges, proprioceptive deficits impacting his writing efficiency and motor planning, and visual motor challenges. The assessor recommended Student's IEP include 60 minutes per week of direct occupational therapy, one hour per month of consultation services; an occupational therapy designed self-regulation program, adapted paper, and that he be referred for an assistive technology (AT) evaluation.
- District contends that the IEP meeting notes reflect a robust discussion on occupational therapy assessment findings, recommendations, and proposed goals, but that discussion occurred entirely between the private assessor and Parent. None of the private assessors' input was incorporated in any way into the Amendment IEP.
- The evidence clearly shows that District procedurally violated the IDEA and Education code by not meaningfully considering Student's private evaluations in developing Student's Amendment IEP. This deprived Student of educational benefit and denied a FAPE as Student's IEP offer would have differed if District had considered this information.

REMEDIES/ORDER:

- District must provide Student a block of nine hours of compensatory education by a non-public agency, to be applied at Parent's discretion to address Student's needs in any of the areas of English language arts, math, writing, speech and language, occupational therapy, or feeding.
- Within 30 days of the date of this order, District must pay \$100.00 to Parent, as reimbursement for the battery operated bento box previously purchased by Parent.
- Parent must provide District the bento box previously purchased by Parent within 10 days of receipt of reimbursement, for inspection and testing by District.
- Within 10 days after the start of the school year, unless Student is not attending school, District must test Student's ability to open the bento box previously purchased by Parent. If the bento box purchased by Parent is not functional or cannot be opened by Student, District will within 10 additional days select and purchase at district expense a bento box Student can open.

- Beginning at the start of the school year, District must provide Parent a video once per week of Student eating his lunch at school, unless and until Parent directs otherwise in writing, or the IEP team changes or removes the support. In implementing the weekly feeding video support,
- District may conduct a school-based feeding assessment of Student according to its assessment plan, without Parent's consent, except that it may not conduct interviews, or otherwise communicate with Student's medical doctors or private providers without Parent's consent.

Student v. SADDLEBACK VALLEY UNIFIED SCHOOL DISTRICT

CASE NO. 2022120468

Student v. SADDLEBACK VALLEY UNIFIED SCHOOL DISTRICT

Counsel for Student: Kathleen Loyer

Counsel for District: Daniel Harbottle

Representative for District: Diane Clark and Shawn Beese

ALJ: Laurie Gorsline

Date of Decision: June 19, 2023

Significant areas of law: Parents' failure to consent negates any obligation for District to assess Student's needs in several suspected areas.

ISSUES:

- Did District deny Student a FAPE by failing to appropriately assess Student in all known / suspected areas of need?

FACTS OF THE CASE:

- Student was nine (09) years old and was eligible for special education under the primary category of autism and the secondary category of speech or language impairment.

CONCLUSION:-

- District DID NOT deny Student a FAPE by failing to appropriately assess Student in all known / suspected areas of need.

Rationale:

- District was not required to conduct a reevaluation of Student unless it determined Student's educational or related services needs, including improved academic achievement and functional performance, warranted a reassessment, or if a Parent or teacher requested a reassessment. (20 U.S.C. § 1414(a)(2)(A)(i) & (ii); 34 C.F.R. § 300.303(a)(1) & (2); Ed. Code, § 56381, subd. (a)(1); M.S. v. Lake Elsinore Unified School District (9th Cir. 2017) 678 Fed. Appx. 543, 544 (Lake Elsinore) (nonpub. opn.).
- District sent the three-year assessment plans to Parents which were both comprehensive and would have been used by Student's IEP team to determine the special education, related services, and supplementary aids and services for Student to be involved in and make progress in the general education curriculum, including her assistive technology needs.

- Student failed to prove that any specific assessment beyond those proposed was required to determine whether Student needed any of these devices or what she meant by an “assistive technology specialist” or “sensory integration/hyperactivity”.
- Student’s one-line cursory reference to Student’s distractibility, overstimulation, dysregulation, stimming, and inability to sustain attention was insufficient. (See e.g., *Kraim v. Virginia, et al.* (S.D.W. Va. July 26, 2021, No. 3:21-cv-00326) 2021 WL 3612305, at *7 [“[J]udges are not pigs searching for truffles,” and not required to be “mind readers.”]; see also, *In Re: Out of Network Substance Use Disorder Claims Against UnitedHealthcare* (C.D. Cal., October 14, 2022, 8:19-cv-02075-JVS(DFMx)) 2022 WL 17080378, fn. 2 (*In Re: Out of Network*) [“The Court ‘is not a pig searching for truffles in a forest,’ and will ‘not perform the work of representing parties.”]; *Agarwal v. Oregon Mutual Insurance Company* (D. Nev. January 18, 2013, No. 2:11-cv-01384-LDG) 2013 WL 211093, at *3 [“[I]t is not the responsibility of the judiciary ‘to sift through scattered papers in order to manufacture arguments for the parties.’”].
- The IDEA regulations only require a functional behavior assessment in certain disciplinary situations. (34 C.F.R. § 300.530(d)(1)(ii) and (f)(1)(i).) In the instant case, there was no evidence of any disciplinary situation mandating a functional behavior assessment.
- It was undisputed that none of Student’s teachers requested an assistive technology assessment, vision assessment and functional behavior analysis assessment. In addition, there was no specific evidence that Parents, their lay advocate, or their attorney, ever requested these assessments.
- District was required to obtain Parents’ consent to the three-year reevaluation and could not assess Student without a Parent’s consent. (20 U.S.C. § 1414(c)(3); Ed. Code, § 56381, subd. (f)(1).)
- Regardless of Parents’ motives in refusing to consent to reevaluation, Parents’ failure to consent negated any obligation for District to assess Student’s needs in several suspected areas.

REMEDIES/ORDER:

- All requests for relief by Student are denied.

Student v. GRANITE MOUNTAIN CHARTER SCHOOL

CASE NO. 2023010119

Student v. GRANITE MOUNTAIN CHARTER SCHOOL

Counsel for Student: Mother

Counsel for District: Vivian Billups-Randolph

Representative for District: Dr. Cristina Navarro-Cabero and Nicole Balogh

ALJ: Christine Arden

Date of Decision: June 20, 2023

Significant areas of law: Essential IEP team members

ISSUES:

- Did District deny student a FAPE by significantly impeding on parent's opportunity to participate in IEPs, by failing to have the occupational therapist, the speech-language pathologist, or their assistants at the IEP team meetings?

FACTS OF THE CASE:

- Student was 07 years old and was eligible for special education under the primary eligibility category of autism, and the secondary eligibility category of speech or language impairment.
- Student filed a due process hearing request before ALJ and contended that District denied him FAPE in several ways. However, Student did not meet his burden of proof on any allegation.

CONCLUSION:-

- District DID NOT deny student a FAPE by significantly impeding on parent's opportunity to participate in IEPs, by failing to have the occupational therapist, the speech-language pathologist, or their assistants at the IEP team meetings.

Rationale:-

- An IEP team meeting must include the following:
- at least one parent;
- a representative of the local educational agency;
- a regular education teacher of the child if the child is, or may be, participating in the regular education environment;
- a special education teacher or provider of the child;
- an individual who can interpret the instructional implications of assessment results;

- other individuals who have knowledge or special expertise regarding the pupil, as invited at the discretion of the district; and,
- when appropriate, the student.
(20 U.S.C. § 1414(d)(1)(B); Ed. Code, § 56341, subd. (b).)
- A required team member may be excused from attending an IEP meeting if parents give their written consent to the excusal of that team member. The essential IEP team members who must be excused from an IEP team meeting by the parent are the same as those required to be present at IEP meetings. (34 C.F.R. § 300.321(e).)
- The speech language pathology assistants and occupational therapy assistants who provided related services directly to Student were not among the personnel legally required to attend IEP team meetings. 20 USC § 1414 (d)(1)(B)(i)-(vii); Ed. Code, § 56341(b)(1)-(5); and 34 CFR § 300.321(a) (a)(1)-(7).
- District did not commit a procedural error by failing to ensure that the speech-language pathology assistants, and occupational therapy assistants, who worked directly with Student, were present at IEP meetings.
- The IEP meeting notes indicate Mother consented both verbally and in writing either before the meeting, or at the beginning of the meeting, to excuse the speech-language pathologist from attending the entire meeting, and to excuse the occupational therapist from attending part of the meeting.
- IEP meeting notes also indicate that occupational therapist reported to the IEP team about Student's occupational therapy, and answered Mother's questions. Mother had no other questions for occupational therapist before he left the meeting. There was no persuasive evidence that the IEP meeting notes were inaccurate.

REMEDIES/ORDER:-

- All relief sought by the Petitioner, Student, is denied.

Student v. COMPTON UNIFIED SCHOOL DISTRICT

CASE NO. 2022120157

Student v. COMPTON UNIFIED SCHOOL DISTRICT

Counsel for Student: Jenny Chau and Alexander Rodriguez

Counsel for District: Daniel L. Gonzalez and Alexandra Bernstein

Representative for District: Dr. Mayra Helguera

ALJ: Clifford H. Woosley

Date of Decision: June 02, 2023

Significant areas of law: Failure to complete assessments and conduct IEP meeting results in denial of FAPE.

ISSUES:

- Did District's improper unilateral disenrollment of Student deny Student a FAPE?

FACTS OF THE CASE:

- Parent on behalf of Student filed an OAH wherein they alleged that District denied Student a FAPE, because it did not comply with its child find obligations, failed to timely assess and hold an IEP team meeting, did not offer special education and related services, and improperly disenrolled Student. The OAH Decision was in favor of District on all issues. In the Appellate Order, Judge affirmed the OAH Decision, except as to the disenrollment.
- The Appellate Order found that, based upon the evidentiary record on appeal, the Parent's Permit remained valid as a matter of law and that Student complied with District's residency requirements. District therefore failed to fulfill its obligations to Student under the IDEA by summarily disenrolling Student. Judge reversed the OAH Decision as to its finding that District no longer owed a duty to Student under IDEA when it disenrolled Student and remanded back the matter.

CONCLUSION:-

- District's improper unilateral disenrollment of Student DENIED Student a FAPE.

Rationale:

- Parent requested that District assess Student for special education. District issued an assessment plan for Student later the same day and proposed to assess Student in the areas of academic achievement, health, intellectual development, language and speech, motor development, adaptive behavior, behavior, and social emotional, which included an educationally related intensive counseling services assessment, called ERICS. Parent signed the assessment plan, adding an occupational therapy assessment, and returned it.

- District finished the psychoeducational assessment report in time and found that Student met the criteria for three special education eligibilities, as a student with emotional disturbance, other health impairments, and specific learning disability.
- District also completed the functional behavior assessment, which recommended behavior supports and a behavior intervention plan for Student's IEP.
- District did not complete all of Student's assessments and never convened an initial IEP team meeting because it disenrolled Student. However, the Appellate Order ruled that the Permit, if the facts on appeal remained unchanged, was valid. Student complied with District's residency requirements and her permit was valid throughout the period in question. Hence, her disenrollment was improper and District continued to have IDEA obligations to Student.
- When Parent changed residence and School, the new school's assessments found that Student met the criteria for special education eligibility, under specific learning disability, other health impairment, and emotional disturbance, which were the same eligibilities as previous District's assessments.
- If District had not incorrectly disenrolled the Student, it would have convened Student's initial IEP team meeting and would have found Student eligible for special education. Hence, disenrollment of Student resulted in a denial of FAPE because District did not complete Student's assessments and hold Student's initial IEP meeting.
- A school district's failure to conduct appropriate assessments or to assess in all areas of suspected disability may constitute a procedural denial of a FAPE. (*Park v. Anaheim Union High School Dist.*, et al. (9th Cir. 2006) 464 F.3d 1025, 1031-1033.)
- A procedural violation results in liability for 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); Ed. Code, § 56505, subd. (f)(2); see *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.)
- District's failure to convene IEP meeting deprived Student of educational benefits to which she was entitled, and impeded Student's right to a FAPE. Parent could not participate in the decision-making process because District did not convene an IEP meeting. Since Student would have been found eligible at an initial IEP team meeting, District's failure to convene and hold Student's initial IEP was a substantive procedural error, which amounted to a denial of FAPE. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2) Student proved by a preponderance of the evidence that District's unilateral disenrollment of Student, and consequential failure to complete Student's assessments and convene an IEP team meeting, was a substantive procedural denial of a FAPE. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).) And, as a result of this failure, Student's right to an IEP, with appropriate placement and services, was delayed for six months.

REMEDIES/ORDER:

- District shall provide Student with 50 hours of tutoring from a high school level, credentialed math teacher, who will support Student in her math, science, or social science college course work.2. The 50 hours must be used by Student no later than August 31, 2025. Unused hours shall be forfeited.

Student v. MANTECA UNIFIED SCHOOL DISTRICT AND STOCKTON UNIFIED SCHOOL...

CASE NO. 2023030132

Student v. MANTECA UNIFIED SCHOOL DISTRICT AND STOCKTON UNIFIED SCHOOL DISTRICT

Counsel for Student: Sheila Bayne, Robert Burgermeister, and Peter Collison

Counsel for District: Dee Anna Hassanpour and Matejka Handley

Representative for District: Jose Avila, Ed.D., Jody Burriss and Denise Nagao

ALJ: Alexa Hohensee

Date of Decision: June 01, 2023

Significant areas of law: District's obligation to provide parent training.

ISSUES:

- Did District deny Student a FAPE by failing to offer parent training in the areas of autism and speech or language impairment?

FACTS OF THE CASE:

- Student was six years old and was eligible for special education under the category of autism. Student filed a due process hearing request by alleging that both Districts have denied Student a FAPE in several ways.

CONCLUSION:-

- District DID NOT deny Student a FAPE by failing to offer parent training in the areas of autism and speech or language impairment.

Rationale:

- Student's complaint states a list of ideas for "Parent IEP Training" without citation. Student's creation of the term Parent IEP Training does not obligate a school district to offer parent training in an IEP.
- As with other related services, districts are responsible for providing parent counseling and training when the child's IEP team determines that it is necessary for the child to receive FAPE. (U.S. Dept. of Educ., Assistance to States for the Education of Children with Disabilities, and Preschool Grants for Children with Disabilities (71 Fed. Reg. 46573, Aug. 14, 2006).)
- To determine whether services for a child's parents, such as training or counseling, should be included in a child's IEP, the team developing the IEP must determine that the service is needed for the child to receive an appropriate special education or other required related services in the least restrictive environment. (Letter to Dole (OSERS, July 25, 1986) at p. 2.)

- The IEP team identified Student's areas of need, wrote goals in those areas of need, and offered sufficient programs, supports, and services for Student to meet his goals in speech and language, behavior, and fine motor skills. The weight of the evidence did not establish that Student required parent training for autism or speech or language impairment in his IEP to receive a FAPE, to assist in developing skills needed to benefit from special education, or to make progress on his annual goals and access his education.
- Father testified that neither he nor Mother requested parent training in autism or speech or language impairment at any IEP team meeting, or from any person at District at any time. Nor did he establish that Parents required training.
- Father did not explain the nature of the training in autism or speech or language impairment he believes Parents needed or how that training was necessary for Student to make progress on his goals or access his educational program.
- None of the educational professionals who testified opined that parent training in autism or speech or language impairment was necessary for Student to receive a FAPE.
- Student's IEP did not contain parent training and counseling services, but such services were readily available. Several members of Student's IEP teams testified that the information packet attached to the procedural safeguards given to Parents at each IEP team meeting directed special education parents to the Parent Advisory Committee, which provided free training for parents of students with disabilities. This packet also contained information for contacting the Valley Mountain Regional Center, a state agency that provided services, including parent training, to families of children with disabilities. Similarly, Student's pediatrician referred parents to the Valley Mountain Regional Center, where Parents received training in Student's disabilities to support Student at home.
- It is established by testimony of the witnesses that if Parents had requested parent training in autism or speech or language impairment, IEP team would have discussed that at the IEP team meetings and considered providing training to Parents. However, Parents did not request parent training, and parent training was not necessary for Student to receive a FAPE.

REMEDIES/ORDER:

- All of Student's requests for relief are denied.

Student v. NEWPORT-MESA UNIFIED SCHOOL DISTRICT

CASE NO. 2022100859

Student v. NEWPORT-MESA UNIFIED SCHOOL DISTRICT

Counsel for Student: Tim Adams and Madeline Knutson

Counsel for District: Dan Harbottle

Representative for District: Juliana Sauvao

ALJ: Linda Dowd

Date of Decision: June 22, 2023

Significant areas of law: A parentally placed private school student's entitlement to an IEP

ISSUES:

- Did District deny Student a FAPE by failing to convene an IEP team meeting while student was a parentally placed private school student?

FACTS OF THE CASE:

- Student was 10 years old and was first eligible for special education on November 4, 2016, as a student with autism and a speech or language impairment. Student attended District's preschool program during the 2016-2017 school year. Parents disenrolled Student from District in May 2017. Student has not attended a District preschool during the 2016-2017 school year.
- Student filed a due process hearing by contending that District denied him a FAPE by failing to make an offer of goals, services, and placement, and that the offer it did make at the IEP meetings did not meet Student's needs. Student also argued that District did not draft goals in all areas of need and the ones it did draft were not appropriate and the services offered by District were inadequate to meet Student's needs and it failed to offer a permanent one-to-one aide. Student further argued that he required a nonpublic school placement.

CONCLUSION:-

- District DID NOT deny Student a FAPE by failing to convene an IEP team meeting while student was parentally placed private school student.

Rationale:

- Student has been a parentally placed private school student since May 2017.
- For public school children with disabilities, school districts make a FAPE available by having an IEP in effect at the beginning of each school year. (34 C.F.R. § 300.323(a).) Private school children with disabilities, however, do not have an individual entitlement to a FAPE. (34 C.F.R. § 300.137; Capistrano, supra, 21 F.4th at p. 1138.)

- Section 300.137(a) states “no parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.” (34 C.F.R. § 300.137(a).)
- Once a parent unilaterally enrolls the student in private school, the student meets the definition of a private school child with a disability and does not have an individual entitlement to special education and related services.
- The Ninth Circuit held that if a student has been enrolled in a private school by their parents, the school district does not need to develop an IEP, even when reimbursement has been requested or if a complaint has been filed. When parents withdraw a student from public school and place a student in private school, all a parent has to do is ask for the school district to develop an IEP, and then the school district must develop one. There is no freestanding requirement that IEPs be conducted for privately placed student.
- Parents did not have any further contact with District after withdrawing Student for homeschooling until their attorney sent a letter to the District. Parent’s email to District at the time of withdrawing Student, read in conjunction with the withdrawal form, notified District that Parents would return Student to District when they were ready, at an unspecified future date. Parents did not request that District develop an IEP for Student while he was privately placed. Therefore, District was not obligated to develop an IEP or offer Student a FAPE. (Capistrano, supra, 21 F.4th at pp. 1138-40.)

REMEDIES/ORDER:

- N/A

Student v. TRAVIS UNIFIED SCHOOL DISTRICT

CASE NO. 2022120744 2022070352

Student v. TRAVIS UNIFIED SCHOOL DISTRICT

Counsel for Student: Tania Whiteleather

Counsel for District: Jan Tomsy

Representative for District: Deanna Brownlee

ALJ: Tiffany Gilmartin

Date of Decision: June 05, 2023

Significant areas of law: Characteristics of appropriate assessment

ISSUES:

- Is District's functional behavior assessment appropriate that student is not entitled to an independent educational evaluation at public expense?

FACTS OF THE CASE:

- Student was 09 years old and eligible for special education under emotional disturbance with a secondary eligibility of other health impairment.
- In the IEP team meeting the IEP team determined that Student was no longer eligible for special education. Student filed due process hearing request whereby he alleges that he was improperly exited from special education.
- The District filed a due process hearing request whereby it alleges that its functional behavior assessment is appropriate and Student is not entitled to independent educational evaluation at public expense.
- OAH granted Student's motion to consolidate the two cases.

CONCLUSION:-

- District's functional behavior assessment was appropriate and student is not entitled to an independent educational evaluation at public expense.

Rationale:

- Student's behavior assessment was conducted pursuant to the assessment plan provided to Parent after parent's consent.
- The assessor's qualifications as a Board-Certified Behavior Analyst met the statutory requirements for her to conduct the behavior assessment.

- The assessors completed direct observations, collected data on Student, conducted a records review of Student, and provided parent and teacher assessment tools for their feedback of Student's behavior. The assessor also reviewed the data with the team at Student's IEP team meeting.
- Parent requested an independent educational evaluation in behavior and specifically challenged the lack of frequency data on Student's elopement or breaks. District denied Parent's request in time by prior written notice and filed for due process.
- District's assessor as a BCBA was qualified to conduct the assessment. She demonstrated that she had sufficient knowledge of Student's disability. Her assessment consisted of data review and in-person observation.

REMEDIES/ORDER:

- Student's requested relief on all issues is denied.

CENTRAL UNIFIED SCHOOL DISTRICT v. Student

CASE NO. 2023030998

CENTRAL UNIFIED SCHOOL DISTRICT v. Student

Counsel for Student: Parent

Counsel for District: Dee Anna Hassanpour and Anisha Asher and Lucy Nadzharyan

Representative for District: Julie Shafer

ALJ: Cararea Lucier

Date of Decision: June 22, 2023

Significant areas of law: Procedural IDEA violation that results in denial of FAPE.

ISSUES:

- May District implement Student's annual IEP without parental consent?

FACTS OF THE CASE:

- Student was 16 years old and qualified for special education and related services under the eligibility categories of traumatic brain injury and visual impairment.
- During pandemic, Parent provided District with a letter from Student's pediatrician, stating that Student should not attend school in-person as Student was especially vulnerable to severe illness from COVID-19. At the IEP meeting, District agreed to place Student on Home Hospital Instruction for the 2021-2022 school year.
- District sent Parent a prior written notice letter proposing to provide Student in-person instruction on a comprehensive high school campus after the Thanksgiving break and hoped to obtain Parent's input via an IEP team meeting, and to discuss annual goals and placement. Parent sent several hostile replies in an insulting tone.
- Parent continued to request Home Hospital Instruction. District staff was concerned about the length of the request because Home Hospital Instruction generally was temporary, averaging two months. Student had been on Home Hospital Instruction for two and a half years, receiving just one hour per day of educational service. District continued trying to schedule an IEP team meeting to discuss Parent's request throughout the winter break.
- During Student's 11th grade year, District convened Student's annual IEP. The procedural and substantive appropriateness of the annual IEP is at issue in this due process matter.

CONCLUSION:-

- District MAY NOT implement Student's annual IEP without parental consent.

Rationale:

- District did not include all required IEP team members at the IEP team meeting as it failed to include a general education teacher at these meetings. The team attempted to excuse the general education teacher from the meetings. As the general education teacher did not provide input about the development of the IEP, in writing, to Parent prior to the IEP team meetings, the general education teacher was not lawfully excused. This failure on part of District was not harmless, rather it impeded Student's right to a FAPE during the general education portion of her school day as student had significant, pervasive disabilities. Hence, appropriately including her in general education classes required thoughtful planning and input from a general education teacher. District's failure to include a general education teacher also significantly impeded Parent's opportunity to participate in the decision-making process about how Student could be accommodated and served in general education.
- District denied Student a FAPE by convening the IEP team meeting without Parent on, because it denied Parent the ability to participate in the IEP team decision about Student's placement. District had spent many months trying to convene Student's IEP. As challenging as the circumstances were for District, a school district may not prioritize the schedules of its staff as a reason to convene an IEP team meeting without a parent. (Doug C., supra, 720 F.3d 1038.)
- District did not include accurate, current, present levels of performance in the IEPs. The evidence suggests that District had not conducted a comprehensive assessment of Student after she returned to the district during the 2019-2020 school year. Additionally, Parent allowed District very limited access to Student. This lack of knowledge impeded District from including current and accurate present levels of performance in the IEP at issue. The IEP failed to include current and accurate information about Student's communication and gross and fine motor functioning, and only limited information about student's visual impairment needs.
- The annual IEP did not include appropriate annual goals in all areas of need as District could not develop speech goals and annual goals related to fine and gross motor skills for Student because of lack of access to Student.
- District did not predetermine Student's special education and related services prior to IEP team meetings. However, District's error in making two offers of placement in the IEP document particularly impacted Student and Parent's rights because Parent did not attend the IEP team meeting and would have relied on the IEP document to understand the placement offer.
- District failed to offer Student appropriate services in all areas of need to address her speech, language, and communication skills. District could not determine an appropriate amount of speech services for Student because staff had limited knowledge of Student's communication needs. Although Parent limited District's ability to access Student for orthopedic impairment services due to a personality conflict, District still had the legal obligation to offer Student appropriate services.

- District failed to include an emergency conditions provision describing the instruction and services Student would receive in the event of an emergency lasting more than 10 school days. The IEP team overlooked this procedural requirement when developing the IEP document which impeded Parent's ability to participate in the decision-making process
- District failed to comply with the procedural requirements in developing Student's transition goals and services as the IEP team did not interview Student for the transition planning process, use age-appropriate assessments to develop the Individual Transition Plan, or solicit her input during the IEP team meeting. Student's voice was absent from the post-secondary transition planning process, violating both the letter and intent of the law. District did not demonstrate that it took any steps to comply with this important aspect of the IDEA.

