

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

In the Matter of:

OAH CASE NO. N2007060036

STUDENT,

Petitioner,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT,

Respondent.

DECISION

Eileen M. Cohn, Administrative Law Judge of the Office of Administrative Hearings, Special Education Division, heard this matter in Los Angeles, California on April 1-3, and April 16, 2008.

Petitioner Student (Student) was represented by his Mother. Respondent Los Angeles Unified School District (District) was represented by Donald A. Erwin, Assistant General Counsel, Office of General Counsel, District. Ms. Harriet Watson, Due Process Specialist for District, was also present each day.

Petitioner filed a request for Due Process Hearing on May 30, 2007. The parties requested a continuance and on July 10, 2007, OAH granted the continuance and rescheduled the prehearing conference and hearing. On October 19, 2007, District and Student entered into an interim settlement agreement.¹ On November 9, 2007, the

¹ Student and Mother were represented by counsel until December 28, 2007.

parties requested a continuance, and on November 28, 2007, OAH continued the due process hearing until January 14, 2008. Mother did not appear the first day of hearing, January 14, 2008. On January 16, 2008, OAH issued an Order to Show Cause as to why the matter should not be dismissed (OSC re Dismissal). Mother appeared at the OSC re Dismissal on January 23, 2008. OAH determined that the matter should not be dismissed.

Sworn testimony and documentary evidence was received at the hearing. Mother scheduled Student's physician to appear by telephone on April 2, 2008. Student's physician did not appear. At the conclusion of testimony on April 3, 2008, the parties agreed to continue the hearing until April 16, 2008, to provide Mother additional time to secure the telephonic testimony of Student's physician, and to present closing arguments. Mother did not secure the telephonic testimony of Student's physician. The parties presented closing arguments on April 16, 2008, and the matter was submitted.

ISSUE

Did District's offer of round-trip bus transportation between home and school with a one-on-one aide during the 2006-2007 and 2007-2008 school years deny Student a free and appropriate public education?

CONTENTIONS

Student contends that he can not tolerate the school bus and needs to be transported by taxi with a one-on-one aide. District maintains that Student can tolerate the school bus with a one-on-one aide. District further maintains that taxi drivers are not subject to the same training and safety protocols required of school bus drivers and attendants, and for that reason the school bus is an appropriate option for Student.

FACTUAL FINDINGS

1. Student, who was 10 years, seven months old at the time of the hearing, is eligible for special education and related services under the categories of multiple disabilities (MD) – vision (MDV) and autism. Student has Norrie’s Syndrome, a genetic impairment, which has resulted in cortical blindness and developmental delays across all areas. Student’s eligibility for special education is not in dispute.

2. Student attends Francis Blend Special Education Center (Francis Blend). Student has attended Francis Blend since 2000. Francis Blend is a special education center devoted to pupils with visual impairments. Many pupils at Francis Blend also have MD and autism. Francis Blend is not Student’s home school. Mother consented to Student’s placement in a special day class (SDC) at Francis Blend for the school year and extended school year during the school years at issue. For the 2006-2007 school year, Mother and District agreed to Student’s placement in a fourth grade SDC at Francis Blend. Student advanced to the fifth grade in the 2007-2008 school year. The appropriateness of Francis Blend as a placement for Student is not disputed.

3. Francis Blend is 15 miles from Student’s home and it is undisputed that Student requires round-trip transportation to access the campus and his education.

4. During his early school years at Francis Blend, Mother accompanied Student to school on public transportation. Mother and Student traveled on several buses and trains to get to Francis Blend from Student’s home. During the 2005-2006 school year, his third grade year, Student’s difficulties with bus transportation became more pronounced. At that time, Student began to more intensely exhibit autistic behaviors, including, an aversion to transitions and loud noises. Mother could no longer take Student to school using public transportation because Student could not tolerate the noise and crowd. At the beginning of the 2005-2006 school year, Student attempted to ride the school bus without an aide and was not successful. In January 2006 District

offered Mother round-trip bus transportation with a one-on-one aide. Mother declined the offer.

5. Student has a younger sibling that attended a District school close to Francis Blend. During the 2005-2006 school year, Mother reported that she was having difficulty coordinating her sons' conflicting bus schedules. As a way to acclimate Student to the school bus, Ms. Nancy Cohen (Principal Cohen), Francis Blend's Principal, secured an agreement from District's Superintendent of Special Education to allow Mother and sibling to ride the bus with Student for one month. In January 2006, Mother rode the bus with Student and his sibling for a day or two, but Mother stopped using the bus for Student after she observed that it took a long time for school staff to coax Student to get on the bus for the return ride home.

6. Principal Cohen has a master's in special education and has been a credentialed resource specialist. She has been the Principal of Francis Blend for three years. She manages 100 staff members, including, designated instructional service providers, 12 classroom teachers, and 35 aides. She provides in-service training for staff, including aides, on special education matters. School aides have available in-service training opportunities throughout the year. Principal Cohen provides training directly to staff on her campus and also brings in specialists to provide training on specific topics. Francis Blend's aides also receive individual support from a behaviorist on campus.

7. Principal Cohen knew Student and Mother and was directly involved in pursuing transportation options for Student. From her testimony it was also apparent that, when not directly involved, Principal Cohen was apprised of all matters relating to Student's transportation and education. Given her background, her knowledge of Francis Blend, Student, his educational and transportation needs, she had great credibility as a witness, and her testimony was given great weight.

8. At the hearing, District acknowledged that there were historical problems with Student's behavior on the bus and that he continued to have difficulties riding the school bus during the 2006-2007 school year. Student displayed many disruptive behaviors including, taking his seat belt off, getting out in the aisle of the bus while it was moving, laying on the floor of the bus, pulling a young girl's hair, and screaming and tantruming. One incident occurred shortly after Student returned to school in fall 2006, on October 9, 2006. Student had pulled another pupil's hair while traveling on the bus. Student could not calm down. The bus dispatcher contacted Mother and she retrieved Student. The area bus supervisor, Ms. Nicole Jackson, reported the incident to Principal Cohen. Principal Cohen investigated the incident with the aides on the bus. Student and the other pupil were kept apart and the problem was resolved.

9. The IEP team meeting to develop the 2006-2007 IEP was scheduled for May 2006, but could not be held because Mother moved with Student and his sibling outside the District. The 2006-2007 IEP team meeting convened on October 25, 2006, after Mother and Student returned to the District. At the October 25, 2006, IEP team meeting, Mother and District agreed that Student required a one-on-one aide on campus and also to accompany him round trip from home to school. Student required a one-on-one aide because he continued to have difficulty transitioning from activity to activity. District and Mother agreed that transportation was a transitional activity. At the time of the October 25, 2006, IEP team meeting, Student had been riding the school bus with a one-on-one aide for three weeks. As it did for the 2005-2006 school year, District offered Student a one-on-one aide at the October 25, 2006, IEP team meeting. The IEP meeting adjourned before the IEP was completed because the "Welligent" program used to prepare the IEP broke down during the meeting. Mother did not respond to District's offer at that time.

10. From October through winter recess December 2006, Paula Woods (Ms. Woods) was assigned as Student's one-on-one bus aide. Mother likened Ms. Woods to a "sorority sister." She communicated easily with Ms. Woods. District regulations dictate that aides remain on the bus at drop-off and that pupils' parents receive them at the door of the bus if they are unable to leave the bus unassisted. As a blind pupil, Student needed assistance exiting the bus. When the bus arrived at Student's home, Ms. Woods exited the bus with him so that she could walk to public transportation near Student's home. She delivered Student to Mother who was waiting a few feet from the bus. Mother trusted Ms. Woods and considered her tenure as Student's bus aide a success.

11. Ms. Woods worked at Francis Blend as an aide for seven years and was well-acquainted with Student. Before she was his one-on-one bus aide, she was his classroom aide. Ms. Woods's testimony was given great weight because of her experience as an aide at Francis Blend, her familiarity with Student, Mother and District's shared respect for her, and her candor as a witness. In response to Mother's examination, Ms. Woods admitted that as a classroom aide she became frustrated with Student and was overheard by Mother voicing her ill opinion of Student after he had a tantrum. Mother assumed that Ms. Woods did not admit this incident to her supervisors. Mother took it upon herself as a "sorority sister" not to report Ms. Woods. However, Ms. Woods told her immediate supervisor about the incident. Ms. Woods's self-report enhanced her credibility as a witness. Ms. Renee Barry-Jones (Ms. Barry-Jones) was Ms. Woods's immediate supervisor. As Francis Blend's supervising special education assistant, Ms. Barry-Jones manages the classroom and bus aides. She has been working at Francis Blend for 13 years in a variety of positions and works with a pupil population that includes many autistic pupils and pupils with multiple disabilities. Ms. Barry-Jones has known Student since he was four years old. She works closely with the aides to make sure they are following the behavior support plans, and taking advantage of in-

service training opportunities. She was familiar with Student's behavior support plan, his problems with transitions, and his transportation challenges. Because of these facts, Ms. Barry-Jones was a credible witness and her testimony about Student and the training and supervision of aides was carefully considered.

12. During fall 2006 Student's bus ride was 90 minutes each way. In addition to Student, there were approximately eight other pupils on the bus. In all there were three aides on the bus, including Ms. Woods or her substitute. With few exceptions, Student rode without incident under Ms. Woods's care.

13. Ms. Woods was aware of Student's behavior support plan. To address his problems with transitions, the behavior support plan provided, among other things, that calm de-escalating language be used. Ms. Woods knew when Student was agitated. She recalled only two occasions where Student's behavior was problematic.² One time Student stood up to get off the bus after he heard another child crying. Another time he became agitated because he had to go to the bathroom. Both times she was able to talk to him, reassure him, and successfully calm him. Ms. Woods found activities to keep Student occupied. He listened to a CD player, and had a "leap frog" to play with. Ms. Woods played games with Student, rubbed his back, sang, and provided him candy as a reward. Mother was particularly impressed that Ms. Woods sang spiritual songs to Student to calm him.

14. Mother preferred Ms. Woods and would have liked her to continue as his aide. Ms. Woods worked part-time on a six hour schedule. Due to her limited hours she could not accompany Student each day without exceeding her monthly time allotment.

² No evidence was presented that Ms. Woods was riding with Student at the time of the October 9, 2006, incident.

District had to secure an additional bus aide for Student for those days when Ms. Woods could not ride with Student.

15. Mother recommended that District assign only one bus aide to Student. District agreed. At the conclusion of winter break, in January 2007, District assigned Student a full-time eight hour aide, Ms. Kimberly Johnson (Ms. Johnson). Ms. Johnson did not have the experience of Ms. Woods, and required guidance from Francis Blend's behavioral specialist to address Student's behaviors. On January 22, 2007, approximately two weeks after Ms. Johnson began accompanying Student, he had a severe tantrum during his bus ride home. Student was listening to his CD player and his ear plug became dislodged. On that day, Ms. Johnson was not able to control him. He would not stay seated and moved to the aisle of the bus while it was moving and lay on the floor screaming and tantruming. As a result of Student's behavior, the bus driver could not transport passengers safely.

16. District staff adhere to a safety protocol for transporting pupils. Whenever pupils's behaviors are a threat to themselves or to others, and the bus driver can no longer proceed safely, the bus driver pulls over and calls the bus dispatcher. The bus dispatcher calls the parent and the area bus supervisor. When the parent does not retrieve the pupil, the area bus supervisor will drive the pupil home. The area bus supervisor has access to a District van to transport pupils when these situations arise.

17. District safety protocols were followed on January 22, 2007. The bus driver moved the bus to the side of the road, and contacted the dispatcher to arrange for another bus to transport the other pupils. After pupils were transferred to another bus, the bus driver attempted to take Student home, but he became upset again and the driver could not proceed safely. The bus dispatcher contacted Mother to take him home and Mother picked up Student.

18. District bus drivers must meet certain qualifications to make sure they are responsible and capable school bus drivers. District bus drivers are subject to criminal background checks and must be specially certified to drive a school bus. Bus drivers also receive ongoing training to keep them informed about pupils' disabilities and behaviors. They must attend in-service training each year where they receive up-to-date information on a variety of subjects, including, special education, autism, bus safety, bus inspections and terrorism.

19. At the time of the January 22, 2007, incident, school buses transporting Student were equipped with safety features, including seat belts, seat harnesses or vests, fire extinguishers, emergency exits, and two-way radios. District buses also had to be certified by the California Highway Patrol before they could be used. Every 3000 miles, or 45 days, buses must be inspected.

20. Principal Cohen investigated the incident that day. She wanted to isolate the "triggers" that upset Student so that everyone involved, including his aide, his classroom teacher and school staff, would be able to work with him to manage his behaviors. Principal Cohen and other District witnesses maintained that, in their experience, autistic pupils are generally prone to behavior challenges. The January 22, 2007, was not an isolated event for District transportation personnel or Francis Blend's staff.

21. Mother testified that District also failed to provide the school bus services it committed to provide for the 2006-2007 school year. On the day of the January 22, 2007, incident, Mother spoke with a bus dispatcher and was told that it would be best for Student to stay off the bus for a couple of days. Mother told her mother, Student's grandmother, that he was suspended. Student's grandmother was a long-standing administrative employee of a District high school. She understood that special education pupils could not be suspended for their behavior on a school bus. She was also aware

that any suspension had to be confirmed in writing in the form of a citation. She relied completely upon her daughter's representations and did not investigate whether District's suspension protocols were followed. Based upon her daughter's representations, she wrote letters to District officials about Student's suspension from the bus. At the hearing, Mother denied that she told Student's grandmother that he was suspended; however, the fact that Student's grandmother used the term suspension in several letters and testified that Mother was the sole source of her testimony, undermined Mother's credibility.

22. Principal Cohen attempted to contact Mother the day after the incident. When Mother failed to return her call, she contacted Student's grandmother on January 29, 2007. On January 30, 2007, Principal Cohen spoke with Mother. Mother was very upset and also told Principal Cohen that she thought Student was suspended from the school bus. Principal Cohen assured her that Student was not suspended from the bus. Principal Cohen contacted District's transportation planner, Mr. Salvador Beltran (Mr. Beltran) to make sure that the driver was still going to Student's home. She was assured that Student's home was not eliminated from the bus route. Mr. Beltran instructed the area bus supervisor to make sure the bus driver continued to go by Student's home. At the hearing, Mother insisted that the bus did not come to pick up Student after the incident. When Student rode the bus, Mother waited for Student in front of their home for the bus to arrive. Mother failed to provide any evidence that she actually waited with Student for the bus, or was in a location where she could observe whether the bus failed to arrive. Given Mother's objection to Student riding the bus to school, it is unlikely that she intended that Student ride the bus and waited with him for the bus to arrive in the morning, only to find that her home was no longer on the bus route. Mother admitted that she had difficulty getting Student ready in the morning, that getting him out of the house was a "journey" and sometimes Student was not ready in time for the bus.

Mother's testimony that District failed to provide the transportation it promised to Student was not credible.

23. After the January 22, 2007, incident Student no longer traveled on the school bus. According to Mother, during February of 2007 she drove Student to school in a used car she had recently purchased. The car soon failed. There were 180 school days during the 2006-2007 school year. Of those, Student was absent 114 full days, and 7 partial days. Student was only present 66 days, including partial days. District and Mother agreed that Student attended school during October through December and part of January. District representatives testified about Student's overall attendance record, but did not identify the specific days that Student attended school. If Student attended school at all during February, he did so only on occasion.

24. The October 25, 2006, IEP was completed at a second IEP team meeting on March 1, 2007. Mother and District agreed that the March 1, 2007, IEP covered the 2006-2007 school year and the 2007-2008 school year. At the March 1, 2007, IEP team meeting Mother expressed her concern that the 90 minute bus route was too long. She never mentioned her claim that bus service had been suspended. District's March 1, 2007, IEP offer of transportation included a commitment to add another bus to the route traveled by Student to reduce the amount of time he spent on the bus each day. District estimated that it could reduce the time by 20 minutes each way, or to 70 minutes each way. Student would be picked up at 7 a.m., instead of 6:40 a.m. Principal Cohen had explored ways to modify Student's bus route. In December 2006 Principal Cohen asked Mr. Beltran, District's transportation planner, to explore whether an additional bus could be added to the route to reduce the length of the bus ride. Mr. Beltran had several conversations with Principal Cohen during the first three months of 2007 about shortening Student's bus route. During February or March, Mr. Beltran also spoke directly with Mother about District's progress in modifying and shortening the

bus route. Mother wanted to know who was handling the matter and how long it would take. Mr. Beltran succeeded in adding another bus to the route shortly after the March 1, 2007, IEP team meeting, on March 16, 2007.

25. Mother insisted that she never spoke to Mr. Beltran. Mr. Beltran has a wealth of experience working in bus transportation for the District. Mr. Beltran has worked for the District 18 years, eight years as a bus driver, two years as an assistant area bus supervisor, and two years as an area bus supervisor. Mr. Beltran has been a transportation planner for four years and in that capacity oversees the allocation of buses, bus routes, and the on time performance of buses. During his tenure with District he has worked with autistic pupils, parents and administrators. He is familiar with special education pupils and their transportation needs. His testimony was straightforward and impersonal. As the person directly responsible for effectuating the change in the bus route for Student he would likely recall speaking with Mother. Mother demonstrated that she was not always aware of the names of people she dealt with at the District so her testimony that she never spoke with Mr. Beltran was not reliable.

26. Mother remained unconvinced that travel on a shorter bus route with a one-on-one aide was appropriate for Student.³ Mother did not consent to District's offer of transportation at the March 1, 2007 IEP team meeting. Mother insisted that Student required isolated transportation. Mother requested vouchers so that Student could travel to school by taxi with a one-on-one aide.

27. After Student's brief attendance during February 2007, he did not return to school for the remainder of the 2006-2007 school year and extended school year.

³ Shortly after the March 1, 2007, IEP team meeting Mother filed a mediation only request claiming that the 90 minute bus ride was too long.

Mother and Student left the District at the time Mother filed a request for due process, on or about May 30, 2007.

28. Mother and Student returned to District in late October 2007 at which time Mother agreed to have Student ride the school bus on the new bus route with a one-on-one aide. On the first day of Student's attendance, Mother was waiting with Student in front of her home when the school bus arrived at 7 a.m. Including Student, there were five pupils traveling on the bus with three aides. District assigned Mr. Jeremiah Ogola (Mr. Ogola) to Student as his one-on-one aide. Mr. Ogola has been a one-on-one aide with District for 13 years. He was experienced assisting pupils with behaviorial issues. He had worked with pupils with disabilities similar to Student and understood their difficulty with transitions. He was also familiar with Student. Attending another pupil, he rode on the same bus with Student years before when there were 14 pupils on the bus and Student was not accompanied by an aide. Mr. Ogola testified emotionally about his experiences with Mother. In his testimony, Mr. Ogola demonstrated his deep compassion and devotion to disabled pupils like Student. Although he was loyal to District as a long-standing employee, from his demeanor and tone it was apparent that his testimony was not scripted and that his testimony was based upon his very personal and direct experience with Student and Mother. He spoke about his understanding of Student's needs not just as an aide, but as a father of his own children. Mr. Ogola's testimony was given great weight and where his testimony conflicted with Mother's it was accorded deference.

29. When the bus arrived at Student's home at 7 a.m. on the first day Student returned to school, everyone was excited and happy to see Student waiting for the bus. Ms. Woods and one other aide were also on the bus assisting other pupils. Ms. Woods left the bus to retrieve Student because Student knew her and she thought it would be easier since both Student and Mother were familiar with her. Student sat next to Mr.

Ogola. Mr. Ogola assisted Student with his cane and back pack and spoke with him during the ride to school. Student was quiet during the bus ride to school and did not exhibit any behavior difficulties. The bus arrived at school 15 minutes late due to traffic, but Student remained quiet. At school everyone was happy to see him. Student was greeted by Principal Cohen. He ate his breakfast and participated in the classroom. At the end of the school day Student got back on the bus without incident. For three days Student rode the bus accompanied by Mr. Ogola without any behavioral problems. Student did not have any difficulty getting on the bus at the end of the school day.

30. When the bus arrived at Student's home at the end of the fourth day, Mother was standing about five yards away with her hands crossed across her chest and would not approach the bus. Mr. Ogola spoke with Student and told him it was time to go home. He walked him to the bottom of the step. Mother still did not approach the bus to receive Student. Mr. Ogola assisted Student so that he could step off the bus. Mr. Ogola did not want to get off the bus because it was against District policy. As long as he held on to a pupil he was responsible for that pupil's welfare. Student told Mr. Ogola that he didn't want to go home and didn't want to see Mother. He attempted to get back on the bus. Finally, making a one-time exception to District policy, Mr. Ogola walked off the bus with Student and delivered him to Mother. Mother remained silent with her hands crossed across her chest. She did not take Student's arm. Mother testified that when she heard Student say "no Mommy" she remained silent and didn't greet him in order to give him the time she thought he needed to "click in" that it was alright to exit the bus.

31. Mother had difficulty with the formality of the bus driver and Mr. Ogola. She gave a "thumbs-up" sign to the bus driver with the expectation that the bus driver would respond in kind up or down so that Mother would know how Student behaved on the bus. The bus driver did not respond. Unlike Ms. Woods, Mr. Ogola followed

District policy and did not want to exit the bus with Student to bring him to where Mother was waiting. Also unlike Ms. Woods, Mr. Ogola did not engage in casual conversation with Mother about Student's school day. In response to Mother's query regarding the identity of Student's mobility aide, Mr. Ogola advised her to contact the school.

32. Mother's and Mr. Ogola's mutual antagonism was dramatically on display during the due process hearing. Mr. Ogola considered Mother's election not to verbally greet her blind son and welcome him home to be uncharacteristic of a loving and caring parent. In Mr. Ogola's experience, parents warmly greet their children and pepper them with questions about their school day or give them previews of what they will be doing once they get home. Mr. Ogola testified that Mother's silence was especially disturbing because as a blind child Student did not know where Mother was unless she touched him or spoke with him. During his testimony, Mr. Ogola stood up and angrily demonstrated how Mother stood cross-armed, refusing to retrieve her son from the school bus. In turn, Mother demonstrated her disdain for Mr. Ogola's refusal to bend District rules for her, by glaring at him and repeatedly referring to him as "Mr. District Employee" during cross-examination.

33. Despite this incident with Mother, Mr. Ogola expected to see Student and Mother the next day waiting for the bus. Student and Mother did not appear for the bus pickup again. With the exception of these four days, Student has not attended school during the 2007-2008 school year.

34. The bus driver filed a report about the incident that occurred on the fourth day.⁴ Ms. La Sonya Letona (Ms. Letona), District's Area Bus Supervisor, contacted Mother

⁴ The bus driver's report was filed on November 2, 2007. She stated that the incident occurred on October 30, 2007. The District recorded that Student attended school on October 30 through November 2, 2007. Mr. Ogola clearly recalled that

to investigate the bus driver's written report. Ms. Letona has a bachelor's degree in organizational leadership, and has been elevated up the ranks of District's transportation operation since she began with District as a bus driver in 1986. Ms. Letona coordinates the bus schedule and oversees 49 drivers for 32 District schools. Ms. Letona testified generally about District transportation policies and procedures and specifically about her knowledge of the October 2007 incident and her conversation with Mother. She spoke in a straightforward manner without exaggeration. Her testimony was well-regarded.

35. Mother did not leave District an updated telephone number. By the time Ms. Letona reached Mother, Mother and Student were no longer waiting for the bus in front of their home at the scheduled time. Mother expressed her frustration with the bus driver's attitude in a phone conversation with Ms. Letona. Ms. Letona wanted to meet with Mother to "get on the same page" regarding Student's bus transportation. Mother explained that Student had to go through a "journey" each morning and that sometimes it takes him a long time to get ready. Mother stated that she would go through "the journey" with him. In response to Ms. Letona's concern about Student's absence, Mother stated that she understood that the driver could not wait for Student. Student was never removed from the bus route by District during the 2007-2008 school year. Generally,

Student did not return to the bus after the incident with Mother. At the hearing, Mother marked the school calendar to indicate that Student traveled the school bus with Mr. Ogola on Thursday and Friday, October 25 and 26, 2007, and on Monday and Tuesday, October 29 and 30, 2007. The school recorded Student's attendance on October 29 through November 2, 2007. The school's records are inconsistent with both Mr. Ogola's and Mother's recollection. Regardless of these inconsistencies, it was established that Student attended school for four days in the fall of 2007.

when a pupil is absent for ten days, the parent or the special education office is contacted, and if transportation is not instructed to continue to make the stop, the stop will be skipped. In this case, Ms Letona instructed the bus driver to continue to stop by sporadically to check to see if Mother and Student were waiting for the bus.

36. Mother repeatedly referred to District's transportation offer as a "band-aid method" that would not resolve Student's long-standing difficulty riding the school bus, or prevent further disruptions like the January 22, 2007, incident.

37. Student's behaviors, including his problems with transitions, are characteristic of pupils with autism. Although the behaviors can be controlled most times with careful supervision, they can not necessarily be eliminated. Student had problems with all transportation transitions, whether private or public. Mother testified that she also would ride in the taxi with Student to eliminate any resistance he might have to this mode of transportation. Although in the past Student exhibited more difficulty with bus transportation, Mother also had difficulty convincing Student to enter her private car at end of the school day at Francis Blend.

38. Mother was a bright and articulate advocate. As part of the leadership of Francis Blend's parent council she was actively involved in campus matters. However, Mother failed to meet Student's burden of proof that District's offer of transportation at the October 25, 2007 and March 1, 2007, IEP team meetings, denied Student a FAPE.

LEGAL CONCLUSIONS

1. Student claims that District's offer of transportation on a school bus accompanied by a one-on-one aide for the 2006-2007 and 2007-2008 school years denied Student a FAPE. Student claims that the only appropriate transportation for Student is a taxi where Student can ride with his one-on-one aide. As discussed below, Student failed to meet his burden of proof that District denied him a FAPE.

2. The United States Supreme Court has ruled that the petitioner in a special education due process administrative hearing has the burden to prove his or her contentions at the hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].)

3. In *Board of Education of the Hendrick Hudson Central School District, et al. 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.” Pursuant to California special education law and the Individuals with Disabilities in Education Act (IDEA), as amended effective July 1, 2005, children with disabilities have the right to a FAPE that emphasizes special education and related services designed to meet their unique needs and to prepare them for employment and independent living. (20 U.S.C. § 1400(d); Ed. Code, § 56000.) FAPE consists of special education and related services that are available to the student at no charge to the parent or guardian, meet the state educational standards, include an appropriate school education in the state involved, and conform to the child’s IEP. (20 U.S.C. § 1402(9).) “Special education” is defined as specially designed instruction, at no cost to parents, to meet the unique needs of the student. (20 U.S.C. § 1402(29).)

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. § 1402(26).) In California, related services may be referred to as designated instruction and services (DIS). (Ed. Code, § 56363, subd. (a).)

5. "Transportation" is defined as "travel to and from school and between schools, travel in and around school buildings." (34 C.F.R. § 300.16(b)(15).) The public agency must ensure that any transportation service included in a child's IEP as a related service is provided at public expense and at no cost to the parents, and that the child's IEP describes the transportation arrangement. (*Ibid.*)

6. In determining whether the District has offered a FAPE, the focus is on the adequacy of the proposed program and related services. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) If the District's proposed program and related services reflect Student's needs, provide some benefit, and comport with the IEP, the District has offered a FAPE, even if the parents prefer another program or services, and even if the preferred program or services could have resulted in greater educational benefit. (*Rowley*, 458 U.S. at pp. 207-208.)

7. The definition of FAPE requires that special education and related services be provided in conformance with a child's IEP. (See 20 U.S.C. § 1401(a)(9).) When a student alleges a denial of FAPE based on the failure to implement an IEP, in order to prevail the student must prove that any failure to implement the IEP was "material," meaning that "the services a school provides to a disabled child fall significantly short of the services required by the child's IEP." (*Van Duyn v. Baker School Dist.* 5J (9th Cir. 2007) 481 F.3d 770, 780.) "Minor discrepancies between the services provided and the services called for by the IEP do not give rise to an IDEA violation." (*Ibid.*)

8. Mother failed to meet Student's burden of proof that Districts' offer of bus transportation with a one-on-one aide and a modified bus route prevented Student from obtaining the educational services provided by his IEP. District and Parent agreed that Student's autism was the cause of his behavioral difficulties. At the time of the March 1, 2007, IEP, both District and Mother were aware that Student's behaviors on the bus could be controlled with a behavior support plan implemented by an experienced

aide. It was anticipated that Student would continue to have behavior challenges and be prone to tantrums or meltdowns as a consequence of his autism. It was also anticipated that disruptions on the school bus could never be completely avoided. As Mother conceded, Student did ride the bus successfully during the 2006-2007 school year with Ms. Paula Woods. Student also rode the bus successfully after the bus route was modified as District promised with a newly introduced, but experienced aide. Significantly, Mother's explanation to Ms. Letona for failing to appear with Student for bus pickup after just four days had nothing to do with any problems she claimed Student had riding the bus. Mother's dislike of the bus driver or her decision to go through Student's "journey" with him and not timely deliver him to the bus, did not render District's offer inappropriate. Student was well-liked and well treated by District staff, and his time with them was successful. (Factual Findings 1 through 5, 7 through 15, 20 through 37; Legal Conclusions 2 through 6.)

9. As understandably upsetting as the January 22, 2007, incident was to Mother, District had in place a protocol to handle Student's behavioral breakdowns and to ensure Student's safety or the safety of other pupils riding the bus. Moreover, District has a well-trained and experienced staff. Staff are provided with on-going training in safety and the special needs of pupils, and are provided support by a behaviorist. Bus drivers are vetted with criminal background checks and must be specially certified to drive a school bus. Finally, District's school buses are well-equipped for foreseeable emergencies. In contrast to the persuasive testimony regarding the appropriateness of District's bus transportation, Mother provided no evidence that taxi cab drivers are similarly experienced, well- trained and vetted, or that taxi cabs are required to be kept in an equally safe condition. (Factual Findings 6, 11 through 13, 15 through 20, 25, 28 through 30 and 34; Legal Conclusions 2 through 6.)

10. As to Student's other claim that District denied him a FAPE because it failed to provide transportation after the January 22, 2007, incident, Mother may have been erroneously told to keep Student home for a couple of days on January 22, 2007, but Mother was expressly told by Principal Cohen that Student was not suspended and there is no evidence that the bus route was modified to avoid Student's home. On the contrary, Principal Cohen spoke with District transportation personnel to ensure that Student's home was not skipped on the bus route. If the bus dispatcher misspoke and led Mother to believe that Student could not ride the bus for a couple of days, the misstatement did not result in a material breach of the proposed IEP. (Factual Findings 21 through 22; Legal Conclusion 7.)

11. In conclusion, Mother failed to meet Student's burden of proof that District's offer of bus transportation denied Student a FAPE. On the contrary, the preponderance of the evidence establishes the transportation services provided by the District were designed to meet Student's unique needs, and assist Student to benefit from special education. (Factual Findings 1 through 38; Legal Conclusions 2 through 7.)

ORDER

Student's request for relief is denied.

PREVALING PARTY

Under Education Code section 56507, subdivision (d), this Decision must indicate the extent to which each party prevailed on each issue heard and decided in this due process matter. Respondent school district prevailed on all issues decided in this matter.

RIGHT TO APPEAL THIS DECISION

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

Dated: May15, 2008

A handwritten signature in black ink, appearing to read "Eileen M. Cohn", written over a horizontal line.

Eileen M. Cohn

Administrative Law Judge

Office of Administrative Hearings