



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 14938-25

AGENCY DKT. NO. 2026-39680

A.J. ON BEHALF OF M.S.,

Petitioner,

v.

**WASHINGTON BORO BOARD OF
EDUCATION,**

Respondent.

A.J. on behalf of M.S., petitioner, pro se

Alison L. Kenny, Esq., for respondent (Schenck, Price, Smith & King, L.L.P.,
attorneys)

Record Closed: December 16, 2025

Decided: January 9, 2026

BEFORE **MATTHEW G. MILLER, ALJ:**

STATEMENT OF THE CASE

This matter arises under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, et seq., and the implementing federal and state regulations. Petitioner A.J., on behalf of her minor child, M.S., seeks an order reversing the Washington Boro Board of

Education's (the "District") decision denying their request for door-to-door transportation services.

PROCEDURAL HISTORY

On August 26, 2025, the petitioners filed a Request for Due Process seeking an order reversing respondent's denial of transportation services for M.S. N.J.A.C. 6A:14-2.7(b). The matter was transmitted to the Office of Administrative Law (OAL), where it was filed on September 25, 2025, for hearing. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. An initial telephone conference call took place on October 6, 2025 and the case was scheduled for a hearing on November 12, 2025.

Following testimony on that date, the record was held open for summations and formally closed on December 16, 2025.

However, it must be noted that on January 5, 2026, the tribunal was advised by A.J. that an IEP meeting had occurred on December 19, 2026 and significant changes were made to M.S.'s programming. Additionally, troubling behavioral issues were noted. A conference call was held on January 6, 2026 and, after discussion, the parties were advised that while the existence of the new IEP would be acknowledged, since it was both performed and supplied subsequent to the formal closing of the record, it would neither be considered for the purposes of this decision, nor entered as an exhibit.

FACTUAL DISCUSSION

Based upon a review of the testimony and the documentary evidence presented and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following pertinent **FACTS**:

1. M.S., who turned eight years-old in July, is currently a third-grade student at Memorial School in Washington Boro, New Jersey. He was first referred for potential eligibility for Special Education Services in May 2025 when he was a student at the Taylor School.

2. An initial IEP meeting was held on June 30, 2025, and he was found eligible for Special Education Services under the classification of Emotional Regulation Impairment (“ERI”). His first IEP was implemented the following day.
3. It is undisputed that Washington Boro is a “walking district” and that the only students who receive busing services are those who are found to require it as part of their IEP.
4. In August 2025, A.J. requested that the District provide door-to-door busing services to M.S.
5. As a result of that request, the District convened an IEP meeting on August 25, 2025. During that meeting, it was determined by the District that “M.S. did not require transportation as an IEP service” and it was explained to A.J. “that IEP based transportation is provided when a student’s disability ‘directly impacts their ability to safely access school without specialized transportation’ and when it is ‘necessary for the student to benefit from their special education.’” (R-5 at 14.)
6. Independent of M.S.’s diagnosis of ERI, it is undisputed that he was involved in an extremely serious motor vehicle accident on June 18, 2024, during which he suffered a significant injury to his ankle, which required surgery and extensive physical therapy.
7. As a result of that injury and a subsequent surgery, the District has provided busing to M.S. during the first semester of the 2025–26 school year, but that will cease by the end of 2025.¹
8. At the time of the hearing, M.S. resides with his mother, A.J., her boyfriend, P.A., and his three siblings, ages fifteen, ten and five.
9. M.S. had previously attended Aftercare at Kid Care. However, without an Applied Behavior Analysis (“ABA”) therapist, M.S. has not been permitted by the staff at Kid Care to attend Aftercare during the 2025–26 school year.

¹ During the conference call on January 6, 2026, it was confirmed that the District had indeed stopped providing the referenced courtesy busing.

10. A.J. has been unable to secure the services of an ABA therapist thus far this school year.
11. In conjunction with the presentation of her case, petitioner submitted brief letters from two of M.S.'s medical providers.² In the first one, Joseph Steven Stricker, M.D., wrote:

[M.S.] carries a diagnosis of autism spectrum disorder. Due to [M.S.] struggling with significant emotion and behavior regulation difficulties relating to his diagnosis I am recommending (the) family be offered bus transportation to school.

[P-2.]

12. In the second letter, Rebecca Farnham, M.D., wrote:

[M.S.] has been a patient of the Child Development and Autism Center since his neurodevelopmental evaluation of 1/25/2024. He is followed here for autism spectrum disorder and Attention Deficit Hyperactivity Disorder (ADHD), combined type.

Due to significant impulsivity, aggression, and elopement that goes along with his diagnoses, safety issues need to be a priority for this child. It is strongly suggested, if possible that this child be provided with door to door transportation that includes close supervision.

The final decision as to eligibility for educational services rests with the Child Study Team and the actual program decisions of the IEP team.

[P-3.]

² Respondent initially filed a Motion to Bar these reports, since they had not been supplied in a timely manner prior to the hearing. After reviewing the reports, however, the respondent consented to petitioner's reliance on same and did not object to their admission into evidence.

TESTIMONY

For Respondent:

Frank Esposito, Superintendent/Director of Special Services, Washington Boro Board of Education

Mr. Esposito testified that he has an undergraduate degree in finance and also holds master's degrees in Elementary and Special Education as well as Leadership. He started his professional career as a paraprofessional while obtaining his first master's degree, and then was a grade school teacher for about ten years. He has been employed as the Director of Special Services in both the Bloomfield and South Plainfield school districts and also has experience as a principal and director of curriculum in a private school. He holds multiple licenses and certifications.

He joined the Washington Boro School District in the dual role of superintendent and Director of Special Services in August 2023. It is a small district with 575 total students from pre-K through sixth grade. His job duties include overseeing Special Education Services in addition to the traditional roles of a superintendent. Over the years, he has participated in thousands of IEP meetings and over one hundred eligibility meetings and is familiar with issues of transportation provided in conjunction with Special Education Services. Mr. Esposito was offered and accepted without objection as an expert in school operations and Special Education Services.

Mr. Esposito became aware of M.S. because of his behavioral issues in October 2024. He was not receiving Special Education Services at that time. His behaviors were escalating, but he was not physically violent towards his peers or teachers. There was an instance when he had walked out of the classroom. The prior Special Education Coordinator intervened and he kind of "half-heartedly" pushed her away and the principal also intervened.

It was at this point that M.S. was referred to the Child Study Team to be evaluated for eligibility for Special Education-Related Services. He then reviewed the May 2025 Multi-Disciplinary Report, which included social, educational and psychological aspects. In reviewing the same, he noted M.S.'s IQ of 126 and that he is a "bright boy" with "better than average intelligence." (R-1.) Based on his test scores, Mr. Esposito would expect M.S. to "do all the things a general education student does at an average or higher level."

A Functional Behavioral Assessment was also performed in May 2025. Most of M.S.'s challenging behaviors involved "escape from demand" issues. While there was "some" elopement, the primary issue was his use of inappropriate language and pushing a paraprofessional with some aspects of "attention seeking." He has never eloped from the building or failed to follow the class to and from a special lunch or playground time. He finds M.S. to be very engaging, both with peers and adults. While not particularly outgoing, he does not self-isolate, nor do his peers isolate him. His negative behaviors almost always involve school tasks, not interactions. (R-2.)

After noting the unremarkable Physical Therapy Evaluation (R-3), he then reviewed the original IEP report, which reflected the outcome of the June 30, 2025, meeting which he had attended. He confirmed that it had been determined that M.S. was eligible for services pursuant to a diagnosis of Emotional Regulation Impairment ("ERI"). It was also determined that he did not require transportation services in order for him to receive benefit from his IEP. (R-4.) There was an issue with A.J. signing off on the plan, and a follow-up meeting occurred on August 25, 2025, which focused primarily on the busing issue. He also took part in this meeting, and it was again determined that transportation was not a required related service. (R-5.)

That determination was made based upon the fact that the District is a "walking district" and whether the student is capable of navigating the route to school safely. It was determined that M.S. (independent of his current injury) can walk unaided, understand street signs and follow directions from an adult. There had never been an issue with getting from one place to another unaided. Even with the diagnosis of autism (which was unofficial at the time), given the specifics of M.S.'s situation, there was simply no need for transportation services.

Mr. Esposito testified that in the District, busing is provided to Special Education students who have very low cognition and would have significant difficulty in navigating a route to school and performing even basic tasks independently without specific, explicit instructions. He also noted that even with the autism diagnosis, there is a spectrum of behaviors and M.S. is clearly high-functioning and is in a general education classroom. He does have a paraprofessional in the classroom with him, but that staff member is not a “one-to-one” and there is no Special Education teacher, because he does not need the academic support.

Currently, M.S.’s classroom is near his office and the nurse’s office and (since he is currently in a wheelchair because of his injury), they will wheel him out of the classroom and attempt to de-escalate the situation. He will often fall asleep in the wheelchair and in speaking with him, a significant issue seems to be a lack of sleep at home.

It was confirmed that M.S. is currently receiving busing because of his recent surgery, but Mr. Esposito testified that it has not had any impact on his accessing educational services or behaviors, and his attendance patterns are very similar to the last school year. Finally, he clarified that “elopement” is a term of art and is meant to describe an act where M.S. goes somewhere he is not supposed to be. It does not necessarily mean that he leaves the classroom or the school building.

On cross-examination, Mr. Esposito reviewed the one episode from the 2024–25 school year where M.S. actually left the classroom (due to task avoidance) and had a physical altercation with staff. Given the intervention, they did not know if he intended to leave the building. No incident like this has happened since then. He was unaware of a November 15, 2024 incident and a copy of the Incident Report for same did not refresh his recollection of same.

Finally, he acknowledged that there is a bus route that passes by the petitioners’ home but noted that the bus “passes by a lot of people’s homes” and has no impact on whether M.S. is eligible for transportation services or not. He also testified that providing bus service to an ineligible student could ultimately have a “debilitating” effect on the

District's budget, since it would likely lead to multiple requests for services from similarly situated students. The only reason M.S. was offered the transportation was as an "olive branch" because of his injury, the specific family circumstances and the ongoing dispute. He reiterated that he has no concerns that M.S., as a third grader in a general education class, would not be able to read street signs and follow basic directions to navigate his way home.

For Petitioner:

A.J., mother of M.S.

A.J., M.S.'s mother, testified that she lives with her boyfriend, P.A. and her four children, M.S. (who turned eight in July) and his fifteen, ten and five-year-old siblings, two of whom have special needs. M.S.'s father has not been involved in his life for the past seven months. The oldest child attends Warren Hills Regional High School and the others are in Washington Boro. M.S. had first been found eligible for Special Education while attending kindergarten in Morristown in 2022. He started first grade in Morristown and finished it in Pennsylvania. He started second grade in Pennsylvania and ended the year in Washington Boro.

The car accident occurred in Tennessee on June 18, 2024. He suffered a severe ankle injury and had surgery about ten days later, was casted for about twelve weeks, and was still wearing it when the 2024–25 school year started. He was first diagnosed with autism in November 2024.

For the 2024–25 school year, in the morning, A.J. would drop M.S. off at Kid Care, a contracted agency which provides pre-care and then the children there would walk as a group to school, which was about two-tenths of a mile. After school, he would walk with a group back to Kid Care, where she would pick him up. However, he had several behavioral incidents at Kid Care and he was told not to return in May 2025.

M.S. had another ankle surgery in August 2025 and he was going to start physical therapy the day following the hearing. He will have a walking boot, but was using a

wheelchair in school pending the commencement of physical therapy. The District has provided transportation for the entire school year.

She testified that she had not asked for transportation during the original IEP meeting in June because Kid Care had allegedly told her that as long as M.S. had an ABA therapist, he would be allowed to attend. However, she has been unable to secure the services of a therapist, and he is not being permitted to return.

A.J. testified that there were multiple occasions in 2024–25 where M.S. would refuse to walk from the school back to Kid Care and actually had to be guided by the principal. It was based on these incidents that Kid Care allegedly required the ABA therapist.

As to his in-school behavior, A.J. related multiple occurrences where M.S. acted out and was placed in an isolation room (which Mr. Esposito testified had been used) and claimed to her that he would have left the premises if school personnel hadn't stopped him.

She expressed concern about his ability to get home by himself. He tends to wander off, and she feels that he does not have a great sense of direction and doesn't think he could make his way home. Last year, her then fourteen-year-old would walk him home and this year, her ten-year-old (who is also at Memorial) goes to Kid Care and can't walk him home.

A.J. works in Morris County with hours from 8:30 a.m. to 4:30 p.m. It is about an hour commute and she usually arrives at Kid Care between 5:20 p.m. and 5:30 p.m. P.A. is self-employed and there is only one car in the household. He also has three children of his own who live in Bergen County.

A.J.'s primary concerns are that M.S. would refuse to attend Kid Care (which is only a ten-minute walk from the school) and that he would be unable to navigate the route home. He told her that he would refuse to go "because he didn't want to walk."

The two letters presented by A.J. had not been presented to the District prior to the hearing.

Petitioner’s Position:

A.J. argues that in failing to provide door-to-door transportation services to M.S., he is being deprived of a Free and Appropriate Public Education (“FAPE”) pursuant to the Individuals with Disabilities in Education Act (“IDEA”) 20 U.S.C. 1400.” [Pet’r’s Br. at 1.] More specifically, it is argued that given the multiple disabilities and deficits cited in his IEP, his ability to navigate the 1.2 mile route home from school is “significantly impair(ed)” and that there is a “profound risk of harm if he is required to walk this route.”

A.J. also cites M.S.’s continuing recovery from ankle surgery as a complicating factor in this specific case. Referencing his medical reports, she claims (albeit without any legal citation) that:

The evidence shows that M.S. lacks the adaptive, cognitive, and safety-awareness skills required to walk a 1.2-mile route across two highways. His autism-related impairments, combined with his postoperative physical limitations, make independent travel impossible. Without transportation, M.S. cannot safely access his education.

[Pet’r’s Br. at 2.]

Respondent’s Position:

The respondent argues that transportation services are not required for M.S. to receive FAPE. While there is no question that transportation is a “related service” under Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176 (1982), related services must be provided only when they are “required to assist a child with a disability to benefit from Special Education.” Id. at 188–89. See also, 20 U.S.C. §1401(26)(A) and N.J.A.C. 6A:14-3.9(a).

Here, there was direct evidence, given M.S.'s courtesy transportation for his injury, that his busing has had literally no impact on his educational experience, since his attendance both with and without it remained unchanged. Absent his temporary physical disability (i.e., his ankle injury), there would be no need for transportation in order for him to benefit from Special Education. Therefore, the decision to deny same is entirely appropriate.

LEGAL DISCUSSION AND CONCLUSION

The IDEA deems transportation to be a "related service" that "may be required to assist a child with a disability to benefit from special education." New Jersey has codified the same definition in N.J.A.C. 6A:14-3.9, noting that the same should be provided in accordance with their IEP. N.J.A.C. 6A:27-5.1. Per Rowley, related services must be provided only when they are "required to assist a child with a disability to benefit from special education." Id. at 188-89; see also, 20 U.S.C. §1401(26)(A).

While reported cases concerning transportation often concern claims of violations of the Americans with Disabilities Act ("ADA"), those claims (which are not cognizable in the OAL) are viewed under the microscope of the IDEA. J.T. v. Dumont Pub. Schs., 438 N.J. Super. 241, 266-67 (App. Div. 2014). However, there is little case law concerning the provision of transportation services that do not involve either: a.) out-of-district placements; b.) physical disabilities; or c.) a pick-up or drop-off location other than the student's primary/in-district residence.

The petitioner cites no law in her brief, but rather points to A.S.'s IEP, which "identifies multiple disabilities, including deficits in executive functioning, safety awareness, and adaptive behavior," which, "as an autistic child with limited safety awareness," leads to a "profound risk of harm if required to walk this route" to school. Pet'r's Br. at 2.

The explanation provided in the law of what makes transportation necessary for a student to receive FAPE is so nebulous as to almost be meaningless. In that light, the positions of both parties are not particularly unreasonable. In essence, Mom argues that

her third grader, who struggles with refusal and avoidance issues, is incapable of navigating the one and two-tenths-mile route home from school every day without assistance, which is not available to him. The District argues that M.S. is in a general education class and (absent the continuing physical disability) is perfectly capable of navigating around his school without assistance and that there is no reason why he could not traverse the trip home.

Regardless of M.S.'s medical diagnosis, the problem remains. Whether the basis for his eligibility for Special Education is ERI, AD/HD or autism, the basic questions remain unchanged.³ Is this really a convenience issue for the family (Mom can't get off work early, boyfriend works in Bergen County, and other children can't supervise)? Or is this really a safety issue (M.S. is literally incapable of consistently making the trip home from school)? This type of dispute is addressed in a rather basic form in F.A. and T.A. o/b/o K.A. v. Belvidere Bd. of Educ., 2011 N.J. Agen. LEXIS 151 (Mar. 18, 2011), which determined that even if K.A.'s disability necessitated transportation services (it didn't), the parents could not dictate the specifics of same (here, the order of pick-up and drop-off).

Here, in assessing the testimony, I **FIND** that there is probably some truth to all of the allegations. I have little doubt that M.S. is physically and mentally capable of navigating the walk home. He is an almost eight and a half year-old general education student whose sole issues are behavioral. However, those behavioral issues are not insignificant as Dr. Farnham notes in her report: "(d)ue to significant impulsivity, aggression, and elopement that goes along with his diagnoses, safety issues need to be a priority for this child." (P-3.)

The case that comes closest to addressing the issue is S.M. and E.M. o/b/o B.M. v. Freehold Reg. Bd. of Educ., 2021 N.J. Agen. LEXIS 841 (Oct. 18, 2021). While not directly on point, this case explores a situation where:

B.M. was also provided with "special transportation" services, giving him a route to and from school designed just for him, although he may be paired with another student on that route,

³ It should be noted that the Functional Behavior Assessment referenced both the autism and AD/HD diagnoses. (R-2.)

but he was being transported with a one-on one aide. The aide was provided because B.M. had “issues in the past of concern of elopement or, you know, becoming explosive or hitting.” B.M.'s parents had expressed concerns about B.M. acting impulsively and running out into the street without thinking, and they lived on a “very busy street with a lot of

traffic.” The aide was there to assist B.M. during transportation to “supervise and make sure [B.M.] didn't put himself in that position” where he would endanger himself. B.M.'s records indicate that he had attendance issues at a previous school he attended before going to live at Woods.

[Id. at *23–*24 (citations omitted.)]

While there certainly are similarities between this case and B.M. (work scheduling and aftercare issues similar to the ones here), there are also differences. B.M. was much older than M.S., he had toileting and disrobing issues and his behavioral problems⁴ were so severe that he would often refuse to get ready for school. His attendance record was abysmal. There was also clear dysfunction within the family and inconsistency concerning B.M.'s residential placement. Id. at *26.

Ultimately, while I appreciate A.J.'s logistical issues, I agree with the District that this is a convenience issue. There is simply insufficient persuasive, detailed evidence to demonstrate that M.S. is being denied FAPE by not being provided with bus transportation. While there is anecdotal evidence of refusal in the past, the actual documented evidence of “elopement” in the sense of leaving the school building, etc., is extremely limited. There is no evidence that he is incapable of getting ready for school in the morning or that he has any physical or emotional limitations in doing so. There is further no evidence that he is unable (even absent the temporary wheelchair) or unwilling to navigate the school building or playground.

⁴ B.M. was classified as autistic with “significant cognitive impairments, developmental delays pretty much in all areas of functioning, social/emotional, speech and language communication.” Id. at *4.

While I appreciate Dr. Farnham's letter⁵ and her references to "aggression," "impulsivity," and "elopement," and her relation of those issues to the provision of transportation services, her conclusions are unsupported by the credible evidence. (P-3.)

It should also be noted that, in contrast to her testimony, in the supplemental IEP meeting report, A.J. was noted as saying that while "walking to and from school" was M.S.'s biggest complaint, his argument for busing was that it would "take a lot of that stress off his shoulders." (R-5.)

While not directly on point, the discussion in M.B. o/b/o T.B. v. Nutley Bd. of Educ., 2022 N.J. Agen. LEXIS 657 (July 20, 2022) is illustrative. There, due to work issues, the parents requested that pick up and drop off be from T.B.'s pre-care and after-care program, rather than the family home. The District refused, citing a post-COVID policy change due to significant logistical problems caused by an increasing number of requests. The petition was denied. In the decision, the judge cited multiple other cases where parental convenience was insufficient to alter a district policy. See, L.R. o/b/o E.R. v. Middletown Twp Bd. of Educ., OAL Dkt. No EDS 10263-09, Final Decision, (October 15, 2009) and North Allegheny Sch. Dist. v. Gregory P., 687 A.2d 37 (Pa. Commw. Ct. 1996).

While the above cases do not specifically discuss the decision concerning the necessity of transportation services, but rather their scope, they do provide guidance that the services themselves must be related to the student's disability and his ability to access and benefit from Special Education Services.

Based upon a review of the totality of the evidence and testimony presented, I **CONCLUDE** that the District has established by a preponderance of the credible evidence that bus transportation is not required to assist M.S. to benefit from Special Education Services and therefore provide him with FAPE. While I appreciate the logistical issues facing the family, those issues are no different for M.S. than for other similarly situated students. I therefore **CONCLUDE** there is no obligation for the District to provide

⁵ Dr. Stricker's letter is even less persuasive and provides no connection between his diagnoses and the recommendation for busing.

busing services to M.S. for any reason, including the courtesy busing being provided due to his surgical recovery.

Accordingly, I **CONCLUDE** that petitioner's request for busing shall be denied.

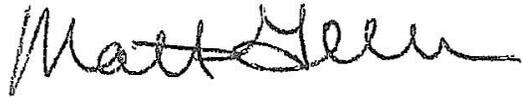
ORDER

I **ORDER** that the Petitioner's due process petition be and hereby is **DENIED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2024) 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 (2024). 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.

January 9, 2026

DATE



MATTHEW G. MILLER, ALJ

Date Received at Agency

January 9, 2026

Date Mailed to Parties:

January 9, 2026

sej

APPENDIX

List of Witnesses

For petitioner:

A.J.

For respondent:

Frank Esposito, Superintendent and Director of Special Services

List of Exhibits in Evidence

For Petitioner:

- P-1 M.S. Physical Restraint Documentation Form (November 15, 2024)
- P-2 Letter from Joseph Steven Stricker, M.D. (October 7, 2025)
- P-3 Letter from Rebecca Farnham, M.D. (October 27, 2025)

For respondent:

- R-1 Multi-Disciplinary Report (May 2025)
- R-2 Functional Behavior Assessment (May 2025)
- R-3 Physical Therapy Evaluation (June 3, 2025)
- R-4 Initial IEP (June 30, 2025)
- R-5 Assess Progress & Review or Revise IEP (August 25, 2025)