REMEDIES/ORDER:

- District failed to offer Student a FAPE. Hence, it may not implement the IEP without Parent's consent.

LEMOORE UNION ELEMENTARY SCHOOL DISTRICT v. Student

CASE NO. 2022080193

LEMOORE UNION ELEMENTARY SCHOOL DISTRICT v. Student

Counsel for Student: Taymour Ravandi, Amanda Miller and Lauren-Ashley Mendez

Counsel for District: Elizabeth Rho-Ng and Adrienne Nichelini

Representative for District: Elizabeth Rho-Ng and Adrienne Nichelini

ALJ: Elizabeth Rho-Ng and Adrienne Nichelini

Date of Decision: June 21, 2023

Significant areas of law: Procedural IDEA violation that results in denial of FAPE.

ISSUES:

- Did District's IEPs offer Student a FAPE such that District may implement it without parental consent?

FACTS OF THE CASE:

- Student was 10 years old and was qualified for special education and related services under the primary category of other health impairment and the secondary category of hard of hearing.
- Student's needs included math, reading, writing, social-emotional, self-advocacy, attention, and hearing assistance and suffered from Goldenhar syndrome, moderate severe conductive hearing loss, attention deficit hyperactivity disorder, social anxiety, asthma, and sleep apnea.
- District offered Student a special education program. Student partially consented to the IEP offer but disputed the placement offer, among other things. Hence, District filed its due process hearing request to implement its IEP offer without parental consent because Parent refused to consent to a necessary portion of the IEP offer i.e. Student's placement.

CONCLUSION:-

- District's IEPs offer denied Student a FAPE such that District MAY NOT implement it without parental consent.

Rationale:

- District's Assistant Superintendent of Special Services and special education teacher, school psychologist and Student's case manager unilaterally changed Student's IEP date, all the goals, services, modifications, and support start and end dates without a meeting or notice to Parent or any other District staff. They also unilaterally changed the annual IEP date due to which Student continued to have the same IEP offer for 22 months, and District unilaterally granted itself 10 extra months to hold Student's annual IEP review.

- The unilateral changes made by District's staff were not technical edits or slight changes and the changes were not to correct information inaccurately recorded in or omitted from a previous IEP document.
- School districts can change annual review dates and services and goals through the IEP meeting process, but not unilaterally by district staff members without an IEP team meeting, agreement from Parent to forego it, or documentation showings its attempts to allow Parent to participate in the IEP development process.
- By unilaterally changing the goals, services, supports, and modification timelines in Student's IEP, District created an entirely new IEP offer and a new annual review date because it was beyond the legally required annual IEP review date. This violated IDEA's clear requirement for school districts to hold annual IEP team meeting review and was a procedural IDEA violation.
- Student was deprived of a new annual IEP meeting with participation and input from the IEP team, including a general education teacher and school nurse, updates on Student's present levels of performance, progress on goals, consideration of the new assessment data, and outside medical information.
- Student was deprived of a new annual IEP meeting with participation and input from the IEP team, including a general education teacher and school nurse, updates on Student's present levels of performance, progress on goals, consideration of the new assessment data, and outside medical information.
- Parent received neither any notice nor participated in developing the IEP offer and District's staff made new annual IEP offer without reviewing the newly completed assessments and home hospital instruction documentation with the IEP team. Although the IEP offer was discussed with Parent the following day, participation after the fact is no substitute for IEP discussions, especially since the changes were already decided on in the new annual IEP offer.
- The prior written notice language and staff's behavior established that these "amendments" to Student's IEP were already predetermined before Parent even knew about them.
- The evidence showed that IEP changes were non-negotiable, not based on Student's individualized needs but instead, for legal positioning, and that Parent had to sign the new annual IEP offer or they would go to due process hearing. District also failed to disclose to Parent that it was changing the IEP offer to Student.
- Predetermination is an automatic violation of a parent's right of participation under the IDEA. Where predetermination has occurred, "regardless of the discussions that may occur at the meeting, the school district's actions would violate the IDEA's procedural requirement that parents have the opportunity 'to participate in meetings with respect to the identification, evaluation, and educational placement of the child.'" (H.B. v. Las Virgenes, supra, 239 Fed.Appx. at p. 344, quoting 20 U.S.C. § 1415(b)(1).)
- District's predetermination of the annual IEP offer significantly infringed upon Parent's right to meaningful participation in the decision making IEP process.

REMEDIES/ORDER:

- District's claim for relief is denied and it may not implement the IEP without parental consent.

NEWARK UNIFIED SCHOOL DISTRICT v. Student

CASE NO. 2023020144

NEWARK UNIFIED SCHOOL DISTRICT v. Student

Counsel for Student: No one

Counsel for District: Jennifer Fain and Rebecca Buchsbaum

Representative for District: Olivia Rangel

ALJ: Theresa Ravandi

Date of Decision: May 04, 2023

Significant areas of law: Assessing Student without Parent's Consent

ISSUES:

- Is District authorized to assess Student pursuant to its assessment plan without Parent's consent?

FACTS OF THE CASE:

- Student was 10 years and nine months old and eligible for special education under the primary category of orthopedic impairment and the secondary category of speech and language impairment. Student had Down Syndrome, a heart condition, asthma, and allergies, and was followed by several medical specialists.
- Student's last School completed his triennial assessments and prepared a multidisciplinary educational evaluation report which included a health, psychoeducational, speech and language, occupational therapy, assistive technology, and physical therapy assessment in first grade and Student joined the current District in fourth grade.
- District attempted to obtain Parent consent to assess but parent refused to provide consent by objecting the use of norm-referenced or standardized tools. Hence, District filed a due process hearing request before ALJ.

CONCLUSION:-

- District is authorized to assess Student pursuant to its assessment plan without Parent's consent.

Rationale:

- District did not have a current understanding of Student's strengths, deficits, or educational functioning as Student enrolled as a fourth grader during the COVID-19 pandemic and schools remained closed to in-person instruction, and Student had not attended any in-person programming.

- Parents themselves asked District to assess Student in all areas of need to determine his present levels. Consequently, District sent Parent an assessment plan proposing to assess Student's academics, health, intellectual development including auditory processing, language and speech, motor skills, social-emotional and behavioral functioning, and adaptive skills.
- District responded to Parent's questions on assessments and explained the test instruments the school psychologist would likely administer and why, provided the proposed testing instruments' website links, and informed Parent of the assessors' willingness to discuss the tools they planned to use.
- All the witnesses testifying on behalf of District opined that Student's triennial reassessment was necessary not only because it had been over three years since the last assessments, but also because Student's IEP team needed updated information to develop an appropriate program. Their testimonies were thoughtful, detailed and persuasive.
- District's assessment plan was appropriately worded, written in a manner easy to understand, and in English, Parent's preferred language. It specified the types of assessments, and identified each proposed assessment area and specified the title of a qualified examiner for each area.
- District made numerous attempts to meaningfully discuss with Parent its proposal to reassess Student and to obtain Parent's consent and provided Parent multiple, substantively similar assessment plans with notices of procedural safeguards. District satisfied the collaborative process under the IDEA that necessitates parental input and informed discussions.
- Once a school district establishes a need for assessment and meets the statutory requirements, parents may not put conditions on assessments.

REMEDIES/ORDER:

- District may reassess Student pursuant to the assessment plan with qualified assessors and assessment tools of its choice.
- Parent shall cooperate in making Student reasonably available for each assessment

Student v. SALINAS UNION HIGH SCHOOL DISTRICT

CASE NO. 2023040286

Student v. SALINAS UNION HIGH SCHOOL DISTRICT

Counsel for Student: Joshua Cruz

Counsel for District: Haley Fagan, Baldassari and Roxanne Khan

Representative for District: Jennifer Smith

ALJ: Rita Defilippis

Date of Decision: May 22, 2023

Significant areas of law: Manifestation determination review

ISSUES:

- Did District fail to conduct an appropriate manifestation determination review meeting by inaccurately determining Student's conduct was not a manifestation of his disability?

FACTS OF THE CASE:

- Student was thirteen years old and eligible for special education under specific learning disability and other health impairment due to attention deficit hyperactivity disorder.
- Student was disciplined for shoving a male peer into the girl's restroom; attempting to pants a peer during class; attempting to physically engage with another student over a video posting; harassing and pushing a peer in violation of a no contact order; taunting another student; making inappropriate comments about a peer; taking a female student's backpack and attempting to hide it in another classroom; cursing at students in his class; attacking another student based on Student's belief that the other Student took his Chromebook; and pushing a peer down to the ground in the school hallway.
- Student was suspended and recommended for expulsion based on this incident for violating two codes of conduct: Education Code section 48900(a)(2), willingly using force on another student, and Education Code 48900(e), committing or attempting to commit a robbery.
- District convened a manifestation determination review meeting and the District's members of the team determined that Student's conduct was not a manifestation of his disability and recommended student for expulsion. The following day, Parent was directed to contact a specific NPS for educational placement for more than 10 days.

CONCLUSION:-

- District failed to conduct an appropriate manifestation determination review meeting by inaccurately determining Student's conduct was not a manifestation of his disability.

Rationale:

- New assistant principal was aware of previous assistant principal's discipline note on earlier behavior incident and the warning regarding "greater consequences." The new principal testified that Assistant Principals "back each other up" to maintain consistency regarding student discipline.
- School psychologist was tasked with preparing materials for Student's manifestation determination review meeting. However, the assistant principal did not provide school psychologist with any percipient witness statements, despite her request. Instead, he orally communicated the incident and provided selective information to the psychologist, including his version of events.
- Student's special education testing results and reports establish that Student has had behavior challenges including physical aggression toward peers, disruptive classroom behavior, inattentiveness, impulsivity, peer conflicts, social struggles, and defiance of authority, since kindergarten.
- School psychologist's determination report conclusions and her testimony at hearing, differed sharply from her assessment report three months before the behavior incident. Further, she was not aware of conflicting and exculpatory witness statements or of Student's past discipline history involving physical aggression and she narrowly construed Student's disability as "impulsivity" even though in her earlier assessments, she found student eligible for special education under other health impairment due to Student exhibiting behaviors similar to, or the same as, students with attention deficit-hyperactivity disorder. It is evident that her opinion was heavily influenced by assistant principal's opinion.
- There was no testimony, for example, that Student told others ahead of time that he intended to attack the victim after school or social media posts laying out a plan.
- The evidence established that Student's conduct was impulsive and a manifestation of his disability, specifically attention deficit hyperactivity disorder. Further, Student established that District changed Student's placement for more than 10 days for Student's violations of its code of conduct.

REMEDIES/ORDER:

- Within two weeks of this order, District shall convene and IEP team meeting to review and modify Student's behavior intervention plan, and modify it to address Student's behavior.
- District is ordered to return Student to his previous School unless District and Parent agree otherwise as part of the modified behavior intervention plan.

Student v. PALM SPRINGS UNIFIED SCHOOL DISTRICT

CASE NO. 2022090902

Student v. PALM SPRINGS UNIFIED SCHOOL DISTRICT

Counsel for Student: Wendy Dumlao

Counsel for District: Maria Gless and Austin Jones

Representative for District: Sofia Wagner and Jodi Curtis

ALJ: Cynthia Fritz

Date of Decision: April 12, 2023

Significant areas of law: What constitute as a major discrepancy between the services required by the child's IEP and the services offered by the District? A major discrepancy between the services required by the child's IEP and the services offered by the District is denial of FAPE.

ISSUES:

- Did District deny Student a FAPE by failing to implement Student's specialized academic instruction and speech and languages services during distance learning?

FACTS OF THE CASE:

- Student was 10 years old with diagnosis of autism spectrum disorder; attention deficit hyperactivity disorder, called ADHD; and Facioscapulohumeral Muscular Dystrophy. Student qualified for special education eligibility under the categories of autism and other health impairment.
- Parents filed a request for due process hearing by contending that District failed to provide student a FAPE during school year 2021-2022, especially during distance learning and by failing to offer extended school year due to various reasons.

CONCLUSION:

- District DENIED Student a FAPE by failing to implement Student's specialized academic instruction and speech and languages services during distance learning.

Rationale:

- A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP.
- Student was entitled to 30 minutes, eight times monthly, of group speech and language services based upon his latest IEPs. His Distance Learning IEP Aligned Plan also offered the same speech and language services.

- Student was not provided 22 of the 56, 30 minute sessions, during September 2020 to April 2021. District failed to provide 11 hours out of the 28 hours required. Further, it was evident that although Student made progress on his speech and language goals, his progress was negatively impacted.

REMEDIES/ORDER:

- Within 30 days of this Decision, Parent must provide to District the proof of tuition amount, proof of payment, the loan document between Parent's father and Lindamood-Bell program (Parent's choice of methodology for Student's reading services), and proof of loan or responsibility to reimburse between Parent and Parent's father.
- Within 60 days of receipt of the above documents, District will reimburse Parent for the actual cost of 80 hours of the summer 2022 Lindamood-Bell program not to exceed \$12,560.
- District must provide Student 7 hours of district provided, in-person, compensatory speech and language services. The compensatory services must be provided to Student by the end of the 2023-2024 school year.

Student v. TWIN RIVERS UNIFIED SCHOOL DISTRICT

CASE NO. 2022110687

Student v. TWIN RIVERS UNIFIED SCHOOL DISTRICT

Counsel for Student: Colleen Snyder

Counsel for District: Marcella Gutierrez and John Louis Chiappe

Representative for District: Kathleen Walker

ALJ: Rommel P. Cruz

Date of Decision: April 13, 2023

Significant areas of law: Failure to provide adequate specialized instructions and related services despite having complete information about Student's needs is denial of FAPE.

ISSUES:

- Did District deny Student a FAPE by failing to make a clear written IEP offer for adequate and appropriate specialized academic instruction and appropriate mental health services?

FACTS OF THE CASE:

- Student was 13 years old and was eligible for special education under the categories of specific learning disability and autism. She also met special education eligibility criteria for a speech and language impairment and other health impairment due to anxiety and attention difficulties.
- The District conducted three IEP team meetings and provided copy of IEP document to parents in the following manner:
- Mother filed a request for due process hearing based on the contention that untimely delivery of the October 26, 2022 IEP documents to Parents significantly impeded Parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to Student. Further, parents disagreed with the IEP because it was not consistent with the recommendations of an independent psychoeducational evaluation.
- Student further contended that District denied her a FAPE by failing to offer sufficient minutes of pull-out specialized academic instruction, an evidence-based structured literacy program.

CONCLUSION:

- District DENIED Student a FAPE by failing to make a clear written IEP offer for adequate and appropriate specialized academic instruction and appropriate mental health services.

Rationale:

- The information available at the August 15, 2022 IEP team meeting established Student required explicit, structured, evidence-based interventions to address her significant academic deficits. Assessments also established that Student required explicit, structured, evidence-based interventions because of her dyslexia.
- Based on the independent psychoeducational evaluation, it was recommended that Student receive small-group instruction using an evidence-based curriculum that was structured, scientifically based, and used multi-sensory strategies to address Student's challenges in reading decoding, reading fluency, and math.
- After June 8, 2022 IEP meeting, IEP team had sufficient data that Student made progress with a program directly addressing her diagnosed dyslexia. The District also knew that Student had a high level of anxiety and required counseling services in Spanish to make meaningful progress in addressing her social emotional functioning deficits. However, District chose to ignore this information.
- The above conclusion was also confirmed by the assessments conducted by the credentialed school psychologist wherein Student was diagnosed with mixed dyslexia and it was specifically recommended that Student receives daily 90 minutes of evidence-based specialized academic instruction consist of 60 minutes for reading and writing, and 30 minutes for math. Further, it was confirmed that Student had an elevated level of anxiety. The report also recommended that Student receive counseling services to address her anxiety and service providers to be bilingual because Student preferred to communicate in Spanish.
- District's decision not to offer Student evidence-based interventions was not objectively reasonable based on the information available at the time of the August 15, 2022 IEP team meeting. Further, the District failed to offer counseling services in Spanish.

REMEDIES/ORDER:

- District shall establish and maintain a compensatory education fund for Student's use in the amount of \$9,885. The compensatory education fund is independent of, and in addition to, any past settlement agreements between the parties.
- Parents shall have until June 1, 2024, to access the fund for speech and language services, academic intervention and supports, private school tuition, social skills development, direct instruction in executive functioning skills, mental health services, English language instruction, and mileage reimbursement for transporting Student to and from these services and Student's home.
- Services shall be provided by a certified NPS or nonpublic agency, or providers with the requisite license, credential, or certificate in the service delivered, for Parents to access the compensatory education fund.

- Parents may access the compensatory education fund by seeking reimbursement from District or by requesting that District directly pay the provider. Parents shall provide District with invoices for service, with the date, type, and cost of service, and proof of payment in the form of cancelled checks, bank statements, or credit card statements before receiving reimbursement. District shall reimburse Parents within 60 days of receiving proof of payment.
- If Parents elect for District to directly contract with an NPS, nonpublic agency, Parents shall provide District with written notice requesting District contract with the selected provider, and provide District with the provider's contact information. If the selected provider does not wish to contract with District, Parents may identify an alternative provider.
- Mileage reimbursement shall be at the Internal Revenue Service rate of \$0.655 per mile. Mileage reimbursement shall not exceed a total of \$500 for transporting Student to and from services and private school, and Student's home. Parents shall submit proof of attendance to receive mileage reimbursement for each day of Student's attendance. District shall reimburse Parents within 60 days of receiving proof of attendance.

Student v. LOS ANGELES UNIFIED SCHOOL DISTRICT

Counsel for Student: Lynda Williams and Robert Burgermeister

Counsel for District: Dee Ann Hassanpour and Lucy Nadzharyan

Representative for District: Dee Ann Hassanpour and Lucy Nadzharyan

ALJ: Penelope Pahl

Date of Decision: February 01, 2023

Significant areas of law: Failure to assess student for eligibility under the category of emotional disturbance is not denial of FAPE unless student has a condition exhibiting one or more of the characteristics provided under 34 C.F.R. § 300.8(c)(4); Cal. Code Regs., tit. 5, § 3030, subd. (b)(4) over a long period of time, and to a marked degree, that adversely affects a child's educational performance.

ISSUES:

- Did District deny student a FAPE by failing to assess student for eligibility under the category of emotional disturbance?

FACTS OF THE CASE:

- Student was 12 years old and was eligible for special education under the category of other health impairment.

CONCLUSION:

- District DID NOT deny student a FAPE by failing to assess student for eligibility under the category of emotional disturbance.

Rationale:

- According to district's psychiatric social worker, Student's behavior improved after he began receiving special education behavior supports. The district's behavior aide supervisor also confirmed this observation. Parents also acknowledged the improvement in student's behavior during distance learning.
- Neither the teachers and school psychologist recommended an assessment for emotional disturbance since Student's initial eligibility assessment nor did parents ever request an emotional disturbance assessment. Further, No expert testified that Student should have been assessed for emotional disturbance.
- There was no evidence that Student had an inability to learn, rather his grades were excellent.

- Student had difficulties with some peers due to his excessive competitiveness; however, these problems were not evidence of an emotional disturbance. Further, Student was seen to have friends and get along with classmates and adults when he was calm. The evidence established that student was able to have good relationships with peers and adults.
- There was no evidence that Student refused to go to school or that getting him to attend was a struggle or that he had unexplained illnesses, such as stomach aches, that resulted in missed school rather his attendance was excellent.
- Father misunderstood that anxiety was “under the emotional disturbance umbrella” and did not understand what emotional disturbance really meant in the special education context. However, Student offered no evidence that anxiety interfered with his ability to access his education or impeded his educational performance.
- No Parent, teacher, or school administrator saw Student as a threat to himself or others. School psychologist who worked with Student received no reports of significant outbursts such as those requiring a class evacuation or an intervention from an adult for safety concerns. Nor did she receive a request for an emotional disturbance assessment from Parents, teachers, or administrators.
- Student failed to establish that District should have assessed him in the area of emotional distress. However, even had Student established a need to assess, Student offered no evidence that lack of assessment deprived Student of access to education or deprived Parents of a meaningful opportunity to participate in the IEP development process.

REMEDIES/ORDER:

- None.

Student v. SAN DIEGO UNIFIED SCHOOL DISTRICT

Counsel for Student: Meagan M. Nunez and Jennifer L. Varga

Counsel for District: Jonathan P. Read and Juliana Mascari

Representative for District: Brian Spry

ALJ: Paul H. Kamoroff

Date of Decision: March 15, 2023

Significant areas of law: District is not required to provide student a FAPE during student's private placement by parents.

ISSUES:

- Was District required to provide student a FAPE during his private placement?

FACTS OF THE CASE:

- Student was 16 years old and was eligible for special education under the category of emotional disturbance. Student was privately placed by parents from September 2020 to December 2021 and re-enrolled in the NPS in January, 2022.

CONCLUSION:

- District WAS NOT required providing student a FAPE during his private placement.

Rationale:

- Private school children with disabilities, do not have an individual entitlement to a FAPE. (34 C.F.R. § 300.137; Capistrano Unified Sch. Dist. v. S.W., 21 F.4th 1125, 1138 (9th Cir. 2021), cert. denied, (Capistrano).)
- Private school children with disabilities, do not have an individual entitlement to a FAPE. (34 C.F.R. § 300.137; Capistrano Unified Sch. Dist. v. S.W., 21 F.4th 1125, 1138 (9th Cir. 2021), cert. denied, (Capistrano).)
- Parents' notice of private placement did not request the NPS to develop an IEP for Student.

REMEDIES/ORDER:

- None.

Student v. GATEWAY COLLEGE AND CAREER ACADEMY

Counsel for Student: Phillip VanAllsburg and Andrea Blair

Counsel for District: Lisa Corr and Ashley DeVance

Representative for District: Miguel Contreras

ALJ: Jennifer Kelly

Date of Decision: March 22, 2023

Significant areas of law: Student is not entitled to receive IEP services comparable to his/her last implemented IEP where Student does not transfer from one public school to another within the same state during the same academic year or between school years.

ISSUES:

- Did District deny student a FAPE by failing to develop an administrative IEP to provide student services comparable to those within his last agreed upon and implemented IEP?

FACTS OF THE CASE:

- Student was 16 years old and was eligible for special education and related services under the category of autism. Student was enrolled in a private school during school years 2019-2020 and 2020-2021 and enrolled in current NPS in November 2021 for school year 2021-2022.

CONCLUSION:

- District DID NOT deny student a FAPE by failing to develop an administrative IEP to provide student services comparable to those within his last agreed upon and implemented IEP.

Rationale:

- Student completed the 2020-2021 school year at a private school and did not enroll in any public school before the start of the 2021-2022 school year.
- Student did not prove he transferred between public school districts within the same academic year.
- The preponderance of the evidence proved Student did not transfer from one public school to another within the same state during the same academic year or between school years for purposes of the IDEA and California intrastate transfer provisions.

REMEDIES/ORDER:

- None.

Student v. TURLOCK UNIFIED SCHOOL DISTRICT

Counsel for Student: Leroy Sumter and Sheila Bayne

Counsel for District: Tilman Heyer, Marcy Gutierrez and Louis Chaippe

Representative for District: Ericka Tschantz

ALJ: Deborah Myers-Cregar

Date of Decision: March 13, 2023

Significant areas of law: Services can only be offered after proper assessment and in case parents do not give consent to the assessment, District's failure to offer services is not denial of FAPE.

ISSUES:

- Did District deny student a FAPE by failing to offer occupational therapy?

FACTS OF THE CASE:

- Student was seven years old and was eligible for special education under the categories of autism spectrum disorder and specific learning disability.

CONCLUSION:

- District DID NOT deny student a FAPE by failing to offer occupational therapy.

Rationale:

- Student's expert witness credibly testified that it would not be appropriate to offer services without an assessment. However, District could not assess Student without Parent's consent.
- District staff conducted initial assessments which evaluated Student for motor development and perceptual skills and had concerns about Student's fine motor development and sensory processing.
- District recommended a new assessment plan to evaluate an additional area of suspected disability and presented the proposed occupational therapy assessment plan to Parent within time, but Parent did not give consent to the assessment.
- Parent's refusal to sign the very occupational therapy assessment she is seeking defeats her claim for relief on this issue.

REMEDIES/ORDER:

- None.

LONG BEACH UNIFIED SCHOOL DISTRICT v. Student

CASE NO. 2022110700

LONG BEACH UNIFIED SCHOOL DISTRICT v. Student

Counsel for Student: Jane N. DuBovy

Counsel for District: Meagan M. Kinsey and Alicia A. Arman

Representative for District: Diana Zepeda-McZeal, Ed.D

ALJ: Paul H. Kamoroff

Date of Decision: May 03, 2023

Significant areas of law: Independent evaluation on public expense

ISSUES:

- Is Student entitled to a psychoeducational and transition independent educational evaluations at public expense, when Parents' selected evaluator's fee exceeds District's cost criteria?

FACTS OF THE CASE:

- Student was 17 years old and eligible for special education under other health impairment due to an attention disorder.
- District conducted student's psychoeducational and transition independent educational evaluations, to which parents disagreed, communicated their disagreement to District through their attorney and requested for independent evaluations at public expense by identifying an independent evaluator. However, District denied parent's request as the evaluator's fee exceeded District's cost cap.
- District agreed to fund an independent evaluation by any qualified assessor that met its cost cap, and requested that Parents provide information regarding any unique circumstance that would warrant an exception to the cost cap. District also sent parent a list of additional evaluators approved by the District, communicated District's policy and cost cap through four proper written notices.

