



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 08829-21

AGENCY DKT. NO. 2022-33461

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

Petitioners,

v.

WEST MORRIS REGIONAL BOARD

OF EDUCATION,

Respondent.

David R. Giles, Esq., for petitioners

Jodi S. Howlett, Esq., for respondent (Cleary, Giacobbe, Alfieri & Jacobs, LLC,
attorneys)

Record Closed: October 19, 2022

Decided: December 7, 2022

BEFORE **JUDE-ANTHONY TISCORNIA**, ALJ:

STATEMENT OF THE CASE

J.S. and S.S. on behalf of A.S. (petitioners) filed a due-process petition seeking door-to-door transportation of A.S. from her home in Long Valley (Washington Township), New Jersey, to her out-of-district placement at Sage Day High School located in Boonton, New Jersey. A.S. is currently being picked up and dropped off by a school bus at a

municipal building a short distance from her house. Petitioners also seek reimbursement for all costs associated with the underlying petition.

PROCEDURAL HISTORY

Petitioners filed a request for due-process hearing (“due-process petition”) with the Office of Special Education Policy and Procedures on or about October 5, 2021. The due-process petition challenged West Morris Regional High School District’s failure to provide curb-to-curb transportation to A.S. for her out-of-district placement located at Sage Alliance (“Sage”) in Boonton, New Jersey.

On October 25, 2021, the matter was transmitted to the Office of Administrative Law (OAL).

Subsequent to the filing of the due-process petition, petitioners filed a request for emergent relief on January 5, 2022, seeking enforcement of stay-put protection regarding curb-to-curb transportation of A.S. from her home in Long Valley, New Jersey, to her out-of-district placement at Sage Alliance. On January 26, 2022, the undersigned issued a final decision denying petitioners’ request for emergent relief, finding that the District was already implementing “stay put.” The undersigned further ordered that the curb-to-curb transportation provision remains in effect as long as A.S. remains at Sage Alliance.

A plenary hearing was held before this tribunal on June 1, 2022, June 3, 2022, June 22, 2022, and August 3, 2022. Final submissions were received on October 19, 2022, at which point the record was closed.

FACTUAL DISCUSSION

The operative facts are largely undisputed, and I **FIND** the following to be the facts of the case: A.S. is a fourteen-year-old minor child eligible for special education and related services under the classification of “other health impaired.” A.S. lives within the West Morris Regional Board of Education district, and, as such, respondent/District is the

local education agency currently responsible for providing A.S. with a free appropriate public education (FAPE).

Prior to becoming a (high-school) student in the West Morris Regional High School District, A.S. was a special-education (middle-school) student in the Washington Township School District (Washington Township). While still a student at Washington Township, a transitional individualized education program (IEP) was put in place on April 23, 2021, (“April IEP”) which called for A.S.’s continued placement at Barnstable Academy pending her placement at a new out-of-district private therapeutic day school. This IEP also provided for curb-to-curb transportation from A.S.’s home to Barnstable. Accordingly, A.S.’s placement at Barnstable and curb-to-curb transportation continued through the end of the 2020–2021 school year.

On July 1, 2021, following the completion of A.S.’s eighth-grade year, A.S. became a student of the West Morris Regional High School District. On July 14, 2021, at the request of petitioners, the West Morris Regional High School District convened an IEP meeting. Petitioners and A.S. attended this meeting virtually. The IEP resulting from the meeting called for A.S. to be placed on home instruction pending her acceptance to an appropriate out-of-district placement. Because A.S. would be receiving home instruction under this IEP, transportation was not provided as a “related service” therein. Petitioners did not sign off on this July 14, 2021, IEP, but rather said IEP was implemented upon the expiration of the fifteen-day notice period pursuant to N.J.A.C. 6A:14-2.3(h).

A.S. was ultimately placed at Sage Day High School, a private therapeutic day school, beginning on September 10, 2021 (the start of the 2021–2022 school year). The July 14, 2021, transitional IEP (“July IEP”) contemplated A.S. remaining on home instruction awaiting acceptance to an out-of-district placement. Upon A.S.’s acceptance to Sage, the District put A.S.’s transportation contract out to bid, with Cassidy Transportation Company (Cassidy) ultimately winning the bid. Cassidy was then employed by the District to transport A.S. (via school bus) to Sage, beginning on October 10, 2021. Between the time A.S. started at Sage on September 10, 2021, and Cassidy being contracted to transport A.S. on October 10, 2021, her father, S.S., drove A.S. to and from Sage every school day for approximately twenty days.

