

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2009080646

**DECISION**

Eileen M. Cohn, Administrative Law Judge, Office of Administrative Hearings, heard this matter on January 27 and 28, 2010, in Van Nuys, California.

Student was represented by his mother (Mother).

Los Angeles Unified School District (District) was represented by Lauri LaFoe, Attorney at Law, of Sansom Willis LaFoe LLP. Dr. Jose Gonzalez and Dr. Deborah Neal, District due process specialists, were present on January 27, and January 28, 2010, respectively.

On August 19, 2009, Student filed his Due Process Complaint (complaint). Continuances were granted for good cause on October 2, 2009, and December 3, 2009. At the conclusion of the hearing, the matter was continued until 5:00 p.m., February 4, 2010, so the parties could file and serve written closing arguments. District and Student timely filed their written closing arguments and on February 4, 2010, the record was closed and the matter was submitted.

## ISSUES<sup>1</sup>

1. Whether District denied Student a free and appropriate public education (FAPE) at the April 17, 2009 individualized education program (IEP) team meeting because the school principal, the school psychologist, and Student's regular education teacher, were not present.
2. Whether the District denied Student a FAPE in the April 17, 2009 IEP because the offer of unsupervised bus transportation did not meet his unique needs for supervision and safety.

## FINDINGS OF FACT

1. Student was eight years old at the time of hearing. During the 2008-2009 school year, he was a second grade pupil at Haskell Elementary School (Haskell). Haskell is not Student's home school. He attended Haskell on a child care permit based upon the proximity of Haskell to his caregiver's residence. There is no dispute that Student was entitled to an IEP, and special education and related services, from District.
2. Student was diagnosed with attention deficit hyperactivity disorder (ADHD). Due to his diagnosis of ADHD, he was made eligible for special education under the category of other health impaired (OHI).
3. Student's educational challenges arising from his ADHD were well documented in his initial IEP of May 29, 2008. The IEP was conducted when Student was enrolled in first grade at another District elementary school. Assessment results revealed that Student had cognitive ability within the high average range and high to superior abilities in visual short-term memory, visual spatial relationships and most other areas of visual perceptual skills. His phonological skills, including word discrimination, were within the high average range. Student's auditory memory was less developed than his visual memory and directly impacted his access to education. His reading performance in the general education class was a particular noted concern as it was lower than required for pupils at his grade level. Overall, the IEP team noted many direct and serious challenges facing Student as a direct consequence of his ADHD. Student often appeared confused in following directions and instruction. He had "great difficulty" sustaining attention, staying on task, or remembering his assignments.

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<sup>1</sup> The issues are identical to the issues set forth in the PHCs, but have been further refined to conform to the applicable legal standards. At the hearing, Mother indicated that she also wanted to contest the appropriateness of the offered placement in a special day program. Mother withdrew this issue from her complaint at the first PHC. At the first PHC, Mother was granted a continuance to consult with an attorney or an OAH mediator to clarify her issues and amend the complaint. Mother elected not to amend the complaint and to limit her issues in the first PHC. Her request to amend the complaint at the hearing was denied.

4. Student's behavioral challenges arising from his ADHD were also clearly noted in his initial IEP. The initial IEP team acknowledged as Student's strengths that he "likes people, including his peers," that he "smiles often and shows affection," and that he is generally a "light hearted boy, who enjoys the attention of others." In contrast to its short description of Student's strengths, the IEP team chronicled in detail Student's negative behavior arising from his disability. Student's teacher reported that Student was impulsive, and often failed to follow rules in the classroom and school yard. She noted that Student was always looking everywhere, trying to engage other pupils. She observed that he "has had physical and verbal disagreements with students from grades 1-5", and "[w]hen confronted always denies." His desire for physical contact with other Students was evidenced by: "pestering" the pupil in front of him in line by "poking and blowing in his ear;" punching his friend; having water fights with other pupils or throwing water at them in the restroom; kissing one girl; and hugging another girl. Student also engaged in acts of property destruction. His teacher made sure he was always accompanied to the bathroom because, in addition to his physical interactions with other pupils, he would clog the toilets and sinks. Student's teacher concluded that Student needed to observe school and classroom rules and routines, to keep his hands and feet to himself, to pay attention, and to engage appropriately with other pupils.

