

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2009060473

DECISION

Clara L. Slifkin, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on August 19, 2009, in Los Angeles, California.

Student was represented by his parent (Parent). Los Angeles Unified School District (District) was represented by Assistant General Counsel Patrick J. Balucan. District Due Process Specialist Cynthia Shimizu attended the hearing.

Student filed a Due Process Hearing request (Complaint) on June 8, 2009. The due process hearing was continued on August 3, 2009. The record was closed and the matter was submitted at the end of hearing on August 19, 2009.

ISSUE

Does the District's proposed placement of Student at Willenberg Special Education Center (Willenberg) deny Student a free appropriate public education (FAPE)

for the 2009-2010 school year due to the distance and duration of the bus ride from Student's home to Willenberg? ¹

PROPOSED REMEDY

Student requests District keep Student at his current placement, Benjamin Banneker Special Education Center, in a Special Day Class for students with multiple disabilities.

FACTUAL FINDINGS

JURISDICTION

1. Student was 10 years of age at the time of the due process hearing. At all relevant times Student lived with his Parent in the jurisdictional boundaries of the District and was eligible for special education services as a student with multiple disabilities, orthopedic (MD/O).

STUDENT'S UNIQUE NEEDS

2. Student has a very rare syndrome, Cardio Facial Cutaneous Syndrome (CFCS). The medical problems associated with this syndrome include: cleft palate, a characteristic facial appearance, learning problems, speech and feeding problems, heart defects, and levels of parathyroid hormone that can result in seizures. It is estimated that there are only 200-300 people in the world that have this syndrome. Student's cleft palate was surgically corrected in 2000. Consistent with CFCS Student has the following impairments: low muscle tone, muscle weakness throughout his trunk and legs, impaired motor control and planning, global developmental delay, and nystagmus.

¹ At the conclusion of the hearing, Parent withdrew Pre-hearing Conference issue (b) "Due to the inability of staff at Willenberg to meet [Student's] basic physical needs."

3. Student is in a wheelchair and is unable to stand on his own weight. He has unique needs in the area of toileting, feeding, attending, and communicating. Student does not understand speech and needs total care for daily living activities.

PLACEMENT AND TRANSPORTATION HISTORY

4. On January 12, 2009, Student enrolled in District's Annalee Elementary School, his school of residence, in a Special Day Class (SDC). Student had recently moved to the District from another school district. On February 13, 2009, District held a 30-day IEP. The IEP team consisted of Parent, an administrator, a program specialist, a general education teacher, and a special education teacher. Based on some observation and a review of Student's records, the IEP team agreed that Student continued to meet eligibility requirements and that Student's present level of performance and goals from his prior IEP were still appropriate. The IEP team agreed that Adapted Physical Education (APE) and Physical Therapy (PT) services should continue at the same levels as his prior IEP, but that speech and language services are discontinued.

5. For the remainder of the 2008-2009 school year, the District offered Student placement at Benjamin Banneker Special Education Center (Banneker) in a SDC for students with multiple disabilities, and home-to-school transportation. Parent requested a fulltime adult assistant at Banneker. The IEP team recommended that Banneker consider an AA for Student due to health and safety reasons. Parent consented to the IEP.

6. After the February 13, 2009 IEP meeting, District discovered that Student's residence was outside Banneker's geographical area. Because Student was placed at Banneker for the remainder of the 2008-2009 school year, District transportation provided Student with a special bus route and a separate lift-gate bus to pick him up and drop him off before and after regular bus runs. Coordinating Student's

transportation to Banneker required assistance from drivers located in other geographical areas.

APRIL 27, 2009 IEP OFFER OF PLACEMENT AT WILLENBERG

7. On April 27, 2009, District convened an annual IEP team meeting to discuss Student's progress toward his goals and to determine Student's placement options for the sixth grade. Parent, Donna Olmsted, Banneker's Principal (Principal Olmsted), a special education teacher, school nurse and physical therapist attended the meeting.

8. The IEP team offer included: (1) continued placement at Banneker for 2008-2009 and extended school year (ESY); (2) placement for 2009-2010 school year in a multiple disabilities severe class (MD/S) at Willenberg; (3) APE for 30 minutes a week and PT 20 minutes monthly; (4) modified curriculum for students with moderate to severe disabilities; and (5) supports in toileting, feeding, and extra time to do his work. The IEP offer included transportation. Parent consented to the IEP team's offer of specific instruction, services, and an MD/S class placement but did not consent to placement at Willenberg. Parent requested that Student remain at Banneker for the 2009-2010 school year, because Willenberg classrooms did not have sufficient staff to student ratios to meet Student's unique needs.

9. The District's offer of a MD/S class at Willenberg was a self-contained class with a high adult to student ratio and specially trained personnel. The MD/S class would meet Student's unique needs and need for total care for daily living activities. Willenberg is a special education school campus for moderate to severely impaired students from the ages of 3-22 years located in District 8 of the District.

10. Daniel Murphy, Principal of Willenberg, has been employed by the District for 30 years, as a resource specialist, program specialist, and principal of Willenberg for the past 11 years. Principal Murphy explained that Student's classroom at Willenberg

had nine other students, a special education teacher, two and a half aids, and a half-time aid with medical training. He further explained that the proposed classroom special education teacher has an “aggressive physical program” where Student could work on his goal of using a stander three to five times a week. Principal Murphy had reviewed Student’s IEP and persuasively explained at hearing that Student’s goals could be implemented and all services provided at Willenberg.

11. Principal Olmsted,² who chaired the April 27, 2009 IEP team meeting, explained at hearing that it was difficult to transport Student to Banneker. Beginning in 1998, District set up geographical boundaries (“cachment” areas) for its 18 special education centers. These boundaries are important in assuring the safe and efficient transportation of all students. Students are assigned to a special education center based on their home address because bus routing is designed within a cachment area. The District has a strict policy about placing students within their cachment area. She reported that in her 11 years as a principal, she only knew of one child who attended school outside his cachment area.

12. Both Principal Murphy and Olmsted testified that the program Student attended at Banneker and the proposed Willenberg program are comparable. Both schools are a special education campus for moderate to severely impaired students from the ages of 3-22 years located in District 8 of the District. Both campuses have some self-contained classrooms, specially trained personnel, and a school nurse.

² Principal Olmsted had been employed by the District for 36 years as a special education teacher, specialist for deaf and hard of hearing students, assistant principal and principal. She had been the principal at Banneker since December of 2003.

Willenberg has a larger campus with fewer students. Thus, Student's placement at Willenberg would meet his unique needs.

13. Parent believed that Willenberg would not meet Student's unique needs because it is located further from Student's home than Banneker. Parent was concerned that the longer trip could trigger Student's minor seizures related to his heart defects and that it would take her more time to go to Willenberg if Student had a physical emergency.

14. Parent did not present any medical evidence regarding Student's seizures. District witnesses testified that they have not observed nor were they informed by Parent that Student has had any types of seizures. District witnesses also testified that at the April 27, 2009 IEP meeting, Parent did not talk about her concerns regarding Willenberg's distance from her home impacting Student's health. In fact, District witnesses reported that Parent had not brought up this issue before hearing.

15. Banneker is located closer to Student's home than Willenberg. Banneker is located on San Pedro Street in Los Angeles, 4.06 miles from Student's home. Willenberg is located on South Weymouth Avenue in San Pedro, 11.57 miles from Student's home. Parent testified that she drove to Willenberg from her home on five days of the week to calculate the average driving time to this campus. She reported that the commuting time varied from 40 minutes to one and one-half hours because of traffic congestion on the freeway. She also reported that the driving time from Student's home to Banneker is consistently 11 minutes by automobile because Parent did not have to drive on the freeway.

16. Sabrina Carthan is an area bus supervisor for Banneker and has held this position for eight years. As a supervisor, she works with central transportation to adjust routes and address transportation issues for special education students. Ms. Carthan adjusted Student's transportation bus route to Banneker. Ms Carthan explained that

because Student was not in Banneker's catchment area and he needed a wheel chair bus, she assigned a bus driver to transport Student to school before or after completing their regular route. If Student attended Willenberg, Student would not require a special bus route for pick up and drop off.

17. Ms. Carthan persuasively testified that because Student lives within Willenberg's catchment area, his bus ride would be shorter despite the distance being farther. If Student attended Banneker, his bus would have to be specially routed because he is outside of its catchment area. Student would be picked up at 6:15 a.m., and arrive at Banneker at 7:45 a.m., 90 minutes later. Student's ride home would only take 20 minutes. On an early dismissal day, Student's trip would take two hours. In contrast, Student's bus rides to and from Willenberg without special accommodations would be about 30 minutes. On early dismissal days Student's trip would take from 45 to 60 minutes.

LEGAL CONCLUSIONS

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

2. Student contends that the District's proposed placement of Student at Willenberg for the 2009-2010 school year denied Student a FAPE. Student asserts that the distance and duration of Student's bus ride to Willenberg is too far to meet his special needs. Student contends that he has heart seizures and the longer bus ride to Willenberg would trigger such a seizure. Further, Student contends that if he has a medical emergency at Willenberg it would take Parent more time to travel to this school than to Banneker. District contends that Willenberg is comparable to Banneker, that Willenberg meets his unique needs, and that Student's medical needs do not require District to offer Student a placement that requires specially designed bus transportation. District also contends that although Banneker is closer in miles to Student's home, when

District calculates Student's actual time on the bus Student would be on the bus for a shorter period of time if he attends Willenberg. Thus, the District contends that the offer provided Student a FAPE.

3. A child with a disability has the right to a FAPE under the IDEA. (Ed. Code, §§ 56000, 56026; 20 U.S.C. § 1412(a)(1)(A).) FAPE is defined as special education and related services that are available to the student at no cost to the parent or guardian, that meet the State educational standards, and that conform to the student's individualized education program (IEP). (20 U.S.C. § 1401(9); Ed. Code, § 56031; Cal. Code Regs., tit. 5, § 3001, subd. (o).) The term "related services," includes transportation and other developmental, corrective, and supportive services as may be required to assist a child to benefit from his or her education. (20 U.S.C. § 1401(26); Ed. Code, § 56363, subd. (a).) In California, the term designated instruction and services (DIS) means "related services." (Ed. Code, § 56363, subd. (a).)

4. The IDEA regulations define transportation as: (i) travel to and from school and between schools; (ii) travel in and around school buildings; and (iii) specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide transportation for a child with a disability. (34 C.F.R. § 300.34(c)(16).) Decisions regarding such services are left to the discretion of the IEP team. (Analysis of Comments and Changes to 2006 IDEA Part B Regulations, 71 Fed.Reg. 46576 (August 14, 2006).)

5. In *Board of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley* (1982) 458 U.S. 176, 200 [102 S.Ct. 3034] (*Rowley*), the United States Supreme Court addressed the level of instruction and services that must be provided to a student with disabilities to satisfy the requirement of the IDEA. Under *Rowley* and state and federal statutes, the standard for determining whether a district's provision of services provided a FAPE involves four factors: (1) the services must be designed to meet the student's unique needs; (2) the services must be reasonably designed to provide some

educational benefit; (3) the services must conform to the IEP as written; and (4) the program offered must be designed to provide the student with the foregoing in the least restrictive environment. While this requires a school district to provide a disabled child with meaningful access to education, it does not mean that the school district is required to guarantee successful results. (See 20 U.S.C. § 1412(a)(5)(A); Ed. Code, § 56301; *Rowley, supra*, at p. 201.)

6. School districts are required to provide only a “basic floor of opportunity” that consists of access to specialized instructional and related services, which are individually designed to provide educational benefit to the student. (*Rowley, supra*, at p. 201.) In resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district’s proposed program. (See *Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1307, 1314.) A school district is not required to place a student in a program preferred by a parent, even if that program will result in greater educational benefit to the student. (*Ibid.*) Whether a student was denied a FAPE is determined by looking to what was reasonable at the time, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrman v. East Hanover Bd. of Education* (3d Cir. 1993) 993 F.2d 1031, 1041.)

7. Here, Student requested continued placement at Banneker. The April 27, 2009 IEP offered placement at Willenberg and transportation. Parent consented to the IEP team’s offer of specific instruction, services and placement in a MD/S classroom, but did not consent to placement at Willenberg. Both Principal Murphy and Olmsted persuasively testified that Willenberg will meet his special needs. Student would be placed in a MD/S class with specially trained personnel and high adult to student ratios that would provide Student with a safe environment. It is not disputed that the program at Willenberg and at Banneker are comparable. The Willenberg program is designed to

meet Student's unique needs and is reasonably calculated to provide Student with some educational benefit.

8. Parent failed to meet her burden of proving that Student's unique needs required transportation to Banneker rather than Willenberg. At the April 27, 2009 IEP meeting, Parent did not raise her concern that Willenberg's distance from Student's home and the duration of the bus ride to Willenberg would be detrimental to Student's health. At hearing, Parent testified that she was concerned that her home was further away from Willenberg in the event that she had to go to school because Student had a medical emergency. Parent appears to be loving, caring, and concerned about Student's health and general well being. However, Parent's testimony concerning Student's need to be closer to home because of his heart seizures and her distance from Student was not persuasive. Student attended Banneker for part of the 2008-2009 school year. Principal Olmsted's testimony that Student did not have any unique needs that required a shorter bus ride was persuasive. School personnel had not been informed of, and never observed, Student having a seizure. Parent did not present any medical testimony that substantiated her position that a longer bus ride would trigger Student's seizure. Therefore, Student's argument that because of his medical condition and special needs he had to attend Banneker, was not persuasive. In addition, because Student has a rare syndrome, it is understandable that Parent would want her son to be at a school that was closer to her home in case of a medical emergency. However, in resolving the question of whether a school district has offered a FAPE, the focus is on the adequacy of the school district's proposed program. A school district is not required to place a student in a program preferred by a parent.

9. Further, even though Willenberg is 7.51 miles further than Banneker from Student's home, this does not demonstrate that Student was denied a FAPE. Sabrina Carthan testified that the District creates bus routes in each catchment area. When

calculating the bus route time to both schools, she reported that Student would be on the bus less time if he attended Willenberg. Because Student is transported to school by bus, the time the bus would take to get to school is pivotal. Ms. Carthan's testimony was persuasive; Student would spend less time on the school bus if he attended Willenberg.

10. Finally, Parent contends that to be provided with a FAPE, Student must be provided with direct, non-stop bus transportation to Banneker during the 2009-2010 school year. As discussed above, the evidence did not support a finding that Student had a seizure condition that required this type of transportation. Parent did not present any persuasive evidence demonstrating that direct bus transportation was necessary to meet Student's other unique needs identified in his IEP, in the areas of toileting, feeding, attending, communicating, and daily living activities.

11. In conclusion, the evidence demonstrated that the offer of placement at Willenberg for the 2009-2010 school year contained in the April 27, 2009 IEP considered Student's unique needs and was designed to provide appropriate special education and services. Student failed to demonstrate that his unique needs required specially designed transportation to Banneker in order to receive a FAPE. Accordingly, Student has not met the burden of persuasion on the sole issue in his Complaint. (Factual Findings 1 to 17; Legal Conclusions 1 to 12.)

ORDER

Student's request for relief is denied.

PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that this Decision indicate the extent to which each party prevailed on each issue heard and decided in this due process matter. The District prevailed on the sole issue.

RIGHT TO APPEAL THIS DECISION

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

Dated: September 2, 2009

/s/

CLARA L. SLIFKIN

Administrative Law Judge

Office of Administrative Hearings