

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT, on behalf of STUDENT,

OAH CASE NO. 2008090736

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

DECISION

Stella L. Owens-Murrell, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on December 16 -17, 2008, in Los Angeles, California.

Student, in pro se, was represented at the hearing by her parents (Parents). Parents' primary language is Arabic. Arabic language interpreting services were provided by Ms. Luleiona Khoury for the second day of hearing.¹

Los Angeles Unified School District (District) was represented at the hearing by My T. Huyhn, Esq., of District's Office of General Counsel. District Due Process Specialists Doreen Rubin and Sharon Snyder attended the first and second days of hearing, respectively.

Student filed a Due Process Hearing request (Complaint) on September 17, 2008. On October 21, 2008, OAH issued an order continuing the due process hearing dates to December 16 - 19, 2008.

The parties provided oral closing arguments at the conclusion of hearing. The record closed and the matter was submitted on December 17, 2008.

¹ Parents were several hours late on the first day of hearing and no testimony was taken. The interpreter was ordered for the remaining days of hearing.

ISSUE

Whether District failed to provide Student a Free Appropriate Public Education (FAPE) in the 2008-2009 school year, by failing to offer home-to-school transportation in the Individualized Education Program (IEP) dated June 13, 2008?²

PROPOSED REMEDY

Student requests District provide one-way home-to-school transportation for Student.

FACTUAL FINDINGS

Jurisdiction

1. Student was 10 years of age at the time of the due process hearing. She lives with her parents in the jurisdictional boundaries of the District. Student is eligible for special education services as a student with a specific learning disability (SLD) due to auditory memory, visual processing and comprehension deficits in reading, writing and mathematics.

Placement and Transportation History

2. Student's school of residence is Grandview Elementary School (Grandview). Student does not attend Grandview but is currently enrolled in the fifth grade special day class program (SDC) at Walgrove Elementary School (Walgrove) for the 2008-2009 school year.

3. When Student was initially determined eligible for special education services District placed her at Short Avenue Elementary School (Short Avenue) in a special day class program (SDC) for grades kindergarten through third grade, because Grandview did not have a primary SLD class. Student attended Short Avenue for the 2005-2006 and 2006-2007 school years in the second and third grade. District provided home-to-school transportation because the IEP could not be implemented at Student's school of residence.

4. District convened an annual IEP team meeting on August 30, 2007, to discuss Student's progress toward goals and to determine Student's placement options for the fourth grade. Parents, a school administrator and a special education teacher attended the meeting. The IEP offer included: (1) placement in a SDC at Grandview for the 2007-2008 school year; (2) mainstreaming into a fourth grade general education class for physical education (PE), Art, Music, and/or other non-curricular activities as determined by the school administrator and the SDC teacher; and (3) accommodations and modifications to Student's academic

² The issue has been reframed for clarity based upon evidence presented at the due process hearing, but is the same issue that was determined at the prehearing conference.

curriculum. The IEP offer specifically excluded transportation because the offered placement was at Student's school of residence and Student had no unique needs that required transportation as a related service. Parents consented to the IEP offer.

5. Student attended Grandview for the 2007-2008 school year. Sometime after Student began attending Grandview, Parents expressed their dissatisfaction with the school's academic program. Parents believed Student was not receiving a quality education. Parents received notification that Grandview was a program improvement school. Parents were further notified of their right to request a transfer to a non program improvement school under the Program Improvement School Choice Program³. Parents requested District transfer Student to Walgrove Elementary School for the 2008-2009 school year.

The June 13, 2008 IEP

6. District convened an IEP team meeting on June 13, 2008, to discuss Student's annual progress toward goals and placement for the 2008-2009 school year. Father, a school administrator and a special education teacher, attended the meeting. The IEP team reviewed Student's academic performance and discussed Student's unique needs and present levels of performance in the areas of language arts-reading, language arts-writing, and mathematics. The IEP noted that Student's disability impacts her progress in the general education curriculum because it impairs her ability to retain information, which is necessary to complete classroom tasks involving reading, writing and mathematics. The IEP further noted that Student's educational needs were not due to health problems or physical disabilities that would impede access to the general education curriculum. The IEP team established annual goals and objectives in Student's areas of need. The IEP offer for the 2008-2009 school year included: (1) placement in the fifth grade special day class (SDC) at Walgrove under the Program Improvement School Choice Program; (2) mainstreaming into the fifth grade general education class for PE, Music, Art and/or other non-curricular activities as determined by the SDC teacher and school administrator; (3) ESY; (4) and school-to-school transportation from Grandview to Walgrove based on Student's attendance at a non-resident school under the Program Improvement School Choice Program. The IEP offered no other related services. Father consented to the IEP.

³ Under the No Child Left Behind Act (NCLB) of 2001, as a condition of receiving federal funds, all states are required to create academic standards that identify what a child should know and be able to do in kindergarten through grade twelve in the subjects of English-language arts and mathematics. Schools must then test students each year to determine if they are proficient in these subjects. Each school is reviewed annually, using a system approved by the California Department of Education, to determine if students at the school are making adequate yearly progress (AYP). Schools and local education agencies (LEA) that do not make AYP are identified as program improvement schools (PI). Parents of students at PI schools may request a transfer of their child to a non-PI school.

Parents' Request for Home-to-School Transportation

7. Grandview is located near the corner of Grandview Boulevard and Mitchell Avenue. Student's residence is located 0.57 miles from Grandview. The distance from home-to-school by automobile is two minutes, and five minutes on foot.

8. Sharon Snyder is currently a Due Process Specialist for District. She has visited Grandview on numerous occasions in the past in connection with her work for District and Grandview was her children's home school. She is familiar with the school grounds and the location of the bus zone. Ms. Snyder explained that the school bus zone is situated in front of the entrance to the school facing Grandview Boulevard. This area is designated as a No Parking Zone. The children have the option of standing on the sidewalk of the No Parking Zone or on a grassy area near the sidewalk to wait for the school buses. The bus zone is not located in the middle of a busy street. There are no apparent dangers from cars in traffic and the activity in the bus zone is observable from the front office of the school, which faces the driveway where the school buses collect and discharge the children. Staff at Grandview is responsible for monitoring the bus schedules and notifying bus drivers if a child is not picked up.

9. Parents have three children including Student. Parents drive their children to school. Student is transported by her parents daily to Grandview where Student boards the school bus for Walgrove. After classes Student attends the standardized testing and reporting (STAR) after-school program. Because of her participation in this program her parents are responsible for picking her up at the end of the day.

10. On September 10, 2008, Parents made a written request to Walgrove for an IEP meeting to amend the IEP for District to provide home-to-school transportation for Student in the morning. Parents requested home-to-school transportation for Student because they believe it is unsafe for Student to be left at the bus zone. Parents also believe that Student is physically capable of walking to Grandview and waiting for the school bus, but she is young and vulnerable to others who might be tempted to prey on her while walking to Grandview and while waiting for the bus at Grandview. Parents cannot wait until Student boards the bus, especially if the bus is late, as they have two other children to transport to school, and any delay would make the other children late for school. Parents also believe that provision of home-to-school transportation would cost District nothing because the trip is no more than five minutes. There is no evidence that the route to Grandview from Student's home is unsafe or that the bus zone at Grandview exposed Student to danger.

11. On September 11, 2008, Joyce Dara, Assistant Principal at Walgrove, gave written notice to parents that the request was denied because Student was not entitled to home-to-school transportation.

12. Joyce Dara has more than 10 years experience as a special education teacher with District in grades four through seven. She has been employed as an assistant principal at Walgrove for the past three years where she oversees the administration of the special

education program and related services, including transportation. Ms. Dara explained that the school of residence is the school located closest to a student's home or residence. A student is generally not entitled to transportation as a related service from a student's home to the school of residence except where student has a severe disability or for safety and health reasons if the transportation is needed for a student to benefit from his or her education.

13. Ms. Dara is familiar with Student. She has observed Student playing with her peers on the school yard at Walgrove. She has also observed Student is able to move about the school campus with no physical limitations or disability. She had the physical abilities of the average 10 year old student and she is well liked by her peers. Ms. Dara reviewed Student's IEP and concluded that there were no physical disabilities or cognitive deficits noted, and no safety concerns. The IEP established that Student's unique needs are in the area of academics. Student is making progress toward her goals, is able to access the general education curriculum, and she is receiving educational benefit. According to Ms. Dara, Student is entitled to school-to-school transportation under the Program Improvement School Choice Program. However, Student is not eligible for related services in the form of home-to-school transportation because she has no severe physical disabilities, health problems or issues of safety that would affect her ability to walk from her home to Grandview to catch the school bus to Walgrove.

LEGAL CONCLUSIONS

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

2. Student contends that the District's failure to offer home-to-school transportation constitutes a denial of FAPE. Student asserts that it is unsafe for her to travel from home to her school of residence where she has to wait for the school bus to transport her to her school of attendance. Student further asserts that she is physically capable of walking from home to her school of residence to wait for the school bus, however, she is young and vulnerable and mentally incapable of protecting herself from predators who might attempt to harm her. District contends that although Student is eligible for special education services as a student with a SLD, Student has no physical disability, cognitive deficits, health or safety needs, and there is no need for District to provide home-to-school transportation. Further, the IEP offer of school-to-school transportation was based on Parent's request for transfer under the Program Improvement Schools Choice Program. Thus, the District contends that the offer provided Student a FAPE.

3. Under the federal Individuals with Disabilities Education Act (IDEA) and corresponding state law, students with disabilities have the right to a FAPE. (20 U.S.C. § 1400 et seq.; Ed. Code, § 56000 et seq.) 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(9); Cal. Code Regs., tit. 5, § 3001, subd. (o).)

4. Similarly, 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. (20 U.S.C. § 1401(26).) In California, related services are also referred to as designated instruction and services (DIS). (Ed. Code, § 56363, subd. (a).)

5. 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. 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).)

6. In *Board of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley* (1982) 458 U.S. 176, 200, [102 S.Ct. 3034] (*Rowley*), the United States Supreme Court addressed the level of instruction and services that must be provided to a student with disabilities to satisfy the requirement of the IDEA. Under *Rowley* and state and federal statutes, the standard for determining whether a district’s provision of services substantively and procedurally provided a FAPE involves four factors: (1) the services must be designed to meet the student’s unique needs; (2) the services must be reasonably designed to provide some educational benefit; (3) the services must conform to the IEP as written; and (4) the program offered must be designed to provide the student with the foregoing in the least restrictive environment. While this requires a school district to provide a disabled child with meaningful access to education, it does not mean that the school district is required to guarantee successful results. (20 U.S.C. § 1412(a)(5)(A); Ed. Code, § 56301, *Rowley, supra.*) The Court stated that school districts are required to provide only a “basic floor of opportunity” that consists of access to specialized instructional and related services, which are individually designed to provide educational benefit to the student. (*Rowley, supra.*, 201.)

7. An IEP is evaluated in light of information available 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.) “An IEP is a snapshot, not a retrospective.” (*Id.* at p. 1149, citing *Fuhrmann v. East Hanover Bd. of Education* (3d Cir. 1993) 993 F.2d 1031, 1041.) It must be evaluated in terms of what was objectively reasonable when the IEP was developed. (*Ibid.*)

8. Here, Student requested placement at Walgrove under the Program Improvement School Choice Program. The June 13, 2008, IEP offered placement at Walgrove with school-to-school transportation as provided under the school choice program.

Father consented to the IEP. Father neither raised any concerns about Student's safety with the IEP team nor requested that District consider offering home-to-school transportation for the 2008-2009 school year. Parents' testimony concerning the unsafe conditions at the bus zone at Grandview was unpersuasive. Student attended Grandview for the 2007-2008 school year in the fourth grade. District did not provide transportation. Student was either transported by Parents or walked the distance from home to school without incident. Parents appear to be caring and loving parents who are genuinely concerned for Student's welfare. However, Parents' testimony revealed the reason for their request for home-to-school transportation was based on their concerns for having to timely transport Student's siblings to school in the morning rather than a concern for Student's unique needs for safe transportation from home to Grandview and to Walgrove or at the bus zone. Moreover, Sharon Snyder provided credible rebuttal testimony concerning the safety of the bus zone at Grandview. Based upon her testimony Student was not at risk of harm in the designated bus zone and could safely board the bus to Walgrove.

9. Further, Ms. Dara credibly testified that based upon her review of the June 13, 2008 IEP and her observations of Student at Walgrove, Student's unique needs were in the areas of reading, writing and mathematics. Student had no physical disabilities, health issues, and no noted safety concerns, demonstrating that Student had no unique needs that required home-to-school transportation.

10. In conclusion, the evidence demonstrates that the offer of school-to-school transportation contained in the June 13, 2008 IEP considered Student's unique needs and was appropriately designed to provide her with educational benefit. Student produced no persuasive or credible evidence in support of her claims that District failed to offer a FAPE in the 2008-2009 school year. Student failed to prove that the IEP offer of transportation from Grandview to Walgrove failed to meet her unique needs and did not provide educational benefit. Accordingly, Student has not met the burden of persuasion on the sole issue in her Complaint. (Factual Findings 1 to 13; Legal Conclusions 1 to 10.)

ORDER

Student's request for relief is denied.

PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that this Decision indicate the extent to which each party prevailed on each issue heard and decided in this due process matter. The District prevailed on the issue.