5. Student's initial IEP team recognized Student's social conflicts with his peers. According to the initial IEP team, due to Student's ADHD he often was isolated at recess time because "children do not always want to play with him" due to his "impulsive decisions." His impulsivity also resulted in suspensions. Student was unable "to respect the personal space of others." His inability to "seek out friendship in appropriate ways has led to interpersonal conflicts with peers." The IEP team developed a behavior support plan (BSP) to address his behaviors which impeded his learning, including his negative interaction with peers. The IEP team noted that he needed close supervision in the "yard, in (the) bathroom, and in the classroom" to access his education.

6. For the 2008-2009 school year, Student was offered a regular education class with counseling and 120 minutes weekly of resource support at San Fernando Elementary School (San Fernando), the home school of the residence listed on Student's 2008-2009 IEP. Mother consented to the IEP.

7. San Fernando was the home school of the residence listed on Student's 2008-2009 IEP. The listed home residence was the residence of Student's grandmother in Mission Hills (the "Mission Hills address"). Mother is a single parent. At all relevant times, Mother attended college full-time with the assistance of the CalWORKS program, the state financial assistance program. Mother also received government subsidized child care services. Student's caregiver resided close to Haskell.

8. Instead of enrolling Student at San Fernando, Mother enrolled Student in Haskell on a child care permit so that he could attend school close to his caregiver's

residence.<sup>2</sup> Lorie Thompson (Ms. Thompson), Haskell's principal, approved Student's child care permit for the 2008-2009 school year. In conformity with his IEP, Haskell placed Student in a regular education classroom and provided him with support from the resource support program (RSP) and counseling.

9. Mother drove Student to school. She dropped him off at the gate. The school gates were monitored by parent volunteers. There is no evidence that Mother walked Student to the gate. Student's caregiver picked him up by car after school.

10. Over the course of the 2008-2009 school year, Student's classroom behaviors improved. Many pupils seemed to like him. He became less disruptive, stopped making noises or bothering other pupils as frequently, and enjoyed a good relationship with his teacher. Student responded well to praise and being rewarded with computer time. During counseling sessions, he was always respectful and demonstrated an understanding of appropriate versus inappropriate behaviors.

11. Student continued to struggle with some social interactions during the 2008-2009 school year. By April of 2009, Student was close to his goal of keeping his hands to himself but had not met it. He persisted in blaming others for conflicts and would not take responsibility for his part.

12. The school day at Haskell ended at 2:30 p.m. Haskell kept the campus playground open to its pupils in grade two through five until 6:00 p.m. After-school playground hours were not part of the school day and were not supervised by Haskell staff. District offers the services of one youth services coach to informally monitor the playground after school hours, but otherwise pupils were free to use the playground unsupervised as long as they stayed in certain areas and abided by rules of conduct that Haskell distributed to all parents. Student ran into difficulty when he was not picked up directly from school by his caregiver and was left to play unsupervised in the playground until his caregiver arrived at school. Generally, Student was picked up by his caregiver between the hours of 4:30 and 5:30 p.m. On one occasion, when Student remained after school he walked across the street to visit a street vendor. A pupil found him and walked him back to campus. Another time Student was found affixing graffiti to a school building. Mother also alerted Haskell that Student was repeatedly subjected to physical bullying after school by the same group of pupils.

13. Student's IEP did not provide for after-school extracurricular activities. Formal and direct supervision for pupils who remained after school was provided only for pupils enrolled in after-school activity programs. During the 2008-2009 school year, District offered an after-school program at Haskell, called Keep Kids Doing Something, better known as KYDS. KYDS was not a special education program and was open to all pupils on

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<sup>2</sup> At the hearing, Mother also claimed that Student qualified as homeless during the relevant time period. There is no evidence that Mother provided District with any documentation that Student qualified as a homeless pupil during the relevant time period.

a first-come, first-served basis. Sometime during the 2008-2009 school year, Mother enrolled Student in KYDS. He was excused from KYDS because of his failure to follow rules and stay with the group.

14. Mother requested an IEP team meeting for the sole purpose of re-enrolling Student in KYDS. Haskell sent written notification to Mother to participate in an IEP team meeting on April 1, 2009. Haskell indicated that the purpose of the IEP team meeting was in response to Mother's request and to conduct an annual review. Mother agreed to the IEP team meeting. She noted in the meeting notice that she would like to "review playground (extracurricular activities added) with supervision-instruction after school" and "KYDS assignment for [Student]."

