

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

JURUPA UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2013030379

DECISION

The due process hearing in this matter is based upon Student's due process complaint, which he filed on March 11, 2013. The hearing convened on May 8 and 15, 2013, at the offices of the Jurupa Unified School District in Riverside, California, before Administrative Law Judge (ALJ) Darrell L. Lepkowsky from the Office of Administrative Hearings (OAH), State of California.

Student's mother (Mother) and father (Father) (collectively referred to as Parents) appeared on behalf of Student. Student was present on the first day of the hearing. Attorney Jonathan P. Read appeared on behalf of the Jurupa Unified School District (District). Michelle L. Johnson, the District's Administrator for Education Support Services, also appeared on behalf of the District. Certified interpreter Miguel Rojas was present to provide English to Spanish and Spanish to English interpretation for Student's parents.

Student called his mother, father, and himself as witnesses. The District called Lori Smith, Leanne Coon, Michelle Murray, Sonia Porter, Arlene Stevens, and Ms. Johnson as its witnesses.

The hearing concluded on May 15, 2013, at which time the matter was submitted.

ISSUES

1. Did the District deny Student a FAPE under the Individuals with Disabilities Education Act (IDEA) when it stopped providing Student with round trip bus transportation from his home to school pursuant to Student's January 24, 2013 individualized education program (IEP)?

2. Did the District deny Student a free appropriate public education (FAPE) under the IDEA because the District continues to maintain Student's placement in a classroom where his teacher has yelled at him and hit him?

PROPOSED REMEDY

As a proposed remedy, Student requests that the District move him to another elementary school and provide him with bus transportation to and from the new school.

CONTENTIONS

Student contends that he used to love going to school. He contends that his teacher for the present school year has yelled at him and hit him at school, and that because of this he now cries in the morning and resists going to school. Student is also unhappy with the way his teacher manages his classroom and how his school Principal runs the school. He believes that his teacher and Principal are too strict with regard to discipline, that his teacher over-reacts to situations, and that she is too free with giving praise. For these reasons, Student believes the District should be ordered to place him at another school. Student also contends that his unique needs require bus transportation as a related service. Although Student acknowledges that Mother consented to Student's latest IEP, in which the District did not offer transportation, Student asserts that Mother did not willingly sign the IEP, and that she has since realized that she should not have agreed to the termination of the transportation services. Student contends that he needs the transportation in order to receive a FAPE. He wants the District to transfer him to another school and to provide him with bus transportation to get there.

The District contends that Student's teacher has never hit him. Although the District acknowledges that Ms. Smith has raised her voice to Student, the District contends that it was only to stop Student from possibly getting hurt when he ran out of line while waiting to be dismissed at the end of a school day. The District asserts that it is providing Student a FAPE in his present classroom setting. With regard to bus transportation, the District argues that Student's disability does not require transportation to school as a related service. As Student now attends his neighborhood school, he is not entitled to bus transportation since the District does not provide the transportation for general education children who live in the same area.

Based upon the following findings of fact and legal conclusions, this Decision finds that Student has failed to meet his burden of proof that the District has denied him a FAPE by any of the actions of his teacher or Principal. This Decision additionally finds that Student has failed to prove that he requires bus transportation to and from school based on his disability. The District therefore had no obligation to include transportation as a related service in Student's IEP.

FACTUAL FINDINGS

The Student

1. Student is an eight-year-old boy. His family resides within the boundaries of the Jurupa Unified School District.
2. Student qualifies for special education under the primary eligibility category of Autism. Student has a secondary eligibility as Speech or Language Impaired.
3. In spite of his disabilities, Student has made significant academic strides. He was able to identify all lower case and upper case letters as early as kindergarten. As of his last annual IEP team meeting on January 24, 2013, Student was reading at a beginning first grade level. He was able to copy letters, numbers, and sentences. Student could count to 100. He was able to do double digit addition using Touch Math and had started doing single digit subtraction.
4. Student's voice and fluency are within the expected range for his same-age peers. Student can produce five to seven word verbal sentences with pictures and mild support. He can produce most sounds in English. The difficulties he has in pronunciation of some sounds are attributed to the fact that Student's first language was Spanish.
5. Student is a happy child at school but is easily distracted and can become over-excited. He works hard when he is able to focus and responds well to redirection and prompts. However, Student will sometimes smile or laugh when reprimanded or redirected after inappropriate classroom behavior.
6. To address Student's difficulties staying on task and remaining focused in the classroom, Student's IEP provides for positive behavior interventions such as being given stickers, happy faces, and verbal praise when Student is able to focus and complete work without constant reminders of appropriate classroom behavior. Student also has a goal to remain on task with only one prompt.
7. Student's gross motor skills are age appropriate. Student also is able to take care of his personal needs independently. He demonstrates a desire to make friends and is generally able to initiate play in the classroom and on the playground.

Provision of Bus Transportation

8. Student's IEP team placed him in a mild to moderate special day class (SDC) setting for the 2012-2013 school year for second grade as well as last year for first grade. His IEP team believed that Student required the smaller class size and higher adult to student ratio of an SDC in order to address his off-task and inappropriate behaviors in class and to address his academic and language deficits.

9. Student's neighborhood school is Mission Bell Elementary School (Mission Bell). There was no first grade SDC class available last year for Student at Mission Bell. Student was therefore assigned to an SDC at Pedley Elementary School (Pedley). Since Pedley is not Student's neighborhood (or home) school, Student's IEP provided him with bus transportation to and from school. Student did not require bus transportation because of any of his disabilities.

10. Student's parents preferred for him to attend his neighborhood school. At the end of the 2011-2012 school year, they requested the District to transfer Student to Mission Bell.

11. Space was available for Student at Mission Bell for the 2012-2013 school year, when Student would start second grade. Student's IEP team agreed to the transfer, which was documented in an IEP. However, Student's IEP team failed to remove bus transportation as a service for Student on his IEP when he was assigned back to his neighborhood school. Because transportation remained on the IEP, the District continued to provide this service to Student when he started second grade in fall 2012 in the mild to moderate second/third grade SDC at Mission Bell taught by District special education teacher Lori Smith.

12. The District held Student's annual IEP meeting on January 14, 2013. Mother attended the meeting. The District IEP team members included Mission Bell Principal Leanne Coon; Student's special education teacher Lori Smith; Michelle Murray, who is a District behavior specialist for preschool and elementary grades; and Arlene Stevens, a District program specialist. A Spanish language interpreter also attended the meeting to assist Mother. Although Mother is conversant in English she does not understand all concepts and therefore sometimes requires the assistance of an interpreter.

13. The District IEP team members explained to Mother that Student no longer qualified for bus transportation because he was now attending his neighborhood school. They explained that Student did not have a disability that would make him otherwise eligible to receive transportation as part of his IEP. The team explained that the transportation had been provided since the beginning of the 2012-2013 school year because the last IEP team had forgotten to remove it from Student's IEP and the District therefore had to honor the provision of the service. Mother agreed with the District team members that Student's disability did not require him to need transportation. She also agreed that Student did not otherwise qualify for District-provided transportation.

14. At the IEP meeting, Mother did not voice any objection to ending the bus transportation. She did not offer any reasons to the IEP team as to why Student should continue to qualify for transportation.

15. Mother consented to the District's January 24, 2013 IEP offer. She signed the IEP that day.

16. However, Mother had immediate regrets about agreeing to discontinue bus transportation. At hearing, she testified that she felt intimidated at the IEP meeting and therefore had not carefully thought out the consequences of agreeing to stop the transportation. Mother was a very sincere witness during her testimony. She may very well have felt intimidated at the IEP meeting because she was alone and the District had several of its staff in attendance. However, Mother did not give any concrete examples of anything the District specifically did or said at the IEP meeting to make her feel intimidated.

17. Mother called Ms. Stevens soon after the January 24, 2013 IEP meeting. Mother told Ms. Stevens that she had changed her mind. She asked that the District reinstate the bus transportation.

18. Ms. Stevens asked Mother why she now thought Student's disability required him to need transportation. Mother told Ms. Stevens that she was just worried about getting Student to school if her car broke down or if it was raining. Mother did not want Student to get wet if it rained. Ms. Stevens told Mother that other families just used raincoats and umbrellas if their children had to walk to school in the rain.

19. Mother believed that Ms. Stevens was making fun of her during this conversation by suggesting that all Mother had to do was buy rain gear for Student. Ms. Stevens presented as a sincere and dedicated professional during her testimony at hearing. She has 23 years of experience in the field of special education as a special education teacher and as a school psychologist. There is nothing in Ms. Stevens' background nor was there anything in her demeanor at hearing that would suggest she would be deliberately condescending to parents. Mother's belief that Ms. Stevens was making fun of her may be attributable to the fact that Mother is a native Spanish language speaker and therefore misinterpreted the tenor of the conversation.

20. Ms. Stevens offered Mother an opportunity for another IEP meeting to revisit the IEP team's decision to discontinue the bus transportation. Mother did not ask for the additional meeting.

21. Sonia Porter is the District's Director of Elementary Education. At hearing, she testified that unless a special needs child has a disability that requires bus transportation, the District will not provide bus transportation to the child. For the student population as a whole, the District only provides bus transportation to children who live more than two miles from school. She informed Student's parents of this during the course of this school year. Parents had asked her about transferring Student to a different school. Ms. Porter explained to them that the District permitted students to transfer to schools outside of their neighborhood; but that if Parents made such a choice, they would be responsible for transporting Student to the new school just as they were responsible for transporting Student to his present school. She explained that since a program was available for Student at his home school, the District was not responsible for transporting him to a school chosen by Parents.

22. At hearing, Mother testified that someone from the District told her that the District would provide bus transportation to any student who lived just one mile or more from the student's home school, in contradiction to Ms. Porter's testimony that the required distance was two miles. However, it is not relevant for purposes of this case whether the distance required for the District to provide its students with bus transportation is one or two miles. Student does not live even more than a mile away from Mission Bell. The ALJ asked Mother how far her family lived from the school. Although Mother was not familiar with how many miles, or portion of miles the distance was, she did state that it was only a few blocks. Mother also stated that it only took her and Student about 10 minutes to walk from their home to school.

23. Additionally, Michelle Johnson, the District's Administrator for Education Support Services, testified that she had conducted an internet MapQuest inquiry to determine exactly how far Student lived from Mission Bell. Ms. Johnson testified that MapQuest indicated the driving distance from Student's home to the school was four tenths of a mile. None of Student's witnesses disagreed with Ms. Johnson's findings. Student therefore does not qualify for District-provided transportation based upon the distance of his home from school under either the one or the two-mile criteria.

24. Student provided no testimony or evidence at hearing that would indicate his disabilities are such that he requires bus transportation in order for him to access his education. Mother basically admitted that she wants the transportation for Student because it is more convenient than having to drive Student to school or walk with him there. Mother is also concerned about Student having to walk to school in bad weather. However, the families of all children who attend District schools must contend with the same inconveniences and difficulties in getting their children to school that are of concern to Mother.

Issues with Lori Smith's SDC

Classroom Management and Discipline

25. Lori Smith is Student's special education second grade teacher. She has both a bachelor's degree and a master's degree in education. She holds a multiple subject teaching credential and is certified to teach students who have autism spectrum disorders. Ms. Smith has worked as a teacher for the District since 1993, the last 13 years of which have been teaching one of the mild to moderate SDC's at Mission Bell. Her classroom this year is composed of second and third grade children. Student has been in her class since the beginning of the 2012-2013 school year. During her testimony, Ms. Smith presented as a dedicated professional with deep concern for her students.

26. Student had many more problems with staying on task, focusing, and misbehaving at the beginning of the school year than he had at the time of the hearing. Early in the school year, Student would have difficulty sitting still. He would jump out of his seat during whole class instruction. He would yell out rather than raise his hand to be called on.

Student has since learned classroom rules and procedures and is now less likely to be so impulsive.

27. Student's report cards for the 2012-2013 school year up to the date of the hearing reflect steady improvement in his behavior at school. His first quarter report card indicates that Student needed to improve his efforts to be responsible for his behavior. Student was not following school and playground rules and did not demonstrate self-control. Likewise, Student's behavior continued to need improvement during the second quarter reporting period. Student continued to demonstrate a lack of self-control and an inability to accept responsibility for his actions. Student would only follow directions if he chose to. By the end of the third quarter, Student's behavior had improved considerably. He was able to follow classroom and playground rules. His grade for effort in being responsible for his behavior increased from a "needs improvement" to "satisfactory progress."

