

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS on behalf of STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2008090252

DECISION

Administrative Law Judge (ALJ) Darrell Lepkowsky, Office of Administrative Hearings (OAH), State of California, heard this matter in Van Nuys, California, on April 27 and 29, 2009.

Student's Father (Father) represented Student.

Rachel C. Disario, Esq., of Fagen, Friedman & Fulfroost, LLP, represented the Los Angeles Unified School District (District). District representative Susan Glickman, the District's Administrative Coordinator for its Due Process Office, attended the hearing each day.

Student filed a Request for Due Process Hearing (Complaint) on September 8, 2008. A stipulated continuance was granted in the Order Following Prehearing Conference dated October 28, 2008. At the hearing, the parties were granted permission to file written closing arguments. Upon receipt of written closing arguments on May 7, 2009, the matter was submitted and the record was closed.

PROCEDURAL ISSUES

Prior to the first day of hearing, the District moved to quash six personal subpoenas Student had served, or attempted to serve, on various present and former District employees. Student filed oppositions to the District's motions to quash for two of the subpoenas. OAH granted the District's motions as to those two subpoenas. On the first day of hearing, Father indicated that he had been unable to effectuate service on witness David Brewer; the ALJ therefore did not address the motion to quash as to Mr. Brewer. Father indicated that he did not intend to pursue his subpoena as to Lisa Kendrick and did not intend to call Allyn Shapiro as a witness. Therefore, the ALJ found the District's motions to quash as to those two witnesses to be moot. With regard to the District's motion to quash as to witness Barbara Baum, the ALJ informed Father that she granted the motion without prejudice to Father's providing an offer of proof as to why Ms. Baum's testimony would be relevant to the case. Father did not address the need for Ms. Baum's testimony during the remainder of the hearing.

Father also initially indicated that he intended to call his former attorney as a witness. The ALJ advised Father and his former attorney that Father would be waiving his attorney-client privilege as to this case and potentially as to other matters concerning his contacts with the District. After consultation with his former attorney, Father decided not to call him as a witness.

At hearing, Father withdrew his request for reimbursement for any expenses incurred by him or Student's Mother for other than the first three days of their trip to Colorado to visit Student the weekend of February 14 through 18, 2008.

ISSUE

Whether Student is entitled to reimbursement for all of his Parents' transportation expenses incurred in traveling to Student's out-of-state nonpublic school

(NPS) during the period from February 14, 2008, through February 18, 2008, in the amount of \$3,047.43?¹

CONTENTIONS OF THE PARTIES

Student contends that the District violated his right to a free appropriate public education (FAPE) by refusing to reimburse his Parents for the costs associated with his Mother's trip to visit Student on the weekend in question, and by reducing certain of the costs claimed by Father. Student contends that the District authorized the trip and agreed to reimburse his Parents for the costs associated with it. Student concedes that due to a work emergency, his Mother was not able to attend his family therapy session at Forest Heights Lodge (Forest Heights) in Colorado, the residential treatment center (RTC) where Student attends school pursuant to his individualized education program (IEP). However, Student asserts that his Mother flew to Colorado to visit him as soon as she was able to do so, and that her visit to him was reasonable under the circumstances. Student therefore contends that the District should be required to reimburse him as a reasonable interpretation and application of the District's policy regarding reimbursement to parents of travel expenses associated with a child's placement at an out-of-state RTC. Student also contends that the District misapplied its policy with regard to Father's expenses for gasoline, parking at his hotel and at the airport, and for his rental car.

¹ In an order dated December 9, 2008, after a hearing held on November 3, 2008, OAH found that OAH had jurisdiction to hear this issue. At the prehearing conference held on October 28, 2008, Student withdrew the other issue initially raised in his complaint.

The District concedes that most of Father's expenses for the first three days of his trip to Colorado should be reimbursed, and offered to do so. However, the District contends that it is not liable for the costs of Mother's airfare and other expenses because she did not attend the family therapy session for Student at Forest Heights on February 15, 2008. The District asserts that its policy specifically states that only travel for a student's initial placement at an RTC, for the student's therapeutic visits home, and for parents to meet with their child's therapist at the RTC, are subject to reimbursement by the District, for a maximum of four trips a year. The District contends that Mother did not attend Student's family therapy session at Forest Heights on February 15, 2008, and did not even go to the RTC at any time during that weekend, although it concedes that Mother spent the weekend, as did Father, with Student in Vail, Colorado. The District contends that Student and his Parents went to Vail to go skiing, and that the District is not legally obligated to pay for the family's ski vacation.