15. Prior to the April 1, 2009 IEP team meeting, Rene Chavez (Mr. Chavez), the Assistant Principal, met with Mother and Student's teacher informally to discuss Student's poor academic progress and his need for more support than he could be provided within a regular education classroom. They discussed changing Student's placement to a special day program (SDP).

16. The IEP team met as scheduled on April 1, 2009. The IEP team included: Mother; two administrators, Ms. Thompson and Mr. Chavez; Sandy Dawson (Ms. Dawson), Student's special education teacher and resource specialist; Marlene Dahl (Ms. Dahl), Student's general education teacher; and Julie Lewis (Ms. Lewis), the school psychologist. Every IEP team member that participated in the April 1, 2009 IEP team meeting signed the attendance sheet.

17. At the April 1, 2009 IEP team meeting, the IEP team reviewed Student's draft IEP which included his present levels of performance in reading, writing, math, behavior, and social-emotional. Overall, the IEP indicated that Student could not successfully access his second grade general education curriculum in reading, writing, or math due to his severe distractibility, and inability to follow classroom directions. Student's problems persisted despite support he received in the classroom from the special education assistant and additional resource support he received on a pull-out basis from the resource specialist in Haskell's learning center. Ms. Thompson informed Mother that Student was in danger of failing second grade. The IEP set forth a set of annual goals and objectives in reading, writing and math. No standardized assessments were performed. Reports of Student's present levels of performance were based primarily upon observations of his general and special education teachers, and school psychologist from counseling sessions.

18. There is no evidence that a SDP placement for Student was discussed in any detail. Ms. Thompson testified that it was her practice to defer to her regional district office, here, support unit north, to designate the actual site of the SDP, because the regional office is aware of the enrollment numbers. She testified that she was concerned that Haskell's SDP was already at capacity with Students that are assigned Haskell as their home school. Haskell housed one SDP for grades one through three in a 400 square foot space. At the time of the IEP, the Haskell SDP included 16 pupils, and two more pupils were anticipated. She

directed Mr. Chavez to consult with support unit north for a recommendation as to the school site. Ms. Thompson continued the IEP to April 17, 2009, to allow time for Mr. Chavez to obtain the recommendation for a specific SDP placement from the regional district office and present it to the IEP team. She explained to Mother that the placement recommendation would be made at the April 17, 2009 IEP team meeting.

19. The IEP team assisted Student with his enrollment in the supervised afternoon program KYDS. At the request of Ms. Thompson, Mr. Chavez intervened and secured a place for him in the program. Student attended the program until the end of the 2008-2009 school year. Mother reported that Student did not have any further incidents on the playground after school once he was enrolled in a formal supervised program. She was satisfied that he was safe. After-school extracurricular activities, including KYDS, were not part of the IEP team offer for the 2009-2010 school year. Due to budget cuts, KYDS was discontinued for the 2009-2010 school year.

20. The IEP team reconvened on April 17, 2009, as scheduled. Present at the meeting were Mother, Mr. Chavez, Ms. Dawson, and Allyson Stockton (Ms. Stockton), a part-time special education teacher with a dual credential in general education. Ms. Dahl, Student's current general education classroom teacher, was absent due to illness. Ms. Thompson was not present and did not sign the attendance sheet. Ms. Lewis, the school psychologist, was not present.

21. Mr. Chavez, as Vice Principal, was responsible for coordinating and conducting the IEP team meetings. He attended the IEP team meetings in his capacity as an administrator. Mr. Chavez has twelve years of experience in the District, including five years as a multi-subject general education classroom teacher. Mr. Chavez was familiar with Mother and Student, and was aware of Student's progress in the general education curriculum and his challenges.

22. Student's general education teacher, Ms. Dahl, was absent from school on April 17, 2009. Mr. Chavez invited Ms. Stockton to take her place at the IEP team meeting just before the meeting began. Ms. Stockton was not, and had never been, Student's general education teacher. She was familiar with Student in her capacity as a part-time resource teacher because it was part of her job to know all the pupils involved in the resource program. There was no evidence that she was Student's case manager or worked with him directly. Mother was surprised by the absence of Student's regular education teacher. Mother was not notified in advance that Student's general education teacher would be absent and did not agree to excuse her from the meeting. Prior to the April 17, 2009 IEP team meeting, she had not met Ms. Stockton and did not know who she was or what she did at Haskell.

