

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2019090067

PARENTS ON BEHALF OF STUDENT,

v.

TORRANCE UNIFIED SCHOOL DISTRICT.

DECISION

JUNE 16, 2020

On September 3, 2019, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parents on behalf of Student, naming Redondo Beach Unified School District as respondent. A due process hearing request is referred to as a complaint.

On November 25, 2019, OAH granted Student's first request to amend his complaint. On January 21, 2020, OAH granted Student's second request to amend the complaint, naming Redondo Beach Unified and Torrance Unified School District as respondents. OAH continued the matter for good cause on February 27, 2020.

On May 4, 2020, OAH granted Student's request to dismiss Redondo Beach Unified as a party, based on Redondo Beach Unified and Student reaching a settlement agreement. The matter proceeded against Torrance Unified.

Administrative Law Judge Rommel P. Cruz heard this matter on May 5, 2020. The hearing was conducted by video conference.

Attorneys N. Jane DuBovy and Mandy Favaloro represented Student, both appeared by video. Mother and Father attended the hearing by video. Student did not attend the hearing.

Attorney Sundee Johnson represented Torrance Unified and appeared by video. Director of Compliance Melinda Smith attended the hearing by video on behalf of Torrance Unified.

At the parties' request, the matter was continued to May 19, 2020, for written closing briefs. The record was closed and the matter was submitted on May 19, 2020.

ISSUES

On April 28, 2020, Student withdrew a Child Find claim identified as Issue 1 in the April 27, 2020 Order Following Prehearing Conference for Hearing by Videoconference and claims that exceeded the two-years statute of limitations. The remaining issues are set forth below and have been clarified consistent with *J.W. v. Fresno Unified Sch. Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443, and *Ford v. Long Beach Unified Sch. Dist.* (9th Cir. 2002) 291 F.3d 1086, 1090. (But see *M.C. v. Antelope Valley Union High Sch. Dist.* (9th Cir. 2017) 858 F.3d 1189, 1196, fn. 2 [dictum].) No change in substance has been made to the issues.

1. Did Torrance Unified procedurally deny Student a free appropriate public education, referred to as a FAPE, by failing to complete assessments and hold an individualized education program, referred to as an IEP, team meeting to review assessments within 60 days of Parents' February 9, 2018 consent to the December 2017 assessment plan, infringing Parents' rights to meaningfully participate and cause a loss of educational benefit?
2. Did Torrance Unified deny Student a FAPE by failing to conduct triennial assessments within three years of the November 2014 initial assessments?

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the Individuals with Disabilities Education Act, referred to as the IDEA, are to ensure:

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

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501,

56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Here, Student requested the hearing and had the burden of proof as to the issues. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was 14 years old at the time of the hearing. He was in eighth grade and attended Mr. J's Academy, a private school. Mr. J's Academy was located within the geographic boundaries of Torrance Unified School District at all relevant times.

ISSUE 1: DID TORRANCE UNIFIED DENY STUDENT A FAPE BY FAILING TO TIMELY COMPLETE ASSESSMENTS AND HOLD AN IEP TEAM MEETING TO REVIEW THE ASSESSMENTS?

Student contends Torrance Unified committed a procedural violation of the IDEA by failing to timely reassess and to determine his eligibility for special education. Student argues the violation substantially interfered with Parents' right to meaningfully participate in the IEP process and denied Student an educational benefit. Torrance Unified contends the delay in completing its psychoeducational assessment did not impede Student's right to a FAPE, significantly impede Parents' opportunity to participate in the decision-making process regarding the provision of a FAPE, or cause a deprivation of educational benefits.

The IDEA regulations and the Education Code specify that for children enrolled by their parents in private school, including the duty to assess or reassess those children, is the responsibility of the school district in which the private school is located. (34 C.F.R. § 300.131, Ed. Code § 56171; Analysis of Comments and Changes to 2006 IDEA Part B Regulations, 71 Fed. Reg. 46593 (August 14, 2006), (hereafter, Comments to Regulations).)

The IDEA provides for periodic reassessments to be conducted not more frequently than once a year unless the parent and school district agree otherwise, but at least once every three years unless the parent and school district agree that a reevaluation is not necessary. (20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b); Ed. Code, § 56381, subd. (a)(2).) An evaluation under federal law is the same as an assessment under California law. (Ed. Code, § 56302.5.)