CONCLUSION:

- Student is not entitled to a psychoeducational and transition independent educational evaluations at public expense when Parents' selected evaluator's fee exceeds District's cost criteria.

Rationale:

- The District, through appropriate prior written notices informed Parents of District's guidelines and cost cap for evaluations, informed Parents of District's agreement to fund an independent evaluation by any qualified assessor who met its cost criteria, provided a non-exhaustive list of approved evaluators, explained that if Parents selected an evaluator who did not meet District's cost criteria, Parents would have to show a unique circumstance that warranted an exception to its cost criteria and provided contact information, including a specific person and direct telephone number, that Parents could use if they desired additional information regarding the independent evaluation. Hence, District met its obligation to provide Parents information about where an independent evaluation may be obtained, and District's criteria and cost cap for independent evaluations.
- Parent failed to provide information showing Student had a unique need or their chosen evaluator had a unique qualification that warranted an exception to District's cost cap. Parents were unwilling to select another evaluator and District was unwilling to provide an exception to its cost cap without information warranting an exception.
- District succeeded to prove through witnesses and documents that its cost cap is reasonable, determined by contacting various qualified assessors throughout southern California and inquiring what those assessors charged for different types of evaluations and reviewed and updated its criteria and cap for independent educational evaluations every one to two years. Hence, District's process for establishing cost criteria for independent evaluations was lawful.
- District submitted service contracts with 12 qualified assessors who had contracted with District to conduct independent evaluations at or below their cost cap.
- District persuasively testified that Student did not demonstrate an area of need that justified an exception to District's cost cap for an independent evaluation.
- Student's witnesses failed to prove their contention that District's cost cap was below industry standards and would prevent Parents from obtaining an independent evaluation by a qualified assessor. They further failed to impeach the experience or qualification of any evaluator who met District's cost cap and to submit any persuasive evidence to show that an exception to District's cost cap was warranted.

REMEDIES/ORDER:

- District's cost criteria for independent evaluations is reasonable such that District is not required to fund the independent evaluations, as requested by Parents.one.

Student v. GOLETA UNION SCHOOL DISTRICT

Counsel for Student: Andrea Marcus

Counsel for District: Melissa Hatch

Representative for District: Amanda Martinez

ALJ: Tiffany Gilmartin

Date of Decision: January 03, 2023

Significant areas of law: Failure to communicate with parents in their native language and failure to provide reasons for denial of their request impedes their opportunity to participate in decision making. Hence, the same is denial of FAPE.

ISSUES:

- Did District deny student a FAPE by failing to provide prior written notice to parent while rejecting their request for assessment and failing to provide an investigation report of the incident occurred in School?

FACTS OF THE CASE:

- Did District deny student a FAPE by failing to provide prior written notice to parent while rejecting their request for assessment and failing to provide an investigation report of the incident occurred in School?

CONCLUSION:-

- District denied student a FAPE by failing to provide prior written notice to parent while rejecting their request for assessment and failing to provide an investigation report of the incident occurred in School.

Rationale:-

- Parent requested of behavior, math, and speech assessment. School refused to parent's request for assessment in English Language i.e. not the native language of parents and failed to provide reasons of such refusal. Hence, it did not meet the criteria for prior written notice and significantly impeded her opportunity to participate in the decision making process in the development of Student's IEP.
- The evidence established that student's instructions aide engaged in a physical restraint of Student because Student was doing something wrong and not following directions. Parent was never provided with an investigation report on the incident despite request. The failure to provide the report denied Parent information necessary to have a full, meaningful, and informed discussion with the IEP team.

- The report would have afforded Parent a full discussion of the matter in the development of Student's IEP, including determining the necessity for a functional behavior assessment or an interim behavior intervention plan.

REMEDIES/ORDER:-

- District shall provide two hours of training to its administrative personnel, teaching staff, and case managers, including all principals and special education staff, regarding a school district's duties concerning behavior emergency reports under Education Code section 56521.1.
- District shall provide two hours of training to its administrative personnel, teaching staff and case managers, including all principals and special education staff, regarding a school district's duties concerning prior written notice under the IDEA, its implementing regulations, and the California Education Code.
- District shall provide four hours of comprehensive training to all of its administrative personnel, teaching staff, case managers, and related services providers, including all special education staff, on the following topics:
 - a school district's duties to assess in all areas of suspected disability, predetermination, and
 - a parent's participatory rights in the IEP process.
 - A school district's obligations to properly determine and document a student's present levels of academic achievement and functional performance in an IEP.
- School shall fund an independent educational occupational therapy evaluation and an independent psychoeducational evaluation by assessors of Parent's choice, who meet the criteria under Santa Barbara County SELPA guidelines for independent educational evaluations. Student shall provide to School a copy of each completed independent educational evaluation report within 10 days of Parent's receipt or Student attorney's receipt of each report, whichever occurs first. School shall convene an IEP team meeting to review each report within 30 days of its receipt of each report.
- School shall pay for, or provide reimbursement for, the psychoeducational evaluation conducted by private specialist in an amount in accordance with Santa Barbara County SELPA guidelines.

Student v. DOWNEY UNIFIED SCHOOL DISTRICT

Counsel for Student: Damian Fragoso

Counsel for District: Alefia Mithaiwala and Denise Lee

Representative for District: Dr. Rebekah Ruswick

ALJ: Tiffany Gilmartin

Date of Decision: January 23, 2023

Significant areas of law: Application of an impermissibly narrow view of student's disability which is highly inconsistent with his/her history makes the manifestation determination review inappropriate.

ISSUES:

- Did District fail to conduct an appropriate manifestation determination review meeting by determining that Student's conduct was not a manifestation of his disability?

FACTS OF THE CASE:

- Student was 10 years old and was eligible for special education under the under the primary category of other health impairment. Student has a history of behavior related incidents which increased substantially during fourth-grade year.
- Student chest bumped a pregnant classroom aide for which he was suspended for five school days and subsequently expelled after manifestation determination.

CONCLUSION:-

- District failed to conduct an appropriate manifestation determination review meeting by determining that Student's conduct was not a manifestation of his disability.

Rationale:-

- In Student's previous IEP he failed to meet several goals specifically his goals in compliance and social emotional learning. His IEP noted his behavior impeded his learning and others, specifically his defiance, inability to filter negative behaviors, and difficulty with redirection.
- District was on notice of Student's escalating intensity of behaviors and his continued struggles with dysregulation and impulse control.
- District psychologist testified she would need more information to determine if Student's disability extended beyond his eligibility for other health impairment due to inattention.
- The manifestation determination review team applied an impermissibly narrow view of student's disability which is highly inconsistent with school records, Student's documented history of maladaptive behaviors, and Student's IEP's.

- The manifestation determination team had substantial evidence produced by District to support the conclusion that Student's behavior was a manifestation of his disability. However, there was no evidence presented that District has completed a functional behavior assessment that is required by law.

REMEDIES/ORDER:-

- Within 10 days of this decision, District shall provide Parent an assessment plan to conduct a functional behavior assessment. The functional behavior assessment will be initiated within 15 days of parental consent followed by an IEP team meeting to review the assessment. Student's IEP team will review Student's existing behavior intervention plan and modify it as necessary and District shall reinstate Student's enrollment at previous elementary school unless the parties agree otherwise.

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT v. Student

Counsel for Student: Mother

Counsel for School: Kaitlyn Tucker

Representative for School: Geovanni Linares

ALJ: Cynthia Fritz

Date of Decision: January 05, 2023

Significant areas of law: Where student is aware of the severity of his actions, lacks empathy, and continues to fantasize harming others, school may decide an appropriate interim alternative educational placement without parent's consent.

ISSUES:

- Does maintaining Student's current placement causes a substantial risk of injury to Student or others and is its proposed interim alternative educational placement appropriate?

FACTS OF THE CASE:

- Student was 15 years old and was eligible for special education under the categories of specific learning disability and other health impairment. School requests an additional 45-day interim alternate education placement at an NPS as it believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

CONCLUSION:-

- Maintaining Student's current placement causes a substantial risk of injury to Student or others and its proposed interim alternative educational placement is appropriate.

Rationale:-

- During his placement at NPS, Student made a Journal entry wherein he identified himself as a necrophile, then graphically detailed his dream where he murdered a current 15-year old female student from his original placement and had sexual intercourse with her dead body.
- The nature and detail of the violence and aggression described in the journal entry and naming a specific person as the potential victim is extremely concerning. His program supervisor at NPS believes Student is unpredictable and struggles with what is real and does not believe a public high school has the resources to meet Student's needs. The program supervisor's testimony was corroborated with evidence.
- The testimony of staff of NPS as well as his original placement was thoughtful and well-reasoned and did not reveal any significant shortcomings.

- Parent's unwillingness to accept the gravity of the incident, especially given Student's prior conduct while at original placement diminished her credibility and persuasiveness. Parent's flippant attitude further exemplified the blame-shifting, lack of insight, and attempts to allow Student to escape responsibility regarding his verbally aggressive behavior.
- Student was aware of the severity of his actions. Additionally, Student did not display any fear over the substance of his writing, rather, only for the consequences that may ensue due to its discovery.
- Staff at School's proposed placement is trained on de-escalation techniques, redirection, empathy building, and nonviolent crisis prevention and intervention. It employs a full-time mental health therapist and full-time board certified behavior analyst. Student met his goals at this placement earlier and responded well to supports.

REMEDIES/ORDER:

- Within 15 days of this Decision, School may remove Student from his current placement and place him at NPS proposed by it as an interim alternative educational setting for 45 days.

Student v. BELLA MENTE MONTESSORI CHARTER ACADEMY

Counsel for Student: Gabriella Torres and Amanda Miller

Counsel for School: Maryam Rastegar and Kevin Davis

Representative for School: Erin Feeley

ALJ: Robert G. Martin

Date of Decision: January 31, 2023

Significant areas of law: A manifestation determination is not legally and procedurally compliant if it only lists assessment scores, statements of students and parents, IEP goals, etc. without providing any analysis of all this information and does not allow parents a meaningful participation.

ISSUES:

- Did School predetermined the outcome of Student's manifestation determination meeting, and failed to conduct a procedurally compliant meeting?

FACTS OF THE CASE:

- Student was 13 years old and was eligible for special education under the category of other health impairment, due to his ADHD. He was suspended and subsequently expelled due to threats of shooting in School and intending to kill students and teachers.

CONCLUSION:-

- School predetermined the outcome of Student's manifestation determination meeting and failed to conduct a procedurally compliant meeting.

Rationale:-

- School's team members never discussed Student's advocate's suggestion that Student's threats appeared to be a manifestation of his long time and continuing inability to recognize his own inappropriate behavior. Rather, most of the time was devoted to discuss School's difficulty obtaining and deciphering information from Student's previous School, IEP, behavior intervention plan, and related services. This discussion casts doubt on whether School was implementing Student's IEP with fidelity.
- School Psychologist prepared draft manifestation determination report based on School's incident report, other investigation materials, and some of Student's educational records without speaking with Student, Parents, or with the classmates. A number of columns on the form were filled inappropriately.

- School's members of Student's manifestation determination review team made no changes to School Psychologist's manifestation report on parent's feedback and their attorney's request and simply proceeded with expulsion.
- School's manifestation report did not include any analysis of the information presented therein including assessment scores. Rather the report only listed items found by police, statements collected in earlier investigations, Student's IEP goals and services etc.
- School had only been enrolled in school for 41 days before manifestation report and School's s teachers and staff had not had time to become familiar with Student's behaviors and how his disabilities might influence them. They were aware of Student's ADHD and impulsive behavior but not aware of all of the ways Student's impulsivity had previously manifested itself.
- Student's behavior from kindergarten to Seventh Grade had improved remarkably and he continued to meet most of his behavioral goals.
- Before considering items found from Student's home as evidence of planning by Student to conduct a school shooting, School should have reviewed and weighed Parents' alternative explanations offered by Parents.
- School did not conduct a meaningful meeting with the appropriate parties, as required by Target Range, supra, 960 F.2d at p. 1485.

REMEDIES/ORDER:-

- School is ordered to conduct a new manifestation determination review meeting for Student, complying with all IDEA procedures, within 45 days of this order.

ESCONDIDO UNION SCHOOL DISTRICT v. Student

Counsel for Student: None

Counsel for School: Deborah Cesario and Shannyn Shafer

Representative for School: Meggan Lokken

ALJ: Cynthia Fritz

Date of Decision: January 10, 2023

Significant areas of law: School must prove a specific facility is appropriate for Student even if it is established that Student's current placement is substantially likely to cause injury to Student and others.

ISSUES:

- Does Student's current placement is substantially likely to cause injury to Student and others and does School's proposed placement in a residential treatment center is an appropriate 45-day interim alternative educational setting.

FACTS OF THE CASE:

- Student was 13 years old and was eligible for special education under the primary category of autism and the secondary category of intellectual disability. Student was diagnosed with autism spectrum disorder and attention deficit hyperactivity disorder.

CONCLUSION:-

- Student's current placement is substantially likely to cause injury to Student and others. However, School's proposed placement in a residential treatment center IS NOT an appropriate 45-day interim alternative educational setting.

Rationale:-

- Student's behavior has resulted in multiple attempts to commit suicide while on campus, sexual assaults on staff and students, multiple attempted sexual assaults, and repeated threats of harm to himself and others.
- School attempted to conduct a risk assessment but Student refused to participate. School also drafted a safety protocol plan and behavior tracking plan. School offered wraparound services to student which parents refused to accept.
- School provided additional supports and services to Student to address his issues. However, his behaviors escalated to attempted self-injurious behavior.

- School conducted an IEP to discuss student's significant escalation in dangerous self-injurious behavior, provided behavior emergency report, offered additional services as well as assessments. Parents agreed to assessments but did not give consent to offer of FAPE.
- School's staff and witnesses were credible given the congruent documentary and witness testimony. The staff was well-informed and displayed familiarity with Student and his history. They were thorough and detailed in their accounts of Student's behaviors and expressed sincere beliefs of their concerns related to Student's sexually explicit verbalizations, sexual gesturing, exposing himself, suicidal ideations, suicidal actions, and sexualized touching of both staff and students.
- School failed to present any specific evidence from NPSs as to why these treatment facilities could not service and support Student's increased mental health needs.
- School failed to present any evidence about any specific placement possibility, including any documentary or testimonial evidence about any residential programs and its ability to meet Student's needs.
- School failed to prove that an unspecified residential treatment center with particular criteria is an appropriate interim alternative educational setting.

REMEDIES/ORDER:-

- None.

CROFTS V. ISSAQUAH SCHOOL DISTRICT

Counsel for Student: Lynda Williams

Date of Decision: February, 2022

Significant areas of law: Failure to evaluate student for a specific disability requested by parents is not denial of FAPE where the evaluation conducted by school results in framing of appropriate IEP goals to address student's specific needs.

ISSUES:

- Did school deny student a FAPE by failing to evaluate student for "dyslexia"?

FACTS OF THE CASE:

- Student was dyslexic. The parent alleged that the district violated the IDEA when it evaluated the student for a "specific learning disability" and not specifically for "dyslexia." The parent further alleged that the district denied her child a FAPE when it failed to include the parent's preferred dyslexia instructional method in the student's IEP, and that the parent's subsequent request for an IEE at public expense was improperly denied.
- Administrative Law Judge (ALJ) decided the case against Student and in favor of School.
- Parents filed appeal against decision of ALJ before U.S. Court of Appeals for the Ninth Circuit which confirmed the decision of ALJ.

CONCLUSION :-

- School DID NOT deny student a FAPE by failing to evaluate student for "dyslexia".

Rationale:-

- The district's evaluation was not deficient simply because the term "dyslexia" was not used in the evaluation or in the IEP, as the parent preferred.
- School district complied with the IDEA when it developed an IEP that was "reasonably calculated" to enable the student to make meaningful progress towards improving her assessed language deficiencies. The student's IEP goals were targeted to address the exact learning areas in which she struggled and she was making measured progress towards those goals in both the special and general education environments.
- IDEA affords educators the discretion to select from various methods for meeting the individualized needs of a student, provided those methods are reasonably calculated to provide educational benefit.

REMEDIES/ORDER:-

- None.

Student v. SAN JUAN UNIFIED SCHOOL DISTRICT

CASE NO. 2023030665

Student v. SAN JUAN UNIFIED SCHOOL DISTRICT

Counsel for Student: Robert Burgermeister, Leroy Sumter, and Lynda Williams

Counsel for School: Dee Anna Hassanpour and Lucy Nadzharyan

Representative for School: Robert Morgan

ALJ: Marlo Nisperos

Date of Decision: Marlo Nisperos

Significant areas of law: Predetermination of IEP.

ISSUES:

- Did District deny Student a FAPE by predetermining Student's IEP?

FACTS OF THE CASE:

- Student was 18 years old and graduated with a regular high school diploma. Before graduating, Student was eligible for special education under the category specific learning disability.
- Student's complaint alleged denials of FAPE based on the IEP team meeting held during his final year of high school which governed Student's education program for 23 school days.

CONCLUSION:-

- District DENIED Student a FAPE by predetermining Student's IEP.

Rationale:

- District's staff sent Parent an email asking to schedule an IEP team meeting. Parent responded the same day and provided dates and times that Parent was available to attend a meeting. Despite Parent's timely response, staff never scheduled one.
- After a lapse of four months, District's staff sent Parent an email asking for his availability to schedule a meeting in the month of March, in response to which Parent provided dates and times he was available. However, Parents were informed that staff is unable to find coverage for his classes on the dates Parent had suggested and proposed to hold a meeting after nine days. Parent did not respond to staff's email and instead asked Student to tell them that Parent needed at least a month's notice to schedule a meeting based on Parent's work schedule and other responsibilities. Without notifying Parent, staff held an IEP team meeting on a date of their own choice.
- District staff did not invite Parent, Student, or the other required IEP team members to the meeting. Only two teachers met and wrote Student's IEP.

- After the unplanned IEP meeting, District's staff called Parent to inform him of the IEP the two teachers had created and offered Parent two options: to discuss the contents of the IEP with one teacher or for Parent to review the IEP document independently. After staff told Parent that Student was graduating in a few weeks with a diploma, Parent decided to review the document on his own.
- After the unplanned IEP meeting, District's staff called Parent to inform him of the IEP the two teachers had created and offered Parent two options: to discuss the contents of the IEP with one teacher or for Parent to review the IEP document independently. After staff told Parent that Student was graduating in a few weeks with a diploma, Parent decided to review the document on his own.
- The written IEP document was subsequently provided to Parent with a take it or leave it attitude by District 23 days before Student graduated despite the fact that the District staff knew that Parent would be unable to schedule an IEP team meeting to discuss the IEP because Parent needed one month's notice to schedule time off work to attend a meeting.
- District's predetermination of IEP significantly impeded Parent's opportunity to participate in the decision-making process because Parent was not invited to and did not attend the meeting. Parent was denied the opportunity to ask questions or voice his concerns about Student's readiness to graduate. Parent was deprived the opportunity to speak with the IEP team about Student's academic progress.

REMEDIES/ORDER:-

- Within 10 days of this Decision, District shall send notice to Student in writing to initiate the process of developing a summary of performance. Within 10 days of notice, Student shall respond in writing with the names of the individuals he is requesting be members of the group. If Student does not respond to District within 10 days of written notice, Student's entitlement to the summary of performance is forfeited.
- Within 45 days of this Decision, the group shall meet to discuss Student's summary of performance. The meeting shall be held by telephone, videoconference, or in-person based on Student's preference.
- District shall provide to Student a written summary of performance within 15 days of the final meeting.
- The summary of performance shall include a summary of Student's academic achievement and functional performance to help Student transition beyond high school. It shall also list accommodations that would benefit Student in postsecondary educational or work environments. The document will memorialize the discussion and recommendations of the group and may include other information that will support Student's postsecondary goals.
- Within 45 days of this Decision, District shall contract with an independent third party with special education expertise, unaffiliated with District, to conduct a two-hour training for special education administrators and staff regarding predetermination and exit IEP team meetings for students graduating with a regular high school diploma.
- All of Student's other requested claims for relief are denied.

STUDENT v. CORONA-NORCO UNIFIED SCHOOL DISTRICT

CASE NO. 2022080622 & 2022090289

Student v. CORONA-NORCO UNIFIED SCHOOL DISTRICT

Counsel for Student: Sheila Bayne

Counsel for School: Constance Taylor

Representative for School: Dawn Rust

ALJ: Christine Arden

Date of Decision: December 22, 2022

Significant areas of law: School may not implement student's IEP without parental consent when IEP team fails to consider students' current level of performance while deciding an appropriate placement.

ISSUES:

- Did school's IEP constitute a FAPE in the least restrictive environment for Student such that School may implement that IEP without obtaining parental consent?

FACTS OF THE CASE:

- Student was 12 years old and was eligible for special education under the primary category of autism, and a secondary category of intellectual disability.

CONCLUSION:-

- School's IEP DID NOT constitute a FAPE in the least restrictive environment for Student such that School may implement that IEP without obtaining parental consent.

Rationale:-

- Student's report card for the third trimester was printed five days after his IEP team meeting. It is reasonable to assume Student's third trimester grades, or an estimate of the grades Student earned in the third trimester, were known by Student's teachers, and would have been available to the IEP team for discussion. This was important information that the IEP team was required to review when discussing Student's placement for the upcoming school year. However, there was no evidence that such a discussion occurred at any of the three IEP team meetings.
- Student's excellent grades in all of his grade-level classes should have alerted the IEP team to the fact that Student was performing well in comparison to his peers in grade-level classes. It is unreasonable the team disregarded the good grades Student earned in both the mild-to-moderate special day class and the temporary placement.

- The IEP team was obligated to consider Student's passing to excellent performance in grade-level classes before offering Student placement in a moderate-to-severe special day class with a modified functional curriculum.
- Student's IEP team did not consider Student's successful academic performance in both placements when it inexplicably offered him a more restrictive, less academically rigorous, functional placement.
- The testimony of the teachers that the appropriate placement for Student was in the more functional level Life Skills program appeared memorized and coached, and their opinions that Student should be placed in the Life Skills program were illogical.
- The IEP team's failure to discuss Student's grades, or why the cognitive results of testing by School were so disparate with Student's satisfactory academic performance, particularly in light of Parent's protest concerning the cognitive testing results, was not appropriate.
- School's IEP team failed to meet its obligation to determine why and how Student earned such good grades in the mild-to-moderate special day class and in the temporary placement if the team believes he is unable to access his education in the Essentials program.

REMEDIES/ORDER:-

- School shall not implement the IEP without parental consent. Until a new IEP is consented to by Parents or found to offer a FAPE by OAH, Student's operative program shall be the previous IEP.
- Student's IEP team shall reconvene an IEP meeting within 30 days of the date this Decision is issued to develop an IEP and offer Student a FAPE for the remainder of the school year, until his next annual IEP is due.

STUDENT v. MONROVIA UNIFIED SCHOOL DISTRICT

CASE NO. 2021120214

Student v. MONROVIA UNIFIED SCHOOL DISTRICT

Counsel for Student: Rhonda Krietemeyer, Matthew Zerby, and Cordelia Martinez

Counsel for School: Vivian Billups Randolph

Representative for School: Jennifer Johnson, Megan Esquer, A. Tod Overton, Kimberly Cabrera and Vonni Cummings

ALJ: Cararea Lucier

Date of Decision: December 30, 2022

Significant areas of law: Failure to conduct appropriate assessments despite having notice of student's special needs and disabilities is denial of FAPE.

ISSUES:

- Did school deny student a FAPE by failing to conduct appropriate assessments despite having notice of student's special needs and disabilities and by leaving his triennial assessment incomplete?

FACTS OF THE CASE:

- Student was fourteen years old and eligible for special education and related services under the eligibility categories of specific learning disability and speech or language impairment.
- Mother was extremely concerned regarding student's special needs and his academic progress and continuously approached school staff, both personally and through her attorney, to address her concerns. She requested for his assessments and amendment in his IEP goals to specifically address his needs.

CONCLUSION:-

- School **DENIED** student a FAPE by failing to conduct appropriate assessments despite having notice of student's special needs and disabilities and by leaving his triennial assessment incomplete.

Rationale:-

- While conducting social-emotional evaluation of Student, the school evaluator did not review Student's IEPs, progress on goals, speech and language assessments, medical information or nurse's logs, results of state standardized testing, or attendance from past years, making the evaluation inappropriate. Further, the school failed to use appropriate assessment tools and solely relied on BASC-3 rating scale.

- School knew that student struggled academically but assumed it stemmed solely from his specific learning disability and failed to investigate other known potential causes of Student's educational struggles. The school felt he was fine, and the assessment served to validate this assumption. Hence, assessment suffered from confirmation bias.
- School left the triennial assessment incomplete during COVID-19 by incorrectly believing that parents have agreed to stop the assessment. Further, school failed to share the assessment results with the parents.

REMEDIES/ORDER:-

- School shall reimburse Parents for the costs they incurred for the private assessments.
- School shall contract with a certified non-public agency of Parents' choice to provide 53 hours of compensatory education to be used in any educationally-related area of Parents' choice. Parents may choose more than one certified non-public agency to provide the compensatory education.
- School shall reimburse Parents in an amount not to exceed \$5,000.00 for parent education, counseling, and support, subject to submission of invoices by parent.