A.S.'s dwelling is located on the side of a steep mountain road with no sidewalk or shoulder. After securing the transportation contract, Cassidy informed the District that the area immediately in front of A.S.'s home was too dangerous an area for their school bus to safely stop. Thus, both the District and Cassidy resolved to pick A.S. up and drop her off each day at the Washington Township municipal building, which is located approximately one third of a mile (1,760 feet) down the road from A.S.'s home. Thus, one of A.S.'s parents has been responsible for driving A.S. to and from this municipal building before and after school each day, which they have been doing and continue to do.

Petitioners filed a due-process petition on October 5, 2021, challenging the District's failure to provide for curb-to-curb transportation for A.S. The matter was transmitted to the OAL on October 25, 2021, and was assigned to the Honorable Danielle Pasquale, ALJ. At the time of the filing of the petition, A.S.'s last agreed-to and implemented IEP was the April 23, 2021, IEP. Subsequent to the filing, on October 12, 2021, the District, once again, convened an IEP meeting, and proposed an IEP that contemplates A.S.'s current placement at Sage and provides for transportation between the municipal building and Sage as a related service.

On January 5, 2022, the petitioners filed a request for emergent relief seeking enforcement of stay put. As a result, the undersigned concluded that the April 23, 2021, IEP, which provided for curb-to-curb transportation as a related service, was the stay-put IEP, and that curb-to-curb transportation as a related service remains the stay-put transportation provision while the underlying due-process petition is heard.

Respondent's Witnesses

Steven Deon

Steven Deon (Deon) is employed by the District as a school psychologist at West Morris Central High School. In his employment as a school psychologist, Deon conducts

student evaluations, serves as a case manager for special-education students, and collaborates with teachers and related-services professionals to draft student IEPs.

Deon became aware of A.S. upon her entering West Morris Central High School as a ninth-grade student. Specifically, Deon attended a transition meeting with A.S.'s child study team at Washington Township on April 23, 2021, prior to A.S. transitioning to the West Morris Regional High School District. At that meeting, Deon discussed A.S.'s eighth-grade IEP with the child study team at Washington Township, as well as plans for her transition to high school. See R-4. Specifically, the team discussed discontinuing A.S.'s placement at Barnstable Academy upon completion of her eighth-grade year. Deon learned that pursuant to her IEP, A.S. qualified for special education and related services under the eligibility category "other health impaired" due to a diagnosis of attention deficit hyperactivity disorder. R-4. Through her eighth-grade IEP at Washington Township, A.S. received curb-to-curb transportation to and from Barnstable Academy. R-4.

At the April 23, 2021, IEP meeting, Deon also reviewed evaluations conducted of A.S. to assess her grades, progress, and social-emotional functioning in relation to her academic functioning. See R-5. Deon testified that at the time of the April 23, 2021, transition meeting with the Washington Township team, there was not yet a projected program and placement for A.S.'s ninth-grade year. Thus, the recommendation was that A.S. would continue at Barnstable Academy through her eighth-grade year, while exploring other out-of-district placement options for A.S.'s ninth-grade year.

Washington Township was charged with exploring out-of-district placement options through June 30, 2021, after which A.S. became a student of the West Morris Regional High School District. Over the summer when A.S. transitioned to ninth grade in the West Morris Regional High School District, Washington Township provided Deon with a child study team report dated May 5, 2020. This report was used by the child study team to aid in drafting A.S.'s IEP, and it contained a full profile of A.S., including her grades, a classroom observation, teacher input, and relevant evaluations. Deon testified that the child study team report did not contain any recommendations with regard to transportation needs for A.S.

Dion also reviewed a psychiatric report by Lonny J. Behar, M.D., provided by the Washington Township child study team the summer before A.S.'s ninth-grade year, dated January 3, 2015. See R-7. Dr. Behar's psychiatric report similarly did not contain any recommendations with regard to transportation needs for A.S.

On July 1, 2021, when A.S. became a student of the West Morris Regional High School District, Washington Township had not yet secured an out-of-district placement for A.S. for her ninth-grade year. On July 2, 2021, A.S.'s parents requested an "emergency IEP meeting" with the West Morris Central child study team to discuss placement options for A.S. Accordingly, the West Morris Central child study team convened a meeting on July 14, 2022. See R-2. At the meeting, the child study team recommended home instruction for A.S. pending her acceptance into an out-of-district placement. R-2. Thus, A.S.'s IEP would reflect "home instruction" until West Morris Central secured an appropriate placement for A.S. Because A.S. was placed on home instruction, transportation was not provided as a related service in the IEP drafted at the meeting.

