

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT

v.

SAN DIEGO UNIFIED SCHOOL DISTRICT.

CASE NO. 2024100129

DECISION

MAY 2, 2025

On October 3, 2024, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parent on behalf of Student, naming San Diego Unified School District. On December 12, 2024, Student moved to amend the complaint. OAH granted permission to file an amended complaint on December 23, 2024, and the amended complaint was deemed filed on that date. OAH continued the hearing date at San Diego's request on February 3, 2025. Administrative Law Judge Chris Butchko heard this matter by videoconference on March 4, 5, 6, 18, and 19, 2025.

Meagan Nunez represented Student, assisted on March 4, 2025, by co-counsel Leonard McDaniel. Parent attended all hearing days on Student's behalf. Nicholas Felahi represented San Diego Unified School District. Amy Seaman, Due Process Administrator, attended all hearing days on San Diego's behalf.

At the parties' request, the matter was continued to April 8, 2025, for written closing briefs. The record was closed and the matter was submitted on that date.

ISSUE

Did San Diego deny Student a free appropriate public education, known as FAPE, from August 7, 2024, to the date of filing by failing to provide a shortened route for Student's transportation to school?

Student's amended complaint had a subpart that asserted San Diego had also denied Student FAPE by failing to provide a transportation aide. On March 4, 2025, Student withdrew that issue without prejudice.

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 FAPE 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, 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]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Student requested the hearing and therefore bears 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 nine years old and in fourth grade at the time of hearing. Student resided within San Diego's geographic boundaries at all relevant times. Student was eligible for special education under the primary category of autism. Student was placed in the Successful Transitions Achieved Through Responsive Support program, a special day class called STARS, at Wegeforth Elementary School during the time at issue.

ISSUE: DID SAN DIEGO DENY STUDENT A FAPE BY FAILING TO OFFER A SHORTENED ROUTE FOR STUDENT'S TRANSPORTATION TO SCHOOL?

Student contends San Diego had notice that the bus transportation plan it offered involved keeping Student on a bus, in restraints, for an excessively long time. Student argues that transportation for any period longer than 30 minutes presented a risk of impacting Student's physical and emotional health and academic readiness.

Because the morning route selected for Student's transportation took between one hour, 40 minutes and two hours, Student asserts San Diego denied FAPE by failing to offer Student a shorter bus route.

San Diego counters that the length of time Student was transported was not excessive. Other students had equal or longer transportation times. Further, San Diego argues it did not observe the dysregulation Parent said Student would suffer on long bus rides, as Student rode the bus home and to field trips without incident. San Diego contends that its staff were not aware San Diego could change Student's bus route, and notes that changing Student's bus route would require convening meetings to change the educational programming of all students affected by the change. San Diego asserts it offered Parent alternatives to the long bus ride, which Parent declined. Accordingly, San Diego concludes it did not deny Student a 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 individualized education program, referred to as an IEP, for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a), and 56363, subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501.)

In general, a child eligible for special education must be provided with 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 Dist. v. Rowley* (1982) 458 U.S. 176, 201-204; *Endrew F.*

v. Douglas County School Dist. RE-1 (2017) 580 U.S.386, 402-403 [137 S.Ct. 988, 1000].)

Related services include transportation when required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a).)

A child's unique needs are to be broadly construed to include the child's academic, social, health, emotional, communicative, physical, and vocational needs. (*Seattle School Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500, citing H.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2106.)

STUDENT'S TRANSFER TO THE STARS PROGRAM

Student attended Ericson Elementary School, Student's home school, in a general education setting in the 2023-2024 school year. Although Student was capable of grade-level work, Student was disruptive to the class. Student was generally withdrawn, but had episodes of highly distracting behavior. A functional behavior assessment conducted by San Diego during the school year found Student "will often become highly dysregulated, resulting in crying or fighting off characters from [Student's] imagination." Student would also be non-compliant and attempt to elope or run away from the instructional area. The assessment noted that Student's elopement behaviors became much less frequent when a one-to-one aide was assigned for all hours of Student's academic day. Student was noncompliant to instruction 56 percent of the time. The intensity of Student's behaviors was characterized as ranging from "moderate (disruptive)" to "extreme (significant threat to health or safety)." Student's behaviors were mostly triggered by demands of non-preferred tasks but could occur spontaneously.

Because of Student's behavioral issues, Ericson Elementary discussed changing Student's placement at an early three-year-review IEP team meeting on December 12, 2023. The team found that Student's attention and task engagement were "severely limited by internal distractors." The IEP team proposed placing Student in the STARS program at Wegeforth Elementary School. Wegeforth was approximately 12 miles from Student's home, and Parent was told the bus ride would take approximately one hour. Parent was reluctant to agree to the placement, and the change was put on hold pending a future IEP team meeting.

The IEP team met again on April 23, 2024, and discussed the change of placement. Parent wanted to give a medication change and new applied behavior analysis therapy a chance to take effect, and did not agree to the placement change at the IEP team meeting. Parent electronically signed the IEP to agree to the change of placement on June 4, 2024.

STUDENT'S 2024-2025 TRANSPORTATION PLAN

On August 7, 2024, Parent received a bus schedule for the first week of the 2024-2025 school year. Student was to be picked up from home at 6:00 a.m. The school day at Wegeforth began at 7:55 a.m. and the regular dismissal time was at 2:20 p.m. Parent was alarmed by the early pick-up time. Parent emailed the school principal to explain that the long commute would be detrimental to Student's well-being. Parent noted that Student had "safety and emotional limitations" on long commutes and "sleep issues." Parent requested an emergency IEP team meeting.

Parent followed up on August 9, 2024, with an email to San Diego's Transportation Operations Supervisor, asking that Student's bus ride be no longer than 30 minutes due to Student's emotional dysregulation and asking if Student's behavior aide could ride along to keep Student safe. Parent included a note from Student's Neurologist, written before Parent received the bus schedule, which recommended a safety restraint for Student when being transported to keep Student safe and prevent elopement attempts. San Diego agreed to employ a safety harness as a restraint, and there is no issue about its availability or use. The only dispute concerns the length of the ride during which Student would be restrained.

The Transportation Operations Supervisor responded later that day that changes to Student's transportation plan must be recommended by an IEP team. Once the IEP team agreed that changes were necessary, the case manager had to submit the change to San Diego's special education office for approval. Once approved, the transportation office would schedule new service. Wegeforth's Principal also received this email. Parent then emailed Student's teacher to schedule an IEP team meeting.

Wegeforth's Principal emailed Parent 15 minutes later, saying an IEP team meeting would be scheduled "right away" and asking if Parent would transport Student to school in the interim. Parent immediately replied, stating that Parent had two other children to drop off at school and one to take to therapy, and the earliest Parent could get Student to school was 11:00 a.m. Parent asked again if Student's behavior aide could ride along to keep Student safe. Wegeforth's Principal responded that "third parties" could not ride on the bus.

Wegeforth's Principal recommended inviting a transportation representative to another IEP team meeting and holding it within the next 30 days. In the meantime, Wegeforth's Principal said if Parent could "transport [Student] for the limited day we would welcome [Student] with open arms." Parent sent a last email on August 9, 2024, asking if there were any other options or if a transfer back to Ericson Elementary was necessary.

AUGUST 12, 2024 IEP AMENDMENT TEAM MEETING

The IEP team met again to amend the December 12, 2023 IEP on August 12, 2024. The purpose of the meeting was to address Parent's concerns about the length of time Student would be on the bus in the morning. There was no representative of the transportation department despite Wegeforth's Principal's stated intention in the August 9, 2024 email to invite a transportation department representative. Parent was told there was a possibility that the route would change, but the IEP team did not offer to request a change. Parent was again offered the option to transport Student in exchange for mileage reimbursement. Parent asked for a transfer back to Ericson Elementary, Student's home school, but the request was denied. The IEP team meeting notes report San Diego would "contact transportation regarding shortening bus route and will reach out when contact has been made." The notes report Parent was assured bus routes can change, and the schedule Parent had was only for the first week of school. Although Student's pick-up time did change from week to week, the length of the bus ride never went below one hour, 40 minutes.

Parent agreed to transport Student to school when possible and said the family would otherwise “hold off” on attending school until a better option was found. Student’s attendance was spotty, sometimes missing several days in a row. Parent found a private transportation company, called Hop Skip Drive, that would transport Student in the morning for 50 dollars per day. Parent passed the information about Hop Skip Drive to San Diego, but it did not pursue the option.

STUDENT’S SCHOOL DAY AT WEGEFORTH ELEMENTARY

Student never rode the bus to Wegeforth. Parent transported Student in the morning, arriving between 9:30 and 11:00 a.m. after readying two other children for school and taking a third child to therapy sessions. Student’s day was disrupted by the late arrivals. Student’s teacher felt Student lost out by arriving late because it disrupted the school day routine, and students with autism benefited from regular routines.

The STARS program began the day with physical activity, socialization, and breakfast for about an hour to help the class transition into an academic day. Student’s Teacher believed attending this transition time would have helped with Student’s behavior issues. Student’s Teacher did not report that Student would arrive dysregulated after being dropped off by Parent or that Student’s dysregulation was more common immediately after being dropped off.

Student’s behavior issues did not resolve at Wegeforth. Student had been provided a one-to-one aide since May 2023, and that support continued at Wegeforth. Despite that support, Student continued to have dysregulation events. Student would hit and kick adults, attempt to leave the classroom, overturn tables, and have emotional melt-downs due to dysregulation.

Student rode the bus home from school. There were fewer students on the bus in the afternoon because there were more buses available at that time of day. On average, Student's ride home from school took 30 minutes. Student did not suffer dysregulation on the bus ride home and there were no behavioral incidents.

APPLIED BEHAVIOR ANALYSIS THERAPY SUPERVISOR'S LETTER

In support of Parent's request to have the duration of Student's bus ride reduced, Parent provided San Diego with an August 26, 2024 letter from the provider supervising Student's applied behavior analysis therapy. The letter stated Student required a shorter bus ride or one-to-one support during the bus ride due to "communication deficits, sensory needs, impaired social/emotional regulation, and safety concerns." If Student were restrained in a safety harness for an extended period, Student would suffer "distress that would interfere with [Student's] ability to learn throughout the school day." The letter also noted Student's sleep issues, which would be exacerbated by requiring Student to be on the bus so long before the start of school.

In response, the IEP team met again on September 9, 2024, in an amendment meeting, whose topic was listed as "mileage reimbursement." The Team Action report for the meeting notes only mention that Parent was again offered the opportunity to transport Student to school and receive mileage reimbursement. The notes do not reflect that there was any discussion of the applied behavior analysis Therapy Supervisor's letter. The IEP team meeting participants were not listed in the meeting notes, and the unsigned attendance list for the IEP team meeting again did not include a transportation representative at the meeting, despite Wegeforth's Principal's stated intention in the August 9, 2024 email to involve the transportation department in resolving Student's transportation issue.

San Diego did not tell Parent the letter from the applied behavior analysis Therapy Supervisor was deficient in detail, nor that a letter supporting Parent's request to shorten the transportation time needed to cite medical concerns and be written by a medical doctor to be considered by the IEP team. This requirement was known by San Diego's employees.

SECOND LETTER FROM STUDENT'S NEUROLOGIST

Student initially filed this action on October 3, 2024. On December 12, 2024, Student lodged an amended version of the complaint with OAH. On December 18, 2024, Student's Neurologist provided a new letter regarding Student's transportation needs, providing a medical opinion that Student's autism and sleep pattern disturbance required that Student's "commute be modified to meet [Student's] physical, mental, and emotional needs." OAH deemed Student's amended complaint filed on December 23, 2024. The Transportation Operations Supervisor wrote an email on January 24, 2025, to Wegeforth's Principal and a Program Specialist reporting that the transportation department could reassign the stop order to provide a short travel time to Student.

San Diego held an IEP team meeting on January 31, 2025, in response to Parent's request and the Neurologist's letter. Rather than offer to request rearrangement of the stop order as outlined by the Transportation Operations Supervisor, the IEP team instead proposed having Student picked up at a stop roughly 20 minutes from Student's home, which would reduce Student's bus travel time by 20 minutes. Because that proposal did not change the time Student would have to wake in the morning and simply divided the total travel time between two means of transportation, Parent rejected the proposal.

SAN DIEGO'S POLICY

San Diego has a policy that bus rides to school should not take more than 85 minutes one way, in recognition of the fact that lengthy bus rides affect students' readiness to learn. This policy applies equally to students in general education and special education. Out of the 4,000 to 5,000 students in the San Diego Unified School District, 70 have bus rides more than 85 minutes, and one-third to one-half of those students are in special education.

STUDENT'S NEED FOR A SHORTER TRANSPORTATION TIME

Student argues that Parent informed the IEP team of an individualized need for a reduced transportation time and provided documentation of the need. San Diego argues that Student was not treated worse than some other students and the IEP team saw no need to reduce Student's travel time.

Nothing in the IDEA or the California Education Code speaks to the maximum acceptable length of time of a student's bus transportation. Like everything else in a student's IEP, the services must be appropriate to a student's needs and circumstance. (*McNair v. Oak Hills Local School District* (8th Cir. 1989) 872 F.2d 153, 156. [IDEA requires that "the related service is designed to meet the unique needs of the child caused by the handicap."].)

Cases have held that a mere desire for a shorter ride time because of fatigue from a long bus ride does not require a route change. (*Student v. Oceanside Unified School Dist.* (2012) OAH Case No. 2011120626 ["Student provided no evidence that he has any special, physical, or mental health needs that would impact his ability to tolerate a long commute. He provided no evidence that he has behavioral issues that arise because of the commute

....”]; orders and decisions rendered in special education due process hearing proceedings may be cited as persuasive but not binding authority in subsequent proceedings (Cal. Code Regs., tit. 5, § 3085).) However, where there is a disability-related reason to require a shorter bus ride, the failure to shorten a student’s commute has been held to be a denial of FAPE through the failure to provide an appropriate related service. (See *Kutsushi v. Government of Dist. of Columbia* (D.D.C., Mar. 27, 2006, No. CIV.A. 04-2016 (JGP)) 2006 WL 785293 [ALJ determined the offered transportation was “inappropriate because the student, in addition to his visual impairment, was confined to a wheelchair and could not tolerate being in the chair for two hours at a time on the bus” (in administrative decision available at 108 LRP 7451).].)

Parent established at hearing that Student had a documented medical need due to disability for a transportation route that takes less than one hour, 40 minutes. San Diego argues Student did not establish the maximum duration of a bus ride that Student can tolerate. That is correct, but immaterial. The applied behavior analysis Therapy Supervisor’s note stated a ride longer than 30 minutes would be inappropriate for Student, but that was not a medical statement. Parent believed that rides longer than one hour were beyond Student’s tolerance, but Parent is not a medical professional. The note from Student’s Neurologist set out a medical need due to disability, but did not suggest a maximum length of time.

San Diego argues that the lack of a specific recommendation made the Neurologist’s letter ineffectual. That is incorrect. Student demonstrated that the current level of service is inadequate to meet needs due to disability, which established a denial of FAPE. Having informed the IEP team that one hour, 40 minutes transportation is too long given Student’s disability, the Neurologist’s letter did not need to specify the exact terms of an appropriate service.

Despite being aware of Parent's concerns about Student's related service of transportation, San Diego offered only workarounds, such as mileage reimbursement, having Parent drop Student off at a distant location at an intermediate stop on the bus route, or having Parent rearrange transportation of the other children. A parent may accept a workaround if an appropriate service cannot be rendered, but it does not cure the denial of FAPE if the IEP team proposes an alternative that shifts the burden of providing the service, and therefore FAPE, to the parent.

San Diego's other arguments in briefing are unpersuasive. San Diego notes that other students have longer travel times, but that fact is irrelevant to Student's individualized needs. Likewise, San Diego's argument that other students were able to overcome their dysregulation from bus transportation and that San Diego was prepared to react to Student's dysregulation on the bus and in the classroom afterwards is irrelevant and backwards. Where there is medical documentation of a disability-related need, the appropriate response is to meet the need, not to work afterwards to remedy the consequences of failing to address the need.

Likewise, San Diego's assertions that Student's dysregulation was mild and not physically or psychologically harmful are unsupported. Student's dysregulation at Ericson Elementary was so extreme that the IEP team recommended Student transfer out of the general education setting and into a special day program, which only existed at another school campus. At Wegeforth Elementary, teacher reports, assessments, and documented incidents in the record show that Student's dysregulation was extreme, consisting of screaming, crying, hitting, throwing things, and overturning tables. It is highly speculative and unsupported by evidence to say it would not be physically or psychologically harmful if those events increased in frequency and possibly severity.

Lastly, the argument that San Diego's assessors and staff should be accorded deference because they have seen Student in school and have greater periods of observation, knowledge of the school setting, and a considered plan for addressing Student's needs is not persuasive in this context. Parent is not presenting a differing assessment or a different methodology for meeting Student's needs. Parent provided medical documentation of a disability-related need, to which San Diego did not respond. If there were a basis to argue that the Neurologist's opinion was wrong, San Diego must demonstrate it through equivalent competent medical testimony and evidence. It did not do so, and it is not persuasive to say the opinions of educational professionals should be given greater weight on a medical issue than that of a medical doctor.

Student proved a medical need for a shorter transportation time.

SAN DIEGO'S KNOWLEDGE OF STUDENT'S NEEDS

Student asserts San Diego was aware of Student's dysregulation due to disability and Student's sleep disorder. San Diego argues that its staff did not see Student demonstrate any evidence of an issue with bus rides, and there was not sufficient data to justify disrupting the school's bus schedule.

The decisions of an IEP team are evaluated based upon the information held by the IEP team at the time of its decisions. As commonly stated, an IEP is "a snapshot, not a retrospective." (*Adams v. Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) If matters are concealed or not shared with the school district, there is no violation in failing to respond to them.

A similar case demonstrates the rule. In *Student v. Hemet Unified School Dist.* (2014) OAH Case Nos. 2013090788 and 2014010760, a 70 minute bus ride was determined to be inappropriately lengthy given the student's acid reflux condition, but no denial of FAPE was found because information about that condition was not provided to the IEP team. A supporting doctor's note merely stated that it was difficult for that student to tolerate being in a vehicle for a long length of time and that she was able to get out of her car seat. The letter did not address the student's health issues per se or specifically address her acid reflux. Parents never provided the IEP team with information from her doctor addressing the student's health issues or the impact of those issues on her ability to tolerate safely a long bus ride.

In contrast, here Parent informed San Diego of Student's issues in detail. Upon receiving the initial bus schedule, Parent contacted Wegeforth's Principal on August 7, 2024, to report Student's safety and emotional limitations on long commutes and Student's sleep issues. When the IEP team did not react to the report, Parent provided a letter from Student's applied behavior analysis Therapy Supervisor that further set out how Student's emotional dysregulation and sleep issues would be worsened by a long bus route. At this point, San Diego was on notice of a problem and needed to respond to the need or work with Parent to understand the problem. Instead, San Diego took no action.

Some things raised by Student in briefing were not shared with San Diego in an effective or meaningful manner. Student argues that Student's early onset of puberty complicated Student's ability to emotionally regulate, particularly in the morning, but that fact was not raised in the Therapy Supervisor's or Neurologist's letters given to San

Diego and were not part of any discussions at IEP team meetings. Likewise, Parent testified Student got carsickness, but that was also absent from the letters and no mention of it appears in Student's educational records in evidence.

San Diego further argues it was justified in disregarding the possibility of a medical issue with long bus rides because it did not observe any issues when Student rode the bus. San Diego points out that Student rode the bus home each day without event. That does not contravene Student's position that long bus rides have negative effects since the bus ride home generally only took 30 minutes. Likewise, its argument that district staff saw Student ride the bus to field trips during the school day without significant dysregulation is inapposite in two respects. First, the teacher testimony supporting this point did not state how long the field trip transportation took. Second, just as San Diego argues that Parent's observation of Student's behavior on long car rides is not informative of Student's behavior on long bus rides, Student's disposition on a mid-day trip to a field day does not predict Student's reaction to an early morning awakening for a nearly two-hour ride to school. Further, it is completely irrelevant to Student's sleep issues and disrupted sleep cycle caused by a 6:00 a.m. pick-up for a nearly two-hour ride to school restrained in a harness.

As noted above, San Diego had full knowledge of a medical need for a shortened bus route prior to the filing of the amended complaint, and still did not act. The January 31, 2025 IEP team meeting where San Diego persisted in its refusal to act took place after the filing of the amended complaint, but is illustrative of the fact that no presentation of the need for a shortened bus ride would have sufficed to get San Diego to act because San Diego personnel believed their observations of Student justified closing their minds to the

possibility that Student had an unmet need. (*E.M. v. Pajaro Valley Unified School Dist.* (9th Cir. 2009) 652 F.3d 999, 1004 [after-acquired information may be used to assess the reasonableness of a school district's determinations].)

San Diego had knowledge of Student's emotional dysregulation and sleep issues throughout the entire 2024-2025 school year, and medical documentation would have been available if San Diego had ever requested or explained the need for it.

FEASIBILITY OF CHANGING THE BUS ROUTE

San Diego argues that the IEP team never knew it was possible to direct the transportation department to change the time of Student's morning pick up, and that doing so was impossible because of the impact on other students.

The argument that changing Student's bus route was not an option known to the IEP team is not supported by the record. The leader of the IEP team at Wegeforth was the school's principal. Wegeforth's Principal was not a persuasive witness. The Wegeforth Principal's testimony was inconsistent and incomplete. Like many of the district-employed witnesses, Wegeforth's Principal maintained that San Diego did not act on Parent's concerns that the lengthy bus ride would have a negative effect because the school did not have data on Student's response to long bus rides. Wegeforth's Principal could not explain why no plan to collect data was prepared or proposed to Parent, given that San Diego believed it needed that to make an appropriate offer of related services. Instead, it ignored the need.

Wegeforth's Principal was dismissive of the value of the behavior Therapy Supervisor's note, since it did not come from a medical doctor, but could not explain why San Diego both did not inform Parent San Diego required documentation from a physician regarding a medical need for a shorter transportation time and failed to act upon receipt of the second letter from Student's Neurologist. Wegeforth's Principal's assertion that the IEP team was not aware they could request that the transportation department give Student a preferential pick-up time for a medically documented reason was likewise not credible, especially given that Wegeforth's Principal knew from the Transportation Operations Supervisor that bus stops could be rerouted but did not raise it with the IEP team or inform Parent of the possibility.

San Diego's Transportation Operations Supervisor was highly credible, explaining that it was San Diego's policy that a doctor's note was required to change a bus transportation schedule, and that the IEP team needed only to inform the transportation department that a student had medically certified needs requiring a shorter bus ride for one to be arranged. If the IEP team had requested a change, the order of stops would have been rearranged so that Student would be picked up later in the morning, reducing the need to wake up well before 6:00 a.m. and shortening the time Student would be restrained in a safety vest.

The Transportation Operations Supervisor had been involved in discussions regarding Student's transportation since being emailed directly by Parent on August 9, 2024. The Transportation Operations Supervisor knew San Diego could accommodate Parent's suggestion that San Diego pay for a private transportation company to transport Student in the morning, as it had done so for other students. In contrast to Wegeforth's Principal's evasive and sometimes inconsistent testimony, the

Transportation Operations Supervisor recalled telling the principal and a program specialist that reordering the stops was an option to give Student a shorter bus ride if it were medically documented as a need. The exact date upon which the Transportation Operations Supervisor told Wegeforth's Principal and the Program Specialist is unclear. It may have been shortly before the January 31, 2025 IEP team meeting or it may have been on August 9, 2024, when Parent, Wegeforth's Principal, and the Transportation Operations Supervisor were exchanging emails.

If San Diego's IEP team members did not know from the first Wegeforth IEP team meeting on August 12, 2024, that a documented medical need could result in a reordered bus route, it was either because Wegeforth's Principal withheld that knowledge from the IEP team or because San Diego failed to staff the IEP team with members adequately informed about the options available bearing upon the sole purpose of the meeting. Neither excuse San Diego's failure to inform Parent of the option or the requirements to qualify for it.

San Diego's final argument was that changing the bus schedule for Student would be impossible because doing so would require holding IEP team meetings to amend the IEPs of all affected students because it would constitute a change of their placements. Parent was assured at the August 12, 2024 IEP team meeting that bus schedules could change, presumably to offer the hope that Student's schedule would change for the better. Bus pick-up times are not set in IEPs, and, even accepting San Diego's premise that an altered pick-up time constitutes a change of placement, an increased travel time to school would only constitute a material change for students with medical needs requiring a shorter commute. San Diego has not argued that any such students exist. This argument, like San Diego's argument that district finances would not allow changing the order of bus pick-ups, is not persuasive.

San Diego could have, but did not, meet Student's need for a shorter bus route. By that failure, it denied Student a FAPE by failing to offer an appropriate related service.

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.

San Diego denied Student a FAPE from August 7, 2024, to the date of filing by failing to provide a shortened route for Student's transportation to school. Student prevailed on the only issue.

REMEDIES

Student was denied a FAPE from August 7, 2024, to the date of filing of Student's amended complaint on December 23, 2024. Student's requested relief, according to the February 21, 2025 Order Following Prehearing Conference, was for the provision of a bus aide, a shortened route for Student's transportation to school, and compensatory educational services. The provision of a bus aide as relief is tied by context to the withdrawn claim that Student was denied a FAPE by San Diego's failure to provide a bus aide and is not considered as an item of relief here.

As stated in the February 21, 2025, Order Following Prehearing Conference, a party seeking compensatory educational services must provide evidence regarding the type, amount, duration, and need for any requested compensatory educational services.

No evidence of that sort was presented at hearing. Accordingly, any compensatory services awarded would rest upon the hearing officer's equitable power to afford complete relief under title 20 United States Code section 1415(i)(2)(C).

In final briefing, Student requests reimbursement for mileage Parent traveled to transport Student to school. Pursuant to the February 21, 2025, Order Following Prehearing Conference, a party seeking reimbursement must provide admissible evidence of these expenditures or a stipulation to the amount of the expenditures. No evidence or stipulation was presented at hearing. Again, any reimbursement awarded rests upon the hearing officer's ability to award equitable relief.

COMPENSATORY ACADEMIC TUTORING

Student requests 360 hours of compensatory services based upon the opinion testimony of Student's psychologist. At hearing, the psychologist estimated Student needed 360 hours of compensatory academic tutoring services for the entire 2024-2025 school year. The relevant period for this case spans only from August to December 2024, commonly considered half a school year. The psychologist did not offer a rationale for the 360 hours, which equates to almost two hours for every school day. Without an explanation for how that number relates to Student's lost educational opportunity, it cannot be considered as a basis for relief.

Because San Diego did not offer appropriate transportation to school, Parent had to transport Student to school. Parent could not do so until she was able to prepare Student and Student's school-aged siblings for school, take them to their school, and, on some days, take their preschool-aged sibling to therapy appointments. As a result, Student arrived at school between 90 minutes to three hours late, although later in the

fall semester Student generally arrived earlier. On some days, Parent did not take Student to school at all, because of Parent's choice to "hold off" on attending school until San Diego resolved the transportation issue.

Except for days on which Parent opted not to take Student to school at all, Parent did a reasonable job of working around San Diego's failure to offer appropriate transportation to school. Student missed the first hour of school every day, from roughly 7:55 a.m. to 9:00 a.m., which was devoted to physical activity, socialization, and breakfast.

Student seeks academic tutoring as a compensatory service. Student missed between 30 minutes and two hours of academic opportunity each day. Student is not owed greater compensatory services for those days on which Parent did not bring Student to school as those days were either Parent's decision for Student not to attend or part of an unavoidable absence. Student's lost educational time is within a rough range of 45 to 180 hours. Compensatory services are not computed on a one-to-one basis. (*Parents of Student W. v. Puyallup School Dist.* (9th Cir. 1994) 31 F.3d 1489, 1496 (denying any compensatory services).)

Appropriate relief is relief designed to ensure that the student is appropriately educated. Although Student has not provided evidence that Student is not progressing in a manner appropriate to Student circumstances, San Diego has not briefed the issue of remedy in any depth and has not asserted that Student is performing at an expected level. Lacking any guidance from the parties but aware that the loss of that much educational time must have an impact upon a student with special needs, Student's relief must be constructed to meet Student's individual circumstances.

By analogy to home/hospital instruction, one common formulation is to provide a student five hours of individual instruction for every week the student did not receive instruction at school. This derives from the statute regarding funding the school district receives from the state based on average daily attendance: "For purposes of computing average daily attendance ... each clock hour of teaching time devoted to individual instruction shall count as one day of attendance." (Ed. Code, § 48206.3, subd. (c)(1).) Further, state law provides that no pupil shall be credited with more than five days of attendance per calendar week or more than the total number of calendar days regular classes are held in any fiscal year. (*Id.* at subd. (c)(2).) Therefore, districts count one hour of instruction as equivalent to one day of instruction, because that is what they get paid for by the state.

However, Education Code section 48206.3, subdivision (a), specifies that the home/hospital instruction described is for students with temporary disabilities, defined in subdivision (b)(2) as specifically excluding a disability for which a pupil is identified as an individual with exceptional needs under section 56026. It is not appropriate to conflate the average daily attendance payment for students receiving individual instruction while recovering from a temporary disability with the question of what amount of individual instruction is appropriate for a student with a disability who is receiving services under a program of special education and related services. What will appropriately compensate a child with a disability for a denial of FAPE does not depend on the funding formula for average daily attendance.

Further, that formula is used to address the learning needs of general education students. Student has exceptional needs due to disability. Student is non-compliant over 50 percent of the time during school, and Student's attention and task engagement is severely limited. Under such circumstances, using the upper range of lost instructional

time is appropriate. Assuming 180 lost hours, dividing that number by a six-hour school day results in 30 hours of lost educational time. As Student's disability causes a loss of over 50 percent of that time due to noncompliance, the awarded time will be increased by 50 percent. Although no percentage is given for lost educational opportunity due to Student's difficulties with attention and task engagement, the characterization of the impairment as "severe" justified a further 50 percent increase in the award. Accordingly, Student is awarded 67.5 hours of compensatory academic services (30 hours times 1.5 equals 45 hours, then further multiplied by 1.5 equals 67.5 hours).

REIMBURSEMENT

Parent seeks reimbursement for transporting Student to school each day for the period between August 7 and December 23, 2024. This is not a double recovery considering the award of compensatory services. Although it effectively accepts San Diego's offer to reimburse Parent for mileage to transport Student to school to relieve it of the obligation to do so, Parent is seeking the reimbursement as equity and Student may still obtain remedy for the lost instructional time. Accordingly, San Diego shall reimburse Parent at the 2024 Internal Revenue Service mileage rate of 67 cents per mile for one round trip of 12 miles each way for each day of actual attendance at Wegeforth Elementary School between August 7 and December 23, 2024.

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TRANSPORTATION

San Diego shall immediately arrange transportation for Student to school in the morning by a means that will take no more than one hour to complete. Until such time as such suitable transportation can be arranged, San Diego shall reimburse Parent up to 50 dollars for each day of transportation to Wegeforth Elementary School provided by Hop Skip Drive or other similar transportation service upon proof of incurred cost. If Parent states the family is unable to pay the transportation service and await reimbursement due to financial hardship, Parent will continue to receive mileage reimbursement at the 2025 Internal Revenue Service mileage rate of 73 cents per mile for one round trip of 12 miles each way for each day of actual attendance at Wegeforth Elementary School and Student will receive an additional hour of compensatory academic tutoring for each day of actual attendance until suitable transportation is arranged.

ORDER

1. San Diego shall provide Student with 67.5 hours of compensatory academic tutoring from a non-public agency of Parent's choice or other mutually agreed-upon provider.
2. San Diego shall reimburse Parent at the 2024 Internal Revenue Service mileage rate for each day of actual attendance at Wegeforth Elementary School between August 7 and December 23, 2024.
3. San Diego shall immediately arrange transportation for Student to school in the morning by a means that will take no more than one hour to complete.

4. San Diego shall reimburse Parent up to 50 dollars for each day of transportation to Wegeforth Elementary School for school attendance provided by Hop Skip Drive or other similar transportation service upon proof of incurred cost. This relief shall end on the earlier date of the last day of the 2024-2025 regular school year or the first day of school attendance for which San Diego makes available to Student door-to-door transportation from home to school that takes one hour or less, whether or not Student uses or accepts the offered transportation.
5. If Parent self-certifies the family is unable to pay for transportation and await reimbursement from San Diego due to financial hardship, Parent will receive the 2025 Internal Revenue Service mileage rate for each day of actual attendance at Wegeforth Elementary School and Student will receive an additional hour of compensatory academic tutoring for each day of actual attendance until suitable transportation is arranged. San Diego's obligations under this order to provide additional reimbursement or compensatory service shall end on the earlier date of the last day of the 2024-2025 regular school year or on the first day of school attendance for which San Diego makes appropriate transportation to school available to Student, whether or not Student uses or accepts the offered transportation.

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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.

Chris Butchko

Administrative Law Judge

Office of Administrative Hearings