28. Ms. Smith explained at hearing that she uses a "proximity" method for redirecting or prompting students in class. Either she or a classroom aide will look at the student or stand near him or her if the student is not paying attention or is not following directions. If that was not successful in refocusing the student, she or the aide would put a hand on the student's back or shoulder. Ms. Smith also uses hand prompts by placing her hand over the student's hand or tapping his or her hand to get the student's attention. She has used these methods successfully during the course of the year with Student as well as with his classmates.

29. Ms. Smith also uses a system of rewards in the classroom for good behavior. Students can earn stickers, prizes, candy, and "Mission Bell Bucks," which is currency that can be exchanged for prizes. If students misbehave, she talks to them about the inappropriate behavior, sometimes using social stories as a teaching tool. Ms. Smith also sends home notes to parents detailing her students' good behavior as well as their inappropriate behavior. Her students can also lose privileges such as recess time if they misbehave.

30. At the beginning of the school year, Ms. Smith sent a letter home to the parents of each of her students explaining her classroom philosophy and expectations for her students. Among other things, Ms. Smith advised parents that she expected the children to accept responsibility for their actions. She further advised that her students would not be permitted to disrupt the learning of other students. Ms. Smith described her classroom rules and the fact that her students would be able to earn positive rewards for good behavior and negative consequences for bad behavior. Her letter stated that negative consequences could include a warning to the child, time out in the classroom, missing recess, time out in another classroom, and referral to the Principal and a telephone call home.

31. Ms. Smith asked her students' parents to review the letter with their children and to sign the letter and send it back to her. Mother does not recall when she received the letter. In any case, she did not sign it because she does not believe that the teacher should be giving time outs to the children in another classroom.

32. Student has had instances of misbehavior or inappropriate behavior throughout the 2012-2013 school year, particularly at the beginning of the school year. November 2012, he took some stickers from another child without asking for them and put them in his pocket. Another child saw what Student had done and told one of the classroom aides. Student admitted that he had taken the stickers and was a bit upset that someone had told on him. Ms. Smith counseled Student about taking things from others. She also referred the incident to Ms. Coon, the school Principal. Ms. Coon called Student into her office and counseled him about the consequences of stealing things and that it was against the law. She also sent a note home to Parents to let them know what had happened and to inform them that if Student stole something again, it could result in a suspension from school.

33. Parents would not sign the note. They believe the school overreacted to the incident and that Ms. Smith should have just told Student it was wrong and not to take things again without permission. Parents do not use the terms “rob” or “steal” with Student and do not believe his teachers should use those terms either.

34. On another occasion, Student was disciplined for swinging his backpack, which has wheels, while the class was lining up in class to board the school bus. Student continued to swing it in line and as the class walked out to the bus. Ms. Smith asked Student to stop. However, once Student boarded the bus, he continued to swing the backpack. Ms. Smith told him that it was dangerous and that he could hurt someone if the backpack hit the person, particularly because the backpack had wheels. Ms. Smith took the backpack away from Student and told him she would return it the next day. Mother thinks it was wrong for Ms. Smith to tell Student that the backpack was a dangerous weapon and that it was wrong for her to take the backpack away from Student.

35. Ms. Smith has also disciplined Student during the course of the school year by not letting him go to recess on some occasions when he misbehaved, and by taking away other privileges such as reading time with a reading buddy. Mother does not believe that Ms. Smith should withhold privileges from Student without first discussing it with Mother.

36. On many occasions, Student had good days at school where his behavior was appropriate and he remained on task. Ms. Smith sent home notes with “happy faces” so that Parents would know how well Student was doing. On one occasion, she sent home a note that had four “happy faces” on it. Mother did not like that. She felt that there were too many happy faces. She gives Student rewards if he achieves a certain amount of happy faces a week and this note gave Student too many at one time.

37. In all of these incidents, Ms. Smith applied discipline and positive reinforcements according to her classroom management style. In each case, the discipline or praise was based on her classroom rules as they were explained to her students and their parents at the beginning of the school year. Ms. Smith is the teacher and has certain latitude in running her classroom. Student’s parents do not agree with Ms. Smith’s rules and procedures. If they believe that Student needs a particular type of behavior support plan, Parents may make the proposal through Student’s IEP process. However, although they

might do things differently at home, or do things differently if they were the classroom teacher, Parents do not have a right to impose their way of doing things on Ms. Smith. There is no evidence that Ms. Smith's classroom management style has denied Student a FAPE.

