

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:

CAPISTRANO UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT,

OAH Case No. 2016030010 (primary)

PARENT ON BEHALF OF STUDENT,

v.

CAPISTRANO UNIFIED SCHOOL DISTRICT.

OAH Case No. 2016020203

DECISION

Parent on behalf of Student filed a due process hearing request with the Office of Administrative Hearings, State of California, on January 29, 2016, naming Capistrano Unified School District. Capistrano filed a request for due process hearing (District's complaint) on February 26, 2016, naming Student. On March 1, 2016, Capistrano filed a motion to amend District's complaint. On March 10, 2016, OAH granted Capistrano's motion to amend and consolidated the two matters, designating Capistrano's case as the primary matter for purposes of setting the timeline for issuance of this Decision. The matter was continued for good cause in the March 10, 2016 order.

Administrative Law Judge Dena Coggins heard this matter in San Juan Capistrano, California, on May 31, June 1, and June 2, 2016.

Attorney Adriana Nusbickel and attorney Damian Fragoso represented Student at the hearing and attended each day of hearing. Parent attended each day of hearing.

Student was not present.

Attorney Ernest Bell represented Capistrano Unified School District at the hearing. Kimberly Gaither, Capistrano legal specialist, special education, attended each day of hearing.

At the conclusion of the hearing, the matter was continued to June 14, 2016, to afford the parties an opportunity to submit written closing briefs. The record closed with the parties' timely submission of closing briefs and the matter was submitted for decision.

## ISSUES<sup>1</sup>

1. Student's Issue One: Did Capistrano deny Student a free appropriate public education when it failed to provide timely notice of District's intention to hold Student's annual IEP team meeting, resulting in Parent being unable to attend because she was not available on the date scheduled by the District?

2. Student's Issue Two: Did Capistrano deny Student a FAPE when it held an individualized education program team meeting without Parent on November 17, 2015, and developed an IEP without Parent's input and participation?

3. Student's Issue Three: Did Capistrano's failure to offer Student curb-to-curb transportation as a related service during the 2014-2015 and 2015-2016 school years deny Student a FAPE?

4. District's Issue One: In order to offer Student a FAPE, did the January 11,

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<sup>1</sup> The issues have been rephrased and reorganized for clarity. The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

2016 IEP need to include transportation as a related service?<sup>2</sup>

## SUMMARY OF DECISION

This Decision holds that Capistrano committed a procedural violation resulting in a denial of FAPE by providing less than one-day notice of the November 17, 2015 IEP team meeting, which significantly impeded Parent's opportunity to participate in the decisionmaking process regarding the provision of FAPE to Student.

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<sup>2</sup> District's issue to be decided in this matter was framed in the May 24, 2016 Order Following Prehearing Conference as "Did District's January 11, 2016 individualized education plan offer provide Student a free appropriate public education although it did not include transportation as a related service." On the first and second days of hearing, Capistrano clarified that the District was not litigating whether the entire January 11, 2016 IEP offered Student a FAPE. Rather, Capistrano asserted that the issue, detailed above, is the correct framing of District's issue. Capistrano acknowledged that the issue, as it appears above, narrows the original issue contained in the May 24, 2016 Order. Student did not oppose Capistrano's narrowing of the issue.

Capistrano raised a second issue in its amended request for due process hearing — "Are District's testing accommodations in the January 11, 2016 offer of a placement, program, and services appropriate such that they provide Student a FAPE." On the second day of hearing, Student stipulated that the testing accommodations in the January 11, 2016 IEP are appropriate such that the testing accommodations provide Student a FAPE. Based on Student's stipulation, the parties agreed the issue had been resolved pursuant to the stipulation. Accordingly, the parties understood the issue would not be decided in this Decision, and the issue is deemed withdrawn by Capistrano.

This Decision further holds that Capistrano committed a procedural violation resulting in a denial of FAPE by holding the November 17, 2015 IEP team meeting, and developing an IEP without Parent's input and participation. Parent did not affirmatively refuse to participate in the IEP meeting or need convincing to attend the meeting. Parent expressed her desire to be present at all IEP meetings, and Capistrano's choice to go forward without parental participation after Parent cancelled the meeting significantly impeded Parent's opportunity to participate in the decisionmaking process regarding the provision of FAPE to Student.

Student asserts she has been eligible for curb-to-curb transportation as a related service since the 2014-2015 school year, and remained eligible for transportation for the 2015-2016 school year. Capistrano maintains that Student has not required transportation at any time during the relevant time period in order to receive a FAPE. This Decision holds that Student did not require transportation, including curb-to-curb transportation, as a related service to receive a FAPE during the relevant period.

## FACTUAL FINDINGS

### JURISDICTION

1. Student is a 16-year-old girl who has been found eligible for special education and related services under the eligibility category of specific learning disability. Student has qualified for special education and related services since 2003. Student also has a medical condition called hyperhidrosis that causes excessively sweaty hands. Additionally, Student has a soft voice, at whisper volume, resulting from a damaged vocal cord.

2. Student has resided with Parent within the educational boundaries of Capistrano at all relevant times. Student has attended Dana Hills High School since the 2014-2015 school year, her ninth grade year. At the time of hearing, Student was in the

tenth grade. Student is currently working towards earning a high school diploma, and she is expected to graduate on time.

### 2013 ASSESSMENT OF STUDENT

3. In September and October 2013, Capistrano conducted a multi-disciplinary triennial assessment of Student. The purpose of the assessment was to obtain a current estimate of Student's then-present levels of development and to assist the IEP team in determining Student's special education needs. No other formal assessments of Student have been conducted by Capistrano between 2013 and the time of hearing. Lindsay De Pass, a Capistrano school psychologist, was one of the assessors.

4. Lindsay De Pass testified at hearing. Ms. De Pass has been a school psychologist for eight years, about five of those years with Capistrano. She earned a bachelor of science degree in sociology in 2004. She earned a master's degree in school psychology in 2008. She has a Pupil Personnel Services credential.

5. The evidence established Student's intellectual functioning in verbal comprehension, perceptual reasoning, working memory and processing speed to be within the low average to average range at the time of the assessment. Student's general cognitive ability was within the low average range. Student's abilities to sustain attention, concentrate, and exert mental control was in the low average range while her ability in processing simple or routine visual material without making errors was in the average range. Student's working memory standard score was in the low range. Her vocal quality did not significantly interfere with her ability to communicate at the time of the assessment, and her voice had not been an issue in class.

6. Although Student's working memory standard score was in the low range, it did not affect her ability to navigate the middle school campus. Student maneuvered around the middle school campus for two years and was able to be where she was expected to be on campus throughout her school day, which included classes on

opposite ends of the campus. Student did not need assistance or depend on peers to get to her middle school classes.

7. Student met the eligibility criteria for specific learning disability because a discrepancy existed between her intellectual ability in perceptual reasoning and academic achievement in the areas of mathematic reasoning and mathematic calculation, and Student had a processing disorder in the areas of conceptualization and association processing.

