

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

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CASE NO. 2019091005

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ASPIRE PUBLIC SCHOOLS,

v.

PARENT ON BEHALF OF STUDENT.

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DECISION

NOVEMBER 18, 2019

On, September 25, 2019, the Office of Administrative Hearings, called OAH, received a due process hearing request from Aspire Public Schools, naming Student as respondent. Administrative Law Judge, Tiffany Gilmartin, heard this matter in Oakland on October 22, 2019.

Heather Edwards represented Aspire Public Schools. Elizabeth Blevins, regional director of special education, attended the hearing on Aspire's behalf. Mother represented Student.

At the parties' request the matter was continued until November 5, 2019 for written closing briefs. Aspire Public Schools filed its closing brief on November 4, 2019.

Mother submitted a document after hours on November 5, 2019. The document was submitted without a proof of service. Staff contacted Mother in an attempt to obtain a proof of service. Nothing further was received from Mother. Due to the untimeliness of its submission and the lack of proof of service the document was not reviewed or considered in this decision.

The record was closed, and the matter was submitted for decision on November 5, 2019.

## ISSUES

Does Student's May 2, 2019, Individualized Education Program, that does not offer transportation services constitute a free appropriate public education?

## JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (20 U.S.C. §1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the Individuals with Disabilities Education Act, referred to as the "IDEA," are to ensure:

- all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and

- the rights of children with disabilities and their parents are protected. (20 U.S.C. §1400(d)(1); See Ed. Code, §56000, subd. (a).)

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, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 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, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. §1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. §1415(i)(2)(C)(iii).) Aspire was the moving party and bore the burden of proof. The factual statements below constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. sec. 1415(f)(E); Ed. Code, sec. 56505, subd. (e)(5).)

Student was 6 years old and in transitional kindergarten at the time of hearing. Aspire Public Schools is a parent-choice charter school. Student was eligible for special education in the primary category of Autism and in the secondary category of speech and language.

Does Student's May 2, 2019, Individualized Education Program, that does not offer transportation services constitute a free appropriate public education?

Aspire contends Student's behavior, communication, motor skills or health needs do not result in a need for transportation services, specifically an Aspire-provided ride to and from school. Student's prior IEP from Oakland Unified School District provided Student transportation. After Student enrolled at Aspire in August 2018,

a transportation assessment was conducted for Student in accordance with September 10, 2018 assessment plan to which Mother had consented. Aspire contends the results of that assessment demonstrate Student does not require transportation, specifically an Aspire-provided ride to and from school, as a related service to access his education. Student's most recent IEP from Aspire, dated May 2, 2019, does not offer transportation services.

Mother argued Student required transportation services since he is a Student with a disability, specifically Autism. Mother contends generally that Student requires transportation services to receive a free appropriate public education, referred to as FAPE.

A FAPE, means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Parents and school personnel develop an IEP, for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14) and (26), 1414(d)(1)(A); Ed. Code, §§ 56031, 56032, 56345, subd. (a) and 56363 subd. (a); 34 C.F.R. §§ 300.17, 300.34, 300.39 Cal. Code Regs., tit. 5, § 3001, subd. (p).)

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176; *Endrew F. v. Douglas County School Dist.* (2017) 580 U.S. \_\_\_\_ [137 S.Ct. 988, 1000]; *E.F. v. Newport Mesa Unified School Dist.* (9th Cir. 2018) 726 Fed.Appx. 535.)

In a District-filed case, concerning the provision of a FAPE, typically the local education agency must demonstrate every element of the program is appropriate for the IEP to be deemed FAPE. FAPE is a unitary whole concept. It is the "individualized education program," not some portion of it, which must be reasonably calculated to confer benefit. (*Rowley, supra*, 458 U.S. 176.) Educational benefit includes the student's mental health needs, social and emotional needs that affect academic progress, school behavior, and socialization. (*County of San Diego v. California Special Education Hearing Office* (9th Cir. 1996) 93 F.3d 1458, 1467.)

In this instance, the parties agreed that the only area in dispute was transportation. An agreement alone as to the disputed components of an IEP is not sufficient for a school district to affirmatively prove an entire IEP constitutes a FAPE. At the prehearing conference on October 14, 2019, parties stipulated on the record that the May 2, 2019, IEP constitutes an offer of FAPE except for transportation. Prior to commencing this due process hearing, Parties submitted a signed written stipulation that in relevant part stated: "The IEP dated May 2, 2019 for [Student] developed by Aspire is appropriate under state and federal law with the exception of the proposal to remove special education transportation services." As a result of this stipulation, for the purposes of this decision, the only question at issue is whether Student does not require transportation to access his education such that the May 2, 2019, IEP, which does not offer transportation, constitutes an offer of FAPE.

## STUDENT'S TRANSPORTATION NEEDS

Student entered Aspire during the 2018-2019 school year. Student's previous school district, Oakland Unified School District, had provided Student with transportation as a related service pursuant to his IEP. Student was placed at a school that was not his school of residence. As a result, in his former placement, Student was

transported to his school of residence by Mother and was subsequently transported to the school he actually attended by Oakland. Student lives approximately two miles from Aspire. Aspire is a parent-choice charter school. Aspire does not provide transportation to non-disabled students.

Upon Student's enrollment at Aspire in August 2018, Aspire completed an initial 30-day health and development inventory. Mother identified Student's difficulties as following directions, speech, and respecting boundaries. She also noted Student had no current health or medical conditions.

On August 23, 2018, Aspire convened a 30-day transition IEP team meeting so the team could review Student's IEP. During this IEP team meeting, Aspire team members discovered Student's IEP from Oakland provided him transportation. Aspire had not been providing Student with transportation. Aspire arranged to reimburse Mother for transporting Student to school during the first 30 days. Aspire also arranged a transportation service to pick up Student at his home and deliver him to campus.

At the August 23, 2019 IEP team meeting, Aspire team members recommended conducting a transportation assessment to determine if Student required transportation to receive a FAPE. Aspire presented Mother with a transportation assessment plan dated September 7, 2018. Mother consented to the transportation plan on September 10, 2018. Aspire continued to provide Student transportation services in the form of a car service pending the outcome of the assessment and IEP process.

Yumi Lifer, a program specialist with Aspire, who testified at the hearing, conducted Student's transportation assessment. Ms. Lifer identified three key areas of consideration in conducting Student's transportation assessment: health, mobility, and gross motor skills. Ms. Lifer reviewed Student's health records and previous IEP's that

documented his needs. Student's IEP dated June 7, 2018 identified Student's gross motor skills as age appropriate. She identified Student's communication, specifically his expressive skills, as less developed.

Ms. Lifer interviewed Mother as part of the assessment. Mother raised safety concerns about dropping Student off and his ability to navigate into the school building. She also raised issues of convenience and school start time. Ms. Lifer conducted a lunch time observation of Student on September 18, 2018. She was able to observe Student engaged in appropriate play with peers. She indicated she saw no problems with mobility, self-advocacy, or independent play with peers.

Anne Everett, Student's educational specialist during the 2018-2019 school year, who also testified at this hearing, conducted an observation of Student during the morning drop off on September 21, 2018. Student's vehicle was met by a one-to-one independence facilitator who opened the car door for Student, and prompted Student to exit the vehicle while holding the door open. Student was observed being able to step out of the vehicle unassisted. Student held the independence facilitator's hand while they entered the school property. The facilitator directed Student to his classroom's assembly area. Ms. Everett's observation noted Student responded to the verbal and physical prompts from his facilitator appropriately.

As a result, Ms. Lifer concluded in her transportation assessment that there was no indication Student's mobility, behavior, communication skills, physical need, or ability to follow directions necessitated school-provided transportation. She also concluded Student could be transported to school by Parent because Student did not demonstrate a need for any other kind of transportation.

Aspire convened an IEP team meeting on October 24, 2018 to discuss the results of Ms. Lifer's assessment which Ms. Lifer described at this meeting. Mother objected to the removal of transportation services from Student's IEP. Mother again raised her concerns regarding Student's safety at drop off and the need to find parking to ensure Student safely arrived at the school building. The IEP team offered Student a one-to-one aide, known as an independence facilitator, for 300 minutes per day of individual and group behavior services, five days per week, for 1500 minutes weekly to assist Student in transitioning between activities, which also included meeting Student at the curb for morning drop-off. At the conclusion of the meeting, Mother consented to the IEP with the exception of removing transportation.

Aspire held another IEP team meeting on December 5, 2018 to continue to discuss Student's transportation needs. Jason Stack, principal at Berkeley Maynard Academy, and Elizabeth Blevins, the regional director of special education, were both present at the IEP meeting and testified at the hearing. Mother asserted that Student was offered transportation in his IEP from Oakland Unified and that service should remain. Aspire team members believed that because the school does not transport typically-developing students and Student's transportation assessment concluded he did not require an Aspire-provided ride to school to access his education, transportation should not be included in Student's IEP. The IEP team made no changes to its October 24, 2018 IEP offer, which included the 1500 weekly minutes of an independence facilitator to support Student in transitions, but did not include Aspire-provided vehicle service.

The IEP team reconvened on May 2, 2019 for Student's annual IEP team meeting. Aspire team members asserted that Student did not require an Aspire-provided ride to school. Aspire argued Student required assistance in navigating the school facility, an



accommodation that the independence facilitator would support. This aide, Student's independence facilitator, would meet Student at the parking lot and accompany him to his classroom staging area. Aspire again offered 300 minutes daily, five days a week, for 1,500 minutes weekly of behavior support that included assistance with transitioning between activities. Mother consented to the IEP with the exception of transportation services on June 13, 2019.

Transportation is a nonacademic service that may be required by an IEP. (34 C.F.R. § 300.107(b).) A disabled child's special education program may require "related services" which include transportation and such developmental, corrective and other supportive services that are required to assist the child to benefit from special education. (20 U.S.C. § 1401(26)(A); 34 C.F.R. § 300.34(a)(2006).) In California, "related services" are called "designated instruction and services." (Ed. Code, § 56363, subd. (a).)

As a related service, "transportation" means travel to and from school and between schools, travel in and around school buildings, and specialized equipment, if required to provide transportation for a child with a disability such as special or adapted buses, lifts, and ramps. (34 C.F.R. § 300.34(c)(16)(i)-(iii)(2006).) Transportation as a related service was not explicitly defined in the IDEA. Instead, decisions regarding the child's needs were left to the discretion of the IEP team. As a result, if the IEP team "determines that supports or modifications are needed in order for the child to be transported so that the child can receive FAPE, the child must receive the necessary transportation and supports at no cost to the parents." (Analysis of Comments and Changes to 2006 IDEA Part B Regulations, 71 Fed.Reg. 46576 (August 14, 2006).)

The IDEA gives significant discretion to the IEP team to determine whether the child requires transportation to receive a FAPE. Here, Aspire conducted a transportation assessment. Aspire defined the key considerations and factors used to evaluate Student's need for transportation. Aspire's assessment determined Student's needs did not require transportation to and from school.

However, Mother did raise a concern and Aspire's own assessment noted that Student required assistance navigating the busy parking lot into the school facility. To address this identified difficulty, Aspire offered Student an independence facilitator, for 1500 minutes weekly, who would meet him at the curb of the school and escort him into the building.

Further, as a result of the stipulation parties entered into prior to the due process hearing, this decision makes no determination that Aspire's assessment was properly conducted or, its offer was clear or appropriate. The only matter at issue here is whether Student demonstrated a need for continued transportation services.

The evidence at hearing established that Student does not have a unique need for curb to curb transportation services. He does have a need for an individual to meet him at the curb and facilitate his entry to school and the first daily activity. Student's May 2, 2019, IEP offers that exact service. To that end, Aspire has met its burden, Student does not require transportation services.

## CONCLUSIONS AND 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. Aspire prevailed on the issue heard and decided.

## ORDER

1. Student's May 2, 2019, IEP, that did not offer transportation services, constitutes an offer of FAPE.
2. Aspire may cease providing Student curb to curb transportation.

## RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56506, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

/s/

Tiffany Gilmartin

Administrative Law Judge

Office of Administrative Hearings