FACTUAL FINDINGS

1. Student is a 15-year-old male who is a resident of the District. He was determined to be eligible for special education under the category of emotional disturbance on or about January 30, 2003, the date of Student's initial IEP team meeting. Pursuant to his IEP, Student attends school at Forest Heights, an RTC which is located in Evergreen, Colorado, and has attended school there for almost three years. The parties do not presently dispute either Student's eligibility for special education or his placement at Forest Heights.

2. Student's IEP dated November 6, 2007, encompasses the time period of the travel at issue in this case, and will generally be referred to as "Student's IEP" or "the IEP." Although the parties did not move into evidence a signed copy of the IEP, neither Student nor the District disputes that this IEP was properly in effect during the time period in question.

3. The IEP contains Student's present levels of performance in the areas of educational, communicative, social/emotional, physical motor, cognitive, transitional/vocational, and therapeutic component. The present levels of performance address Student's strengths and needs in all these areas. None of the areas of need include any reference to a need for visits between Student and his Parents.

4. The IEP also includes goals and objectives for Student in the areas of behavioral, social/emotional, vocational/transition, math, writing, and reading.² There is no goal that specifically addresses interaction with Student's family or the need for family therapy or family visits. There is no mention of the need for family interaction or family therapy in any of the six goals in the IEP.

5. The IEP contains a page of notes entitled "For IEP Team Information." This page lists the related services that Student would receive through this IEP, specifically for the purpose of augmenting Student's reunification with his family. The related services listed are individual therapy, family therapy, case management, medication management, and psychiatric consultation. There is no mention in the notes or any reference in the list of related services, to visits between Student and his Parents, or any reference to the need for Student's Parents to attend family therapy sessions in person, nor is the number of family therapy sessions specified.

6. Student's IEP also includes a behavior support plan (BSP). The BSP does not reference family therapy, family visits, or family interaction.

7. The only reference to transportation is on page eight of the IEP, under section eight, "Transportation." The IEP indicates that the District will provide Student

² The sixth goal in successive order in the IEP is a reading goal. It is incorrectly identified as goal "7."

with transportation because his IEP cannot be implemented at his home school. The IEP indicates that transportation will be pursuant to District (LAUSD) travel guidelines.

8. The District has a travel reimbursement policy which it has implemented through the District's Nonpublic Services Division. The policy in effect during the time period of the travel at issue in this case is dated September 2007. The policy is entitled, "Travel Reimbursement Guidelines for Out of County Residential Nonpublic Schools." District witnesses Barbara Gottesman, who is a specialist for the District's nonpublic services division, and Eileen Skone-Rees, who is the District Administrative Coordinator of its Nonpublic services division, stated at hearing that the District has modified the travel policy over the years, at least in part, based on prior disputes with Student's Parents in order to resolve ambiguities in the policy.

9. The preamble to the written guideline states that, "Your child with special needs will soon be enrolled in a residential school outside of Los Angeles County. You or your child's travel associated with the child's initial placement, subsequent therapeutic visits by you to meet with your child and his/her therapist at the Residential Nonpublic School or your child's therapeutic visits home may be reimbursable by the LAUSD Division of Special Education, Nonpublic Services Department (NPS). The reimbursement of four (4) trips per fiscal year (July 1 – June 30) is provided when procedures are followed, documentation requirements are met and approval is given by the NPS Specialist." The preamble goes on to state that, "All travel must be approved by the NPS specialist for initial placements, family therapy/counseling, and therapeutic home visits."

10. The guidelines indicate the following procedures, which parents must follow in order to obtain reimbursement of travel expenses for themselves or for their child:

- Both **PARENT** and **SCHOOL** must notify NPS Specialist at least **twenty-one (21) calendar days** in advance of the trip.