#### OCTOBER 21, 2014 IEP MEETING

8. Capistrano convened an IEP team meeting on October 21, 2014. Parent; Steven Forbes, education specialist and Student's case carrier; Leslie Horton, education specialist; Chad Wanders, education specialist; Erin Masters, school psychologist; Kenneth Workman, general education teacher; and Christine Gilman, general education teacher, attended the meeting. The purpose of the meeting was to conduct an annual review of Student's IEP. The IEP team discussed Student's goals, including her social/emotional functioning goal. Student's goal in the area of social/emotional functioning related to self-advocacy — when needing assistance or having a concern, Student would ask an adult or trusted peer for help with 100 percent accuracy in five out of five trials. The IEP found Student met her social/emotional goal by the October 21, 2014 meeting. At the meeting, the IEP team agreed that the social/emotional goal would not be continued due to Student's success in the area. Student was provided with accommodations to access her education, including access to a portable voice amplifier to increase voice volume if needed. Student was offered specialized academic instruction.

9. At the meeting, Parent requested Student be found eligible for transportation services as a related service. Parent based her request on Student being young behaviorally and socially vulnerable. No decision was made at the meeting about

Parent's request for transportation.

10. Parent drives Student to and from school each day. The distance from Student's home to school is about 4.9 miles. There is a public bus route near Student's home and the Dana Hills campus. The distance between Student's home and the closest public bus stop on the bus route is 0.6 miles, about a 14-minute walk. The 14-minute walk consists of four turns from Student's home to the bus stop. This bus stop is on a main road. The distance from Dana Hills to the closest public bus stop on the bus route is 0.2 miles, about a 4-minute walk. This bus stop is about three steps off of the school campus. The evidence did not establish any safety concerns relating to the area surrounding Student's home and Dana Hills.

11. Parent testified at hearing. Parent holds the educational rights for Student and is Student's primary caretaker. Parent drives Student to school every day. Parent has never taught Student to walk to school or catch a public bus. Parent does not believe Student knows her home address. Student has never ridden the bus. Student does not go to the store or her friends' homes by herself because she does not know how to get there. Parent testified that Student does not talk to strangers and is scared of strangers. Parent shared that unfamiliar people have a difficult time hearing Student in public and Student has expressed discomfort when speaking in public.

12. Student does not have a driver's license and is not working on getting a learner's permit. Parent believes Student is not currently able to acquire a driver's license.

13. Parent does not believe Student can ride the public bus to school on her own because Student doesn't know where the bus stop is, she has never ridden the bus before, she would not know how to independently navigate to and from the bus stop, the bus is not safe, she does not have the ability to do it, she is a girl, she does not know what to do, would have a difficult time knowing what stop to get off of the bus, and she

has a low voice. Further, Parent believes Dana Hills is too far for Student to walk to school.

14. Craig Dunn testified at hearing. Mr. Dunn is a health and physical education teacher, college and career planning teacher, and head track and cross country coach for Capistrano. He has been in his current position as a health and physical education teacher since 2007. He earned a bachelor of science degree in child and family development in 2000. He received a physical education teaching credential in 2007 and a master's degree, specializing in teaching and learning in a global society, in 2011. He has been Student's physical education teacher for the last two semesters and is familiar with her ability to follow multi-step instructions as assigned in his class and to navigate campus.

15. Mr. Dunn is familiar with the area surrounding Dana Hills. Mr. Dunn takes his track athletes running in the area surrounding Student's home and Dana Hills. He described the socio-economic status of the neighborhood as middle upper class and safe.

16. Erin Masters testified at hearing. Ms. Masters is a school psychologist at Dana Hills, and has been in her current position for five years. She has been a school psychologist for approximately 10 years. She has also been a specialized academic instructor in several special day classes, including mild to moderate, moderate to severe, and severely disabled classrooms. In addition to participating in the October 21, 2014 IEP team meeting for Student, she has observed Student during lunch, passing periods, and in class. She has been familiar with Student since 2014.

17. Ms. Masters is familiar with the area surrounding Dana Hills. Ms. Masters has taken the bus route Student would take to school. Ms. Masters described the surrounding neighborhood of Dana Hills as affluent and relatively safe.

18. The Dana Hills campus consists of a main building and numerous portable



sections throughout the campus and a football field. Student attends classes in the main building and in portable classrooms. Students at Dana Hills have a block schedule, requiring students to attend all classes on Mondays, Tuesdays and Thursdays; periods one, three, and five on Tuesdays and Thursdays; and periods two, four, and six on Wednesdays and Fridays. Parent reviews Student's next day class schedule with Student each day. Student does not require assistance getting from class to class during the school day and is punctual. During the 2014-2015 school year, Student had only one unexcused tardy and one excused tardy. For the current school year, 2015-2016, as of May 11, 2016, Student had one excused tardy and did not have an unexcused tardy.

19. At the October 21, 2014 meeting, the district members of Student's IEP team did not believe Student needed transportation. During the IEP meeting, Ms. Horton and Ms. Masters discussed Student's success at navigating the Dana Hills campus and her ability to get from class to class without difficulty. A final decision regarding transportation was postponed to October 31, 2015, when a written decision would be provided to Parent.

20. Luci Coppola testified at hearing. Ms. Coppola is a program specialist for Capistrano, and has been in her current position since January 2012. Ms. Coppola earned a bachelor of arts degree in psychology in June 2003 and a masters of arts degree in December 2007. She received a California Multiple Subject Credential, Education Specialist Credential, Level II Clear Mild/Moderate, and California Administrative Services Credential. In her current position, Ms. Coppola assists school sites programmatically in specialized academic instruction, works closely with general education teachers, acts as a resource to Capistrano's employees in understanding resources available to sites, assists in guiding teams through compliance related issues, and provides compliance advice relating to special education law. She was previously an autism specialist and a teacher in a special day class with Capistrano, for about 3 years

each. Ms. Coppola has been involved in Student's IEP meetings since Student was in sixth grade.

21. On October 31, 2014, Ms. Coppola sent Parent a prior written notice denying Parent's transportation request. In support of the denial, Ms. Coppola referenced the IEP team meeting discussion that demonstrated Student could navigate the Dana Hills campus successfully and independently and Student's lack of ambulation, vitality and cognition issues that would preclude her from being transported in the same manner as her non-disabled peers. Other relevant factors considered by Capistrano in denying Parent's request for transportation included input from staff who worked with Student and were familiar with her level of independence, proposed IEP goals/objectives from the October 21, 2014 IEP meeting, review of Student's individualized transition plan, and input from all members of the IEP team. As will be discussed more fully below, Student did not establish she required transportation as a related service as of the October 21, 2014 IEP team meeting.

#### APRIL 24, 2015 IEP ADDENDUM MEETING

22. An IEP addendum meeting was held on April 24, 2015. Parent; Amy Sabol, assistant principal at Dana Hills; Mr. Forbes; Ms. Gilman; Ms. Coppola, and Celia Guzman, Student's advocate, were present at the meeting. Parent requested the meeting. The purpose of the meeting was to discuss transportation and extended school year services<sup>3</sup> for Student. Capistrano IEP team members acknowledged that Student has a soft voice, and shared that Student has access to a voice amplification system but rarely uses the device. The team discussed Student's ability to safely navigate the school campus and Capistrano IEP team members' belief that Student's voice did not appear to

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<sup>3</sup> The extended school year takes place during the summer break, outside of the regular school year.

be a safety risk. However, Student was found eligible for transportation services for the 2015 extended school year session because the recommended extended school year program was not available at Student's school of residence. The District's policy is to provide transportation services to a student for the extended school year when the program is not at the Student's school of residence.

#### CAPISTRANO'S ATTEMPTS TO SCHEDULE STUDENT'S FALL 2015 ANNUAL IEP

23. Student's next annual IEP review was to be on or before October 20, 2015, one year after her last annual IEP review on October 21, 2014. On September 3, 2015, Capistrano began its numerous attempts to set Student's annual IEP meeting.

24. On September 3, 2015, Capistrano proposed three IEP meeting dates: October 15, October 19, and October 20, 2015. On September 10, 2015, Parent, through counsel, accepted the October 15, 2015 meeting date proposed by Capistrano. However, on October 13, 2015, Parent cancelled the October 15, 2015 meeting because that date was no longer convenient for Parent and her counsel.

25. In a second attempt to schedule Student's fall 2015 IEP meeting, on October 14, 2015, Mr. Forbes proposed two new meeting dates, including one date at two different times. On the same day, Mr. Forbes also sent an email to Student's counsel, wherein he acknowledged receipt of Parent's meeting cancellation, explained that he called twice and left two messages, and requested Student's counsel propose a new date and time for Student's IEP meeting. The following day, on October 15, 2015, Student's counsel sent a letter to Capistrano, informing Capistrano that the proposed dates were not convenient for Parent and Student's counsel. In the letter, Student's counsel proposed two new dates: October 30, 2015 and November 6, 2015. In response, Capistrano sent Parent an IEP meeting invitation, dated October 15, 2015, proposing three IEP meeting dates: October 30, 2015, November 4, 2015, and November 5, 2015. At this point, the parties reached a mutually agreeable date and time for the IEP

meeting — October 30, 2015, at 1:00 p.m.

26. Even though the parties had seemingly reached an agreement for a meeting on October 30, 2015, Capistrano convened an IEP meeting on October 15, 2015. Mr. Forbes, Ms. Coppola, Mary Danna, Student's science teacher; and Ms. Sabol attended the meeting. Neither Parent nor Student's counsel attended the IEP meeting because Parent had cancelled the meeting. The meeting attendees acknowledged Parent and Student's counsel cancelled the October 15 meeting two days prior and requested meeting dates that were outside of the annual timeline. Because Parent was not in attendance, the meeting was adjourned and no information was shared amongst the attendees.

27. Capistrano convened the IEP team meeting on October 15, 2015, even though there was no expectation for Parent to be in attendance, because Capistrano believed it was an opportunity for the IEP team to demonstrate they were ready and willing to review Student's needs and goals as related to her annual timeline in light of past experience of cancelled IEP team meetings by Parent and Student's counsel. Ms. Coppola defined annual timeline as a compliance requirement and a time to review Student's goals, needs and services. Student had met the majority of her goals, with the exception of her writing goal, by the October 15, 2015 IEP meeting. There was no evidence that established that this meeting was any more than smoke and mirrors designed to look as if the IEP team met within one year, when no substantive meeting was actually held.

28. On the same day Capistrano convened the IEP team meeting, Mr. Forbes sent Parent an IEP meeting invitation proposing three meeting dates, including October 30, 2015, at 1:00 p.m. The following day, Mr. Forbes emailed Student's counsel to confirm Parent's proposed meeting date of October 30, 2015, and asking Student's counsel to also confirm the meeting date and time. On October 19, 2015, Parent,

through letter from Student's counsel, cancelled the October 30, 2015 meeting because that date was no longer convenient for Parent and Student's counsel. The letter indicated that the other two dates proposed by Capistrano were also not convenient for Parent and Student's counsel. No other dates were proposed by Student's counsel, but Capistrano was invited to contact Student's counsel to determine a mutually convenient date and time for the meeting. This was the second time the parties agreed on an IEP team meeting date that was subsequently cancelled by Parent.

29. On October 20, 2015, Mr. Forbes, who was not in receipt of the cancellation letter from Student's counsel, attempted to confirm the October 30, 2015 meeting date by sending a follow up email to Student's counsel. Mr. Forbes also called and left a message with Student's counsel's reception desk.

30. In a third attempt to schedule Student's fall 2015 IEP meeting, Capistrano sent an IEP team meeting invitation, dated October 22, 2015, to Parent, proposing three dates: November 10, 2015 (two different times on that day), November 13, 2015, and November 17, 2015 (three different times on that day). A total of six potential meeting times were proposed. On October 23, 2015, Mr. Forbes sent a follow up email to Student's counsel requesting a response from Student's counsel to confirm a meeting date and time. On October 29, 2015, Ms. Coppola sent a letter to Parent detailing Capistrano's unsuccessful attempts to set a mutually agreed upon meeting date, and continuing to propose the six potential meeting times contained in the October 22, 2015 meeting invitation. Ms. Coppola requested Parent confirm in writing her intent to attend one of the proposed meeting dates at least two school days prior to the selected meeting date. Ms. Coppola further explained that the IEP team meeting would occur on November 17, 2015, one of the proposed meeting dates, absent confirmation from Parent. On November 4, 2015, Parent accepted the proposed meeting date of November 17, 2015, through letter from counsel to Capistrano. The agreement,

however, was fleeting. In a letter, dated November 9, 2015, Student's counsel cancelled the November 17th IEP team meeting and proposed two additional dates: November 18, 2015, and December 1, 2015 (two different times on that day), as the November 17 date was no longer convenient for Parent and Student's counsel. Mr. Forbes was not available on November 18 or December 1, as proposed by Parent.

31. On November 16, 2015, Ms. Coppola sent a letter to Parent by attaching the letter to an email sent to Student's counsel at 4:37 p.m. In the letter, Ms. Coppola informed Parent that Capistrano planned to hold the November 17th IEP team meeting. Ms. Coppola offered options for Parent to participate in the IEP process without being physically present, including by telephone conference; making arrangements for a relative or other representative to be present on Parent's behalf; or by providing written concerns, observations, and/or recommendations for the IEP team members to consider when writing goals and recommending services. Ms. Coppola explained in her letter that the law requires IEP team meetings to be convened within specific timelines, and, although the District would like Parent to attend and participate in the IEP process, the IEP meeting could not be delayed indefinitely. Parent received the letter on November 16, 2015, but she could not attend the meeting with only one-day notice. Parent was not willing to attend the meeting without counsel. Parent responded through a letter from Student's counsel to Capistrano, dated November 17, 2015, reiterating her and Student's counsel's unavailability on November 17, 2015.<sup>4</sup> In the letter, Student's counsel explained Parent wished to attend all of Student's IEP team meetings and did not give Capistrano permission to hold an IEP team meeting without Parent or counsel present at the meeting. In the letter, counsel reiterated Parent's availability on December

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<sup>4</sup> It is not clear from the evidence the reason Parent was unable to attend any of the three scheduled IEP team meetings.

1, 2015, one of the two dates proposed in Student's counsel's November 9, 2015 letter. Despite its awareness that Parent would not be in attendance, Capistrano went forward with the annual IEP team meeting on November 17, 2015.

#### NOVEMBER 17, 2015 IEP MEETING

32. On November 17, 2015, an IEP team meeting was convened. Mr. Forbes, Ms. Coppola and Ms. Danna attended the meeting. Neither Parent nor Student's counsel attended the meeting. The IEP team members in attendance reviewed and discussed Student's present levels, progress on goals, proposed goals, services and supports. The IEP team proposed goals in the areas of reading, mathematics, and written expression, but did not propose a social/emotional functioning goal. Student's individualized transition plan was also updated. The IEP continued to provide an accommodation that allowed Student to access a portable voice amplifier to increase voice volume for class presentations to large groups. Student remained on diploma track. The IEP team proposed increasing the specialized instruction Student received each week. The IEP team found Student was not entitled to transportation.

33. The meeting was held as a full annual IEP team meeting. Ms. Coppola believed the IEP team was looking at a loss of opportunity for Student if the team did not move Student's educational program forward by convening the meeting.

34. Mr. Forbes testified at hearing. Mr. Forbes has been a special education teacher at Dana Hills for about five years. He received an associate of arts degree in liberal studies and an associate of science degree in fire science in 2001. He earned a bachelor of science degree in human services in 2003. He received a master's degree in special education in 2011. He is currently a co-teacher in Ms. Danna's coordinated science class at Dana Hills. Student is in his class. As Student's case carrier, he is responsible for IEP accommodations, supporting Student on her goals, monitoring her grades, and sending invitations for IEP meetings to IEP team members. Mr. Forbes

began working with Student during the 2014-2015 school year. Mr. Forbes went forward with the November 17, 2015 IEP team meeting because he believed Student's IEP goals needed to be updated, the team needed to put a plan in place that would push Student's education forward, and given the history of meeting cancellations, he felt it was necessary to go forward. A copy of the annual IEP was sent to Parent.

35. On December 4, 2015, Parent provided partial consent to the November 17, 2015 IEP. Parent consented to all goals, increased amount of specialized academic instruction, extended school year services, and several accommodations. Parent did not fully consent to the IEP because of Capistrano's failure to include transportation services for the extended school year and the District's failure to include three testing accommodations relating to Student's participation in statewide and District assessment programs.

36. On December 15, 2015, Ms. Coppola sent a letter to Parent in response to the December 4, 2015 letter. Capistrano agreed to provide Student with transportation during the extended school year if Student's extended school year placement was not located at Student's school of residence. The decision to provide transportation for Student during the extended school year was based upon review of Student's last agreed upon IEP and the District's transportation policy, as discussed above.<sup>5</sup>

#### JANUARY 11, 2016 IEP MEETING

37. On January 11, 2016, Capistrano convened an IEP team meeting. Parent; Student; Jim Campbell, Parent's advocate; Adriana Nusbickel, Student's counsel; Ms. Coppola; Mr. Forbes; Ms. Sabol; and Ms. Danna attended the meeting. The meeting was requested by Parent to discuss keeping Student and her sibling in the same classes for

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<sup>5</sup> The letter also indicated that Parent's requested accommodations were added to an amended IEP.



the year and transportation services for Student. Mr. Forbes distributed Student's current grades and present levels of progress to the IEP team. Ms. Danna and Mr. Forbes provided an update to the team about Student's work in class and accommodations. The IEP team meeting was not a continuation of the annual meeting held on November 17, 2015, as the team previously completed discussion of the issues relating to Student's annual IEP review, drafted an annual IEP, and Parent reviewed and partially consented to the IEP prior to the January 11, 2016 meeting.

38. During the meeting, Mr. Campbell asked Student questions relating to her ability to use public transportation. Student answered no when asked if she knew where to find the public bus to get to school, the name of the street where the school is located, where to get off of the bus if she were riding the bus to school, what to do if she missed her bus stop, and what to do if she gets lost. Student answered that she did not know if she would be able to find someone to help her if she missed her bus stop.

39. Ms. Coppola discussed other transportation options that Student could use, such as carpooling and rides from Parent. Ms. Coppola stated that the IEP team's current offer and belief was that Student was able to get to and from school in the same manner as her general education peers. Nevertheless, Ms. Coppola said that Parent's transportation request would be further considered by Capistrano based on the information provided at the meeting, and a formal written response would be provided to Parent after the meeting.

40. During the meeting, Ms. Coppola said that it sounded like public transportation had been ruled out based on Student's answers to the questions posed by Student's advocate. During her testimony, Ms. Coppola clarified that she did not believe all IEP team members ruled out public transportation during the meeting, but acknowledged Student's representation that Student did not have the skills to use public transportation at that time. Based on the context of the discussion, and Ms.

Coppola's continued representation during the meeting that Capistrano team members believed Student could get to school in the same manner as her general education peers, Ms. Coppola was not eliminating the possibility that Student could ride a public bus to school at the time of the meeting.

41. At the time of the meeting, Ms. Coppola believed Student could get to and from school in the same manner as her general education peers — by carpool, ride from Parent or taking a public bus. Student's answers to the questions at the IEP team meeting did not persuade Ms. Coppola differently because Ms. Coppola believed Student could learn to ride public transportation based on available data about Student, teacher input, and the fact that Student was on track to graduate with a regular high school diploma.

42. Ms. Danna left the meeting with Parent's consent before the discussion of transportation services. However, the evidence established that Ms. Danna did not believe Student required transportation services. Mr. Forbes also did not believe Student required transportation services.

43. After the meeting, Ms. Coppola discussed the transportation request with Capistrano's Director of Informal Dispute Resolution, who is an attorney in Capistrano's compliance department, to get the Director's legal opinion. On January 28, 2016, Ms Coppola sent a letter to Parent regarding Parent's transportation request. In the letter, Ms. Coppola stated that Capistrano was denying Parent's request because Capistrano's IEP team members believed Student was capable of getting to her school of residence in the same manner as her typically developing peers. Ms. Coppola's examples of ways Student could get to school included riding to school with Parent and/or carpooling. Capistrano's decision was based on review of Student's last agreed upon IEP, staff input regarding Student's level of independence around campus, and Student's cognitive and social abilities on campus. The decision was also based on consideration of Capistrano's

special education reference chart, known as the Special Education Transportation Decision Tree which assists IEP teams in making and justifying transportation decisions.<sup>6</sup> Ms. Coppola represented that her letter was a reinforcement of the IEP team's decision that Student was not eligible for transportation. In Ms. Coppola's letter, she did not indicate that she had a discussion with the Director of Informal Dispute Resolution to seek the Director's legal advice regarding the IEP team's decision about Parent's transportation request.

#### STUDENT'S NEED FOR TRANSPORTATION SERVICES

44. Student is eligible for special education and related services under the eligibility category of specific learning disability. Student does not have any physical impairment preventing her from getting to school in the same manner as her nondisabled peers. While Student does have a soft voice, the evidence established that she is able to communicate with her teachers, peers, and even adult strangers without needing to utilize the accommodations available to her for her soft voice. Student did not have behavior issues during the relevant period. Student is able to navigate the Dana Hills campus without assistance. The evidence did not establish any concerns regarding the safety of the neighborhood surrounding Dana Hills and Student's home.

45. While Student had an identified area of need in social emotional functioning in the October 21, 2014 IEP, by at least the October 21, 2014 IEP meeting, Student had met her social emotional functioning goal, and self-advocacy was no longer an area of identified need during almost the entire period at issue.

46. In Mr. Dunn's physical education class, Student participates in soccer, basketball, "ultimate ball," and fitness testing, and raises her voice during sporting

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<sup>6</sup> Kimberly Gaither, a legal specialist for Capistrano, provided testimony regarding her general understanding of the Decision Tree.

games to demand the ball from classmates. Mr. Dunn was extremely credible when he testified that Student had no difficulty receiving oral instruction in class without the help of others, raised her voice during sports games, and transitions from class to class at the large school campus without the need for assistance. While Mr. Dunn does not have a special educational credential, he is qualified to opine about his observation of Student's ability to receive oral instructions in his class through his own personal observation and as a credentialed teacher.

47. Leslie Horton testified at hearing. Ms. Horton is employed by Capistrano as a special education teacher. She has been in her current position at Dana Hills for 17 years. She taught at another high school in a special day class within the District for three years. She was a resource teacher and special day class teacher prior to her employment at Capistrano. She has a bachelor of science degree in history. She has a specialist credential, mild to moderate disabilities, and a single subject credential in social studies. She has been a credentialed special education teacher for approximately 20 years. Ms. Horton has been Student's resource specialist teacher supporting Student on her IEP goals and classes during Student's ninth and tenth grade years. Student was also in Ms. Horton's English class in ninth grade.

48. Ms. Horton, with many years of special education teaching experience and experience as Student's resource specialist teacher for the last two years, credibly testified she is aware of Student's unique educational needs, and does not believe Student has any area of need that would prevent her from getting to school in the same manner as her general education peers. Further, Ms. Horton's opinion that Student has the skills necessary to learn to take public transportation to school was given great weight based on her observations of Student over the last two school years, her educational and professional experience, and the character of her testimony.

49. Jolene Bradshaw testified at hearing. Ms. Bradshaw has been Student's

English teacher since September 2015. She credibly opined that Student has the ability to get to school in the same manner as her general education peers. Ms. Bradshaw bases her opinion on her many years of experience as a special education teacher and her observations of Student in class. She is an education specialist teacher at Dana Hills, and has been employed with Capistrano since 2013. In her current position, Ms. Bradshaw teaches English and resource class to ninth through twelfth graders with mild to moderate learning disabilities. She helps create and implement IEP's for students. Ms. Bradshaw has been a special education educator for over 10 years. She has been Student's teacher for Directed English since September 2015. Ms. Bradshaw's Directed English II class provides the same curriculum to students as general education students, but the curriculum is revised so that all students can be successful in learning the curriculum. Her students are held to the same curricular standards as their general education peers, but the learning is accommodated. This year, Student is reading the same text as her general education peers are reading in the same grade, but she receives work assignments that have larger text with fewer words on each page of an assignment in comparison to assignments given to her general education peers.

50. Ms. Danna testified at hearing. She is a biology and coordinated science teacher at Dana Hills. She also attended three of Student's IEP meetings during the relevant period. She has been employed as a science teacher for five years. Prior to becoming a science teacher, Ms. Danna was a resource aide. She earned a bachelor of science degree in microbiology in 1999. She has a single subject teaching credential in science: specialized biology and fundamental science. Student was in Ms. Danna's coordinated science class during the 2015-2016 school year. That class was a lower level science class that follows the same content as a biology class but is instructed at a slower pace and the curriculum does not go as in depth as a general education biology class. Based on Ms. Danna's professional experience and observations of Student, Ms.

Danna opined that Student could learn to use public transportation to get to school.

51. Similarly, Ms. Masters credibly testified that Student has the cognitive and physical ability to take public transportation to school each day based on Student's pragmatic judgment, social reasoning, ability to manage her time and plan effectively, Student's 2013 assessment results showing Student performing within the low average to average range in verbal comprehension and perceptual reasoning scores, and her ability to navigate the Dana Hills campus with a complex block schedule. While Ms. Masters has never formally assessed Student, taught a subject to Student, or provided Student with guidance or counseling, her opinion was supported by the evidence provided by Student's current teachers.

52. Student has maintained an academic grade point average over 3.6 during her ninth grade year and first part of her tenth grade school year, while working toward her regular high school diploma.

53. Parent drives Student to school every day because Parent is genuinely concerned about Student's ability to get to school in the same manner as her nondisabled peers. Parent believes Student needs transportation as a related service because Student has never learned to walk to school or take public transportation, does not know her home address, has never rode a bus alone, and is not familiar with the bus stop. The evidence did not establish that Student cannot learn her home address or how to take public transportation to school. While Student's ability to navigate the school campus, by itself, does not establish that she is able to navigate the bus route or walk to and from school, the fact that she is able to successfully navigate the campus and get to class unassisted and on time is supportive of Capistrano's decision not to provide transportation to Student as a related service.

54. Parent's concerns that Dana Hills is too far for Student to walk to school, the safety of the bus, and Student's lack of comfort in speaking in public are all valid

worries of a concerned parent; however, these concerns do not relate specifically to Student's specific learning disability. Moreover, these concerns were not substantiated by the evidence offered at hearing. Although it could be said the distance from Student's home to school is too far for Student to walk each day, her disability does not prevent her from doing so. Furthermore, Student is not limited to walking to school. She can utilize any of the other forms of transportation available to her nondisabled peers in arriving to school each day.

55. Capistrano established that Student is capable of getting to school in the same manner as her nondisabled peers, and that Student's specific learning disability does not require Student to receive transportation as a related service to benefit from special education.

## LEGAL CONCLUSIONS

### BURDEN OF PROOF

1. As the petitioning party, Student has the burden of proof by a preponderance of the evidence on all issues in this case. (*Schaffer v. Weast* (2005) 546 U.S. 56-62 [163 L.Ed.2d 387].)

### INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA.<sup>7</sup>

2. Jurisdiction over this matter arises 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.<sup>8</sup>; Ed. Code, § 56000 et seq.; Cal. Code. Regs., tit. 5,

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<sup>7</sup> Unless otherwise indicated, the legal citations in this Introduction are incorporated by reference into the analysis of each issue decided below.

<sup>8</sup> All references to the Code of Federal Regulations are to the 2006 version.

§ 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; (2) to ensure that the rights of children with disabilities and their parents are protected; and (3) to assist States, localities, educational service agencies, and Federal agencies in providing for the education of all children with disabilities. (20 U.S.C. § 1400(d)(1)(A)–(C); 34 C.F.R. 300.1; Ed. Code, § 56000, subd. (a).)

3. A FAPE means special education and related services that are available to an eligible child at no charge to a parent or guardian, meets state educational standards, and conforms to the child's IEP. (20 U.S.C. § 1401(9)(A)–(D); 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, subd. (a).) "Related services" means transportation and other developmental, corrective and supportive services required to assist a child with a disability to benefit from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code § 56363, subd. (a).) In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982), 458 U.S. 176, 201 [102 S. Ct. 3034, 73 L.Ed.2d 690] (Rowley), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs. *Rowley* 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. (*Rowley*, supra, 458 U.S. at pp. 200.)

4. 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.) For a school district's offer of



special education placement and services to constitute a FAPE, the offer must be reasonably calculated to provide the student with educational benefits. (*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 *Fuhrmann v. East Hanover Bd. of Education* (3rd Cir. 1993) 993 F.2d 1031, 1041.)

#### ISSUE 1: TIMELINESS OF CAPISTRANO'S NOTICE OF NOVEMBER 17, 2015 IEP TEAM MEETING.

5. Student asserts Capistrano failed to give timely notice of the November 17, 2015 IEP meeting, resulting in Parent being unable to attend the meeting and impeding Parent's right to meaningfully participate in the IEP process. Capistrano generally maintains the District provided more than adequate notice of the IEP meeting.

6. Among the most important procedural safeguards are those that protect parents' right to be involved in the development of their child's educational plan. (*Doug C. v. Hawaii Dept. of Education* (9th Cir. 2013) 720 F.3d 1038, 1043-1044) (Doug C.) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child; and the provision of FAPE to the child. (34 C.F.R. § 300.501(b).) The IDEA requires that school districts provide notice to parents early enough to ensure that they have an opportunity to attend the IEP meeting and schedule the meeting at a mutually agreed on time and place. (34 C.F.R. §§ 300.322(a)(1)-(2); 300.501(b)(2) .) The regulations do not state the amount of time that constitutes timely notice of an IEP meeting; however, ten-day advance notice is a general guide for timely notice. (*Letter to Constantian*, 17 IDELR 118 (OSEP 1990).)

7. Capistrano made multiple efforts to convene Student's annual IEP meeting at a mutually agreed on time and place. Capistrano began making efforts to convene

Student's annual IEP meeting in September 2015. By November 9, 2015, Parent had cancelled three IEP meetings. Capistrano provided substantial evidence of its documented efforts to convene the IEP meeting at a time convenient for Parent.

8. However, Capistrano did not provide notice of the November 17, 2015 IEP meeting early enough to ensure Parent had an opportunity to attend the IEP meeting. Providing Parent with less than 24 hours' notice of an IEP meeting is not early enough to ensure that Parent had an opportunity to attend the meeting. There was no dispute that Capistrano received the November 9 cancellation letter in a timely manner. Instead of immediately informing Parent of its intent to go forward with the IEP meeting, Capistrano waited until 4:37 p.m. on November 16, 2015, to inform Parent that the District intended to convene the IEP meeting on the following day despite Parent's unavailability. Capistrano acknowledges in its closing brief that the provision of notice 10 days ahead of a proposed meeting is generally regarded as timely. Capistrano's notice of the IEP team meeting the day before it was to occur cannot be deemed sufficient notice.

9. In its closing brief, Capistrano suggests that Mr. Forbes' October 22, 2015 IEP meeting invitation proposing a meeting date on November 17, among two other dates, was timely notice of the November 17 meeting. A meeting notice must indicate the purpose, time, and location of the meeting and who will be in attendance. (34 C.F.R. § 300.322(b)(i).) A proposal of three different meeting dates (and six different meeting times), did not put Parent on notice of the exact time and date the meeting would occur. Capistrano cites no authority that supports the proposition that an IEP team meeting notice proposing several meeting dates can be deemed timely notice of an IEP meeting.

10. Ms. Coppola's October 29, 2015 letter, indicating the District would proceed with the November 17, 2015 IEP meeting if Parent did not confirm her intent to

attend one of the proposed meeting dates in the October 22, 2015 IEP meeting invitation, was not sufficient to put Parent on notice that the meeting would go forward on November 17. On November 4, Parent accepted the proposed November 17, 2015 meeting date. When Parent subsequently cancelled the November 17, 2015 meeting on November 9, 2015, it was unreasonable for Capistrano to assume Parent was aware the meeting would go forward on November 17. In Student's counsel's November 9 letter, Parent proposed two additional meeting dates on November 18 and December 1. If Parent expected Capistrano to move forward with the November 17 meeting, it is unlikely Student's counsel would have proposed additional meeting dates. Capistrano's practice had been to set a new meeting date once Parent cancelled a meeting. It was not reasonable for Capistrano to assume Parent was aware the November 17 meeting would go forward despite Parent cancelling the meeting based on Capistrano's past conduct. Furthermore, if Capistrano believed the October 29, 2015 letter was timely notice of the November 17 IEP meeting, it would not have been necessary for Ms. Coppola to state in the letter that the letter was prior written notice of the District's proposal to hold an IEP team meeting on November 17.

11. Capistrano argues that its educators provided more than timely and reasonable notice of the many proposed dates for Student's 2015 annual review IEP meeting. The issue, however, is whether the District provided timely notice of the November 17, 2015 IEP meeting. It did not. Student met her burden of establishing that Capistrano committed a procedural violation by failing to provide timely notice of its intent to hold her annual IEP team meeting on November 17, 2015.

12. It is important to note that although the evidence in this case establishes that the District should have provided Student with more notice of the November 17, 2015 IEP team meeting, there may be circumstances in which repeated IEP meeting cancellations by a parent would do more harm to a student's interest than having

parental participation. Although Parent's continuous meeting cancellations is somewhat troubling here, the facts in this case do not rise to a level of more harm to Student's interest by accommodating Parent's schedule than proceeding without parental participation.

13. States must establish and maintain certain procedural safeguards to ensure each student with a disability receives the FAPE to which the student is entitled, and that parents are involved in the formulation of the student's educational program. (*W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1483-1484 [superseded in part by statute on other grounds by 20 U.S.C. § 1414(d)(1)(B)].) In *Rowley*, the Supreme Court recognized the importance of adherence to the procedural requirements of the IDEA. (*Rowley, supra*, 458 U.S. at pp. 205-206.)

14. A procedural error does not automatically require a finding that a FAPE was denied. (*W.G. v. Target Range, supra*, 960 F.2d at p.1484.) Harmless procedural errors do not constitute a denial of FAPE. (*L.M. v. Capistrano Unified School Dist.* (9th Cir. 2008) 556 F.3d 900, 910.) A procedural violation results in a denial of a FAPE only if the violation: (1) impeded the child's right to a FAPE; (2) significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a FAPE to the parents' child; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2); Ed. Code, § 56505, subd. (f)(2) & (j).)

15. It is necessary to determine if the procedural violation resulted in a denial of a FAPE to Student. Parent's opportunity to participate in the decisionmaking process was significantly impeded by the lack of timely notice of the November 17 meeting. Parent did not participate in the decisionmaking process regarding the provision of FAPE to Student because she was only provided with one-day notice of the meeting. Parent was unable to attend the meeting, and she informed the District of her unavailability on November 9, 2015. Going forward with the meeting without providing

Parent with timely notice significantly restricted Parent's right to participate in the IEP meeting. Accordingly, Capistrano's procedural violation resulted in a denial of FAPE to Student.

ISSUE 2: LACK OF PARENTAL INPUT AND PARTICIPATION AT THE NOVEMBER 17, 2015 IEP MEETING.

16. Student contends Capistrano committed a procedural violation by holding an IEP team meeting on November 17, 2015, and developing an IEP without Parent's input and participation resulting in a denial of a FAPE. Capistrano asserts that the District appropriately proceeded with Student's annual review in Parent's absence to prevent loss of educational opportunity by an overdue review of Student's IEP.

17. The IDEA requires a school district to ensure that an IEP team for a student with a disability includes the parents of the child. (34 C.F.R. 300.321(a)(1).) Parent participation is a key aspect of IEP development. (*Ibid.*, *Doug C.*, 720 F.3d at 1040 ["Parental participation in the IEP and educational placement process is central to the IDEA's goal of protecting disabled students' rights and providing each disabled student with a FAPE"].) A school district must take steps to ensure that one or both of a child's parents are present at each IEP team meeting or are afforded the opportunity to participate. (34 C.F.R. § 300.322(a).) If a student's parents are unable to attend an IEP meeting, the school district must use other methods to ensure parent participation, including individual or conference telephone calls or video conferencing. (34 C.F.R. §§ 300.322(c), 300.328 , 300.501(c).)

18. Because a school district is ultimately responsible for the student's educational program, a school district may conduct an IEP meeting without a parent when it is unable to convince the parents that they should attend. (See 34 C.F.R. § 300.322(d).) Applicable regulations provide steps that must be taken before conducting an IEP meeting without parental participation. To do so, the school district must keep a

record of its attempts to arrange a mutually agreed upon time and place, such as (1) detailed records of telephone calls made or attempted and the results of those calls; (2) copies of correspondence sent to the parents and any responses received; and (3) detailed records of visits made to the parent's home or place of employment and the results of those visits. (34 C.F.R. § 300.322(d).)

19. Capistrano convened an IEP meeting on October 15, 2015 without Parent in attendance. Capistrano adjourned the meeting with no information shared amongst meeting attendees because Parent was not in attendance. Capistrano reconvened the meeting on November 17, 2015 without Parent in attendance. At the meeting, the IEP team reviewed and discussed Student's present levels, progress on goals, proposed goals, services and supports. The IEP offer increased the amount of specialized academic instruction provided to Student in a separate environment. The IEP team updated Student's individualized transition plan also. The IEP team sent the IEP to Parent for consent after the meeting, which Parent partially consented to on December 4, 2015.

20. It is vital that Parent have an opportunity to participate in Student's IEP development. Capistrano clearly recognized the importance of Parent's participation in the IEP meeting based on its continued attempts to schedule Student's annual IEP meeting at a mutually agreed upon time and place beginning in September 2015. Capistrano kept substantial record of its attempts to arrange a mutually agreed upon time and place for the IEP meeting. However, Capistrano held Student's annual IEP meeting without parental participation despite Parent's expressed desire to attend all of Student's IEP team meetings. In Student's counsel's November 17, 2015 letter to Capistrano, counsel reiterated Parent's wish to attend all of Student's IEP team meetings and provided notice to the District that Parent did not give Capistrano permission to hold an IEP meeting without Parent and Student's counsel present at the meeting. And although Capistrano provided options for Parent to participate in the meeting without

being present, Parent made it clear, through letter from Student's counsel, that she wanted to be present at Student's IEP meetings. Parent did not affirmatively refuse to attend the meeting and did not need convincing to attend. By going forward with the meeting, Capistrano committed a procedural violation.

21. There may be times when accommodating a parent's schedule would be to the detriment of a student's educational interest. (*A.M. v. Monrovia Unified School Dist.* (9th Cir. 2010) 627 F.3d 773) (finding that convening the IEP meeting without parents in attendance was appropriate where the student was new to the school and there was no IEP in place.) Capistrano asserts that the District held the November 17, 2015 meeting based on the need to update Student's program so that she could continue to make appropriate educational progress because Capistrano was implementing Student's stale IEP goals. However, Capistrano was required to continue working on Student's identified areas of need regardless if her operative IEP contained goals Student had already met. Capistrano could not cease to provide services to Student once the District missed the annual review deadline for Student's annual review. While it would have been ideal for Student to have new goals once her 2014 goals had been met, nothing prevented Capistrano from continuing to further Student's educational progress in light of her identified areas of need prior to the annual IEP meeting. Additionally, Parent was not requesting meeting dates far into the future. Rather, Parent proposed dates almost contemporaneous with the November 17, 2015 meeting date. Capistrano provides no legal authority to suggest that Capistrano could not continue to work on Student's areas of need, even though she had met many of her goals by the November 17, 2015 IEP meeting. Here, the evidence did not establish that accommodating Parent's schedule would have done more harm to Student's interest than proceeding with the IEP meeting without Parent's participation.

22. The facts in this case are strikingly similar to the facts in *Doug C. v. Hawaii*

*Department of Education*, (9th Cir. 2013) 720 F.3d 1038 (Doug C.). In *Doug C.*, the Ninth Circuit found the Hawaii Department of Education denied parent the opportunity to participate in the IEP process, thus denying student a FAPE, when the department held an annual IEP team meeting without parental participation even though parent actively sought to reschedule the meeting in order to participate. (*Id.* at 1040-1041.) Like in *Doug C.*, Parent sought to reschedule previously agreed upon IEP team meetings once Parent became unavailable to meet on those dates. As in *Doug C.*, Capistrano provided Parent an opportunity to participate in an IEP team meeting by phone once the District was on notice that Parent may not be able to attend the IEP team meeting. Also like the facts of *Doug C.*, Capistrano went forward with the IEP team meeting without parental participation. Echoing the United States Supreme Court, the Ninth Circuit reiterated parental participation being among the most important procedural safeguards in the IDEA." (*Ibid.* at 1044, citing *Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 882. ["Parents not only represent the best interests of their child in the IEP development process, they also provide information about the child critical to developing a comprehensive IEP and which only they are in a position to know"].) The Ninth Circuit found the parent in *Doug C.*, did not affirmatively refuse to attend the IEP meeting nor that the department was unable to convince him to attend because parent had vigorously objected to the meeting going forward without him and asked to reschedule the meeting for the following week. (*Doug C., supra*, 720 F.3d at p. 1044.) Like the parent in *Doug C.*, Parent did not refuse to attend the IEP meeting; rather, Parent continuously attempted to reschedule IEP meeting dates once she cancelled them so that she could be present and participate in Student's IEP meetings.

23. Capistrano asserts, and the evidence established, Capistrano IEP team members made themselves available on many occasions prior to the November 17, 2015 IEP team meeting in order to accommodate Parent's and Student's counsel's



requests to reschedule the IEP meeting dates. However, as stated in *Doug C.*, “the fact that it may have been frustrating to schedule meetings with or difficult to work with [a parent] . . . does not excuse the Department’s failure to include [parent] in [his child’s] IEP meeting when he expressed a willingness to participate.” (*Doug C.*, *supra*, 720 F.3d at p. 1045.) Furthermore, even if certain members of the IEP team were unavailable on the dates Parent proposed in the November 9, 2015 letter, the IEP meeting could have went forward on the proposed date with Parent’s agreement to waive the members’ attendance, which the District failed to explore. (See 20 U.S.C. § 1414(d)(1)(C).)

24. In its closing brief, Capistrano asserts that by October 15, 2015, it was time for Student to embark on a more ambitious educational program. Consequently, it was vital that Parent be provided the opportunity to participate in that embarkation. By proceeding in Parent’s absence, Capistrano denied Parent the opportunity to participate in the development of Student’s educational program.

25. Student established that Capistrano committed a procedural violation resulting in a denial of FAPE by holding the November 17, 2015 IEP meeting and developing an IEP without Parent’s input and participation because the violation significantly impeded Parent’s opportunity to participate in the decisionmaking process evidenced by the fact she did not participate in any part of the decisionmaking process relating to Student’s IEP development.

#### ISSUES 3 AND 4: STUDENT’S NEED FOR CURB-TO-CURB TRANSPORTATION AS A RELATED SERVICE DURING THE 2014-2015 AND 2015-2016 SCHOOL YEARS.

26. Student contends she has been eligible for curb-to-curb transportation as a related service since the 2014-2015 school year, and remains eligible for transportation for the 2015-2016 school year. Capistrano maintains that Student has not required transportation services at any time during the relevant time period in order to receive a FAPE.

27. Related services include transportation and other developmental, corrective and supportive services as may be required to assist a child with a disability to benefit from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code § 56363, subd. (a).) 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 special transportation for a child with a disability. (34 C.F.R. § 300.34(c)(16).)

28. School districts must provide transportation to disabled students, if: (1) the school district provides transportation to the general student population to and from school, or, (2) the IEP team determines Student requires transportation to benefit from special education. (Questions and Answers on Serving Children with Disabilities Eligible for Transportation, 53 IDELR 268 (OSERS 2009); Analysis of Comments and Changes to 2006 IDEA Part B Regulations, 71 Fed. Reg. 46576 (Aug. 14, 2006) ["It is assumed that most children with disabilities will receive the same transportation provided to nondisabled children, consistent with the [least restrictive environment] requirements . . . unless the IEP Team determines otherwise"]; *Letter to Smith*, 23 IDELR 344 (OSEP 1995).)

29. The offer of transportation is made on a case-by-case basis. (*In re: Student with a Disability* (N.Y. SEA 2012) 59 IDELR 180 (SEA NY 2012) [noting a student's mobility, behavior, communication skills, physical and health needs, age, ability to function without special transportation, ability to follow directions, distance student will have to travel, the nature of the area, and the availability of private or public assistance as relevant considerations when determining the need for transportation services]; *Student v. Los Angeles Unified Sch. Dist.* (Cal. SEA 2008) 50 IDELR 114 [considering student's safety and the safety of other pupils riding on the bus in determining appropriate transportation services]; *Student v. Modesto City Elementary School Dist.* (Cal. SEA 2002) 38 IDELR 88 [finding district's offer of general education bus

transportation appropriate to meet needs of a student with specific learning disability with the cognitive ability to learn and remember the bus route, speech and language skills to be understood and communicate his needs, and no physical impairments that would prevent him from traveling to the bus stop].)

30. Capistrano does not provide transportation to and from school for its general education student population at Dana Hills. As a result, the IEP team was tasked with determining whether Student required transportation for the 2014-2015 and 2015-2016 school years.

31. Student is eligible for special education and related services under the eligibility category of specific learning disability. Student is sixteen years old. She does not have any physical impairment preventing her from getting to school in the same manner as her nondisabled peers. While Student does have a soft voice, the evidence established that she is able to communicate with her teachers, peers, and even adult strangers and understand oral and written instruction. Student did not have behavior issues during the relevant period. Student is able to navigate the Dana Hills campus without assistance. The bus stops are near Student's home and the school campus.

32. Although Parent is genuinely concerned about Student's ability to get to school in the same manner as her general education peers, the evidence did not establish that Student cannot learn her home address or how to take public transportation to school. Student's academic abilities support Capistrano's position that Student has the ability to learn her home address and navigate to school each day. Parent's concerns that Dana Hills is too far for Student to walk to school, the safety of the bus, and Student's lack of comfort in speaking in public do not substantiate a claim that Student needs transportation services to benefit from her special education and these concerns were not substantiated by the evidence.

33. The District provided overwhelming evidence that Student is capable of

getting to school in the same manner as her nondisabled peers, and that Student's needs including her soft spoken voice, do not require Student to receive transportation as a related service to in order to benefit from special education. Student did not prove by a preponderance of the evidence that Capistrano denied Student a FAPE by failing to offer her curb-to-curb transportation during the 2014-2015 and 2015-2016 school years. Capistrano met its burden of establishing that in order to offer Student a FAPE, the District did not need to include transportation as a related service in the January 11, 2016 IEP.

## REMEDIES

1. Student prevailed as to Issues 1 and 2. As a remedy, Student requests Capistrano convene a replacement annual IEP team meeting for Student with Parent present at the meeting.

2. ALJ's have broad latitude to fashion appropriate equitable remedies for the denial of a FAPE. (*School Com. of the Town of Burlington, Mass. v. Department of Education of the Commonwealth of Mass.* (1985) 471 U.S. 359 at pp. 369, 374 [105 S.Ct. 1996, 85 L.Ed.2d 385]; *Parents of Student W. v. Puyallup School Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496 (*Puyallup*).) In remedying a FAPE denial, the student is entitled to relief that is "appropriate" in light of the purposes of the IDEA. (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3); *Puyallup, supra*, 31 F.3d at p. 1496.)

3. It was determined herein that Capistrano committed two procedural violations resulting in a FAPE denial by failing to give timely notice of the November 17, 2015 IEP meeting, and convening the meeting and developing an IEP without parental participation. As a result of these procedural violations, Parent was uninvolved in the development of Student's current IEP.

4. Parent is entitled to an IEP meeting to develop, review, or revise a student's IEP whenever requested by Parent. (Ed. Code, § 56343, subd. (c).) A meeting of

an IEP team requested by a parent to review an IEP shall be held within 30 days from the date of receipt of the parent's written request, with some exceptions. (Ed. Code, § 56343.5.) Capistrano shall convene an IEP team meeting with parental participation to allow Parent an opportunity to be involved in the development of Student's current IEP.

5. It is further determined that a two-hour training by a third party not employed by Capistrano regarding *Doug C.*, and the laws relating to parental participation in the IEP and educational placement process is an appropriate remedy in light of Capistrano's procedural violations. All of Student's other claims for relief are denied.

## ORDER

1. Capistrano shall convene an IEP team meeting with Parent present at the meeting to discuss Parent's concerns about the currently implemented IEP. Parent shall propose three IEP meeting dates and times that are within 30 days of the start of the 2016-2017 school year. Capistrano shall convene the IEP team meeting on one of the proposed meeting dates.

2. Capistrano shall pay the cost for the attendance of Student's counsel or advocate at the IEP team meeting, up to a maximum of three hours. If Parent or Student's counsel cancels the meeting once set by Capistrano, Capistrano will not be obligated to conduct the meeting within 30 days of the start of the school year pursuant to this order or pay the cost for Student's counsel's or advocate's attendance at a rescheduled IEP team meeting. This order does not preclude the parties from agreeing to use the IEP meeting as Student's annual IEP review meeting.

3. Within 30 days of the date of this Decision, Capistrano will conduct a two-hour training for all Capistrano special education administrators, program specialists and special education teachers assigned to work with Dana Hills students during the 2016-2017 school year. The subject matter of the training shall include a discussion of

procedural safeguards that ensure each student with a disability receives the FAPE to which the Student is entitled. The training must include a thorough explanation of the law relating to parental participation in the IEP and educational placement process and the importance of the *Doug C.* opinion.

4. The training must be conducted by a person or persons with expertise in special education law who is not employed by Capistrano.

5. Student's other requests for relief are denied.

## PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, Student prevailed on Student's Issues 1 and 2 and Capistrano prevailed on Student's Issue 3 and District's Issue 1.

## RIGHT TO APPEAL

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

DATED: July 25, 2016

\_\_\_\_\_/s/\_\_\_\_\_  
DENA COGGINS  
Administrative Law Judge  
Office of Administrative Hearings