

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

GARDEN GROVE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2009081095

DECISION

The due process hearing in this matter convened on October 13, 14, 22 and 30, 2009, in Laguna Hills, California, before Timothy L. Newlove, Administrative Law Judge (ALJ) from the Office of Administrative Hearings, Special Education Division (OAH).

Student's father (Father) and mother (Mother) appeared on behalf of Student. On October 22 and 30, 2009, attorney Paul Kamaroff appeared and represented Student and his Parents. Attorney Courtney M. Brady, of the Harbottle Law Group, appeared on behalf of Garden Grove Unified School District (Garden Grove or District). Dr. Gary W. Lewis, Assistant Superintendent, also appeared on behalf of the District.

On August 6, 2009, Parents, on behalf of Student, filed with OAH a Request for Due Process Hearing. On September 1, 2009, OAH issued an initial Scheduling Order which set a due process hearing in the case for September 22, 2009. On September 21, 2009, OAH granted a continuance of the initial hearing date.

On October 13, 2009, the due process hearing commenced and the ALJ made rulings on motions that the District had submitted and that Student had opposed. The ALJ partially granted the District's Motion to Dismiss as regards Student's request to recover

reimbursement for lost wages and for expenses incurred in driving to IEP meetings and to private service providers. The ALJ also granted the District's Motion to Quash Subpoenas that Parents had served upon District personnel.

On October 30, 2009, the due process hearing concluded. The parties agreed to submit closing briefs with a two week deadline. On November 13, 2009, the parties submitted closing briefs. The ALJ marked Student's closing brief as B-1 (38) and the District's closing brief as District Exhibit 28. With such submission, the ALJ closed the record.

ISSUE

Did the Garden Grove Unified School District deny Student a free appropriate public education (FAPE) for the 2007-2008, 2008-2009 and 2009-2010 school years by failing to provide Student with appropriate transportation services?

PROPOSED REMEDY

As a proposed remedy, Student requests that the District provide transportation as a related service in Student's Individualized Education Program. Student further requests that the District reimburse his Parents for the cost of transporting him to and from school for the time period at issue in the case.

CONTENTIONS

Student contends that his unique needs require transportation as a related service and that the District failed to provide such service for the last two school years and for the current school year.

The District agrees that Student's disabling condition requires transportation as a related service. For the 2007-2008 school year, the District argues that Parents preferred to transport Student on their own. For the 2008-2009 school year, the District argues that

Student was not entitled to receive transportation services because his Parents elected to place him in a school of choice. For the current school year, the District contends that Parents signed an Intra-District Transfer Agreement which permitted Student to attend an elementary school that is not his home school, but in which Parents expressly agreed to provide transportation.

Based upon the following findings of fact and legal conclusions, this Decision finds that, from September 2007 to March 27, 2009, the District did not deny Student a FAPE through the failure to provide transportation because Parents elected to transport their son to and from school. The Decision finds that, from March 27, 2009 to the end of the 2008-2009 school year, the District did deny Student a FAPE since Parents notified the District of changed circumstances regarding their ability to provide transportation. For the 2009-2010 school year, the Decision finds that the District need not provide transportation services since Parents signed an Intra-District Transfer Agreement in which they agreed to transport their son to school.

FACTUAL FINDINGS

THE STUDENT

1. Student is an eight-year-old boy. His family resides within the boundaries of the Garden Grove Unified School District.
2. Student qualifies for special education as a child with autism. In an April 2008 triennial psychoeducational assessment, a District school psychologist determined that Student falls within the severely autistic range. Under this disabling condition, Student has limited speech and language skills. He uses one or two word utterances to communicate his wants and needs. He has poor focus and a low attention span. Student has delays in his gross motor abilities. Student also has social-emotional delays. Student requires constant supervision and he is a risk for elopement.

3. Dr. Gary W. Lewis is the Assistant Superintendent for Special Education and Student Services for the District. At the outset of the due process hearing, Dr. Lewis testified that Student's unique needs require transportation as a related service.

SCHOOL OF ATTENDANCE

4. The Garden Grove Unified School District includes six cities in Orange County, California, and serves 5,000 special education students. The District has 47 elementary schools. To determine a pupil's school of attendance, the District operates on a quarter section system. Under this system, the District is divided into numerous small geographical areas called quarter sections. Under normal circumstances, the District requires a pupil whose family resides in a particular quarter section to attend the elementary school that is either located in the same quarter section, or that is located in the quarter section nearest to the family home.

5. For the time period involved in this case, Student's family has resided at the same address. This home address is situated in the quarter section in which Paine Elementary School is located. Under the District's school of attendance policy, Paine Elementary is Student's home school.

6. However, Paine Elementary does not have the Mild/Moderate Special Day Class that Student requires for his special education program. Currently, Anthony Elementary School is the school located nearest to Parents' residence that offers such a program. Anthony Elementary is situated in a different but adjacent quarter section than Paine Elementary. Anthony Elementary is located about one and one-half miles from Student's residence. Anthony Elementary is Student's home school for the Mild/Moderate Special Day Class program.

7. Presently, Student is attending second grade at Hill Elementary School in a Mild/Moderate Special Day Class. Hill Elementary is situated in a quarter section that is several steps removed from the quarter section in which Parents reside. Hill Elementary is

located about three miles from Student's residence.

8. Garden Grove Unified School District permits parents to request an intra-district transfer of their child. An intra-district transfer applies to pupils who reside within the District and who want to attend a school in the District other than the home school. An intra-district transfer is also called an Adjustment Transfer or Parental Choice Enrollment. Parents must submit a request for an intra-district transfer to the District's Child Welfare and Attendance Office which decides the request based upon space availability and other considerations. The Child Welfare and Attendance Office accepts intra-district transfer requests during the month of March of the school year. Typically, because an intra-district transfer involves attendance at a site that is not the pupil's home school, the District requires the parents to provide transportation as a condition of approval of such a transfer request.

PRESCHOOL AND KINDERGARTEN

9. For the 2005-2006 school year, Student was four years old and he attended preschool at Anthony Elementary. During this school year, the District provided transportation services by bus for Student. The bus was equipped with a harness to secure Student.

10. On May 11, 2006, the District convened an Individualized Education Program (IEP) meeting for Student. This meeting was an annual and transition-to-kindergarten IEP. The team placed Student in a Moderate/Severe Special Day Class with a compliment of related services, including speech and language therapy, occupational therapy and behavioral intervention services. The May 2006 IEP also provided Student with transportation daily to and from school.

11. For the 2006-2007 school year, Student attended kindergarten in a Moderate/Severe Special Day Class at Murdy Elementary School. Murdy Elementary is situated in a quarter section that is adjacent to the quarter section in which Paine

Elementary is located. Murdy Elementary is located about three miles from Student's residence. Under the May 2006 IEP, the District provided transportation for Student to and from Murdy Elementary.

THE MAY 9, 2007 IEP

12. On April 19, 2007, the District convened an annual IEP meeting to discuss and formulate Student's special education program for the 2007 extended school year (ESY) and the 2007-2008 school year. The meeting adjourned and continued on May 9, 2007. After much discussion, the team offered Student placement in a Mild/Moderate Special Day Class as a retained kindergarten pupil. The team also offered the following related services: group speech and language therapy one time a week for 25 minutes; occupational therapy provided by a nonpublic agency (NPA) one time a week for 50 minutes; and behavior intervention services in the form of a full time intensive behavior intervention (IBI) aide and an IBI clinic two hours each day.

13. The Garden Grove Unified School District utilizes a standardized IEP document which includes subsection 12 entitled "Instructional Settings/Services." The standardized IEP treats matters relating to transportation services in section 12 of the document. Under paragraph 12b, after a description of the child's special education program, the form provides "Requires Special Education Transportation" which is followed by two boxes indicating "No" or "Yes." In addition, the form contains a box indicating "Eligible for transportation, however parent declined offer and will transport student."

14. The May 9, 2007 IEP did not provide transportation services for Student. At this IEP, the team recognized a need to provide transportation services for Student in order to offer an appropriate special education program. The team intended to place Student as a retained kindergarten pupil in the Mild/Moderate Special Day Class at Hill Elementary which is located outside the quarter section where Parents reside. In several preliminary drafts of the May 2007 IEP, the box under "Requires Special Education Transportation" was

marked "Yes." However, in the final version of the May 2007 IEP, the transportation box was marked "No" because Parents informed the team that they preferred to transport their son to and from school. Parents provided consent to the May 2007 IEP, except with regard to the placement of Student in an IBI clinic.

15. Jim Carter is the District's Coordinator of Special Education. Mr. Carter participated in Student's May 2007 IEP and kept notes for this meeting. Mr. Carter testified at the due process hearing and stated that the District offered to provide transportation services, but that Parents declined. The IEP notes prepared by Mr. Carter contain the following scant reference to the matter of transportation: "(A)dditional parent concerns regarding. . transportation were addressed by the teacher." Amy Keller was the "teacher" referenced in Mr. Carter's note. Ms. Keller testified telephonically at the due process hearing and stated that she discussed the matter of transportation with Parents and that Parents did not request transportation services. In the May 2007 IEP, the box indicating "Eligible for transportation, however parent declined offer and will transport student" was unchecked. Ms. Keller testified that the failure to check this box was an oversight on her part.

THE 2007-2008 SCHOOL YEAR – RETAINED KINDERGARTEN

16. For the 2007-2008 school year, Student attended Hill Elementary as a retained kindergarten pupil in a Mild/Moderate Special Day Class under the May 2007 IEP. Student attended class from 8:30 a.m. to 12:10 p.m. A school year has 180 days of class. District attendance records show that Student attended Hill Elementary for 127 days during this school year.

17. For the 2007-2008 school year, Parents transported Student to Hill Elementary, and to outside service providers. Student's Mother had the main responsibility of transporting her son. At the due process hearing, Mother testified that the drive between home and Hill Elementary takes about 10 minutes.

18. On October 19, 2007, Student's IEP team held a meeting to discuss the addition of a Behavior Support Plan. Parents attended this meeting. Teachers and staff at Hill Elementary had concerns that Student's off-task and self-stimulatory behaviors impeded his learning. The team proposed a Behavior Support Plan and several behavioral goals. The team did not discuss the issue of transportation at this IEP meeting.

19. On November 7, 2007, Student's Father sent an email message to Clark Osborne. Mr. Osborne is a Program Supervisor for the District. He has oversight responsibilities for special education programs provided by the District. In the message, Father requested Mr. Osborne to arrange an IEP meeting in which the team would discuss certain subjects including "Transportation from the school." On the following day, Mr. Osborne returned the email message and stated, in part: "The IEP you requested will be initiated by Hill Elementary School."

20. On December 7, 2007, Student's IEP team met to discuss a parental request and Student's placement. Student's Mother attended this meeting. At the meeting, Mother requested the District to perform an Adaptive Physical Education assessment of her son. Mother also informed the team that she did not want the District to implement the Behavior Support Plan discussed at the October 2007 IEP. Except for Student's Mother, the IEP team expressed the opinion that Student would be better-placed in a Moderate/Severe Special Day Class. Mother stated that she wanted the District to retain Student in his Mild/Moderate Special Day Class placement.

21. At the December 2007 IEP meeting, the team also discussed transportation. Clark Osborne attended and prepared notes for the December 2007 IEP meeting. Regarding transportation, the notes state that "(T)he parent inquired about transportation which was addressed by the (Program Supervisor)." Mr. Osborne testified at the due process hearing. Mr. Osborne stated that he recalled that he had a brief conversation with Student's Mother on the matter of transportation. He stated that he informed Mother

about the District's transportation policy. He stated that he told Mother that, for the coming school year, the District wanted Student to attend the Mild/Moderate Special Day Class at Anthony Elementary, and, if Parents preferred to maintain Student at Hill Elementary, then Parents must provide transportation. He stated that Mother did not make a formal request for transportation services. He stated that, had Mother made a formal request, he would have documented such request in the IEP notes.

22. On December 19, 2007, Student's Father sent an email message to Clark Osborne regarding subjects discussed at the December 7, 2007 IEP meeting. The lead subject in the email concerns "Student School Transportation." Regarding this subject, the email stated, in part: "When the parent asked for Bus transportation the SD [school district] Program Coordinator (SDPC), SDPC informed parent SD cannot provide this service since it is not our home school. SDPC also mentioned Anthony Susan is our Home school and if we send our son only to that school only then SD will provide Transportation." In italics, the email also provided: "Transportation is a related service that the school district must, if appropriate, provide for a special education student. The school district must furnish appropriate transportation to and from school, and to any educational program or service provided by the school that is away from the primary school the student is attending."

23. At the due process hearing, Mr. Osborne testified that he received but did not respond to this email. Mr. Osborne indicated that he did not respond because he received the email on the last day of school before the Christmas holiday break, and because, after the holiday, Student's family left the country for a long visit abroad. In fact, from January to early March 2008, Parents and Student were abroad visiting their country of origin. This is the principal reason that Student missed 53 days of class during the 2007-2008 school year. Upon his return from this trip, Student continued in his attendance at Hill Elementary.

24. In December 2007, the District completed the Adaptive Physical Education

assessment requested by Student's Mother. On March 28, 2008, Student's IEP team convened to discuss the results of this assessment which showed that Student had considerable gross motor deficits. In response, the team added a psychomotor goal to Student's IEP and agreed to provide adaptive physical education as a related service. The team did not discuss the issue of transportation at this IEP.

THE APRIL 30, 2008 IEP

25. On April 30, 2008, the District convened an IEP meeting to discuss triennial assessments of Student and formulate his special education program. Student's Parents and their educational Advocate attended this meeting. After discussion of Student's progress, present levels of performance and goals, the team offered a program for the remainder of the 2007-2008 school year, for the 2008 ESY, and for the 2008-2009 school year. For the 2008-2009 school year, the April 2008 IEP placed Student in first grade in a Mild/Moderate Special Day Class and provided the following related services: individual speech and language therapy two times a week in 30 minute sessions; group speech and language therapy one time a week for 30 minutes; occupational therapy provided by an NPA one time a week for 50 minutes; occupational therapy consultation one time a month for 50 minutes; adapted physical education two times a week in 30 minute sessions; and behavior intervention services in the form of a full-time IBI aide for Student, two hours each day in an after-school IBI clinic and two hours each month of IBI supervision.

26. Student's Parents did not consent to the IEP at the time of the April 30, 2008 meeting. Instead, Parents notified the team that they wanted to review the proposed IEP and the team's recommendation for placement and services. The April 2008 IEP continued to September 2008.

27. The April 2008 IEP did not offer Student transportation as a related service. Clark Osborne facilitated and took notes for the April 30, 2008 IEP meeting. At the due process hearing, Mr. Osborne testified that the District offered transportation services to

the Parents. He stated that, initially, Parents and their Advocate requested transportation services from school to home for the remainder of the school year. He stated that later during the meeting Parents rescinded such request. On this subject, the IEP notes provide as follows: "Parent and advocate requested. . . transportation home for the remainder of the year (rescinded the request/will let the District know). . ."

28. The April 2008 IEP marked the beginning of an ongoing dispute between the District and Parents regarding the location of Student's special education program. Anthony Elementary does not have a Mild/Moderate Special Day Class for kindergarten pupils. For this reason, the District placed Student at Hill Elementary as a retained kindergarten pupil during the 2007-2008 school year. However, Anthony does have a Mild/Moderate Special Day Class for the elementary school grades. Since Anthony Elementary is Student's home school for a Mild/Moderate Special Day Class, starting with the April 2008 IEP, the District informed Parents that the District wanted to place Student at Anthony Elementary for the upcoming school year. Clark Osborne testified that he informed Parents that, based upon their quarter section in the District and the District's school of attendance policy, Student must attend the Mild/Moderate Special Day Class at Anthony Elementary. Despite this testimony, the April 2008 IEP placed Student at Hill Elementary, and the notes from this IEP do not clearly show that the placement was based upon parental preference. Instead, the notes simply indicate that the District offered to place Student in a Mild/Moderate Special Day Class.

29. Student's Parents do not want their son to attend the Mild/Moderate Special Day Class at Anthony Elementary. In May 2008, Student's Mother visited Mild/Moderate specialized academic classes at Anthony and Zeyen Elementary Schools. Zeyen Elementary is a District school located about 10 miles from Student's residence. Mother testified that, in comparison with the Mild/Moderate Special Day Class at Hill Elementary, there were more pupils in the classroom at Anthony. Mother also testified that, in comparison with her

impression of the teacher at Anthony Elementary, Student's teacher at Hill Elementary is more open and better able to handle Student's behavioral issues. More generally, Parents are pleased with the academic progress that Student has made at Hill Elementary. Parents also stated that Student has made improvements in his behaviors during the time that he has attended Hill. Above all, Parents are concerned that Student has great difficulty with transitions, and they fear that, if Student must attend Anthony Elementary, his behaviors will regress in the form of tantrums and increased aggression.

30. On July 10, 2008, the California Department of Education received a Compliance Complaint from the Advocate representing Parents. The Complaint alleged that the District had committed numerous violations of Student's rights under special education law, including the failure to implement the Behavior Support Plan in the October 2007 IEP, the failure to provide appropriate behavioral intervention services, the failure to provide student records and progress reports, and the failure to properly respond to a request for an Independent Educational Evaluation. The Complaint did not raise transportation services as an issue. On September 4, 2008, the Department of Education issued a Compliance Complaint Report finding the District in compliance as regards the issues raised in the Complaint.

THE 2008-2009 SCHOOL YEAR – FIRST GRADE

31. For the 2008-2009 school year, Student attended first grade at Hill Elementary in a Mild/Moderate Special Day Class under the April 2008 IEP. District attendance records show that Student attended 172 of 180 days for this school year. Student's Parents provided transportation for their son during this school year.

32. The schedule for first grade at Hill Elementary requires a pupil to attend school from 8:35 a.m. to 3:00 p.m. The District provides bus transportation set to these hours. For the 2008-2009 school year, Student did not follow this schedule. On Mondays, Student's Mother removed her son from school at 12:30 p.m., and drove him 19 miles to a

private speech and language provider located in Lake Forest, California. On Tuesdays, Mother removed her son from school at 2:45 p.m., and drove him seven miles to the Children's Therapy Center, the NPA that provides occupational therapy for Student under the April 2008 IEP. On Wednesdays, Mother removed Student from school at 1:45 p.m., and drove him six miles to a private adaptive physical education provider called Scats Gymnasium. On Thursdays and Fridays, Student attended Hill Elementary for the entire school day.

33. Durham School Services is a private company that contracts with the District to provide bus transportation for pupils who reside within the District. Shortly before the beginning of the 2008-2009 school year, a representative from Durham came to Student's home and provided Parents with orientation and safety training regarding bus transportation for the school year. At the start of the school year, Durham also sent a bus to Student's home in order to provide transportation to Hill Elementary. Student's Mother testified that Parents declined this service. Mother stated that, for the first two weeks of each school year, she prefers to drive Student to school in order to assist with his transition into the classroom setting. Thereafter, Parents did not call either Durham or the District to resume transportation services.

34. On September 29, 2008, Student's IEP team convened a meeting that continued and finalized the April 2008 IEP. Student's Parents and their Advocate attended this meeting. The team discussed numerous subjects, including the goals contained in the April 2008 IEP, Parents' concern regarding Student's IBI aide, and the team's concern that Student was missing school time. Clark Osborne facilitated and took notes for the September 2008 IEP meeting. Mr. Osborne testified that, during the meeting, he informed Parents that Anthony Elementary is Student's home school for a Mild/Moderate Special Day Class and that, in order for Student to attend Hill Elementary, Parents must apply for an Adjustment Transfer. Parents did not make a transfer application until March 2009.

35. Mr. Osborne also testified that the District permitted Student to attend the Mild/Moderate Special Day Class at Hill Elementary for the 2008-2009 school year as an accommodation to Parents, and, in exchange, Parents agreed to transport their son to and from school. Regarding transportation, the IEP notes provide as follows: "Currently, transportation is in place to Hill, according to parents. The PS [program supervisor] explained this shouldn't be the case, since transportation is supposed to be provided if he attends Anthony. The PS will double check the transportation issue." In fact, Mr. Osborne testified that he thought that the arrangement by Durham School Services to provide bus transportation for Student was a mistake.

36. At the conclusion of the September 29, 2008 IEP meeting, Parents signed their consent to the terms of the April 2008 IEP, with the exception of certain goals and the offer of the after-school IBI clinic. In this IEP, at paragraph 12b, under "Requires Special Education Transportation," the "No" box is checked. In the same section, the box indicating "Eligible for transportation, however parent declined offer and will transport Student" is not checked.

37. On December 12, 2008, Student's IEP team convened to review proposed goals. Student's Parents and their Advocate attended this meeting. The team discussed and adopted goals proposed by Parents relating to adapted physical education and academic goals proposed by Student's teacher at Hill Elementary. Accordingly, the team added to the April 2008 IEP goals relating to pre-academics, math, social and receptive communication, and psychomotor abilities. At the time of the December 2008 IEP, Student's Mother was pregnant with her second child. To accommodate the pregnancy, the Advocate for Parents requested the District to advance Student's annual IEP. The team did not discuss the issue of transportation at the December 12, 2008 IEP meeting.

THE MARCH 27, 2009 IEP

38. On March 27, 2009, the District convened Student's annual IEP meeting.

Student's Parents and their Advocate attended this meeting. The team discussed a variety of subjects, including a request from Parents for a reading program during the 2009 ESY and for a Vision Therapy Evaluation. The District then offered a special education program for the remainder of the 2008-2009 school year, for the 2009 ESY and for the 2009-2010 school year. For the 2009-2010 school year, the March 2009 IEP placed Student in second grade in a Mild/Moderate Special Day Class, and provided the following related services: individual speech and language therapy two times a week in 30 minute sessions; group speech and language therapy one time a week for 30 minutes; occupational therapy provided by an NPA one time a week for 50 minutes; occupational therapy consultation one time a month for 50 minutes; adapted physical education two times a week in 30 minute sessions; and behavior intervention services in the form of a full-time IBI aide and two hours each month of IBI supervision.

39. At the March 27, 2009 IEP, Parents requested that the District permit Student to remain in the Mild/Moderate Special Day Class at Hill Elementary. Parents also requested that the District provide transportation to and from Hill Elementary for the remainder of the 2008-2009 school year and for the upcoming school year. Parents realized that, with the anticipated arrival of a baby child, Mother could not transport Student to school as she had been doing. Parents informed the team of the changed circumstances in their family necessitating transportation services.

40. Clark Osborne facilitated and took notes for the March 27, 2009 IEP. Mr. Osborne testified at the due process hearing that the team intended to place Student in the Mild/Moderate Special Day Class at Anthony Elementary. Mr. Osborne stated that, during this IEP, he gave the Parents a clear option. He stated that, since Anthony and Hill Elementary Schools have the same Mild/Moderate Special Day Class programs, and since Anthony is closest to Student's residence, Student must attend second grade at Anthony, and the District will provide bus transportation. In the alternative, Mr. Osborne informed

Parents that they can apply for an adjustment transfer to Hill Elementary, and, if approved, Parents must provide transportation for Student.

41. The March 27, 2009 IEP did not offer transportation as a related service. At the conclusion of this IEP, Parents provided consent, except for the decision regarding transportation, the ESY 2009 offer, and a particular goal related to adapted physical education.

THE INTRA-DISTRICT TRANSFER

42. On March 31, 2009, Clark Osborne telephoned Parents and their Advocate to inform that this was the last day for Parents to make a transfer request in order to allow Student to attend Hill Elementary for the 2009-2010 school year. Student's Mother testified that she received Mr. Osborne's voice message and contacted her husband. During the afternoon of March 31st, Student's Father went to the offices of the Garden Grove Unified School District where he met with Mr. Osborne. Father and Mr. Osborne discussed a form entitled "Intra-District Parental Choice Transfer." In this form, parents can request that their child attend a school of choice within the District. The form contains certain terms, including the following clause: "Parent/Guardian must provide transportation and will notify the school of attendance of any changes in conditions with respect to this permit." Mr. Osborne testified that he explained and helped Father complete the form. On March 31, 2009, Father signed the Intra-District Parental Choice Transfer and submitted the form to the District's Child Attendance and Welfare Office.

43. At the due process hearing, Student's Father testified that he believes that Clark Osborne misled him regarding the Intra-District Parental Choice Transfer. Father testified that, when he went to the District offices on March 31, 2009, he was in a panic. Father stated that he was under great stress due to his wife's pregnancy and Parents' concern that Student remain at Hill Elementary. Father testified that he signed the Intra-District Parental Choice Transfer without fully reading the form. Father stated that, when he

signed the form, he did not understand that he agreed to transport his son to the school of choice.

44. On April 11, 2009, Student's Mother gave birth to a baby girl.

45. On April 14, 2009, the Advocate for Parents sent a letter to Clark Osborne. The letter states, in part: "... we are requesting a written response as to why the District is no longer providing transportation for (Student). Additionally, this will serve as notice that we reiterate our request for transportation to Hill both morning and evening."

46. On April 16, 2009, the District's Child Welfare and Attendance Office approved Parents' Intra-District Parental Choice Transfer which requested that Student attend Hill Elementary for the 2009-2010 school year.

47. On April 20, 2009, Mr. Osborne sent a written reply to the letter received from Parents' Advocate a week earlier. This letter states, in part: "With regard to transportation to Hill Elementary School both morning and evening, the District continues to deny this request. The District would provide transportation to Anthony Elementary School, because this would be the home school of attendance for Mild/Moderate Special Day Class (MM SDC) students based on your clients' address. Furthermore, your clients obtained an Intra-District Parent Choice Transfer on March 31, 2009 to Hill Elementary School through Child Welfare and Attendance. . . It explicitly states 'Parent/Guardian must provide transportation and will notify the school of attendance of any changes in conditions with reference to this permit.'" Mr. Osborne sent a copy of this letter to Parents.

48. On April 21, 2009, Student's Father sent an email to Dr. Lewis. Father sent the email in response to Mr. Osborne's April 20, 2009 letter to Parents' Advocate. In the email, Father informed Dr. Lewis that Parents believed that Mr. Osborne misled Parents regarding the Intra-District Parental Choice Transfer. The email explained this deception as follows: "Since last couple of IEP meetings GGUSD coordinator was pushing/insisting us for applying the intra school district transfer though all the services are in place. On March 31

@ 1:33 pm Clark left a voice mail stating that in order to get school transportation services we have to apply before 4:30 pm on 03/31/09. We are in a panic mood and signed everything believing that transportation services will restart based on Clark's advice."

49. Regarding transportation services for the 2008-2009 school year, Father's April 21, 2009 email also stated: "Please be informed that GGUSD had provided school transportation during the start of the academic year by a Durham School services and we had a orientation training from the School bus driver. But we were dropping and picking up on our own to maintain good communication between us and school teacher till now. We requested bus services to resume based on family's condition during our IEP meeting on 03/27/09."

50. On April 21, 2009, several hours later, Dr. Lewis responded to Father's email. In his response email to Father, Dr. Lewis suggested three options to resolve the transportation dispute. Under the first option, Parents would withdraw the Intra-District Parental Choice Transfer, and the District would place Student in the Mild/Moderate Special Day Class at Anthony Elementary. Under the second option, the District would provide transportation services to Hill Elementary for the remainder of the 2008-2009 school year, and Student would enroll at Anthony Elementary for the following school year. Under the third option, Parents would continue with the approved Intra-District Parental Choice Transfer and provide transportation for their son for the 2009-2010 school year.

51. On April 22, 2009, Student's Father sent an email to Clark Osborne requesting an emergency IEP meeting for the purpose of adding transportation as a related service.

THE MAY 20, 2009 IEP

52. On May 20, 2009, Student's IEP team convened to discuss the subjects of transportation services and a Vision Therapy Evaluation. The District arranged this meeting based upon Father's April 22, 2009 email to Clark Osborne. During the meeting, Parents

requested that the District add transportation as a related service to Student's March 27, 2009 IEP. In response, Mr. Osborne reiterated the three options described in the April 21, 2009 email from Dr. Lewis to Father.

53. At the May 20, 2009 IEP, the team discussed the appropriateness of the Mild/Moderate Special Day Class programs at Anthony and Hill Elementary Schools. Parents expressed the belief that the program at Anthony was not appropriate for their son. On this point, Mother testified that, based upon her observation at Anthony Elementary and her son's successes at Hill Elementary, she thinks that Student can only make progress at Hill Elementary and cannot make progress at Anthony Elementary. Parents declined to accept the District's offer to rescind the Intra-District Parental Choice Transfer. Parents decided not to rescind this agreement because they want their son to attend second grade at Hill Elementary.

54. In contrast to Parents' concerns, Student's IEP team expressed confidence that the Mild/Moderate Special Day Class program at Anthony Elementary can serve Student. In this vein, Robert Douk, a District school psychologist who has assessed Student, testified that, in his opinion, the District can implement Student's March 2009 IEP at Anthony Elementary, and that Student will not regress if he attends Anthony. Elizabeth Milliman, Student's current teacher in the Mild/Moderate Special Day Class at Hill Elementary, also testified that the District can implement Student's IEP in the Mild/Moderate Special Day Class at Anthony Elementary.

55. At the conclusion of the May 20, 2009 IEP, the District offered to add transportation services to the March 2009 IEP provided that Parents agreed to enroll Student at Anthony Elementary. The District declined Parents' request for transportation services to and from Hill Elementary for the 2009-2010 school year.

56. Until the March 27, 2009 IEP, Parents elected to transport Student to and from school despite the willingness of the District to provide such service. This preference

included both the 2007-2008 school year and a major portion of the 2008-2009 school year. At the due process hearing, Mother testified that she preferred to drive Student to and from school in order to remain in communication with his teacher. Student's disabling condition presents many challenges for him at school. Mother stated that she wanted to closely follow Student's progress on all aspects of his special education program. In the same vein, Father testified that he preferred that Parents drive Student to outside service providers, like the Children's Therapy Center, in order to maintain an ongoing communication with the provider.

57. Angela Day is a Behavioral Specialist with the District. Ms. Daly was Student's case manager for behavior intervention services for the last two school years. Ms. Daly testified at the due process hearing. Ms. Daly corroborated Mother's testimony. She stated that, for the last two school years, on each Monday, Ms. Daly, Student's teacher and Mother met for 30 to 45 minutes and discussed Student's program and progress. Ms. Daly stated that, during these meetings, which became less frequent as the birth of her second child approached, Mother did not raise transportation as a matter of concern.

EXTENDED SCHOOL YEAR 2009

58. For ESY 2009, which lasted from July 6 to July 31, 2009, Student attended Newhope Elementary School and the District provided transportation services. Newhope Elementary is a school within the District and located six miles from Student's residence.

THE CURRENT SCHOOL YEAR

59. For the 2009-2010 school year, Student is currently attending second grade in the Mild/Moderate Special Day Class at Hill Elementary. The current school year commenced on September 10, 2009. Parents are providing transportation services for their son.

60. At the due process hearing, Mother testified that Student missed the first

two days of school because she could not arrange for transportation. Mother also testified that, since the birth of their baby girl, Parents have employed babysitters and transportation aides to help with the transportation of Student to Hill Elementary. Mother stated that assistance is necessary because, due to his disabling condition, Student cannot ride in a car with his baby sister without an attendant. Mother testified that Student poses a danger of harming himself and his sister without the assistance of an aide.

61. Jennifer Figueroa is an IBI aide assigned to Student for the 2008-2009 school year and the current school year. Ms. Figueroa testified at the due process hearing. Ms. Figueroa stated that part of her duties as an IBI aide for Student include meeting Student when he arrives at school and escorting him to the classroom. Ms. Figueroa stated that she has seen both Mother and Father drive Student to Hill Elementary. Ms. Figueroa stated that, since the birth of Student's baby sister, she has seen several adults in the car transporting Student, including his grandmother. In contrast to Mother's testimony, Ms. Figueroa stated that she has seen Mother transport Student and the baby without an adult assistant. In addition, she stated that she has not seen Student engage in aggressive and dangerous behaviors in the car.

CLAIM FOR REIMBURSEMENT

62. Parents seek reimbursement for the cost of transporting their son to Hill Elementary for the past two school years and for the current school year. Parents also seek reimbursement for the expense of employing babysitters and transportation aides who have helped Mother transport Student to school. Student's Mother testified that she requires the assistance of a transportation aide for two hours each school day, and that Parents pay the aide \$15 per hour. For the due process hearing, Parents produced copies of five checks for child care and transportation assistance. The checks were written in May, June, July and October 2009, and total \$1,905. The copies of the checks showed no indication that the checks were cashed. During the due process hearing, Father admitted

that his mother lives in the family home, that she assists in transporting Student to school, and that at least two of the checks were written to her.

63. For total transportation costs, Parents have submitted a request for reimbursement in the amount of \$4,122. Parents calculate this figure as follows. First, there are 180 days in the school year; by the end of the current school year Parents will have transported Student to Hill Elementary for three school years (for a total of 540 days); Parents drive six miles a day transporting Student (540 days multiplied by six miles equals 3,240 miles); the reimbursement rate used by the Internal Revenue Service is 55 cents per mile; accordingly, the total reimbursement amount for three years is \$1,782 (\$0.55 multiplied by 3,240 miles). Second, from April 13 to June 18, 2009 and from September 14 to October 21, 2009, Parents will have paid transportation aides a total of \$2,340 (78 days multiplied by \$30 per day).

LEGAL CONCLUSIONS

BURDEN OF PROOF

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

OAH JURISDICTION

2. The parents of a disabled child have the right to present a complaint with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) for the child. (20 U.S.C. § 1415(b)(6)(A); 34 C.F.R. § 300.507(a)(2006); Ed. Code, § 56501, subd. (a)(1)-(4).) OAH has the authority to hear and decide this matter because it is a case that raises the issue of whether the Garden Grove Unified School District failed to provide a FAPE to Student by

not providing the related service of transportation. (Wyner v. Manhattan Beach Unified School District (9th Cir. 2000) 223 F.3d 1026, 1029.)

SCHOOL OF ATTENDANCE

3. The California Legislature has mandated that school districts within the state must follow an open enrollment policy: "On or before July 1, 1994, the governing board of each school district, as a condition for the receipt of school apportionments from the state school fund, shall adopt rules and regulations establishing a policy of open enrollment within the district for residents of the district." (Ed. Code, § 35160.5, subd. (b)(1).) The open enrollment policy must provide "that the parent or guardian of each schoolage child who is a resident in the district may select the schools that the child shall attend, irrespective of the particular locations of his or her residence within the district." (Ed. Code, § 35160.5, subd. (b)(2)(A).) The open enrollment selection policy can consider the capacity of the school of choice, but must be made through "a random, unbiased process." (Ed. Code, § 35160.5, subd. (b)(2)(B).)

TRANSPORTATION

4. A disabled child's special education program may require "related services" which include transportation and such developmental, corrective and other supportive services that are required to assist the child to benefit from special education. (20 U.S.C. § 1401(26)(A); 34 C.F.R. § 300.34(a)(2006).) In California, "related services" are called "designated instruction and services." (Ed. Code, § 56363, subd. (a).)

5. As a related service, "transportation" means (1) travel to and from school and between schools, (2) travel in and around school buildings, and (3) specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide transportation for a child with a disability. (34 C.F.R. § 300.34(c)(16)(i)-(iii)(2006).)

6. The Individualized Education Program (IEP) team makes the decision about

whether a disabled child requires transportation as a related service. (Ed. Code, § 56342, subd. (a); 71 Fed.Reg. 46576 (Aug. 14, 2006).) The decision is based upon the unique needs of the disabled child. (McNair v. Oak Hills Local School District (8th Cir. 1989) 872 F.2d 153, 156.) The decision is not based upon the geographic boundaries of the school district. (Alamo Heights Independent School District v. State Board of Education (5th Cir. 1986) 790 F.2d 1153, 1160.)

FAPE STANDARD

7. Under the Individuals with Disability Education Act (IDEA) and companion state law, children with disabilities have the right to a FAPE. (20 U.S.C. § 1400(a); 34 C.F.R. § 300.101 (2006); Ed. Code, § 56000.) A FAPE means special education and related services that are available to the special needs pupil at no charge to the parents, that meet state educational standards, and that conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17 (2006); Cal. Code Regs., tit. 5, § 3001, subd. (p).) "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 (2006); Ed. Code, § 56031, subd. (a).)

8. The United States Supreme Court has held that, under the IDEA, a school district is required to provide a special needs pupil with a "basic floor of opportunity" that consists of access to specialized instruction and related services individually designed to provide educational benefit to the child. (Board of Education of the Hendrick Hudson School District v. Rowley (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (Rowley).)

9. There are two parts to the determination of whether a school district has complied with the IDEA and companion state law. First, the tribunal must determine whether the district has complied with the procedures set forth in special education law. (Rowley, *supra*, 458 U.S. at pp. 206-207.) In this case, Student's Request for Due Process Hearing did not raise any procedural irregularities committed by the District. Second, the tribunal must decide whether the IEP developed through such procedures addressed the

student's unique needs and was reasonably calculated to enable the student to receive educational benefit. (*Id.* at p. 201; *Park v. Anaheim Union High School District* (9th Cir. 2006) 464 F.3d 1025, 1031; *J.L. v. Mercer Island School District* (9th Cir. 2009) 575 F.3d 1025, 1037-1038.)

10. In addition, a school district must provide a special education program in the least restrictive environment. This means that the district must educate the special needs pupil with non-disabled peers "to the maximum extent appropriate." (20 U.S.C. § 1412(a)(5)(A); see also 34 C.F.R. § 300.114 (2006); Ed. Code, § 56342, subd. (d).) The least restrictive environment doctrine requires a school district, in making placement decisions, to offer a placement "as close as possible to the child's home." (34 C.F.R. § 300.116(b)(3) (2006); see 71 Fed.Reg. 46588 (Aug. 14, 2006) ["The Department has consistently maintained that a child with a disability should be educated in a school as close to the child's home as possible, unless the services identified in the child's IEP require a different location."].)

PARENTAL PREFERENCE

11. The intersection between an intra-district transfer and entitlements under federal disability law was the subject in *Timothy H. v. Cedar Rapids Community School District* (8th Cir. 1999) 178 F.3d 968 [Timothy H.]. In Timothy H. case, student had the disabling conditions of cerebral palsy, spastic quadriplegia and multiple orthopedic problems. Student's IEP placed her at a neighborhood high school and provided transportation services. However, student's parents preferred the educational program at a high school outside of the family's attendance area. Parents applied for an intra-district transfer to the school of choice and the school district granted the application. The district's intra-district transfer policy provided that "(P)arents shall be responsible for the transportation of students not attending their resident area school." (*Id.* at p. 970.) After transporting their daughter to the school of choice for one school year, parents filed for

due process. An Administrative Law Judge ruled in favor of the school district, finding that the parents had not established a need beyond parental preference for participating in the intra-district transfer program. (Ibid.) The parents filed a civil action in United States District Court which determined that the school district had violated section 504 of the Rehabilitation Act by limiting student's opportunity to participate in the benefits of the district's transfer program based upon her disability. (Id. at p. 971.) The federal court also determined that the school district had failed to establish that providing specialized transportation for student would be an undue financial or administrative burden. (Ibid.) Upon appeal, the Eighth Circuit Court of Appeals reversed the federal court, finding that the school district's intra-district transfer program was facially neutral and did not discriminate against student based upon her disability. (Id. at p. 972.) The appellate court further noted that "requiring the school district to spend any amount of money to provide transportation to students participating in its intra-district transfer program would fundamentally alter the main requirement of a program designed to be of no cost to the school district – parental transportation." (Id. at p. 973.)

EQUITABLE RELIEF - REIMBURSEMENT

12. Federal law provides that a court that hears a civil action taken from a special education administrative due process hearing "shall grant such relief as the court deems appropriate." (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3)(2006).) The United States Supreme Court has held this authority "confers broad discretion on the court" to grant relief that is appropriate in light of the purpose of the IDEA. (*School Committee of the Town of Burlington, Massachusetts v. Department of Education* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996, 85 L.Ed.2d 385].) The broad authority to grant relief extends to the Administrative Law Judges and Hearing Officers who preside at administrative special education due process proceedings. (*Forest Grove School District v. T.A.* (2009) 557 U.S. __ [129 S.Ct. 2484, 2494, fn. 11; 174 L.Ed.2d 168] (*Forest Grove*).)

13. When granting relief in IDEA cases, the decision maker "must consider all relevant factors, including the appropriate and reasonable level of reimbursement that should be required." (*Florence Carter School District Four v. Carter* (1993) 510 U.S. 7, 16 [114 S.Ct. 361, 126 L.Ed.2d 284].) Courts and ALJs "retain discretion to reduce the amount of a reimbursement award if the equities so warrant." (*Forest Grove*, *supra*, 129 S.Ct. at p. 2496.) The fashioning of equitable relief in IDEA cases requires a "fact specific" analysis. (*Parents of Student W. v. Puyallup School District No.* (9th Cir. 1994) 31 F.3d. 1489, 1497.)

14. It is well-established that transportation expenses can be an item of reimbursement in IDEA cases. (*Ojai Unified School District v. Jackson* (9th Cir. 1993) 4 F.3d 1467, 1479; *Union School District v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1527; *Capistrano Unified School District v. Wartenberg* (9th Cir. 1995) 59 F.3d 884, 897.)

DETERMINATION OF ISSUE:

15. The following determinations are based upon Findings of Fact, paragraphs 1 through 63, and Conclusions of Law, paragraphs 1 through 14.

16. From September 2007 to the March 27, 2009 IEP, the Garden Grove Unified School District did not deny Student a FAPE by failing to provide transportation services to and from school. During this time, the District recognized that Student, as a child with autism, has unique needs such that transportation is a related service that is required in his special education program. However, except for intermittent requests, Parents elected to transport their son to and from school for this period.

17. Parents elected to transport Student because they wanted to remain in close contact with their son's teachers at Hill Elementary. The need to maintain regular and ongoing relations with the teachers is understandable since Student's disabling condition presents with many challenges and Parents are deeply involved in their son's progress through school. The preference to provide transportation is also understandable in that Hill Elementary is only three miles and a 10 minute drive from Student's home.

18. From September 2007 to March 27, 2009, there were three occasions in which Parents raised transportation as an issue. First, on November 7, 2009, in an email to Clark Osborne, Father requested an IEP meeting which would include "Transportation from the school" as a subject for discussion. At the December 7, 2007 IEP arranged as a result of this email, Mr. Osborne and Mother discussed transportation. Mr. Osborne testified that Mother did not make a formal request for transportation services at this meeting. Second, following this IEP meeting, on December 19, 2007, Father sent Mr. Osborne a lengthy email which included the subject of "Student School Transportation" and a strident reminder of the law relating to the provision of transportation as a related service for special education students. The District did not respond to this apparent request since, shortly thereafter, Parents and Student left for a three month stay in the family's country of origin. Third, at the April 30, 2008 IEP, Parents and their Advocate initially requested transportation home for the remainder of the school year, but rescinded this request later in the IEP. Subsequently, at the end of the 2007-2008 school year, the Advocate filed a Compliance Complaint with the California Department of Education, and did not include transportation as an issue for investigation and report. After the April 2008 IEP meeting, Parents did not raise transportation as an issue until the March 27, 2009 IEP meeting. In sum, although Parents intermittently raised the issue of transportation, there was never a formal request that required District action.

19. In his closing brief, Student raises two issues against the foregoing analysis. First, Student contends that, in refusing to provide transportation as a related service, the District failed to give Parents prior written notice. An important procedural safeguard in special education law requires a school district to provide prior written notice when the district proposes or refuses to initiate or change matters relating to the identification, evaluation, educational placement, or provision of FAPE for a child with a disability. (20 U.S.C. § 1415(b)(3); 34 C.F.R. § 300.503 (2006); Ed. Code, § 56500.4.) Here, Parents did not

raise this purported procedural violation in their Request for Due Process Hearing. Consequently, the scope of the due process hearing did not include this charge. (20 U.S.C. § 1415(f)(3)(B); 34 C.F.R. § 300.511(d)(2006); Ed. Code, § 56502, subd. (i).) In addition, by agreeing to transport their son in order to monitor his progress, Parents have shown no harm from this alleged failure. (L.M. v. Capistrano Unified School District (9th Cir. 2009) 556 F.3d 900, 910.) Second, Student contends that his Parents did not make a knowing and intelligent waiver of the right to receive transportation services. However, the weight of the evidence is contrary to this contention. Until the March 27, 2009 IEP, the preference of Parents to transport Student on their own is best summarized in Father's April 21, 2009 email to Clark Osborne which stated, in part: "we were dropping and picking up on our own to maintain good communication between us and the school teacher till now."

20. From March 27, 2009 to the end of the 2008-2009 school year, the Garden Grove Unified School District did deny Student a FAPE by failing to provide transportation to and from Hill Elementary. The April 2008 IEP placed Student at Hill Elementary School and, contrary to the District's contentions, this IEP did not clarify that the District made the placement at Hill based solely upon parental preference. Thus, for the 2008-2009 school year, the District had a continuing obligation to provide Student with transportation services if requested by Parents. At the March 2009 IEP, Parents made clear to the team that, due to Mother's advanced pregnancy and the imminent arrival of their second child, the preference to drive Student to and from school had ended. Upon learning of such changed circumstances, the District had a duty to provide transportation as a related service for the remainder of the school year. Instead, the District improperly conditioned the provision of transportation services for the remainder of the 2008-2009 school year upon the agreement by Parents to enroll Student at Anthony Elementary for the 2009-2010 school year. Student is a child with autism and his unique needs require transportation as a related service in order for him to benefit from his special education

program. After the March 27, 2009 IEP, the District should have resumed providing transportation services for this pupil.

21. For the current school year, the Garden Grove Unified School District has not denied Student a FAPE by not providing transportation to and from Hill Elementary. This determination is based upon the Intra-District Parental Choice Transfer signed by Father on March 31, 2009. In this agreement, in exchange for the District permitting Student to attend a school of choice (Hill Elementary), Parents agreed to provide transportation for the 2009-2010 school year. The Intra-District Parental Choice Transfer is a valid form of parental preference which overcomes Student's contention that the District has denied him a FAPE. (see Timothy H, *supra*, 178 F.3d at p. 973.) Parents contend that the District's Program Supervisor duped him into signing the Intra-District Parental Choice Transfer. However, the District has offered to rescind the intra-district transfer agreement, and Parents have declined this offer because they wish to keep Student in the Mild/Moderate Special Day Class at Hill Elementary. If Parents wish to benefit from the school of choice under the Intra-District Parental Choice Transfer, then they must abide by the provision which requires them to provide transportation.

REIMBURSEMENT FOR FAPE DENIAL

22. Parents are entitled to reimbursement for the expenses of transporting Student to and from Hill Elementary for the time period from March 27, 2009 to the end of the 2008-2009 school year. During this period, there were approximately 55 school days. Three times during the week, or on approximately 33 school days, Mother removed Student before the end of the school day. Thus, it appears that during the subject time period, Parents made a total of 77 driving trips that require reimbursement (55 days multiplied by two trips per day, minus 33 days). The roundtrip distance from Parents' residence to Hill Elementary is six miles. For 77 driving trips, the total distance was 462 miles. Applying the Internal Revenue Service rate of 55 cents per mile, the amount of

reimbursement for transportation is \$254.10.

23. Parents seek additional reimbursement for babysitters or transportation aides needed to help transport Student to and from school after the birth of his baby sister. This claim for reimbursement is problematic, partly because Parents did not produce copies of checks showing that the checks were cashed or deposited, and partly because Parents claim that they paid Student's paternal grandmother for assistance as a transportation aide. Parents are not entitled to receive reimbursement from the District for help provided by a family member. Giving Parents the benefit of the doubt, and based upon the checks that cover the last three months of the 2008-2009 school year, the District shall reimburse Parents in the amount of \$250 for the babysitters and transportation aides needed by Parents in order to transport Student to Hill Elementary from March 28, 2009 to the end of the 2008-2009 school year.

ORDER

1. The Garden Grove Unified School District denied Student a free appropriate public education by not providing him with transportation services from March 27, 2009 to the end of the 2008-2009 school year.

2. For this denial of FAPE, the District shall reimburse Student's Parents in the amount of \$504 as the cost of providing transportation for Student to and from school from March 28, 2009 to the end of the 2008-2009 school year.

3. The remainder of Student's request for relief are denied.

PREVAILING PARTY

The decision in a special education administrative due process proceeding must indicate the extent to which each party prevailed on the issues heard and decided. (Ed. Code, § 56507, subd. (d).)

On the FAPE claim for the 2007-2008 school year, the District prevailed. On the

FAPE claim for the 2008-2009 school year, the District prevailed for the time period from the beginning of the school year to March 27, 2009, and Student prevailed for the time period from March 28, 2009 to the end of the school year. On the FAPE claim for the 2009-2010 school year, the District prevailed.

RIGHT TO APPEAL DECISION

The parties in this case have the right to appeal this Decision by bringing a civil action in a court of competent jurisdiction. (20 U.S.C. § 1415(i)(2)(A); 34 C.F.R. § 300.516(a)(2006); Ed. Code, § 56505, subd. (k).) An appeal or civil action must be brought within 90 days of the receipt of the Decision. (20 U.S.C. § 1415(i)(2)(B); 34 C.F.R. § 300.516(b)(2006); Ed. Code, § 56505, subd. (k).)

December 3, 2009

_____/s/____

TIMOTHY L. NEWLOVE

Administrative Law Judge

Office of Administrative Hearings