

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

TAFT CITY SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NO. 2009030654

DECISION

The due process hearing in this matter convened on May 26 and 27, 2009, in Taft, California, before Timothy L. Newlove, Administrative Law Judge (ALJ) from the Office of Administrative Hearings (OAH).

Stacy L. Inman, attorney at law, appeared on behalf of the Taft City School District (Taft or District). Ruth Haupt, Special Education Program Specialist, attended the hearing on behalf of the District. Student's father (Father) attended both days of the hearing and represented Student. Student's mother (Mother) attended the hearing on May 27, 2009.

On March 13, 2009, the District filed with OAH the Due Process Complaint Notice in this matter. On April 9, 2009, at a mediation, the parties agreed to continue the initial hearing date set in the case. During the due process hearing, the ALJ heard witness testimony and admitted documentary evidence. On May 27, 2009, the parties submitted the matter for decision and the ALJ closed the record.

ISSUE

Is the District's offer of placement and services at Taft Primary School, developed at the Individualized Education Program meeting on February 27, 2009, designed to confer a meaningful educational benefit and thereby a free appropriate public education to Student through April 16, 2009?

CONTENTIONS OF THE PARTIES

Taft contends that for the 2008-2009 school year it was the school district responsible for providing Student's special education program. At that time, Student was under an

Individualized Education Program (IEP) developed and delivered by the Kern County Superintendent of Schools. Taft wanted to pull-back or transfer Student from the Kern County special education program to a comparable program within the District. In February 2009, Taft held an IEP for this purpose. Taft contends that, at this IEP, the District satisfied both procedural and substantive requirements necessary for providing Student with a free appropriate public education (FAPE).

Student's parents do not contest the District's contentions. Student's parents do not contend that the Kern County IEP that Taft sought to implement did not offer Student a FAPE. Student's parents also do not contend that Taft did not offer to implement the Kern County IEP with a comparable special education program at Taft Primary. Instead, Student's parents simply do not trust the District to educate their son.

FACTUAL FINDINGS

The Student

1. Student is a seven-year-old boy who qualifies for special education and related services as a child with a speech and language impairment. Student's family resides within the boundaries of the Taft City School District which operates preschool, kindergarten and classrooms from grades one through eight.

2. From his impairment, Student has unique needs in the areas of expressive and receptive language. He has difficulties in speech and letter recognition. According to a February 2009 speech and language progress report, Student makes errors in articulation for certain sounds and blends. He needs work on "her/she" pronoun substitution and on using the auxillary verb "is" in spoken sentences. Student also has difficulty with using past tense and plural verbs and in forming interrogative questions. Student requires a classroom with a small pupil-to-teacher ratio in order to make academic progress.

The 2006-2007 School Year – Preschool

3. For the 2006-2007 school year, Student was in preschool. For this school year, Student's parents had an interdistrict attendance agreement with Elk Hills School District (Elk Hills). Elk Hills is a small school district located in Kern County, California. In October 2006, Elk Hills found Student eligible for special education and related services.

4. The Kern County Superintendent of Schools (Kern County) is a county office of education that provides special education programs for school districts, like Taft and Elk Hills, that do not have the resources or personnel to provide placement and services for special needs pupils who have individualized education programs. After finding Student eligible for special education, Elk Hills made a referral to Kern County which placed Student at a preschool called the Richardson Center. Kern County operates the Richardson Center, a

child care developmental center, which is located within the boundaries of Elk Hills in Bakersfield, California.

5. On April 16, 2007, Kern County convened an IEP meeting which Student's parents attended. From this IEP, Kern County, on behalf of Elk Hills, offered to place Student for the remainder of the 2006-2007 school year at Richardson Center and provide speech and language services. The April 2007 IEP also offered to place Student at Richardson Center for the extended school year, from June 18 to July 13, 2007. The April 2007 IEP further offered to place Student full-time in a Special Day Class (SDC) at Independence Elementary School (Independence Elementary) for the 2007-2008 school year, from August 20, 2007 to April 16, 2008, provide speech and language services in the amount of three 20 minute sessions per week, and provide transportation by bus. Student's parents consented to the April 2007 IEP.