- Nonpublic school must provide the NPS Specialist with written documentation of the EXACT date(s) of therapy session(s) before travel approval is granted. Note: if more than one day of family therapy is requested, sessions must be on consecutive calendar days only (**two days maximum**).
- NPS Specialist will contact parent and confirm that trip is approved and eligible for reimbursement.
- PARENT and/or SCHOOL is responsible for making all travel arrangements.
- Parent is responsible for submitting **ORIGINAL** itemized receipts for ALLOWABLE EXPENDITURES. **Make a copy of the itemized receipts and documents you submit to the NPS Department. Keep copies for your files.**
- Claim Form (Exhibit B, attached) and documentation are to be submitted to the NPS Specialist at the following address: LAUSD, NPS Department, 333 S. Beaudry Ave., 17th Floor, Los Angeles, CA 90017.

(Bold in the original)

11. The guidelines also specify allowable expenditures:

- **Airfare** – coach class – submit passenger ticket receipts for student and/or parent(s) indicating date, passenger name, destination and cost. If a trip is postponed, reservations should be cancelled immediately.
- **Automobile mileage** – allowance for transportation by private automobile to and from the residence of the student and the nonpublic school at the District approved rate.
- **Hotel** – itemized original payment documentation. The District may reimburse a standard Hotel accommodation at the rate determined by US Government Service Administration for the area. Contact school for recommendations re: suggested hotels.

- **Rental car agreements and fuel receipts** – not to exceed mid-size car – itemized original payment documentation.
- **Meals** – reimbursement shall not exceed a maximum of \$48.00 per day of travel (per adult, per day) – with itemized original payment documentation indicating the date, name and location of the restaurant.
- **Airport parking** – receipt, not to exceed \$12 per day.
- **Shuttle, fly-a-way** – to and from airport – receipt not to exceed \$25.00 one way.

12. Non-allowable expenses detailed in the guidelines are: First class/Business Class airfare; travel expenses for family members (i.e. siblings, etc.); luxury hotels/accommodations; luxury vehicles rentals; student meals; meals in the Los Angeles area; entertainment related expenses (i.e. amusement parks, sporting events, movies, etc.); alcoholic beverages; snacks; tips, etc.

13. The number of nights of hotel stays for each visit is not specified in the guidelines. However, both Gottesman and Skone-Rees indicated at hearing that the District will reimburse two nights and three days of expenses: travel to the student's school the day before a family therapy session, including meals, hotel, and rental car expenses; expenses for the day of the therapy session, including meals, rental car, and hotel expenses; and travel the day after the therapy session, including meals and rental car expenses. The District will also reimburse for airport parking in the Student's home city.

14. On January 19, 2008, Father sent an email to Gottesman requesting approval for a "reimbursable therapeutic weekend" for him and Mother to visit Student for the President's Day weekend of February 15 – 18, 2008.

15. On January 22, 2008, Gottesman sent an email to a staff member at Forest Heights requesting confirmation that Student's Parents would be visiting him for

therapeutic purposes. The staff member confirmed that Student's Parents would be visiting for that purpose in an email dated the same day. Although the emails do not specify the date of the visit, it was part of the chain of emails beginning with Father's email of January 19, 2008, and everyone therefore knew that the visit was for the February 15 – 18³ President's Day weekend. Gottesman informed Father the same day that his visit had been confirmed by Forest Heights.

16. On February 5, 2008, Gottesman wrote to Parents to inform them that the District had approved their therapeutic trip to Forest Heights "subject to the September/07 Travel Reimbursement Guidelines for Out of County Residential Nonpublic Schools." Gottesman attached a copy of the guidelines to her letter, along with a claim form for reimbursement.

17. Student's Mother is a physician completing her medical residency. Because emergencies arise so often at work, Parents purchased fully refundable airline tickets for their trip to Colorado in February 2008. Student's family therapy session was scheduled for February 15, 2008. Parents planned to fly from Los Angeles to Denver, Colorado, on February 14, the day before the session was scheduled, and return from Denver, Colorado, to Los Angeles on February 18.