23. At the April 17, 2009 IEP team meeting, for the 2009-2010 school year, the IEP team offered Student placement in a SDP for specific learning disabled pupils with related services due to his need for intensive small group instruction to access the general education curriculum. Student would spend 920 minutes a week in the SDP, or 58 percent of

his time. As deemed appropriate by school staff, Student would also be mainstreamed for social studies, science, art, music and PE, as well as field trips, assemblies, language arts and math. Student would also be provided with school counseling for 30 minutes, once monthly. The IEP included a BSP. Extended school year services were also offered.

24. The IEP team did not offer Student the SDP for specific learning disabilities available at Haskell. Instead it offered Student a SDP for specific learning disabilities at El Dorado Elementary School (El Dorado). El Dorado was not Student's home school. It was the school closest to San Fernando, the home school connected to the Mission Hills address.

25. The IEP team offered Student transportation during the regular school year and ESY because the IEP could not be implemented at Student's home school. On the IEP, the team indicated that transportation would be provided from "home to school." Other transportation options were available, including "school to school" but these options were not selected. "Home to school" transportation was offered due to Student's "unpredictab[ility], severe impulsivity (and) distracti[b]ility."

26. Haskell's IEP team members addressed Student's behavior and safety on the bus. They determined that he required a safety vest to keep him securely in his seat during the bus ride. A safety vest was made a part of the IEP team's transportation offer.

27. The school day began at 8:00 a.m. and ended at 2:20 p.m. Mother requested transportation that would accommodate Student's child care needs. With input from Mother during the IEP team meeting, Mr. Chavez prepared a transportation form that was attached to the IEP. Although the transportation form is not usually part of IEPs, it was attached to Student's IEP and can only be interpreted as memorializing the District's transportation offer. The IEP offer of transportation was that Student would be transported directly from his home address, the Mission Hills address, to El Dorado in time to take advantage of El Dorado's breakfast program at 7:30 a.m. At the end of the school day, at 2:30 p.m., Student would board the school bus and be delivered from El Dorado directly to the home of his caregiver in Granada Hills.

28. Mother testified that District's offer required Student to take two buses each way. According to Mother, District's offer required that she deliver Student to his caregiver in Granada Hills for pick up at 7:00 a.m. where a small school bus would take him to Haskell. Mother consulted with the caregiver and was advised that she would not be available at that hour to wait for the school bus. At Haskell he would wait outside the school gates for another big bus to take him to El Dorado. At the end of the school day, he would be transported by one bus from El Dorado to Haskell, and then another bus from Haskell to the caregiver's home, unless the caregiver elected to pick him up at Haskell instead. Mother emphasized the safety risk of leaving him unattended in front of Haskell waiting for buses. The IEP did not include any notes indicating that this other route was discussed at the IEP. There is no evidence that this route was made part of the IEP team offer.

29. At the end of the IEP team meeting on April 17, 2009, Mother requested time to review the offered transportation with Student's caregiver and to visit the proposed SDP before she signed the IEP. Mother understood that the IEP team would reconvene in two weeks after she had an opportunity to consider the offer. However, in contrast to the April 1, 2009 IEP team meeting, at the end of the April 17, 2009 IEP team meeting, another IEP team meeting was not scheduled. The completed IEP was provided to Mother for her consent.

30. Mother visited El Dorado for the sole purpose of assessing the safety of District's offered bus transportation. She did not visit the SDP. She drove by El Dorado at the end of the school day and observed a crowd of unsupervised pupils waiting on the sidewalk for their transportation, including the buses. She did not stop the car to observe the situation, or speak with anyone about the bus transportation. She didn't like what she observed to be the pupil "drop-off." From her one observation from her passing vehicle, she concluded that Student would be left unattended when he went to board the bus at the end of the school day, and be at risk of running into the neighborhood, or getting into physical altercations with other pupils. According to Mother, her observation that pupils were not supervised was confirmed by Student's second grade resource teacher.