STUDENT v. ENCINITAS UNION ELEMENATRY SCHOOL DISTRICT

CASE NO. 2022060874

Student v. ENCINITAS UNION ELEMENATRY SCHOOL DISTRICT

Counsel for Student: Wendy Dumlao

Counsel for School: Jonathan Read and Juliana Mascari

Representative for School: Maria Waskin and Erin Lain

ALJ: Claire Yazigi

Date of Decision: December 05, 2022

Significant areas of law: Failure to provide adequate supports and services during distance learning is denial of FAPE.

ISSUES:

- Did school fail to offer and provide adequate supports and services during distance learning?

FACTS OF THE CASE:

- Student was ten years old and eligible for special education under the primary category of Autism and the secondary category of Intellectual Disability.
- Due to COVID outbreak, schools were closed and students were offered distance learning. However, school did not provide student in-person services during distance learning.

CONCLUSION:-

- School DENIED student a FAPE by fail to offer and provide adequate supports and services during distance learning despite having proper notice of student's special needs and disability.

Rationale:-

- Parents faced extremely difficult situation during distance learning due to student's special needs and disabilities and communicated their concerns to school properly. Parents specifically requested the school for in-person services. However, school failed to address their concerns and continued depending on virtual supports only. Consequently, student received no education benefit during extended school year.
- School offered no legal authority supporting a contention that Student's ability to receive a FAPE was conditioned on Parents' ability or willingness to provide or obtain full-time one-to-one support.
- School's IEP offer of extended school year specialized academic instruction, occupational therapy, adaptive physical education, and speech and language did not meet student's needs and was not reasonably calculated to provide educational benefit to her.

- Executive Order N-26-20 directed the California Department of Education (CDE) and the California Health and Human Services Agency to jointly develop guidance ensuring that students with disabilities received a FAPE during distance learning consistent with their IEP under the IDEA.
- On April 27, 2020, the Secretary of Education declined an opportunity provided by Congress to seek an extension of IDEA timelines due to COVID-19.

REMEDIES/ORDER:-

- School shall provide student with 26 hours of district-provided, in-person compensatory specialized academic instruction; eight hours of district-provided, in-person compensatory occupational therapy, eight hours of district-provided, in-person compensatory speech and language services, and eight hours of district-provided, in-person compensatory adaptive PE;

STUDENT v. HERMOSA BEACH CITY SCHOOL DISTRICT

CASE NO.2017060038

STUDENT v. HERMOSA BEACH CITY SCHOOL DISTRICT

Counsel for Student: Rosa Hirji and Briana Banayan

Counsel for School: Diane Willis

Representative for School: Patricia Escalante, Kim Taylor

ALJ: Christine Arden

Date of Decision: January, 2018

Significant areas of law: Exceptions to Statute of Limitation

ISSUES:

- Are behavioral intervention claims barred by statute of limitation without any exceptions?
- Did District deny student a FAPE with regard to Student's unique area of need in behavior by use of illegal behavior interventions to address disability related behavior; use of unwarranted emergency behavior interventions; use of interventions that caused Student humiliation and emotional trauma; and/or failing to provide behavior interventions to allow Student access to speech and language services?
- Did District deny student a FAPE by failing to develop goals in an IEP that were reasonably calculated to provide Student with educational benefit?
- Did District deny student a FAPE by failing to implement the behavior support plan decided in an earlier IEP?
- Did District deny student a FAPE by failing to implement his toileting goals?
- Did District deny student a FAPE by failing to place Student in an educational environment that conferred educational benefit

FACTS OF THE CASE:

- Student was 16 years old and was eligible for special education services for autism and speech and language impairment, also had severe behavioral issues and very limited speech.

CONCLUSION:-

- Behavioral intervention claims ARE NOT barred by statute of limitation in certain exceptions.

Rationale:-

- the statute of limitations begins to run when a party is aware of the underlying facts that would support a legal claim, not when a party learns that the action was wrong.

- title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (l), establish exceptions to the statute of limitations in cases in which the parent was prevented from filing a request for due process due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or the local educational agency's withholding of information from the parent that was required to be provided to the parent.
- District/NPS withheld information from Parents about emergency behavior interventions that had been used on Student that District was required to provide to Parents (sub-issue A(6)(b).)
- Mother had specifically inquired if CPI techniques were used on Student and was told that they were not, which was a misrepresentation.
 - District DENIED student a FAPE with regard to Student's unique area of need in behavior by use of illegal behavior interventions to address disability related behavior; use of unwarranted emergency behavior interventions; District DID NOT DENY student a FAPE by use of interventions that caused Student humiliation and emotional trauma and/or failing to provide behavior interventions to allow Student access to speech and language services.

Rationale:-

- An emergency behavior report must be immediately forwarded to, and reviewed by, a designated school administrator.
- The NPS failed to report to Parents and/or District within one school day when CPI transport holds were used on Student in violation of Education Code, section 56521.1(e). Further, the emergency behavior reports about transport holds used on Student during behavior emergencies were not provided to Parents or District when those events occurred. Moreover a number of reports were missing and not accounted for.
- The Student's behaviors were predictable, he was neither violent nor created a danger to himself or others. Hence, less intrusive means could and should have been used to address these behavior emergencies. Student's Behavior Plan was not materially revised while he was at NPS, even though his maladaptive behaviors continued and even worsened.
- There was no direct evidence that the emergency behavior interventions used at NPS caused Student humiliation and emotional trauma. Further, evidence did not establish that Student was deprived of access to speech and language services due to the lack of appropriate behavior interventions.
 - District DID NOT deny student a FAPE by failing to develop goals in an IEP that were reasonably calculated to provide Student with educational benefit.

Rationale:-

- No one at that meeting suggested or requested new goal should be developed for Student in any area. Moreover, no evidence was introduced to suggest that Student needed new goals in that specific IEP. Hence, school was not required to develop new goals at this meeting.

- District DID NOT deny student a FAPE by failing to implement the behavior support plan decided in an earlier IEP.

Rationale:-

- The evidence established that there was no behavior support plan or behavior intervention plan in that specific IEP as the said IEP was held for the purpose of discussing the recently completed Functional Behavior Assessment.
- District DID NOT deny student a FAPE by failing to implement his toileting goals.

Rationale:-

- Parents were aware of the IEP team meetings which had toileting goals and also knew when these goals were not included. Hence, statute of limitations applies on inclusion of toileting goals in his IEPs. Further, parent's claims are based on incomplete record of his toileting schedule provided by school.
- District DENIED student a FAPE by failing to place Student in an educational environment that conferred educational benefit.

Rationale:-

- The initial placement at the NPS recommended by District was appropriate. However, if District had adequately monitored the Student's program and progress during his school year, it would have known that NPS had not complied with a number of material requisites set forth in the Education Code regarding Student's behavioral emergencies and behavioral interventions. By failing to do so, District denied student a FAPE.

REMEDIES/ORDER:-

- Within 45 days of the date of this Order:
 - District shall make arrangements with Parents and a certified nonpublic agency to provide for 286.5 hours of specialized academic instruction to be provided to Student.
 - District shall make arrangements with a certified nonpublic agency specializing in applied behavioral analysis services to provide for 191 hours of behavioral aide services from a trained behavioral aide and 19.1 hours of behavioral supervision services from a BCBA.
 - Student shall use the above awarded compensatory education services within three years from the date of this order.

SUMMIT PUBLIC SCHOOLS-DENALI, v. PARENT

CASE NO.2018070224

SUMMIT PUBLIC SCHOOLS-DENALI, v. Parent

Counsel for Student: Parent

Counsel for School: Megan Moore and Rachael Tillman

Representative for School: Kevin Bock

ALJ: Penelope Pahl

Date of Decision: August, 2018

Significant areas of law: Implementation of assessment plan without parental consent, lack of clarity in IEP offer.

ISSUES:

- May school assess student pursuant to its assessment plan including the diagnostic placement, without parental consent?
- Does school's IEP, including its offer of placement, FAPE services, and accommodations, provide Student a FAPE in the least restrictive environment?

FACTS OF THE CASE:

- Student was 16 years old and was eligible for special education and related services with emotional disturbance as a primary eligibility category as well as secondary categories of other health impairment, due to a diagnosis of attention deficit disorder; and specific learning disability.

CONCLUSION:-

- School CANNOT assess student pursuant to its assessment plan including the diagnostic placement, without parental consent.

Rationale:-

- The school's recommended assessment plan lacked in following:-
 - No time frame for the "diagnostic placement" was provided.
 - Neither a plan for lunch visits to another campus nor transportation to the school's recommended placement was provided.
 - No safety plan, taking into consideration Student's 24-hour suicide watch, for the lunchtime socialization or for the "diagnostic placement" was provided.
 - No academic subject for Student's general education was specified.
 - The method of selecting an academic subject for the diagnostic placement was neither included in student's assessment plan nor in the prior notice sent to parents.

- No details as to the type of data to be collected or the criteria to be used to evaluate the placement were included.
- student was required to change placements as a precursor to a required assessment.
- the proposed location designated for the assessment has already been closed
- None of the School's witnesses could articulate the criteria to be applied to evaluate the "diagnostic placement" and no evidence was presented that any methodology had been identified or developed to assist in drawing conclusions about how the diagnostic placement was proceeding.
- On denial of parent's consent to assessment for "diagnostic placement" school refused to conduct other assessments consented by parent, which was unjustified.
 - School's IEP, including its offer of placement, FAPE services, and accommodations, DOES NOT provide Student a FAPE in the least restrictive environment.

Rationale:-

- The IEP offer made by school included an offer for both the regular school year and extended school year instruction. However, evidence did not establish whether the two offers were to be implemented concurrently or sequentially.
- The IEP offer failed to clarify a lot of important things including but not limited to Student's placement to be implemented, how long the offered placement would last, method of providing Career and College awareness instruction, how Student was to socially interact with peers, subject matter to be taught in the general education setting etc.

REMEDIES/ORDER:-

- Not applicable.

STUDENT v. STOCKTON UNIFIED SCHOOL DISTRICT

CASE NO. 2022080176

STUDENT v. STOCKTON UNIFIED SCHOOL DISTRICT

Counsel for Student: Robert Burgermeister and Lynda Williams

Counsel for School: Kate Im

Representative for School: Todd Reynolds, Vincent Hernandez

ALJ: Jennifer Kelly

Date of Decision: November 22, 2022

Significant areas of law: Conducting IEP team meeting in absence of parent, failure to develop appropriate goals in IEP team meeting.

ISSUES:

- Did school deny student a FAPE by assigning student to distance learning during year 2020-2021, failing to provide in-person services and by failing to provide necessary accommodations during distance learning?
- Did school deny student a FAPE during year 2020-2021 by failing to assess him to ensure he could receive a FAPE during distance learning?
- Did school deny student a FAPE by convening the IEP team meeting without parents or by predetermining his offer of placement and services?
- Did school deny student a FAPE by failing to develop adequate goals in IEP to address his all areas of need?
- Did School deny student a FAPE by failing to offer sufficient individual services in form of a one-to-one aide?
- Did School deny student a FAPE by failing to offer sufficient speech and language services?
- Did School deny student a FAPE in IEPs by failing to offer extended school year services?
- Did School deny student a FAPE in IEPs by failing to offer parents training to address student's needs arising from Autism?
- Did School deny student a FAPE in IEPs by failing to offer at home and clinic-based applied behavior analysis therapy?
- Did School deny student a FAPE in IEP by determining student's offer of placement and services?
- Did School deny student a FAPE in IEPs by failing to offer a sufficient program and supports necessary for student to receive an educational benefit?
- Did School deny student a FAPE in IEPs by failing to collect accurate and complete data on student's goal progress, particularly during distance learning?

FACTS OF THE CASE:

- Student was sixteen years old and was eligible for special education special education under the category of autism.
- Due to COVID outbreak, schools were closed for a specified period wherein they were not required to provide educational services to general education students as well as students with disabilities. After few months, government issued guidance for schools to continue educating students to the extent feasible through distance learning and/or independent study.

CONCLUSION:-

- School DID NOT deny student a FAPE by assigning student to distance learning during year 2020-2021 failing to provide in-person services and by failing to provide necessary accommodations during distance learning.
- School DID NOT deny student a FAPE during year 2020-2021 by failing to assess him to ensure he could receive a FAPE during distance learning.

Rationale:-

- School complied with regulations issued by the relevant authorities during COVID outbreak and offered and delivered instruction to all its students through a combination of online distance learning and in-person learning.
- All the teachers were credentialed during the period of distance learning as well who supervised his learning with instruction, interaction, and check-ins online every day.
- School also provided all the necessary equipment to students including Chromebook laptops, hotspots etc. to students needing such facilities to complete assigned schoolwork.
- School was permitted to deliver special education and related services in Student's IEP in a distance learning environment with accommodations necessary as per his IEP.
 - School DID NOT deny student a FAPE during year 2020-2021 by failing to assess him to ensure he could receive a FAPE during distance learning.

Rationale:-

- None of the federal and state guidance concerning delivering special education and services during the COVID-19 pandemic indicated an assessment was required before providing a student's special education and related services through a distance learning modality. Further, SB 98 explicitly authorized distance learning and did not condition it on assessments of each student receiving special education and related services.
 - School DENIED student a FAPE by convening the IEP team meeting without parents or by predetermining his offer of placement and services.

Rationale:-

- School convened the meeting in parent's absence without trying to contact either Parent to confirm whether they planned to attend and without making efforts to reschedule the meeting, or encouraging either Parent to attend by telephone or videoconference. School completely relied on their conversation with mother.
- Mother's post-IEP team meeting consent for the IEP team to meet without her did not absolve School of its obligation to comply with the IDEA's procedural requirements of seeking to arrange a mutually agreed upon time and place to hold the IEP with Parents and to document its efforts.
- Obtaining Mother's input after the meeting was held and Student's educational program developed did not satisfy School's obligation to consider Parents' concerns for enhancing Student's education and obtaining information on Student's needs. School's failure to comply with the procedural requirements infringed on Parents' ability to participate in the IEP formulation process.
- School did not provide Parents a copy of the "Emergency Circumstances Consideration IEP Form" at any time. The first time Parents were made aware of the existence of the emergency circumstances form was at the due process hearing.
 - School DENIED student a FAPE by failing to develop adequate goals in IEP to address his all areas of need.

Rationale:-

- School lacked sufficient information to determine Student's educational needs as his assessments were outdated and Parents had not consented to Student's triennial assessments the prior year when he was in middle school.
- Neither parents nor his general education teacher attended his IEP team meeting. School, not parents, had the obligation to gather information about Student's present levels of performance for review at Student's IEP team meeting.
- The goals developed in the meeting did not contain baseline data. Because the goals were not based on his present level of performance there was no direct relationship between his present levels of performance and the goals.
- The goals determined in the next IEP team meeting were largely equivalent to Student's prior goals and did not show a direct relationship between Student's areas of need and the goals. The goals were not measurable, did not indicate who was responsible for implementing those, and did not meet Student's behavioral and transition needs. Further, School failed to develop goals in all of Student's known areas of need, including as to math and behavior.
 - School DID NOT DENY student a FAPE by failing to offer sufficient individual services in form of a one-to-one aide?

Rationale:-

- Student and parents failed to present any witness testimony or documentary evidence to support their claim that student required a one-to-one aide, in class or at home, as a related service to benefit from special education or that he would have performed better with the support of a one-to-one aide.
 - School DENIED student a FAPE by failing to offer sufficient speech and language services.

Rationale:-

- The IEP team knew of Student's communication deficiencies, particularly in the area of pragmatic language and school was obliged to offer Student an IEP reasonably calculated for him to make progress in light of his circumstances. However, school failed to do so.
 - School DID NOT student a FAPE in IEPs by failing to offer extended school year services.

Rationale:-

- Student offered no evidence that the IEP team had information Student would have any particular difficulties with regression or recoupment with respect to his academic or other skills.
 - School DID NOT student a FAPE in IEPs by failing to offer parents training to address student's needs arising from Autism.

Rationale:-

- Student failed to prove Parents made a "request for help" in any IEP team meeting. Further, mother offered no testimony of any problems she experienced at home due to Student's behaviors.
 - School DID NOT DENY student a FAPE in IEPs by failing to offer at home and clinic-based applied behavior analysis therapy.

Rationale:-

- None of Student's special education or general education teachers believed he required applied behavior analysis at school. Student's teachers all testified he was easily redirected. Mother convincingly explained Student did not engage in inappropriate behaviors in the home setting.
- Mother's testimony made clear she thought "home therapy" meant academic tutoring to help Student do his homework.
 - School DID NOT DENY student a FAPE in IEP by determining student's offer of placement and services.

Rationale:-

- Parents have the right to participate in the identification, evaluation, and educational placement of a child with a disability. School violated the IDEA by holding Student's IEP team meeting without Parents present and afterwards sending the IEP document to Parents for signature. However, Student did not offer any testimony or documentary evidence proving School predetermined Student's offer of FAPE.
 - School DENIED student a FAPE in IEPs by failing to offer a sufficient program and supports necessary for student to receive an educational benefit.

Rationale:-

- The IEP team was aware of Student's academic, pragmatic language, and behavior struggles and lacked sufficient information to determine whether Student met his prior year's annual goals. Still the team substantially reduced Student's specialized academic instruction and speech and language consultation services as compared to his previous IEP.
- The IEP team did not address Student's issues of which School and the IEP team was aware or should have been aware. No explanation, other than School's mistaken belief that Parents did not want Student to receive special education and related services, was offered by School for substantially reducing Student's program.
- Despite Student's failure to make meaningful progress towards his annual goals and his academic and behavioral struggles, School did not modify its offer of specialized academic instruction or provide behavioral support.
 - School DID NOT DENY student a FAPE in IEPs by failing to collect accurate and complete data on student's goal progress, particularly during distance learning.

Rationale:-

- Student offered no evidence through Parents or any other witness regarding what data School was required to collect, or how it failed to accurately collect such data, with respect to any of his IEP goals.

REMEDIES/ORDER:-

- Student is awarded:-
 - 186 hours of compensatory academic instruction and/or speech and language services to be used as per parent's discretion. If the services are held at a location other than Student's home, School shall reimburse Parents for transportation for one round-trip travel to the location, not to exceed 50 miles round-trip.
 - one hour per week of speech and language services for the same 34-instructional school week period, for a total of 34 hours.

- one hour weekly compensatory speech and language services for a total of 12 hours.
- School shall fund an independent educational evaluation at public expense in the area of speech and language by a licensed speech and language pathologist.
- Parents shall be allowed to access services during summer or other school breaks, or other times convenient to meet Student's needs outside his regular school schedule.
- School shall convene an IEP team meeting to consider appropriate behavior goals and/or the use of positive behavior interventions and supports, and other strategies, to address those behaviors. The IEP team shall specifically consider Student's inattention to task, work refusal, use of inappropriate words and actions, and any other maladaptive behaviors known to the IEP team at the time of the IEP team meeting.

STUDENT v. CARMEL UNIFIED SCHOOL DISTRICT

CASE NO. 2022070678 & 2022060843

STUDENT v. CARMEL UNIFIED SCHOOL DISTRICT

Counsel for Student: Henry Tovmassian and George Crook

Counsel for School: Amanda Johnston

Representative for School: Steven Gonzalez and Cassandra Ziskind

ALJ: Kara Hatfield

Date of Decision: November 30, 2022

Significant areas of law: Failure to consider full continuum of placements, predetermination of placement and comparable offer of IEP.

ISSUES:

- Did School deny student a FAPE by failing to consider the full continuum of placements, and because of that, significantly impeded Parents' participation in the decision making process. Hence, offered made by school was NOT FAPE?
- Did school deny student a FAPE by failing to assess student in areas of need or by failing to provide him educational benefit?
- Did school deny student a FAPE by failing to identify all his education needs, failing to document appropriate present levels of performance in the areas of need, and failing to develop goals in vision and communication with augmentative and alternative communication?
- Did School deny student a FAPE by predetermining the IEP offer?
- Did school deny student a FAPE by failing to have necessary team members in IEP team meeting?
- Did school deny student a FAPE by failing to make a specific formal offer?
- Did school deny student a FAPE by failing to offer appropriate accommodations?
- Did school deny student a FAPE by failing to offer appropriate placement and services in the least restrictive environment?
- Did School deny student a FAPE by failing to provide him placement and services comparable to his IEP in previous school?

FACTS OF THE CASE:

- Student was five and half years old and was eligible for special education and related services under the eligibility categories of orthopedic impairment, visual impairment, and speech or language impairment.

CONCLUSION :-

- School DENIED student a FAPE by failing to consider the full continuum of placements, and because of that, significantly impeded Parents' participation in the decision making process..
- Rationale:-
- School was required to consider and include Parents in a discussion of whether Student required any time during the school day to have interaction with typical peers to receive educational benefit, and if so, what frequency and duration of inclusion was appropriate, as well as where and how inclusion could be achieved if Student attended the special day class operated by the NPS recommended by School.
- The audio recording of the IEP team meeting established there was no discussion with Parents about this mandatory element of a least restrictive environment analysis.
- School neither tried to reconvene IEP meeting nor waited to reconvene at the start of the new school year and rushed to pursue an order from OAH to implement it, which is a procedural violation of IDEA.
- School DID NOT DENY student a FAPE by failing to assess student in areas of need or by failing to provide him educational benefit.

Rationale:-

- Because Parents did not request assessment in advance of the comprehensive triennial reassessment, School was not required to assess Student under Education Code section 56381, subdivision (a)(1) based on parental request.
- School provided Parents an assessment plan for a comprehensive triennial reassessment and was conducting the comprehensive triennial reassessments during the due process hearing, with parental consent.
- School DID NOT DENY student a FAPE by failing to identify all his education needs, failing to document appropriate present levels of performance, and failing to develop goals in vision and communication with augmentative and alternative communication.

Rationale:-

- Student failed to prove what educational needs Student had that School did not identify and how any alleged procedural violation in failing to identify all of Student's educational needs significantly impeded Parents' opportunity to participate in the decision making process, denied Student educational benefit, or otherwise impeded Student's right to a FAPE.
- School DID NOT DENY student a FAPE by predetermining the IEP offer.

Rationale:-

- School staff was not prohibited from having opinions, as professional educators, about what placement a student might require.
- Parents received a draft of the IEP before the meeting indicating to them School's placement recommendation was a regional program operated by the County. That recommendation does not amount to predetermination of an IEP offer.
- The recording of IEP team meeting proves that Parents had meaningful participation in the meeting and actively participated.
- School DID NOT DENY student a FAPE by failing to have necessary team members in IEP team meeting.

Rationale:-

- Student's complaint did not specifically identify who, by category or individual identity, Student contends was required to attend but did not. Further, student's written closing argument failed to mention this issue at all.
- School DID NOT DENY student a FAPE by failing to make a specific formal offer in IEP team meeting?

Rationale:-

- Student failed to prove any manner in which the IEP document, as made into a final offer by School and provided to Parents failed to state a coherent, formal, written offer as required by Union. (15 F.3d at p. 1526.)
- The IEP offer made by school clearly stated goals proposed, how they will be measured, special education and related services, and supplementary aids and services to be provided, and program modifications or supports for school personnel to be provided. Further, the IEP stated a projected start date for services and modifications, as well as the anticipated frequency, location, and duration of services and modifications.
- School DID NOT DENY student a FAPE by failing to offer appropriate accommodations?

Rationale:-

- Student's complaint did not specifically identify any accommodations Student contends he required but was not offered in the IEP.
- School DID NOT DENY student a FAPE by failing to offer appropriate placement and services in the least restrictive environment.

Rationale:-

- Student did not prove how much school would pay the County for providing Student with the proposed placement and embedded related services in the special day class at the NPS recommended by School. Student could have produced this necessary information through documentary evidence such as contracts and financial information, or through testimony of appropriate witnesses with relevant information.
- Student failed to produce all evidence necessary for a full, four-factor analysis under Rachel H. of the least restrictive environment for Student, and if Student could not be educated in a general education environment full time, then analysis under Daniel R.R. of whether he was offered mainstreaming to the maximum extent that was appropriate in light of the continuum of program options.
- School DENIED student a FAPE by failing to provide him placement and services comparable to his IEP in previous school.

Rationale:-

- Student proved that School implemented an interim program that on paper was comparable to student's previous IEP, but in effect, did not afford Student 75 percent of general education time within the 210-minute school day of School's transitional kindergarten. The offered time, was approximately 30 minutes per day short of the opportunity for general education a comparable program would have afforded Student.

REMEDIES/ORDER:-

- Within 10 days of this Decision, Parents shall inform School what quantities of which educational and related services they want School to provide in compensatory education, totaling 20 hours. Parents shall also inform School whether they request the compensatory education services be delivered during the regular school day, with no right to make up any other classroom time missed due to the delivery of these compensatory education hours, or prefer service after regular school hours but only on days school is regularly in session.
- By the end of the first full week school after the winter break, School shall propose to Parents a schedule for delivery of the compensatory education. In the delivery of compensatory education, if the provider cancels a session, the time will be credited back to Student. If Student cancels a session with a least 48 hours' notice, the hours shall be credited back to Student. If Student cancels a session with less than 48 hours' notice, Student will forfeit the hour or hours for the session. School's proposed schedule shall allow the total 20 hours to be completed within specified time.
- School shall provide at least four hours of special education training to all its employees who are general education teachers and school principals, assistant principals, or other similar administrator titles, who as part of their regular job duties attend IEP team meetings, and also all special education teachers, administrators, related services providers, and school nurses.

STUDENT v. CHAFFEY JOINT UNION HIGH SCHOOL DISTRICT

CASE NO. 2022040873

STUDENT v. CHAFFEY JOINT UNION HIGH SCHOOL DISTRICT

Counsel for Student: Sheila C. Bayne, Lynda Williams, Valerie Weiss, and Robert Burgermeister

Counsel for School: Sundee M. Johnson

Representative for School: Kelly Whelan

ALJ: Paul H. Kamoroff

Date of Decision: November 04, 2022

Significant areas of law: Lack of appropriate assessments and offer of services.

ISSUES:

- Did school deny student a FAPE by
 - failing to assess her in all areas of suspected disability in a timely manner?
 - failing to offer her appropriate speech, language and behavior services including an individual aide?
 - failing to offer appropriate goals as part of the IEP?
 - failing to offer related services for physical therapy and adapted physical education?
 - failing to failing to offer occupational therapy?
 - failing to find Student eligible for special education under the primary eligibility category autism, and the secondary eligibility category speech and language impairment?
 - failing to consider parents' requests?

FACTS OF THE CASE:

- Student was 15 years old and was eligible for special education and related services under the categories specific learning disability, based upon an attention processing disorder that impacted her ability to progress in math, and other health impairment.
- Student was found eligible for special education under speech and language impairment, based upon low average scores in receptive and expressive language in her IEP. Accordingly four goals were offered by the school addressing these categories.
- Student changed school in ninth grade and an interim IEP was conducted in new school to assess her for special education as well as to determine appropriate goals for her.

CONCLUSION :-

- School DID NOT DENY student a FAPE by failing to assess her in all areas of suspected disability in a timely manner.

Rationale:-

- The Student's case manager and teachers found her IEP goals set by previous schools far below her ability level. Accordingly they devised a re-assessment plan for her in all relevant areas and conducted the assessments with parents' approval.
- Student's psychoeducational assessment identified a mild attention disorder confirming her eligibility for special education under specific learning disability and other health impairment.
- All witnesses as well as minutes of IEP proved that proper assessment was done by qualified and experienced staff, in all areas of need, and neither further assessment was required nor student required any behavior intervention, assistive technology or mental health services.
- School DID NOT DENY student a FAPE by failing to failing to offer her appropriate speech, language and behavior services including an individual aide.

Rationale:-

- Student continued to perform well at school even without receiving special education in areas of speech and language. None of the student's witnesses were able to prove that she required speech and language supports or services.
- The private assessor hired by parents met student only twice and neither interviewed her teachers nor let them complete any tests. The private assessor's testimony was contradictory to the evidence on record including student's grades and testimony of other witnesses.
- Mother herself testified that she did not believe Student required behavior supports or services, including an individual aide, and had not requested such while formulating the complaint.
- School DID NOT DENY student a FAPE by failing to failing to offer appropriate goals as part of the IEP.

Rationale:-

- Proper assessments were conducted by school and the assessment reports were discussed in the IEP meeting in presence of all the relevant IEP team members. Based on the assessments, four goals were determined, in the areas of math, study skills and organization, career exploration, and college awareness.
- Each goal determined in the meeting had a baseline, short-term objectives, was measurable, identified school staff responsible for ensuring Student met the goal, and correlated to an area of identified need for Student. School also offered various accommodations to meet her goals. The appropriateness of goals was also supported by testimonies.
- School DID NOT DENY student a FAPE by failing to failing to offer related services for physical therapy and adapted physical education.

Rationale:-

- No person who had interacted with student, other than Mother, reported any concerns that would warrant physical therapy services or adapted physical education.
- School examiner was qualified and experienced and after examining student in all relevant areas did not find her eligible for such services. School did not offer physical therapy services. However, it offered various accommodations to address Mother's concerns.
- School DID NOT DENY student a FAPE by failing to offer occupational therapy.

Rationale:-

- Student was properly assessed in all areas of suspected disability by qualified and experience assessors and she had no difficulty attending to self-care tasks or performing at school.
- Student displayed no deficit in any area that fell under the purview of occupational therapy. The school's findings were consistent with Student's ability to access her educational program, and high grades.
- School DID NOT DENY student a FAPE by failing to offer a sufficiently intensive academic program.

Rationale:-

- IEP offered various accommodations with consent of parents, to support student in regular education classes, and a daily study skills class to assist her with assignment completion, organization, and math. With these accommodations, Student performed well in her regular education classes and earned passing to high grades in each course.
- School DID NOT DENY student a FAPE by failing to find Student eligible for special education under the primary eligibility category autism, and the secondary eligibility category speech and language impairment.

Rationale:-

- Student was properly assessed in all areas of suspected disability by qualified and experience assessors and she was neither diagnosed with autism nor with speech and language impairment.
- the private examiner hired by parent totally relied on mother's input without even observing student practically. Further, the private examiner and mother's testimony did not corroborate with evidence on record.
- School DID NOT DENY student a FAPE by failing to consider parents' requests.

Rationale:-

- The record of IEP team meetings as well as testimony of all the witnesses including parents confirmed that parents were involved throughout the process of evaluation as well as for devising her IEP goals. Further, school gave due consideration to parent's requests and addressed all requests reasonably.

REMEDIES/ORDER:-

- All requests for relief are denied.

STUDENT v. LOS ALAMITOS UNIFIED SCHOOL DISTRICT

CASE NO. 2022070072

STUDENT v. LOS ALAMITOS UNIFIED SCHOOL DISTRICT

Counsel for Student: Damian Fragoso

Counsel for School: Tracy Petznick Johnson

Representative for School: Grace Delk

ALJ: Theresa Ravandi

Date of Decision: November 10, 2022

Significant areas of law: Parent's demand to include specific methods/services in IEP to deal with student's needs.

ISSUES:

- Did School deny student a FAPE by failing to offer structured literacy instruction and evidence-based practices for dyslexia appropriate to meet Student's needs in the IEP?

FACTS OF THE CASE:

- Student was 10 years old and was eligible for special education under the categories of specific learning disability and speech and language impairment, and also met criteria for other health impairment based on attention deficits.

CONCLUSION :-

- School DID NOT deny student a FAPE by failing to offer structured literacy instruction and evidence-based practices for dyslexia appropriate to meet Student's needs in the IEP?

Rationale:-

- IEP offer was based on a comprehensive multidisciplinary evaluation of Student that was not in dispute. Further, goals of the IEP were also not in question.
- School incorporated previous NPS's as well as private examiner's input while making recommendation for specialized academic instruction for student. The school's resource specialist thoughtfully considered and thoroughly answered each question, providing persuasive testimony that was not undermined by cross-examination.
- The IEP is to be read as a whole. There is no requirement that mandatory information be included in a particular section of the IEP if that information is contained elsewhere. (20 U.S.C. §1414(d)(1)(A)(ii)(II); 34 C.F.R. § 300.320(d)(2) (2007); Ed. Code, § 56345, subd. (h).) Hence, Student's contention that the offer failed because it did not specify what subjects would be targeted or the size of the groups was not persuasive.

- The IEP team notes clarified that school was committed to a structured literacy approach. Further, Student's reading goals required a structured literacy program. The school's witness's testimony was sincere, consistent with the evidence, and persuasive.
- To determine whether a school district offered a student a FAPE, the focus must be on the adequacy of the district's proposed program, not that preferred by the parent. (Gregory K. v. Longview School Dist. (9th Cir. 1987) 811 F.2d 1307, 1314 (Gregory K.))
- School followed the California Dyslexia Guidelines which defined the components for an evidence-based structured literacy program. School districts need not specify an instructional method in the IEP unless that method is necessary for a student to receive a FAPE. (71 Fed. Reg. 46,665 (Aug. 14, 2006);
- Requiring a particular method would limit the autonomy and flexibility in tailoring instruction to Student's needs.
- Shutdown during COVID-19 and year at prentice are two intervening variable in regressed performance of student. However, student's witnesses failed to account for these variables.

REMEDIES/ORDER:-

- Student is not entitled to any remedy.

ESCONDIDO UNION SCHOOL DISTRICT v. STUDENT

CASE NO. 2022090699

ESCONDIDO UNION SCHOOL DISTRICT v. STUDENT

Counsel for Student: None (Decided ex-parte)

Counsel for School: Deborah Cesario and Shannyn Shafer

Representative for School: Meggan Lokken

ALJ: Cynthia Fritz

Date of Decision: November 07, 2022

Significant areas of law: Exception to parental consent under FERPA

ISSUES:

- Can School submit referral packets to potential residential treatment centers to secure a placement for Student without parental consent?

FACTS OF THE CASE:

- Student was 13 years old and was eligible under the primary category of autism and the secondary category of intellectual disability. Student was diagnosed with autism spectrum disorder and attention deficit hyperactivity disorder.
- Student demonstrated below average cognitive ability, and had needs in academics, attention, focus, verbal and nonverbal communication, pragmatic skills, impulsive behavior, emotional regulation, perseverating on topics, and mental health. Hence, school found him eligible for emotional disturbance and other health impairment, but parents did not give consent to his IEP.

CONCLUSION :-

- School CANNOT submit referral packets to potential residential treatment centers to secure a placement for Student without parental consent.

Rationale:-

- Students have substantial privacy and confidentiality interests in their school records and the current scenario does not fall under the following exception to the parent consent requirement provided by FERPA:-
 - to comply with a judicial order or lawfully issued subpoena
- as allowed under FERPA, school can redact the personally identifiable information from Student's education records to receive conditional acceptances at residential treatment facilities.

- as regards exception to the parent consent requirement provided by FERPA in case of health and safety emergency, school can independently make this determination and implement it without OAH intervention.

REMEDIES/ORDER:-

- Not applicable.

STUDENT v. CONEJO VALLEY UNIFIED SCHOOL DISTRICT

CASE NO. 2016030817

Student v. CONEJO VALLEY UNIFIED SCHOOL DISTRICT

Counsel for Student: Henry Tovmassian and George Crook

Counsel for School: Wesley Parsons and Siobhan Cullen

Representative for School: Michelle Morse and Lisa Miller

ALJ: Christine Arden

Date of Decision: November, 2016

ISSUES:

- Did school deny student a FAPE by failing to assess him in all areas of disability in a timely manner?
- Did school deny student a FAPE by failing to find him eligible for special education within specified time?
- Did School deny student a FAPE by failing to set measurable goals and appropriate level of performance in all areas of need through his IEP?
- Did School deny student a FAPE by failing to make a formal, specific offer of FAPE for a specified period before conducting an IEP?

FACTS OF THE CASE:

- Student was adopted by parents when he was seven weeks old and started showing behavioral issues at the age of two.
- In the third Study Team meeting, the school psychologist testified that Student had a suspected disability, warranting his assessment for special education. Mother obtained a private psychological assessment of Student from a licensed neuropsychologist, and duly informed the school about her decision.
- The private assessor hired by mother concluded that Student had deficits in executive functioning, poor self-control with his emotions and behaviors and he had problems adequately managing his impulses. The private assessor recommended behavioral and mental health interventions both at school and home.

CONCLUSION:-

- School DENIED student a FAPE by failing to assess him in all areas of disability in a timely manner.

Rationale:-

- The student behaved aggressively with the peers as well as parents almost on daily basis and was also diagnosed with ADHD. Mother also kept school officials informed about student's behavioral issues at home. However, despite escalating behavioral issues, school failed to refer him for special education assessment.
- School improperly failed to acknowledge Mother's request for an IEP for Student as a request to assess him. The team should have informed Mother she had a right to immediately request an assessment of Student and get the assessment process underway.
- A school district's failure to assess in all areas of suspected disability may constitute a procedural denial of a FAPE. (Ed. Code, § 56320, (f);(Park v. Anaheim Union High School District, et al. (9th Cir. 2006) 464 F.3d 1025, 1031-1033.)
- School's unreasonable delay in assessing Student also deprived Parents of important information about his disabilities and, therefore, significantly impeded Parent's opportunity to participate in the decision making process regarding the provision of FAPE to Student.
 - School DENIED student a FAPE by failing to find him eligible for special education within specified time.

Rationale:-

- The school's child find obligation and duty to assess arise only after it has notice of Student's suspected disabilities.
- Mother credibly testified that, at the third Study Team meeting, she told the team she wanted an IEP for Student. Her testimony is corroborated by the minutes of the meeting, which acknowledged that:
 - the team discussed assessment for special education eligibility; Mother expressed concern that the process was lengthy;
 - the team stated it needed to get to know Student better before it would refer him for assessment.
- School did not act within the prescribed time period after getting proper notice of student's suspected disabilities as Student's inability to build or maintain satisfactory interpersonal relationships with peers over a long period of time already existed when he entered kindergarten.
- School DENIED student a FAPE by failing to set measurable goals and appropriate level of performance in all areas of need through his IEP during a certain period. However, after conducting the first IEP, there was no default on part of school.

Rationale:-

- Student was entitled to an IEP containing measurable goals and appropriate present levels of performance in all areas of need which was first triggered by Mother's request for an IEP in the third Study Team meeting. However, school failed to do so for four months and 19 days.
- Mother credibly testified that, at the third Study Team meeting, she told the team she wanted an IEP for Student. Her testimony is corroborated by the minutes of the meeting.
- In the first IEP meeting, assessments conducted by private assessors as well as by School were discussed in detail in presence of all the relevant members. Keeping in view the assessment results, four measurable goals were proposed in the areas of social, emotional and nonverbal communication. The IEP team also developed appropriate accommodations, strategies, and a proposed positive behavior intervention plan for Student.
- School gave Mother an assessment plan proposing additional assessments of Student in the areas of social/emotional behavior intensive social emotional services (ISES); occupational therapy/motor skills development, including sensory needs; functional behavior; and special circumstances paraprofessional support, which assesses whether Student needed an aide. The ISES assessment was a reasonable follow-up to School's psycho educational assessment and private assessments.
- The student's private assessor was neither credentialed as a school psychologist nor has ever worked in a public-school setting nor had any experience or knowledge on development of IEPs. Hence, her testimony on IEP was given less weight.
- -School DENIED student a FAPE by failing to offer him an appropriate placement and services, including appropriate accommodations and modifications, speech and language services, occupational therapy, behavioral interventions, psychotherapy, social skills, and extended school year services by failing to offer him an IEP for four months and 19 days.

Rationale:-

- School's duty to assess student was first triggered by Mother's request for an IEP in the third Study Team meeting. However, school failed to do so for four months and 19 days.
- However, there is no default on part of the school after the first IEP meeting wherein IEP team developed appropriate accommodations, strategies, and a proposed positive behavior intervention plan for Student.
- Student did not prove he required a full time 1-to-1 trained aide from a nonpublic agency throughout the entire school day to access his education.
- Student also failed to prove he required speech therapy or occupational therapy or an extended school year program in order to meet his unique needs and to access his education.

- The evidence established Student behaved properly, for the most part, while he was in a structured classroom setting without the support of an aide which is additional proof that school's offer of FAPE was appropriate.
- School DENIED student a FAPE by failing to make a formal, specific offer of FAPE for a specified period before conducting an IEP.

Rationale:-

- School was required to make a clear specific offer of FAPE after timely assessment for special needs and especially after Mother's request for an IEP in the third Study Team meeting. However, school failed to do so for four months and 19 days.
- However, after the first IEP meeting, school took all the right measures and made a proper, clear and specific offer of FAPE to student keeping in view all his special needs.
- The formal offer of services made in the IEP was clear and contained the requisite specificity. The offered services are adequately described and the duration of each service is specified with particularity. Student offered no evidence that Parents did not understand the placement, services, accommodations and modifications which School offered in the IEP.

REMEDIES/ORDER:-

- School shall reimburse parents the fee paid to private assessor for his assessment as well as for attending the meeting, within 45 days of the Order.
- School shall provide student with compensatory education at School's cost. The compensatory educational services shall not be provided to Student during the time he is regularly scheduled to receive instruction in his core curriculum academic classes so that Student will not miss his then current academic instruction in order to receive compensatory education. The compensatory education is decided as under:-
 - 18 hours of individual counseling provided by a credentialed District counselor;
 - 18 hours of speech and language therapy provided by a District speech and language pathologist; and
 - 150 minutes of behavior intervention services
- School shall provide at least two hours of special education training to the special education administrative, teaching and other professional personnel who provide special education services in the area of the obligations under the IDEA to refer pupils for assessment for special education in all areas of suspected disabilities, and in the area of functional behavior assessments. This training shall be provided by an independent provider, not affiliated with the District, specializing in special education training to school districts.

STUDENT v. SUMMIT PUBLIC SCHOOLS-DENALI

CASE NO. 2018070224

SUMMIT PUBLIC SCHOOLS-DENALI v. Student

Counsel for Student: Valerie Mulhollen

Counsel for School: Megan Moore and Rachael Tillman

Representative for School: Kevin Bock

ALJ: Penelope Pahl

Date of Decision: September, 2018

ISSUES:

- May school assess Student pursuant to its assessment plan, including the diagnostic placement, without parental consent?
- Does school's IEP offer including its offer of placement, services, and accommodations, provide Student a FAPE in the least restrictive environment?

FACTS OF THE CASE:

- Student is eligible for special education and related services with emotional disturbance as a primary eligibility category as well as secondary categories of other health impairment, due to a diagnosis of attention deficit disorder; and specific learning disability.
- Due to student's special needs, parents gave notice to school about their unilateral placement of student in an NPS with the expectation of reimbursement of expenses from the School. School's representative refused to reimburse the said expenses.
- Student's therapist diagnosed him with drug resistant, cyclical, existential depression that was not tied to a situation or his environment.
- Parents and school representatives agreed to place student in NPS recommended by parents and student's therapist till stabilization of his condition. The said agreement was based on the expectation that this will ease student's transition to NPS recommended by school.
- Due to reversal of student's conditions, parents gave prior notice to school that student needed a residential treatment center. School denied this request but agreed to discuss all these issues in upcoming IEP meeting.
- School requested parents to conduct an educationally related mental health services assessment and health assessment, due to the significant change in Student's mental health being reported by Parents. However, parents did not consent to the proposed assessments. Hence, school requested a due process hearing.

CONCLUSION:-

- School MAY NOT assess Student pursuant to its assessment plan, including the diagnostic placement, without parental consent.

Rationale:-

- The diagnostic assessment plan proposed by school did not specify the academic subject for Student's general education. Further, the method of selecting an academic subject for the diagnostic placement was neither included in the assessment plan nor in the prior written notice given to Parents.
- No details as to the type of data to be collected or the criteria to be used to evaluate the placement were included in the assessment plan or in the Prior Written Notice given to parents. The one-to-one program offered during the "diagnostic placement" was not school's usual educational model.
- Neither the assessment plan nor the Prior Written Notice defined the length of the "diagnostic placement". School failed to specify a safety plan for Student, who still struggled with suicidal ideation, or plan for any mental health support during the assessment.
- School placed unreasonable conditions on the assessments, specifically requiring Student to abandon his then current school and attend what it termed a "diagnostic placement," for an unspecified length of time. California law does not have a provision for a "diagnostic placement." Thus if one is requested as an alternate form of assessment, the placement must meet the standard of an appropriate assessment under state and federal law.
- Without specificity as to the assessment methodology to be employed, and consideration of Student's unique needs for the duration of the "alternative assessment," this assessment could not meet the criteria of state or federal law mandating the use of technically sound assessment instruments or instruments used for purposes for which the assessments or measures are valid and reliable. (20 U.S.C. 1414(b)(2) and (3); Ed. Code §.)
 - School's IEP offer including its offer of placement, services, and accommodations, DID NOT provide Student a FAPE in the least restrictive environment.

Rationale:-

- Clarity is a critical component of an offer of FAPE. In *Union School Dist. v. Smith* ((1994) 15 F.3d 1519, cert. den., 513 U.S. 965 (Union)), the Ninth Circuit held that a district is required by the IDEA to make a clear, written IEP offer that parents can understand.
- The school's IEP offer was unclear regarding several aspects including but not limited to questions like how Student's placement was to be implemented; or how long the offered placement would last. Neither the method of providing Career and College awareness instruction, nor how Student was to socially interact with peers were specified.

- Another flaw in the IEP offer was its failure to offer Student instructional time commensurate with other Students at his grade level or justify the limited instructional time offered. This is against the provisions of Section 3053 of title 5 of the California Code of Regulations subdivision (b)(2)(B).

REMEDIES/ORDER:-

- Not discussed.

STUDENT V. SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT

SANTA MONICA CASE BRIEF

Student v. Santa Monica-Malibu Unified School District

Counsel for Student: Parents

Representative for School: Ben Drati

Decided by: Los Angeles Superior Court jury

Date of Decision: October, 2022

ISSUES:

- Did school officials fail to act after suspicions of abuse were raised by district employees?

FACTS OF THE CASE:

- Twin brothers were autistic and non-verbal, but there were signs that something was wrong, including unusually aggressive behavior by the boys.
- A district employee used corporal punishment including physical restraint and battery against the two special-needs students when they were in second grade.
- A bus driver witnessed when school staff physically restrained the boys and punished them by putting hand sanitizer on their cuts, according to court documents.

CONCLUSION:-

- School officials failed to act after suspicions of abuse were raised by district employees.

Rationale:-

- The incident was witnessed by school bus driver and was reported to the officials accordingly.
- All students have an “inalienable right to attend campuses which are safe, secure, and peaceful.” Cal. Const. Art. I § 28(f)(1).
- Students with disabilities are uniquely vulnerable to abuse and harassment, making it reasonably foreseeable that a lack of supervision on the part of school employees could lead to harm. See, e.g., Jennifer C. v. Los Angeles Unified School District, 168 Cal.App.4th 1320, 1327-28 (2008); M.W. v. Panama Buena Vista School District, 110 Cal.App.4th 508, 520 (2003).

Source: <https://www.rhdtlaw.com/the-abcs-of-school-district-liability/>

- A teacher or school official's excessive and unreasonable corporal punishment of a student violates the student's Fourth Amendment rights and gives rise to a cause of action under 42 U.S.C. § 1983. *Preschooler II v. Clark County School Board of Trustees*, 479 F.3d 1175 (9th Cir. 2007); *Doe ex rel. Doe v. Hawaii Dept. of Education*, 334 F.3d 906 (9th Cir. 2003).
- According to the California Child Abuse and Neglect Reporting Act there are 39 classifications of "mandated reporters." They range from teachers, to instructional aides, classified employees of any public school, office administrators and coaches. As the holder of a credential, certificate or permit that authorizes one to work with or observe children, a person is required to report every instance of child abuse or suspected abuse. The only people who may be exempt from this rule are volunteers.
Source: <https://www.hg.org/legal-articles/california-school-s-duty-to-report-abuse-30061>

REMEDIES/ORDER:-

- School is required to pay Forty-Five Million dollars for failing to stop abuse.

RELEVANT INFORMATION:-

- definition of "Abuse" under California's Child Abuse Laws
Sexual abuse or exploitation as listed by incident in 11165.1; neglect; willful cruelty or unjustifiable punishment; any physical injury inflicted other than by accidental means. Penal Code §11164, et seq., Assembly Bill No. 1179, Chapter 127

STUDENT V. EL SEGUNDO UNIFIED SCHOOL DISTRICT

EL SEGUNDO CASE BRIEF

Student v. El Segundo Unified School District

Counsel for Student: Christa Ramey

Representative for School: Melissa Moore

Decided by: Jury of Los Angeles County

Date of Decision: August, 2022

ISSUES:

- Was School district's negligence, including in supervising and training its employees factor in causing harm to student?

FACTS OF THE CASE:

- A 13 year old girl was bullied, tormented and verbally assaulted by three students from November 2017 to June 2018 and one of the bullies started a petition to kill the victim.
- Student suffered from PTSD, cut herself and sought refuge in the school nurse's office nearly every lunch break.
- The parents contacted school administrators and counselor for help, but they dismissed their concerns as drama over a teen love triangle.

CONCLUSION:-

- School district's negligence, including in supervising and training its employees, was a factor in causing harm to student.

Rationale:-

- Even after finding out about petition created to kill the student, teachers did not notify her parents.
- Bullying is to be taken seriously and the administrators are culpable when they don't stop it.
- The former Principal falsely claimed that she has notified police as soon as she learned about the death threat against student. However, police was notified on the next day that too just few minutes before meeting with student's parents.
- As per California's laws and regulations, school must adopt a policy prohibiting harassment, intimidation, or bullying and procedures for preventing acts of bullying and cyberbullying.
- As per California's laws and regulations, School must develop an online training module to assist all school staff, school administrators, parents, pupils, and community members in increasing their knowledge of the dynamics of bullying and cyberbullying.

- If school personnel witness an act of discrimination, harassment, intimidation, or bullying, he or she shall take immediate steps to intervene when safe to do so.” (Education Code Section 234.1(b)(1))

Source: <https://www.aclusocal.org/en/seths-law>

REMEDIES/ORDER:-

- School is required to pay One Million dollars for failing to stop students from bullying.

RELEVANT INFORMATION:-

- definition of “Bullying” under California’s laws and regulations

“Bullying” means any severe or pervasive physical or verbal act or conduct, including communications made in writing or by means of an electronic act, and including one or more acts committed by a pupil or group of pupils as defined in Section 48900.2, 48900.3, or 48900.4, directed toward one or more pupils that has or can be reasonably predicted to have the effect of one or more of the following:

- Placing a reasonable pupil or pupils in fear of harm to that pupil’s or those pupils’ person or property.
- Causing a reasonable pupil to experience a substantially detrimental effect on the pupil’s physical or mental health.
- Causing a reasonable pupil to experience substantial interference with the pupil’s academic performance.
- Causing a reasonable pupil to experience substantial interference with the pupil’s ability to participate in or benefit from the services, activities, or privileges provided by a school.

Source: <https://www.stopbullying.gov/resources/laws/california>

- Policy requirements for schools to stop bullying

California school districts are required to adopt a policy prohibiting harassment, intimidation, or bullying and procedures for preventing acts of bullying and cyberbullying. School district policies must contain key policy and procedural elements, including, but not limited to:

- Statements prohibiting harassment, intimidation, or bullying;
- Procedures for reporting and investigations, including timelines for investigating and reporting complaints;
- Publications of antidiscrimination, anti-harassment, anti-intimidation, and anti-bullying laws;
- Resources available to support LGBTQ and other at-risk students;
- Protections for complainants from retaliation; and
- Identification of a district officer responsible for ensuring district compliances with requirements under the law.

California school districts are encouraged to maintain documentation of complaints and their resolution for a minimum of one review cycle.

Source: <https://www.stopbullying.gov/resources/laws/california>

STUDENT v. WILLIAM S. HART UNION HIGH SCHOOL DISTRICT

CASE NO. 2021110193

Student v. WILLIAM S. HART UNION HIGH SCHOOL DISTRICT

Counsel for Student: Diana Maltz

Counsel for School: Jayme Duque and Daniel Gonzalez

Representative for School: Joanna White

ALJ: June R. Lehrman

Date of Decision: June 29, 2022

ISSUES: Alexia Velarde

- Did School deny Student a FAPE in triennial assessments by failing to assess in all areas of suspected disability?
- Was psychoeducational assessment and speech and language assessment inappropriate thereby denying student a FAPE?

FACTS OF THE CASE:

- Student was eligible for special education services under the category of “multiple disabilities” due to Autism, microcephaly, impulse control disorder, anxiety, and pervasive developmental disorder, all of which adversely affected her educational performance.
- In triennial assessment, Student was not assessed in all areas of suspected disability, specifically, behaviors and mental health.
- Student claimed that School’s failure to conduct a functional behavioral assessment and an educationally related mental health assessment has resulted in denial of FAPE.

CONCLUSION:-

- School DID NOT deny Student a FAPE in triennial assessments by failing to assess in all areas of suspected disability.

Rationale:-

- Functional behavior analysis is only required when a child is removed from a current placement due to behavioral issues. (Butte School District No. 1 v. C.S. (9th Cir. 2020) 817 Fed.Appx. 321 (Butte),)
- The instruments used by school were “technically sound” and demonstrated the effect that behavioral factors had on the functioning of the student. (20 U.S.C. §1414(b)(2)(C); 34 C.F.R. § 300.304 (b)(3); Ed. Code, § 56320, subds. (e) & (f).)

- Just because assessors did not directly observe Student, directly interview her, or administer any assessment instruments directly to her does not mean that School failed to assess Student in all areas of suspected disability, specifically behaviors or mental health.
- In matters alleging a procedural violation, a due process hearing officer may find that a child did not receive a FAPE only if the procedural violation did any of the following: impeded the right of the child to a FAPE; significantly impeded the opportunity of the parents to participate in the decision-making process regarding the provision of FAPE to the child of the parents; or caused a deprivation of educational benefits. (20 U.S.C. § 1415 (f)(3)(E); Ed. Code, § 56505, subd. (f).)
- The IEP team had adequate information to determine the nature of Student's behaviors and consider whether changes in services were necessary and IEP goals were set accordingly.
 - Psychoeducational assessment and speech and language assessment WERE INAPPROPRIATE thereby denying student a FAPE.

Rationale:-

- The school neither did any investigation of any kind concerning Student's current cognitive levels, other than to review a prior assessment tool, nor undertook any efforts to update this information or ensure it was current. Hence, school failed to reevaluate Student in accordance with the procedural requirements of the IDEA. (20 U.S.C. 1414 (a)(2)(A); 34 C.F.R. § 300.303.)
- Although Student was, at the time of assessment in question, 18 years old, there were not multiple prior comprehensive assessments that clearly established Student's cognitive functioning.
- School failed to provide any legal authority that relieved it of the responsibility for conducting a thorough cognition assessment.
- School did not notify Parent of her right to request an assessment, rather school presented Parent with an assessment plan, then produced a legally noncompliant assessment that did not administer such assessments and other evaluation measures as might have been needed to produce the legally required data. (34 CFR § 300.305 (a) and (c).)
- Speech pathologist conducted a "Speech and Language Triennial Review of Records." The records review was cursory in the extreme. The pathologist was unable at hearing to describe, and the report did not list, the records she had reviewed.
- The pathologist appeared evasive about the difference between a "records review" and a "full evaluation" and about what factors go into the determination of which type of process is appropriate. Further, there is no information stated in the report, and none elucidated via testimony at hearing, explaining why student's receptive and expressive language skills are not an area of concern.
- the IEP team was without any critical evaluative information concerning Student's needs in the area of language and speech. That deprivation made it impossible for the IEP team to evaluate the recommendation that Student was no longer eligible for services, or to if she was eligible, to consider and recommend appropriate services necessary to address Student's needs.

- Mother was substantially impaired in her ability to fully participate in the collaborative IEP process. (Timothy O. v. Paso Robles Unified School District, supra, 822 F.3d 1105, 1120 21.)

REMEDIES/ORDER:-

- School shall fund two independent educational evaluations. One shall be in the area of speech and language. The other shall be in the areas of cognitive development and academics. Parent shall choose the assessor(s), who shall conform to school's assessment criteria. School shall provide Student with agency criteria for conducting the assessments within 10 days of this Decision.
- Within 10 days of receipt of notification of Parent's selected assessment provider(s), school shall contact the provider(s) to arrange for direct contract billing.
- School shall convene an IEP team meeting to address Student's special education and related service needs. School shall fund the attendance of the independent educational evaluation assessor(s) at an IEP, at a rate of payment consistent with existing District policy.

STUDENT v. GROSSMONT UNION HIGH SCHOOL DISTRICT

CASE NO. 2021100329

Student v. GROSSMONT UNION HIGH SCHOOL DISTRICT

Counsel for Student: Wendy Dumlao and Erica Mortenson

Counsel for School: Sarah Sutherland and Whitney Antrim

Representative for School: Rose Tagnesi

ALJ: Rommel P. Cruz

Date of Decision: June 29, 2022

ISSUES:

- Did School deny Student a FAPE by offering an unclear and inconsistent 30-day interim IEP, that failed to accurately reflect the offer of general education classes in physical education and an elective class?
- Did School deny Student a FAPE by failing to offer Student a comparable IEP, by offering Student general education courses at the subsequent IEP team meetings?
- Did School deny Student a FAPE by failing to offer Student an appropriate placement at IEP team meetings?

FACTS OF THE CASE:

- Student was eligible for special education and related services under the categories of autism and speech or language impairment.
- Student contends School's offer of four special education classes, not five, and two general education classes, was inconsistent with the written offer of FAPE.
- Parents unilaterally decided to place student in an NPS of their choice and asked for reimbursement of expenses from school as they did not agree with the NPS recommended by school.

CONCLUSION:-

- School DID NOT deny Student a FAPE and offer of IEP was clear and consistent with previous IEP meetings.

Rationale:-

- At the time of transition from one school to another, the Transition IEP decided the goals consistent with student's needs and his IEP in previous school.
- Parents submitted a request to place student in an NPS of their choice, which was denied by school through written notice.

- The above notice is duly supported by IEP meeting notes which mentions that fifth special education elective class shall be determined at a later date and would be based on Student's interests and needs. The sixth class would be general education physical education class, with adapted physical education specialist support. The offer of FAPE did not include a second general education class.
- Parents did not express concerns about the general education classes on Student's class schedule at the IEP meeting scheduled to discuss student's placement at an NPS unilaterally decided by parents.
- Even if the subsequent assignment of two general education classes or the absence of an identified fifth special education elective class resulted in a procedural violation, any inconsistency or lack of clarity did not result in a denial of a FAPE.
- Neither the assignment of two general education classes, nor the unidentified special education elective class significantly impeded Parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to Student, deprived Student of educational benefit, or impeded Student's right to a FAPE. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).); see Target Range, supra, 960 F.2d p.1484.)
 - School DID NOT deny Student a FAPE and offered a comparable program related to general education classes at IEP meetings.

Rationale:-

- Student's contention, and reliance on Parent v. Charter Oak Unified School District, (March 11, 2021) OAH Case Number 2020100198 (Charter Oak), was unpersuasive due to following:-
- In the above case, OAH treated the school district's contention that it offered that student a comparable program as an affirmative defense to the school district's failure to conduct an IEP team meeting or have an IEP in place by the start of the school year; IDEA procedural violations which the school district conceded it committed. Accordingly, OAH held that the school district carried the burden of proving its affirmative defense that despite the procedural violation, no substantive FAPE denial occurred because the school district offered the student a comparable program.
- While in current case, school does not concede failing to offer Student a comparable program or any other significant procedural violations, like the school district in Charter Oak. Hence, burden of proof is on student.
- Student's program at previous school consisted of five special education classes and one general education physical education class. Student's inability to participate in his physical education class was due to school's policy to suspend physical education classes for all of its students because of COVID, and not because Student could not access and benefit from physical education in the general education setting.
 - School DID NOT deny Student a FAPE and placement offered by school was reasonably calculated to enable Student to meaningfully benefit from his education.

Rationale:-

- Evidence established that School recommended NPS's moderate/severe special education class was the least restrictive environment.
- Placement sought by Student, and supported by his experts, was a more restrictive NPS. At such NPS, Student would have less opportunities to mainstream or socialize with his nondisabled peers.
- The evidence did not support Student's contention that size and student population of school's recommended NPS was too large as to impede him from accessing his education.
- Student's recent assessments also established that Student had no difficulty maneuvering a large school campus. Further, his occupational therapy assessment found that he could navigate his school environment and find classrooms and office with the supervision of his aide.
- The occupational therapist observed Student to safely navigate the various school surfaces such as concrete and dirt, and stairs if supervised.
- No testimony or evidence was offered to describe the nature of Student's pacing that necessitated a sensory room larger than any available room at NPS recommended by school.
- Student did not require an RBT, or an aide with equivalent training, to support him as a one-to-one aide. Further, Student did not require a BCBA on-site at school at all times. Further, in school's recommended NPS, moderate/severe special day class was taught by a teacher who was a BCBA for 10 years, with experience working with children with autism and behavior problems.

REMEDIES/ORDER:-

- All of Student's requests for relief are denied.

STUDENT v. SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT

CASE NO. 2022020679

Student v. SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT

Counsel for Student: Robert Burgermeister

Counsel for School: Meagan Kinsey

Representative for School: Dr. Howanna Lundy

ALJ: Deborah Myers-Cregar

Date of Decision: June 20, 2022

ISSUES:

- Did School deny student a FAPE by failing to assess in the areas of speech and language, cognitive processing, gross motor development, fine motor development, occupational therapy, adaptive skills, autism, spectrum disorder, auditory processing and physical therapy?
- Did School deny student a FAPE by failing to offer sufficient goals reasonably calculated to enable student to receive and educational benefit to address student's needs in the areas of expressive communication, receptive communication, gross motor skills, fine motor skills, auditory processing, adaptive living skills, social emotional functioning, behavior and academics?
- Did School deny student a FAPE by failing to offer sufficient programs and supports to address student's needs in the areas of regression and social skills?
- Did School deny student a FAPE by failing to offer a one-to-one aide?
- Did School deny student a FAPE by failing to offer student ABA therapy and ABA clinical meetings?
- Did school deny Student a FAPE by failing to offer parent training regarding student's speech and language impairment?
- Did school deny Student a FAPE by denying parent an opportunity to meaningfully participate in student's IEP process by excusing the school nurse and general education teacher from IEP team meeting without parent's informed consent?

FACTS OF THE CASE:

- Student became eligible for special education under the category of speech and language impairment.
- Parents tried to enroll the student in school as they suspected her disabilities and requested school to assess her for certain disabilities.

CONCLUSION:-

- School DID NOT deny Student a FAPE by failing to assess in the areas of speech and language, cognitive processing, gross motor development, fine motor development, occupational therapy, adaptive skills, autism, spectrum disorder, auditory processing and physical therapy.

Rationale:-

- Parent's testimony was inconsistent in many ways. Hence, was not persuasive.
- A social worker with the Department of Children and Family Services, telephoned school secretary to let them know that student should be tested for speech and language impairment. School secretary responded to the call in timely manner and left messages for the social worker. However, the social worker did not respond to those messages.
- School was unable to track student on the basis of social worker's call as correct and complete details were not provided by the social worker. Further, did not have written consent by an educational rights holder to enroll and assess Student.
- School acted reasonably by informing Parent of the additional enrollment documentation that was needed, and by following and contacting Student's private pre-school to confirm they were aware of the process. The school enrolled the student immediately after receiving all the required documents and informed parents about such enrollment.
- Student's assessments were conducted in person, with four assessors, all parties wearing personal protective equipment, and a written report was completed in due course of time.
- The assessment results were reviewed in first IEP meeting and Student was found eligible for special education with a speech and language impairment. Proper goals were set at the IEP meeting keeping in view student's needs.
- School conducted assessments which would have demonstrated auditory processing deficits, as reported by Parent. The assessors persuasively testified that Student had no delay in her responses to assessment questions. School used alternative instruments to evaluate Student for general processing information, and did not use solely a single measure to evaluate Student. Hence, there is no evidence that school failed to assess student in areas of cognitive processing and auditory processing.
- Parents failed to provide that they reported any information to school suggesting Student had fine or gross motor skills deficits. Further, there was no evidence that either Parent or a teacher made a request for an occupation therapy or physical therapy evaluation. Hence, school did not fail to assess student in the areas of gross or fine motor development, or occupational and physical therapy.
- School conducted two assessments to assess student's adaptive living skills, which were based on Parent's reporting and obtained detailed information about Student's unique profile of adaptive functioning by reviewing her performances in other assessment composites. Hence, school did not fail to assess student in the area of adaptive living skills.

- Parent did not establish that School was on notice that Student had characteristics of autism. Student provided no expert testimony or other evidence proving that Student required such an evaluation. The assessors did not observe any speech and language deficits which indicated Student could have autism. Hence, school did not fail to assess student in the area of autism.
- School DID NOT deny Student a FAPE by failing to offer sufficient goals reasonably calculated to enable student to receive and educational benefit to address student's needs in the areas of expressive communication, receptive communication, gross motor skills, fine motor skills, auditory processing, adaptive living skills, social emotional functioning, behavior and academics.

Rationale:-

- School did not have a duty to offer Student special education and related services before she was assessed and found eligible.
- At the time of the IEP, Student was able to use words and sentences and was understandable. She could ask for help, initiate conversations, greet others, and use her name. She did not exhibit difficulty using spoken language. Hence, she did not demonstrate that she required an additional expressive communication goal, other than her articulation/phonology goal.
- Student was able to follow verbal and non-verbal instructions. She did not exhibit difficulty understanding spoken language and did not establish she required a goal and had an identified, important area of unique need in her receptive communication. Hence, she did not demonstrate that she required a receptive communication goal.
- Student did not exhibit deficits in her gross motor skills. During the preschool years, many students try many kinds of grips, and continue to develop skills such as the tripod grip, and Student was still very young. Her teacher did not report any concerns about Student's motor development.
- Student's profile revealed her conceptual skills score fell in the low average range, her social skills score fell in the average range, and her practical skills score fell in the below average range. Student's practical skills were divided into community use, home living, health and safety, and self-care.
- School did not use only one measure to evaluate Student in her adaptive living skills. Beside the subtests of the two assessments, the evaluation, also the remaining subtests of the assessments, Parent's and teacher's interviews, and her observations of Student were used.
- During the assessment process, Student greeted the assessors and established rapport with them. Her parents and teachers did not report any concerns with Student's social-emotional functioning.
- Student provided no teacher report, credentialed assessor testimony, or expert testimony that demonstrated she required a gross motor skills goal, an auditory processing goal, an adaptive living skills goal, a social-emotional functioning goal, a behavioral goal, of an academic goal.
- School DID NOT deny Student a FAPE by failing to offer sufficient programs and supports to address student's needs in the areas of regression and social skills.

Rationale:-

- Student's IEP goals were set based on her needs and there was no evidence an IEP was necessary to address regression. Student presented no baseline data and evidence of a lack of progress at hearing which required School to convene an IEP team meeting to address regression concerns.
- Student's assessments did not demonstrate that she had social skills deficits. Parent also did not report any concerns about Student's social skills in interview conducted by school staff. Her teacher reported that Student got along well with her peers.
 - School DID NOT deny Student a FAPE by failing to offer a one-to-one aide.

Rationale:-

- During assessment process, Student was able to independently navigate her preschool program without a one-to-one aide. Her teacher did not describe difficulties requiring Student to have a one-to-one aide in the preschool setting.
- Student was well behaved, appropriately social, and able to focus and participate in the assessment process. She did not act out, leave her seat, or leave the room. Student did not require teachers to redirect her to stay on task.
 - School DID NOT deny Student a FAPE by failing to offer student ABA therapy and ABA clinical meetings.

Rationale:-

- Neither parents nor teacher reported that Student had problem behaviors. She did not get into trouble at school, and was always good at home. She did not throw tantrums or act out.
- Student was compliant, motivated, and actively participated in the assessment process. She was friendly and maintained eye contact. Student was calm and answered the assessment questions appropriately.
- The below average score in home living and self-care did not demonstrate a need and justify a goal or in-home ABA therapy services for those tasks, as they were developmentally appropriate for a preschool student.
 - School DID NOT deny Student a FAPE by failing to offer parent training regarding student's speech and language impairment.

Rationale:-

- Student had a mild articulation impairment which could affect her ability to be understood by her teacher, staff members and her peers. She used verbal communication and typical gestures and did not use American Sign Language to communicate.
- Other than above, she did not have deficits in her vocabulary, receptive or expressive communication skills.
- Vide assessment reports, school properly guided parents how they could facilitate speech and language at home, by singing songs and reading books to provide opportunities to produce a variety of sounds, and to model how to produce a sound correctly.
 - School DID NOT deny Student a FAPE by denying parent an opportunity to meaningfully participate in student's IEP process by excusing the school nurse and general education teacher from IEP team meeting without parent's informed consent.

Rationale:-

- The evidence established that based on Parent's agreement in writing, School excused both the nurse and the general education teacher from attending the meeting.
- The excused nurse provided a health assessment as part of the IEP, interviewed Parent, and included information that Parent provided to her.
- The excused general education teacher's interview with the special education teacher and the psychologist was included in the assessment and discussed at the IEP team meeting.
- Parent meaningfully participated in the development of Student's IEP because she was informed about Student's problems, attended the IEP team meeting, heard the assessors explain their reports, had the opportunity to express disagreement regarding the IEP team's conclusions, and had the opportunity to request revisions in Student's IEP. She consented to the IEP and did not request changes to it, until the subject due process request was filed

REMEDIES/ORDER:-

- All relief sought by Student is denied.

BERKELEY UNIFIED SCHOOL DISTRICT v. Student

CASE NO. 2023040764

BERKELEY UNIFIED SCHOOL DISTRICT v. Student

Counsel for Student: No one

Counsel for School District: Lenore Silverman and Ankita Thakkar

Representative for School: Heather Lena Sweeny and Shawn Mansager

ALJ: Kara Hatfield

Date of Decision: May 30, 2023

ISSUES:

- Does Student's behavior pose significant risk of injury to himself or others such that District can remove Student to an interim alternative educational setting for not more than 45 school days?

FACTS OF THE CASE:

- Student was 13 years old and eligible for special education under the category of other health impairment and after a three-year-review assessment, Student's eligibility was changed to primary emotional disturbance, and secondary other health impairment. Student's placement was changed from a public school to an NPS.
- Parent placed student in an NPS as a general education student and requested District to assess Student for eligibility for special education and related services. District completed the assessment process with parent's consent and determined that Student is eligible for special education under the categories of emotional disturbance and other health impairment.
- District recommended and offered placement in a residential facility to which parent did not agree and Student continued to attend NPS as a general education student where he had multiple incidents of majorly disruptive behaviors.
- Within two weeks of starting school in general education setting, student had already been suspended a total of six days for events involving slapping, pushing, punching, and kicking other students, and for saying sexually charged and insulting things to another student. He often provoked fights, used profanity, and used offensive words based on race, disability, appearance, and sexual orientation. He created disruptions in his own classes and other classes he barged into when he eloped from his assigned classes.
- Parent did not want to agree to send Student to another educational setting and wanted a judge to make the decision about what type of educational setting Student required. Hence, District filed a request for due process hearing before ALJ.

CONCLUSION:-

- District proved that Student's behavior posed significant risk of injury to himself or others such that District can remove Student to an interim alternative educational setting for not more than 45 school day.

Rationale:-

- District implemented behavior intervention plan at the NPS attending by Student, however, student continued to exhibit majorly disruptive behaviors including elopement from campus, exiting onto three residential streets that fronted the school, as well as one very busy, major street that had a lot of vehicular traffic, including public buses.
- District had to provide counseling services to other students who were victimized by Student's aggression. Other students and their parents requested to be transferred out of classes in which Student was assigned because Student was so disruptive to their learning. Students and staff expressed that they feel fear in the hallways since Student began attending the School.
- Student's conduct was so threatening or out-of-control that District staff could not resolve the crisis on their own, and they called for additional support and resources from public services including community-based mobile crisis intervention program with skilled staff for medical intervention as well as Police Department.
- District submitted various behavior logs and reports, manifestation determination analyses, and IEP team meeting notes for manifestation determinations and presented credible witnesses in support of its request to remove Student from his current educational placement.

REMEDIES/ORDER:-

- District may immediately remove Student from his current placement and place Student at District's recommended or similar residential facility with an integrated nonpublic school, as an interim alternative educational setting.
- The interim alternative educational setting shall last a maximum of 45 school days, at which point District shall return Student to his current placement, unless otherwise ordered or agreed to by the parties.

STUDENT v. HANFORD ELEMENTARY SCHOOL DISTRICT

CASE NO. 2022050318

STUDENT v. HANFORD ELEMENTARY SCHOOL DISTRICT

Counsel for Student: Mother

Counsel for School District: Deborah Ettinger

Representative for School: Karen McConnell

ALJ: June Lehrman

Date of Decision: August 17, 2022

ISSUES:

- Was the IEP offer made by school FAPE? May School implement student's IEP without parent's consent?

FACTS OF THE CASE:

- The student was very easily distracted, off task, vocalizing, mouthing objects, fidgeting and not focused. She Student required redirections to remain on task when completing her independent assignments and when working in a small group with her teacher in the special day class.
- The school did not offer aide support to student despite parents' request and communication of their concerns.
- The only program accommodations and supports offered were (1) graphic organizers or other outlines to organize thoughts for writing assignments, (2) tests to be given in paper/pencil form rather than on a laptop, and (3), daily during reading instruction, re-phrasing/follow up reading comprehension questions to determine understanding.
- The Assistant Superintendent of Special Services had a heated argument with student's Regional Center advocate wherein former misbehaved with latter and called her "hindrance to the IEP process".

CONCLUSION:-

- The offer made by School WAS NOT FAPE and school MAY NOT implement student's IEP without parent's consent.

Rationale:-

- Regional Center advocate's recollection of incidents around the call and details discussed on call were more chronologically correct as compared to Assistant Superintendent of Special Services.
- Assistant Superintendent of Special Services called the family's advocate at her workplace and attempted to discourage her from expressing the family's viewpoint. This behavior violated the IDEA by interfering with Parents' ability to express their opinions and participate meaningfully at the IEP team meeting.
- The development of the IEP by school did not meet the procedural requirements, and therefore does not provide Student a FAPE.
- School failed to prove that non-academic or socialization aspects of additional mainstreaming would overcome the inference that, without appropriate supports, student might not succeed in additional general education mainstreaming.
- Family presented video of student attempting to complete homework which showed her very distracted, off task, vocalizing, mouthing objects, fidgeting and not focused. Three of the relatives having experience in general education also testified that student had unique needs.
- An IEP must contain a clear written, enforceable offer. However, the student's IEP failed to identify accommodations and supports that Student needed to access her educational program.
- The goals identified in IEP meetings were also not clear to responsible persons as IEP is silent about how those goals will be achieved.

STUDENT v. ATASCADERO UNIFIED SCHOOL DISTRICT

CASE NO. 2022060339

STUDENT v. ATASCADERO UNIFIED SCHOOL DISTRICT

Counsel for Student: Attorneys David Grey and Barbara Grey

Counsel for School District: Sarah Garcia, Karina Demirchyan and Ethan Hicks

Representative for School: Cynthia Ravalin

ALJ: Cynthia Fritz

Date of Decision: August 04, 2022

ISSUES:

- Was Student's violation of the school code of conduct caused by, or had a direct and substantial relationship to, Student's disability or a direct result of Director of Student Intervention Services failure to implement student's IEP?

FACTS OF THE CASE:

- Student had difficulties with physical and verbal aggression, elopement, and off-task behavior since elementary school and needed the support of a board-certified behavioral analyst (BCBA), since middle school.
- On the day of incident, Student's behavior involved off-task behavior, elopement, verbal threats, gestures of physical harm to staff, cursing, and instances of unwanted physical contact upon one staff member. Out of which physical aggression was the only conduct alleged to violate the school code.
- School charged Student with grabbing/patting the buttocks of a staff member and shoving a staff member against a wall twice.
- School psychologist gathered statements from the participants of incident, contacted some school staff for clarifications, interviewed Student, and brought together the witness accounts and documentation regarding Student's disabilities, IEP, behavior intervention plan, assessments, health records, Student observations, and disciplinary record in a written manifestation determination report.
- Manifestation determination team unanimously agreed that Student's conduct during incident was not caused by or had a direct or substantial relationship to Student's disabilities.

CONCLUSION:-

- Student's conduct had NO DIRECT OR SUBSTANTIAL relationship with his disabilities. It was NOT IMPULSIVE, rather it was planned. Further it was NOT A DIRECT RESULT of any failure of school to implement his IEP.
- Further, procedural violations were confronted by student in closing brief, however, these procedural defects were not pled as issues in his complaint. School had no notice of these procedural challenges for hearing. Hence, these are not determined in the decision.

Rationale:-

- Student's statements during the incident showed he understood the situation. He responded throughout the incident to staff that he did not want to comply, did not care if he got hurt, and that people were not the boss of him.
- There were no intense antecedents likely to invoke the physical aggression of the student at the time of incident and he had ample time to make choices about whether to engage in physically aggressive conduct or not.
- Student politely opened a door for preferred staff member then soon after swung an object on the other staff member, showing his ability to decipher between preferred and un-preferred staff.
- Student was given appropriate space and a lot of time and only one person tried to deal with him at once. Staff prompted the student to use calming strategies as well as to take his medication.
- Each school witness was familiar with Student and his IEP, was an experienced educator and qualified to testify in their discipline and had observed Student at school. Further, most of the witnesses corroborated each other's testimony.

REMEDIES/ORDER:-

- Manifestation determination, that Student's conduct was not caused by, or a direct or substantial relationship to, Student's disabilities is affirmed.
- Manifestation determination, that any failure to implement the IEP was not a direct result of Student's conduct is affirmed.
- All relief sought by Student from the expedited hearing is denied.

STUDENT v. SAN DIEGUITO UNION HIGH SCHOOL DISTRICT

CASE NO. 2022020209

STUDENT v. SAN DIEGUITO UNION HIGH SCHOOL DISTRICT

Counsel for Student: Matthew Storey, Jennifer Holzman and Marymichelle Lotano

Counsel for School District: Sarah Sutherland and Whitney Antrim

Representative for School: Tiffany Hazelwood

ALJ: Christine Arden

Date of Decision: August 04, 2022

ISSUES:

- Did school deny FAPE to student by predetermining placement at an NPS?

FACTS OF THE CASE:

- Student had anxiety since the age of three, received services for her communication delays and was diagnosed with ADHD and epilepsy.
- Student's triennial assessment showed that she needed a calm and small atmosphere to learn. Hence, an appropriate NPS was recommended by IEP team and parents consented to it.
- After some time her case manager was changed even though all the other members of IEP team remained same.
- After showing progress on her IEP goals, parents consented for her placement in a larger NPS. In all the IEP meetings none of the team members suggested that student needed a placement in an NPS having a therapeutic setting.
- Her case manager told the IEP meeting that he has decided that student needs placement in an NPS having a therapeutic setting and she should be supported by a school psychologist, rather than a school counselor. Even though he was the least familiar person with student's history as compared to all other IEP team members.
- Her case manager asked parents to give consent to an NPS where students were regularly rowdy and loud, hence, the said NPS was not suitable for her. All the members of IEP as well as parents disagreed with this proposal.

CONCLUSION:-

- School DENIED FAPE to student by predetermining placement at an NPS and by impeding parent's participation in IEP formulation process.

Rationale:-

- A school district's predetermination of an IEP seriously infringes on parental participation in the IEP process, which constitutes a procedural denial of a FAPE.
- Predetermination occurs when an educational agency has made its determination prior to the IEP meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives.
- Student's case manager neither discussed the case with her private therapist, or any other member of IEP team about her behavioral and social emotional needs nor responded to parent's concerns. Rather he made all the decisions on his own and completely disregarded opinions of other members of IEP as well as parents who were more aware of the student's history.
- The NPS suggested by her case manager was not appropriate for her as it admitted students with severe behavioral problems. Hence, the atmosphere was loud, rowdy and negative which would have resulted in triggering her anxiety. Further, she did not need as restricted environment as offered by the said NPS.
- Her case manager was required to have an open discussion with the other IEP team members regarding the appropriate nonpublic school placement to meet Student's needs. His refusal to do so evinced a predetermined, unchangeable offer.

REMEDIES/ORDER:-

- In this case Parent's unilateral placement of Student at the NPS was appropriate and reasonable.
- Parents must provide proof to school that they have incurred expenses on tuition fee and transportation of student to NPS of their choice and school shall reimburse the said expenses.
- School shall not be required to reimburse mandatory registration fees or interest charges paid by parents at NPS of their choice.

STUDENT v. SAN DIEGUITO UNION HIGH SCHOOL DISTRICT

CASE NO. 2022030378

STUDENT v. SAN DIEGUITO UNION HIGH SCHOOL DISTRICT

Counsel for Student: Parents

Counsel for School District: Attorney Jennifer Fant

Representative for School: Tiffany Hazelwood

ALJ: Jennifer Kelly

Date of Decision: September 30, 2022

ISSUES:

- Did school deny FAPE to student by failing to provide speech and language services as decided in IEP?
- Did school deny FAPE to student by failing to provide specialized academic instruction as decided in IEP?
- Did school deny FAPE to student by failing to implement the Self and Match system for Student's independent functioning, to implement the fading plan for the special circumstances instructional aide support or provide an appropriately trained one-to-one special circumstances instructional aide?
- Did school deny FAPE to student by committing procedural violations in development of IEP?
- Did school fail to provide student's educational records on parent's request?

FACTS OF THE CASE:

- Student had Autism and attended a difference school in fifth and sixth grade where he Social-Emotional Learning Foundations program taught by a special education teacher.
- In the last IEP meeting at the previous school it was determined that Student was achieving academically within the average or better range in all areas except reading and listening comprehension.
- New FAPE was offered by the new school in their IEP meeting which included one-to-one support by an instructional aide in the general education setting, extensive program accommodations etc.
- After raising some issues, Parents agreed to all components of the IEP but disagreed with Student's placement in the co-taught English class and 1,800 minutes yearly group speech and language services.
- Parents did not want Student to remain in a special education homeroom taught by a special education teacher. Hence, school amended its FAPE keeping in view the concerns of parents.

CONCLUSION:-

- School DID NOT deny FAPE to student by failing to provide speech and language services as decided in IEP?

Rationale:-

- Parents' consent is mandatory for implementing any component of IEP. As the parents did not provide consent to the speech and language services offered by school, school was under no obligation to provide such services.
- Student had pragmatic and social communication deficiencies and had no other language or speech delays as certified by an experienced and credible Speech Pathologist.
 - School FAILED to provide specialized academic instruction to student as per decisions in IEP.

Rationale:-

- Workability lessons were included in Student's program which resulted in reduction of time allocated to more appropriate lessons.
- The workability lessons provided to student were vocational and career-based lessons which neither addressed Student's unique educational needs nor contributed to the progress on Student's IEP goals.
- A disabled student younger than age 16 is not required to have post-secondary goals and transition services unless the IEP team determines this is necessary.
 - School DID NOT fail in providing the student specialized academic instruction in the co-taught class in conformity with IEP.

Rationale:-

- Parent's concern that student was having trouble in co-taught English class was a misunderstanding as per evidence presented by the teachers. Rather the student was doing very well in co-taught English class. He participated in the class by reading the texts, responding to questions, working in paired and small groups with classmates, and making presentations to the class.
- Student's progress was closely monitored by and discussed between his English Teacher and Special Education Teacher and discussed with his supporting aide. Both the teacher are highly qualified and experienced in their area of expertise.
- A variety of strategies were used to work on student's reading and comprehension skills which contributed towards achieving the goals determined in IEP.
 - School FAILED to implement the "Self and Match" system for Student's independent functioning but DID NEITHER fail to implement the fading plan for the special circumstances instructional aide support NOR failed to provide an appropriately trained one-to-one special circumstances instructional aide.

Rationale:-

- an appropriate behavior monitoring system requires students to rate their own behavior, receive feedback from the teacher, and earn a reward for demonstrating appropriate behaviors.
- School's claimed that it's grade check-in system was equivalent to "Self and Match" system. However, as the grade check-in system does not perform above functions, it is not appropriate self-monitoring system.
- School did not have updated progress of student in subsequent IEP meetings. The failure was material and resulted in denial of FAPE to student.
- Parents had a misunderstanding that a fading plan was in field. However, no fading plan was decided in IEP hence, school was under no obligation to implement such plan.
- Student claimed that his instructional aides were internees and were not qualified enough to do the job. However, school presented sufficient evidence that all the instructional aides were properly trained for the job. Further, the IDEA does not require an IEP to specify the qualifications or training of service providers and student did not prove the instructional aides who worked with him were unqualified.
 - School DID NOT deny FAPE to student by committing procedural violations in development of IEP.

Rationale:-

- Student showed progress in all of his goals determined in IEP which addressed Student's unique areas of need and contained a statement of how the goals would be measured.
- All the IEP goals were measurable, appropriately ambitious, and sought to improve an identified area of deficit for Student with realistic baselines which reflected his current performance.
- The IDEA does not require an IEP to adopt the specific form of data collection preferred by a child's parents.
- Progress on the goals was determined not just on data, but also on observations of the teachers and service providers working with Student.
 - School DID NOT fail to provide student's educational records on parent's request.

Rationale:-

- Other than asserting the lack of raw data or school's alleged misinterpretation of the data prevented them from meaningful participation, parents did not articulate how the lack of any such raw data hindered them.
- Parents participated in each of these IEP team meetings and their issues were appropriately addressed by the school.

REMEDIES/ORDER:-

- School failed to implement the “Self and Match” system for Student’s independent functioning. Student asked for implementation of an evidence-based intervention to increase Student’s independence which was already implemented by school. However, as a remedy, training of Pacific Trail’s administrators and staff on implementing accommodations is warranted.
- Due to partial default in terms of workability lessons, student asked for reimbursement of expenses incurred on private speech and language and academic tutoring services. This remedy was denied.
- The student also claimed reimbursement of expenses incurred on intensive summer program focused on independent function, cognitive processing skills and reading comprehension. This remedy was denied.
- As a remedy for denial of FAPE, Student is entitled to a total of 31 hours of compensatory education in the area of academics.
- School shall provide and fund the services through its Special Education Local Plan Area contractors or a certified non-public agency with whom school contracts, at Parents’ discretion and choice.

STUDENT v. SACRAMENTO CITY UNIFIED SCHOOL DISTRICT

CASE NO. 2022080223

STUDENT v. SACRAMENTO CITY UNIFIED SCHOOL DISTRICT

Counsel for Student: Mother

Counsel for School District: Kaitlyn M. Tucker and Jennifer N. Baldassari

Representative for School: Geovanni Linares (Director)

ALJ: Paul H. Kamoroff

Date of Decision: September 22, 2022

ISSUES:

- Does maintaining Student's current placement may cause such a substantial risk of injury to Student or others that district may remove Student to an interim alternative educational setting for not more than 45 school days without Parent's consent?

FACTS OF THE CASE:

- School social worker and psychologist informed Vice Principal that student was viewing and searching inappropriate (violent) content on his school computer during class.
- The school counselor contacted the mother and offered counseling services to student. However, she claimed that he was already taking private counseling which was untrue.
- School social worker and psychologist kept meeting the student for his welfare and came to know that student has very violent thoughts for his classmates. The student also had a violent encounter with English teacher.
- Student's started threatening and bullying minority students, on the basis of their sexual orientation specially females belonging to LGBTQ community. This made his classmates afraid of him.
- The student also misbehaved, threatened and used offensive and sexually explicit words for teachers as well as vice principal which terrorized them as well.
- The student's private therapist also informed the district that student intended to rape and murder his classmate. Hence, the district involved Police Department's Mental Health Unit.
- In an IEP meeting it was concluded that student is eligible for special education and related services under the categories of specific learning disability and other health impairment.
- In the hearing it was noted that both student and his mother had prejudice against members of LGBTQ community as both of them blamed the said community for all issues. Mother also termed student's violent encounters as pranks.
- School psychologist opined that student required placement at a small, therapeutic, nonpublic school which has a lower adult-to-student ratio and recommended a suitable school for this purpose.

CONCLUSION:-

- Maintaining Student's current placement CAUSES such a substantial risk of injury to others that school may remove Student to an interim alternative educational setting for not more than 45 school days, without Parent's consent.

Rationale:-

- The student's violent and inappropriate behavior was evident from volumes of behavior logs and reports, victim and witness statements, and police reports submitted by district.
- The above logs were also supported by testimonies of school social worker, psychologist, teacher, vice principal, and police officers.
- School psychologist is educated, experienced and has credibly opined that full implementation of Student's IEP, even with an individual aid and behavior services shall not eliminate the risk of injury for other students and school staff.

REMEDIES/ORDER:-

- Within 15 days of the decision, school may remove Student from his current placement and place him in the recommended or similar nonpublic school, as an interim alternative educational setting.
- The interim alternative educational setting shall last a maximum of 45 school days, after that student may return to his placement at current school unless otherwise ordered or agreed to by the parties.

STUDENT v. SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT

CASE NO. 2022030985

Student v. SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT

Counsel for Student: Libbie Chase

Counsel for School District: Karen Gilyard, and Carlos Gonzalez

Representative for San Bernardino City: Dr. Howanna Lundy

ALJ: Deborah Myers-Cregar

Date of Decision: September 09, 2022

ISSUES:

- Did the school fail to provide FAPE (Free Appropriate Public Education) to student by delaying required assessments?
- Did school fail to provide IEP to student by failing to design program that meets student's unique needs in the areas of social-emotional goals, math goals and reading goals?
- Did the school deny student FAPE by affecting parent's ability to participate in decision making by failing to produce required education records and the failure to assess student's emotional progress?

FACTS OF THE CASE:

- Student has previous history of psychological health issues and did not have sufficient access to technology required for online classes.
- San Bernardino City did not have sufficient record of student's special needs at the time of transfer and took appropriate steps to collect the record to be discussed in IEP meeting within 30 days of student's transfer.
- As per notes of IEP meeting, previous assessments of student were outdated and psychoeducational re-assessment was required.
- Parents also communicated their concerns regarding Wi-Fi connectivity issues at their home as well as student's mental health.
- The special education teacher also failed to understand previous school's FAPE offer and did not make much effort to resolve the issue.
- School failed to provide the student an assessment plan for psychoeducation at or after her triennial IEP team meeting despite having sufficient information which asked for detailed assessment.
- The school's health assessment test was timely, appropriate and conducted by a registered school nurse.
- Student did not require any assistive technology as she was provided with Chromebook or Wi-Fi hotspot by school.

- Student was neither introduced to school counselor nor to school psychologist and there was no update on her emotional health.
- Student failed to establish that parents submitted any written request for access to her academic records.

CONCLUSION:-

- School denied FAPE to student by failing in appropriate assessment of Psychoeducation, mental health services and health issues.

Rationale:

School had sufficient information of previous history of sexual abuse and self harm of the student gathered as under:-

- Relevant record was shared by previous school which mentioned that she had to remain in foster care for some time and had faced trauma of sexual abuse and used self-harm as her coping mechanism
- Her case manager knew that she was well below grade level in all academic areas and she failed half of her classes during freshman year and that her performance didn't improve much over time.
- The school knew her previous assessments were outdated and reassessment was required.
- The school also had information that student frequently remained absent in virtual classes due to mental health issues.
- her special education teacher didn't understand FAPE offered by previous school and didn't make any effort to get more information in this regard while her general education teacher couldn't recommend the proper placement for the student.
- She was also remaining absent from online classes and communicated her concerns in IEP meetings and school was not justified to consider self-harm as normal thing not requiring immediate attention. Hence, school was bound to conduct appropriate assessment in this regard.
 - School did not deny FAPE to student by failing in appropriate assessment of assistive technology.

Rationale:-

School provided ChromeBook or Wi-Fi hotspot to student considering her homeless shelter situation and just because student demanded a calculator does not mean that she needs assistive technology. Further student had contact information of the department whom she could reach in case of any trouble.

- School denied FAPE to student by failing to design appropriate programs relating to social-emotional goals, math goals and reading goals.
- Rationale: The student's most recent scores were sufficient evidence that her educational performance is affected by social-emotional goals, her parents also communicated this concern in IEP meetings and her performance improved after on-campus classes. She also admitted in IEP meetings that Maths is an area where she lacks. Neither she was provided with immediate access to her counselors nor the provided schedule met the needs of the student.
- School did not deny FAPE to student by impeding parent's ability to participate in decision making by failing to produce educational records.

Rationale:-

The school is required to share educational record with parents on their demand. However, there is no evidence on record which shows that parents submitted any written request before school authorities. Hence, school cannot be held accountable in this regard.

REMEDIES/ORDER:-

- Student is entitled to equitable remedies in shape of compensatory education. The licensed and qualified assessors shall be chosen by the student and will not exceed the rate specified by SELPA.
- The school shall develop appropriate goals for student in the areas of social-emotional skills, maths and reading. The educational therapies shall also be provided to the student at an hourly rate established by SELPA.

STUDENT v. MILLER CREEK SCHOOL DISTRICT

CASE NO. 2022060347

Student v. MILLER CREEK SCHOOL DISTRICT

Counsel for Student: Donald J. Farber

Counsel for School District: Attorney Jan Tomskey

ALJ: Brian H. Krikorian

Date of Decision: September 06, 2022

ISSUES:

- Did the school district deny Student a FAPE by removing him from NPS without Parent's permission and without an IEP meeting prior to change of placement?

FACTS OF THE CASE:

- Student had autism and speech and language impairment. He was placed in IEP at NPS under an independent contract with school.
- Director of NPS also informed the parents that student was "aging out" from the curriculum offered by the NPS.
- Student's occupational therapist reported several incidents of student's outbursts, tantrums and conflicts with parents to NPS which were duly communicated to district as well.
- NPS sent a 20-days written notice terminating ISA before terminating the contract with district.
- NPS also informed parents in writing that they have not expelled the student, rather have found a space for him in another nonpublic school under the Master Contract and California law. However, parents rejected the placement.
- Student alleged that an IEP meeting was required with parents before declining education to student by the NPS as it resulted in improper change of placement.

CONCLUSION:-

- District DID NOT violate the Section 1415(k) of the IDEA and DID NOT deny student a FAPE by removing him from NPS without Parent's permission and without an IEP meeting.

Rationale:-

- NPS's decision to terminate the contract was backed by concern that student will not return to physical learning program and he was aging out of the program offered by the said NPS.
- As per master contract between NPS and District, either party could terminate the agreement after giving 20-day written notice of the termination.
- Prior to termination, district located another contracted nonpublic school that could carry out Student's IEP as per his age and needs.

Student v. PIEDMONT UNIFIED SCHOOL DISTRICT

CASE NO. 2023010391

Counsel for Student: Kristin Springer and Shira Mowlem

Counsel for District: David Mishook and Lilianna Romero

Representative for District: Douglas Harter

ALJ: Theresa Ravandi

Date of Decision: July 11, 2023

Significant areas of law: - Failure to complete assessments in a timely manner is a procedural violation that significantly impede parental participation in the IEP process.

ISSUES:

- Did District deny Student a FAPE by failing to timely complete speech and language and occupational therapy assessments after parent's consent?

FACTS OF THE CASE:

- Student was ten and half (10.5) years old and eligible for special education under the category of specific learning disability.
- Student asserts that District was required to complete a speech and language and an occupational therapy assessment within 60 days of Parent's consent to assess and denied him a FAPE by failing to complete these assessments.
- District argues it was not required to complete these assessments because Student disenrolled from the District. Hence, it had no duty to assess Student once Parents privately placed him at an NPS.

CONCLUSION:-

- District **DENIED** Student a FAPE by failing to timely complete speech and language and occupational therapy assessments after parent's consent.

Rationale:-

- Special education assessments must be completed, and an IEP team meeting held, within 60 days of receiving consent, excluding school vacations in excess of five school days and other specified days. (20 U.S.C. § 1414(a)(1)(C); 34 C.F.R. § 300.301(c); Ed. Code, §§ 56043, subd. (f)(1), 56302.1, subd. (a), & 56344, subd. (a).)
- The IDEA and its implementing regulations do not distinguish between private school students who are privately placed because of a FAPE dispute or those privately placed as a matter of preference. (Ibid.)

- Parent paid a deposit for the NPS to hold a spot for Student and paid in full tuition costs of the NPS prior to Student's IEP team meeting. Parent's action showed an intent to follow private assessor's recommendation to place Student at a specialized school for children with dyslexia. Even so, Parent's action and intent, and Student's subsequent disenrollment, did not eliminate District's duty to assess Student pursuant to a signed assessment plan.
- Enrollment is not a prerequisite to assessing a student's special education needs. "The Department of Education's regulations implementing the IDEA specifically contemplate that, upon a parent's request, a school district must evaluate a child residing in its district for purposes of making a FAPE available to her, even if she is enrolled in a private school in another district." (*Bellflower Unified Sch. Dist. v. Lua*, (9th Cir. 2020) 832 F. Appx 493, 495–96). Similarly, disenrollment, in and of itself, does not relieve a district of its obligation to timely complete agreed-upon assessments.
- Following Student's disenrollment, District continued to engage Parent in FAPE discussions in an effort to finalize Student's IEP. However, it failed to take any steps to conduct Student's speech and occupational therapy assessments. This denied Parents a meaningful opportunity to participate in the IEP development process. (*Target Range*, supra, 960 F.2d 1479, 1484.)
- In failing to timely assess Student's language and fine motor needs, District deprived the IEP team, including Parents, of important assessment information. (*Amanda J.*, supra, 267 F.3d 877, 894.). Without this information, Student's IEP team could not determine if Student had educational needs in these areas and, if so, how to best address them. "Procedural violations that interfere with parental participation in the IEP formulation process undermine the very essence of the IDEA." (*Id.* at p. 892.)
- District was responsible for timely completing Student's speech and language and occupational therapy assessments. Student proved District committed a procedural violation by failing to timely complete the agreed-upon assessments. (*Park*, supra, 464 F.3d 1025, 1032-1033; *Timothy O.*, supra, 822 F.3d 1105, 1118.)
- The Ninth Circuit has held that a procedural error resulting in a loss of an educational opportunity denies a student a FAPE. (*Doug. C. v. Hawaii Department of Education* (9th Cir. 2013) 720 F.3d 1038, 1047 (*Doug C.*)) "A procedural error results in the denial of an educational opportunity where, absent the error, there is a 'strong likelihood' that alternative educational possibilities for the student 'would have been better considered.'" (*Ibid.*, quoting concurring opinion of Judge Gould in *M.L. v. Federal Way School Dist.* (9th Cir. 2005) 394 F.3d 634, 657.)
- District's failure to assess suspected areas of need as identified in the assessment plan resulted in a loss of educational opportunity under the rationale of *Doug C.* Without assessment data on the impact of Student's speech, language, or fine motor skills on his learning, Student's IEP team could not consider appropriate services or alternative programming to meet such needs. As such, these assessment failures significantly impeded Parents' informed and meaningful participation at the IEP team meeting. Had District completed these assessments, the IEP team could have discussed the results at the IEP team meeting and determine whether additional or alternative programming was warranted.

REMEDIES/ORDER:-

- An independent educational evaluation at public expense may be awarded as an equitable remedy, if necessary to grant appropriate relief to a party. (Los Angeles Unified School Dist. v. D.L. (C.D.Cal. 2008) 548 F.Supp.2d 815, 822-23.)

Student v. CABRILLO POINT ACADEMY

CASE NO. 2023020680 2023020409

Counsel for Student: Paul A. Hefley, Jr.

Counsel for Academy: Courtney M. Brady

Representative for Academy: Dr. Pamela Gandara

ALJ: Jennifer Kelly

Date of Decision: July 20, 2023

Significant areas of law: Failure to consider and discuss private assessments in IEP is against the requirements specified under the IDEA.

ISSUES:

- Were Academy's psychoeducational assessment and report appropriate?

FACTS OF THE CASE:

- Student was five (05) years old eligible for special education under the primary category of autism. Student qualified for early intervention services through the Inland Regional Center based upon developmental delays. He received occupational therapy and speech and language services.
- Parents requested Academy to conduct evaluations in the areas of psychoeducation, occupational therapy, speech and language, visual processing by a developmental optometrist, audiological processing by an audiologist, functional behavior, and emotionally related mental health services.
- Academy conducted the assessments, but Student contends that the aforesaid assessments did not accurately reflect Student's needs, specifically in the areas of auditory and visual processing, functional behavior, and assistive technology.

CONCLUSION:-

- Academy's psychoeducational assessment and report **WERE NOT** appropriate.

Rationale:-

- If a parent obtains an independent educational evaluation or shares an evaluation they privately paid for, the school district must consider the evaluation when making decisions about the student. (20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. §§ 300.304, 300.502(c)(1).) A school district has no obligation to adopt the evaluator's recommendations or conclusions. (See T.S. v. Board of Educ. of the Town of Ridgefield (2nd Cir. 1993) 10 F.3d 87, 89-90.)
- Academy did not prove it considered the visual and auditory processing reports provided by Parents as part of the psychoeducational assessment. (20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304.)

- Academy did not explain whether private assessors' testing accurately captured Student's auditory and visual processing deficits and needs and offered no evidence how it interpreted the private assessor's auditory processing evaluation or visual processing evaluation. Academy also did not explain how these reports informed its decisions about Student's skills and deficits in these areas. Academy provided no explanation for failing to consider any of the findings of private assessments results, or their recommendations for accommodations and services.
- Academy did not prove the outcome of Student's phonological and visual processing assessments were sufficiently comprehensive to identify Student's special education and related service needs as required by the IDEA. (34 C.F.R § 300.304(c)(6).).
- Academy failed to meet its burden of proving its psychoeducational assessment was legally compliant based upon deficiencies in the phonological and visual processing components.
- Academy did not establish that its assessments were sufficiently comprehensive to rule out visual and phonological deficits, or that additional visual and auditory processing assessments were not necessary.

REMEDIES/ORDER:-

- Within 30 calendar days of this Order, Academy shall contract with a licensed school psychologist of Parents' choice, for an independent psychoeducational evaluation report at a cost not to exceed \$5,000.00. Academy shall hold an IEP team meeting within 30 days of receipt of the independent psychoeducational evaluation and fund up to two hours of the cost of the assessor's attendance at the IEP meeting to review the evaluation.
- Within 15 days of the start of the school year, Academy shall convene an IEP team meeting to discuss Student's services, the continuum of placement options, and Student's least restrictive environment, and shall make a placement offer that complies with IDEA procedures. Parents shall be provided an opportunity to ask questions and express their concerns about the placement offer.
- Within 30 calendar days from the date of this Order, Academy shall contract with a non-public agency or independent law firm specializing in special education law to provide four hours of training to Academy's administrators and special education staff concerning requirements and best practices for promoting parental participation and avoiding predetermination of FAPE offers at IEP team meetings.

Within 30 calendar days of this Order, Academy shall contract with a nonpublic agency of its choice to provide Parents four hours of parent counseling and training to assist Parents in understanding the special needs of Student and help Parents to acquire the necessary skills that will allow them to support the implementation of Student's IEP. The services shall be provided by a non-public agency by a qualified social worker, psychologist, guidance counselor, or other qualified personnel, and shall include tools for effective communication with teachers, staff, and administration.

Student v. SACRAMENTO CITY UNIFIED SCHOOL DISTRICT

CASE NO. 2023020910

Counsel for Student: Parent

Counsel for District: Kaitlyn Tucker and Katherine Woznick

Representative for District: Geovanni Linares

ALJ: Brian H. Krikorian

Date of Decision: July 19, 2023

Significant areas of law: Failure to implement IEP is denial of FAPE.

ISSUES:

- Did District fail to implement Student's IEP?

FACTS OF THE CASE:

- Student was fifteen (15) years old and eligible for special education under the categories of specific learning disability and other health impairment.
- Student looked at inappropriate material on his computer and phone during class. A school psychologist, contacted Parent to inform her of the matter, and suggested Student may need some counseling. Parent acknowledged Student's conduct and agreed to set up counseling for Student.
- Over the next two months District monitored Student and deemed him a "medium risk, harm to others." District also held two SST meetings. While Student had not committed any overt act which would be viewed as a danger to others or himself, the SST team felt it necessary to monitor and assist Student to avoid any actual events that may harm Student or others.
- At the end of the second SST meeting, the team recommended that Student be assessed for special education. Parent agreed to the assessment, so long as Student was not pulled out of class for assessments.
- District failed to complete Student's assessments and conduct IEP meeting within the prescribed time. However, the District recognized and acknowledged the delay on its part and the impact of the aforesaid delay on Student's behavior and also offered compensatory education to the Student.

CONCLUSION:-

- District **FAILED** to implement Student's IEP.

Rationale:-

- There was no dispute that the assessment was not completed within 60 days. Parent testified that she did not dispute that she had asked the assessors not to remove Student from his classes for assessment purposes. In addition, Student had significant behavioral problems and concerns,

including threats made by Student to other students and staff and the resulting suspension from school, that caused District to stop the assessments. While these issues delayed the process, District did not sufficiently explain why they could not have used alternative means and scheduling to complete the assessment within the 60 day timeline.

- There was no evidence presented, beyond the assessment delays and Student's behavior, why the second IEP meeting was scheduled over two months later. The team members acknowledged that, even though IEP team meeting was held, District did not complete the assessment within the 60-day timeline. However, District offered to provide compensatory education for the time lost during the delay.
- District conducted a Manifestation Determination meeting. At the Manifestation Determination meeting, the team decided that the Student's conduct was the direct result of a failure to implement the IEP, which had just been developed. An additional assessment plan was presented to Parent by the SELPA for a behavioral intervention plan as well as speech and language assessment, and she signed the assessment plan.
- Based upon the findings at the manifestation hearing, the lack of implementation of IEP further resulted in the exacerbation of Student's inappropriate behaviors. Further, District acknowledged both in the IEP and in subsequent letters, that it delayed completing the IEP process. While it was laudable that District was proactive and addressed the delay by immediately providing remedial education, that does not excuse the actual violation.

REMEDIES/ORDER:-

- Although District denied Student a FAPE, it has already provided compensatory education. Student is not entitled to a remedy.

HUENEME ELEMENTARY SCHOOL DISTRICT v. Student

CASE NO. 2023030299

Counsel for Student: Vikki Rice

Counsel for District: Melissa Hatch and Beatrice Hoffman

Representative for District: Stephanie Barnes

ALJ: Judith L. Pasewark

Date of Decision: July 10, 2023

Significant areas of law: Assessing Student without conditions imposed by Parent.

ISSUES:

- May District assess Student at District office or school site, without conditions imposed by Grandparent?

FACTS OF THE CASE:

- Student was thirteen (13) years old and eligible for special education and related services under the category of other health impairment, and speech and language impairment.
- Grandparent requested that OAH order District to conduct Student's assessments in a neutral setting and allow Grandparent to be present during the assessments to comfort Student's anxiety.
- Student's motion for affirmative relief was denied. Consequently, District filed this request for due process hearing to request permission to assess without Grandparent's permission.

CONCLUSION:-

- District **MAY** assess Student at District office or school site, without conditions imposed by Grandparent.

Rationale:-

- Student had changed substantially since his last assessments, warranting reassessments in all areas of suspected disability as during last five years Student experienced significant developmental changes, including puberty, COVID-19 isolation, and virtual schooling.
- Grandparent provided District with a letter from a psychiatric-mental health nurse practitioner and clinical psychologist treating Student. This letter put District on notice of Student's behavior and mental health diagnoses as other specified trauma-stressor related disorder; attention deficit hyperactivity disorder, and mild to moderate intellectual disability and ruling out autism spectrum disorder. Student presented with sufficient severity, social impairment, and psychiatric disturbance to warrant home-hospital instruction because he remained challenged by aggressive and impulsive behaviors which made the traditional classroom setting inappropriate at that time. Student

remained impulsive, highly reactive, distrustful of others and attempted to control communication with maladaptive strategies. This letter also supported District's determination that it needed to reassess Student.

- District's special education staff identified a range of concerns they believed warranted a full reassessment in addition to the assessment being a required triennial reevaluation including a comprehensive cognitive and behavioral assessment and assessment of self-esteem, ability to interact with peers and his ability to regulate his emotions and behaviors, academic performance to determine Student's present levels of academic performance and update Student's IEP with appropriate goals and services, health assessment, etc.
- District established that it was statutorily obligated to conduct a triennial assessment of Student. Not only was the assessment overdue, but District had ample information indicating the changes in Student's educational and social emotional needs warranted reassessment. District also established that it developed a legally compliant, written assessment plan, which it provided to Grandparent which met the statutory requirements of California Education Code section 56321. Grandparent was entitled to no more, nor did Grandparent have veto power over District's right to reassess Student.
- District established that Grandparent, with the assistance of her advocate, actively thwarted each attempt to complete the health assessment. The evidence established that District's staff attempted to schedule Student's health screening on seven occasions. Grandparent only provided partial responses to the health questionnaire and did not provide consent to contact Student's medical providers.
- Grandparent failed to make Student available for in-person testing by cancelling scheduled assessment dates and preventing virtual observations.
- If parents do not consent to the reassessment plan, the district may request permission to assess without parental consent by showing at a due process hearing that it is unable to obtain parental consent to needed evaluations. (20 U.S.C. § 1414(c)(3); 34 C.F.R. § 300.300(c)(1)(ii)(2006); Ed. Code, §§ 56381, subd. (f)(3), 56501, subd. (a)(3).) Further, a parent who wishes that their child receive special education services under the IDEA must allow reassessment if conditions warrant. (Gregory K. v. Longview Sch. Dist., (9th Cir. 1987) 811 F. 2d 1307, 1315.)

REMEDIES/ORDER:-

- District may conduct a multidisciplinary assessment of Student pursuant to the assessment plan.
- District may conduct the assessments at its district offices, a school site, or any other location District and the assessors deem appropriate to obtain valid assessment results.
- District shall notify Grandparent within 15 business days of this Decision, and of the dates, times, and places District requires Grandparent to present Student for assessment. District has the

authority to reject or approve any changes to the designated assessment dates proposed by Grandparent.

- Grandparent is ordered to cooperate in making Student available for assessments as requested by District to comply with state and federal timeline requirements.
- Grandparent may not dictate any conditions or veto any district locations selected by District for Student's assessments.
- Grandparent may not be present during Student's assessments unless deemed appropriate by the assessor.
- District shall communicate with Grandparent directly through email correspondence about scheduling and conducting the assessments and scheduling the IEP team meeting to discuss the assessment results.
- If Grandparent fails to cooperate in making Student available to District to complete the multidisciplinary assessments, in their entirety, on days requested by District, District shall no longer be obligated to provide Student special education and related services.

SANTA ANA UNIFIED SCHOOL DISTRICT v. Student

CASE NO. 2023030528

Counsel for Student: Parent

Counsel for District: Jennifer Fant

Representative for District: Rae Rice and Diane Nicholas

ALJ: Charles Marson

Date of Decision: July 10, 2023

Significant areas of law: When to implement IEP without Parent's consent?

ISSUES:

- Did District's proposed amended IEP with placement at an NPS, offer Student a FAPE such that District may implement it without Parent's Consent?

FACTS OF THE CASE:

- Student was nine (09) years old and eligible for special education under the categories of emotional disturbance and other health impairment.
- District wants to remove Student from his special day class to an NPS by contending that Student cannot receive a FAPE in his current placement because District cannot adequately control his undesirable behaviors in its special day class.
- Parents agreed to nearly all of the IEP offer, but not to the change of placement by contending that Student is receiving a FAPE in his current special day class and that, while his conduct is sometimes difficult, he is succeeding academically and his behaviors are improving enough to allow him to remain there.

CONCLUSION:-

- District's proposed amended IEP with placement at an NPS, offer Student a FAPE such that District may implement it without Parent's Consent.

Rationale:-

- District afforded Parents full participation in the process that produced the IEP offer.
- District provided an accurate statement of student's needs based on appropriate assessments conducted by qualified assessors in the areas of academic achievement, health, intellectual development, language/speech communication development, motor development, social-emotional behavior, and adaptive behavior.
- The annual goals were all carefully drafted, and addressed all of Student's areas of need. They reflected the findings of assessments. All of the annual goals had specific baselines reflecting

Student's present levels of academic and functional performance so that they were measurable. The goals in the offered IEP were needed and measurable. No additional goals were needed.

- The accommodations and modifications directly addressed the specific difficulties Student had in his education. Nothing in the record suggested that any additional accommodation or modification was needed. The accommodations and modifications were adequate, and no more were needed.
- The evidence showed that in creating and offering the disputed IEP, District afforded Parents all the procedural rights to which they were entitled. The offer was procedurally valid.
- Federal and state law require a school district to provide special education in the least restrictive environment appropriate to meet the child's needs. (20 U.S.C. 1412(a)(5); 34 C.F.R. § 300.114(a)(2006); Ed. Code, § 56040.1.)
- Student's current program is not his least restrictive environment because he cannot make satisfactory progress there and is disruptive to others.
- As evident from the consistent and detailed testimony of the District's witnesses duly supported by extensive documentary evidence, Student is not benefiting academically from his current placement as his behavioral challenges prevented him from achieving academic success in the current program. Further, student's behaviors greatly disrupt his teachers' instruction and his peers' opportunity to learn.
- Only Parents testified in favor of Student's current placement. No professional appeared at hearing to support their position, and no reliable data supported it either.
- Substantial evidence showed that Student could obtain a FAPE by being placed at the NPS proposed by District as the NPS complies with state academic standards. It is focused on returning students to their districts when possible. The school has a point system that rewards or discourages various behaviors and places students on five levels of behavioral self-regulation. The school starts planning for a student's return to the campus of origin when the student shows three months of level five behavior. Hence, it is both an appropriate choice and his least restrictive environment.

REMEDIES/ORDER:-

- District may implement the IEP without parental consent.

Student v. SAN JUAN UNIFIED SCHOOL DISTRICT

CASE NO. 2023030673

Counsel for Student: Sheila Bayne

Counsel for District: Dee Anna Hassanpour and Matejka Handley

Representative for District: Robert Morgan

ALJ: Penelope Pahl

Date of Decision: July 10, 2023

Significant areas of law: General Education Teacher is a required participant in IEP meeting.

ISSUES:

- Did District deny Student a FAPE by failing to have a general education teacher present at the IEP meeting?

FACTS OF THE CASE:

- Student was eleven (11) years old and eligible for special education under the category of intellectual disability.

CONCLUSION:-

- District **DENIED** Student a FAPE by failing to have a general education teacher present at the IEP meeting.

Rationale:-

- An IEP team must include not less than one regular education teacher of the child, if the child is, or may be, participating in the regular education environment. (20 U.S.C. § 1414(d)(1)(B)(ii); 34 C.F.R. § 300.321 (a)(2); Ed Code § 56341, subd. (b)(2); Ed. Code § 56341.1 subd. (e).)
- A member of the IEP team shall not be required to attend an IEP meeting, in whole or in part, if the parent of the child with a disability and the local educational agency agree, in writing, that the attendance of such member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in that meeting. (Ed. Code § 56341, subd. (f).)
- Both state and federal statutes require that the excusal of a required IEP team member, due to the lack of need for their participation, be in writing and signed by the Parent. (20 U.S.C. (d)(1)(C)(iii); Ed. Code § 56341, subd. (f).) However, in this case no such excusal signed by Parent was available on record. Hence, the absence of the general education teacher was not legally excused.
- Student's continued level of general education placement was required to be discussed as part of the continuum of placement options, even if ultimately the decision was to maintain Student's current levels of general education participation.

- The general education teacher's perspective was a required part of the team discussion to evaluate educational benefits of placement in a general education class; the non-academic benefits of such placement; the effect Student would have on the teacher and children in the general education class; and the costs of mainstreaming the student.
- The general education teacher was also required to participate in the discussion of any issues regarding behavior supports, supplementary aids and services, and program modifications and necessary supports for school personnel that would be provided for Student, to allow him to advance toward attaining his annual goals and to be educated and participate with other Students, both with disabilities and without. (20 U.S.C. § 1414 (d)(1)(A)(IV) and (d)(3)(C); Ed. Code § 56341(b)(2).)
- Any excusal without a general education teacher's written input into the development of the IEP, delivered to each IEP team member prior to the meeting is invalid. (20 U.S.C. §1414(d)(1)(C)(ii)(II); 34 C.F.R. § 300.321 (e)(2)(ii); Ed Code § 56341(g).)
- Parent had second thoughts about Student's placement in the independent living skills class after consenting to the IEP. Those concerns might have been eliminated – or possibly supported – by a general education teacher. Hence, Parent did not have the benefit of a discussion that included all required participants. His opportunity to participate in the IEP development process was seriously infringed due to non-availability of the general education teacher.

REMEDIES/ORDER:-

- District is ordered to convene an IEP team meeting that includes all statutorily required participants, within 10 school days of the beginning of the school year, to develop an IEP that considers the input of all team members. The IEP is ordered convened within 10 days school days of the beginning of the school year to avoid further delay in completing Student's IEP, which has been delayed due to the improperly convened IEP.
- District is also ordered to provide one hour of group training, either in-person or virtual, regarding the requirements for IEP team meetings. This training must include all persons who participated in Student's IEP development in any capacity. The training shall specifically include the rules regarding who is required to participate on an IEP team; the circumstances under which a usually necessary participant is not required to participate on an IEP team; the proper method, and timing, of excusing a necessary participant; and the further reporting obligations of a necessary IEP team participant to the remaining IEP team members upon being excused. This training shall not be provided by a member of District's staff.

Student v. ASPIRE INSKEEP ACADEMY CHARTER, ASPIRE CENTENNIAL COLLEGE PREPARATORY ACADEMY, AND ASPIRE PUBLIC SCHOOLS

CASE NO. 2023020691

Counsel for Student: N. Jane DuBovy and Mayra Loza

Counsel for District: Heather Edwards

Representative for District: Meghann Cazale

ALJ: Ted Mann

Date of Decision: August 10, 2023

Significant areas of law: Implementation of IEP when student changes school/educational agency during a school year.

ISSUES:

- Did District deny Student a FAPE by failing to have an IEP in place at the start of the school year?

FACTS OF THE CASE:

- Student was twelve (12) years old and eligible for special education under the autism eligibility category, with a history of difficulties with communication, behavior, and socialization, and needs in the areas of social communication, behavior, English language development, reading, writing, and math.
- Student completed elementary school at the end of the 2021-2022 school year and transferred to a new local educational agency for the start of middle school for the 2022-2023 school year. The new educational agency continued to implement the last-agreed to IEP, for the beginning of the 2022-2023 school year and held an IEP on September 15, 2022 to prepare a new IEP for Student for middle school. The Student contends that the new educational agency has denied student a FAPE by failing to have an IEP in place at the start of the school year.

CONCLUSION:-

- District **DENIED** Student a FAPE by failing to have an IEP in place at the start of the school year.

Rationale:-

- The new educational agency delayed offering a new IEP offer for Student until after the start of the school year, instead of completing the IEP developed by previous educational agency, or developing an alternative. Hence, the new educational agency failed to have an appropriate IEP in place at the beginning of the school year and committed a procedural violation.

- The difference between the services offered in the previous educational agency's IEP and new educational agency's IEP was negligible. Hence, there was no substantive impact on Student in any delay in the creation of an IEP for the 2022-2023 school year. Also, the operative goals at the beginning of the 2022-2023 school year were created in October 2021 and were designed to continue until October 2022, effectively eliminating any substantive impact on Student for the first 30 days of the 2022-2023 school year.
- Student failed to demonstrate by a preponderance of the evidence that new educational agency's failure to have an IEP in place at the start of the 2022-2023 school year resulted in any substantive denial of FAPE to Student for the 30 days of the 2022-2023 school year in question or that Student was deprived of educational benefit by the delay.
- However, new educational agency impeded the opportunity of Parent to participate in the decision-making process for the timely creation of Student's IEP for the 2022-2023 school year by failing to have an IEP in place by the start of the school year. Hence, the District denied Student a FAPE by failing to have an IEP in place by the start of the school year.

REMEDIES/ORDER:-

- None of the remedies sought by Student are commensurate with the narrow substantive harm related to the denial of Parent's participation in the creation of a timely IEP for Student for the 2022-2023 school year. Additionally, from an equitable standpoint, educational agency's efforts to maximize parental participation afford it some consideration. Here, an appropriate equitable remedy for the agency's failure to have a completed IEP for Student prior to the school year is one hour training for its IEP team members in the process and timelines for the IEP process.

Student v. YUBA CITY UNIFIED SCHOOL DISTRICT

CASE NO. 2023050319

Counsel for Student: Robert Burgermeister

Counsel for District: Dee Anna Hassanpour and Matejka Handley

Representative for District: Christy Taylor

ALJ: Penelope Pahl

Date of Decision: August 21, 2023

Significant areas of law: Only material failures to implement an IEP constitute violations of the IDEA.

ISSUES:

- Did District deny Student a FAPE by assigning Student to distance learning without providing necessary services and accommodation as stated in her IEP?

FACTS OF THE CASE:

- Student was seven (07) years old and eligible for special education under the category of speech language impairment. Student contended that district denied her FAPE during distance learning.

CONCLUSION:-

- District **DID NOT** deny Student a FAPE by assigning Student to distance learning without providing necessary services and accommodation as stated in her IEP.

Rationale:-

- Only material failures to implement an IEP constitute violations of the IDEA. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP. (Van Duyn ex rel. Van Duyn v. Baker School Dist. 5J, (9th Cir. 2007) 502 F.3d 811, 815.)
- Student failed to prove the amount of specialized academic instruction lost or the discrepancies between what was provided and the IEP requirements. Student also failed to prove how any loss of specialized academic instruction during the short distance learning period constituted more than a minor discrepancy with Student's IEP.
- Student provided no evidence of any missed speech therapy sessions during distance learning and did not offer any evidence that Student had difficulty accessing online speech services.
- Student's IEP included accommodations, specifically "visuals/icons for daily activities scheduled or choice board." During the 30-minute distance learning sessions, visual schedules were used. All students completed activities together. Therefore, virtual learning did not allow for children to

choose the order in which they preferred completing activities. Student offered no evidence that the lack of a choice board impeded Student's ability to access the 30-minute distance learning sessions.

REMEDIES/ORDER:-

- Student did not prevail on any issues. All requested remedies are denied.

Student v. PALO ALTO UNIFIED SCHOOL DISTRICT

CASE NO. 2023070050

Counsel for Student: Marc Buller and Emily Hart

Counsel for District: Jennifer Choi

Representative for District: Amanda Boyce

ALJ: Cynthia Fritz

Date of Decision: August 09, 2023

Significant areas of law: - What constitutes a serious bodily injury?

ISSUES:

- Did Student's conduct constitute serious bodily injury?

FACTS OF THE CASE:

- Student was nine years old and eligible for special education under the categories of autism and speech or language impairment.
- Student bit his one-to-one aid, which caused a wound i.e. approximately 3.5 inches by 2.5 inches in length and width, oblong, and bleeding mixed with plasma and clear liquid coming out.
- The District contends that this caused serious bodily injury to the staff while students argue otherwise.

CONCLUSION:-

- Student's conduct constitute serious bodily injury.

Rationale:-

- The photographs submitted in evidence corroborated staff's testimony. The pictures include both the elbow and wrist, so scale was evident. The bite was accurately described in size and depth. A bite frequently includes an outline of the mouth dotted by teeth marks. Not in this case. The flesh was removed from the entire area, including the center, as individual teeth marks were not visible.
- District's witness also described victim as very upset, frightened, crying, breathing erratically, unable to talk, and squeezing her hand tight, and telling her that the injury really hurt. The victim went to 16 follow up medical visits, with some virtual visits, and four mental health related visits through the time of hearing and still undergoing treatment.
- The victim's injury rendered her temporarily unable to perform her work duties completely, she was unable to change her own wound dressing for days and had to do modified work through the end of the school year.

- Student failed to present any evidence contrary to the personal accounts of the victim and witnesses who had firsthand knowledge of the injury or an expert witness in opposition to victim's opinion and other witnesses that victim was in extreme pain at the time of the bite.
- Even after lapse of two months, victim describes her injury as the skin being extremely rough, difficult to touch, painful, scarred, wrinkled, and with a large skin tag through it. The scar is approximately 1.5 inches by 1.5 inches on the outside of her forearm in a prominent, obvious, and readily visible area. Victim believes plastic surgery will not help and the scar is hard for her to look at.
- The evidence presented not only established permanent scarring on victim's forearm, an obvious location on a person's body, but also significant cosmetic deformity with the wrinkling, rough skin, and large skin tag through the scar.
- While Parents disputed the seriousness of the injury at a subsequent meeting with District and did not believe it constituted a serious bodily injury, neither Parent had any personal knowledge of the injury. Thus, their opinions were less persuasive.

REMEDIES/ORDER:-

- Within 15 calendar days of this decision, District must conduct a manifestation determination meeting to determine whether Student's conduct, was a manifestation of his disability or caused by District's failure to implement his IEP.
- If it is determined that Student conduct was a manifestation of his disability, the IEP team must review Student's behavioral intervention plan and modify it, if necessary, to address the behavior.
- District must return Student to his last agreed upon and implemented placement upon expiration of the 45-day interim alternative educational placement unless Parents and District agree otherwise.