18. An emergency arose at Mother's work the day she and Father were scheduled to leave for Colorado, and Mother was unable to accompany Father. Parents cancelled Mother's refundable ticket and reserved another flight for her. However, they knew that Mother would be unable to arrive at Forest Heights on February 15 in time for the therapy session. Forest Heights had given permission for Student to spend the weekend with Parents off-campus. Parents decided to spend the weekend with Student

³ Unless otherwise specified, all dates refer to 2008.

in Vail, Colorado, which is only 100 miles from Forest Heights.⁴ Therefore, Parents reserved an airline ticket for Mother from Los Angeles directly to Vail. Parents purchased a non-refundable airline ticket for Mother's trip.

19. Father drove his private vehicle to the Los Angeles International Airport and flew to Denver as planned on February 14. His flight left at 7:19 p.m. He rented a Durango from the Alamo rental car agency at the airport in Denver, for a total of four days. Father is a member of Alamo's frequent customer club and received a discount on the rental. Father is six feet, two inches in height. He states that he does not fit into a mid-sized car and therefore rented the Durango, which is a much larger vehicle. However, Father did not provide any evidence, either through testimony or documentation, regarding the types of mid-sized cars available through the various car rental agencies, and what the height limitations for drivers in the available cars would be. Conversely, the District's travel reimbursement guidelines do not specify the maximum amount of daily car rental charges that the District will reimburse and there is no evidence that non-discounted car rental for a mid-sized car would not have equaled or exceeded the amount paid by Father for the rental of the Durango.

20. Father spent the night of February 14 at a hotel in Denver. He is not requesting reimbursement for any meals on that day. Father drove to Forest Heights the morning of February 15. As planned, he attended Student's family therapy session with Student and Licensed Social Worker Brian Helf, who is Student's therapist at Forest Heights.⁵ Helf attempted to include Mother in the therapy session by telephone but was unable to reach her as she was involved with an emergency at work.

⁴ Forest Heights is 60 miles from the Denver airport.

⁵ Student's older brother also attended the family therapy session. Parents are not requesting reimbursement for any of his expenses.

21. Sometime after the family therapy session on February 15, and with the permission of Forest Heights, Father and Student traveled to Vail. Mother met them in Vail that evening. Father and Student spent the nights of February 15, 16, and 17, at a hotel in Vail. Mother spent the nights of February 15 and 16 with them, returning to Los Angeles on February 17, a day earlier than did Father. In addition to visiting with each other during this weekend, Parents and Student spent at least some of the time skiing. They do not request reimbursement for any of the costs for skiing in Vail.

22. Student contends that skiing is used by Forest Heights as therapy for its students as well as part of its physical education program. He also contends that he spent much of the weekend in question visiting with Mother. Student therefore contends that the fact that Mother did not attend his therapy session should not preclude reimbursement of Mother's expenses. However, there is no evidence that supports this contention. Helf, who is Student's case coordinator, and who has worked at Forest Heights for 30 years, stated that it was important for the students to have time with their families outside of therapy. However, he did not testify that Student required this in order to receive a FAPE, access his education, or otherwise achieve his goals and objectives. Helf testified that the school takes its students on outings on Fridays, such as camping and skiing, in order to challenge them and help the students overcome anxieties. However, even under questioning by Father, Helf would not concede that skiing with parents was part of the school's physical education program or part of the students' therapy. Helf did not state, and there is no other evidence, that Student required those types of outings with his parents in order to access his education, progress in therapy, achieve his goals, or otherwise receive a FAPE. Nor is there any evidence that Student required visits with Mother or Father, in the context of family therapy or outside of therapy, in order to receive a FAPE. Student's IEP does not state

that such visits are necessary, and Student offered no testimony from Helf or any other professional that such visits are necessary in order for him to receive a FAPE.

23. The only evidence in support of reimbursement for the costs of Parents' visits to Student at his RTC is the reference in Student's IEP on page eight which states that the District will reimburse transportation costs pursuant to the District travel guidelines dated September 2007. Parents agreed to the IEP and therefore agreed to those guidelines. The guidelines provide that the District will only reimburse expenses for parents to visit their children at RTCS for purposes of family therapy. Since it is undisputed that Mother did not attend the therapy session, and there is no evidence that Student needed to visit with her outside of a therapy session in order to receive a FAPE, Student has failed to meet his burden of proof that Parents are entitled to reimbursement for any of the costs of Mother's visit on February 15 – 17, 2008. Parents are therefore only entitled to reimbursement for the costs of Father's visit, per the District's guidelines.

24. Parents submitted a claim to the District on April 20, 2008, for reimbursement for their expenses incurred on this trip. The claim totaled \$3,278.69.⁶ On June 5, 2008, the District wrote to Parents stating that it was disallowing all of Mother's expenses and stating that it was only willing to reimburse Parents for Father's airline ticket; for two days of his hotel at \$140 per day; for only two days of Father's airport parking for a total of \$24; for only \$109.91 of his rental car; for only \$20.40 of Father's gasoline costs; and for two days of his meals, for a total of \$96, for a total of \$1,559.70. The District did not specifically explain why it was allowing or disallowing each claim

⁶ In subsequent correspondence, Parents decreased their claim by \$200, conceding that they were only entitled to \$140 per night for hotel costs rather than the \$197.69 per night which they originally claimed.

submitted; rather, it referred Parents to the guidelines for travel as a basis for what it was agreeing to reimburse.

25. Father conceded at hearing that Parents were only entitled to reimbursement of costs for the first two nights and three days of his trip.

26. Father submitted a claim for \$1,029.39 for his airline ticket. The District does not dispute this cost and has agreed to pay it. The ALJ will thus order reimbursement to Parents of \$1,029.⁷

27. Father conceded at hearing that Parents are only entitled to reimbursement for hotel charges at \$140 per day, which is the United States' government rate for the area. The District has agreed to pay that rate for two nights at a hotel, whether in Denver or in Vail, for a total of \$280. Father claimed \$22 per day for valet parking at his hotel because the snow prevented him from self-parking. Father was credible⁸ on this point and the District offered no evidence that self-parking was available at the hotel on the nights in question. However, the District's guidelines do not provide for hotel parking charges, whether they are for valet parking or for self-parking. Since Parents agreed in Student's IEP that the District's guidelines would be applied to transportation costs, and they failed at hearing to show that such costs are necessary to provide Student with a FAPE, the ALJ will not order the District to reimburse Parents for any of Father's hotel parking costs for this trip.

⁷ The ALJ has rounded amounts ordered for reimbursement to the nearest whole dollar.

⁸ Father did not specifically testify at the hearing. However, the ALJ swore him in as a witness soon after the hearing began on April 27, since Father was essentially offering testimony as he asked questions of the witnesses and as he responded to objections from opposing counsel.

28. With regard to meals, Father only claims the \$48 per day permitted under the District's guidelines. The District has agreed to pay that amount, for a total for two days' meals of \$96.

29. The District only agreed to reimburse Father for \$109.91 of his rental car costs. Gottesman testified that the figure was based upon \$40 per day, which she said was the average charge to rent a mid-sized car. However, Gottesman did not state how she arrived at this figure, and whether all rental car companies charge the same. Nor do the District guidelines inform parents of what the maximum reimbursable rate is for a rental car. Further, it is unclear how the District arrived at its final figure of \$109.91 as reimbursement for Father's rental car costs. Since Father mitigated his costs by using his available discount, since his costs are not much more than the District's figure of \$40 per day, once taxes and other costs are included, and since the District's guidelines offer no guidance on the maximum reimbursable amount for rental cars, the ALJ will order a pro-rated reimbursement for Father's rental car based upon the amount he paid for the rental. Alamo charged Father for only four days of car rental. Father rented the car at 11:38 p.m. on February 14 and returned it at 8:36 p.m. on February 18. Since the District's policy only requires reimbursement for two night hotel charges, the District is only responsible for reimbursement of the car rental from the night of February 14 to the night of February 16, for a total of two days' charges for Father's rental car. Pro-rating the total amount of \$278.51 for four days, at \$70 per day, Father is entitled to reimbursement in a total of \$140, as reasonable reimbursement for rental car expenses under the District's guidelines.

30. Father claims a total of \$78.98 in gasoline costs. However, that cost includes a charge of \$20.40 for refueling by Alamo when Father returned his car to that rental agency. Father offered no justification at the hearing for charging the District with his failure to fully refill his rental car tank. Therefore, the ALJ finds Parents are only

entitled to reimbursement of the \$58.58 charge for gas at Conoco Phillips for filling the gas tank on February 18, pro-rated for four days (the amount of days charged for Father's rental car) at the rounded-off amount of \$15 per day, for a total of \$30 for the first two days of the car rental.

31. Although Gottesman testified that the District allows three days of travel under its travel reimbursement guidelines, the District only agreed to reimburse Parents for two days of Father's airport parking costs. Based upon Gottesman's testimony and the District's travel guidelines, Parents are entitled to \$12 a day for airport parking for three days, for a total of \$36.

32. Pursuant to Student's IEP, which incorporates the District's travel reimbursement guidelines of September, 2007, Parents are entitled to reimbursement for Father's expenses incurred during the first two nights and three days of his therapeutic family therapy visit with Student the weekend of February 14, 2008, in the total amount of \$1,611.

CONCLUSIONS OF LAW

BURDEN OF PROOF

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

REIMBURSEMENT OF TRAVEL EXPENSES FOR PARENTS' FEBRUARY 14 – 18, 2008 TRIP TO COLORADO

2. Student alleges, in effect, that he was denied a FAPE because the District failed to reimburse his Parents for all their expenses related to their trip to visit him between February 14 and 18, 2008. At hearing, Father conceded that Parents are only entitled to reimbursement for the first two nights and three days of their trip. Student alleges that his Mother is entitled to reimbursement for all her expenses

even though she did not attend his family therapy session or visit him at the school location during the trip. Student also contends that Father is entitled to more reimbursement of his expenses than the District has agreed to pay. The District asserts that Mother's expenses are not reimbursable because she did not attend Student's family therapy session of February 15, 2008, and that certain of Father's expenses exceed the District's travel reimbursement guidelines.

3. FAPE means special education and related services that are available to the child at no charge to the parent or guardian, meet California's educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(a)(9).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(a)(29).) "Related services" are transportation and other developmental, corrective and supportive services as may be required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); Ed. Code, § 56363, subd. (a) [In California, related services are called designated instruction and services].)

Mother's Expenses

4. The related service of transportation may, when educationally appropriate, include transportation costs and expenses related to family visits to a distant residential placement. In *Union School District v. Smith* (9th Cir. 1994) 15 F.3d. 1519 (hereafter *Union*) the Ninth Circuit found that a student's parents were entitled to reimbursement for transportation costs of a unilateral private school placement, including transportation costs between the parents' city of residence and the city where their child's private school was located as well as for the parents' lodging costs where the school was located. Citing to the version of the Individuals with Disabilities Education Act (IDEA) that was in effect at the time, the Ninth Circuit found that related services

include transportation if required to assist a child with a disability to benefit from special education. The Ninth Circuit further found that the child's lodging costs as well as his mother's lodging costs were reimbursable since the child's appropriate special education placement was at a non-residential program not within daily commuting distance of the family's home. (*Id.* at p. 1527.)

5. Administrative bodies and courts have ordered reimbursement to parents of costs associated with residential placements, such as transportation for the student to and from the placement, and transportation for parents to and from the placement, as well as other parent costs incurred in conjunction with the placement, based upon case-by-case findings that the costs are part of the student's related services and are necessary in order for the student to receive benefit from special education and, therefore, receive a FAPE. Therefore, cost determinations are individualized to each student's particular needs. The federal Office of Special Education Programs (OSEP; formerly the Bureau of Education for the Handicapped) made such a finding as early as 1978. In *Letter to Dorman* (Bureau of Education for the Handicapped, Oct. 4, 1978) 211 IDELR 70, 211 LRP 6641, the federal compliance officer stated that transportation for a student to and from one of the State of Wisconsin's two residential schools on the weekends was a related service under the Education of the Handicapped Act (EHA), the precursor to the IDEA. The compliance officer went on to state that it was the federal government's belief that a case-by-case analysis was necessary to determine how many home visits a particular handicapped student required. Therefore, transportation issues were appropriately the purview of the student's IEP team, subject to a due process hearing if there was disagreement between the parents and the school district regarding the amount of visits a student required, based upon his or her individual needs. In *Letter to Anonymous* (OSEP, Sept. 12, 1988) 213 IDELR 164, 213 LRP 9070, OSEP found that under the EHA, part B, the number of trips to and from a residential placement for a

student would have to be determined on a case-by-case basis. OSEP also found that transportation for parents to and from the facility to attend conferences, etc., would also have to be determined on a case-by-case basis as part of the IEP process, as would other costs incurred by parents in conjunction with the student's residential placement.

6. Case law has supported OSEP's interpretation that transportation and other costs incurred by parents in conjunction with their child's residential placement may be reimbursable as related services, but that reimbursement must be decided on a case-by-case basis pursuant to the child's unique needs. Where a dispute has arisen between a school district and parents over the scope of reimbursement, including the amount and type of visits to and from residential placements, the cases indicate that the focus is on whether a student required visits (either from his parents at the RTC or visits by the student to home) in order to receive a FAPE.

7. In *New Prairie United School Corporation* (SEA IND 1999) 30 IDELR 346, 30 LRP 5664, the Indiana appeals board affirmed a hearing officer's finding that a student required twice monthly family therapy sessions at his out-of-state RTC in order to receive a FAPE. The board also affirmed the hearing officer's finding that student either required his parents to be present at one therapy session a month or, in lieu of a parental visit, that student go home, either option to be at the school district's expense. The hearing officer, as affirmed by the board, also found that one of the parents' visits to the student was not reimbursable by the district because the visit was not for the purpose of the parents to attend a family therapy session. The monthly visits between student and his parents were upheld because the student's therapist had indicated that he required the monthly in-person contact as part of his educational program at the RTC.

8. The fact that visits between parents and a residentially placed student must be reimbursed by a district only if the visits are necessary for a child to receive

FAPE was emphasized in *Niskayuna Central School District* (SEA NY 1999) 30 IDELR 913, 30 LRP 5702. On review of a hearing officer's decision, the state review officer found that a student's parents were entitled to reimbursement for reasonable expenses incurred for airfare, a hotel room, a rental car, and food. The reimbursement was affirmed because the child's IEP goals included improving his relationship with his family. Additionally, the child's first IEP had stated that the district would pay for eight parent visits to the RTC. Although the next IEP did not specify an amount of visits, it stated that transportation would be reimbursed per the district's policy. The review officer therefore ordered reimbursement to the parents for all expenses which were contemplated by the student's IEP. Similarly, in *Board of Education of the Wappingers School District* (SEA NY 2001) 35 IDELR 112, 101 LRP 388, the state review officer found reimbursable a parent's expenses for transportation to her son's RTC in the amount of what the son's transportation home for the weekend in question would have cost since, during that weekend, the student would not have been provided with residential care because it was a parent-family visitation weekend. However, the review officer disallowed the parent's other non-transportation related expenses for the weekend, such as hotel and meals, because the student's IEP did not contain goals specifically related to improving the student's relationship with his family. Additionally, the review officer found while the student's parents had many meetings arranged during the weekend in question with their son's RTC staff, which may have been helpful to the parents, there was no evidence in the record that the meetings contributed to the achievement of the student's IEP goals.

9. In *Aaron M. v. Yomtob* (N.D. Ill. 2003) 38 IDELR 122, 103 LRP 5105, the district court found that six parental visits to the child's RTC placement provided the child with a FAPE as a related service because the visits were specifically included in the child's IEP and the parents had not proven that their child needed more visits in order

for him to receive a FAPE. Similarly, in *Agawam Public Schools* (SEA MA 2004) 42 IDELR 284, 104 LRP 35103, a state hearing officer denied reimbursement to parents for their transportation and related expenses to attend parent-teacher conferences, to attend other activities at the child's RTC to which parents were invited, or for the purpose of maintaining good parent-child communication. In disallowing the requested reimbursement, the hearing officer noted that the child's IEP did not have any goal, objective or accommodation that would necessitate the parents' presence at school and there was no evidence to support a finding that the child would not fully be able to participate in the school's programs without parental visits. Finally, in *Luke P. v. Thompson R2-J School District* (D. Col. 2006) 46 IDELR 70, 106 LRP 46353, the court, in pertinent part, denied reimbursement to the parents for three visits to their child's RTC for purposes of parent training and two visits for attending school events. The court found that there was no evidence in the record that the training trips or parent attendance at school events were supportive services required to assist the student in benefiting from his education.

10. The theme which resonates through all the cases cited is that reimbursement of transportation and related expenses for visits by a student's parents to an RTC must be supported by a finding that the student's IEP specified that such visits would be reimbursed, or by a finding that the evidence indicated that the student required the visits to achieve his goals and/or to receive a FAPE. In the instant case, Student has offered no evidence that his IEP required that he have personal visits with his parents (for family therapy or for other reasons) or that visits by his parents were necessary in order for him to meet his goals and objectives or to otherwise receive a FAPE. The only evidence in the record is that Student's IEP in effect at the time of his Parents' visit in February 2008 stated that transportation would be provided pursuant to the District's travel reimbursement guidelines. As stated above in Factual Findings 9 - 12,

the guidelines provide, in pertinent part, that the District will only reimburse parents for a trip to their child's RTC if the visit was for purposes of family therapy. Since Student's Mother did not attend his therapy sessions, her visit was not covered by the District's guidelines. Student has therefore failed to meet his burden of proof that the District is required to reimburse his Parents for the cost incurred by his Mother during her trip to Colorado on February 15 through February 17, 2008. (Factual Findings 2 – 24; Conclusions of Law 2 – 10.)

Father's Expenses

11. As stated in Factual Finding 7, Student's IEP indicates that the District would reimburse transportation expenses related to Student's placement at Forest Heights pursuant to its travel reimbursement guidelines. As stated in Factual Finding 13, District witnesses Gottesman and Skone-Rees concurred that the District policy, although not specifically stated in the guidelines, permits reimbursement for expenses incurred for three days and two nights of travel. Father therefore is entitled to reimbursement for his airline ticket in the amount of \$1,029; for three days parking at the airport at the District's guideline amount of \$12 per day for a total of \$36; for two days of meal reimbursement at \$48 a day for a total of \$96; and for two nights hotel reimbursement at \$140 per night for a total of \$280. (Factual Findings 2 – 16 and 19 – 32; Conclusions of Law 2 – 11.)

12. As stated in Factual Finding 30, Father's request for reimbursement for refueling charges by Alamo Rental Car is not supported by the evidence. However, the District guidelines provide for reimbursement of gasoline expenses and Student provided documentary evidence that Father spent \$58.58 for gasoline for his rental car. Pro-rating the amounts over the four days that Father rented a car, at \$15 a day, Parents are entitled to a total of \$30 dollars of reimbursement for gasoline expenses for the first

two days that Father rented a car. (Factual Findings 2 – 16 and 19 – 32; Conclusions of Law 2 – 10 and 12.)

13. Father’s request for reimbursement for the cost of renting the Durango is reasonable in light of the lack of specificity in the District’s policy, the lack of evidence of what it would cost to rent a mid-sized car without application of any discounts, and in light of Father’s mitigation of costs by his use of his frequent customer discount at Alamo. However, Father is only entitled to reimbursement for two days’ rental car cost, prorated for a total reimbursement of \$140.00. (Factual Findings 2 – 16 and 19 – 32; Conclusions of Law 2 – 10 and 13.)

REMEDY

14. Based upon Student’s IEP, which states that the District will reimburse transportation expenses pursuant to its guidelines for travel reimbursement dated September 2007, and the lack of any evidence demonstrating that Student required any visits with his Parents outside the parameters of those guidelines in order to receive a FAPE, Parents are not entitled to reimbursement for Mother’s visit to Colorado. Parents are entitled to reimbursement for Father’s travel expenses in the total amount of \$1,611. (Factual Findings 2 - 32; Conclusions of Law 2 - 14.)

ORDER

Within 45 days of the date of this Order, the District shall reimburse Student’s Parents the amount of \$1,611.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, Student partially prevailed on the sole issue heard only to the extent

that his Parents should be reimbursed for the pro-rated cost of gasoline during the first two days of Father's trip to Colorado, excluding the Alamo refueling charges; the cost of Father's parking at the airport for three days; and the full cost of Father's rental car for the first two days of rental. The District prevailed on the primary matter in this case: that the District was not required to reimburse Parents for the cost of Mother's airfare and her other expenses for her trip to Vail, Colorado from February 15 through February 17, 2008.

RIGHT TO APPEAL THIS DECISION

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

DATED: May 11, 2009

/s/
DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings