



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 01878-23

AGENCY DKT. NO. 2023-35411

R.W. ON BEHALF OF R.H.,

Petitioner,

v.

NEWARK BOARD OF EDUCATION,

Respondent.

R.W., petitioner, pro se

Sabrina Styza, Associate Counsel, and **Bernard Mercado**, Senior Associate Counsel, for respondent (Brenda Liss, General Counsel)

Record Closed: September 8, 2023

Decided: October 13, 2023

BEFORE **SUSANA E. GUERRERO**, ALJ:

STATEMENT OF THE CASE

Petitioner R.W. on behalf of R.H. filed a due-process petition (Petition) asserting that the Newark Public School District (the District or respondent) failed to provide the transportation services required by R.H.'s Individualized Education Program (IEP). R.W. seeks reimbursement for transporting R.H. to school for the 2021–2022 and 2022–2023 school years. The District denies the allegations.

PROCEDURAL HISTORY

The contested case was transmitted to the Office of Administrative Law (OAL), where it was filed on March 3, 2023. The hearing was held on July 25, 2023. The parties were provided an opportunity to provide post-hearing summations by September 8, 2023. R.W. and the District filed their respective closing briefs by this deadline, and the record closed on September 8, 2023.

FACTUAL DISCUSSION

Dorothy Croner (Croner), supervisor of School Transportation Services in the District's Office of Pupil Transportation, testified on behalf of the District. R.W., R.H.'s mother, testified on her own behalf and offered no other witnesses. Based on the testimony the parties provided, and my assessment of its credibility, together with the documents submitted, and my assessment of their sufficiency, I **FIND** the following as **FACT**:

At the time of the hearing, R.H. was a twelve-year-old student who had attended a charter school in Newark for several years. During the 2021–2022 and 2022–2023 school years, R.H. had an IEP that provided transportation services to and from school.

Croner testified credibly about the process by which the District provides transportation to special education students, including those who attend Newark charter schools. While it was the child study team at the charter school that developed the IEPs here, the District is responsible for transportation. When the District's Office of Pupil Transportation was informed that R.H.'s IEP called for transportation services, it determined a route and vendor to transport the student. R.H. was provided a regular school bus. There is no evidence to suggest that R.H.'s IEP called for any special instruction relating to transportation.

The District provided R.H. with transportation services at the start of the 2021–2022 school year via a regular school bus. In the Fall of that school year, R.W. called and texted the Office of Pupil Transportation because she was not happy with the

transportation company and with the time the bus arrived at her home in the morning. R.W. complained that the bus arrived too early, at 6:45 a.m., and she wanted them to come at about 7:10 a.m. R.W. ultimately declined to have R.H. use the bus since the bus could not arrive at the time R.W. requested. R.H. stopped using the bus sometime in September 2021, and since R.W. indicated that she no longer wanted transportation, the District subsequently suspended, or paused, transportation services in late September or early October.

In late January, or early February, 2022, the charter school reached out to the District's Office of Pupil Transportation to reinstate transportation services, and the District re-started transportation for R.H. the first week in February 2022. Also, in or around January 2022, R.W. had also filed a complaint in the Superior Court against the Newark Public Schools concerning R.H.'s transportation.¹

As R.H.'s IEP for the 2022–2023 school year also provided for transportation, the District also arranged for transportation for the school year in late July 2022. While the District again offered this service, R.W. refused to have R.H. take the bus.

R.W. alleges that the District failed to provide R.H. with transportation services since September 2021 as required by R.H.'s IEP, and that she is entitled to reimbursement from the District for transporting R.H. to school during the 2021–2022 and 2022–2023 school years, and at the rate provided to vendors. She testified about her personal concerns with the District's transportation bidding process, and that she did not like the transportation company used during those two academic years. While R.W. testified that the bus did not arrive or drop off R.H. in a timely fashion, and she expressed complaints about the driver and about not having an appropriate aide on the bus, I did not find this testimony credible. She did not testify with any specificity and provided no evidence to substantiate any of her assertions concerning the appropriateness of the transportation provided, or the District's alleged failure to provide the transportation services required pursuant to R.H.'s IEPs.

¹ R.W. filed a lawsuit against the District in the Superior Court seeking, in part, reimbursement of monies that she asserted she was entitled to pursuant to an alleged Board contract for transporting R.H. to school. After a hearing, the Superior Court dismissed R.W.'s complaint in or around November 2022. R.W. subsequently filed this action.

I **FIND** that, for the 2021–2022 and 2022–2023 school years, the District offered and provided appropriate transportation services consistent with R.H.’s IEP. No credible or reliable evidence was presented to suggest that the transportation services offered by the District failed to comply with the IEP, or that the services provided were unsafe or inappropriate in any way. R.W. simply refused to accept the transportation offered.

LEGAL ANALYSIS AND CONCLUSIONS

This case arises under the Individual with Disabilities Education Act (IDEA), 20 U.S.C. § 1401 et seq., which makes available federal funds to assist states in providing an education for children with disabilities. Receipt of those funds is contingent upon a state’s compliance with the goals and requirements of the IDEA. Lascari v. Bd. of Educ. of Ramapo-Indian Hills Reg. Sch. Dist., 116 N.J. 30, 33 (1989). As a recipient of Federal funds under the IDEA, the State of New Jersey must have a policy that assures that all children with disabilities will receive FAPE. 20 U.S.C. §1412. FAPE includes Special Education and Related Services, including transportation. 20 U.S.C. §1401(9); N.J.A.C. 6A:14-1.1 et seq. The responsibility to deliver these services rests with the local public school district. N.J.A.C. 6A:14-1.1(d).

The purpose of the IDEA is to ensure that all children with disabilities have access to FAPE that “emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C. 1400(d)(1)(A). For a school district to provide FAPE to a disabled child under the IDEA they must develop and implement an Individualized Education Plan (“IEP”) — a “comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs.” Sch. Comm. of Burlington v. Dep’t of Educ. of Mass., 471 U.S. 359, 368, 105 S. Ct. 1996, 2002, 85 L. Ed. 2d 385, 394 (1985). N.J.A.C. 6A:27-5.1 provides, in part, that

students with special needs must be provided with transportation in accordance with N.J.S.A. 18A:39-1 et seq. and in accordance with their IEP.

Here, the petitioner does not challenge the sufficiency of any IEP. Rather, she alleges that the District failed to implement that portion of R.H.'s IEPs that provides for transportation to and from school. At the hearing, R.W. also challenged the method of transportation offered by the District by asserting generally that she had concerns about the transportation company and the driver. While R.H.'s charter school developed the IEP and determined the appropriate related services, including the type of transportation, it is the District's obligation to provide the transportation services consistent with the IEP.

While parents are always free to request specific forms of transportation, and while the transportation provided must be appropriate, they have no legal right to unilaterally select the type of transportation to be provided. Here, the District provided R.H. with transportation through a standard school bus, which was consistent with R.H.'s IEPs for the 2021–2022 and 2022–2023 school years. While the District did not transport R.H. during a portion of the 2021–2022 school year, it was only because R.W. informed the District that R.H. would not be taking the bus and even texted the District to direct that R.H. should be removed from the bus route. When the District was asked to restart transportation services, it immediately did so. The District never denied R.H. transportation services—it only, understandably and reasonably, paused busing when it became clear that R.H. would not be taking the bus.

Although the driver and busing company were not ones that R.W. preferred, and while R.W. may have “every right to be picky” as she states in her closing statement, she does not have the legal right to compel the District to utilize a company or driver of her choosing. R.W. is also not entitled to any compensation or reimbursement from the District after choosing not to accept the transportation offered when it was appropriate, as here, and complied with the IEP. While R.W. may have implied that the transportation company and bus drivers here were not qualified, she offered no evidence to support this

claim, and offered no credible or reliable evidence to show that the transportation was in any way unsafe or inappropriate, or that R.H. was ever denied a FAPE.

Consequently, I **CONCLUDE** that R.H. was not denied a FAPE with regard to the transportation services offered and provided by the District for the 2021-2022 and 2022-2023 school years.

ORDER

Based on the foregoing, I hereby **ORDER** that the relief requested by the petitioner is **DENIED**; and that 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 (2022) 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 (2022). 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.

October 13, 2023
DATE



SUSANA E. GUERRERO, ALJ

Date Received at Agency _____

Date Mailed to Parties: _____

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APPENDIX

LIST OF WITNESSES

For Petitioner:

R.W.

For Respondent:

Dorothy Croner

LIST OF EXHIBITS IN EVIDENCE

For Petitioner:

None

For Respondent:

- R-1 September 30, 2021 email from T&K Bus Services to the District's Office of Pupil Transportation with attached text message from petitioner
- R-2 February 22, 2022 email from Office of Pupil Transportation to petitioner
- R-3 July 20, 2022 Transportation Order