31. Mother also consulted with Student's caregiver about Student's placement at El Dorado. Student's caregiver represented to her that she would not travel to El Dorado to pick Student up at the end of the day, or travel to El Dorado to pick Student up at any time of the day, even if he became sick.

32. Ms. Thompson testified about District's policy and practices regarding the supervision of pupils transported by bus when they arrive at the school site. Ms. Thompson has twenty years of experience in the District and her understanding of District policy was given deference. District policy specifies that special education pupils must be supervised when they arrive at the school. In addition, both special education and regular education pupils are supervised in the school yard before their school day begins. When pupils arrive at school they go directly into the school yard and stand in an assigned line with their classmates. They are supervised on the school yard before they enter their classrooms. Student would arrive in time for breakfast at 7:30 a.m.; he would go to the cafeteria where he would be supervised at breakfast. If he joined his classmates in line on the school yard, he would also be supervised.

33. After hearing Ms. Thompson's testimony at the hearing, Mother conceded that Student would be safe upon arrival at El Dorado. Based upon her observation of El Dorado, she maintained that he would be unsafe at the end of the school day when he had to board the school bus.

34. On April 22, 2009, Mother signed the IEP, indicating that she did not consent to the IEP offer. Mother wrote that she needed to look into a few issues before making a final decision. At the hearing, Mother testified that she meant that she needed to check the transportation arrangements with Student's caregiver. She further testified that she would have no objection to El Dorado if the transportation was appropriate.

35. Mother did not enroll Student in a District school for the 2009-2010 school year. At the beginning of the 2009-2010 school year, Mother enrolled Student in a private school, Applied Scholastic. Applied Scholastic permits Student to arrive before the school day begins at 7:00 a.m. and stay after school until 6:00 p.m. Mother is able to drop Student off at 7:00 a.m. and pick him up at 6:00 p.m. Mother's classes began at 8:00 a.m. and she studies until 5:00 p.m. so it was important for her to be able to drop her son off early and have him stay at the school site late.

36. Mother was Student's only witness. District administrators, Ms. Thompson and Mr. Chavez testified for District. The relationship between Mother and District administrators was combative due to disputes regarding Mother's child care permit and Student's altercations with other pupils after school. Their relationship affected the credibility of their testimony. Documentary evidence was primarily relied upon to reconcile any conflicting testimony. In the absence of documentary evidence, deference was given to witnesses where they demonstrated a more detailed recollection. Ms. Thompson demonstrated a clearer and more detailed recollection of the April 1, 2009 IEP team meeting, than Mother, or Mr. Chavez. As the principal, she was also familiar with school personnel and could testify about their duties. Ms. Thompson did not attend the April 17, 2009 IEP team meeting, so any testimony she provided regarding what occurred at that IEP meeting that was not otherwise corroborated by documents or the other witnesses was disregarded. Mr. Chavez's testimony regarding the April 17, 2009 offer was supported by documentation so his testimony on the offer, including Mother's participation and his informal discussion with her, was given deference. Mother was Student's only witness. Mother's testimony regarding the transportation offer conflicted with the IEP. Mother's admissions impacted her credibility, especially where her admissions contradicted her allegations. In particular, Mother's admission that she would have approved of El Dorado if the transportation was appropriate, her stated reason for requesting a continuance of the IEP to review transportation and caregiver needs, and her apparent disinterest in speaking to anyone about the SDP placement, negatively affected her credibility regarding District's procedural violation.

## LEGAL CONCLUSIONS

1. As the petitioning party, Student has the burden of proof on all issues. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].)

### *Issue One: IEP Team Members*

2. Student contends that District failed to have required members of the IEP team at the April 17, 2009 IEP team meeting, to fully discuss the IEP team offer. Mother alleges that she required the input of the principal, psychologist, and Student's regular education classroom teacher, to determine whether the offer was appropriate. Mother alleges that the principal Ms. Thompson, was absent from that meeting, and moreover, falsely represented that she attended this meeting. Student contends that the school psychologist was absent, and

that her attendance was required for her to determine whether the placement offer was appropriate. The school psychologist was required to determine the placement because Student's cognitive ability was very high, and the SDP might be too slow-paced for him. Likewise, Student contends that his regular education teacher was absent, and that her attendance was required so that she could determine whether the placement was appropriate.

3. District maintains that all required members of the IEP team were present at the April 17, 2009 IEP team meeting. District maintains that Mr. Chavez, the vice principal, attended the April 17, 2009 IEP meeting as the administrative team member, and therefore Ms. Thompson's attendance was not required. Moreover, the record establishes that the principal, Ms. Lorie Thompson, signed only that she was present at the April 1, 2009 IEP team meeting, and did not execute the attendance record for the April 17, 2009 IEP team meeting. District concedes that it would have been preferable to have Student's general education classroom teacher present, but that her absence did not deny Student a FAPE as the general education teacher present was familiar with Student. District maintains that Student failed to provide any evidence of why the attendance of either the school principal or the school psychologist was necessary at the April 17, 2009 IEP team meeting. For the following reasons, Mother failed to meet her burden of proof.

4. Under the IDEA, the IEP team consists of: (1) the parents of a child with a disability; (2) not less than one regular education teacher of such child (if the child is, or may be, participating in the regular education environment); (3) not less than one special education teacher, or where appropriate, not less than one special education provider of such child; (4) a representative of the local educational agency who is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; is knowledgeable about the general education curriculum; and is knowledgeable about the availability of resources of the local educational agency; (5) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team already described; (6) at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and (7) whenever appropriate, the child with a disability. (20 U.S.C. § 1414(d)(1)(B); 24 C.F.R. § 300.321 (2006); Ed. Code § 56341, subd. (b)(2).)

5. The requirement that a regular education teacher of the child be part of the IEP team is met if the school district provides a general education teacher that served the pupil at one time. (See *R.B. Ex. Rel., F.B. v. Napa Valley Unified School District* (9th Cir. 2007) 496 F.3d 932, 939.)

6. The regular education teacher shall, "to the extent appropriate," participate in the development, review, and revision of the pupil's IEP, including assisting in the determination of appropriate positive behavioral interventions and strategies for the pupil, and supplementary aids and services and program modifications or supports. (20 U.S.C. § 1414(d)(2)(C).)

7. The attendance of required IEP team members is excused if the parent and the school district consent in writing, and the IEP team member submits input in writing to the IEP team prior to the meeting. (20 U.S.C. § 1414(d)(1)(C).)

8. In order to fulfill the goal of parental participation in the IEP process, the school district is required to conduct, not just an IEP meeting, but a meaningful IEP meeting. (*W.G. v. Board of Trustees of Target Range School District* (9th Cir. 1992) 960 F.2d 1479, 1485 (*Target Range*).) A parent who has had an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way. (*Fuhrmann v. East Hanover Board of Education* (3rd Cir. 1993) 993 F. 2d 1031,1036.) Stated another way, a parent has meaningfully participated in the development of an IEP when he/she is informed of his/her child's problems, attends the IEP meeting, expresses his/her disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann, supra*, 993 F.2d at p. 1036 .)

9. Not every procedural violation of the IDEA results in a substantive denial of a FAPE. (*Target Range, supra*, 960 F. 2d at p. 1484.) According to Education Code section 56505, subdivision (f)(2), a procedural violation may constitute a substantive denial of a FAPE only if it:

- (A) Impeded the child's right to a free appropriate public education;
- (B) Significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents' child; or
- (C) Caused a deprivation of educational benefits.

(See also 20 U.S.C. § 1415 (f)(3)(E)(ii); *Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1032.

10. Here, all required IEP team members personnel attended the April 1, 2009 IEP team meeting, including Student's regular education teacher, two administrators, and his special education teacher. The school psychologist attended the April 1, 2009, IEP team meeting. At that meeting, the IEP was reviewed with the exception of placement. The IEP referenced Student's unique needs, present levels of performance, goals and objectives, and behavioral support plans. (Legal Conclusion 4; Factual Finding 16.)

11. District did not commit a procedural violation by not including Ms. Thompson in the April 17, 2009 IEP team meeting. Haskell did have the required administrative member of the IEP team present at the IEP team meeting on April 17, 2009. Only one administrator was required to attend the IEP. Mr. Chavez attended the IEP team meeting as an administrator. Student did not present any evidence that Mr. Chavez was not qualified to attend as an administrator. Ms. Thompson was not required to attend the April 17, 2009 IEP

team meeting, and she did not. Moreover, contrary to Mother's assertion, Ms. Thompson did not falsely indicate that she had attended that meeting. She signed the attendance sheet for the April 1, 2009 IEP team meeting. She did not sign the attendance sheet for the April 17, 2009 IEP team meeting. (Legal Conclusion 4; Factual Findings 16, 20 through 21.)

12. District did not commit a procedural violation by not including the school psychologist in the April 17, 2009 IEP team meeting. Student's school psychologist was not a required member of the April 17, 2009 IEP team meeting. A school psychologist may be required at an IEP team meeting to interpret the instructional implications of evaluation results. Mother referenced evaluation results from Student that were done in advance of his May 2008 IEP at his previous school, by another school psychologist. Those evaluation results were set forth in his initial May 2008 IEP, and there was no evidence that the results were discussed. The reason for the April 17, 2009 IEP team meeting was to discuss placement. Formalized tests were not conducted in advance of the April 2009 IEP team meetings. Further, even if evaluation results were discussed, there is no evidence that the school psychologist was the only member of the IEP team that could explain the instructional implications of previous evaluation results. Two special education teachers were present at the meeting. While undoubtedly the school psychologist would have been able to add to the discussion of Student's placement based upon the results of past evaluations of his cognitive ability, Student failed to provide any evidence that other team members were not qualified to explain the instructional implications of Student's previous evaluation results. (Legal Conclusion 4; Factual Findings 20 through 22.)

13. District did commit a procedural violation when it convened the April 17, 2009 IEP team meeting, without Student's former or present regular education teacher. Haskell did not obtain Mother's written consent to excuse the required regular education teacher. Ms. Stockton was not, and had never been, Student's regular education teacher. She was credentialed as a regular education teacher, but she was not retained by Haskell as a regular education teacher. She was credentialed as a special education teacher, and she worked at Haskell as a part-time special education resource teacher. Accordingly, Ms. Stockton did not qualify as a regular education IEP team member because she had never served Student in her capacity as a regular education teacher. For this reason, Haskell violated the IDEA's procedural requirement to include in the IEP team at least one regular education teacher who had taught the child as part of the April 17, 2009 IEP team meeting. (Legal Conclusions 4 through 7; Factual Findings 20 and 22.)

14. Student failed to meet his burden of proof that the absence of his current or former general education teacher significantly impeded Mother's opportunity to participate in the decision-making process, or caused a deprivation of educational benefits or a denial of a FAPE. At the April 17, 2009 IEP team meeting, Student's current special education teacher was present, as well as a dual-credentialed teacher, who in her capacity as a part-time special education resource teacher was generally familiar with Student. The principal reason the SDP was recommended was Student's need for a small instructional setting so that Student could access the regular education curriculum. A special education teacher who was also a credentialed regular education teacher was available to provide input as to how the

SDP would fit with Student's regular education curriculum. Mr. Chavez also had background as an elementary school regular education teacher, and in his capacity as an administrator, was charged with knowing the placement options for Student. Mother had an opportunity to contribute to the IEP team on matters that concerned her. The IEP addressed Mother's request to hold an IEP to secure a placement for Student in KYDS. She successfully solicited the IEP team's assistance at the April 1, 2009 IEP team meeting. Notably, there is no evidence that Mother presented any concerns about the SDP placement to the IEP team at the April 17, 2009 meeting, apart from its location. At the hearing, Mother admitted that she would not have objected to El Dorado if Student's transportation was safe. The IEP team acknowledged Student's unique need for safety in developing the transportation plan by providing him a safety vest during his bus ride, and offering home-to-school transportation. Mother did participate in developing Student's transportation plan. As part of the home-to-school offer, the IEP team considered Student's caregiver needs in developing a transportation route that delivered Student directly to his caregiver at the end of the school day. Mother demonstrated that her primary concerns were Student's transportation and caregiver needs. When Mother requested more time to consider the IEP team's offer, she did so to review the offered transportation and the caregiver's schedule. Although Mother claims that she advised the IEP team that she needed to consult with the school psychologist, her actions are not consistent with her claimed interest in the SDP placement, other than its location. When Mother visited El Dorado, she only drove by to look at the bus stop, she did not inquire about the SDP. In sum, Mother failed to meet her burden of proof that her ability to participate or her son's educational opportunities were impeded by the absence of his general education teacher at the April 17, 2009 IEP team meeting. (Legal Conclusions 1, 8 and 9; Factual Findings 1 through 5, 14 through 36.)

### *Issue 2: Bus Transportation*

15. Student contends that the District's offer of unsupervised bus transportation compromises Student's unique need for safety and fails to provide him a FAPE. District maintains that her argument is without merit because it fully considered Student's unique needs for safety both on the bus and off the bus. For the reasons set forth below, District's offer of bus transportation did not deny Student a FAPE.

16. Under the Individuals with Disabilities Education Act (IDEA) and companion state law, students with disabilities have the right to a FAPE. (20 U.S.C. § 1400 et seq.; Ed. Code, § 56000 et seq.) A FAPE means special education and related services that are available to the student at no cost to the parents, that meet the state educational standards, and that conform to the student's IEP. (20 U.S.C. § 1401(a)(9); Ed. Code, §§ 56001, 56040, subd. (a); Cal. Code Regs., tit. 5, § 3001, subd. (o).)

17. An IEP is evaluated in light of information available to the IEP team at the time it was developed. It is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir.

1999) 195 F.3d 1141, 1149.<sup>3</sup>) “An IEP is a snapshot, not a retrospective.” (*Id.* at p. 1149, citing *Fuhrmann v. East Hanover Bd. of Education* (3rd Cir. 1993) 993 F.2d 1031, 1041.) It must be evaluated in terms of what was objectively reasonable when the IEP was developed. To determine whether a district offered a student a FAPE, the focus is on the adequacy of the district’s offer, rather than on the placement preferred by the parent. (*Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1307, 1314.)

18. California law defines special education as instruction designed to meet the unique needs of individuals with exceptional needs coupled with related services as needed to enable the student to benefit fully from instruction. (Ed. Code, § 56031.) The term “related services” includes transportation and such developmental, corrective, and other supportive services as may be required to assist a child to benefit from special education. In California, related services are called designated instruction and services, which must be provided if they may be required to assist the child in benefiting from special education. (Ed. Code, §56363, subd. (a).)

19. The IDEA regulations define transportation as: (i) travel to and from school and between schools; (ii) travel in and around school buildings; and (iii) specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide transportation for a child with a disability. (34 C.F.R. 300.34(c)(16).) The IDEA does not explicitly define transportation as door-to-door services or include in the definition of transportation an aide to escort the child to and from the bus. Decisions regarding such services are left to the discretion of the IEP team. (Analysis of Comments and Changes to 2006 IDEA Part B Regulations, 71 Fed. Reg. 46576 (August 14, 2006).)

20. Here, the weight of the evidence does not support Student’s allegation. Notably, Mother misstated District’s IEP offer. She testified that District offered transportation from school to school which would require Student to ride a total of four buses a day: a small bus from the caregiver’s address to Haskell, then a large bus from Haskell to El Dorado, and the same configuration on his return trip. She testified that he would have to remain outside of Haskell for long periods of time unattended while waiting for his transfer bus. However, District offered Student direct home-to-school transportation. District’s offer did not require that Student depart from one bus mid-route and wait unsupervised for the next bus, or his caregiver. According to District’s transportation plan, Student would be picked up from the Mission Hills address, travel on the bus secured by a safety vest, and be dropped off at El Dorado where he would either go directly to breakfast or to a line-up outside of class. As Mother conceded, any gap in supervision would occur, if at all, during the time it would take Student to leave the campus at the end of the day and get on a waiting school bus which would take him directly to his caregiver’s home. Student’s behavior problems escalated when he was left alone or unattended on the school campus for extended

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<sup>3</sup> Although Adams involved an Individual Family Services Plan and not an IEP, the Ninth Circuit Court of Appeals applied the analysis in *Adams* to other issues concerning an IEP (*Christopher S. v. Stanislaus County Off. of Education* (9th Cir. 2004) 384 F.3d 1205, 1212) and district courts within the Ninth Circuit have adopted its analysis of this issue for an IEP. (*Pitchford v. Salelm-Keizer School Dist. No. 24J* (D. Or. 2001) 155 F.Supp.2d 1213, 1236.)

