



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 03391-22
AGENCY DKT. NO. 2022-34090

M.B. ON BEHALF OF J.B.,
Petitioners,

v.

NUTLEY TOWN BOARD OF EDUCATION
Respondent.

M.B., petitioner appearing pro se

Joanne L. Butler, Esq. for respondent (Schenck Price Smith & King, LLP, attorneys)

Record Closed: June 30, 2022

Decided: July 20, 2022

BEFORE **NANCI G. STOKES**, ALJ:

STATEMENT OF THE CASE

M.B. requests that respondent transport her son J.B. from his daycare to school and drop him off at daycare after school. Did the respondent fail to provide a Free and Appropriate Public Education ("FAPE") to J.B. by only offering transportation services from home to school and school to home? No. Special education "related services" only include transportation required to assist a disabled student in benefitting from special education. 20 U.S.C. § 1401(17).

PROCEDURAL HISTORY

On March 8, 2022, petitioner filed a petition seeking mediation with the Nutley Board of Education (Board) with the New Jersey Department of Education, Office of Special Education Policy and Dispute Resolution (OSEPDR). After an unsuccessful mediation on March 30, 2022, petitioner requested conversion to a due process petition and hearing.

On April 29, 2022, the Office of Special Education (OSE) transmitted the petition for a due process hearing to the Office of Administrative Law (OAL) under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the Office of Administrative Law, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, and the Special Education Program, N.J.A.C. 1:6A-1.1 to -18.4.

On May 9, 2022, I conducted a pre-hearing conference after a settlement conference with another Administrative Law Judge and issued a pre-hearing order.

On June 23, 2022, I conducted a hearing via Zoom technology. For recordkeeping purposes, the parties chose to submit post-hearing briefs, and petitioner filed her summation on June 28, 2022. The Board filed its summation brief on June 30, 2022, and I closed the record.

FINDINGS OF FACT

To support its position, the Board presented three witnesses: Amy Giaccio, J.B.'s Case Manager; Peggy Hollywood, District Transportation Coordinator; and Helen Doyle-Marino, District Director of Special Services. M.B. testified in support of the relief she requests for J.B. All witnesses testified credibly and sincerely. Based upon a review of the evidence presented and my assessment of its sufficiency, and having had the

opportunity to hear the demeanor of the witnesses and assess their credibility, I **FIND** the following **FACTS**:

Background and Educational History

At age five, the Nutley School District (District) first evaluated J.B. and classified J.B. as preschool disabled, entitling him to special education services. N.J.A.C. 6A:14-3.5(c). Following that classification, J.B.'s March 1, 2022, Individualized Education Program (IEP), placed him in the half-day general education preschool program for the 2021–2022 school year. His preschool program at the District's Spring Garden School ran from 12:00 P.M. until 2:25 P.M.

J.B.'s IEP included Speech Therapy sessions two times weekly for twenty-five minutes in a small group. The IEP called for transportation as a related service two times a day from March 3, 2022 to June 24, 2022, according to the District's Policy. The bus would provide a car seat for J.B.'s use. The IEP does not identify a physical impairment or J.B.'s need for an aide or other personnel to effectuate J.B.'s transportation to and from school.

During the 2021-2022 school year, progress assessments in March and June 2022, reveals that J.B.'s obtained benefit from the speech therapy services, having mastered several goals and was progressing in others. J.B.'s speech therapist similarly identifies improvement in her activity notes. The District introduced new goals given J.B.'s progress. Although M.B. suggests that J.B. would have improved less without daycare, daycare was not part of his IEP, and no evidence supports this assertion.

In the spring of 2022, the District re-evaluated J.B. for the 2022-2023 school year as he was aging out of preschool. The District conducted an educational evaluation and another speech and language evaluation. These assessments and information from J.B.'s current teachers determined that J.B. satisfied the eligibility criteria for speech and language services, primarily based on articulation difficulties. On June 7, 2022, the Child

Study Team met and created J.B.'s new IEP for the 2022-2023 school year, including small group speech therapy twice a week for twenty-five minutes. As a full-day kindergarten student, J.B.'s IEP did not include transportation as a related service, and M.B. voiced no transportation concerns regarding the new IEP.

Transportation

J.B.'s parents had to leave work or expend their funds to provide transportation to and from daycare to his school. Both J.B.'s parents work, making transportation complex in the middle of the day. Absent a daycare program, J.B. might have fewer socialization opportunities outside of school.

When meeting to develop the initial IEP, M.B. expressed concerns regarding J.B.'s transportation because J.B. attended daycare before and after his school program. M.B. asked that the District pick up J.B. from daycare, bring him to school, and return him to daycare after school. The District advised M.B. that the District Policy was to pick up and drop off from home only but supplied M.B. with contact information for the transportation director, Ms. Hollywood, and the Special Services Director, Helen Doyle-Marino, to reach out to with her concerns.

Case Manager Amy Giaccio consistently noted that the District's transportation policy was to and from home in her discussions and emails with M.B., and recorded those communications in her case notes. Ms. Giaccio expressed that no educational reason existed for J.B. to receive transportation to and from his daycare center rather than his home.

M.B. denies receiving a letter in August 2021 explaining the District transportation instructions to parents, now disallowing drop-off or pick-up at alternate locations. Nutley acknowledges that before COVID-19, it would honor written requests for such alternate sites, but these requests became logistically impossible for the District during the COVID-19 pandemic. The preschool program size increased, including an extra classroom, and

the number of requests from parents for alternate location pick-ups or drop-offs increased. More preschool students were now in daycare centers.

However, as Ms. Hollywood explained, daycare centers often fail to have students ready, causing delays and students arriving late to school. As such, in August 2021, the District changed its instructions to parents. Specifically, student pick-up and drop-off would now only be from home. The District highlighted its revised procedures in the form transportation instruction letter sent to parents in August 2021, stating that “children will not be picked up or dropped off anywhere other than the home address.”

Ms. Hollywood spoke with M.B. regarding her request and offered to pick the child up at J.B.’s grandmother’s home in Nutley if that was more convenient. The daycare center is closer to the Spring Garden School than J.B.’s grandmother’s home. Still, the District’s concerns for delay at a residential location are less than at a daycare center, which is why Ms. Hollywood offered that accommodation. Yet, M.B. declined any transportation services offered by the District.

Board Policy 8600 addresses the District’s transportation policy for students, and Board Policy 8670 (Policy 8670) covers transportation of special needs students. Policy 8670 advises that “transportation services may include, but are not limited to, special transportation equipment, transportation aides, and special arrangements for other assistance to and from school.” Notably, Policy 8670 does not provide for pick-up or drop-off locations other than home. The District last amended Policy 8670 in 2019. Still, the District accepted written requests for alternate location pick-up and drop-offs without specific mention in Policy 8670, and the District did not change Policy 8670 to restrict transportation to and from home when modifying its transportation instructions to parents in August 2021.

Still, the District provides parents with strict instructions regarding student transportation, stressing the importance of being ready for pick-ups, including that bus drivers wait no longer than two minutes for students. Further, bus drivers will not blow a

horn to alert their presence at the stop. For drop-offs, the bus driver must see the designated adult at the residence to discharge the student. These particular transportation instructions supplemented Policy 8670 and were the same before the COVID-19 pandemic and continue.

Undeniably, J.B. received speech therapy services to address the disability outlined in his IEP and would need to be at school to receive those services. Still, J.B. required nothing more than a car seat for transportation. Under a court order issued from litigation involving the Division of Child Protection and Permanency, the District transports only one student to and from daycare. M.B. knows that the District picked up or dropped off other students at daycare centers in 2018 and 2019, and the District does not deny that it did so. Since August 2021, however, the District has denied all parental requests for transportation to and from daycare centers.

Yet, M.B. maintains that “special arrangements for other assistance” is open to interpretation and should require the District to accept requests for alternate location transportation services for special education students. M.B. acknowledges that this request no longer applies to J.B. as the school year has ended, and he will be a full-day student next year. Even so, M.B. continues this case to fight for other special education students facing similar transportation issues.

None of the District’s witnesses agree with M.B.’s interpretation of “special arrangements for other assistance.” Both the Transportation Coordinator and the Director of Special Services testified that “special arrangements” include seat belt locks, car seats, harnesses, toys, iPads, a nurse, a behaviorist, an aide, or specialized seating assignments. In other words, the arrangements addressed some assistance needed for transporting the student. Special arrangements, according to these witnesses, do not mean a pick-up or drop-off at an alternate location, such as a daycare center. The District was always willing to provide J.B. with transportation to and from school from a residence. In essence, the District offered the courtesy of daycare pick-ups and drop-offs to parents upon written request until logistical challenges during the COVID-19 pandemic required

a change to ensure students arrived at school on time. Still, the District does not view Policy 8670 as requiring what M.B. asserts it must.

LEGAL DISCUSSION AND CONCLUSIONS OF LAW

The Individuals With Disabilities Education Act (IDEA), 20 U.S.C. §§ 1401 to 1482, and State statutes, N.J.S.A. 18A:46-1 to -55, are designed "to ensure that 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 employment and independent living." 20 U.S.C. § 1400(d)(1)(A). A school district must provide special education and related services to children with disabilities under their IEP. 34 C.F.R. § 300.350. In addressing the contours of FAPE, the United States Supreme Court explained that an appropriate IEP does not need to maximize a student's potential or provide the best possible education at public expense, but instead must be "reasonably calculated to enable the child to receive educational benefits." Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 207 (1982).

The United States Supreme Court construed the FAPE mandate to require the provision of "personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." Rowley, 458 U.S. at 203. New Jersey follows the federal standard that the education offered "must be 'sufficient to confer some educational benefit' upon the child." Lascari v. Bd. of Educ. of Ramapo Indian Hills Reg'l High Sch. Dist., 116 N.J. 30, 47 (1989) (citing Rowley, 458 U.S. at 200).

The IDEA does not require that a school district "maximize the potential" of the student, Rowley, 458 U.S. at 200, but requires a school district to provide a basic floor of opportunity. Carlisle Area Sch. v. Scott P., 62 F.3d 520, 533-34 (3d Cir. 1995). In addressing the quantum of educational benefit required, the Third Circuit has made clear that more than a "trivial" or "de minimis" educational benefit is required, and the appropriate standard is whether the IEP provides for "significant learning" and confers

“meaningful benefit” to the child. T.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 577 (3d Cir. 2000); Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 247 (3d Cir. 1999); Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 180, 182-84 (3d Cir. 1988), cert. den. sub. nom. Cent. Columbia Sch. Dist. v. Polk, 488 U.S. 1030 (1989). In other words, the school district must show that the IEP will provide the student with “a meaningful educational benefit.” S.H. v. State-Operated Sch. Dist. of Newark, 336 F.3d 260, 271 (3d Cir. 2003). The responsibility to provide a FAPE rests with the local public school district. 20 U.S.C. § 1401(9); N.J.A.C. 6A:14-1.1(d). To be sure, the school district bears the burden of proving that it offered a FAPE. N.J.S.A. 18A:46-1.1.

Under the IDEA, "related services" include transportation where required to assist a disabled student in benefitting from special education. 20 U.S.C. § 1401(17) (emphasis added). Irving Indep. Sch. Dist. v. Tatro, 468 U.S. 883, 894, (1984) (districts must provide only those services necessary to aid a disabled child to benefit from special education).

Federal regulation 34 CFR 300.34(c)(16), provides that transportation services include, "(i) Travel to and from school and between schools; (ii) Travel in and around school buildings; and (iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability."

Similarly, New Jersey's Administrative Code states that “related services shall be provided to a student with a disability when required for the student to benefit from the educational program,” and those services include transportation. N.J.A.C. 6A:14-3.9(a)7.

Moreover, N.J.A.C. 6A:27-5.1. provides, in pertinent part, that:

(a) Students with special needs shall be provided with transportation in accordance with N.J.S.A. 18A:39-1 et seq. and in accordance with their Individualized Education Program (IEP).

1. The district board of education shall provide transportation as required in the IEP. Such services may include, but are not limited to, special transportation equipment, transportation

aides and special arrangements for other assistance to and from the school.

[N.J.S.A. 18A:39-1](#) provides that if there are elementary school pupils who live more than two miles from their public school of attendance or secondary school pupils who live more than two and one half miles from their public school of attendance, the district shall provide transportation to and from school for these pupils.

Yet, the District does not dispute its obligation to transport J.B. to and from school under Policy 8670 through his IEP. Instead, it disputes petitioner's interpretation that special arrangements must accommodate and include parental requests for alternate location drop-offs and pick-ups of special education students.

Many decisions facing similar parental requests reached the same conclusion. See e.g. L.R. o/b/o E.R. v. Middletown Twp Bd. of Educ., OAL Dkt. No EDS 10263-09, Final Decision, (October 15, 2009), <https://njlaw.rutgers.edu/collections/oal/> (finding that the District's policy not to transport students to and from daycare was not arbitrary, capricious, or unreasonable as transportation for students with disabilities "should not, . . . be provided to accommodate the needs, work schedules or domestic arrangements of parents or guardians.") (citations omitted); S.H. and M.H. o/b/o L.H. v. Caldwell-West Caldwell Board of Education, OAL Dkt. No. EDS 5369-08, Final Decision, (June 17, 2008), <https://njlaw.rutgers.edu/collections/oal/> (finding that the board of education was "entitled to adhere to [an unwritten] Board policy which prohibits transportation to any place other than home and school."); J.Z. o/b/o A.Z. v. Piscataway Township Board of Education and J.Z. o/b/o V.Z. v. Piscataway Township Board of Education, OAL Dkt. Nos. EDS 6520-00 and EDS 6521-00, Final Decision, (December 29, 2000), <https://njlaw.rutgers.edu/collections/oal/> (finding that a board of education does not have any legal obligation to transport children to any location other than home and school unless an alternative location is identified in the IEP as educationally necessary); G.S. o/b/o B.S. v. Board of Education of the Township of Piscataway, OAL Dkt. No. EDS 8388-00, Final Decision, (December 26, 2000), <https://njlaw.rutgers.edu/collections/oal/> (denying petitioner's request for special accommodation transportation to daycare

because “it is clear that special busing is sought by petitioner because of the time conflict caused by her employment demands.”).

Notably, other jurisdictions similarly conclude that the IDEA only requires transportation services to address a disabled child's educational needs rather than unrelated parental preferences or arrangements. N. Allegheny Sch. Dist. v. Gregory P., 687 A.2d 37 (Pa. Cmwlth. 1996). Indeed, the court noted that families with children having special needs may suffer hardships due to “personal needs” or “lifestyle preferences,” but “mitigating such hardships, however, is not the purpose of the IDEA” or the District’s responsibility. Id. at 40.

Districts also have considerable discretion in determining bus stops. In Vineland City Bd. of Educ. v. C.M., OAL Dkt. No. EDS 4589-08, 2008 N.J. AGEN LEXIS 407, Final Decision (June 26, 2008), <https://njlaw.rutgers.edu/collections/oal/>, the Administrative Law Judge (ALJ) concluded a district’s transportation policy change from door-to-door to curbside pick-up still provided FAPE where the student’s IEP provided for transportation services with “front of house pickup.” Vineland contracted with a transportation service provider that did not allow its driver to enter the driveway because of insurance and other concerns. The ALJ recognized the broad discretion afforded to a school board’s determination of its bus stops. Indeed, the Commissioner of Education will not overturn a district's decision regarding school bus stop locations and will not second guess such exercise of discretion unless it is arbitrary, capricious, or unreasonable. See Lemma v. Branchburg Board of Education, EDU 8953-97 Initial Decision, (July 22, 1998), adopted Commissioner’s Decision, (August 28, 1998), <https://njlaw.rutgers.edu/collections/oal/>. The Vineland student was not physically impaired or unable to walk to the curb. Instead, the parent did not wish to walk his child to the curb and “his inconvenience is not an element under IDEA.” The ALJ determined that the district’s transportation of the student remained consistent with the IEP and the district's obligations under IDEA, thereby conferring a FAPE.

While the CST Team agreed that J.B., a preschooler, required transportation as a related service, the IEP specifies that the transportation will be provided in accordance with “District Policy.” The District’s Policy 8670 does not advise that it will transport students to and from daycare facilities. Instead, Policy 8670 follows the administrative code’s language that transportation is provided to special education students “to and from school.” However, since August 2021, the District opted to no longer accept requests for pick-ups or drop-offs to and from daycare centers. The District applied that change uniformly to parental requests only yielding to a single student’s court-ordered transportation route. Significantly, the IEP Team did not determine that J.B. required transportation to and from his daycare to benefit from his IEP program. Indeed, I **CONCLUDE** that a preponderance of the evidence exists that J.B. obtained meaningful benefit from the IEP’s educational services without transportation to and from daycare. In other words, I **CONCLUDE** that the District’s offered transportation consistent with the IEP and the IDEA conferring J.B. with a FAPE.


Here, the District experienced logistical difficulties with day care centers that made students late to school. After August 2021, the District then uniformly stopped affording parental courtesy of transportation from locations other than home or a residence. Parental convenience is understandable, especially in situations when both parents work, but this is not a legal basis to require the District to do so. Instead, I **CONCLUDE** that the District’s decision to remove the courtesy of alternate transportation locations was not arbitrary, capricious, or unreasonable given its growing logistical difficulties and uniform application to parental requests since August 2021. Therefore, I **CONCLUDE** petitioner’s request for pick-up from and drop-off at daycare must be **DENIED**.

ORDER

Based on my findings of fact and conclusions of law, I **ORDER** that petitioners’ request for pick-up and drop-off of J.B. at daycare is **DENIED**, and the petition is hereby **DISMISSED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2019) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C. § 1415(i)(2); 34 C.F.R. § 300.516 (2019). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education Policy and Dispute Resolution.

July 20, 2022



DATE

NANCI G. STOKES, ALJ

Date Received at Agency

July 20, 2022

Date Mailed to Parties:
ljb

July 20, 2022

APPENDIX

Witnesses

For Petitioner

M.B.

For Respondent:

Amy Giaccio

Peggy Hollywood

Helen Doyle-Marino

Exhibits

For Petitioner

None

For Respondent

R-1 Speech and Language Evaluation Report dated January 28, 2022

R-2 Psychological Evaluation dated February 9, 2022

R-3 Eligibility Conference Report – Initial dated March 1, 2022

R-4 Initial IEP dated March 1, 2022

R-5 Education Evaluation dated May 9, 2022 through May 11, 2022

R-6 Speech and Language Re-Evaluation Report (Amended) dated May 2, 2022 and May 17, 2022

R-7 Eligibility Conference Report dated June 7, 2022

R-8 IEP- Reevaluation dated June 7, 2022

R-9 IEP Goals and Objectives Progress Reporting

R-10 Student Case Notes

R-11 Various emails with parents regarding IEP

R-12 Activity Session Notes

R-13 Emails regarding Request for Mediation

- R-14 Emails regarding Transportation Request
- R-15 Correspondence regarding Transportation dated August 7, 2021
- R-16 Correspondence regarding Transportation dated August 1, 2019
- R-17 Amended Hearing Order
- R-18 Student Transportation Policy
- R-19 Transportation of Special need Students
- R-20 Various Resumes
- R-21 Progress Report dated June 17, 2022