A school district is required to complete an assessment or reassessment and hold an IEP team meeting to review the results and to determine eligibility within 60 days of receiving written parental consent to assess, exclusive of school vacations in excess of five schooldays and other specified days. (20 U.S.C. § 1414(a)(1)(C); Ed. Code, §§ 56043, subds. (c) & (f)(1), 56302.1, subd. (a), and 56344, subd. (a); Comments to Regulations, *supra*, 46593.) If the school district conducting the reassessment of a child who attends a private school located in its jurisdictional boundaries determines the child requires special education and related services, the school district where the child resides is responsible for making FAPE available to the child. (Ed. Code, §§ 48200; *Union School District v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1525, fn. 1 [Residency for special education coverage purposes is determined by Ed. Code § 48200]; Comments to Regulations, *supra*, 46593.) The school district in which a child with exceptional needs resides is

charged with convening an IEP team meeting to offer a FAPE to the child. (34 C.F.R. § 300.201.; Comments to Regulations, *supra*, 46593.)

A school district's failure to timely and properly assess is a procedural violation of the IDEA. (*Department of Educ., State of Hawaii v. Cari Rae S.* (D. Hawaii 2001) 158 F.Supp. 2d 1190, 1196; *Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1032.) However, a procedural error does not automatically require a finding that a FAPE was denied. A procedural violation results in a denial of FAPE only if it impedes the child's right to a FAPE, significantly impedes the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child, or causes 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.)

On November 6, 2014, Redondo Beach Unified convened an initial IEP team meeting to review its assessments of Student and to determine his eligibility for special education. The meeting was continued to December 8, 2014, and January 9, 2015. Mother and Father attended each of the meetings and were provided a copy of their procedural rights and safeguards on November 6, 2014. On December 8, 2014, the IEP team reviewed the assessments and determined Student eligible for special education under the category of other health impairment due to attention deficit hyperactivity disorder-like behaviors. Math and reading decoding were identified as areas of need. IEP goals, services, and placement were finalized at the January 9, 2015 IEP team meeting. The IEP offered weekly group specialized academic instruction in math and weekly individual specialized academic instruction to support him in writing. 30 minutes a month of specialized academic instruction was offered to support him in reading.

For the 2014-2015 school year, Parents enrolled Student at Mr. J's Academy for fourth grade. Student has remained enrolled at Mr. J's Academy since. Each school year, Redondo Beach Unified convened an IEP team meeting for Student. On December 21, 2016, Redondo Beach Unified offered Student a service plan for parentally placed private school students. The plan identified math and written language as areas of need. It offered specialized academic instruction 60 minutes a year to be provided by Redondo Beach Unified. The plan end date was November 6, 2017.

Mother testified during hearing. Mother understood that reassessments of students were required at least once every three years. Hence, in the Fall of 2017, Parents provided Redondo Beach Unified with a written request to reassess Student for special education. Parents and Student resided within Redondo Beach Unified's boundaries at the time. Redondo Beach Unified provided Parents' with an assessment plan dated December 11, 2017. The assessment plan proposed to assess Student in the areas of academic achievement, health, intellectual development, social emotional, and behavior.

Redondo Beach Unified advised Parents that Torrance Unified would conduct the assessments since Mr. J's Academy was located within Torrance Unified's boundaries. Melinda Smith, Director of Compliance for Torrance Unified testified by video at the hearing. She testified that during the 2017-2018 school year, the Southwest Special Education Local Plan Area had a policy that the school district in which a private school is located assumed responsibility for assessing a child enrolled in the private school and tasked with determining that child's eligibility for special education. Also, the policy required that if that child resided in another school district, the school district of

residence would be responsible for offering a FAPE to the child. Redondo Beach Unified and Torrance Unified were members of the Southwest Special Education Local Plan Area.

Parents provided written consent to the December 11, 2017 assessment plan on February 9, 2018. Parents returned the assessment plan to Redondo Beach Unified, who forwarded it to Torrance Unified on February 15, 2018. Torrance Unified therefore had 60 days from February 15, 2018, to complete the assessments and to hold an IEP team meeting to review the assessments.

Torrance Unified school psychologist Mikael Lundell conducted the psychoeducational assessment. Mr. Lundell testified by video at the hearing. During the 2017-2018 school year, he tested Student on May 22, 23, and 24, 2018. On June 14, 2018, Mr. Lundell emailed Mother informing her that he would be conducting the academic achievement testing, as the special education teacher initially tasked with the testing was too busy. Mr. Lundell administered academic achievement tests on June 18 and 20, 2018.

Mr. Lundell prepared a draft of his psychoeducational assessment report, with his signature dated June 20, 2018. He provided Parents with a copy of the draft report. Mother testified that Mr. Lundell had informed Parents that the testing would be completed at the beginning of the 2018-2019 school year. At the hearing, Mr. Lundell could not explain why the psychoeducational assessment was not completed and reviewed by the IEP team within 60 days of Torrance Unified receiving Parent's consent to the assessment plan. He also could not explain why he did not begin testing Student

until May 22, 2018, other than to recall that he was busy. At hearing, Mr. Lundell opined that he had enough information by June 2018 to determine that Student qualified for special education.

Torrance Unified's last day of school for the 2017-2018 school year was June 21, 2018. Redondo Beach Unified's last day of school for the 2017-2018 school year was June 20, 2018. Despite communications between Mother and Mr. Lundell about scheduling an IEP team meeting, in which Parents provided dates and times they were available to meet, no IEP team meeting notice was provided to Parents prior to the end of the 2017-2018 school year. As a consequence, Torrance Unified did not timely complete the agreed upon assessments or timely hold an IEP team meeting to review the assessments. Torrance Unified failed to hold an IEP team meeting from April 2018 through the end of the 2017-2018 school year, or during the summer of 2018. Thus, no offer of FAPE was presented to Student for the remainder of the 2017-2018 school year, or prior to the commencement of the 2018-2019 school year. This failure seriously infringed on Parents ability to participate in the development of Student's education program during this time. As a consequence, Parents kept Student enrolled at Mr. J's Academy for the remainder of the 2017-2018 school year.

Parents reenrolled Student at Mr. J's Academy for the 2018-2019 school year. Torrance Unified resumed instruction for the 2018-2019 school year on September 6, 2018. Redondo Beach Unified's first day of class was August 29, 2018. On September 13, 2018, Mr. Lundell completed an additional test to assess Student's oral language abilities. In September 2018, Mr. Lundell also reviewed ratings scales from Student's teacher as part of the Conner's Rating Scales, Third Edition. The results of the

oral language assessment and ratings scales were added to the psychoeducational assessment report. In addition, Mr. Lundell expanded the reasons for the assessment referral in his assessment report. The final version of his psychoeducational assessment report with his findings, conclusions, and recommendations were presented in a written report dated October 12, 2018.

On September 24, 2018, Redondo Beach Unified provided Parents with an IEP team meeting notice for a meeting on October 12, 2018. The IEP team met on October 12, 2018, for Student's triennial IEP and to review Torrance Unified's assessments. At the meeting, Mr. Lundell presented his final psychoeducational assessment report, and shared his findings, conclusions, and recommendations. At the hearing, Mr. Lundell explained he deemed psychoeducational assessment reports to be final once it's been reviewed by an IEP team. Student's IEP team found him eligible for special education under the category of other health impairment, with a secondary eligibility of specific learning disability. Math was the only area of need identified. Parents did not consent to the October 12, 2018 IEP, and informed the IEP team that Student would remain enrolled at Mr. J's Academy. Student remained enrolled at Mr. J's Academy.

IDEA regulations mandated that Torrance Unified complete its assessments and present its findings within 60 days of receiving Parents' consent to reassess. Taking into consideration Torrance Unified's spring break from March 26, 2018, through March 30, 2018, the 60-day deadline to complete the reassessments and to hold an IEP team meeting to review the assessments and offer FAPE was April 21, 2018. Torrance Unified failed to meet the statutory deadline. Torrance Unified failed to hold an IEP team meeting to review the assessments until October 12, 2018, nearly six months past the

60-day deadline. This seriously infringed on Parents' ability to participate in the development of Student's educational program, a significant procedural violation of the IDEA.

Torrance Unified asserts that it was prepared to present a draft of its psychoeducational assessment report to determine Student's special education eligibility at an IEP team meeting prior to the end of the 2017-2018 school year. However, Mr. Lundell was still testing Student's academic achievement on June 20, 2018, Redondo Beach Unified's last day of instruction for the 2017-2018 school year. No IEP team meeting had yet to be scheduled at that point. Thus, a preponderance of the evidence demonstrated that the assessments were not completed by the end of the school year and Torrance Unified was not prepared to present its assessments.

Furthermore, the evidence was clear that Torrance Unified failed to coordinate and schedule an IEP team meeting prior to the end of the 2017-2018 school year. No persuasive evidence was offered indicating that Torrance Unified was without fault in delaying the convening of an IEP team meeting. The facts established that Torrance Unified's delay in completing the assessments was the primary reason for the delay in convening an IEP team meeting to review the assessments and to determine special education eligibility. Mr. Lundell tested Student on September 13, 2018. Only 11 days later, Redondo Beach Unified provided Parents with an IEP team meeting notice for a scheduled IEP team meeting to be held less than 30 days from Mr. Lundell last date of testing. Clearly, Redondo Beach Unified did not delay in scheduling an IEP team meeting, and promptly scheduled a meeting once Torrance Unified completed its assessments.

Torrance Unified's failure to timely reassess and to determine Student's eligibility for special education within the statutory timeframe was a procedural violation of the IDEA. Here, Student was not offered an educational program based upon assessments prior to the commencement of the 2018-2019 school year. Therefore, Torrance Unified's failure to assess Student deprived Student of educational benefits, and, accordingly, Torrance Unified denied Student a FAPE on that basis. (*Carrie I. ex rel. Greg I. v. Dep't of Educ., Hawaii* (D.Haw. 2012) 869 F.Supp.2d 1225, 1247 ("The lack of assessments alone is enough to constitute a lost educational opportunity.").)

In addition, the evidence established that Torrance Unified's procedural violation denied Parents of critical information and significantly impeded their ability to meaningfully participate in the decision-making process regarding Student's education. The untimely assessment of Student deprived Parents' of information regarding Student's needs, and significantly impeded their ability to make a timely, informed decision as to whether Student's needs could be met if he returned to Redondo Beach Unified. Accordingly, Student met his burden in proving by a preponderance of the evidence that Torrance Unified denied him a FAPE by failing to timely reassess him and to convene an IEP team meeting to determine his eligibility for special education.

ISSUE 2: DID TORRANCE UNIFIED DENY STUDENT A FAPE BY FAILING TO CONDUCT TRIENNIAL ASSESSMENTS WITHIN THREE YEARS OF THE NOVEMBER 2014 INITIAL ASSESSMENTS?

Student contends Torrance Unified failed to conduct triennial assessments of Student within three years of November 2014. Student argues the failure infringed on Parents' right to meaningfully participate in an IEP team meeting within the legal

timelines and caused a loss of an educational benefit to Student. Torrance Unified contends Student failed to meet his burden of proof.

The statute of limitations in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (j); see also 20 U.S.C. § 1415(f)(3)(C).) However, title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (j), 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.

In *Avila v. Spokane Sch. District 81* (9th Cir. 2017) 852 F.3d 936, the Court found that the IDEA's statute of limitations barred claims filed more than two years after the time parents "knew or should have known" about the actions forming the basis for their complaint. (*Id.* at pp. 937, 945.) The Court held that in the IDEA's statute of limitations provision, Congress intended to enact a "discovery rule," not an "occurrence rule." (*Id.* at pp. 939-945.)

California implements the IDEA through its special education law. (*Miller v. San Mateo-Foster City Unified School Dist.* (N.D. Cal. 2004) 318 F.Supp.2d 851, 860.) Consistent with the IDEA, California has held that a claim accrues for purposes of the statute of limitations when a parent learns of the underlying facts that form a basis for the action. (Ed. Code, § 56505, subd. (j).) Knowledge that a student's education is inadequate is sufficient for the statute of limitations to begin to accrue. (*M.M. & E.M. v. Lafayette School Dist.* (N.D.Cal., Feb. 7, 2012 Nos. CV 09- 4624, 10-04223 SI)

2012 WL 398773, ** 17 – 19, affd. in part & revd. in part (9th Cir. 2014) 767 F.3d 842, 858-859.)

Both federal statute and subsequent case law inform that continuing violations are not cognizable in due process proceedings. In its commentary on the 2006 version of the Code of Federal Regulations written in response to the reauthorized IDEA, the United States Department of Education directly addressed the issue of continuing violations. A commentator to the proposed 2006 regulations suggested that the regulations should allow extensions of the statute of limitations when a violation is continuing. The United States Department of Education rejected the suggestion, stating, "Section 615(f)(3)(D) of the Act [IDEA] provides explicit exceptions to the timeline for requesting a due process hearing. Section 300.511(f) [of the then-proposed regulations] incorporates these provisions. These exceptions do not include when a violation is continuing Therefore, we do not believe that the regulations should be changed." (Comments to Regulations, *supra*, 46691.)

Here, Student' initial assessments were completed and reviewed by the Redondo Beach Unified's IEP team on December 8, 2014. Thus, Student's reassessments were due to be completed on or about December 8, 2017. Student was enrolled at Mr. J's Academy for the 2017-2018 school year, which is located within Torrance Unified's boundaries. Student was not assessed by Torrance Unified prior to December 8, 2017.

However, Parents were aware that a reassessment of Student was due. Parents requested Redondo Beach Unified to reassess Student for special education in the Fall of 2017. No evidence was offered by Student that Parents were not aware of their procedural rights when the reassessments did not occur by December 8, 2017. In addition, Student offered no evidence to show that Parents were not aware that

Torrance Unified would be conducting the assessments when they received the December 11, 2017 assessment plan. Accordingly, Parents knew of the facts underlying their claim and had until December 8, 2019, to request a due process hearing alleging a procedural violation against Torrance Unified for failing to timely reassess Student. Student did not allege such a claim against Torrance Unified until January 7, 2020, through his second amended complaint. More importantly, Student failed to allege that an exception to the two-years statute of limitations existed for this matter, or to submit any evidence to support an exception to the two-year statute of limitations. Therefore, Student's claim under Issue 2 was barred by the two-year statute of limitations.

CONCLUSIONS AND PREVAILING PARTY

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

Issue 1: Torrance Unified did procedurally deny Student a FAPE by failing to complete assessments and hold an IEP team meeting to review assessments within 60 days of Parents' February 9, 2018 consent to the December 2017 assessment plan, seriously infringing on Parents' rights to meaningfully participate in the development of Student's educational program and causing Student a loss of an educational benefit. Student prevailed on Issue 1.

Issue 2: Student's claim in Issue 2 was barred by the two-year statute of limitations. Torrance Unified prevailed on Issue 2.

REMEDIES

As remedies, Student requests that Torrance Unified reimburse Parents for tuition and costs associated with Student's enrollment at Mr. J's Academy. Student also seeks reimbursement for the cost of transportation from his home to Mr. J's Academy. Torrance Unified contends Student is not entitled to any relief.

Under federal and state law, courts have broad equitable powers to remedy the failure of a school district to provide a FAPE to a disabled child. (20 U.S.C. §1415(i); see *School Committee of Town of Burlington, Mass. v. Department of Educ. of Mass.* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996, 85 L.Ed.2d 385] (*Burlington*).) This broad equitable authority extends to an administrative law judge who hears and decides a special education administrative due process matter. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. 230, 243-244, n. 11 [129 S.Ct. 2484, 174 L.Ed.2d 168].) When a school district fails to provide a FAPE to a student with a disability, the student is entitled to relief that is "appropriate" in light of the purposes of the IDEA. (*Burlington, supra*, 471 U.S. 359, 369-370.) Remedies under the IDEA are based on equitable considerations and the evidence established at the hearing. (*Id.* at p. 374.)

Parents may be entitled to reimbursement for the costs of placement or services that they have independently obtained for their child when the school district has failed to provide a FAPE. (*Burlington, supra*, 471 U.S. at p. 374; *Parents of Student W. v. Puyallup School Dist.* (9th Cir. 1994) 31 F.3d 1489, 1496.) A parent may be entitled to reimbursement for placing a student in a private placement without the agreement of the local school district if the parents prove at a due process hearing that the school district had not made a FAPE available to the student in a timely manner prior to the placement, and that the private placement was appropriate. (20 U.S.C.

§ 1412(a)(10)(C)(ii); 34 C.F.R. § 300.148(c); see also *Burlington, supra*, 471 U.S. at pp. 369-370 [reimbursement for unilateral placement may be awarded under the IDEA where the school district's proposed placement does not provide a FAPE].) The private school placement need not meet the state standards that apply to public agencies to be appropriate. (34 C.F.R. § 300.148(c); *Florence County School Dist. Four v. Carter* (1993) 510 U.S. 7, 11, 14 [114 S.Ct. 361, 126 L.Ed.2d 284] [despite lacking state-credentialed instructors and not holding IEP team meetings, unilateral placement found to be reimbursable where it had substantially complied with the IDEA by conducting quarterly evaluations of the student, having a plan that permitted the student to progress from grade to grade, and where expert testimony showed that the student had made substantial progress].)

The IDEA does not require that a private school placement provide all services that a disabled student needs as a condition to full reimbursement. To qualify for reimbursement under the IDEA, parents need not show that a private placement furnishes every special service necessary to maximize their child's potential. They need only demonstrate that the placement provides educational instruction specially designed to meet the unique needs of a handicapped child, supported by such services as are necessary to permit the child to benefit from instruction. (*C.B. v. Garden Grove Unified Sch. Dist.* (9th Cir. 2011) 635 F.3d 1155, 1158-1159; see also, *S.L. v. Upland Unified Sch. Dist.* (9th Cir. 2014) 747 F.3d 1155, 1159; *Doug C. v. Hawaii Dept. of Educ.* (9th Cir. 2013) 720 F.3d 1038, 1048.)

At the hearing, Mother described Student as naive, and immature for his age. When Student was in public school, he was bullied and struggled academically. Since attending Mr. J's Academy, Student has gained confidence and was much happier.

At the hearing, Jeff Jamile echoed Mother's view. Mr. Jamile testified by video. He was the owner and lead teacher at Mr. J's Academy. He had a clear teaching credential. He was a general education teacher at Torrance Unified from 1998 to June 2010 where he taught grades four to six. He launched Mr. J's Academy in 2010. The Academy's middle school had two credentialed teachers and nine students at the time of hearing. Students at the Academy received a modified curriculum in the areas of spelling, reading, writing, and math, based on their level of performance. They received grade level curriculum for social studies and science.

Mr. Jamile described Student as scared, who had difficulty concentrating when he first entered Mr. J's Academy. Since then, Student's self-confidence had grown. He discovered himself to be athletic and enjoyed sports. Student expressed himself through cosplay, where one dresses up in costumes, dressed as a fictional character found in comic books, science fiction, or anime. Student's Tourette's improved as his coping skills developed.

Academically, Mr. J's Academy offered Student small group and individualized instruction. Math remained an area of weakness for him. However, his reading improved and his writing advanced from incoherent sentences to coherent short stories. His note taking went from primarily plagiarizing to writing notes in his own words.

For the third trimester of the 2017-2018 school year, Student earned a B minus in math, B pluses in spelling and science, and A minuses in reading, writing, and social studies. His report card that trimester noted that he slowly matured and did much better socially.

Parents entered into a contract with Mr. J's Academy for the 2017-2018 school year. The contract obligated Parents to pay Mr. J's Academy \$1000 each month from

September 2017 through August 2018, for a tuition total of \$14,000. As a result of Torrance Unified's untimely reassessment of Student and the lateness of an IEP team meeting to determine his eligibility for special education, Parents' did not receive a timely offer of FAPE from Redondo Beach Unified for their consideration. The reassessment was due to be reviewed and an IEP meeting was due to be held on or before April 21, 2018. As a result, no IEP was offered to Parents to consider from April 22, 2018, through the remainder of the 2017-2018 school year.

Student proved by a preponderance of the evidence that Mr. J's Academy provided Student with educational instruction specially designed to meet his unique needs that permitted him to benefit from instruction. Academically, Student thrived at Mr. J's Academy. As of October 12, 2018, the only area of need identified by the IEP team was math. He was more social and confident. The benefits of an education are not limited to academics, but also in aiding a child's social and emotional growth to support them academically, behaviorally, and socially. (*County of San Diego v. California Special Education Hearing Office, et al.* (9th Cir. 1996) 93 F.3d 1458, 1467.) Therefore, a preponderance of the evidence demonstrated that Student improved academically and socially within Mr. J's Academy small educational setting, with a modified curriculum supported by small group and individualized instruction. Accordingly, Parents are entitled to reimbursement for tuition at Mr. J's Academy in the amount of \$4,250 for the 2017-2018 school year, consisting of \$250 for the last week of April 2018 and \$4,000 for payments made in May, June, July and August 2018.

In addition, Torrance Unified's failure to timely assess Student resulted in Student not receiving an offer of FAPE to start the 2018-2019 school year. A school district must have an IEP in place at the beginning of each school year for each child with exceptional needs residing within the district. (20 U.S.C. § 1414(d)(2)(A); 34 C.F.R. § 300.323(a); Ed.

Code, § 56344, subd. (c).) Thus, it was appropriate for Parents to have Student remain enrolled at Mr. J's Academy to begin the 2018-2019 school year.

Parents entered into another contract with Mr. J's Academy for the 2018-2019 school year. The contract obligated Parents to pay the full amount of the tuition even if Student did not attend Mr. J's Academy after the deposit was paid. Parents paid Mr. J's Academy \$2,500 in June 2018 as a deposit to secure Student's enrollment at the private school for the 2018-2019 school year. For the 2018-2019 school year, Father testified that Parent's paid Mr. J's Academy \$1,000 for tuition at the beginning of each month from September 2018 through August 2019.

Torrance Unified did not present the findings, conclusions, and recommendations from its assessments until October 12, 2018 IEP team meeting. Torrance Unified fulfilled its assessment obligation to Student when it presented its October 12, 2018 psychoeducational assessment report and determined Student eligible for special education. Torrance Unified had no further obligations to Student under the IDEA based on the facts of this case for the 2018-2019 school year. In addition, Redondo Beach Unified assumed responsibility of offering a FAPE to Student for the remainder of the 2018-2019 school year.

However, even if Parents had consented to Redondo Beach Unified's offer of FAPE to return Student to public school following the IEP team meeting, completing the first semester at Mr. J's Academy would have been appropriate considering Student had attended Mr. J's Academy for the past four years and would have had to transition from the small educational setting at Mr. J's Academy to a larger, more comprehensive middle school in Redondo Beach Unified. Such a transition in the middle of the Fall semester would have been disruptive to Student's education. A return to public school

following a natural break in the academic calendar would have offered a smoother transition than one in the middle of the 2018-2019 Fall semester. Therefore, the balance of the equities entitles Parents to reimbursement from Torrance Unified for tuition at Mr. J's Academy through the first semester of the 2018-2019 school year. Accordingly, Parents are entitled to additional reimbursement in the amount of \$6,500 for the 2018-2019 school year deposit and tuition payments made in September, October, November, and December 2018.

Reimbursement for round trip transportation from Student's home to Mr. J's Academy is also appropriate, to be calculated as follows: two round trip daily between Student's home and Mr. J's Academy, consisting of 16.8 miles, at the 2018 Internal Revenue Service standard rate of \$.545 per mile from April 22, 2018, through December 31, 2018. Student did not provide evidence of transporting Student to and from Mr. J's Academy. Therefore, Student will need to submit proof of attendance for Parents to receive transportation reimbursement for each day of Student's attendance.

ORDER

1. Within 45 days upon receipt of payment information from Parents, Torrance Unified shall reimburse Parents for tuition and fees at Mr. J's Academy from April 22, 2018 through December 31, 2018, in the amount of \$10,750. Parents shall provide Torrance Unified with proof of payment in the form of cancelled checks, bank statements, or credit card statements before receiving reimbursement.
2. Within 45 days upon receipt of proof of the number of days Student attended Mr. J's Academy from April 22, 2018, to December 31, 2018, Torrance Unified shall reimburse Parents for two round trip daily, between Student's home and

Mr. J's Academy, consisting of 16.8 miles, at the 2018 Internal Revenue Service standard rate of \$.545 per mile. Parents will need to submit proof of attendance to receive transportation reimbursement for each day of Student's attendance.

3. All other claims for relief by Student are denied.

RIGHT TO APPEAL THIS DECISION

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

/s/

Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings