

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

TORRANCE UNIFIED SCHOOL DISTRICT

v.

PARENTS ON BEHALF OF STUDENT.

OAH Case No. 2014071042

DECISION

Torrance Unified School District filed a due process hearing request with the Office of Administrative Hearings, State of California, on July 21, 2014, naming Student. On August 6, 2014 and on October 28, 2014, the matter was continued for good cause.

Administrative Law Judge Kara Hatfield heard this matter in Torrance, California, on February 24, 2015.

Attorney Sharon Watt represented District. Tangela Diggs, District's Special Education Coordinator, attended the hearing.

Mother and Father (collectively, Parents) represented Student. Student did not attend the hearing.

After hearing, the matter was continued until March 3, 2015, so the parties could file and serve written closing arguments. Upon timely receipt of written closing arguments, the record was closed and the matter was submitted on March 3, 2015.

PREHEARING MOTIONS

On February 19, 2015, District filed a Motion to Conduct Hearing by Means of Affidavit. At the beginning of hearing on February 24, 2015, District withdrew its motion.

Also on February 19, 2015, District filed a Motion to Exclude Student's Direct Testimonial and Documentary Evidence on the basis that Student had not, as required by Education Code section 56505, subdivision (e)(7), notified District of any witnesses or any exhibits Student intended to present within five business days of the first day of hearing. District invoked its right, under Education Code section 56505, subdivision (e)(8), to prohibit the introduction of any evidence at the hearing that had not been timely disclosed to District. District's motion was granted.

However, based upon District having listed Mother and Father on its witness list, Mother's and Father's desires to testify, and the ALJ's analysis that a full and fair resolution of the dispute necessitated the ALJ hearing Parents' testimony as to the basis of the dispute, the ALJ informed all parties at the beginning of hearing that, pursuant to Education Code section 56505.1, subdivision (d), the ALJ would call Mother and Father to testify. District did not consent, and the ALJ advised all parties that Mother and Father would testify on March 2, 2015, five days after the witnesses were identified. At the conclusion of District's presentation of evidence on February 24, 2015, District consented to Parents testifying that same day to avoid the hearing being continued for five days.

## ISSUE

Whether Student's April 22, 2014 Individualized Educational Program, as amended on June 10, 2014, offered Student a free appropriate public education, even though it did not include an offer of transportation.<sup>1</sup>

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<sup>1</sup> District's case originally sought a determination that Student's April 22, 2014 IEP, as amended on June 10, 2014, offered Student a free appropriate public education such that District could implement it without parental consent. At the beginning of the

## SUMMARY OF DECISION

District seeks a ruling that its IEP offer, which did not offer transportation for Student, would provide Student a FAPE. District asserts that because Student attends school within District on a "permit" based upon Mother's employment within the geographic boundaries of District, District is not required to provide Student any transportation as part of providing Student a FAPE. District did not conduct any factual analysis of Student's unique needs to determine that it was not required to provide transportation to Student; District's offer was based solely on a legal argument that it is not required to provide transportation to a special education student who attends school within District on a "permit."

Student contends that she requires transportation after school from the middle school District has offered for her to attend to either the District elementary school Student attended for kindergarten through fifth grade, which is one block from Mother's workplace, or to the District middle school Student has attended during the 2014-2015 school year, which is a few blocks from Mother's workplace. Although Parents did not emphasize Student's unique needs that impede her ability to walk, ride a

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hearing, Parents stipulated that the only procedural dispute concerned the appropriateness of Student's triennial psycho-educational evaluation and the only substantive disputes concerned the appropriateness of the placement offer and corresponding removal of Student's 1:1 aide, and the appropriateness of the transportation offer. At the conclusion of District's presentation of evidence, Parents further stipulated to the appropriateness of the psycho-educational evaluation and the placement offer, including removal of the 1:1 aide as a related service, leaving the only issue for decision the appropriateness of the transportation offer.

bike, or take public transportation from the school offered by District to Mother's workplace, there is no dispute that Student had reduced levels of intellectual, social, and emotional functioning as a result of her autism and required supervision at school at all times.

District did not meet its burden of demonstrating that it may legally avoid its obligation to provide the related service of transportation to a student receiving special education from District based upon District's characterization of Student as a "permit" student. Further, District did not meet its burden of demonstrating that Student does not require school-to-school transportation as a related service. Therefore, on the sole issue remaining for decision, Student's April 22, 2014 IEP, as amended on June 10, 2014, did not offer Student a FAPE. If Student attends Calle Mayor Middle School, which is District's proposed placement, District is ordered to provide Student school-to-school transportation after school.

## FACTUAL FINDINGS

1. Student was 13 years old at the time of hearing. At all relevant times, she lived with Parents within the geographic boundaries of a school district not a party to this case. Student was diagnosed with autism when she was two years old. Mother was employed within the geographic boundaries of District and based upon Mother's employment, Student was allowed to attend school in District beginning when she was three years old. She began receiving special education services from District in June 2005. She attended District's special education preschool program, and received special education and related services from kindergarten through sixth grade with a primary eligibility category of autistic-like behavior and a secondary eligibility of speech-language impairment.

2. Mother worked one block from the elementary school Student attended, Wood Elementary School. Mother provided Student transportation to and from school.

According to Student's April 22, 2014 IEP, District considered Student's "District of Residence" to be Torrance Unified, and Student's "Residence School" to be Wood Elementary School.

3. District conducted a triennial assessment of Student in April 2014. Student's full scale IQ was 61. Student required paraeducator support to modify academics and assist with transitions. Student had difficulty problem-solving during novel situations that occurred throughout her day. She required supervision during the unstructured times of recess, lunch, and passing between classes. She was frustrated with change and became tired and refused to cooperate in the afternoons.

4. At hearing, Student's fifth grade special education teacher described Student as "prompt dependent," constantly looking to an adult to reassure her that she was doing the right thing. Student depended on her 1:1 aide or her teacher to get her to be on task, to finish her assignments, or to do her work.

5. During fifth grade, Student attended a general education program consisting of 53 percent of her time in the general education environment, with the remainder of her time in a resource support program for language arts and math, and with pull-out services for speech and behavior. Student's IEP team met on April 22, 2014, to develop a program for when Student would matriculate to middle school the following school year. District recommended Student be placed full-time in a special day class. At the meeting, Parents requested to observe the Skills and Therapeutic Educational Practices for Success (STEPS) program District recommended, as well as other programs District offered at Hull Middle School and other school sites. Based upon Mother's place of employment, Hull Middle School would have been Student's "school of residence" for middle school.

6. On June 10, 2014, when Student was 12 years and four months old, the IEP team met again to discuss and plan for Student's transition to middle school. District

recommended placement in the STEPS special day class at Calle Mayor Middle School. Parents did not consent to placement in the STEPS classroom or to placement at Calle Mayor Middle School.

7. Student attended sixth grade at Hull Middle School in the 2014-2015 school year. Parents took Student to school and picked her up after school.

8. Hull Middle School was a few blocks, 0.3 miles, from Wood Elementary School, approximately a six minute walk for an adult.<sup>2</sup> The distance from Calle Mayor Middle School to Hull Middle School was an average of 3.6 miles by car, approximately 15 minutes,<sup>3</sup> and an average of 3.5 miles on foot, approximately a one hour and 10 minute walk for an adult.

9. District's April 22, 2014 IEP, as amended on June 10, 2014, did not offer Student transportation.

10. According to District's Program Specialist, District did not offer Student transportation to Calle Mayor Middle School because Student attends school in District on a permit, and District did not offer transportation to Students who were in District on a permit. In closing argument, District asserted Torrance Administrative Regulation 5117(c) as authority for not providing transportation to any student admitted pursuant

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<sup>2</sup> This information is based on Google Maps and the addresses provided for each school on District's public website.

<sup>3</sup> This information is based on Google Maps on a weekday at 2:45 p.m., the time Calle Mayor Middle School releases students in the STEPS program to board buses, as testified to by the STEPS program teacher of the classroom District offered Student.

to an interdistrict attendance permit.<sup>4</sup> The sole basis for District's decision not to offer Student transportation was her status as a "permit" student; no analysis of Student's unique needs factored into District's decision not to offer transportation.

11. If Student had attended Calle Mayor Middle School instead of Hull Middle School, which was a few blocks from Mother's workplace, Parents would have been able to drop Student off at Calle Mayor Middle School in the morning, but would not always have been able to pick her up immediately after school. Father was concerned that if Parents were not able to pick up Student immediately after school, there would be an impact on school personnel having to stay at school to supervise Student while she waited for a ride. At hearing, Parents did not urge consideration of whether Student's unique needs resulting from her disability necessitated transportation as a related service. Parents seemed to believe District's assertion that District had no obligation to provide transportation due to Student's status as a "permit" student, and therefore Parents did not themselves present specific information or argument indicating Student should have been eligible for door-to-door transportation from and to Student's residence within District, which was Mother's workplace, regardless of which school

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<sup>4</sup> Education Code section 46600 allows a parent to request an interdistrict attendance permit, whereby both the student's original district of residence and the district to which student seeks to transfer agree to allow the student to attend school in the parents' desired district. Both districts must approve the agreement before it becomes valid. It is within the authority of either the home district or the receiving district to revoke the interdistrict attendance permit at any time for any reason the local board or superintendent deems appropriate. (See District Transfers – California Department of Education FAQ, at <<http://www.cde.ca.gov/re/di/fq/districttransfers.asp>> [as of March 30, 2015].)

Student attended within District. Parents only requested that if Student attended Calle Mayor Middle School, as District recommended and offered, transportation be provided from Calle Mayor Middle School in the afternoon. Parents indicated they would find a way to collect Student from either Wood Elementary School, one block from Student's residence, or from Hull Middle School, a few blocks from Student's residence.

12. At hearing, Father described the request for transportation as an "accommodation," to facilitate Student attending school.

## LEGAL CONCLUSIONS

### INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA<sup>5</sup>

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006)<sup>6</sup> et seq.; Ed. Code, § 56000, et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are (1) to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

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<sup>5</sup> Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

<sup>6</sup> All references to the Code of Federal Regulations are to the 2006 version, unless otherwise noted.



2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective, and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a) [in California, related services have also been called "designated instruction and services"].) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

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

Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.]) Although sometimes described in Ninth Circuit cases as “educational benefit,” “some educational benefit,” or “meaningful educational benefit,” all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 950, fn. 10.)

4. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3)(C), (D).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) In this case, District, as the complaining party, bears the burden of proof.

DISTRICT'S OBLIGATION TO PROVIDE TRANSPORTATION AS A RELATED SERVICE:  
STUDENT'S ATTENDANCE IN DISTRICT BY "PERMIT"

5. The sole issue in this case is whether Student's April 22, 2014 IEP, as amended on June 10, 2014, offered Student a FAPE, even though it did not include an offer of transportation. Based upon the stipulations entered into at hearing, Student did not dispute the procedural aspects of the IEP's development, and Student did not contest the adequacy of most components of the offer. The controversy focused on District's failure to offer transportation to Student in connection with her attending the STEPS special day class at Calle Mayor Middle School. Student contended to receive a FAPE, she required transportation after school to either of two District schools near Student's residence within District.

6. Education Code section 48200 provides that students shall attend school in the school district in which the parent resides. However, Education Code section 48204, subdivision (b), provides that a district may deem a student to have complied with the residency requirement for school attendance in the district if at least one parent is physically employed within the boundaries of that district for a minimum of 10 hours during the school week. A district is not required to admit such a student to its schools, but a district may not refuse to admit a student on the basis of race, ethnicity, sex, parent income, scholastic achievement, or any other arbitrary consideration. (Ed. Code, § 48204, subd. (b)(1).) "Once admitted to residency, the pupil's transfer may be revoked only if the parent ceases to be employed within the boundaries of the district. As a resident, the student does not have to re-apply for the transfer to be valid." (District Transfers – California Department of Education FAQ, at <<http://www.cde.ca.gov/re/di/fq/districttransfers.asp>> [as of March 30, 2015]; Ed. Code, § 48204, subd. (b)(7) [once a student is enrolled in a district based on a parent's

employment, student must be allowed to attend school through grade 12 if parent so chooses and parent continues to be employed within district boundaries].)

7. In conformity with Education Code section 48204, subdivision (b), in Student's April 22, 2014 IEP, District designated Student's district of residence as District and designated her "residence school" as the elementary school one block from Mother's workplace. Since 2005, Student had been a resident of District and District placed her at Wood Elementary School and Hull Middle School based on the address of her "residence" within District.

8. District's characterization of Student as a "permit" student does not describe how District regarded and treated Student, as evidenced by the April 22, 2014 IEP listing Student's district of residence as District and her school of residence as the elementary school one block from Student's residence within District. Further, it is not accurate, as Student's attendance within District was based on Student's residency within District based on Mother's employment,<sup>7</sup> not an interdistrict transfer agreement/permit.<sup>8</sup>

9. Even if Student were properly regarded as a "permit" student, District's policy or administrative regulation would not insulate District from the obligation to provide Student transportation as a related service if her unique needs necessitated it to provide her with a FAPE. Any state or local law that exempts certain categories of students with disabilities from eligibility for transportation is illegal and violates the fundamental premise of the IDEA, which is that the needs of every student eligible for special education and related services must be considered on an individualized basis.

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<sup>7</sup> Education Code section 48204.

<sup>8</sup> Education Code section 46600.

Although state and local laws may expand the rights of students with disabilities beyond those provided under the IDEA, they may not reduce them. For example, a district may not refuse to provide transportation as a related service to a non-ambulatory disabled student on the grounds that state law generally does not require a district to provide transportation for any student living within two miles of the school. (*Letter to Smith*, (OSEP March 17, 1980) 211 IDELR 191 [211 LRP 7068].) Similarly, District could not refuse to provide Student transportation as a related service purely on the basis that Student attended school within District as a “permit” student and it was District’s policy not to provide transportation to any student attending on a permit.

10. District also erroneously relied on cases that held school districts are not responsible for providing transportation for special education students seeking intradistrict transfers. In those cases, the parents chose for their child to attend a different district school than the school of residence. Here, it was not parental choice for Student to attend a school other than Hull Middle School, her “school of residence” based on her residence address of Mother’s workplace. Rather, District offered an alternative placement at Calle Mayor Middle School based upon Student’s unique needs. Parents did not consent to District’s offer and Student therefore attended Hull Middle School, Student’s “home school.”

11. District’s decision not to offer Student transportation to or from the special education placement and specific middle school District recommended was based solely on District’s incorrect belief that it could deny the related service of transportation to a disabled student based the student’s attendance within District on a “permit,” coupled with District’s incorrect characterization of Student as a “permit” student. District failed to conduct the individualized analysis required by federal law to determine if Student required transportation to benefit from special education.

## DISTRICT'S OBLIGATION TO PROVIDE TRANSPORTATION AS A RELATED SERVICE: STUDENT'S UNIQUE NEED FOR TRANSPORTATION

12. As limited above, the only question to be resolved in this case is whether to receive a FAPE, Student required transportation after school to either of two District schools near Student's residence within District. Although a nearly identical analysis would apply to determining the question of whether Student required transportation to school in the morning, or whether Student required transportation to and from her residence within District, Parents limited their dispute to the issue of transportation after school and transportation to either of the two District schools near Student's residence within District. This decision only addresses the very narrow question of whether District's offer, which did not include afternoon transportation, was, at the time District made its IEP offer, reasonably calculated to provide Student with a FAPE.

13. There are two parts to the legal analysis of a school district's compliance with the IDEA. First, the tribunal must determine whether the district has complied with the procedures set forth in the IDEA. (*Rowley, supra*, 458 U.S. at pp. 206-207.) Second, the tribunal must decide whether the IEP developed through those procedures was designed to meet the child's unique needs, and was reasonably calculated to enable the child to receive educational benefit. (*Ibid.*)

14. An IEP should include a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum, and a statement of measurable annual goals, including academic and functional goals, designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum, and meet each of the child's other educational needs that result from the child's disability. (20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320.) An IEP must include a statement of the special education and

related services, based on peer-reviewed research to the extent practicable, that will be provided to the student. (20 U.S.C. § 1414(d)(1)(A)(i)(IV); 34 C.F.R. § 300.320(a)(4); Ed. Code, § 56345, subd. (a)(4).) The IEP must include a projected start date for services and modifications, as well as the anticipated frequency, location, and duration of services and modifications. (20 U.S.C. § 1414(d)(1)(A)(i)(VII); 34 C.F.R. § 300.320(a)(7); Ed. Code, § 56345, subd. (a)(7).) Only the information set forth in title 20 United States Code section 1414(d)(1)(A)(i) must be included, and the required information need only be set forth once. (20 U.S.C. § 1414(d)(1)(A)(ii); 34 C.F.R. § 300.320(d); Ed. Code § 56345, subds. (h) and (i).)

15. In developing the IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the child's education, the results of the most recent evaluations of the child, and the academic, developmental, and functional needs of the child. (20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. § 300.324(a).)

16. 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. (*Gregory K. v. Longview School Dist.* (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.*) For a school district's offer of special education services to a disabled pupil to constitute a FAPE under the IDEA, a school district's offer must be designed to meet the student's unique needs, comport with the student's IEP, and be reasonably calculated to provide the student with some educational benefit in the least restrictive environment. (*Ibid.*) Whether a student was offered or denied a FAPE is determined by looking to what was reasonable at the time the IEP was developed, not in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrman v. East Hanover Bd. of Education* (3rd Cir. 1993) 993 F.2d 1031, 1041.)

17. In California, related services are called “designated instruction and services.” (Ed. Code, § 56363, sub. (a).) Designated instruction and services includes transportation and developmental, corrective and other supportive services as may be required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26)(A); Ed. Code, § 56363, subd. (a); *Irving Independent School Dist. v. Tatro* (1984) 468 U.S. 883, 891 [104 S.Ct. 3371, 82 L.Ed.2d. 664].) Designated instruction and services shall be provided “when the instruction and services are necessary for the pupil to benefit educationally from his or her instructional program.” (Ed. Code, § 56363, subd. (a).)

18. In developing the IEP and designated instruction and services, the IEP team is mandated to consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial evaluation or most recent evaluation of the child and the academic, functional and developmental needs of the child. (20 U.S.C. § 1414(d)(3)(A).)

19. 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).) The IDEA does not explicitly define transportation as door-to-door services. Decisions regarding such services are left to the discretion of the IEP team. (Analysis of Comments and Changes to 2006 IDEA Part B Regulations, 71 Fed.Reg. 46576 (August 14, 2006).)

20. A school district must provide transportation to disabled students if it provides transportation to non-disabled students. If a school district does not provide transportation to non-disabled students, “the issue of transportation to students with disabilities must be decided on a case-by-case basis. If a [school district] determines that a disabled student needs transportation to benefit from special education, it must be



provided as a related service at no cost to the student and his or her parents." (*Letter to Smith*, (23 IDELR 344 [23 LRP 3398].)

21. Although the Ninth Circuit has not specified criteria for determining whether a child needs transportation as a related service, other Circuits have indicated some guidelines that are useful in evaluating this case. Relevant factors include, at least, (1) the child's age; (2) the distance the child must travel; (3) the nature of the area through which the child must pass; (4) the child's access to private assistance in making the trip; and (5) the availability of other forms of public assistance in route, such as crossing guards or public transit. (*Donald B. By and Through Christine B. v. Board of School Com'rs of Mobile County, Ala.* (11th Cir. 1997) 117 F.3d 1371, 1375 (*Donald B.*). The Eighth Circuit has twice considered requests for transportation for students with disabilities and twice concluded that "a school district may apply a facially neutral transportation policy to a disabled child when the request for deviation from the policy is not based on the child's educational needs, but on the parents' convenience or preference." (*Fick ex rel. Fick v. Sioux Falls School Dist.* 49-5 (8th Cir. 2003) 337 F.3d 968, 970, citing *Timothy H. v. Cedar Rapids Cmty. School Dist.* (8th Cir. 1999) 178 F.3d 968, 973; see also *Anchorage School Dist. v. N.S. ex rel. R.P.* (D. Alaska, Nov. 8, 2007) 2007 WL 8058163, at \*10 [district responsible for pushing student's wheelchair from the curb to the front door of his home because door-to-door service was not "based on the guardians' mere convenience of [sic] preference" where "[b]oth guardians work full time . . . and are unavailable to push [the student] up the ramp at the end of his day."].)

22. District has not met its burden of proof to establish that Student did not need transportation as a related service to benefit from special education. The same factors that District relied on to support its recommendation that Student be placed in a special day class indicate that Student's reduced levels of intellectual, social, and emotional functioning as a result of her autism interfered with or prevented her from

getting to her residence within District after school in the same ways as her non-disabled peers did. At the time of the April 22, 2014 and June 10, 2014 IEP meetings, Student had a full scale IQ of 61. Student was known by District to be prompt-dependent, in constant search of adult support and guidance, and in need of supervision during the unstructured times of recess, lunch, and passing between classes. Student had difficulty problem-solving during novel situations that occurred throughout her day. She became tired and refused to cooperate in the afternoons. District's awareness of Student's need for supervision even passing between classes strongly indicates District should have had concerns about Student's unsupervised passage along a three-and-a-half mile urban route at a time of day she was known to become tired and uncooperative.

23. Evaluating Student's need for transportation under the five factors set forth in *Donald B.*, although Student was 12 years and four months old at the time of the June 2014 IEP, she was of below average intelligence and experienced behavioral and communication challenges commensurate with her diagnosis of autism. District's recommended program and school was over three miles from the school she would have attended if she were not disabled. Even if other children of similar age and even younger could be expected to walk that distance to attend school, or to secure other means of transportation without District assistance, such as a bicycle or public transportation, Student's cognitive challenges and difficulties with problem-solving in novel situations, such as changes in traffic signals, traffic patterns, sidewalk closures, or delayed or re-routed public buses, indicate Student could not reasonably be expected to self-transport between the school District recommended and the school Student would have attended but for her special education needs. District did not offer evidence regarding any analysis of whether the route(s) to school "encompass high crime or high traffic areas that [s]he could not easily traverse." (*Donald B.*, 117 F.3d at p. 1375.) District

did not offer evidence regarding any analysis of the availability of other forms of public assistance in route, such as crossing guards or public transit. With respect to access to private assistance in making the trip, as with all other factors, District did no analysis because of its application of a local regulation that may, in some instances, conflict with and therefore be overridden by the IDEA. District did not meet its burden of showing that Student was able to travel from school without District's help.

24. District attempted to discount Student's need for transportation as being purely a function of Parents' work schedules. District ignored the same factors on which it relied in seeking to remove Student from the general education classroom and incorrectly argued that Student would not qualify for transportation as a related service based on an analysis of her capabilities and needs. Student's need for transportation as a related service was not a consequence of Parents' work schedules,<sup>9</sup> but was a consequence of the impact Student's autism had on her ability to leave school in the same ways as her non-disabled peers, and her resulting need for transportation to benefit from special education.

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<sup>9</sup> Even if Parents' work schedules were considered to be a contributing factor to Student's need for afterschool transportation, as a *Donald B.* factor regarding Student's access, or lack thereof, to private assistance in making the trip, that factor would, in view of Student's inability to independently make the trip, further support a finding that Student required school-to-school, or possibly even door-to-door, transportation. (See *Anchorage School Dist. v. N.S. ex rel. R.P.*, *supra*, 2007 WL 8058163, at \*10 [district obligated to push student's wheelchair from curb to student's front door when guardians' work schedules prevented them from being at home after school to push student's wheelchair from curb to front door].)

25. District failed to meet its burden of proof that District's failure to offer Student school-to-school transportation after school<sup>10</sup> was appropriate and that the April 22, 2014 IEP, as amended on June 10, 2014, offered Student a FAPE.

## ORDER

The April 22, 2014 IEP, as amended on June 10, 2014, did not offer Student a FAPE because it did not offer Student transportation related to her proposed attendance in the STEPS special day class at Calle Mayor Middle School.

## PREVAILING PARTY

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

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<sup>10</sup> This decision is limited to the determination of Student's need and qualification for transportation after school from Calle Mayor Middle School to Hull Middle School, or to Wood Elementary School as may be more convenient for District based on its bus routing, because at hearing, Parents requested only afterschool transportation and made the concession to District that they would accept afterschool transportation to whichever school near Student's residence within District would be easier for District. This decision is not intended to be a determination that Student does not, in fact, qualify under the IDEA for transportation as a related service to as well as from school, or for transportation from or to her residence within District, rather than from or to her current "residence school" or any other school near her residence within District.

## RIGHT TO APPEAL THIS DECISION

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

DATED: March 30, 2015

\_\_\_\_\_/s/\_\_\_\_\_  
KARA HATFIELD  
Administrative Law Judge  
Office of Administrative Hearings