



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 08783-21

AGENCY DKT. NO. 2022-33408

K.H. ON BEHALF OF D.P.,

Petitioner,

v.

SALEM CITY BOARD OF EDUCATION,

Respondent.

K.H., petitioner, pro se

Michael A. Pattanite, Jr., Esq., for respondent (Lenox, Socey, Formidoni,
Giordano, Lang, Carrigg & Casey, attorneys)

Record Closed: October 11, 2022

Decided: November 25, 2022

BEFORE **TAMA B. HUGHES**, ALJ:

STATEMENT OF THE CASE

K.H. (“K.H.” or “petitioner”), challenges the Salem City Board of Education’s (“SCBOE” or “respondent”), provision of transportation with appropriate accommodations for her son, D.P., and seeks compensatory education and an amendment to the IEP to include parental reimbursement for transportation per a 2019 Settlement Agreement.

PROCEDURAL HISTORY

On September 21, 2021, the New Jersey Department of Education, Office of Special Education (OSE) received the petitioner's request for emergency relief. The emergency relief petition was transmitted to the Office of Administrative Law, under Docket EDS 07869-21, where it was filed on September 21, 2021. N.J.S.A. 52:14F-5(e), (f), and (g) and N.J.A.C. 1:6A-1 through -18.5. Oral argument on the emergent petition was held on September 24, 2021, before David M. Fritch, ALJ. The Final Decision Denying Emergent Relief was entered September 27, 2021. The underlying request for due process remained at OSE. See September 27, 2021, Order.

The petition for due process was thereafter transmitted to the Office of Administrative Law (OAL) on October 21, 2021, to be heard as a contested case. N.J.S.A. 52:14B-1 to 15 and 14F-1 to 13. The matter was heard virtually on November 16, 2021, and November 18, 2021, and the record remained open for the receipt of written summations and briefs from the parties. On or about July 27, 2022, the parties were notified that transcripts had been received and that written summations were due on September 30, 2022.

Judge Jeffrey R. Wilson left the OAL on or about August 5, 2022, upon his appointment to the Atlantic County Superior Court. On August 11, 2022, the matter was assigned to the Honorable Tama B. Hughes, ALJ. Thereafter, on August 22, 2022, a conference call was held with the parties to discuss the case status and provide the parties the option to set up a settlement conference, rehear the matter, or consent to my review of the transcripts and listening to the hearing testimony. The parties agreed that my review of the transcripts and hearing records were acceptable.

On October 11, 2022, upon receipt of the parties' summations, the record closed.

FACTUAL DISCUSSION

A summary of the pertinent undisputed evidence presented in this matter is as follows, and I **FIND** as **FACT**:

On September 21, 2021, petitioner filed an emergent petition relief petition seeking transportation with appropriate accommodations, compensatory education, and reimbursement for parental transportation of D.P. At the time, D.P. was in an out-of-district placement at the Salem County Special Services School District (SCSSD) - Cumberland Campus. The emergent application was denied on September 27, 2021. Thereafter, on October 21, 2021, the underlying due process petition was transmitted to the OAL, seeking the same relief for the 2021/2022 academic year. At the time of filing, D.P. was in seventh grade and had been attending SCSSD since the 2018/2019 school year.

Under the July 1, 2021, Individual Education Program (IEP), D.P. was to receive speech, occupational therapy, and counselling services at SCSSD. K.H. was satisfied with the services being provided to her son at SCSSD; however, D.P. had problems accessing the transportation provided by SCBOE which allowed him to get to SCSSD to take advantage of the education and other services offered.

To address the transportation issues, in addition to other services, the July 1, 2021, IEP, required the SCBOE to provide specialized transportation for D.P. to his out-of-district placement including a transportation aide and a harness. (R-3.)

Notably, during the 2019/2020 school year, K.H. received a contract for transportation from SCBOE to transport D.P. to and from SCSSD due to SCBOE's inability to obtain a bus to transport D.P. The contract provided compensation of approximately \$20,000 to K.H. for providing transportation services for D.P. for the 2019/2020 school year. (R-14.)

TESTIMONY

Deborah Maule (Maule), a learning disability consultant with the SCBOE for the past three years, testified as an expert in the areas of special education, learning disability teacher consultant (LDTC) and case management of special education students. (R-43.) Prior to working for the SCBOE, she worked for fourteen years in early intervention, and then became a learning consultant — working in the Evesham Township for two years prior to going to the SCBOE. Among her responsibilities as a LDTC, she handled case management for approximately fifty children, one of which was D.P.

She was familiar with D.P.'s July 1, 2021, IEP. (R-3.) In describing D.P.'s academic needs, she stated that D.P. was working on developing relationships with his peers, engagement, and reciprocity with others in his life. He was also working on transitioning which included transitioning from activity to activity in school, travelling on the bus, visual motor sensory integration, speech, and language to name a few. The most important thing that D.P. was working on was integration with others — back and forth communication which was a struggle for him.

In accordance with the IEP, D.P. was placed in a self-contained program and was to receive specialized transportation. Regarding transportation, the IEP called for transportation observations by either the case manager or a Board-Certified Behavior Analyst (BCBA) to address behaviors related to bussing. (Id. at page 6.) A harness was also to be provided for safety purposes. The IEP also called for Extended School Year (ESY) services. It is her belief that D.P.'s current IEP program provided him with all the related services needs and provided D.P. with a Free and Appropriate Public Education (FAPE.)

According to Maule, per the IEP, the district offered D.P. a pickup and drop off location on a daily basis for the 2021/2022 academic year. Over the ensuing months, there was a series of communications, both verbal and written, with K.H. including a call that took place on June 9, 2021. This conversation was subsequently relayed via email to her supervisor. (R-19.) In synopsising the June 9, 2021, conversation, Maule stated

K.H. expressed concern over her son's safety due to an incident that occurred in another district and wanted to know if the other children on the bus would be wearing a harness. She threatened to go back to court if the bussing issue was not satisfactorily resolved. Id. During her conversation with K.H., she went through a couple of suggestions on how to facilitate getting D.P. on the bus.

Maule went on to state that in or around September 7, 2021, a behavioral data sheet was prepared by the district's BCBA provider, Interactive Kids. (R-21.) The purpose of data sheet was to collect data over time to determine what was affecting D.P., his progression, and what strategies did or did not work. It was part of the district's tiered approach in helping D.P. to access his transportation for the 2021/2022 school year. Unfortunately, they were never able to fill out the form due to D.P.'s behaviors.

Another series of email communications took place on September 14, 2021, which resulted with the setting up of a virtual meeting between Interactive Kids and K.H. on September 15, 2021, to discuss strategies for K.H. to use when attempting to put her son on the bus. (R-24.) Maule went to D.P.'s home on September 17, 2021, and thereafter generated an observation summary of D.P. when his parents attempted to get him on the bus. (R-28.) In describing what she observed on that date, she stated that upon their arrival, only K.H.'s husband was present. K.H. showed up shortly thereafter and went to get D.P. When D.P. came out of the house, he was holding his ears because loud noises bothered him. They tried to engage D.P. with toys and bubbles however that strategy did not work. When the bus had arrived earlier, it was in the middle of the street however when requested, the driver pulled the bus closer to the curb. K.H. had told her that her son liked certain games such as Grand Theft Auto, so when D.P. approached the bus, the driver spoke to D.P. about the game as a motivator to get him on the bus. D.P. did not get on the bus that day, but the experience as a whole appeared, positive. When D.P. went back into the house, he seemed happy. This in a way caused some consternation because D.P. appeared to be happy about not going to school which was not the objective.

Prior to leaving the house, she handed K.H. a laminated picture board that had various emotions (mad, happy, etc.). The purpose of the board was to give D.P. an outlet to point to an emotion if he could not verbally express how he was feeling at the time. The goal was to provide D.P. a positive experience going to school. K.H. appeared to be grateful and appreciative of the steps being taken.

Maule went on to state that Interactive Kids, the district's third party BCBA service provider, developed a Behavior Intervention Plan (BIP) based upon the September 17, 2022, observation at D.P.'s home.¹ (R-27.) The BIP was directed towards D.P.'s transportation challenges, and its purpose was to implement strategies that would assist in adapting D.P.'s behavior over time. The plan provided strategies for the parent, bus driver and aid, to facilitate getting D.P. on the bus so that he could get to school and access his education. It was her belief that the BIP addressed D.P.'s transportation issues.

The BIP was sent to K.H. on September 21, 2021, via email. Through this email, K.H. was requested that she familiarize herself with the BIP to assist in getting her son on the bus the following day. (R-29.) The following day, September 22, 2021, the BCBA and herself went to D.P.'s house. Before D.P. was brought out of the house, the BCBA trained the bus driver and aid on the new behavior plan. When D.P. was brought out, he was crying and covering his ears. The BCBA attempted to engage D.P. by various means to no avail. When K.H. brought D.P. up to the bus, the driver attempted to engage D.P. but he continued to cry and cover his ears. Attempts to get him to identify his emotions on the emotion board were also unsuccessful. After attempting a couple of times to get D.P. on the bus, the bus left, and no data was collected as a result. Throughout this interaction, K.H. was not happy with how things were progressing and expressed her displeasure. Consultation notes generated by Interactive Kids of both the September 22, 2021, and September 16, 2021, interactions were provided to K.H. the following week. (R-30.)

¹ K.H. asserted that the SCBOE did not send anyone out to observe her son until after she filed an emergent application seeking transportation with appropriate accommodations for D.P., compensatory education, and reimbursement for parental transportation to transport her son to and from school. In review of the procedural history of this matter, it appears that the emergent application was filed on September 21, 2021.

According to Maule, on September 22, 2022, she sent an email to the district summarizing the events of the day. (R-31.) In going through the timeline, she stated that when D.P. was first brought out of the house, he did not have his harness on so K.H. had to go back into the house to get it. Also missing were the pictures and gaming system, however K.H. went back and got them as well. Attempts at getting D.P. on the bus were unsuccessful, despite implementing several of the recommended strategies such as playing music and playing his favorite gaming systems. When D.P. was led away from the bus, he was happy. Maule noted that it was the obligation of the parents to get their child on the bus. When all of this was happening, K.H.'s husband told her that the child study team (CST) should know what to do and K.H. commented that "he threw you into the lion's den I cannot help you save your job."² K.H. also repeatedly told her to do her job.

Later that same morning, a virtual strategy meeting took place with K.H. and the BCBA team. At the time of the call, among other commentary, K.H. again stated that she (Maule) should have done her job and that this was being done to cover her ass. (R-31.)

Maule went on to state that the next observation took place on October 21, 2021. The purpose of the visit was to ensure that the BIP was being followed with fidelity — it all begins in the morning the minute D.P. gets up. She reiterated that it was the parents' obligation to get their child on the bus. Present at the time were herself and Rachel Watson from Interactive Kids. During the visit, K.H. was extremely hostile and aggressive towards them, demanding that they get off her property and screaming that they were wrecking her son every morning. She also stated that "she (K.H.) could not help save her job." Later that day, an email was sent to K.H. that summarized what had transpired that day. (R-37.)

After the incident at D.P.'s home, she received the consultation summary from Interactive Kids that summarized the events earlier that morning. At the end of the

² Despite repeated warnings by the judge, throughout the hearing, K.H. would interrupt, make derogatory comments, call the witness a liar, among other comments.

summary, Interactive Kids informed the district that they would no longer provide consulting services to D.P. due to K.H.'s extreme combativeness. (R-38.)

On cross-examination, Maule stated that her very first interaction with D.P. was in September 2021. Three visits were made to the house — September 17, 2021, September 22, 2021, and October 21, 2021. To the best of her knowledge, D.P. did not attend school between September 17, 2021, and September 22, 2021, and attempts to get D.P. on the bus during those visits were unsuccessful. She confirmed that since the beginning of the school year, bus transportation was provided to D.P. and continued to be provided, however D.P. has never gotten on the bus. The goal of the BIP was to get D.P. on the bus. The BCBA was put in place to assist in putting strategies in place for the parents, bus driver and aide.

When questioned about the transportation set up, Maule stated that the transportation provided by the district is a smaller bus. Other students are on the bus when it arrives at D.P.'s house. All of the children on the bus have harnesses. It is the parents' obligation to place the harness on their children prior to getting on the bus and get them onto the bus. Once the child is on the bus, the aide or driver secures the child in their seat.

Regarding D.P.'s attendance at school, Maule stated that there did come a point in time that K.H. drove her son to and from school.

Amiot Patrick Michel (Dr. Michel), the Superintendent for SCBOE, testified that he has been the superintendent for the district for fourteen years. After going through his educational and professional background, he was qualified to testify as an expert in the areas of special education; special education administration of New Jersey school districts; and the provision of faith to special education students. (R-44.)

He is familiar with K.H. having interacted with her as it relates to her son, D.P. He described K.H.'s relationship with the CST as contentious having had to personally intervene on several occasions due to the deterioration of the meeting. He recalled one

meeting between K.H. and several transportation company representatives wherein the meeting deteriorated to the point that K.H. started yelling and had to be asked to leave.³

According to Dr. Michel, D.P. has had prior issues with getting on and off the bus. Prior to attending the SCSSD, he attended the Bankbridge Elementary School (Bankbridge). Due to behavioral issues, which included issues getting off the school bus, his placement at the school was terminated. (R-4.) It was Bankbridge's contention that K.H. had not done everything that she could on her end in implementing the plans and strategies to successfully transport D.P. to and from school. The district speculated that another reason why D.P. was having difficulties at Bankbridge was the possibility that the bus ride was too long. To address this issue, the district placed D.P. at SCSSD which was located closer to his home and his IEP was amended accordingly. (R-5 and R-6.) The May 23, 2019, IEP included transportation for D.P. Prior to that, on May 15, 2019, a letter was sent to K.H. that again requested D.P.'s height and weight so that the school could purchase a harness for D.P. for when he was transported to and from school on the bus. The letter brought into question K.H.'s unwillingness to provide the information and requested that she immediately contact the bus company to provide the necessary information. (R-7.)

Dr. Michel went on to state that a couple of months later, on July 10, 2019, a letter was sent to K.H. informing her that the bus company that had been contracted to transport D.P. to ESY, terminated D.P.'s transport services effective immediately. (R-9.) The district was able to obtain a new service provider the following day and notified K.H. accordingly, informing her that transportation services would resume on July 15, 2019. (R-10.)

Dr. Michel went on to state that the district started running into transportation difficulties for D.P. Bus companies were refusing to pick up D.P. due to their problems in dealing with K.H. Because the district could not get transportation bids to pick up D.P., it filed a due process petition. Thereafter, the parties entered into a settlement agreement, among other terms and conditions, the agreement called for K.H. to

³ According to Dr. Michel, the SCBOE does not have its own bus fleet and contracts third party providers to provide transportation services for its students.

transport D.P. to and from school for the 2019/2020 school year, for which she would be reimbursed up to \$20,000. (R-14.) According to Dr. Michel, it is not good practice to allow a parent to transport their child as it is not the least restrictive environment. Citing to D.P. as an example, he needed to learn life skills, such as getting on public transportation which would hopefully, down the road, assist him in living independently. Unfortunately, in D.P.'s case, their hands were tied at the time because they could not get a bus company willing to go to K.H.'s house any longer.

For a number of reasons, which included the school disruptions as a result of the Covid-19 pandemic, the settlement agreement as it related to the transportation of D.P., was extended into the 2020/2021 academic year.⁴ (R-15.) However, at no time was it the districts' intent for the agreement to extend into the following school years — again pointing to the ultimate goal of getting D.P. to socialize and be independent.

On September 9, 2021, he received an email from K.H. wherein she claimed that her son has not been up for school and that he had now missed three days. She further asserted that she had not received any information that she had to have D.P. outside on the first day of school. (R-22.) In response, he informed K.H. that a bus had been at her house the past three days to transport D.P. to school. He also informed K.H. that “there will not be a specialist outside to assist D.P. onto the bus (there is a specialist from Interactive Kids . . . who will observe D.P. getting on the bus as a way to provide you with the proper guidance to make sure he gets to school.” Id. Dr. Michel went on to add that on multiple occasions, he repeatedly emphasized to K.H. that it was her responsibility to get D.P. on the bus. (R-33.)

Throughout this time, K.H. constantly told him that unless she got paid, she would not take her son to school. Her motivation appeared to be about payment. (R-23.) In review of his attendance, it appeared that D.P. did not attend school on a consistent basis.

⁴ The copy of Exhibit R-15 that was presented during the hearing was unsigned. Dr. Michel represented that the agreement had in fact been executed for the 2020/2021 academic year and payments were made to R.H. to transport D.P. to and from school.

In going through a series of emails between himself and K.H. dated September 13, 2021, Dr. Michel stated that he repeatedly told K.H. to reach out to Interactive Kids to assist her in incorporating strategies at home to get D.P. on the bus. Unfortunately, she responded, as she frequently did, that she was doing her job and it was time that he did his. Id. The following day, he received another email from K.H. who again stated that D.P. did not go to school. In response, he again requested that she reach out to Interactive Kids so that they could assist her in getting D.P. on the bus. (R-24.)

On September 15, 2021, another series of emails were exchanged. In his response to K.H.'s email, he informed her that: "this type of email is the reason bus companies did not previously want to provide transportation to your house. Please refrain from making allegations against the bus company . . . they are simply doing their job. In the meantime, we will make sure we assist you in incorporating strategies." (R-25.) According to Dr. Michel, K.H. had threatened to sue the bus company because they were not doing their job.⁵ He also informed her that all the children on the bus wore harnesses. Id. This information was provided to alleviate her concern that D.P. would be picked on or bullied, a concern that K.H. had previously expressed to him.

The following day, September 16, 2021, Maule sent K.H. an email which outlined strategies designed to assist D.P. in transitioning to take the bus. The information was also sent to the bus company so that they were aware of what K.H.'s efforts were going to be, and to have them to make allowances on their end — both in time and patience. (R-26.) The strategies were developed by the BCBA and CST and individualized for D.P.'s needs. They incorporated ideas and information from K.H. such as D.P.'s interests, and the fact that he did not like being told "no."

⁵ Throughout Dr. Michel's testimony, K.H. had to be cautioned to stop interrupting and cease her ongoing diatribe against Dr. Michel.

K.H. sent another email to him on September 23, 2021.⁶ In a response email, he questioned K.H.'s contradictory statements regarding D.P.'s fear of riding on a bus, pointed out her verbal abuse and accusations that she has levied at the bus companies which in turn resulted in the bus companies refusal to pick up her son; and the fact that the district has gone above and beyond its obligations to assist her in getting D.P. on the bus. Last, he informed K.H. that if D.P. continued missing school because of the bus issue, a new program consistent with his IEP may need to be explored so that he can attend school. According to Dr. Michel, this last point was not a threat, it was a recognition that transportation was a barrier for D.P. If the district was unsuccessful in getting D.P. on a bus, placement at a school that did not require a bus may need to be explored. (R-33.)

With regard to K.H.'s ongoing issue with not being allowed to ride the bus to school with her son, Dr. Michel stated that there were a couple of reasons why she could not. First, there was the legitimate policy and liability/insurance concern of the bus company in having a parent ride the bus with their child. Second, there was also the bus companies negative experience with K.H.

Dr. Michel went on to note that on October 18, 2021, an email was sent to K.H. confirming D.P.'s upcoming therapy sessions. The email also confirmed that Maule and a representative from Interactive Kids, would be at her house on October 21, 2021, to revisit the behavioral strategies that had previously been put in place. It was his position that all of D.P.'s transportation and related services needs, were contained in his current IEP.

Meghan Taylor (Dr. Taylor), the Director of Special Services for the SCBOE, was qualified and testified as an expert in the area of special education and the administration of special education to special education students. (R-45.) She has close to twenty years in the field of special education. At the time of the hearing, she

⁶ Through this email, K.H. stated that on that date, she attempted to get D.P. on the bus without any help from the school or Interactive Kids. She further stated that D.P. did not attend school because she could not get him on the bus and that it was mental abuse to put her child through this everyday because he was afraid of the bus. (R-32.)

had been with the district for a year. In her capacity as the director of special services, she oversees all case management functions for the district.

She is familiar with D.P.'s 2019/2020 IEP and as well as the amended IEP dated September 5, 2019. (R-11.) Under the September 5, 2019, IEP, D.P. who was classified as multiply disabled, was placed in an out-of-district placement at SCSSD. Among the services that D.P. was to receive was speech and occupational therapy, and counselling. The IEP also called for D.P. to receive a special education van for transportation as well as an aide and a harness. The September 5, 2019, amendment added an additional one-to-one aide for D.P. for the morning commute due to D.P. difficulties exiting the van in the morning.

On September 24, 2019, a re-evaluation planning meeting took place. (R-12.) At the time of the meeting, re-evaluations of D.P. were proposed to determine if D.P. remained eligible for special education and related services. K.H. consented to the proposed evaluations. Id. The evaluations that were subsequently conducted consisted of a learning evaluation, social evaluation, psychological evaluation, psychiatric evaluation and occupational therapy and speech evaluations. Upon completion of the re-evaluations a meeting was held on December 13, 2019, at which time D.P. was found eligible to continue receiving special education services under the classifications of multiply disabled based on a diagnosis of Autism, Communication Impairment, Emotionally Disturbed, and Intellectual Disability. (R-13.)

Under the social assessment, D.P.'s transportation needs were discussed which included the negative behaviors that D.P. exhibited during transportation. The psychiatric evaluation also discussed D.P.'s anxiety getting on and off the bus. Dr. Taylor went on to state that D.P.'s transportation issues were a barrier that D.H. needed to overcome so that he could be independent and successful as he got older.

For the 2020/2021 academic year, D.P. remained in his out-of-district placement at SCSSD. As a result of the pandemic, he had a hybrid schedule. Bussing at the time

was an issue because of the pandemic, therefore, K.H. was offered a transportation contract.⁷

On May 21, 2021, D.P.'s annual review took place, for the 2021/2022 academic year. (R-16.) An additional IEP meeting was held in July 2021. The current IEP called for D.P.'s continued placement at SCSSD. It did not call for a one-to-one aide on the bus. According to Dr. Taylor, the one-to-one aide was previously required due to D.P.'s difficulties getting off the bus, but he did not have any issues once he was on the bus. Getting off the bus was not currently an issue. She went on to add that if it appeared that D.P. required a one-to-one aide for transportation, the issue would be revisited.

Regarding BCBA services, Dr. Taylor testified that the district does not have its own BCBA on staff, therefore it contracts with Interactive Kids to provide behavioral services. K.H. was informed at that time that ESY would be provided virtually.⁸ (R-20.) It was her understanding that the reason they could not procure bussing services was because the bus companies would not submit a bid due to their prior difficulties with the household. She went on to note however that the district was subsequently able to obtain a transportation bid and contract for the 2021/2022 academic year. The email also informed K.H. that a representative from Interactive Kids would be present at the July 1, 2021, IEP meeting. Id. Interactive Kids were being brought in to work with D.P. to develop strategies that would assist in his bussing issues.

A couple of months later, on September 29, 2021, she received an email from Dr. Wentzell, the principal of the SCSSD. Dr. Wentzell wanted to pass along a conversation that she had had with K.H. who told her that she did not want district staff

⁷ Dr. Taylor testified that over the course of the 2020/2021 school year, letters were sent to K.H. regarding D.P.'s unexcused absences. (R-17.) In review of the last letter dated May 3, 2021, D.P. was reported to have had sixteen unexcused absences. (R-41.) In breaking this down further, Dr. Taylor testified that in September 2021, D.P. was present in school one day. In the month of October, he attended school twelve days. (R-42.) In review of R-42, it itemized that D.P. missed ten days of school. Notably, this figure is inconsistent with the testimony and documentary evidence presented in this matter that indicate that D.P. did not attend the first two weeks of school in September 2021, addition to the other days itemized on R-42.

⁸ Dr. Taylor testified that D.P. was offered both in-person ESY and virtual since the district was unable to provide transportation. In July 2021, out of sixteen school days, D.P. was absent eight of those days. In August, there were eight school days out of which D.P. attended only one. (R-41.) She subsequently learned that on several of the days, K.H. transported her son to ESY.

members or CST members from Salem City to interact with D.P. (R-34.) This mandate by K.H. created an issue because it was the district's continued responsibility to provide D.P. a FAPE, even if he attended an out-of-district school.

Three weeks later, on October 21, 2021, the district received a letter from Interactive Kids, terminating their services as it related to D.P. (R-36.) The rationale provided for the cancellation of their contract was due to K.H.'s combativeness and threats of filing a lawsuit against its staff members.

Ten days later, on November 1, 2021, the district received an email from the transportation company hired to transport D.P. to and from school. (R-39.) The bus company advised the district that K.H. had called their office and asked that the bus company tell the district that they could no longer transport D.P. so that she could transport him herself. Dr. Taylor went on to state that if the transportation company cancelled its contract, the district would not be able to provide transportation and D.P. would not be able to overcome his barriers as it related to riding on a bus.

A couple of days later, on November 2, 2021, an incident report was filed by D.P.'s bus driver. (R-40.) He described D.P. approaching the bus with a smile on his face, getting on the third step but then banging his head on the side of the bus for the next five minutes. After five minutes, the bus driver told D.P. that it was time for him to get off the bus. When D.P. got off of the bus, he was smiling. Dr. Taylor surmised that D.P. was acting towards a goal — i.e., not getting on the bus, and when he got his way he was happy.

She believed that D.P.'s present IEP provides FAPE. It provides D.P. transportation and services to support him getting access to his transportation which included BCBA observation and a BIP.

On cross-examination, Dr. Taylor confirmed that in 2019/2020, D.P. was provided transportation, a harness and a shared aide going to and from school. He was

also provided an additional one-to-one aide on the bus in the morning to assist D.P. in getting off the bus.⁹

Dr. Taylor went on to add that regarding the 2021/2022 school year, transportation services continued to be offered along with a shared aide. A one-to-one aide was not required at this time — the issue being getting D.P. on the bus, not riding the bus. The bus continues to stop at D.P.'s house each school day. Interactive Kids was no longer in the picture however they offered to share their information on D.P. if a new entity was retained. On the days that D.P. attends school, K.H. transports him to and from school.

K.H. testified that her family moved to Salem County in 2017. Her son, who suffers from among other things, anxiety, has always had issues taking a bus, particularly yellow buses, even before they moved to Salem County. She has six children, D.P. being her fifth child. From the start she knew that he was different than her other children which was why, she had him tested.

D.P.'s biggest problem is autism and there are some issues that he is unable to overcome. She continues to work with him on how to try to overcome his fears or barriers.

In 2019, issues arose with D.P. when he was being bussed to school. At the time, she would physically put her son on the bus because there were issues getting him on the bus. Once she got him on the bus, she would then harness him in and leave the bus. D.P. was attending the Gloucester County School Special Services at the time. Incidents started to occur with D.P. while enroute to the point that D.P. would refuse to get off the bus and the bus companies refused to transport him any longer.

Because there was no transportation, her son was home for eight months. The school brought in a tutor who attempted to work with her son however this was unsuccessful, and it was recommended to the CST that a new placement be explored

⁹ Due to the Covid-19 pandemic, the school district went virtual in March 2020.

which turned out to be SCSSD. She believes that D.P.'s current placement is the best place for her son.

As it relates to his current transportation issues, she has repeatedly asked the district to allow her to go onto the bus to assist in not only getting her son on the bus but get him harnessed into the seat. She can get him on the steps but after that she was not allowed to go any further into the bus.

K.H. went on to relay that she was unaware that the bus was coming to her house on September 7, 2021. She was never contacted, nor did she receive any paperwork. When she called the school to see what happened, she was told that a bus had stopped at her house, but D.P. was not present, so they left. She was informed that the bus would be there the following day. The following day, when the bus arrived, she was able to get her son up the stairs but that was as far as he would go. The bus driver informed her that she could not get on the bus and the aide was not allowed to put "hands on" her son to get him seated.

All of this was very disconcerting — her son did not want to go to school, and he would not get on the bus because of his bus issues. Every morning the same thing occurred and the responses that she received from the school evidenced their lack of concern. This continued for the month of September with the school not sending anyone to help. According to K.H., he was so agitated and upset that he didn't realize he was hurting himself when he banged his head and bit himself. When she called the bus company a month into the school year and told them of her concerns, she was dissatisfied with their response. She told them that if her son got injured, she would sue them. The bus company told her to reach out to the Board of Education however all she was getting told was that she could not get on the bus to secure her son because of a liability issue. Eventually, three weeks later after attempting to get her son on the bus every day, she ended up taking D.P. to school herself and he had a great day.¹⁰

¹⁰ K.H. testified that she did not transport her son prior to that because it costs money between the gas and insurance. She also testified that when she took him to school on that first day, D.P. kicked out her window. K.H. stated that throughout all of this, she has consistently worked to make D.P. understand that he was going to go to school.

According to K.H., she gets blamed for everything and is perceived to be belligerent or crazy. She acknowledged that she acted like that the third time when the school representatives came out and stood by and watched while her son banged his head, bit himself, grabbed his ears and screamed. All they did was watch it all happen and write in their notebooks. They did nothing to assist her, so she told them to leave. They allotted her son six minutes to work through his fear of getting on the bus. Six minutes was an insufficient amount of time for her son to push through his significant fear and anxiety of getting on the bus — a fear that he has had since D.P was six years old.

She went on to recall an incident with her son that truly frightened her.

In all of the years that he has exhibited his self-injurious behavior, the last incident resulted in him having to go to the hospital.¹¹

She asked the representative from Interactive Kids to meet with D.P. at school so that he would not get upset. D.P. understands what is happening and that there is a pattern. She tries to get D.P. on the bus every morning but the bus sets him off. No one comes out to assist her in this regard. If she could get that assistance or permission to get him on the bus and into his seat, she believes he would go along with it. It is her firm belief that the district does not want to help her or her son. When she came into the district, he had issues with taking the bus, but the district appears to have overlooked this fact. The best solution is to stop upsetting her son every morning. This became crystal clear when her son had to go to the hospital on November 10, 2021, after hurting himself on the bus because there was no aide to assist them.

K.H. went on to reiterate that a pattern has now been established with D.P. because the issues of getting him on the bus have been going on for three months at that point. The only reason Interactive Kids came out to her house was because she had filed a complaint. When they came out to her house, she was happy because she

¹¹ According to K.H. this incident occurred on November 10, 2021.

believed that they were going to help her son overcome his fear and anxiety of getting on the bus. They came out one day and gave her a report to work through with D.P., and two booklets (emotion boards) that were geared for a five-year-old — not a twelve-year-old. She also told the workers that she could purchase a game for D.P, that he had a game to help distract him and did in fact purchase it, but D.P. broke it during one of his episodes.

On multiple occasions she told the district and Interactive Kids that she needed help of some kind. She understood that it is her job to get D.P on the bus and she is able to get him onto the first or second step, but she cannot get him up all of the stairs and into the bus and she is not allowed on the bus. Her son is getting emotionally wrecked each day that she attempts to get him on the bus. She truly believes it is a “money thing” with the district and as a result, her son is not getting an education. She was getting paid before to take her son to school but not now. Now she transports her son to school almost every day without any reimbursement. She drives him to school because his education was the most important thing.

K.H. went on to state that transferring her son to the middle school, which was what Dr. Michel threatened to do, would not benefit D.P., or provide him with the services that he receives at his current placement. To resolve the current issue, she offered to transport her son for 2021/2022 school year at least in the morning but asked to be reimbursed to do so. She reiterated, however, that even without reimbursement, she would continue to take her son to school. She is afraid that the district will take away D.P.’s out-of-district placement because of money. She had serious concerns that her son would not receive the necessary services if he was relocated to the middle school. She also questioned who would help her get D.P. into the building. At his current placement, an aide comes out to assist her in getting her son into school.

She believes it is personal between herself and Dr. Michel and the SCBOE because she is advocating for her son, and they don’t like it. Pointing to the previous year, she believed that her son’s education was neglected for eight months before they offered her a reimbursement contract. K.H. went on to describe a couple of incidents

that had occurred with D.P. in 2019, while enroute to the school which is why the bus companies refused to transport her son. (P-1.)

K.H. went on to note that school started in September, and it was now November, and the district had not even offered to provide D.P. with a helmet to protect his head when he bangs it on the bus or even work on that issue. The day she had to bring her son to the emergency room after he had banged his head so hard that he vomited and had dizziness, scared her. All that the district has done is have a caseworker and a specialist out three times, and on each occasion when D.P. acted out, they did nothing to intervene. She thought that after three months of putting her son through all of this, that she and the school could have come to a resolution. Specifically, cut out the morning bus and reimburse her to transport her son in the morning. The reimbursement would help defray the cost of her insurance. Instead, every morning she takes her son out to the bus, gets him onto the first step and that's it. Neither the bus driver or the aid can touch him, grab his harness and pull him onto the bus. Every morning her son is distraught, and she ends up taking him to school herself.

She implemented the plan that the specialist had provided to no avail. Now, she has implemented her own plan and puts D.P. in her car and takes him to school. While he gives her a problem, she is still able to get him to school. It is the school bus that sets her son off. Her son's fear and anxiety with taking the school bus is not novel and the school has been aware of his transportation issues for four years. K.H. acknowledged that she told the caseworker and specialist to get off her property, but she was angry and had had it at that point. She also acknowledged that she did not answer the emails that the school sent to her. It was her belief that the school was trying to goad her into saying something that could be used against her, instead of helping her son.

K.H. reiterated that it was a money thing with the district which was why Interactive Kids was no longer providing services — the district did not want to pay them. Interactive Kids should have been there every day to work on her son's issues, not just a couple of times. Instead, the district makes her look bad because she yells and screams and threatens their jobs. She wouldn't have to threaten them if they did

their job. K.H. went on to add that D.P.'s current placement is the most appropriate placement for her son — a fact that the district is disregarding. The transportation issue has been going on since 2014 when her son was beaten up on a bus three different times. It cannot be fixed overnight, and the Child Study team never addressed the underlying issue — instead they put him on a different bus route. Putting her son in a different school is not an appropriate remedy to the transportation issue. This was why she offered to transport him and asked that they agree to something as it related to reimbursement.

On cross-examination, K.H. acknowledged that she was seeking an agreement from the school district to transport her son to school and get reimbursed for her services. She also acknowledged that her son has issues with all types of transportation — be it a yellow school bus, a van, or a car. He particularly has issues with yellow school busses.

She affirmed that the bus has come every day during the 2020/2021 school year. She also affirmed that when he attended ESY, she drove him. When he has a doctor's appointment or the family goes out, he goes with them in the car. With some exception, D.P. will not walk anywhere. The problem with getting in and out of a vehicle appears to arise when it's time to go to school. She continues to try every morning to get D.P. on the bus. When he does not go to school, he watches TV because there is not much for him to do. Even if she drove him to school in the morning, she believes that there will be issues in getting him on the bus in the afternoon that will need to be addressed.

FINDINGS OF FACT

Having considered the testimonial and documentary evidence presented by the parties, in addition to the findings of fact set forth above, I **FIND** as **FACT**:

The July 1, 2021, IEP provided D.P. with ESY along with specialized transportation to and from school, an aide, and a harness for the duration of the ESY

program. The IEP also provided for specialized transportation to and from school, an aide and a harness, for the 2021/2022 academic year. (R-3.)

SCBOE does not own a fleet of school buses, nor does it have a BCBA on staff. Therefore, both the transportation services and BCBA consultation/services are outsourced through third parties. There are several bus companies that the county bids out to for student transport. BCBA services are contracted through Interactive Kids.

The July 1, 2021, IEP also called for transportation observations to address behaviors related to bussing/bus access (as needed). (R-3.) Present at the July 1, 2021, IEP meeting, was a BCBA consultant from Interactive Kids. (R-3.) The transportation observations were to be conducted by the BCBA to build a BIP for D.P. relative to his transportation issues. In furtherance of this goal, a behavior data sheet was prepared. The data sheet was part of a tiered approach by the district in helping D.P. to access his transportation to and from school during the 2021/2022 academic year. (R-21.) Ultimately, the BCBA was unable to use the data sheet because D.P. never took the bus.

The district was unable to procure transportation for D.P. to ESY in July/August 2021 because the bus companies who the district utilized, refused to submit a bid. The basis of their refusal was due to their prior difficulties with K.H. Given this fact, D.P. was provided ESY virtually as well as in person. D.P. was absent eight out of the sixteen days of ESY.

The district was subsequently able to procure transportation for D.P. for the academic year starting on the first day of school — September 7, 2021. On September 7, 2021, when the bus arrived at D.P.'s home, D.P. did not exit the home. Petitioner was unaware that the bus transportation had started. D.P. did not go to school that day or the following days. (R-22.)

When the bus arrived at D.P.'s home on subsequent dates to transport D.P. to school, they were unsuccessful in getting D.P. on the bus. K.H. was able to get D.P.

onto the first step but was unable to get him any further — even with the assistance of the driver and bus aide.

On September 9, 2021, K.H. was informed that it was her responsibility to get D.P. onto the bus. She was also informed that she herself was not allowed to get on the bus and that the aide was only there to ensure the safety of all the kids on the bus. (R-22.) On this same date, K.H. was informed that someone from Interactive Kids would be out to observe D.P. and provide her with some guidance in getting D.P. onto the bus.

On September 13, 2021, K.H. sent an email to the school stating that the bus showed up with the harness, but she was unable to get her son on the bus. She brought up the fact that she had offered to drive her son if she was reimbursed but that the district refused. In the same string email, the district told K.H. to reach out to Interactive Kids so that they could review strategies with her to get D.P. on the bus. (R-23.)

On September 14, 2021, K.H. sent the school an email indicating that D.P. did not get on the bus again. In response, K.H. was again asked to reach out to Interactive Kids for assistance. Ultimately, it was the district who set up a virtual meeting for the following day, with Interactive Kids and K.H. to discuss strategies to get D.P. on the bus. A follow-up meeting was also scheduled at that time for September 22, 2021, to discuss how the strategies worked. (R-24.)

On September 15, 2021, the virtual meeting took place between representatives of Interactive Kids, Maule, and K.H. The meeting produced strategies for K.H., the bus driver and bus aide, to implement to get D.P. on the bus. (R-25.)

On this same date of September 15, 2021, the district received a complaint from the bus company regarding K.H.'s conduct over the three prior days. The conduct complained of was K.H.'s refusal to remove D.P. from the bus steps — thereby delaying the bus for up to forty minutes. This in turn delayed the bus from transporting the other

children who were on the bus, to school. The bus company also complained of K.H.'s rudeness to the bus driver, aide, and bus company office staff.

On September 17, 2021, Maule and a representative from Interactive Kids went to K.H./D.P.'s home to observe D.P. getting on the bus. An email was sent to K.H. later that morning outlining a BIP that Interactive Kids had developed based upon the observations earlier that morning. (R-26.) Thereafter, a finalized BIP was sent to K.H. on September 21, 2021.¹² (R-27.)

The following day, September 22, 2022, Maule and a representative from Interactive Kids went to D.P.'s house to observe how the BIP was implemented. It was noted at the time that D.P. did not initially have his required harness; his pictures; or the games as outlined in the BIP. Attempts by all those present — the bus driver, K.H., and the BCBA to get D.P. on the bus, were to no avail. Therefore, no data was collected. The observations from September 22, 2021, were summarized and ended with the recommendation that the parties continue with the implementation of the BIP. (R-30.)

Later that morning, a virtual meeting took place with K.H., representatives from Interactive Kids and the district, to discuss implementation of the behavioral strategies to get D.P. on the bus. K.H. was contentious towards the district and repeatedly claimed that they had dropped the ball and that everyone was covering their "ass." The meeting ended abruptly due to K.H.'s attitude and demeanor towards those on the call. (R-31.)

On September 28, 2021, the district responded to an email sent by K.H. who stated that her son was home again and that no one from Interactive Kids came to her home to assist her in getting D.P. on the bus. The district informed K.H. again that it was her responsibility to get D.P. on the bus. She was reminded that the BIP needed to be implemented with fidelity, otherwise the district would have to remove the transportation barrier and make a recommendation that would allow D.P. access to his

¹² This was the same date that K.H. filed an emergent application under OAL Docket No. EDS 07869-21. The underlying Due Process petition was also filed and subsequently transmitted to the OAL on October 21, 2021.

education in a less restrictive environment. (R-33.) In other words, consider relocating D.P. to a different school where transportation would not be an issue.

The following day, September 29, 2021, the district received an email from the principal of SCSSD. K.H. had informed the principal that she did not want any CST member or anyone from Salem City, to have any interaction with D.P. when he was at school. (R-34.)

On October 21, 2021, a third observation took place at D.P.'s residence by Maule and a representative from Interactive Kids to see how the BIP was being implemented. D.P. was able to make it up to the second step, however, stopped and became agitated when K.H. started yelling at Maule and the representative when they questioned where D.P.'s reinforcement items were. K.H. demanded that they get off her property and threatened that there would be a problem if they returned.

Later that morning, Interactive Kids reached out to the district to inform them that they would be terminating their contract for D.P. due to K.H.'s combativeness and threats. (R-36.)

On November 1, 2021, an incident report was filed by the bus company regarding K.H. K.H. was upset that her son was not getting on the bus and requested the bus company inform the district that they could no longer provide transportation for D.P. so that she could drive him herself. (R-39.)

But for one day, D.P. did not attend school in the month of September and attended school only twelve days in October. At no time did he take the bus which continued to show up at his house every school day.

LEGAL ANALYSIS AND CONCLUSIONS

The Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400–1482, ensures 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 further education, employment, and independent living, and ensures that the rights of children with disabilities and parents of such children are protected. 20 U.S.C. § 1400(d)(1)(A), (B); N.J.A.C. 6A:14-1.1. A “child with a disability” means a child with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities, and who, by reason thereof, needs special education and related services. 20 U.S.C. § 1401(3)(A).

There is no dispute that D.P. is eligible to receive special education and related services. States qualifying for federal funds under the IDEA must assure all children with disabilities the right to a free “appropriate public education.” 20 U.S.C. § 1412(a)(1); Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176 (1982). Each district board of education is responsible for providing a system of free, appropriate special education and related services. N.J.A.C. 6A:14-1.1(d). A “free appropriate public education” (FAPE) means special education and related services that (A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the state educational agency; (C) include an appropriate preschool, elementary-school, or secondary-school education in the state involved; and (D) are provided in conformity with the individualized education program required under 20 U.S.C. § 1414(d). 20 U.S.C. § 1401(9); Rowley, 458 U.S. 176. Subject to certain limitations, FAPE is available to all children with disabilities residing in the state between the ages of three and twenty-one, inclusive. 20 U.S.C. § 1412(a)(1)(A), (B).

An individualized education program (IEP) is a written statement for each child with a disability that is developed, reviewed, and revised in accordance with 20 U.S.C. § 1414(d); 20 U.S.C. § 1401(14); 20 U.S.C. § 1412(a)(4). When a student is determined to be eligible for special education, an IEP must be developed to establish the rationale for the student’s educational placement and to serve as a basis for program implementation. N.J.A.C. 6A:14-1.3, -3.7. At the beginning of each school year, the district must have an IEP in effect for every student who is receiving special education and related services from the district. N.J.A.C. 6A:14-3.7(a)(1). Annually, or more

often, if necessary, the IEP team must meet to review and revise the IEP and determine placement. N.J.A.C. 6A:14-3.7(i). FAPE requires that the education offered to the child must be sufficient to “confer some educational benefit upon the handicapped child,” but it does not require that the school district maximize the potential of disabled students commensurate with the opportunity provided to non-disabled students. Rowley, 458 U.S. at 200. Hence, a satisfactory IEP must provide “significant learning” and confer “meaningful benefit.” T.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 577–78 (3d Cir. 2000).

The Supreme Court discussed Rowley in Endrew F. v. Douglas County School District RE-1, U.S., 137 S. Ct. 988 (2017), noting that Rowley did not “establish any one test for determining the adequacy of educational benefits” and concluding that the “adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.” Id. at 996, 1001. Endrew F. warns against courts substituting their own notions of sound education policy for those of school authorities and notes that deference is based upon application of expertise and the exercise of judgment by those authorities. Id. at 1001. However, the school authorities are expected to offer “a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.” Id. at 1002.

Transportation is included as a related service under the regulations in 34 CFR § 300.39(a) and (c)(16) and N.J.A.C. 6A:27-5.1. It is the responsibility of the CST to determine if transportation is required to assist a child with a disability to benefit from special education and related services, and how the transportation services should be implemented. If it is determined that transportation is required under the IEP, it is the district’s responsibility to provide the necessary and appropriate transportation, equipment, transportation aides, and special arrangements for other assistance to and from school. N.J.A.C. 6A:27-5.1.

Here, it is undisputed that D.P.’s July 1, 2021, IEP called for specialized transportation to his out-of-district placement, a transportation aide, and a harness for both ESY and for the 2021/2022 school year. The IEP also called for a BIP and

transportation observations by a BCBA to address D.P.'s behaviors as it related to getting on and off the school bus.

The respondent was unable to procure transportation services for ESY in July/August 2021 due to the third-party providers refusal to bid on the contract. The refusal appears to stem from the bus companies' contentious relationship with the petitioner. As a result of its inability to find transportation, the respondent offered ESY virtually as well as in person if petitioner wished to transport him.

Respondent was subsequently able to secure transportation for D.P. for the 2021/2022 school year, commencing on September 7, 2021. A harness was provided and there was an aide on the bus. While the bus showed up every day, D.P. refused to get on the bus. Petitioner was able to get D.P. onto the first step but then D.P.'s anxiety would escalate, and he would bang his head, hold his ears, scream and/or cry. When he was told that he did not have to get on the bus, he would smile and voluntarily go back into the house.

A week later, on September 15, 2021, a meeting took place with the district, petitioner and the BCBA present for the meeting. Strategies were developed at that time to assist in getting D.P. on the bus. It was made clear on several occasions that getting D.P. onto the bus was petitioner's responsibility and that once on the bus, the bus driver and aide would take over. Notably, complaints came in during this timeframe of petitioner's conduct towards the driver and bus company representatives.

In an attempt to address the problem, three observations took place by the BCBA and the district — September 17, 2021, September 22, 2021, and October 21, 2021. A proposed BIP was sent to petitioner on September 17, 2021, and a finalized BIP was sent on September 21, 2021. The strategies were detailed and started the minute D.P. woke up to the point when D.P. stepped onto the bus and was in his seat. While petitioner testified that she implemented the strategies provided in the BIP that were directed to her, it does not appear that she followed them with fidelity and by her own admission, at some point, disregarded them in their entirety and put her own strategies in play.

It is petitioner's contention that the SCBOE has failed to provide FAPE to D.P. during ESY and in the beginning of the 2021/2022 school year. She is not challenging the academic services provided to D.P. at his current placement. Instead, the entire controversy centers on the transportation of D.P. to and from school — or more specifically, the respondent's failure to transport her son, and refusal to reimburse her to transport her son.

The respondent asserts that the IEP was appropriate as was their implementation of it. Under the July 1, 2021, IEP, the CST determined that transportation was required as a related service. Thereafter, steps were taken by the district to procure the services. Unfortunately, the district was unable to procure the necessary transportation services for ESY because the bus companies with whom they contracted, refused to bid on the contract. This refusal stemmed from their prior volatile and contentious dealings with the petitioner.

The respondent goes on to note that they were subsequently able to procure transportation services for the 2021/2022 school year. In accordance with the IEP, the bus arrived every day with an aide, and a harness had been provided. Interactive Kids was brought in to observe D.P. and develop a BIP. The BIP that was developed was personalized to D.P. to overcome his barriers of getting on the bus and was "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." Andrew F. Douglas Cnty. Sch. Dist. Re-1, 580 U.S. 386, 137 S. Ct. 988, 999 (2017).

Additionally, respondent contends that there is no legal authority or caselaw for the proposition that the district is obligated to have the bus driver or aide, exit the bus and physically retrieve and/or forcefully place the child on the bus. It is the parent's obligation to transfer control of the student which typically occurs on the steps of the bus. Nor is a parent entitled to reimbursement when door-to-door transportation is offered. Additionally, this is not a case where petitioner transported her son every day to school and then sought reimbursement because the district failed to provide transportation. Petitioner refused to transport her son without reimbursement. Such

conduct on her part undercuts her ability to obtain reimbursement or a court ordered transportation agreement.

As noted above, this is not a dispute about D.P.'s programming or current placement, this is strictly a dispute about transportation and whether the district has met its obligations under IDEA in assisting D.P. to access his special education program. The CST is responsible for not only determining if transportation is required to assist a child with a disability to benefit from special education and related services, but how the transportation services should be implemented.

That is what occurred here. The July 1, 2021, IEP, called for special transportation, an aide, a harness and BCBA oversight. The respondent put all of that in play. The respondent was unable to provide transportation for ESY for reasons outside of their control. The bus companies refused to put in bids to transport D.P. to ESY due to prior difficulties with the petitioner. Given this fact D.P. was offered ESY virtually and/or in person. D.P. attended nine out of the twenty-four days of ESY. I **CONCLUDE** that under the unique facts presented here, that the respondent has met its obligations under the IDEA and provided D.P. FAPE for the ESY.

The second issue surrounding transportation occurred in September 2021 when difficulties arose in getting D.P. onto the bus. BCBA consultation was brought in, strategies were put in place and a BIP was prepared — all in accordance with the IEP. By petitioner's own admission, she stopped implementing the strategies with fidelity and it is clear that her relationship with the district throughout this time was extremely contentious to the point of obstruction.

Given this fact and timeline of events, I **CONCLUDE** that both the IEP and the steps that the respondent took to implement the IEP during the window of time in question, were reasonable and appropriately geared to provide D.P. access to his out-of-district placement and provide him FAPE. I concur with the respondent that petitioner is not entitled to reimbursement or an extension of the 2019 settlement agreement. With the exception of ESY, which was addressed above, for the time period in question prior to filing the due process petition, with limited exception, it does not appear that

petitioner drove her son to school. Second, there is no basis to compel the respondent to enter into a transportation agreement with a parent when transportation was already being provided.

ORDER

Based on the foregoing, it is hereby **ORDERED** that the relief sought by petitioner is **DENIED** and the due process petition is **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.



November 25, 2022 _____

DATE

TAMA B. HUGHES, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

TBH/gd

APPENDIX

WITNESSES

For petitioner

K.H.

For respondent

Deborah Maule

Amiot Patrick Michel. Ed.D.

Meghan N. Taylor, Ed.D.

EXHIBITS

For petitioner

- P-1 James L. Hewitt, MD report, dated November 16, 2016, (page 1 only); Salem Medical Center Discharge Instructions, dated November 10, 2021; Bus Discipline Report, dated May 9, 2019; Bus Discipline Report, dated May 13, 2019; Bus Discipline Report, dated May 14, 2019; Bus Discipline Report, dated May 16, 2019; Incident Report, dated July 9, 2019; and IEP Screenshot of two pages, dated July 1, 2021
- P-2 Not Admitted

For respondent

- R-1 Petition for Due Process
- R-2 Final Decision Denying Emergent Relief
- R-3 IEP, dated July 1, 2021
- R-4 Bankbridge rejection letter, dated March 8, 2019
- R-5 Salem County Special Services School District acceptance, dated April 2, 2019
- R-6 IEP, dated May 23, 2019
- R-7 Letter to parent, dated May 15, 2019
- R-8 Letter to parent, dated May 17, 2019

- R-9 Letter terminating transportation, dated July 10, 2019
- R-10 Letter instituting transportation, dated July 11, 2019
- R-11 IEP, dated August 2019
- R-12 Reevaluation plan and IEP, dated September 13, 2019
- R-13 Eligibility Conference Report, dated December 13, 2019, and 2019 Evaluation Reports
- R-14 Final Decision Approving Settlement, dated December 27, 2019
- R-15 2020-2021 Transportation Services Agreement
- R-16 IEP, dated March 21, 2021
- R-17 Letter to parent regarding excessive absences (including prior letters) dated May 3, 2021
- R-18 Interactive Kids Contract, dated June 10, 2021
- R-19 Email from Case manager regarding parent contact, dated June 9, 2021
(Attorney Client Privilege)
- R-20 Email from director to parent regarding transportation, dated July 1, 2021
- R-21 Behavioral Data Sheet, dated September 7, 2021
- R-22 Email to parent regarding transportation and BCBA, dated September 9, 2021
- R-23 Emails regarding transportation, dated September 13, 2021
- R-24 Emails regarding transportation, dated September 14, 2021
- R-25 Email regarding week summary from transportation, dated September 15, 2021
- R-26 Email to parent regarding summary, dated September 17, 2021
- R-27 Interactive Kids Behavior Intervention Plan
- R-28 Summary from Case Manager, dated September 17, 2021
- R-29 BIP email from Case manager, dated September 21, 2021 **(Attorney Client Privilege)**
- R-30 Interactive Kids Consultation Notes
- R-31 Email regarding observation notes, dated September 22, 2021 **(Attorney Client Privilege)**
- R-32 Email exchange regarding transportation, dated September 23, 2021
- R-33 Email to parent regarding BCBA, dated September 28, 2021

- R-34 Email from Salem County Special Services School District regarding attendance, dated September 29, 2021(**Attorney Client Privilege**)
- R-35 Email to parent regarding BCBA observation, dated October 18, 2021
- R-36 Email from Interactive Kids cancelling services, dated October 21, 2021
- R-37 Email observation summary from Case manager, dated October 21, 2021
- R-38 BCBA observation summary, dated October 21, 2021
- R-39 Email from Sheppard Bus Service, dated November 1, 2021 (**Attorney Client Privilege**)
- R-40 Incident Report, dated November 3, 2021
- R-41 2021 ESY attendance
- R-42 2021-2022 student attendance
- R-43 Curriculum Vitae - Deborah Maule (**Redacted Personal Information**)
- P-44 Curriculum Vitae – Amiot P. Michel, Ed. D. (**Redacted Personal Information**)
- R-45 Curriculum Vitae – Meghan N. Taylor, Ed. D. (**Redacted Personal Information**)