Following the July 14, 2022, IEP meeting, Deon attended intakes with the family at Cornerstone Day School and Sage Alliance. Ultimately, A.S. and her parents determined that Sage Alliance was the best fit for A.S., and, as such, Deon scheduled a trial day at Sage Alliance for A.S. on September 2, 2021, prior to her acceptance. Sage Alliance ultimately accepted A.S., the District placed her there, and A.S. began attending Sage Alliance immediately after the Labor Day holiday. When A.S. began attending Sage Alliance, Deon referred her attendance to the transportation department at West Morris Central to facilitate A.S.'s transport to school. He testified that unless a student's IEP mandates curb-to-curb transportation, the District transportation office, and not the child study team, determines the location of the student's bus stop.

On October 12, 2021, the West Morris Central child study team convened a meeting and drafted an IEP memorializing A.S.'s placement at Sage Alliance. See R-1. The meeting on October 12, 2021, also served as a thirty-day review of A.S.'s placement at Sage Alliance, as she had been attending since early September. Deon testified that

a thirty-day review is common practice to memorialize a placement when a student is placed out of district. At the meeting, the team outlined A.S.'s programming and classes at Sage Alliance for her ninth- and tenth-grade years, as well as the provision of related services including group counseling, individual counseling, and family-consult counseling.

Transportation to Sage Alliance was also provided as a related service to A.S. through her IEP. R-1. The Washington Township Municipal Building was designated as the pickup location for A.S. Mr. Deon testified that A.S.'s IEP for ninth grade did not provide for curb-to-curb transportation, because the child study team did not deem that curb-to-curb transportation was warranted for A.S., as she did not suffer severe cognitive or physical limitations. A.S. was, thus, not inhibited from independently getting on or off a transport vehicle to a degree that would warrant the need for curb-to-curb transportation. Deon went on to testify that curb-to-curb transportation has historically been an individualized accommodation, and A.S.'s social-interaction-based disabilities are not the sort of disabilities that warrant curb-to-curb transportation.

On cross-examination, Deon was presented a letter drafted by a Dr. Amador, which indicated that A.S. suffered from "disassociations." See P-16. Deon testified that he had not seen A.S. suffer from any "dissociations." Deon further testified that at the IEP meeting, A.S.'s parents objected to pick up and drop off at the municipal building because of issues regarding car availability to get her to and from the municipal building, and not because of A.S.'s need for curb-to-curb transportation due to her disabilities. The child study team noted these concerns, along with the parents' concerns regarding the hazardous nature of the road on which they live, in the "parental concerns" section of the IEP. R-1.

Deon testified on re-direct examination that just because a student's eighth-grade IEP contains certain recommendations, West Morris Central does not necessarily adopt all of those recommendations for the student's high-school programming.

Joseph Schweighardt

Joseph Schweighardt (Schweighardt) is currently employed as a school psychologist in the Washington Township School District. In addition to his duties as a school psychologist, he serves as a case manager and facilitates IEP meetings. Schweighardt first became familiar with A.S. as an incoming sixth-grader on his case load. Once A.S. was assigned to Mr. Schweighardt's case load, he reviewed her previous evaluations, eligibility reports, and reports from teachers. Pursuant to A.S.'s eligibility re-evaluation report, it was determined that A.S. was still eligible for special education and related services pursuant to an updated psychiatric and functional behavior assessment. See R-5. The functional behavior assessment completed by Schweighardt as part of her re-evaluation revealed that although A.S. had tremendous strength in intellectual functioning and academic capabilities, she exhibited distractibility and often "shut down" in the classroom.

Schweighardt then testified regarding the psychiatric evaluation by J. G. Moreno, M.D., LLC, drafted in March 2020 and included as part of A.S.'s re-evaluation. See R-11. Schweighardt noted that Dr. Moreno did not make any representations that A.S. was suffering from "disassociation" and did not make any representations with respect to the type of transportation that A.S. might need to and from school. R-11.

Schweighardt testified that in April of A.S.'s eighth-grade year, Washington Township convened an annual-review IEP meeting to plan a program for the remainder of A.S.'s eighth-grade year into ninth grade. See R-11. At that time, A.S. was attending school out of district at Barnstable Academy, having transferred from the Newmark School in the middle of her eighth-grade year. See R-4. When discussing A.S.'s placement for ninth grade at that meeting, Schweighardt reviewed feedback from the teachers at Barnstable Academy, which indicated that A.S. was struggling with the social-emotional piece of her disability, such as connecting with her peers and interactions. The consensus of the Washington Township child study team was that A.S. would not continue her placement at Barnstable Academy for her ninth-grade year. R-4.

A.S. remained enrolled at Barnstable Academy for eighth grade, and her IEP while there provided for curb-to-curb transportation. However, Schweighardt testified that the notation of curb-to-curb transportation did not mean that A.S.'s disability warranted transportation that picks her up at her driveway. Rather, it was just a continuation of the transportation that she was provided when she was attending Newmark before she transferred to Barnstable Academy. He further testified that the majority of students get picked up in front of their homes if they require bussing, and A.S. was picked up "like any other gen. ed student would [be]." He testified that he does not know of any student, either general or special education, who does not get curb-to-curb transportation in Washington Township.

Schweighardt testified that the transportation department of the District determines the location of a student's pickup and drop-off, unless the child study team specifically notes a need for curb-to-curb on the transportation form. He also testified that it is not the child study team's job to evaluate a student's location with respect to transportation as a related service in an IEP. Schweighardt testified that he believed a private transportation company transported A.S. to and from Barnstable Academy from her home with a van. He further testified that the issue of A.S. requiring curb-to-curb transportation due to her disability "never came up" during his time as her case manager.

Petitioners' Witnesses

Donald Todd

Donald Todd (Todd) is the director of transportation for Washington Township Schools in Long Valley, Morris County. As the director of transportation Todd oversees the transportation needs for K-8 students in the district. He also oversees transporting Washington Township students to the West Morris Regional High School.

Todd testified that he is familiar with the street on which A.S.'s home is located, through his role as transportation director. He testified that the students who live on that road are all transported with yellow school buses with eight-way warning lights. During A.S.'s time in the Washington Township school district, Todd facilitated A.S.'s

transportation to both Newmark and Barnstable Academy through the county transportation office. The private transportation companies picked up A.S. and dropped her off in front of her home. He described the area where A.S.'s home is located as a "very dangerous curve area," and that he would be concerned regarding a car sliding, especially during the winter season, on that curve. He testified that he would be concerned if the van (he later clarified a van to mean a shorter yellow bus) stopping to pick up A.S. at her home did not have blinking yellow lights due to the dangerous conditions. Moreover, he testified that if a yellow van with flashing lights could not be provided, there would not be a safe alternative to pick a student up at that curve: "only if the parents were willing to make an indent off the road where the van could pick up." He testified that he did not receive special notice from A.S.'s child study team at Washington Township that she required anything other than "regular transportation."

Todd testified that he does not know who West Morris contacted to solicit bids for transporting A.S. to Sage Alliance as a high-school student. He did not speak to the transportation company that is currently providing transportation to A.S, and he does not know anything about A.S. besides her home address. Todd further testified that he does not know what the legal standard under federal law is for requiring curb-to-curb transportation, nor does he know what the acronym "FAPE" stands for.

S.S.

S.S. is A.S.'s father. He testified that A.S.'s first official day at Sage Alliance was September 10, 2021, and that at that time, when she first started at Sage Alliance, he transported her to and from school. On October 7, 2022, he began dropping A.S. off at her bus stop at the municipal lot to be transported to Sage Alliance by the District. He testified as to the difficulties dropping A.S. off at the bus stop while looking for work and with no immediate family in the area to transport her, and the dangers of A.S. walking to the municipal lot for pickup and drop-off. Specifically, he testified that he does not have any family in the area to pick up and drop off A.S., and he feels that under such circumstances, the District should change the bus stop to accommodate the family's needs.

S.S. testified that regarding a “pull off” in front of the house for the bus to pull into for pickup and drop-off, the transportation company visited the site and reiterated to the family that they could not safely provide transportation from that location. He is not familiar with bus safety protocols or school-transportation laws in the state of New Jersey. He testified that it is his opinion that it is the District’s responsibility to ensure that all students get to their own bus stop.

J.S.

J.S. is A.S.’s mother. J.S. described A.S. as “extraordinarily bright,” but testified that she suffers from social-emotional issues such as generalized anxiety disorder. She was placed out of district by Washington Township due to her experiencing anxiety and depressive episodes in class. Before she was placed out of district, a yellow school bus transported A.S. to school at Long Valley Middle School. For transportation to Newmark and Barnstable in eighth grade, a third-party transportation company picked her up and dropped her off in front of the family’s home.

J.S. participated in the IEP meeting on April 23, 2021. She testified that the purpose of the meeting was to discuss A.S.’s progress and her placement for ninth grade. See R-4. Although the family thought that Barnstable Academy was a good fit for A.S. to continue for ninth grade, the administrators at Barnstable felt that she needed a more therapeutic environment. At that time the parents agreed to explore therapeutic schools such as Cornerstone. In the meantime, A.S. still received curb-to-curb transportation for the remainder of her eighth-grade year at Barnstable.

On July 2, 2022, J.S. and S.S. contacted A.S.’s new case manager, Steven Deon, at the West Morris Regional High School District and requested an “emergency meeting” to discuss summer-therapeutic and fall placement for A.S. as she entered her ninth-grade year. At that meeting, conducted on July 14, 2022, it was discussed that the District would explore out-of-district placement options for A.S., and A.S. would be placed on home instruction pending the appropriate placement.

The District signed an enrollment contract and A.S. began school at Sage on September 10, 2022. Regarding transportation, J.S. testified that Deon was facilitating transportation to Sage Alliance through the District's transportation department, and the route was put out to bid. In the interim, petitioners S.S. and J.S. transported A.S. to Sage for a period of twenty days. The petitioners communicated their concerns regarding transporting A.S. to Sage with the District on a daily basis. J.S. testified that she agreed to having A.S. start at Sage Alliance without having transportation secured because "everyone wanted her to get started."

J.S. testified that she was ultimately advised by the District that Cassidy Transportation agreed to transport A.S. to school, but would provide pickup and drop-off at the municipal building, rather than in front of A.S.'s home. J.S. had concerns about this arrangement, because there would be no one to drop A.S. at the municipal lot once her father was back to work, and the route is dangerous to walk. She testified as to the layout of the family's property, and asserted that there is "plenty of room to pull off and a shoulder" for a van to pull up to the home. However, J.S. ultimately accepted the arrangement for transportation from the municipal lot if the District continued to try to find a company that would transport A.S. door to door. After various communications via e-mail with the District throughout September and October 2021 regarding transportation, S.S. and J.S. filed for due process on October 6, 2021.

J.S. attended the thirty-day IEP review meeting for A.S. on October 12, 2021. See R-2. At the meeting, S.S. and J.S. discussed A.S.'s progress at Sage Alliance with the child study team. J.S. stated her concerns regarding transportation from the municipal building and stated that such an arrangement would not be sustainable because in the event her husband became employed, he would not be able to perform pickup and A.S. could not safely walk along the route back home.

J.S. also testified regarding a letter from A.S.'s private psychologist, Dr. Sarah Amador, dated November 22, 2021. See P-16. She asked Dr. Amador to put her concerns in writing regarding A.S. walking along the road to the municipal building. J.S. then testified regarding A.S.'s "dissociations," stating that, aside from the letter from Dr. Amador, she could not recall providing the District with any information regarding these

episodes. She also could not recall Dr. Amador discussing A.S.'s "dissociations" with the child study team at the IEP meeting held in July 2021.

J.S. noted that any of her testimony regarding school-transportation law and bidding routes is solely her opinion, as she does not have a background in these areas. J.S. then testified that she contacted Cassidy Transportation, the transportation company who accepted A.S.'s route to Sage Alliance, numerous times to discuss driveway pickup, only to be informed by the representative from Cassidy Transportation that driveway pickup was not possible.

Towards the end of J.S.'s testimony, the parties stipulated to the fact that the District provided A.S.'s brother, C.S., with transportation from directly in front of the family's home to and from Newmark High School for the extended school year during his freshman year.

Dr. Sarah Amador

Dr. Sarah Amador (Amador) holds a Ph.D. in the area of clinical and school psychology. Amador has worked as a school psychologist for twenty-two years and has worked in private practice for fifteen years. She currently works as a school psychologist for the Chester School District. In her role as school psychologist, she conducts evaluations, serves as a case manager for students in-district, and writes IEP's. She currently owns two private practices in Hackettstown and Short Hills, providing individual therapy, group therapy, and private evaluations.

Amador first met A.S. in the second grade when she began treating A.S. through individual and family psychology sessions. She continued to treat her through the start of her educational career at Long Valley Middle School and communicated with Joe Schweighardt during his time as A.S.'s case manager regarding A.S.'s progress. She also communicated with the staff at Newmark School and Barnstable Academy during A.S.'s eighth-grade year while A.S. was a student. At no time during her time attending IEP meetings at Long Valley Middle School did she make a recommendation to Schweighardt regarding A.S.'s transportation needs.

Amador participated in the IEP meeting in April 2021 during A.S.'s eighth-grade year. She testified that it was contemplated at the meeting that A.S. would need a therapeutic program for ninth grade, as Barnstable Academy was no longer able to support her therapeutic needs. Regarding A.S.'s eventual placement at Sage Alliance for her ninth-grade year, Amador testified that it has been the "best placement for her."

Dr. Amador then testified to the contents of her letter dated November 22, 2021. P-16. She stated that A.S. suffers from considerable anxiety where she "escapes from reality," and thus requires door-to-door transportation. Accordingly, she opined that she is very concerned about A.S.'s ability to get to the municipal lot pickup location safely walking along a "very dangerous road." However, Dr. Amador conceded that she has never conducted a formal evaluation of A.S. as her treating therapist.

Dr. Amador testified that at the time she wrote her November 22, 2021, correspondence making recommendations for curb-to-curb transportation for A.S., she was meeting regularly with A.S.'s parents regarding her IEP. On cross-examination, she conceded that the "dissociative episodes" that A.S. experiences are not mentioned in any of her IEP's. She further conceded on cross-examination that her recommendation for curb-to-curb transportation is based on the assumption that A.S. would be required to walk on the road on which her house is located to the municipal building, despite not having any discussions with West Morris regarding the "need" for A.S. to walk the route.

Respondent's Rebuttal

The undersigned allowed the respondent to call certain witnesses for rebuttal testimony.

Michael Reinknecht

Michael Reinknecht (Reinknecht) testified that the District does not contract with the Long Valley School District with respect to transportation for special-education students within the West Morris Regional High School District. The West Morris Regional

High School District has its own director of transportation that is responsible for coordinating transportation for special-education students.

Petitioners' Rebuttal

The undersigned allowed the petitioner to call certain witnesses for rebuttal testimony.

Nancy Genuardi

Nancy Genuardi (Genuardi) testified that she has been the transportation supervisor at West Morris Regional High School District for fifteen years. Genuardi testified that there are two high schools in the District, and the District contracts with Washington Township and Mendham Township to transport students to school. However, Genuardi testified that for the sixty-five to seventy students that require transportation to out-of-district schools, the West Morris Regional High School District is responsible for providing transportation to these students directly. Genuardi is responsible for contacting transportation agencies to bid the routes for transportation to out-of-district schools.

Genuardi testified that the three main entities that Genuardi works with to secure transportation vendors are the Sussex County Regional Cooperative, the Morris County Educational Services Commission, and the Warren County Special Services School District. When Genuardi receives a request for transportation from the child study team, she contacts these agencies to conduct a bid or a quote to place the student on a transportation route.

Genuardi testified that, in the present matter, the transportation department tried to secure transportation for A.S. from her driveway to Sage Alliance when she started her ninth-grade year. She testified that currently, Cassidy Transportation is providing transportation for A.S. to Sage Alliance. When Genuardi learned that Cassidy Transportation would not provide curb-to-curb transportation to A.S. due to the dangers

of the road on which A.S. lives, she contacted different agencies to provide transportation to and from A.S.'s driveway, to no avail.

Genuardi testified that other students who live on the same road as A.S. that are picked up closer to their homes are picked up on fifty-four-passenger school buses. These buses stop traffic when they have to pick up students. A.S. is transported to Sage Alliance from the municipal lot by a seven-passenger minivan, which does not have the capability to stop traffic like a fifty-four-passenger bus. Genuardi recalled having a conversation with Cassidy Transportation about the safety of a bus stop on A.S.'s road. She testified that a driver at Cassidy Transportation almost got rear-ended a few times stopping at the family's driveway when transporting A.S.'s brother, C.S., to school a few years ago. As such, Cassidy Transportation felt that the family's home was not a safe stop to pick up A.S. to transport her to Sage Alliance.

Genuardi testified that not every student in the District is picked up at their home, and there are students who are assigned a bus stop. This is because the District "centralizes stops," as it cannot stop at every student's house to transport them to school.

Frank Romano

Frank Romano (Romano) has been the director of transportation for the Morris County Educational Services Commission (Commission) for eighteen years. The Commission coordinates transportation for out-of-district special-education students in Morris County. Romano testified that, should a district request transportation services, the Commission requires the district to fill out a specific request form. The Commission then obtains transportation for the student via bid or quote.

Romano testified that the Commission has a joint transportation agreement with the West Morris Regional High School District, and that the Commission provided transportation for A.S. for the 2019–2020 school year to her out-of-district placement while she was a student in Washington Township. He did not recall if anyone from the West Morris Regional School District contacted the Commission regarding transportation

services for A.S. for the 2021–2022 school year. He is also not aware if West Morris solicited bids for A.S.’s transportation.

J.S.

J.S. testified as to video footage of the location of the family’s home, including analysis of a “pull-over” location on the road immediately adjacent to the home, where, she asserts, a school vehicle could pull over in order to pick up and drop off A.S. The video was recorded with her cell phone.

Relief Sought

The due-process petition filed on October 5, 2021, seeks door-to-door transportation of A.S. to and from Sage Academy, and reimbursement for all associated costs. In their closing submission, petitioners also seek a declaration by the undersigned that the proposed October 12, 2021, IEP is “inappropriate and violates A.S.’s right to FAPE.” To this point, it should be noted that, since the October 12, 2021, IEP was proposed after the filing of the due-process petition, I will refrain from issuing any orders, declaratory or otherwise, regarding the appropriateness of the October 12, 2021, IEP, and I **CONCLUDE**, as a matter of law, that said IEP is not before me, as it postdates the filing of the underlying petition.

LEGAL ANALYSIS AND CONCLUSIONS

The primary purpose of the IDEA is “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C. § 1400(d)(1)(A). A free appropriate public education (FAPE) consists of “special education and related services” that “meet the standards of the State educational agency” and are provided in conformity with the “individualized education program” (IEP) required under 20 U.S.C. § 1414(d). 20 U.S.C. § 1401(9).

The IEP is “the centerpiece of the statute’s education delivery system for disabled children.” Honig v. Doe, 484 U.S. 305, 311 (1988). It is a “comprehensive plan” prepared by a child’s “IEP Team” which “must be drafted in compliance with a detailed set of procedures.” Andrew F. v. Douglas Cnty. Sch. Dist. RE-1, 580 U.S. 386, 391 (2017) (citing 20 U.S.C. § 1414(d)(1)(B)). “These procedures emphasize collaboration among parents and educators and require careful consideration of the child’s individual circumstances.” Ibid. (citing 20 U.S.C. § 1414). “The IEP is the means by which special education and related services are ‘tailored to the unique needs’ of a particular child.” Ibid. (citing Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 181 (1982)). “To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” Id. at 399. “The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.” Id. at 404.

“Related services,” as they pertain to a special-education student’s IEP, consist of “transportation, and such developmental, corrective, and other supportive services . . . as may be required to assist a child with a disability to benefit from special education” 20 U.S.C. § 1401(26)(A). In New Jersey, a school district must provide a student with disabilities transportation whenever the student has been placed in an “out-of-district” placement, N.J.A.C. 6A:14-3.9(a)(7) and N.J.A.C. 6A:27-5.1(a)(2), and, “[u]nder no circumstances shall the parent or guardian of the student with disabilities be responsible for payment of the cost of transportation services required by the student’s IEP.” N.J.A.C. 6A:27-5.1(b)(2).

In the case at bar, the District placed A.S. at Sage beginning on September 10, 2021. Her IEP in effect at that time, the April 23, 2021, IEP, called for transportation to and from school. As noted above, New Jersey’s special-education regulations require districts to provide a student with disabilities transportation whenever the student has been placed in an out-of-district placement. See N.J.A.C. 6A:14-3.9(a)(7); N.J.A.C. 6A:27-5.1(a)(2). Here, the District failed to provide any transportation for A.S. to Sage from September 10, 2021, until October 10, 2021. Instead, her father, S.S., had to drive her to and from Sage every school day from September 10, 2021, until October 7, 2021, for a total of twenty days. Based on the foregoing, I **CONCLUDE** that the District failed

to meet its obligation to transport A.S. for this limited period of time, and petitioners should be compensated for providing transportation (mileage) during this time at the prevailing rate.

Regarding the remainder of the petitioners' claim, it should be noted that J.S. and S.S. do not challenge the education services provided at the out-of-district placement, itself, and there are no allegations relative to A.S.'s academic progress thus far. Rather, the entirety of the remaining controversy relates to the District's failure to provide A.S. with a FAPE because, as petitioners allege, the school bus assigned to pick up and drop off A.S. does not perform this task from in front of her home, but rather, from the municipal building a short distance (one-third mile) from her home.

While the petitioners have argued that A.S. suffers from "dissociations," I **FIND** that no evidence to support any such medical diagnosis was presented to the IEP team or in any way contemplated by the IEP team when formulating the April 23, 2021, IEP. Thus, I **CONCLUDE** that any claim or inference that the District is, somehow, obliged to effectuate pickup and drop-off immediately in front of A.S.'s home due to a medical necessity is unfounded.

Further, none of the testimony presented tended to show that A.S. harbored any disability that prevented her from being picked up or dropped off from the municipal building. Rather, A.S. had successfully utilized the District-funded, third-party-owned-and-operated bus from the designated pickup location (municipal building) during the 2021–2022 school year. Thus, the pickup location had not prevented A.S. from accessing her out-of-district educational program at Sage.

The petitioners' main argument can be summarized as follows: 1) The road on which A.S.'s house is located is too dangerous to walk along; 2) the petitioners are, thus, obliged to transport A.S. the short distance down the road to the municipal building in the morning and back up the road in the afternoon; 3) this daily obligation to transport A.S. creates an inconvenience for the petitioners and petitioners may not always be available to facilitate this transport obligation; and 4) the District has an obligation to alleviate this inconvenience or the District will be denying A.S. access to a FAPE. I disagree.

The District provided A.S. with transportation to and from school for the duration of the 2021–2022 in-school school year, and it is undisputed that A.S. was transported on a daily basis between the municipal building and Sage on a district-funded school bus. Thus, A.S. had access to FAPE. While a bus stop at the student’s home may be preferable for any student, with or without an IEP, there remains no evidence, such as medical evidence, that an at-home stop was required for A.S. to access a FAPE. Accordingly, I **CONCLUDE** that transportation to and from the municipal building at the bottom of A.S.’s road, rather than from A.S.’s home, does not rise to the level of a denial of FAPE, and does not cause a deprivation of educational benefits.

It should be further noted that, while the respondent opposes the due-process petition, it does not oppose having A.S. picked up in front of her home in theory. Rather, it maintains that Cassidy, a private third-party bus company currently contracted to transport A.S., has deemed the area immediately in front of the petitioners’ home too dangerous a location for its school bus to stop. Thus, the District asserts that the District, as an entity contracting with a privately owned company, does not have the authority to change the private company’s policy. If, for example, the bus company were to change its policy, or if a new bus company were contracted that were willing to effectuate the stop in front of the home, the District would have no objection to said company picking A.S. up and dropping her off in front of her home.

The April 23, 2021, IEP provides for “curb-to-curb” transportation as a related service. As already concluded by the undersigned via the Emergent Final Decision dated January 26, 2022, while the term “door-to-door” tends to imply that the pickup be effectuated immediately outside A.S.’s front door, “curb-to-curb” suggests on its face that the pickup occur at the nearest and safest curbside location, which, in the present case, appears to be the municipal building a few hundred yards away from the petitioners’ front door.

At the hearing, petitioners testified that there exist locations closer to A.S.’s home, such as a clearing located on an adjacent property, where, in their opinion, a school bus could effectuate a stop safely. However, the testimony offered was merely anecdotal in

nature, as neither the petitioners nor any of their witnesses were offered as experts in school-bus safety.

ORDER


It is, hereby, **ORDERED** that petitioners' due-process petition be **GRANTED IN PART**, as the District failed to provide transportation to Sage Academy from September 10, 2021, until October 7, 2021, for a period of twenty school days, and petitioners should be compensated at the prevailing rate per mile, per day.

It is further **ORDERED** that the remainder of the due-process petition is, hereby, **DENIED**, as the District has been able to provide transportation to and from Sage on a daily basis and A.S. has, thus, been able to successfully access a FAPE.

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.

December 7, 2022

DATE



JUDE-ANTHONY TISCORNIA, ALJ

Date Received at Agency

12/7/22

Date Mailed to Parties:

12/7/22

id

APPENDIX

LIST OF WITNESSES

Respondent's Witnesses:

Steven Deon

Joseph Schweighardt

Petitioners' Witnesses:

Donald Todd

S.S.

J.S.

Dr. Sarah Amador

Respondent's Rebuttal Witness:

Michael Reinknecht

Petitioners' Rebuttal Witnesses:

Nancy Genuardi

Frank Romano

J.S.

LIST OF EXHIBITS IN EVIDENCE

For Petitioners:

P-1 A.S. IEP, June 10, 2020

P-2 A.S. Amended IEP, January 14, 2021

P3 A.S. IEP, April 23, 2021

P-4 A.S. Draft IEP, July 14, 2021

P-5 A.S. IEP, October 12, 2021

- P-6 Email, September 8 – 9, 2021
- P-7 Email, September 10 – 20, 2021
- P-8 Email, September 22, 2021
- P-9 Email, September 23, 2021
- P-10 Email, September 23 - 24, 2021
- P-11 Email, October 12, 2021
- P-12 Email, September 7-13, 2021
- P-13 Email September 14-15, 2021
- P-14 Email, September 20, 2021
- P-15 Email, September 23 - 24, 2021
- P-16 Letter by Sarah Amador, Ph.D., November 22, 2021
- P-17 A.S. Transportation Request Form
- P-18 C.S. IEP, June 2, 2017
- P-19 C.S. IEP, October 10, 2017
- P-20 C.S. IEP, April 19, 2018
- P-21 C.S. IEP, July 9, 2019
- P-22 C.S. IEP Transportation Section, November 14, 2019
- P-23 Sample Washington Township School District Parent Contract

For Respondent:

- R-1 10/12/21 IEP—30 Day Review
- R-2 07/29/21 IEP—Annual Review
- R-3 07/02/21 Parents' request for emergency IEP meeting
- R-4 04/23/21 IEP from Washington Township School District
- R-5 06/10/20 Eligibility Report—Reevaluation
- R-6 04/05/20 Child Study Team Report WM136
- R-7 01/03/15 Psychiatric Report, Lonny J. Behar, M.D.
- R-8 06/10/20 Re-Determination of Eligibility finding student eligible
- R-9 09/08/20–06/24/21 Newmark K–8 Acceptance Packet
- R-10 07/08/20 Eligibility Report with Eligibility Meeting; Signature page dated 07/21/20
- R-11 03/11/20 Psychiatric Report, J.G. Moreno, M.D., LLC