6. The April 2007 IEP provides, in part, that "Parents need to request interdistrict transfer from Taft to Elk Hills for next school year." In fact, on April 23, 2007, Michael Harris, Superintendent for both Taft, as Student's district of residence, and Elk Hills, as the proposed district of attendance, signed an interdistrict attendance agreement that permitted Student to attend school in Elk Hills for the 2007-2008 school year.

The 2007-2008 School Year - Kindergarten

7. For the 2007-2008 school year, Student attended kindergarten at Independence Elementary under the April 2007 Kern County IEP. Kern County operates Independence Elementary which is located at a school site within the boundaries of the Rosedale School District (Rosedale). Student attended a kindergarten through second grade SDC taught by Nicole Cameron.

8. In October 2007, Student suffered a head injury from a horse. As a consequence, on November 1, 2007, Student's IEP team amended the April 2007 IEP to provide for home instruction until January 2008. In December 2007, the IEP team further amended the April 2007 IEP by providing for a temporary change in the location where Student received speech and language services.

9. Kern County, Taft, Elk Hills and Rosedale are part of a special education local plan area (SELPA) called the Kern County Consortium SELPA which includes about 46 members.

10. Ruth Haupt is a Special Education Program Director for the District which has employed her in different positions since 1980. In this role, Ms. Haupt has the responsibility of monitoring special needs pupils served by the Taft City School District. Ms. Haupt fulfills her monitoring duties by reviewing individualized education programs and observing special needs students in the classroom. Ms. Haupt's monitoring duties extend to Taft students who receive special education programs from Kern County.

11. At the start of the 2007-2008 school year, Taft made a decision to “pull-back” special needs pupils who resided within the boundaries of the District but who were receiving special education programs delivered by Kern County. The District made this decision for several reasons. First, when Taft refers a special education student to a Kern County program, the District must reimburse Kern County for the cost of the program. The District can save expenses by providing special education and related services through its own programs. Second, Mike Brusa, the current Taft Superintendent, testified that the District can better serve special needs pupils through its own programs. In the “pull-back” program, Taft has focused on returning from Kern County those special needs students in moderate-to-severe and multi-handicap classrooms from kindergarten through eighth grade. In the last two school years, the District has returned about 30 of 40 special needs pupils who were receiving special education programs delivered by Kern County.

12. As part of the “pull-back” program, Ms. Haupt assumed the responsibility of identifying special needs pupils who resided within the boundaries of Taft but who were receiving special education programs from Kern County, and determining whether the District could serve such students. In this process, when Ms. Haupt identified a special needs pupil, she typically reviewed the child’s IEP, contacted Kern County to discuss the District’s intentions, observed the child in the Kern County program, and determined whether Taft had or could develop a comparable program that met the goals and objectives in the child’s IEP.

13. In January 2008, Ms. Haupt reviewed a verification list that contained the names of Taft special needs pupils who received special education programs delivered by Kern County. She noticed Student’s name. Following her protocol, Ms. Haupt reviewed Student’s paperwork and requested from Kern County the opportunity to observe Student at Independence Elementary. She made two observations of Student in the early months of 2008. From her record review and observations, Ms. Haupt concluded that the District had special education programs and personnel that could serve Student and help him attain the goals and objectives in his IEP. At the second observation, held in April 2008, Lisa Hentges, a Speech and Language Pathologist for the District, and Robin Barrett, a teacher for the District, accompanied Ms. Haupt. Both women agreed in the conclusion that Taft could serve Student.

14. At about this time, Ms. Haupt received a letter dated March 27, 2008, prepared by Leslie Roberts, Superintendent and Principal at Elk Hills. The letter informed that Student’s family “has withdrawn from Elk Hills School to return to their district of residence.” The letter also stated that “(T)he current IEP indicates the intention to return (Student) to his home school campus next year.”

The April 2008 IEP

15. On April 16, 2008, Kern County convened Student’s annual IEP meeting. Ms. Haupt wanted to attend this IEP, but was unable to do so, and the District did not send another representative. Instead, Ms. Haupt called Debra Porter, a Kern County Vice-Principal who facilitated the IEP, and told her to inform Student’s parents that Taft wanted to

pull-back Student. The notes from the April 2008 IEP state that Student's parents wanted Student to remain with Kern County, that the District would be happy to have Student return to Taft, and that Ms. Haupt would contact the parents on this issue.

16. The April 2008 IEP prepared for Student by Kern County contains goals and objectives in the areas of number sense, grammar, penmanship, reading ability, group activities and expressive language. The IEP offered to place Student for first grade during the 2008-2009 school year, from April 16, 2008 to April 16, 2009, in a Special Day Class – Learning Handicapped (SDC-LH) classroom at a public day school. The IEP team understood that the public day school would be Independence Elementary. According to Patricia McDowell, a Principal for Kern County, the SDC-LH is an academic program in which Kern County attempts to have participating students catch-up to grade level. The April 2008 IEP also offered Student with speech and language services in the amount of four 20 minute sessions per week for the school year. The IEP contained a general education participation plan which offered Student the opportunity to mainstream with typically developing peers during story time in a regular education class, outdoor activities, lunch, recess and assemblies. Finally, the April 2008 IEP offered Student transportation by bus to and from his home and Independence Elementary. Student's parents consented to the April 2008 IEP.

17. In June 2008, after Student's kindergarten year had concluded, the District convened a meeting regarding Student. Mr. Brusa, the Superintendent of Taft, Ms. Haupt and Student's parents attended the meeting. The purpose of the meeting was to discuss returning Student to a District school. At the meeting, Father stated that Student was the subject of an interdistrict attendance agreement with Elk Hills. Mr. Brusa adjourned the meeting to determine whether this statement was accurate. He learned about the March 2008 Leslie Roberts letter which stated that Student's family had withdrawn from Elk Hills to return to their school district of residence. Mr. Brusa determined that Taft was the Student's school district of residence and that there was a need to clarify the residency issue raised by Student's parents. Accordingly, Mr. Brusa informed Student's parents that they needed to make an interdistrict attendance agreement request for the 2008-2009 school year. Student's parents made this request which Mr. Brusa denied.

The 2008-2009 School Year – First Grade

18. For the 2008-2009 school year, Student attended Ms. Cameron's SDC-LH classroom at Independence Elementary under the April 2008 IEP. In fact, on May 29, 2009, Student completed his first grade year at Independence Elementary. The District paid for Student's special education and related services delivered under the April 2008 IEP by Kern County. Ruth Haupt testified that the cost of this program was about \$50,000.

19. On February 27, 2009, the District convened an IEP meeting for Student. The primary purpose of this IEP meeting was to obtain Student's parents' consent to transfer Student from the special education program delivered by Kern County at Independence Elementary to a comparable program operated by the District at Taft Primary School. After

discussion, the District offered to place Student in the Mild-to-Moderate SDC at Taft Primary taught by Renee Rios. This class is similar to the SDC-LH class taught by Nicole Cameron at Independence Elementary. Ms. Rios is qualified to provide instruction to special needs pupils. At Taft Primary, she teaches, with the assistance of an aide, a kindergarten through third grade class that has eight students. Ms. Rios testified that she has reviewed Student's April 2008 IEP, and that, in her class at Taft Primary, she could implement the goals and objectives relating to number sense, grammar, penmanship, reading ability and group activities in such IEP. Ms. Rios testified that Student would make academic progress in her class.

20. In the February 2009 IEP, the District also offered to provide the same amount of speech and language services required in Student's April 2008 IEP. The District intended that Lisa Hentges, the Speech and Language Pathologist who observed Student in April 2008, provide such services. Ms. Hentges is qualified to provide speech and language services to special needs pupils. She testified that she could implement the expressive language goals and objectives in Student's April 2008 IEP. In the February 2009 IEP, the District further offered to provide Student with the same opportunities for mainstreaming that appear in the April 2008 IEP.

21. Student's parents did not consent to the District's February 2009 IEP offer to adopt the April 2008 IEP at Taft Primary. Student's parents want their son to continue at Independence Elementary. They do not want their son to attend District schools. Student's parents provided the following reasons for their preference against the District and in favor of Independence Elementary. Father testified that Student loves Ms. Cameron's class and does not want to change schools. Father testified that Ms. Cameron knows Student and his special needs, especially after his accident with the horse in October 2007. Father also testified that he does not think that Ms. Hentges has the time to provide speech and language services in conformity with Student's April 2008 IEP. Both Mother and Father testified that they have a dislike and distrust of Taft schools. Mother testified that she has other children who attended Taft schools and she thinks that her children were not well-served.

22. On March 31, 2009, the District sent a "prior written notice" to Student's parents. The written notice informed Student's parents that the District was making an offer to change Student's placement from the SDC-LH class at Independence Elementary to the Mild-Moderate SDC class at Taft Primary. The written notice informed Student's parents that the reason for the offer was that "Taft City Schools can offer the same services in the student's district of residence as is offered through (Kern County)" and "is able to address all goals and objectives included within (Student's) IEP." The written notice also advised Student's parents of the procedural safeguards under federal and state special education law, and gave the name of a local contact who could provide advice about such procedural safeguards.

23. On April 3, 2009, the District convened an IEP meeting which Student's parents attended. This IEP meeting addressed Student's special education program for the 2009-2010 school year in which Student will be in second grade. At this IEP, the District

again offered to place Student in the Mild-Moderate SDC class taught by Ms. Rios at Taft Primary, with supportive speech and language services. Student's parents did not consent to this offer. The appropriateness of the April 2009 IEP for Student is not a subject for this Decision.

LEGAL CONCLUSIONS

Burden of Proof

1. In an administrative hearing, the party seeking relief has the burden of proving the essential elements of its claim. (*Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528, 163 L.Ed.2d 387].) In this matter, the District has the burden of proof.

Residency and Interdistrict Transfers

2. Normally, a minor must attend a public school in the school district in which the child's parents reside. (Ed. Code, § 48200.) As an exception to this rule, a child can attend a different school district under an approved interdistrict attendance agreement. (Ed. Code, § 48204, subd. (a)(2).) Interdistrict attendance requires an agreement between the school district of residence and the school district of attendance. (Ed. Code, § 46600, subd. (a).) Under such an agreement, the school district of residence must first approve the request by the pupil's parents for admission to a different school district. (*Ibid.*) Then, the school district of proposed attendance must approve the request. (*Ibid.*) "The agreement shall stipulate the terms and conditions under which interdistrict attendance shall be permitted or denied." (*Ibid.*)

Placement

3. An educational placement is that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to a special needs pupil, as specified in the child's IEP, in any one or a combination of public, private, home and hospital, or residential settings. (Cal. Code Regs., tit. 5, § 3042, subd. (a).) Making placement recommendations is the central function of an IEP team meeting. (Ed. Code, §§ 56342, subd. (a), (b); 56343, subd. (d).)

Prior Written Notice

4. Under the Individuals with Disabilities Education Act (IDEA) and companion state law, before a school district proposes to change the educational placement of a special needs pupil, the district must provide the child's parents with written prior notice of the proposed change. (20 U.S.C. § 1415(b)(3)(A); 34 C.F.R. § 300.503(a)(1)(2006); Ed. Code, § 56500.4, subd. (a).) The written prior notice must contain a description of the proposed change, an explanation of why the school district has proposed the change, a statement that the parents have protections under the procedural safeguards in IDEA and state law, and

sources for the parents to contact in order to obtain assistance in understanding their rights under special education law. (20 U.S.C. § 1415(c)(1)(A)-(F); 34 C.F.R. § 300.503, subs. (b)(1)-(7)(2006); Ed. Code, § 56500.4, subd. (b)(1)-(7).) The proposal to change an educational placement “triggers the obligation to convene an IEP Team meeting,” but the school district can hold an IEP meeting before sending prior written notice to the child’s parents. (71 Fed.Reg. 46691 (Aug. 14, 2006).)

Amendment of an IEP

5. A school district must also amend an existing IEP in order to make a change in educational placement for a special needs child. A district can amend an IEP either through agreement with the child’s parents or a by the IEP team at an IEP meeting. (20 U.S.C. § 1414(d)(3)(F); 34 C.F.R. § 300.324(a)(6)(2006); Ed. Code, § 56380.1, subs. (a), (b).) Above all, the child’s parents must have an opportunity to discuss the proposed change in placement with the school district. (Ed. Code, § 56341.5, subd. (a); 71 Fed.Reg. 46685 (Aug. 14, 2006); *Amanda J. v. Clark County School* (9th Cir. 2001) 267 F.3d 877, 892.)

Transfer Students

6. A school district that receives a special needs pupil who has an IEP and who transfers from another school district must afford the transferring student certain procedural and substantive rights. (20 U.S.C. § 1414(d)(2)(C)(i)(I); 34 C.F.R. § 300.323(e)(2006); Ed. Code, § 56325, subd. (a).) In particular, when a special needs pupil with an IEP transfers between school districts that are located within the same SELPA, the “new district shall continue, without delay, to provide services comparable to those described in the existing approved individualized education program, unless the parent and the local educational agency agree to develop, adopt, and implement a new individualized program that is consistent with federal and state law.” (Ed. Code, § 56325, subd. (a)(2).)

Process for Lack of Consent

7. When the parents of a special needs pupil refuse to consent to all of the services offered by a school district in an IEP, and the parents have consented to such services in the past, then the district must file a request for a due process hearing. (Ed. Code, § 56346, subd. (d).) Upon the filing of a request for a due process hearing, the school district must maintain the child in his or her current educational placement. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a)(2006); Ed. Code, § 56346, subd. (f).)

Elements of FAPE

8. Under the IDEA and state law, children with disabilities have the right to a free appropriate public education (FAPE). (20 U.S.C. § 1400(a); 34 C.F.R. § 300.101 (2006); Ed. Code, § 56000.) A FAPE means special education and related services that are available to the special needs pupil at no charge to the parents, that meet state educational standards, and that conform to the child’s IEP. (20 U.S.C. § 1401(a)(9); 34 C.F.R. § 300.17

(2006); Cal. Code Regs., tit. 5, § 3001, subd. (o).) “Special education” is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(a)(29); 34 C.F.R. § 300.39 (2006); Ed. Code, § 56031, subd. (a).) “Related services” are developmental, corrective and support services, including transportation, that are required to assist a special needs pupil to benefit from special education. (20 U.S.C. § 1401(a)(26); 34 C.F.R. § 300.34(a)(2006); Ed. Code, § 56363, subd. (a).) “Related services” include speech-language pathology services. (Ed. Code, § 56363, subd. (a).)

9. The United States Supreme Court has held that the IDEA does not require school districts to provide special needs pupils with the best education available, or to provide instruction or services that maximize a student’s abilities. (*Bd. of Educ. of the Hendrick Hudson Sch. Dist. v. Rowley* (1982) 458 U.S. 176, 198 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*).) School districts are required to provide special needs students with a “basic floor of opportunity” that consists of access to specialized instruction and related services individually designed to provide educational benefit to the child. (*Id.* at p. 201.)

10. There are two parts to the determination of whether a school district has complied with the IDEA and companion state law. First, the tribunal must determine whether the district has complied with the procedures in special education law. (*Rowley, supra*, at pp. 206-207.) Second, the tribunal must decide whether the IEP developed through such procedures was reasonably calculated to enable the special needs pupil to receive a meaningful educational benefit. (*Id.*, at p. 201; *Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1031; *N.B. v. Hellgate Elementary School Dist.* (9th Cir. 2008) 541 F.3d 1202, 1207, 1212-1213.)

Determination of Issue: Is the District’s offer of placement and services at Taft Primary School, developed at an Individualized Education Program meeting on February 27, 2009, designed to confer a meaningful educational benefit and thereby a free appropriate public education to Student through April 16, 2009?

11. Based upon Finding of Fact 1-17, and Legal Conclusion 2, Taft City School District was the school district responsible for Student’s education for the 2008-2009 school year. Student’s parents reside within the boundaries of the District which assumed the financial responsibility for Student’s first grade special education program delivered by Kern County. Student’s parents did not have an interdistrict attendance agreement with Elk Hills for this school year.

12. Based upon Findings of Fact 1-22, and Legal Conclusions 3-7, the District complied with the required procedures for proposing and implementing a change in Student’s educational placement from the Kern County SDC-LH class at Independence Elementary to the Mild-Moderate SDC class at Taft Primary School. First, in February 2009 IEP, the District convened an IEP meeting in which Student’s parents attended. At this IEP, the District offered to amend Student’s April 2008 IEP such that the District would implement Student’s special education program at Taft Primary instead of Independence Elementary. When Student’s parents refused to consent to the District’s offer to change the location of

Student's educational placement, the District sent the parents a prior written notice. This written notice contained a description of the proposed change in placement, an explanation of the reasons for the proposed change, and information concerning the parents' rights under the procedural safeguards in special education law. In the proposed change of placement, the District intended to transfer Student between a county office of education and a school district within the same SELPA. The District followed the requirements relating to special needs transfer students by offering to continue Student in a comparable educational program. Finally, since Student's parents refused all services offered by the District in the February 2009 IEP, the District filed the Due Process Complaint Notice in this case, but maintained Student during the pendency of this matter in his current educational placement at Independence Elementary.

13. Based upon Findings of Fact 1-22, and Legal Conclusions 8-10, the special education program offered by Taft at the February 2009, constituted an offer of FAPE through April 16, 2009. The February 2009 IEP offered to adopt Student's April 2008 IEP in a comparable special education program at Taft Primary School. The April 2008 IEP, in turn, contained goals and objectives designed to meet Student's unique needs in the areas of expressive and receptive language. The April 2008 IEP placed Student in a small-sized SDC-LH classroom which Student needed to make academic progress. The April 2008 IEP also provided Student with speech and language services that were sufficient to assist Student to benefit from his special education program. In the February 2009 IEP, the District offered to place Student in a Mild-Moderate SDC class with eight students and a teacher who could implement the goals and objectives in Student's April 2008 IEP. In the February 2009 IEP, the District also offered comparable speech and language services and intended that a qualified Speech and Language Pathologist would provide such services. By offering a special education program that was comparable in all respects to Student's April 2008 IEP and setting aside qualified personnel to implement such program, the District's February 2009 IEP was reasonably calculated to provide a meaningful educational benefit for Student.

ORDER

The Taft City School District's February 2009 IEP constituted an offer of FAPE to Student from February 27, 2009 through April 16, 2009, and, accordingly, the District was entitled to implement this IEP over the lack of consent by Student's parents.

PREVAILING PARTY

The decision in a special education administrative due process hearing must indicate the extent to which each party prevailed on the issues heard and decided at the hearing. (Ed. Code, § 56507, subd. (d).) The District prevailed on the issue heard and decided in this matter.

RIGHT TO APPEAL THIS DECISION

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

Dated: June 10, 2009

/s/

TIMOTHY L. NEWLOVE
Administrative Law Judge
Office of Administrative Hearings