Allegations that Ms. Smith Hit Student and Yelled at Him

38. Student contends that Ms. Smith yells at him. Mother testified that she observed Ms. Smith yell at Student on one occasion. Mother went to school to pick Student up and walk him home. His class was lined up outside the classroom waiting to be dismissed. Mother gestured to Student to come to her. Ms. Smith did not see Mother initially, but she did see Student move out of line even though he had not been dismissed. Ms. Smith acknowledged at hearing that she did yell at Student to get back in line. The class was lined up near where the buses picked up the children and she was afraid Student might get hurt.

39. Parents believe that there are conflicts between Student and Ms. Smith and that she does things to emotionally damage Student. One example they gave was that Ms. Smith had erased Student's answers on a math worksheet. Parents believed that the answers were correct and that therefore Ms. Smith erased them just to harass Student. The ALJ reviewed the original worksheet. It was clear on the original exhibit that Student's answers had been incorrect. Ms. Smith explained at hearing that her classroom aides will sometimes erase incorrect answers and ask the child in question to try again to do the work. Student did not present persuasive evidence that this was done to harass him or that Ms. Smith yells at Student continually or without reason. The fact that Ms. Smith may have raised her voice to Student so that he would not run out of line does not mean that he was denied a FAPE.

40. The more significant allegation that Student raised in this case was that Ms. Smith had hit him on two occasions. It is unclear when the first incident allegedly occurred. Mother stated that Student came home one day and said that Ms. Smith had hit him across the top of his fingers. Mother reported the incident to the school and to the Sheriff's Department. There was no evidence that Student suffered any injury. There was no evidence that Student's fingers were bruised in any way. The Sheriff conducted an investigation and concluded that there was no evidence to support the allegation that Ms. Smith had hit Student. Ms. Coon, the Principal at Mission Bell, also investigated the matter. She spoke with Ms. Smith and the classroom aides. Ms. Smith denied hitting Student. The aides stated that they had never seen Ms. Smith hit or slap any of the children. Ms. Smith and the aides did acknowledge that they used prompts, such as touching or patting a child's hand to get the child to refocus on instruction or assignments.

41. On February 21, 2013, when Mother picked Student up from school, Student told her that Ms. Smith had slapped him again, this time on the thumb. Student also said that Ms. Smith had hit another child in his class as well. Student does not allege that his thumb was bruised or otherwise injured. Mother immediately contacted the Sheriff's department. A deputy sheriff went to the school that same afternoon to start investigating Student's claim of abuse.

42. Student told the deputy that Ms. Smith had hit him on the left thumb because she said he was doing his math problems incorrectly. The deputy asked Student to demonstrate what had happened. Student raised his right hand and lightly slapped the top of the deputy's thumb with four fingers. Student acknowledged that he had been talking in class instead of doing his work. The deputy could not see any injury to Student's hand.

43. The deputy also interviewed Ms. Smith, who denied having hit Student at any time, even when Student was disrupting the class. The deputy also interviewed one of Student's classmates because Student had said Ms. Smith also hit that child.

44. The deputy could not find any evidence to support Student's allegations. The deputy therefore determined Student's allegation was unfounded.

45. Ms. Coon conducted an independent investigation of Student's allegation that Ms. Smith hit him on February 21, 2013. Mother told Ms. Coon not to talk to Student about the incident unless Mother was present, so Ms. Coon spoke only with the classroom aides, Ms. Smith, and the other child that Student had said was also hit by Ms. Smith. She spoke with each person separately. The aides stated that Ms. Smith had been ill on the day in question and therefore deliberately did not have much contact with the students because she did not want to infect them. The other child confirmed that Ms. Smith had not been near the children that day. Ms. Coon determined that there was no evidence to support Student's contention that he had been hit by Ms. Smith.

46. Ms. Coon has observed Ms. Smith many times in Ms. Smith's classroom. Ms. Coon, who has supervised over 200 teachers during her career, stated that Ms. Smith is one of the most patient special education teachers with whom she has worked. She said that Ms. Smith is soft-spoken, caring, and provides excellent, well-planned instruction. Ms. Coon has only observed Ms. Smith to raise her voice outside of the classroom when student safety was at issue.

47. Sonia Porter, the District's Director of Elementary Education, met with Parents on February 25, 2013, upon their request to discuss Student's allegation that Ms. Smith had hit him. Ms. Porter told them she would also interview Ms. Smith and other witnesses from Student's classroom to determine if there was a basis to Student's contention. Ms. Porter interviewed Ms. Smith, a classroom aide, and the other child who Student had said was also hit by Ms. Smith. The classroom aide denied ever having seen Ms. Smith hit children or yell at them. The other little boy also denied being hit or seeing others hit. Ms. Porter concluded, as had Ms. Coon and the deputy sheriff, that there was no evidence that Ms. Smith had hit Student.

48. Student testified during this hearing. He was a brave little boy to do so in front of the ALJ, the District's representatives, and his parents. Student at first had difficulty answering the questions that Father was asking about the incidents in question. The ALJ therefore asked Student if Ms. Smith had hit him. Student nodded his head yes. In response

to the ALJ's request that he show her what had happened, Student lightly tapped his fingers and thumb.

49. Student did not appear to be making up a story about Ms. Smith hitting him. However, it was apparent to the ALJ, as had been apparent to Ms. Coon, Ms. Porter, and to the deputy sheriff, that what Student believed was a "hit" or a "slap" was merely Ms. Smith tapping Student's hand to re-direct him. It is also apparent that Student may have stated that the incident happened on a day when it could not have occurred. Ms. Smith was ill on February 21, 2013, and was not approaching the students in class so that she would not infect them. The classroom aide and Student's classmate concurred that Ms. Smith had not gotten close to the students on that day.

50. In all likelihood, Student was confused about the days Ms. Smith had touched him because it was something that occurred frequently. Ms. Smith explained at hearing that she and her aides touch the students on their shoulders or backs to re-direct and re-focus them. They also tap the children on their hands to prompt them to focus on the class instruction or the assignments they are supposed to be doing. District behavior specialist Michelle Murray explained at hearing that using physical prompts such as the ones described by Ms. Smith are typical in classrooms. She explained that such physical prompts are part of a "hierarchy" of prompts that instructors use if other cues, such as looking at the child, are insufficient to redirect the child.

51. Parents are concerned because Student is expressing a dislike of school when he comes home from school in the afternoons. He cries in the morning and says he does not like to go to school. He says he does not like Ms. Smith and that she is mean. However, according to Ms. Coon and Ms. Smith, Student does not demonstrate the same negative emotions at school. There, he does not cry or ask to go home. He interacts with the adults and his classmates in the classroom and generally plays well with other children on the playground. He does his class assignments and appears to be happy and well-adjusted at school.

52. The evidence therefore does not support Student's contention that Ms. Smith has hit or slapped him in a manner that could be considered corporal punishment.

LEGAL CONCLUSIONS

Burden of Proof

1. In a special education administrative due process proceeding, the party seeking relief has the burden of proving the essential elements of his claim. (*Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528, 163 L.Ed.2d 387].) In this matter, Student has the burden of proof.

Failure to Provide Bus Transportation from Home to School

2. Student basically contends that the District's failure to offer home-to-school transportation constitutes a denial of FAPE. Student agrees that he does not have a disability that would require the District to provide him with bus transportation. However, Student asserts that the District should provide the transportation to him because his parents might not always be able to drive him to school. Student believes that it is improper for the District to require him to walk to school in bad weather and that it was inappropriate for District personnel to suggest that Student's parents obtain an umbrella and a raincoat for him in case of rain. The District contends that although Student is eligible for special education services as a student with Autism and a Speech and Language Impairment, 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 prior IEP offer of home to school transportation was based upon the fact that Student had previously attended a school that was not designated as his home or neighborhood school. When Student transferred to his home school for the 2012-2013 school year, Student no longer qualified for District-provided bus transportation. The District contends that Student does not require transportation as a related service in order to receive a FAPE.

3. Under the federal 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.

6. Generally, a student's IEP team makes the decision about whether a disabled child requires transportation as a related service. (Ed. Code, § 56342, subd. (a); 71 Fed.Reg. 46576 (Aug. 14, 2006).) The decision is based upon the unique needs of the disabled child. (*McNair v. Oak Hills Local School District* (8th Cir. 1989) 872 F.2d 153, 156.) However, the IDEA requires transportation of a disabled child only to address his educational needs, not to accommodate a parent's convenience or preference. (*Fick v. Sioux Falls School Dist.*

49-5 (8th Cir. 2003) 337 F.3d 968, 970; *Student v. Los Angeles Unified School Dist.* (2010) Cal.Offc.Admin.Hrngs. Case No. 2009080646.)

7. 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. 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.)

8. 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.*)

9. In this case, the District provided Student with bus transportation during the 2011-2012 school year because Student's IEP had placed him at a school outside of his neighborhood. For the present school year, Parents requested that the District move Student to Mission Bell, his home school. The District agreed, and Student's IEP reflected the change in placement. Since Student lives very close to school – the District's evidence indicated that he lives less than a half mile from school and Mother acknowledged that it only took 10 minutes for Student and her to walk to school – Student is not entitled to bus transportation under District policy unless he has a disability that requires bus service. Student's IEP team neglected to address the transportation issue at the time the IEP team changed Student's placement to Mission Bell. The District therefore properly continued to provide bus transportation to Student pursuant to his IEP. However, once Student's IEP team met for his annual review on January 24, 2013, the team discussed that Student was not entitled to bus transportation due to his home's proximity to school and the fact that Student otherwise did not have a disabling condition that required transportation in order for him to receive a FAPE. Mother agreed to discontinue the transportation and signed the IEP. The District thereafter discontinued providing the service. (Factual Findings 8-24.)

10. Student contends that he should continue to receive the bus service. However, the only evidence he presented was that it was inconvenient for his parents to have to be responsible for getting Student to school, particularly if Student and Mother had to walk in the rain. While Student has autism and has expressive and receptive language delays, there is no evidence that his adaptive skills are so deficient that they require him to be transported

to school by bus. Student is only eight years old and, like his typical peers, may not be able to safely walk to and from school by himself. But the law does not require a school district to provide transportation to school children just because they cannot walk by themselves or because they may have to walk to school in bad weather. There is simply no evidence that Student has unique needs that require transportation as a related service so that he can access his education. Student's need for transportation is the same as that of his typically developing peers. (Factual Findings 8-24.)

11. In sum, Student has failed to meet his burden of proof through the presentation of persuasive evidence that the District denied him a FAPE by discontinuing his bus transportation bus in the IEP of January 24, 2103. (Factual Findings 8-24; Legal Conclusions 1-11.)

Allegations that Student's Teacher Hit him and Yelled at him

12. Student basically contends that the District is not providing him with a FAPE because his teacher has made his classroom experience so unpleasant that he no longer wants to go to school. Student contends that his teacher has hit him and yelled at him. He also contends that her decisions regarding how she approaches discipline issues in the classroom are inappropriate. The District asserts that Student's teacher, Ms. Smith, has not hit him. It also asserts that when Ms. Smith has yelled at Student, it was in response to Student disobeying rules and putting himself in potential danger. The District maintains that Ms. Smith appropriately manages her classroom.

13. Physical and verbal abuse of a child may constitute a denial of FAPE, particularly if there is evidence that a school district had knowledge of the abuse but failed to address it in order to ensure abuse-free classrooms. (*Shadie v. Forte, et al.* (M.D.Pa. 2013) 2013 WL 1729368.)

14. Here, there is no evidence that Ms. Smith had a pattern of yelling at Student in an abusive manner. The only incident of yelling to which Student's witnesses testified was when Student ran out of line before being dismissed from school. Ms. Smith acknowledged that she yelled at Student to return to line not only because he had not been excused, but more importantly, because her class was lined up near the school buses and Student could have put himself in danger. Under these circumstances, Ms. Smith's reaction was appropriate. Student has failed to prove that this one instance of yelling by Ms. Smith amounted to a denial of FAPE. (Factual Findings 25-37; Legal Conclusions 1-4, 7, and 12-14.)

15. Student also contends that Ms. Smith hit him on two occasions. He contends that she first hit him across the top of his fingers and then, some months later, hit him on his thumb. In both instances, Mother filed reports of abuse with the local Sheriff's Department. In both instances, the sheriff investigated the allegations. In both instances, the sheriff found that Student had suffered no injury and that the allegations of hitting were unfounded. (Factual Findings 38-52.)

16. Mission Bell Elementary School Principal Leanne Coon investigated Student's allegations even though the Sheriff's Department had not found that the claims were supported by the evidence. Ms. Coon spoke with Ms. Smith, with the classroom aide, and with the other child who Student had named as also having been hit by Ms. Smith. Ms. Smith denied the allegations. Her aide has not witnessed any evidence of abuse by Ms. Smith toward Student or any other child in the classroom. The other child denied that he was hit by Ms. Smith. School administrator Sonia Porter also conducted an investigation of the allegations to alleviate Parents' concerns. She interviewed the same people as had the deputy sheriff and Ms. Coon. Ms. Porter likewise failed to find any evidence that Ms. Smith had abused Student or any other child. (Factual Findings 38-52.)

17. The evidence presented by the District, including testimony by Ms. Smith and Ms. Murray, indicates that in all likelihood Student confused the use of physical prompts by Ms. Smith and her aides with light slaps. Ms. Smith uses prompts such as touching a child's shoulder or back, and placing her hand over the child's hand or tapping the child's hand, in order to redirect and refocus the child on instruction. Ms. Murray, who is a behavior specialist, explained that such physical prompts are part of a "hierarchy" of prompts that instructors use if other cues, such as looking at the child, are insufficient. This does not mean that Student lied to his parents or to the ALJ. Rather, he misinterpreted the physical prompt for something that was wrong, such as a slap. In any case, the District immediately and appropriately responded to Student's allegations by conducting at least two investigations of the alleged incidents. (Factual Findings 38-52.)

18. Student has failed to prove by a preponderance of the evidence that Ms. Smith hit him. He has therefore failed to meet his burden of proof that the District has denied him a FAPE based on the alleged abuse and because it has refused to transfer him out of Ms. Smith's classroom. (Factual Findings 25-52; Legal Conclusions 1-4, 7, and 12-18.)

Ms. Smith's Classroom Management Style

19. Student also has implied that his placement in Ms. Smith's classroom is improper because of the way she manages her classroom and approaches discipline.

20. The manner in which a teacher runs her classroom and the type of discipline she imposes amounts to her teaching methodology. The *Rowley* opinion established that as long as a school district provides an appropriate education, methodology is left up to the district's discretion. (*Rowley, supra*, 458 U.S. at p. 209.) Subsequent case law has followed this holding in disputes regarding the choice among methodologies for educating children with autism. (See, e.g., *Adams v. State of Oregon*, 195 F.3d at p. 1149; *Pitchford v. Salem-Keizer Sch. Dist.* (D. Or. 2001) 155 F.Supp.2d 1213, 1230-32; *T.B. v. Warwick Sch. Comm.* (1st Cir. 2004) 361 F.3d 80, 84.) As the First Circuit Court of Appeals noted, the *Rowley* standard recognizes that courts are ill equipped to second-guess reasonable choices that school districts have made among appropriate instructional methods. (*Ibid.*) "Beyond the broad questions of a student's general capabilities and whether an educational plan identifies and addresses his or her basic needs, courts should be loathe to intrude very far into

interstitial details or to become embroiled in captious disputes as to the precise efficacy of different instructional programs.” (*Roland M. v. Concord Sch. Committee* (1st Cir. 1990) 910 F.2d 983, 992 (citing *Rowley*, 458 U.S. at p. 202).)

21. Here, Student’s parents disagree with many of the ways Ms. Smith runs her classroom. Ms. Smith may be much stricter of a teacher and demand better behavior from her students than did Student’s previous teacher. However, unless a student can demonstrate that a particular instructional methodology does not permit him to access his education and make meaningful progress neither a student nor his parents may dictate how a classroom will be run or what methodologies will be utilized. Here, Student’s report card demonstrates that he is making progress academically, socially, and with regard to his behaviors and efforts at school. The evidence shows that although Student may demonstrate unhappiness at the prospect of going to school, once he arrives there he is happy and ready to learn. (Factual Findings 25-37.)

22. In sum, Student has failed to meet his burden of persuasion that he is not receiving a FAPE because of the manner in which Ms. Smith runs her classroom. (Factual Findings 25-37; Legal Conclusions 1-4, 7, and 20-22.)

ORDER

Student’s request that the District be ordered to transfer him to another school and provide him with transportation to that school 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 all issues raised in this case.

RIGHT TO APPEAL THIS DECISION

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

Dated: May 28, 2013

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings