

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENTS ON BEHALF OF STUDENT,

v.

BONSALL UNIFIED SCHOOL DISTRICT.

CASE NO. 2023070164

DECISION

JANUARY 12, 2024

On July 6, 2023, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parents on behalf of Student, naming Bonsall Unified School District as respondent. Administrative Law Judge Clifford H. Woosley heard this matter by videoconference on November 7, 2023.

Attorney Matthew H. Storey represented Student. Mother attended the hearing on behalf of Student. Attorney Tiffany M. Santos represented Bonsall Unified School District. Dawn D. Dully, Executive Director of Student Services, attended the hearing on behalf of Bonsall Unified School District.

At the parties' request, the matter was continued to December 4, 2023 for written closing briefs. The record was closed, and the matter was submitted on December 4, 2023.

In this Decision, a free appropriate public education is called a FAPE, and an individualized education program is called an IEP. Bonsall Unified School District is called Bonsall Unified.

ISSUE

Did Bonsall Unified deny Student a FAPE by failing to offer Student transportation between home and school for the 2023-2024 school year?

The issue, as stated in the prehearing conference order, was modified at the commencement of the hearing to conform to the parties' evidence and argument at hearing and in their closing briefs.

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, called IDEA, 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 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 (2006); Ed. Code, §§ 56501, 56502, and 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, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see also 20 U.S.C. § 1415(i)(2)(C)(iii).) In this matter, Student had the burden of proof. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was four years and one- month old at the time of hearing and, at all relevant times, resided within Bonsall Unified's geographic boundaries.

ISSUE: DID BONSALL UNIFIED DENY STUDENT A FAPE BY FAILING TO OFFER STUDENT TRANSPORTATION BETWEEN HOME AND SCHOOL FOR THE 2023-2024 SCHOOL YEAR?

Student contended that Bonsall Unified denied Student a FAPE by failing to offer transportation after it unilaterally moved Student's preschool special education class from Bonsall Elementary School to Bonsall West Elementary School, beginning in the 2023-2024 school year. Bonsall Unified also unilaterally decided that Student and his

twin brother would attend separate preschool special education classes, with Student attending in the afternoon and Student's twin brother in the morning. Mother could not transport Student, and his twin brother, to Bonsall West because Mother needed to be present when the Bonsall Unified bus stopped by Student's house to retrieve or drop off Student's older brother.

Student had a six-year-old brother who was significantly disabled. Bonsall Unified provided transportation, pursuant to the older brother's IEP, between home and his program at Bonsall Elementary. The older brother's disability required that Mother be home and accompany Student's older brother to and from the bus each morning and afternoon.

Bonsall Unified asserted Student did not require transportation to benefit from special education. Bonsall Unified contended transportation was a disability-related service, and Student did not need transportation because of his unique educationally-related disability needs. Instead, Bonsall Unified claimed Student's need for transportation was due to Student's family circumstances and that the increased distance to Bonsall West did not warrant transportation.

A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17(a); Cal. Code Regs., tit. 5, § 3001, subd. (p).) Parents and school personnel develop an IEP for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); see also Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a), and 56363, subd. (a); 34 C.F.R. §§ 300.320 (2007), 300.321 (2007), and 300.501 (2006).)

“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 (2017); Ed. Code, § 56031.) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA’s procedures with the participation of parents and school personnel that describes the child’s needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to

- advance in attaining the goals,
- make progress in the general education curriculum, and
- participate in education with disabled and non-disabled peers.

(20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

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, 201-204; *Endrew F. v. Douglas County School District. RE-1* (2017) 580 U.S. 386, 402 [137 S.Ct. 988, 197 L.Ed.2d 335.]

The IDEA defines special education transportation as a related service. (34 C.F.R. § 300.34(c)(16)(2006).) In California, related services are called “designated instruction and services.” (Ed. Code, § 56363, sub. (a).) Designated instruction and services include transportation and developmental, corrective and other supportive services as may be required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26)(A);

Ed. Code, § 56363, subd. (a).) Education Code section 56040 provides that every individual with exceptional needs who is eligible to receive special education instruction and related services shall receive that instruction and those services at no cost to their parents or, as appropriate, to him or her. However, the IDEA requires transportation of a disabled child only to address their educational needs, not to accommodate a parent's convenience or preference. (*Fick v. Sioux Falls School District 49-5* (8th Cir. 2003) 337 F.3d 968, 970.)

BONSALL UNIFIED CHANGED STUDENT'S CLASS LOCATION

Bonsall Unified is in San Diego County and is part of the North Coastal Consortium for Special Education. Bonsall Unified is approximately 20 miles wide and has five school campuses and a virtual academy. Bonsall High School, Sullivan Middle School, and Bonsall Elementary School are all centrally located within Bonsall Unified's boundaries, in Bonsall, California. Bonsall West Elementary is on Bonsall Unified's far west border in Oceanside, California. Vivian Banks Charter is another elementary school, close to the east border, in Pala, California.

Bonsall Unified assessed Student and convened his initial IEP on December 2, 2022. Student was three years and one-month old. The IEP team found Student eligible for special education under the primary disability of autism and secondary disability of speech or language impairment. (34 C.F.R. § 300.8(c)(1) and (11) (2017).) The team drafted seven goals, agreed upon various accommodations, and offered 1,000 minutes a year of speech and language services, and 172 minutes a day of specialized academic instruction. The IEP team placed Student in a preschool special education class, located at Bonsall Elementary. Student resided with his family in Bonsall, California, one mile from Bonsall Elementary.

Bonsall Unified similarly assessed Student's twin brother, convened an initial IEP team meeting, found Student's twin brother eligible for special education, and placed the twin brother in the same preschool special education class as Student. Following their IEP team meetings, Student and his twin brother attended the program at Bonsall Elementary for the remainder of the 2022-2023 school year.

In January 2023, Bonsall Unified staff verbally told Mother that Student's preschool special education class was going to be relocated to Bonsall West. Mother testified at hearing. She was composed, answered with a calm voice, readily acknowledged if she did not know an answer, was consistent, and did not exhibit ill will toward Bonsall Unified staff or administration. Mother's testimony was believable and persuasive. (Evid. Code, § 780.)

In a March 13, 2023 email, Bonsall Unified's Executive Director of Student Services, Dawn D. Dully, formally informed Parents that Student's IEP would be implemented at Bonsall West beginning in the 2023-2024 school year. Dully added that a change in the location of Student's program did not amount to a change in Student's educational placement. Dully invited Parents to seek additional information in an informal meeting or a formal IEP team meeting. Dully said the letter served as Bonsall Unified's prior written notice of proposed and/or refused actions pursuant to title 34 Code of Federal Regulations section 300.503.

Dully testified at hearing. As Executive Director of Student Services, Dully directed Bonsall Unified's department of special education. She had 34 years of special education experience and possessed clear credentials for administrative services, pupil personnel services, and education specialist instruction, level two.

In the 2022-2023 school year, Bonsall Unified had one preschool special education program, which was Student's class, located at Bonsall Elementary. Dully wanted Student's preschool special education class to be in a more comprehensive educational setting, with greater exposure to typically developing peers. Bonsall Unified decided to move the class to Bonsall West, beginning with the 2023-2024 school year. The special education preschool students would be assigned to either a morning class or an afternoon class.

Between March and May 2023, Bonsall Unified staff told Mother that Student and his twin brother might be in separate classrooms with different schedules, for the 2023-2024 school year at Bonsall West. Mother asked staff about transportation and was told that Bonsall Unified was unsure.

On April 27, 2023, Mother, educational specialist Celeste Hostler, and program specialist Laurie Leigh, had a telephonic IEP team meeting for the sole purpose of adding extended school year placement and services for Student. All other team members were excused. The team recommended extended school year as a related service to prevent Student's regression and to support recoupment of skills. Extended school year was from June 15 through July 14, 2023. Mother agreed. The phone call lasted a few minutes. The change of school location and possible change of Student's schedule were not discussed.

In a May 4, 2023 email, Leigh invited the preschool parents to a May 31, 2023 open house at the new preschool location of Bonsall West. Leigh had been a program specialist with Bonsall Unified since August 2022. She testified at the hearing. Her duties included creating preschool protocols, making regional center referrals, arranging preschool transitions to elementary school, and attending nonpublic school IEP team

meetings. Leigh had worked with Bonsall Unified previously, as a special education consultant, for about six months in the 2019-2020 school year. Leigh had more than 30 years of special education experience. She held California life standard elementary, life standard secondary, and pupil personnel services credentials.

In May 2023, Mother and program specialist Leigh had conversations about Student and his twin brother being assigned to different special education preschool classes at Bonsall West for the 2023-2024 school year. Parents were troubled by Bonsall Unified's unilateral decision to place the three-year-old twins into different classes. On May 23, 2023, Mother sent an email to Leigh, referring to their previous conversation, and outlining Parents' concerns regarding Bonsall Unified's intent on separating Student and his twin brother.

Parents believed Student and his twin brother needed to maintain the stability and familiarity of learning and growing together in their school environment, as well as their home life. Parents believed that separating Student and his twin brother at Bonsall West, for the first time in their lives, would cause undue stress and regression in their development.

Leigh responded on May 24, 2023, and denied the request to keep the twin boys in the same classroom for the 2023-2024 school year, stating "[a]s professionals, we believe they will have much better access to the [preschool] curriculum, which includes social interactions with other students, if they are in separate classes." Leigh did not explain who "we" included – herself, Student's teacher, support staff, or director Dully.

On May 31, 2023, Mother wrote to Dully, requesting that Student and his twin brother remain in the same classroom for the 2023-2024 school year. Dully denied the

request on June 5, 2023. Dully stated the District does not guarantee class placement based on parent request. Dully did not identify the “team” who made the decision to separate the twins.

Mother continued to ask staff about transportation for Student and his twin brother from home to Bonsall West. On May 16, 2023, Mother texted Leigh, asking if the “twins qualify for transportation for the next school year.” Leigh had previously used texting as a means of communicating with Mother regarding various issues involving Student and his twin brother. Leigh did not respond to Mother’s request for transportation.

BONSALL UNIFIED’S REFUSAL TO OFFER STUDENT TRANSPORTATION DENIED HIM A FAPE

Student successfully demonstrated that Bonsall Unified denied him a FAPE by not offering transportation between home and Bonsall West, as a related service in Student’s IEP, for the 2023-2024 school year. Bonsall Unified failed to address Mother’s ability to transport Student to the new school site because of the untenable scheduling conflict created by Bonsall Unified’s unilateral decisions to change Student’s program location and schedule.

Father left for work early in the morning and did not return until after the children were home from school. Mother was responsible for assuring that all three children were physically in school. Student and his twin brother attended their program at Bonsall Elementary, after their initial IEP team meetings, for the remainder of the

2022-2023 school year. Mother drove Student and his twin brother each morning and afternoon and was still able to be home to accompany Student's older brother to meet the school bus, because Bonsall Elementary was only one mile from home.

On June 5, 2023, Dully informed Parents that Student's schedule at Bonsall West would be from 11:45 a.m. to 2:45 p.m.. In August 2023, this was changed to 11:30 a.m. to 2:30 p.m.. Student's twin brother's schedule was from 8:00 a.m. to 11:00 a.m.. Student's older brother's bus picked up between 7:45 a.m. and 8:00 a.m., and dropped off between 2:35 p.m. and 2:45 p.m.. This schedule required Mother to be in two places at the same time. If Mother transported Student and his twin brother to and from Bonsall West, she could not be home to accompany the older brother when the bus picked him up and dropped him off. Consequently, Student did not benefit from this IEP special education program since August 2023, because Mother could not transport Student to Bonsall West.

Setting aside the obvious conflict with older brother's bus schedule, the change in location and schedule also meant Student would have been in the car for an extraordinarily long time and distance to attend his special education program. Bonsall West was eight miles from Student's home. Bonsall Unified believed the drive would take about 20 to 25 minutes. Mother said the drive would be 30 minutes or more, each way, which included drop off and pick up time. The changed schedule would require Mother to drive Student's twin brother to school in the morning. Student would have to accompany them because Student was three years old and could not be left alone at home. Midday, Mother would drive Student to school and return with the twin brother. In the afternoon, Mother would drive to pick up Student from school, with his twin brother in the car. Therefore, Student would be in the car, to and from school,

four times, four days a week, for 32 miles and up to two hours each day. Before the change in location and schedule, Student was in the car for a total of two miles per school day and a relative few minutes. Also, Mother's transport of Student and twin brother would increase from four miles to 48 miles, up to three hours a day. Bonsall Unified failed to consider the effect of such a significantly different commute between home and school upon Student's special education program.

Bonsall Unified contended that each child's special education needs had to be evaluated individually. Bonsall Unified claimed the IEP team at its December 2022 meeting determined that Student's unique needs did not require transportation and Bonsall Unified was therefore not obligated to provide it. However, Bonsall Unified did not consider Student's transportation needs at the December 2022 IEP team meeting.

The December 2022 IEP identified Student's residence school as Bonsall Elementary. Program specialist Leigh took the IEP team meeting notes, which stated that Student attended his home school, so did not require transportation. The IEP notes did not record any transportation discussion. And neither Mother nor Leigh had a recollection of any IEP team discussion regarding transportation.

Bonsall Unified also did not consider transportation for Student upon changing his special education program's location and schedule. Student services director Dully was aware that many school districts, as a matter of policy, add transportation as a service to a student's IEP if the child's special education program could not be provided at the child's school of residence, or home school. Dully testified that Bonsall Unified did not have home schools. Bonsall Unified parents could choose to send their child to

any of Bonsall Unified's three elementary schools. However, as of the 2023-2024 school year, Student's preschool special education program was offered only at Bonsall West. Parents did not have a choice of schools.

Dully opined that Bonsall Unified did not need to provide transportation for Student merely because Bonsall Unified changed the program's location. However, Bonsall Unified's policy that it does not have home schools does not undercut the IDEA's preferred policy that the IEP team place student in a special education program in the school nearest the Student's home:

"In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that ... The child's placement is as close as possible to the child's home..." (34 C.F.R. § 300.116(b)(3) (2006).)

Bonsall Elementary was Student's home school, as identified in his December 2022 initial IEP. Bonsall West was not. Though the change in location of a special education program may not be a change of placement, the change in location to a school that was not Student's home school required Bonsall Unified to consider transportation as a related service. Bonsall Unified did not.

Dully stated that every parent had a legal duty to get their children to school, and that Bonsall Unified was not required to provide transportation for the convenience of parents. However, Bonsall Unified did not present any evidence that Student's transportation request was for Parents' convenience. Instead, Bonsall Unified's change in location and class schedule impeded Student from attending his special education program in the 2023-2024 school year.

Mother heard nothing from Bonsall Unified regarding transportation for Student before the start of school on August 16, 2023. On August 17, 2023, Program Specialist Leigh emailed Parents, saying she had heard from the Bonsall West office staff that Student and his twin brother would not be attending preschool. Leigh assumed Parents did not take Student and his twin brother to school because they were in separate classes. Mother responded that the two boys were not in school because she could not transport them between home and Bonsall West and be home to accompany Student's older brother to and from his bus. Mother explained this to the Bonsall West staff. In response, Leigh merely thanked Mother for keeping her in the loop. Leigh did nothing regarding the transportation scheduling conflict.

Bonsall Unified argued that Student's disability related needs did not require it to provide transportation for Student. Bonsall Unified cited two 2003 decisions by the California Special Education Hearing Office, called SEHO, OAH's predecessor. In *Student v. Placentia-Yorba Linda Unified School District* (SEHO 2003) 103 LRP 8378, the district did not provide transportation to students living within the attendance area of the school in which they were enrolled. There, the child's father was seriously ill and unable to take the child to school in the morning and the mother had a scheduling conflict in the afternoon. SEHO held the unavailability of the child's parents was not the result of Student's disability and Placentia-Yorba Linda was not obligated to provide transportation. However, here, Bonsall Unified moved Student's program beyond the area of his school of residence, resulting in Student being in a car an unreasonably long time each day. And, notably, Mother could not transport Student because of a conflict with Student's older brother's special education needs, a conflict created by Bonsall Unified. Finally, similar to prior OAH decisions, SEHO decisions are not binding on ALJ's. (See 5 Cal. Code Regs., § 3085.)

Bonsall Unified contended SEHO again applied the “unique needs” test in *Student v. Pajaro Valley Unified School District* (SEHO 2003) 104 LRP 4107, holding that a student’s age was not a disability-related need. In *Pajaro Valley*, the six-year-old student sought transportation from home, because he could be impulsive and run into traffic when walking from home to the school bus stop. The hearing officer found that all six-year-old students could be impulsive and should not walk unescorted to the school bus stop. Therefore, the student had the same need for supervision as any other six-year-old and did not have a unique need for door-to-door transportation. Similarly, Bonsall Unified cited *San Bruno Park Unified School District* (OAH 2016) 116 LRP 17626, which found a student’s claimed need for transport was based on the student’s young age, and not his disability. Here, Student’s request for transportation is based on his unique needs, created by Bonsall Unified’s unilateral decision, not merely his age.

San Bruno is also distinguishable because the child’s placement offer was at his school of residence and the mother did not argue that she was not capable of transporting the child. Here, Mother was unable to transport Student because Student’s older brother required Mother to accompany him to the bus, which was provided in the older brother’s IEP, on a schedule set by Bonsall Unified.

Bonsall Unified asserted that the transportation situation was due to Student’s family circumstances. It argued that school districts were not required to consider the disabilities of other students, even if in Student’s family. But Bonsall Unified cited no authority for the proposition that an IEP team cannot consider a student’s circumstances in evaluating the need for related services. Also, Bonsall Unified’s argument was illusory because it never considered Student’s transportation needs, in his initial IEP or after the change in location and class schedule, before the commencement of the 2023-2024 school year.

For example, Dully and Leigh mistakenly believed Student's daily round trip drive between home and Bonsall West would only be 16 miles and therefore, did not warrant consideration of transportation for Student. Yet, Bonsall Unified's own board policy stated that the travel distance was to be considered by the IEP team.

Bonsall Unified's Board Policy 3541.2, regarding transportation for students with disabilities, stated that the specific needs of the student shall be the primary consideration when an IEP team was determining a student's transportation needs. The Board Policy identified "travel distances" as a consideration for the IEP team in determining a student's transportation needs.

Bonsall Unified claimed that a child's related services were to be based upon the Student's educational needs related to his disability. The IDEA does not state that transportation must be directly related to Student's disability to be a related service. Although the Ninth Circuit has not specified criteria for determining when a child needs transportation as a related service, other circuits have provided guidance. For example, the Eleventh Circuit concluded a child's need for transportation did not have to be directly linked to the child's disability as a precondition to being provided as a related service. (*Donald B. by and through Christine B. v. Board of School Commissioners of Mobile County, Alabama* (11th Cir. 1997) 117 F.3d 1371, 1375.) Citing the Supreme Court's analysis in *Irving Independent School District v. Tatro* (1984) 468 U.S. 883, 889, the Eleventh Circuit concluded the IDEA defined "related service" as an aid that may be required to assist a disabled child to benefit from special education.

Education Code section 41850, subdivision (d), subsections (1) and (2), define special education transportation as the transportation of severely disabled day class pupils and orthopedically impaired pupils. (See also, 34 C.F.R. § 300.34(c)(16)(2006).)

However, subsection (5), of subdivision (b), Education Code section 41850, states “home-to-school transportation services” is transportation for pupils with exceptional needs as specified in their IEP, who do not receive special education transportation as defined in subdivision (d). (See also, 20 U.S.C. § 1401(26)(A).)

The California Department of Education, Special Education Division, listed examples that IEP teams may consider under subsection (5) of subdivision (b), in determining whether a pupil requires home-to-school transportation services as a related service. This included determining whether “pupils who live beyond reasonable distance to their school and would not, without transportation, have access to appropriate special education instruction and related services at no cost.” (Special Education Transportation Guidelines, California Department of Education, Laws, Regulations & Policies (Last Reviewed, July 19, 2023).) Such consideration did not require a direct relationship between a child’s disability and transportation service. If a school district’s offer of a special education program was at a location and time which the student was unable to attend without transportation, then transportation was an appropriate related service. But, Bonsall Unified never convened an IEP team meeting to consider Student’s transportation needs, and Bonsall Unified did not otherwise offer transportation. Bonsall Unified never addressed Student’s transportation needs with Parents before the beginning of the 2023-2024 school year.

Student required transportation as a related service to access and benefit from his special education program. Bonsall Unified knew, or should have known, that its unilateral decisions in changing Student’s special education program location and schedule affected Student’s ability to benefit from his special education services and denied him access to his special education program. Bonsall Unified’s failure to offer

Student the related service of transportation between home and school, for the 2023-2024 school year, impeded Student's right to FAPE and caused deprivation of educational benefits.

Student met his burden of proof, by a preponderance of the evidence, that Bonsall Unified denied him a FAPE by failing to offer transportation between home and school for the 2023-2024 school year.

CONCLUSIONS AND PREVAILING PARTY

As required by 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.

Bonsall Unified denied Student a FAPE by failing to offer Student transportation between home and school for the 2023-2024 school year. Student prevailed on the sole issue.

REMEDIES

Student prevailed on the sole issue presented at hearing. As a result of the denial of FAPE, Parent could not transport Student to his special education preschool program, since the start of the 2023-2024 school year on August 16, 2023.

Under federal and state law, courts have broad equitable powers to remedy the failure of a school district to provide FAPE to a disabled child. (20 U.S.C. §1415(i); see *School Committee of Town of Burlington, Massachusetts v. Department of Education of Massachusetts* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996, 85 L.Ed.2d 385].) This broad

equitable authority extends to an ALJ who hears and decides a special education administrative due process matter. (*Forest Grove School District v. T.A.* (2009) 557 U.S. 230, 243-244, n. 11 [129 S.Ct. 2484, 174 L.Ed.2d 168].) When school districts fail to provide a FAPE to a student with a disability, the student is entitled to relief that is “appropriate” in light of the purposes of the IDEA. (*Burlington, supra*, at pp. 369-370.) Remedies under the IDEA are based on equitable considerations and the evidence established at hearing. (*Id.* at p. 374.)

Student is entitled to transportation, to and from home and school, to benefit from his special education program and receive a FAPE. Therefore, Bonsall Unified must amend Student’s IEP to include transportation between home and Bonsall West, as a related service. Bonsall Unified must start providing transportation within two weeks of the date of this Decision, unless otherwise agreed between Parents and Bonsall Unified, in writing.

Student also requests compensatory services because he did not receive the benefit of his special education program since August 16, 2023. A school district may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Student W. v. Puyallup School District* (9th Cir. 1994) 31 F. 3d 1489, 1496.) These are equitable remedies that courts and hearing officers may employ to craft appropriate relief for a party.

Student’s special education program included 172 minutes of specialized academic instruction per day, Monday through Thursday, at Bonsall West. As of the date of hearing, Student missed 56 school days. Student seeks an hour-for-hour compensatory education award, which would be 160.5 hours of specialized academic instruction.

An award of compensatory education need not provide a day-for-day or hour-for-hour compensation. (*Puyallup*, at pp. 1496-1497.) Here, Student is entitled to compensatory education, but Student did not submit any evidence as to how he would benefit from an hour-for-hour computation of lost specialized academic instruction. Compensatory specialized education will be individual, as opposed to a group setting in a classroom. A compensatory award of an hour a day is appropriate. Therefore, Bonsall Unified will provide 56 hours of compensatory specialized academic instruction, by Bonsall Unified, or a certified non-public agency, whichever Parents prefer.

ORDER

1. Bonsall Unified School District shall amend Student's IEP to include the related service of transportation, to and from home and Bonsall West, for the 2023-2024 regular school year and, if provided by Student's IEP, extended school year.
2. Bonsall Unified School District shall provide Student 56 hours of compensatory specialized academic instruction, by a certified non-public agency, or Bonsall Unified School District, whichever Parents prefer. The compensatory hours must be used by Student within one calendar year of this decision's date, after which unused hours will be deemed forfeited.

RIGHT TO APPEAL THIS DECISION

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

Clifford H. Woosley

Administrative Law Judge

Office of Administrative Hearings