

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

GREENFIELD UNION SCHOOL DISTRICT.

OAH Case No. 2018021003

DECISION

Parent filed a due process hearing request with the Office of Administrative Hearings, State of California, on February 16, 2018, naming Greenfield Union School District.

Administrative Law Judge Cynthia Fritz heard this matter in Bakersfield, California, on April 12, 13 and 17, 2018.

Mother represented Student throughout the hearing. Student was not present.

Darren Bogie and Christina Oleson, Attorneys at Law, represented Greenfield throughout the hearing. Melissa Ortiz, Director of Support Services, attended the hearing on behalf of Greenfield.

At the request of the parties, OAH continued this matter until April 30, 2018 for written closing briefs. The briefs were timely submitted and the record closed on April 30.

ISSUES¹

1. Did Greenfield deny Student a free and appropriate public education during the 2017-2018 school year by:
 - a. excluding Student from class for three days;
 - b. failing to add intellectual disability as an additional eligibility category;
 - c. failing to provide appropriate transportation; and
 - d. failing to implement the March 16, 2017 IEP, by not giving Mother daily communication about Student?

SUMMARY OF DECISION

Student failed to prove that Greenfield denied him a FAPE during the 2017-2018 school year in any of the four disputed areas. Greenfield did not materially fail to implement Student's March 16, 2017 IEP, due to Student's three-day absence. Student's IEP team identified intellectually disabled as an eligibility category at the March 16, 2017 IEP team meeting, and the failure to re-note it on the January 18, 2018 "other review" IEP team meeting document, was inadvertent and immaterial because it was neither discussed nor changed. A bus aide, curb-to-curb transportation and communications to Mother are not required to educationally benefit Student based upon his unique needs. All requested relief is denied.

¹ The issues have been rephrased and reorganized for clarity. The ALJ has authority to restate the issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified Sch. Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.) All issues outside of OAH's jurisdiction were dismissed sua sponte at the April 6, 2018 prehearing conference.

FACTUAL FINDINGS

JURISDICTION

1. Student is a six-year-old boy who resides with Mother within the geographical boundaries of Greenfield. He is eligible for and has been receiving special education and related services for autism, speech and language impairment, and intellectual disability. Student also has severe food allergies and his medical provider has prescribed an epi-pen and antihistamines as needed. He is a happy, polite and well-behaved boy.

2. Student was found eligible for special education in 2016 and attended the Kern County Office of Education's Richardson Center during the 2016-2017 school year. Student's triennial IEP team meeting was convened on March 16, 2017 to plan for his kindergarten transition. Student was offered 275 minutes of specialized academic instruction in a mild/moderate classroom at Fairview Elementary School, 160 minutes monthly for speech and language services, 15 minutes monthly for health and nursing services and transportation to and from Fairview. Mother participated at the meeting and consented to the March 16, 2017 IEP.

STUDENT'S ABSENCE DURING THE FIRST THREE DAYS OF SCHOOL

3. The parties agree that Student missed the first three days of school on August 17, 18 and 21, 2017, because Greenfield had not received Student's medication authorization forms signed by a physician and parent, and his medications.

4. Student's IEP team meeting on March 16, 2017, included an emergency medical plan describing Student's need for an epi-pen and antihistamine on an as-needed basis, and school staff instructions on administering the medications. The IEP team meeting notes specify that Mother was given the medication paperwork for the physician's signature at that time.

5. Lead school nurse, Jennifer Morales, who testified at the hearing in this matter, confirmed Greenfield's policy that medical authorization forms and medicines are required before the first day of school. Ms. Morales is a properly credentialed and licensed registered nurse who has worked seven years with Greenfield developing and implementing its health program in conformity with current laws, regulations, and policies. She oversees two school sites, including Fairview, and assesses the health and development status of students, creates health care plans, implements physician orders, assists in individualized education plans and supervises staff.

6. Ms. Morales competently explained that State law mandates general and special education children provide medical authorization forms and medications to the school site annually if staff will be administering medication. The forms are distributed at the time of school registration and parents are told they need to be returned before a student starts school. Great weight was given to her testimony.

7. Ms. Morales contacted Mother on August 14, 2017, after she was informed that Student's signed medical authorization forms and medications were not delivered to Fairview. Ms. Morales assisted Mother by faxing the form to Student's physician and received the physician's signature on August 18, 2017. Mother delivered the medications to Fairview on August 22, 2017, and Ms. Morales personally observed Mother sign the medical authorization form the same day. Student was then allowed to attend school.

8. Sabrina Chavez, Greenfield special education teacher since 2017, teaches students in the mild moderate kindergarten through second grade classroom at Fairview. Ms. Chavez has her professional intern permit credential and is currently working on her clear mild moderate credential. She previously worked with autistic and intellectually disabled children as an instructional aide at Valley Achievement Center. Ms. Chavez works with Student every school day.

9. Ms. Chavez established that the first two days of school, August 17 and 18, 2017, were half school days. She explained that Student fully adapted to the classroom within two weeks, which was excellent compared to other students. Based on her formal kindergarten assessment testing, Student is currently performing at grade-level in most areas including letters, numbers, colors, shapes and days of the week. He needs improvement in communication skills, social skills and critical thinking, although she sees progress in those areas. Ms. Chavez specified that Student did not miss any speech and language services the first three days of school. Additionally, during those days, he did not miss academic instruction as Ms. Chavez designed those days as an adjustment period to meet other students, adapt to the classroom, and review previously learned information. Ms. Chavez' testimony was precise, thoughtful and corroborated with documentary evidence. She was a credible witness and her testimony is given substantial weight.

10. Maxine Rodriquez, a speech and language pathologist since 2010, has been working at Greenfield since 2017. She has assessed approximately 200 students for speech and language eligibility which includes students who also have autism and intellectual disabilities. Ms. Rodriquez provides speech and language therapy to students who have IEPs for speech and language impairment; provides initial evaluations; administers assessments; and attends IEP team meetings. Ms. Rodriquez works with Student twice a week.

11. Ms. Rodriquez explained that she sees Student in speech and language class on Tuesdays and Thursdays for 20 minutes each. She established that Student missed no speech and language services the first three days of school because services did not start until the second full school week. Additionally, for any speech and language minutes missed, Ms. Rodriquez explained that they are made up the next month to fulfill the IEP monthly minutes. She further detailed that Student has advanced

throughout the school year from one to two word utterances to three to four utterances and he was not negatively impacted by not receiving speech and language services during the first three days of school. Ms. Rodriguez' testimony was specific, forthright and consistent with documents and corroborated by other witness testimony. She was a credible witness and her testimony is given substantial weight.

12. Diana Sevillanos-Myers, Greenfield school psychologist since 2016 and former program specialist, and special education teacher, provides support services to students, implements social emotional interventions, and conducts evaluations and functional behavior assessments. She is also a Board Certified Behavior Analyst. Ms. Sevillanos-Myers has worked with Student since November 2017 and has extensively observed him in the classroom.

13. Ms. Sevillanos-Myers opined that Student's three-day absence had no impact on Student. His communication with others has had huge growth this year because he has learned a picture exchange system in class. Further, Student's language skills grew from one to two word utterances to four to five word spontaneous utterances. Ms. Sevillanos-Myers was careful and precise and further questioning did not produce any reason to doubt her. Her testimony is entitled to substantial weight.

STUDENT'S INTELLECTUAL DISABILITY ELIGIBILITY

14. Student's intellectual disability eligibility was described in the March 16, 2017 IEP team meeting notes as follows:

The team agrees that [Student] continues to qualify for special education services based on meeting the eligibility of autism (primary) and speech and language impaired as secondary, and intellectual disability as third.

15. Paul Salmon, has been the Greenfield program coordinator since 2015. He

is a former school psychologist, and has been employed as a director of special education, and a vocational counselor in the past. He assists in developing effective special education programs and coordinates resources; responds to parents regarding placement and evaluations; supports special education staff on school sites; and assists in class assignments and placement changes.

16. Mr. Salmon participated in the March 16, 2017 IEP team meeting, as Greenfield's local educational agency representative. He explained that only autism and speech and language appear as the eligibility criteria on the IEP front page because the computer generated document only auto-populates with a primary and secondary eligibility category. Because of this, the third eligibility category, intellectual disability, was placed in the IEP team meeting notes.

17. Mr. Salmon also participated in the January 18, 2018 IEP team meeting, and described it as an "other review" that was convened after Mother's December 2017 request. The meeting purpose is titled "other review" on the front IEP page. Autism, and speech and language impairment eligibility also appear on the front page designated as primary and secondary, respectively. Mr. Salmon credibly explained that the team discussed issues such as communication with Mother, health concerns, and further assessments, not eligibility. After Mother consented to the January 18, 2018 IEP addendum, she requested that Mr. Salmon add Student's intellectual disability eligibility to the document. Mr. Salmon agreed that Student's intellectual disability eligibility was unchanged but did not agree that it needed to be added to the January 18, 2018 IEP. Mr. Salmon's testimony was uncontested, comported to the documents and corroborated other witness's testimony.

18. Ms. Sevillanos-Myers, another January 18, 2018 IEP team meeting participant, related that the lack of intellectual disability noted in the January 18, 2018 IEP team meeting addendum notes was of no consequence because Student remained

eligible for intellectual disability at the time of the meeting and his eligibility was not discussed. Based on her experience, information not discussed in an "other review" would not typically be included in the IEP notes.

STUDENT'S TRANSPORTATION SERVICES

19. Student's IEPs, dated March 16, 2017 and January 18, 2018 as amended, call for Student to receive transportation to and from school. Mother believes that Student cannot ask for help in emergencies due to his verbal delays, and engages in dangerous behavior that requires bus aide assistance.

20. At the March 16, 2017 IEP team meeting, the team discussed Student's bus pick up and drop off down the alley from Student's residence. Also contained in the IEP is an emergency health care plan and protocol for signs of anaphylaxis while Student is on the bus.

21. Student spends approximately 25 minutes on the school bus to get to or from Fairview to his bus stop. Mother takes him to and from the bus stop.

22. Greg Paniagua has been Student's bus driver since February 2018, and he has been a bus driver for 18 years, and described Student's typical bus ride. Student is strapped into a car seat for the bus ride and is well-behaved. He has never been observed to be in any distress. Student is never left on the bus alone and Mr. Paniagua has never had to stop the bus or talk to Student because Student is causing distraction, shouting, or is having any behavioral problems. Student will sometimes run to the back of the bus or get into the driver's seat before getting strapped into his car seat. He will sometimes touch things while getting off the bus including the fire extinguisher. And, Mother occasionally struggles with Student once he is off the bus because he wants to get back on. An aide is typically on the bus with the exception of four to five times per month. If there is no aide, Mr. Paniagua assists with the car seat and getting Student on and off the bus which is not a problem.

23. Angela Delgado has been a substitute bus driver and transportation aide for five years. When she is acting Student's bus driver, he is well-behaved and she has no difficulty with him. Again, she has observed Student touching items, including the fire extinguisher when getting off the bus, and also observed Mother having problems controlling him once he is off the bus as he attempts to get back on. Despite this, Ms. Delgado has never had to stop the bus or contact a supervisor about Student. She has been able to assist Student with his car seat and getting him off the bus without incident. She does not believe he needs an aide.

24. Ms. Chavez explained that Student is able to ask for help in the classroom by saying "help" or "help please." Student asks for help when he needs it.

25. Ms. Sevillanos-Myers has observed Student getting off the bus, and has not noticed Student having any behavior problems, difficulties, or distress. She further explained that bus aides are typically required for students who exhibit behaviors of harming themselves or others while on the bus and she would be contacted to conduct and evaluation or develop a behavioral plan in those situations. She has not been contacted regarding any harmful behaviors of Student while on the bus. Mother did not testify and there was no further testimony as to why Mother believes Student needs a bus aide, and no evidence was presented that Student requires curb-to-curb transportation.

DAILY WRITTEN COMMUNICATION

26. When Student attended Richardson Center, Mother received written daily communication concerning specifics about Student's school day. Mother appreciated this daily written communication because, she claims, Student cannot communicate this information to Mother, due to his language delays. With this information, Mother believes she could better help him with his educational program at home.

27. The March 16, 2017 IEP document does not address daily written communication or any type of communication about Student to Mother. There is no requirement that Mother be provided with daily communication about Student. Regardless of this, Ms. Chavez gave notes to her students' parents starting sometime at the beginning of the school year. She would send them to parents about three to four times per week. The note was a half sheet of paper that included items such as eating, following rules and comments. Sometime after the January 18, 2018 IEP team meeting, the note added more specificity such as if the child ate, followed rules, hit anybody, worked in whole group, worked in centers, used nice words, walked instead of running, and similar comments. It also added the teacher's phone number and email address if parents had any other questions about a student's day. Ms. Chavez originally assigned the daily communication to her aides then personally wrote the notes to Mother after the January 18, 2018 IEP team meeting.

28. At the January 18, 2018 IEP team meeting, Mother discussed her concerns and asked for daily written communication about Student. Although Ms. Chavez testified that communication with Mother is important, she did not believe that daily written correspondence to Mother was an educational need for Student. Despite this, she agreed to give Mother daily correspondence to try to build a better relationship with her. She also agreed to draft them herself and not assign them to an aide. This agreement between Ms. Chavez and Mother was not included as a component of Student's IEP.

29. Ms. Sevillanos-Myers opined that communication to parents is helpful but daily communications to Mother by Greenfield is not required because the communication does not impact Student's programming or educational needs.

30. Mr. Salmon also agreed that sending communication to parents is helpful but Student does not need Greenfield to send Mother daily notes about his day. There

are numerous ways for Greenfield staff to communicate with Mother, and it need not be daily. These include: (1) phone calls; (2) emails; (3) setting up a meeting with the teacher; and (4) IEP team meetings. Since Mother did not testify, no evidence was presented as to why she needed daily communication from the school as part of a program to meet Student's unique educational needs. And no evidence was presented that Greenfield failed to send Mother daily notes after the January 18, 2018 IEP team meeting.

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA²

1. This hearing was held under the IDEA, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006)³ et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's individualized education program. (20 U.S.C. §

² Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

³ All subsequent references to the Code of Federal Regulations are to the 2006 version.

1401(9); 34 C.F.R. § 300.17.) “Special education” is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) “Related services” are transportation and other developmental, corrective and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA’s procedures with the participation of parents and school personnel that describes the child’s needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and nondisabled peers. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a).)

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that “the ‘basic floor of opportunity’ provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to” a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to “maximize the potential” of each special needs child “commensurate with the opportunity provided” to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to “confer some educational benefit” upon the child. (*Id.* at pp. 200, 203-204.)

4. The Supreme Court recently clarified and expanded upon its decision in *Rowley*. In *Endrew F. v. Douglas County School District*, the court stated that the IDEA

guarantees a FAPE to all students with disabilities by means of an IEP, and that the IEP is required to be reasonably calculated to enable the child to make progress appropriate in light of his or her circumstances. (*Endrew F. v. Douglas County School Dist. (March 22, 2017, No. 15-827)* 580 U.S.____ [137 S.Ct. 988, 996, 197 L.Ed.2d 335]).

5. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; *see* 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) By this standard, Student as the complaining party bears the burden of proof.

ISSUE NO. 1: STUDENT'S ABSENCE THE FIRST THREE DAYS OF SCHOOL.

6. Greenfield contends that medical authorization forms and medications are required before a student begins the school year. Mother argues that Greenfield did not give her proper notice to have the signed forms and medications before school began, and Fairview possesses an emergency epi-pen and thus Student's absence was a denial of FAPE.

Failure to Implement an IEP

7. There is no statutory requirement that a district must perfectly adhere to an IEP and, therefore, minor implementation failures will not be deemed a denial of

FAPE. (*Van Duyn v. Baker School Dist.* 5J (9th Cir. 2007) 502 F.3d 811, 820-822 (*Van Duyn*). Only a *material* failure to implement an IEP violates the IDEA. (*Id.* at 822.) “A material failure occurs when the services provided to a disabled child fall significantly short of those required by the IEP.” (*Ibid.*) A brief gap in the delivery of services, for example, may not be a material failure. (*Sarah Z. v. Menlo Park City School Dist.* (N.D.Cal., May 30, 2007, No. C 06-4098 PJH) 2007 WL 1574569, P. 7.) “[T]he materiality standard does not require that the child suffer demonstrable educational harm in order to prevail. However, the child’s educational progress, or lack of it, may be probative of whether there has been more than a minor shortfall in the services provided.” (*Van Duyn, supra*, 502 F.3d at p. 822.)

8. A school district must obtain “a written statement from the physician detailing the name of the medication, method, amount and time schedules by which the medication is to be taken” and “a written statement from the parent... of the pupil indicating the desire that the school district assist the pupil in the matters set forth in the statement of the physician.” (Ed. Code § 49423, subd. (b)(1).) The statements must be provided at least annually. (*Id.*, subd. (b)(3).)

9. There is no dispute that Student missed the first three days of school. Greenfield’s policy of excluding students without completed medical forms and provided medication applies to general and special education students alike. Student asserts Greenfield’s exclusion procedure does not comport with Education Code section 49423, subdivision (b)(1). That issue is not reached, however, unless it is determined first that the three-day exclusion constituted a denial of FAPE. As explained below, Student did not establish such.

10. Student failed to establish that Greenfield materially failed to implement his March 16, 2017 IEP due to a three-day gap in services at the beginning of the 2017-2018 school year. The testimony of Ms. Chavez, Ms. Rodriguez and Ms. Sevillanos-Myers

established that the three-day absence was immaterial. Student missed no speech and language services and minimal specialized academic instruction due to his absence for the first three days of school. Since that time, Student has made progress in academics, speech and language, communications, and social skills.

11. The three-day exclusion is a minor discrepancy between the services provided to the Student and those required in the IEP; and the information presented lacked any evidence that Student suffered any deprivation of educational benefits based upon the absence. Thus, the three-day exclusion did not constitute a denial of FAPE.

ISSUE NO. 2: STUDENT'S INTELLECTUAL DISABILITY ELIGIBILITY

12. Student contends intellectual disability should have been noted on the first page of the March 16, 2017 IEP document, and not in the notes, and it was missing completely in the January 18, 2018 IEP document. Because of this, Student was denied a FAPE.

Eligibility Categories

13. Only children with certain qualifying disabilities are eligible for IDEA benefits. (20 U.S.C. § 1401(3)(4).) Federal law requires special education for a "child with a disability," who is defined in part as a child with an impairment "who, by reason thereof, needs special education and related services." (20 U.S.C. § 1401(a)(3)(A)(ii); 34 C.F.R. § 300.8(a)(i) (2006).) California special education is required for individuals who are defined in part as individuals whose "impairment ... requires instruction, services, or both, which cannot be provided with modification of the regular school program." (Ed. Code, § 56026, subd. (b).)

14. Nothing, however, in the IDEA requires children to be classified by their disabilities (20 U.S.C. § 1412(a)(3)(B)). As long as a child remains eligible for special education and related services, the IDEA does not require that the child be placed in the

most accurate disability category. (20 U.S.C. § 1412(a)(3)(B).)

IEP Team Meetings

15. A school district must conduct an IEP team meeting for a special education student at least annually to review the IEP to determine whether the annual goals are being achieved, to make any necessary revisions to address any lack of expected progress, and to consider new information about the student. (20 U.S.C. § 1414(d)(4)(A); 34 C.F.R. § 300.324(b)(1); Ed. Code, §§ 56380, subd. (a)(1) & 56343, subd. (d); *Anchorage School Dist. v. M.P.* (9th Cir. 2012) 689 F.3d 1047, 1055-56.)

16. A school district must also convene an IEP meeting when a parent requests a meeting to develop, review, or revise the IEP. (Ed. Code, § 56343, subd. (c).) Amendments to an existing IEP can be made without convening the whole IEP team, and without redrafting the entire document. (20 U.S.C. § 1414(d)(3)(D) & (F); 34 C.F.R. § 300.324(a)(4)(i) & (a)(6); Ed. Code, § 56380.1.) An amendment created in this manner must be reduced to written form and signed by the parent. An IEP and its amendment are viewed together as one document. (*Ibid.*)

17. The evidence established that intellectual disability was determined to be Student's third eligibility category at the March 16, 2017 IEP team meeting. Student did not establish that intellectual disability was not included as an eligibility category or that the listing of intellectual disability as a third category in the notes was a denial of FAPE.

18. Mother requested a meeting with Greenfield in December 2017 to discuss her concerns, and an IEP team meeting convened on January 18, 2018, to discuss communication, medical issues, and further assessments. The January 18, 2018 IEP showed autism and speech and language impaired eligibility on the IEP front page and did not note intellectual disability eligibility anywhere in the IEP document. The witnesses agree, however, that Student's intellectual disability eligibility was neither

discussed nor changed at the January 18, 2018 IEP team meeting, and Student continued to have intellectual disability as a third eligibility category.

19. The January 18, 2018 IEP document titled, "other review," constitutes an amendment to the March 16, 2017 IEP because it made minor, not comprehensive changes to the IEP during the year it was in effect. Therefore, the eligibility categories referred back to the March 16, 2017 IEP document, because eligibility criteria was neither discussed nor changed at the January 18, 2018 IEP team meeting. The lack of intellectual disability eligibility as Student's third eligibility category was unintended and immaterial. Student's continued intellectual disability eligibility was confirmed by the witnesses and no changes to his eligibility or program were noted in the IEP. Thus, Student failed to meet his burden by the preponderance of the evidence that Greenfield changed Student's intellectual disability eligibility at the January 18, 2018 IEP team meeting. An even if it had, this would not necessarily result in a denial of a FAPE.

ISSUE NO. 3: STUDENT'S TRANSPORTATION SERVICES

20. Student contends his current transportation is unsafe because Greenfield has made inadequate provisions for medical emergencies and preventing dangerous behavior while on the bus. Student also requested curb-to-curb service at the prehearing conference and in his closing brief. Greenfield believes it provides reasonable and adequate transportation to Student.

Transportation

21. Transportation is a nonacademic service that may be required by an IEP. (34 C.F.R. § 300.107(b).) 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 adaptive 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.)

22. California law defines special education 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 ... required to assist the child to benefit from special education. (20 U.S.C. § 1401(26)(A); 34 C.F.R. § 300.34(a).) In California, "related services" are called "designated instruction and services." (Ed. Code, § 56363, subd. (a).)

23. A school district that transports a student has a duty to exercise reasonable care in the circumstances. (Ed. Code, § 44808; *Farley v. El Tejon Unified School Dist.* (1990) 225 Cal.App.3d 371, 376.) The transportation must be reasonable safe. (*Eric M. v. Cajon Valley Union School Dist.* (2009) 174 Cal.App.4th 285, 293; *Student v. Los Angeles Unified School Dist.* (2006) Cal.Offc.Admin.Hrngs. Case No. 2006020443.)

24. Student failed to establish that he required an aide on the bus to be safely transported. Greenfield provided transportation to and from school as designated in Student's March 16, 2017 IEP. The bus drivers established that the offered transportation is safe because the shortness of the trip, Student's history of taking the bus without incident, attention is paid to his needs, and a lack of medical, safety or behavioral issues. The bus drivers can and do assist Student without an aide. There was no evidence that Student unfastened his car seat, disrupted the driver, was distressed or had behavioral problems that were harmful to him or others that required an aide on the bus. The evidence of Student's behavior of touching things while getting on and off the bus, including the fire extinguisher, did not prove any safety hazard. The only potential safety issue was Student's behavior when he was already in Mother's custody and control after

he exited the bus. Student failed to prove that he required a bus aide for any reason.

25. Student's March 16, 2017 IEP, discussed the home transportation stop up the alley from Mother's residence. Student failed to establish that there was an aspect of his disability that would prevent him from getting to and from the bus stop. It can be argued that at Student's young age, he is not capable of independently getting to the school bus stop down the street. Yet, it is his young age, and not his disability as the reason he cannot transport himself to the bus stop without an adult. No witness endorsed Mother's contention that Student required an aide and curb-to-curb transportation due to his unique needs. Thus, Student failed to meet his burden of proof on this issue.

ISSUE NO. 4: DAILY WRITTEN COMMUNICATION

26. Student contends that he received daily written communications at Richardson Center and Mother wants the same while at Greenfield including information regarding the foods Student eats, when he goes to the restroom and who accompanies him to the restroom, along with the specifics of Student's day. Mother also wants communication from his teacher, not a paraprofessional. Student argues that daily written communications are required because he has language delays the prevent Mother from communicating with Student so she can help him in his educational program at home. Greenfield contends that daily communication is unnecessary to meet Student's unique educational needs.

27. Daily written communication or any type of communication can be included in IEP services if required to assist an individual with exceptional needs to benefit from special education. In this particular case, communications were not included in the March 16, 2017 IEP and Mother believes that daily communication with the school is required because Student has delayed speech and she cannot communicate about what happened at school. Daily notes or other communication from

Greenfield will help Mother at home.

28. Nothing in the IDEA or California's implementing statutes and regulations require a school to communicate daily with a parent. Parents have a right to be informed of their student's progress at school. (Ed. Code, § 51101, subd. (a)(9).) The methodology used to implement an IEP is left to the school district's discretion so long as it meets a child's needs and is reasonably calculated to provide some educational benefit to the child. (See *Rowley*, *supra*, 458 U.S. at p. 208; *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149; *Pitchford v. Salem-Keizer School Dist.* (D. Or. 2001) 155 F.Supp.2d 1213, 1230-1232; *T.B. v. Warwick School Comm.* (1st Cir. 2004) 361 F.3d 80, 84.) Parents, no matter how well motivated, do not have the right to compel a school district to provide a specific program or employ a specific methodology in providing education for a disabled child. (*Rowley*, *supra*, 458 U.S. at pg. 208.)

29. Student failed to demonstrate that Greenfield needed to communicate with her daily to meet his unique needs, and provide him with educational benefit. Student has numerous accommodations in his IEP to assist him to access the educational curriculum. He has accessed the curriculum and progressed academically, and gained educational benefit without the need for daily communication between Mother and the school. Although many witnesses testified that communication with Mother is helpful, not one witness believed that daily communication was required for Student to benefit from special education. Student failed to prove that he has unique academic needs that can only be met through if Mother receives daily reports or communication about him from the school. Further, although not written into Student's IEP, Ms. Chavez had been sending Mother notes regularly about him even though it is not required by his IEP. Student failed to meet his burden of proof on this issue.

ORDER

All relief requested by Student is denied.

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, Greenfield was the prevailing party on all issues presented.

RIGHT TO APPEAL

This Decision is the final administrative determination and is binding on all parties. (Ed. Code, § 56505, subd. (h).) Any party has the right to appeal this Decision to a court of competent jurisdiction within 90 days of receiving it. (Ed. Code, § 56505, subd. (k).)

DATED: May 16, 2018

X

CYNTHIA FRITZ

Administrative Law Judge

Office of Administrative Hearings