BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. GREENFIELD UNION SCHOOL DISTRICT.	OAH CASE NO. 2013060737

DECISION

Student filed a due process hearing request (complaint) with the Office of Administrative Hearings, State of California (OAH) on June 17, 2013, naming the Greenfield Union School District (the District) as the respondent.

Administrative Law Judge Charles Marson heard this matter in Greenfield, California, on October 15, 2013. Student's mother (Mother) represented Student, assisted by Spanish interpreter Romina Sparano. Student did not attend.

Sarah L. Garcia, Attorney at Law, represented the District. Petra Martinez Diaz, the District's Director of Special Education and Student Services, attended the hearing.

The matter was continued on July 23, 2013, at the parties' request. On the day of hearing, the parties were granted a continuance to file written closing arguments by the close of business on October 28, 2013. Upon timely receipt of the written closing arguments, the record was closed and the matter was submitted.

ISSUES

Issue 1: On September 20, 2011, did the District violate Parent's procedural rights, when it prevented Parent from meaningfully participating in Student's educational decision-making process by failing to reschedule Student's individualized education program (IEP) team meeting after Parent informed the District that she could not attend?

Issue 2: From September 20, 2011 to the present, did the District deny Student a free appropriate public education (FAPE) by failing to change his classroom placement despite Parent's contention that the teacher hit Student?

Issue 3: From September 20, 2011 through the present, did the District deny Student a FAPE by seeking to exit him from special education services?[1]

SUMMARY OF DECISION

Student contends that after Mother cancelled a September 20, 2011 IEP team meeting, the District denied her meaningful participation in the IEP process by failing to reschedule the meeting. He contends that since his teacher in his special day class (SDC) repeatedly hit him, the District's failure to change his placement denied him a FAPE. Finally, he contends that the District denied him a FAPE by attempting to exit him from special education.

The District contends that it promptly rescheduled the September 20, 2011 IEP team meeting for October 13, 2011, and that Mother attended and participated in the meeting held that day. It contends that Student's SDC teacher never hit him. It contends that it never exited or attempted to exit Student from special education.

This Decision determines that the District properly rescheduled and held the cancelled IEP team meeting; that the District had no obligation to change Student's SDC placement because Student did not prove his teacher ever hit him; and that the District never exited or attempted to exit Student from special education, which he has received at all relevant times up to and including the present.

FACTUAL FINDINGS

Background and Jurisdiction

1. Student is a seven-year-old boy who lives with his Mother (by adoption) within the geographic boundaries of the District. He was exposed to heroin in utero and receives psychiatric and medical care. At all relevant times Student has received special education and related services for a speech and language impairment, and before August 2012 was also deemed eligible for special education in the category of multiple disabilities.

2. During the school year 2011-2012, Student's IEP placed him in an SDC run by the Monterey County Office of Education (County) and taught by Carol

[1] The issues have been slightly reworded for clarity. No substantive change has been made.

Anthony at Gabilon School, a County campus.[2] During that year Student repeatedly told Mother that Ms. Anthony frequently hit him. Mother requested that the District change Student's placement so that Ms. Anthony was no longer his teacher. The District investigated the charge, did not find any evidence that Ms. Anthony ever hit Student, and therefore declined to change Student's placement.

3. In fall 2011, Mother requested a comprehensive assessment of Student. After obtaining a signed assessment plan, the District conducted an assessment and scheduled Student's IEP team meeting for February 28, 2012, to discuss it. At Mother's request it rescheduled the meeting for March 14, 2012. In the meantime, on March 2, 2012, after again requesting a change of placement, Mother withdrew Student from the District and obtained private education services for him for the rest of the school year.

4. At the March 14, 2012 IEP team meeting, the District proposed an IEP that would place Student for school year 2012-2013 in a general education class in the District, and would deem him eligible for special education solely in the category of speech and language impairment. At the time Mother declined the offer, but in August 2012 she accepted it and enrolled Student in a general education classroom in the District's Cesar Chavez Elementary School. Student continues to be enrolled there and to receive speech and language services pursuant to his IEP.

Failure to Reschedule the September 20, 2011, IEP Team Meeting

5. By agreement of the parties, Student's annual IEP team meeting was scheduled for September 20, 2011. On that morning Mother called the District, stated that a family emergency prevented her attendance, and requested that the meeting be rescheduled. The District proposed several dates, reached agreement with Mother on October 13, 2011, and rescheduled the meeting for that day.

6. Mother attended the IEP team meeting on October 13, 2011, and requested a change of placement because Ms. Anthony allegedly hit Student. The District declined the request at the time but promised to investigate, and proposed an IEP continuing Student's placement in Ms. Anthony's SDC for the rest of the school year. Mother agreed to the IEP.

7. The District's rescheduling of the September 20, 2011 IEP team meeting for October 13, 2011, was confirmed by District witnesses and by the IEP

[2] The evidence did not clearly distinguish between the functions or responsibilities of the County and those of the District. For the purpose of this decision it is assumed that the actions of the County were those of the District and vice versa.

document itself, which bears Mother's signature. Mother admits she attended and participated in the meeting and agreed to the IEP offer.

Failure to Change Placement Because Ms. Anthony Allegedly Hit Student

8. Mother testified that she believes Student's allegations: that Ms. Anthony repeatedly hit him because when he speaks out of fear he speaks truly; she could tell from his eyes and gestures that he was telling the truth; and one day she found scratches on his back that he attributed to Ms. Anthony. Mother admitted that no other witness corroborated Student's claim. She credibly testified that Student is psychologically troubled and receives psychiatric assistance and medication, frequently lies, and has a history of inventing stories that are not true. She also credibly testified that sometimes when she reprimands Student, he goes to his father and falsely tells him that Mother hit him. As early as fall 2010, Mother informed the IEP team that Student lies and makes up stories. Student introduced no other evidence at hearing that Ms. Anthony hit him.

9. After Mother stated at the October 13, 2011 IEP team meeting that Ms. Anthony had hit Student, Principal Rick Lust investigated the charge.[3] He separately interviewed Ms. Anthony and the two adult paraprofessionals that served the class, and all three denied the charge. Mr. Lust also reported the charge to Child Protective Services and the King City Police. The extent of investigations by those agencies is not clear from the record, but neither agency reported any evidence that the charge was true.[4]

Exiting or Attempting to Exit Student from Special Education

10. Mother testified that she learned the District was attempting to exit Student from special education on the morning that she cancelled the September 20, 2011 IEP team meeting. Mother went to the school at the District's request to sign some papers, and there she met Ms. Anthony. Mother testified that Ms. Anthony congratulated her for the fact that Student no longer needed or qualified for special education, and that "they had removed him" from her class. Ms. Anthony requested that she sign papers that Mother believed would have signified agreement with those

[3] Mr. Lust is now the Director of Special Education for the Aromas-San Juan Unified School District, but in school year 2011-2012 was the County's principal for special education and supervised Ms. Anthony's class. He has education specialist instruction and administrative services credentials and a crosscultural, language, and academic development (CLAD) certificate.

[4] In January 2012, Mother filed a police report with the King City Police Department containing Student's allegations. An attorney representing Mother requested that the Department produce the documentation of their investigation, but the Department declined to do so unless subpoenaed.

statements, and Mother declined. As Ms. Anthony did not testify and the District introduced no evidence to contradict Mother's description of the conversation, that description is accepted as accurate.

11. Student introduced into evidence typewritten notes created by Mirta Spitzer, a service coordinator at the San Andreas Regional Center, who did not testify. Ms. Spitzer's notes include reports of telephone conversations with Mother in which Mother described her interaction with Ms. Anthony on September 20, 2011, and other times. They generally show that Mother recounted those interactions to Ms. Spitzer in the same way as she described them at hearing. They do not show that Ms. Spitzer had any independent knowledge of these interactions.

12. Ms. Spitzer's notes also recount her own communication with Ms. Anthony on September 28, 2011, in a format that may be notes of a telephone call or excerpts from electronic mail. In that interchange, according to Ms. Spitzer, Ms. Anthony sought Ms. Spitzer's help in persuading Mother to attend an IEP team meeting. She also stated that "this in all likelihood . . . will be the last year for [Student and his twin brother] to be eligible for any Special Education services." The notes do not show that this representation was made by anyone other than Ms. Anthony personally.

13. Mother was Student's only witness at hearing, Ms. Spitzer's notes were the only documentary evidence Student introduced, and there was no other evidence that the District attempted to exit Student from special education.

14. The District introduced persuasive evidence that neither it nor Student's IEP team has ever attempted to exit Student from special education. Mr. Lust established that he chaired the October 13, 2011 IEP team meeting, and that at no time did the District propose or attempt to exit Student from special education. The IEP document is consistent with that testimony and was signed by all the participants, including Mother and Ms. Anthony. It retained Student's placement in Ms. Anthony's SDC and restated that he was eligible for special education in the categories of multiple disabilities and speech and language impairment.[5]

15. A psychological assessment of Student conducted in January and February 2012 by school psychologist Andrew Hartfelt found that Student's cognitive profile and academic performance are above grade level, and that a variety of misbehaviors reported by Mother to occur in the home do not occur in school. Mr.

[5] Ms. Spitzer's notes include her impressions of the October 13, 2011 IEP team meeting, which she attended. Those notes do not mention any attempt to exit Student from special education.

Hartfelt opined that Student had made such considerable academic and social progress that he would "strongly benefit from a placement with his general education peers." He did not address Student's eligibility in the category of speech and language impairment and did not recommend that he be exited from special education.

16. Mr. Lust chaired the March 14, 2012 IEP team meeting, and established that at the meeting the District did not propose to exit Student from special education. Instead, the District proposed (in light of Student's progress in Ms. Anthony's class) that his placement be changed for the next school year to a general education classroom, where he would continue to have an IEP under which he would receive special education services and supports in the form of speech and language therapy. The District also proposed to limit the classification of his eligibility to speech and language impairment only. The IEP document confirms Mr. Lust's description of the District's offer, and no evidence contradicted it.

17. Mother testified that she understood the District's March 14, 2012 offer to be either an offer to exit Student from special education, or an announcement of his exit as an accomplished fact, and that Student was not offered any services in that IEP. Her testimony strongly suggested that she incorrectly equated placement in a general education classroom, rather than in an SDC, with being exited from special education entirely. That misunderstanding may also account for Mother's perception that Ms. Anthony told her on September 20, 2011, that Student had been removed from her class. Even if Ms. Anthony made that statement, all the evidence showed that Student was not, in fact, removed from his SDC class at any time during the 2011-2012 school year, except by Mother on March 2, 2012. There was no evidence that Student failed to receive his speech and language services except for a brief period possibly caused by a change in personnel.

18. Petra Martinez Diaz, the District's Director of Special Education and Student Services, testified that she did not begin in that position until August 2013 and therefore did not attend Student's 2011 and 2012 IEP team meetings.[6] However, she established that, based on a thorough review of Student's records, the District has never attempted to exit Student from special education; has at all relevant times, including at present, provided him special education and related services; and has at present no plan to exit him from special education.

19. All the documentary evidence introduced at hearing supported the District's claim that it never exited or attempted to exit Student from special education and has, at present, no intent to do so. Mother's testimony and Ms. Spitzer's notes show that Ms. Anthony expressed the personal opinion Student should

[6] Ms. Martinez Diaz has an administrative services credential, a specialist instruction credential in special education, and a multiple subjects credential.

be exited at some time in the future, but this was not the act of the IEP team or the District.

LEGAL CONCLUSIONS

Introduction – Legal Framework under the IDEA[7]

1. This due process hearing was held under the Individuals with Disabilities Education Act (IDEA), its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. §§ 1400 et. seq.; 34 C.F.R. §§ 300.1 (2006) et seq.;[8] Ed. Code, §§ 56000, et seq.; and Cal. Code. Regs., tit. 5, §§ 3000 et seq.)

2. The main purposes of the IDEA are: 1) to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and to prepare them for employment and independent living, and 2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1)(A), (B); Ed. Code, § 56000, subd. (a).)

3. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; Cal. Code Regs., tit. 5, § 3001, subd. (p).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39(a)(1); Ed. Code, § 56031, subd. (a).) "Related services" are transportation and other developmental, corrective and supportive services as may be required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26)(A); 34 C.F.R. § 300.34(a); Ed. Code, § 56363, subd. (a).)

Burden of Proof

4. Because Student filed the request for due process hearing, he had the burden of proving the essential elements of his claim. (*Schaffer v. Weast* (2005) 546 U.S. 49, 62 [163 L.Ed.2d 387].)

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[7] Unless otherwise indicated, the legal citations in this Introduction are incorporated by reference into the analysis of each issue decided below.

[8] All references to the Code of Federal Regulations are to the 2006 version unless otherwise stated.

Limitation of Issues

5. A party who requests a due process hearing may not raise issues at the hearing that were not raised in his request, unless the opposing party agrees to the addition. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *County of San Diego v. California Special Education Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1465.) At hearing and in his closing brief, Student asserted numerous complaints about the District's conduct (such as inadequacies in speech and language service) that were not alleged in the request for due process hearing and therefore cannot be considered here.

Issue 1 -- Failure to Reschedule the September 20, 2013 IEP Team Meeting

6. A parent must be afforded an opportunity to participate in meetings with respect to the identification, assessment, educational placement, and provision of a FAPE to her child. (20 U.S.C. § 1414(d)(1)(B)(i); Ed. Code, §§ 56304, 56342.5.) A district must ensure that the parent of a student who is eligible for special education and related services is a member of any group that makes decisions on the educational placement of the student. (Ed. Code, § 56342.5.) A district must notify parents of an IEP meeting "early enough to ensure that they will have an opportunity to attend", and it must schedule the meeting at a mutually agreed on time and place. (34 C.F.R. § 300.322(a)(2); Ed. Code, §§ 56043, subd. (e); 56341.5, subds. (b),(c).)

7. Based on Factual Findings 1-4 and 5-7, and Legal Conclusions 4 and 6, Student did not prove by a preponderance of evidence that the District denied Mother meaningful participation in the IEP process by failing to reschedule the September 20, 2011, IEP team meeting. The evidence showed without contradiction that soon after September 20, 2011, the District proposed dates for a rescheduled meeting; that it rescheduled the meeting for October 13, 2011; that the meeting was held on that day; and that Mother attended and fully participated in it.

Issue 2 -- Failure to Change Student's Placement from Ms. Anthony's Class

8. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 200 [73 L.Ed.2d 690], the Supreme Court held that the IDEA requires provision of a "'basic floor of opportunity' . . . [which] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs. Inherent in that concept is the requirement that an eligible child be free of injury that interferes with his access to education. (See *Lillbask v. Connecticut Dept. of Educ.* (2d Cir. 2005) 397 F.3d 77, 93-94.)

9. Based on Factual Findings 1-4 and 8-9, and Legal Conclusions 4 and 8, Student did not prove that the District violated special education law by failing to change his placement, because he did not prove by a preponderance of evidence that

Ms. Anthony ever hit him. The evidence supporting Student's claim consisted of his hearsay statements to Mother, scratches on his back he claimed Ms. Anthony inflicted, and Mother's subjective perception that he was telling the truth. That evidence was outweighed by the evidence that Mr. Lust's investigation showed all the adults in the class denied the charge; that his investigation produced no evidence that the charge was true; and that the charge was reported to Child Protective Services and the King City Police but no evidence was introduced that those agencies found that the charges were true. In addition, the evidence showed that Student was not a reliable reporter, as he has a history of concocting false charges and stories, including false charges that people (including Mother) had hit him. Student's charges, without more, do not constitute evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. (See Cal. Code Regs., tit. 5, § 3082, subd. (b).)

Issue 3 -- Exiting, or Attempting to Exit, Student from Special Education

10. A district may not exit a student with an IEP from special education without conducting an assessment supporting ineligibility and without a decision of the Student's IEP team. (34 C.F.R. §§ 300.305(e)(1), 300.306(a)(1); Ed. Code, § 56329, subd. (a)(1).)

11. Based on Factual Findings 1-4 and 10-19, and Legal Conclusions 4 and 10, Student did not prove by a preponderance of evidence that the District ever exited or attempted to exit him from special education. Although Ms. Anthony may have expressed the personal opinion that he should be exited, there was no evidence that the IEP team or the District agreed with her or even attempted to exit him. It appears that Mother mistakenly assumed that placing Student in a general education classroom was the equivalent of exiting him from special education. At all relevant time Student has been eligible for and has received special education and related services, and the District has no present intention to change that status.

ORDER

Student's requests for relief are denied.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing Decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, the District prevailed on all issues.

RIGHT TO APPEAL THIS DECISION

The parties to this case have the right to appeal this Decision to a state or federal court of competent jurisdiction. If an appeal is made, it must be made within 90 days of receipt of this Decision. (Ed. Code, § 56505, subd. (k).)

Dated: December 3, 2013

/s/
CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings