

a notice of hearing to the parties in which we set a prehearing conference for March 16, 2016, and the hearing for March 30, 2016.

On March 7, 2016, Blair Oaks filed a response and a motion to dismiss the due process complaint as to Blair Oaks on the grounds that MSSD had accepted Student and was therefore responsible for providing him with FAPE. On March 8, 2016, MSSD filed its response to the due process complaint. We notified the other parties that they could file objections to Blair Oaks' motion. Neither objected. We held the prehearing conference with all the parties as scheduled on March 16, 2016. On that date, we issued an order dismissing Blair Oaks as a party and setting a decision due date of May 2, 2016.

We held the hearing on March 30, 2016. The court reporter filed the transcript on April 4, 2016. We set a schedule for parties to simultaneously file proposed findings of fact and conclusions of law by April 15, 2016, and replies by April 22, 2015.

Findings of Fact

1. Student is years old. He has diagnoses of a genetic disorder, MCT8, and a seizure disorder, Lenox-Gaustaut. Student uses a wheelchair. He is non-verbal and has cognitive and global development delays. He has poor muscle tone, difficulty regulating his body temperature, and acute light sensitivity. The parties agree that Student has a disability within the meaning of the Individuals with Disabilities in Education Act (IDEA).

2. MSSD is a system of day schools established by state law to offer services in separate school settings to students with severe disabilities. MSSD students are referred by local school districts. Student attends the Kirchner School (Kirchner), a school within the MSSD system.

3. Under Student's Individualized Education Program (IEP), he is entitled to curb-to-curb transportation as a necessary related service.

4. Student resides with his family at.

5. Route M is a curving two-lane highway with a speed limit of 55, but drivers routinely exceed that speed limit.

6. The bus stop for Student's "curb-to-curb" service is where his driveway meets Route M. The spot is at the bottom of a hill.

7. The driveway is gravel and approximately 150 yards long. It is bumpy and difficult to navigate in a wheelchair. Student wears a collar to stabilize his head and neck, but even with the collar his head and neck are unstable when traversing the driveway's bumpy surface.

8. Mother's motor vehicle is not an accessible vehicle. She transports Student in a car seat in her car and loads his wheelchair onto an attached trailer.

9. During the 2014-15 school year, Mother worked in a building next to Kirchner. She took Student to school every day. From August to October, 2014, Student was dropped off in the afternoon at the bus stop.

10. The bus is parked at the stop for two to three minutes to for an aide to unfasten Student from the bus safety restraints and load Student onto the ramp, the driver to lower the ramp, and another person to unload Student from the ramp.

11. From August to September 2014, several people notified the superintendent of Blair Oaks, the building administrator for Kirchner, and members of the highway patrol that they had noticed back-ups on Route M in the afternoon when the bus was stopped for Student. All were concerned that an accident could occur when a westbound car crested the hill at 55 miles per hour and did not have time to stop to avoid running into the end of a line of stopped cars.

12. The Blair Oaks superintendent, James Jones, asked a representative of the Missouri Department of Transportation (MoDOT) to check the stop for sight distance and the possibility of posting a sign.

13. Patrick Skain, a traffic studies specialist for MoDOT, performed the sight distance checks. On September 24, 2014, he wrote to Jones:

In order for a school bus to legally stop along a roadway, State law requires drivers to have at least 300 feet of sight distance for speed limits less than 60 miles per hour. However, to become eligible for a 'School bus Stop Ahead' sign the measured sight distance must also be less than the maximum sight distance for a posted speed limit. For the posted speed limit of 55mph the maximum sight distance is 560 feet. This would mean the sight distance needs to fall between 300 and 560 feet. Below you will find the results for the locations I reviewed.

* * *

At the Route M location, eastbound traffic has an average measured sight distance of 670-plus feet and westbound traffic has an average measured sight distance of 440 feet. Therefore . . . only the westbound direction is eligible for signing.

Pet. Ex. L.

14. By October, three people, including a highway patrol trooper, had stopped by Student's house to complain that the stop at the end of his driveway was unsafe. Jones also called Mother to discuss the issue with her.

15. Mother called Scott Lance, a sergeant with the highway patrol, because she also became concerned about the safety of the bus stop. Lance sent a trooper, Nick Borgmeyer, to view the stop. Borgmeyer reported back to Lance that he felt the bus stop was not safe, and he suggested that it would be safer if the bus could pull into the driveway and turn around there.

16. Mother also raised the issue of the bus stop with Paula Haner,² the building administrator for Kirchner and another MSSD school. Haner contacted Frank Underwood, who

² Haner's surname was Patterson at the time of some of these events, and appears as such on certain documents.

is the location manager for First Student, the company that provides bus transportation to Kirchner.

17. First Student's contract with MSSD is to provide curb-to-curb service for students, and that type of service is the norm. However, its buses will pull into a driveway to provide door-to-door service if the Student's driveway permits. For example, one family that built a house contacted First Student to ask what would be required for a bus to approach the entrance to the Student's house. Underwood went to the property with a bus and demonstrated the type of access that would be required, and the family built the house and driveway to suit the bus.

18. On October 13, 2014, Haner and Underwood went to look at the bus stop. Underwood felt the bus stop was safe, albeit "not the safest stop we have in the whole district." Tr. 129.

19. The bus First Student currently uses on that route is a full-sized one, which is necessary to accommodate the number of students currently on the route. Four of those students are in wheelchairs and three are not.

20. Haner and Underwood took a smaller, "van-body" bus, to see if the smaller bus could pull into Student's driveway and turn around in it. While they were there, a highway patrol trooper pulled up in the driveway behind them and expressed concern about the safety of the stop.

21. Underwood was not able to turn the small bus around in Student's driveway.

22. Later that day, Haner wrote to Mother:

Today Frank and I took a drive out to your house in one of the van buses to see the route and the situation that we were dealing with. Last week I had asked Frank to start searching for one of the small buses to use on this route. He confirmed this today that a search has been made for this and he will let me know when one is located.

We pulled into your driveway and could actually offer Luke a drop off even closer to the house with this smaller bus, if there was a

place that the bus could turn around. It would be dangerous for the bus to back down the driveway and onto the street with the other students with the traffic going at the speed limit posted. Would it be possible for you and your husband to put in a gravel section for the bus to turn around? If so, I believe the bus problem has been solved and everyone will be safe!

Ex. J. at 87. Haner also began contacting possible donors for the gravel that would be required to enlarge Student's driveway.

23. Haner copied Debbie Downing on her e-mail to Mother. Downing is the director for business management of MSSD. At that time, she was the supervisor for business services.

24. Downing forwarded Haner's e-mail to Darlene Baugher on October 14, 2014. Baugher is the "Area II Director" for MSSD, and Haner's supervisor. Downing wrote:

Below is Paula's response to the parent. She did not address her and Frank's evaluation of the drop off location and if there were any safety concerns. She did not follow up with me after evaluating the location to discuss any alternatives if they determined any concerns that this location may be unsafe. Instead she has asked the parent to put in gravel for the bus to turn around at their house. It is unacceptable to ask a parent to invest a large amount of money for a solution to transportation, especially without exhausting all other options.

Ex. K at 95.

25. On October 16, 2014, Downing wrote to Haner:

Paula,

We have noted your concerns regarding the drop off location for [Student]. Central Office stands by the decision that the safest drop off for this location is for [Student's] drop off continue [sic] as it is, where the bus unloads in front of his house on the road. As we have previously stated, it is unsafe for the bus to back out of the driveway or for the bus to pull out of the driveway onto the road and crossing a lane of traffic in order to continue the route.

FYI: I understand that you have had conversations with [Mother] about having the bus pull into the driveway and drop [Student] off at the house. The IEP guarantees curb to curb transportation, which we are in compliance in dropping off at the road at the end

of the driveway. I have explained that the weight of the bus (a large or small bus) would damage the driveway, causing holes and ruts in the drive and the gravel would need to be replaced after a time of use. The driveway would most likely require repair and gravel replacement at least once a year, but possibly more often. Neither MSSD or contract transportation providers are in the practice of paying for additions to existing properties to accommodate the bus or in ongoing maintenance of a driveway that may be damaged from the bus. I understand you are working on trying to get gravel donated, but that would only be an initial fix and not an ongoing solution to keep the driveway in drivable condition. I am unaware of the discussion with Mrs. Pickett, but MSSD or First Student is unable to add to the driveway or repair it in the future. However this is a moot point due to the above MSSD decision.

If you would still like me, you and Frank to go to the house to meet with [Mother], we can do that, but MSSD is firm in its decision that the safest drop off for this location is for the bus to unload in front of the house on the street as currently being done. I am willing to talk to the parent or the school district if necessary. If you have other questions, please let me know so you will be able to support this MSSD administrative decision as BA @ Kirchner School.

Ex. K at 93.

26. On October 17, 2014, Mother e-mailed Haner to ask whether she had made further arrangements to come out again with a small bus. Haner replied that she, Underwood, and Downing would like to observe Student being dropped off on the bus the following Tuesday, but they would not bring the small bus out to try.

27. Mother replied that she did not want another meeting and discussion until she saw for herself that a small bus could not turn around in her driveway.

28. Mother did not consent to meet with Haner, Underwood, and Downing for the purpose of observing Student get off the bus.

29. Sometime around October 20, 2014, Sergeant Lance called Haner to discuss the bus stop with her. Lance then met with two other highway patrol officers, Downing, and

Underwood. The troopers suggested that the bus stop be moved or that the bus pull into Student's driveway. Downing replied that the buses do not drive onto private property, and that she felt it would be more unsafe for the bus to pull out of the driveway at that spot and possibly be hit from the side than to stop and possibly be hit from the rear. Downing said MSSD would not change the route.

30. Lance and another sergeant viewed the stop. He measured the sight distance to the stop at 358 feet, which exceeds the 300-foot minimum required by state law. But he still believes the stop is unsafe because of the possibility of traffic backup behind the bus in the mornings, especially given that it takes two to three minutes to load Student onto the bus.

31. On October 24, 2014, Skain wrote a memorandum setting forth the location of a new "School Bus Stop Ahead" sign for Student's bus stop and authorizing its installation.

32. Because of her concerns about the safety of the bus stop, sometime in October, Mother began to leave work every afternoon to pick Student up from Kirchner and take him home. She also asked that Student's transportation service be changed from curb to curb, to door to door.

33. MSSD issued a Notice of Action (NOA) dated October 29, 2014, refusing Mother's request because MSSD was "able to offer [Student] a safe pick up and drop off at his curb," and "it has been determined, in conjunction with MODOT, that the current drop-off location meets the standards for a safe bus stop [Student] is not at risk for elopement nor are his parents disabled and his parents are able to meet us at the curb." Ex. D at 64.

34. The basis for the refusal was "MODOT information provided on 10/20/14 by Patrick Skain." *Id.*

35. Although she was aware of MSSD's position on Student's transportation, Mother added a large gravel area at the end of her driveway some time after receiving the October 29, 2014 NOA. A large box truck such as a UPS truck can now turn around in the driveway.

36. Mother continued to request door-to-door transportation for Student and received a second “NOA refused” dated February 24, 2015. The reasons cited in the second NOA are identical to those in the first.

37. Mother obtained a letter from Student’s pediatrician and provided it to Student’s IEP team. On March 4, 2015, Michael J. Noetzel, M.D., a pediatric neurologist with Washington University, wrote:

Due to [Student]’s complex medical needs, he requires door to door service for bus transportation. [Student] has difficulty regulating his body temperature and is sensitive to changes in the environment or temperature (i.e. wind, rain, snow, etc). In response to sudden changes in his environment (extreme hot or cold) or light sensitively [sic] he may gag and vomit placing him at very high risk for aspiration (especially when strapped into his wheelchair[]). It would also be challenging for [Student]’s family to push him up or down the families’ driveway which is approximately 150 yards could cause [sic] the same effects on [Student].

Ex. E at 66.

38. Mother again requested that Student’s transportation be changed from curb to curb, to door to door. MSSD issued another NOA to her on May 20, 2015, again refusing the request. The NOA repeated the same reasons for rejecting the request as in the previous NOAs. Again, the basis for the action was the “MODOT information provided on 10/20/14 by Patrick Skain.”

The NOA acknowledged Dr. Noetzel’s letter, but stated:

Since the beginning of RSY 2014-2015, [Mother] initiated an alternate pick-up location at the Special Learning Center, where the bus picks [Student] up at the curb. He is transported to this location in the family vehicle. Transporting him inside a vehicle helps prevent him from the exposure to the environment that is listed in the doctor’s note. Transportation as a Related Service remains as curb-to-curb.

Ex. D at 58.

39. In May 2015, Mother contacted Doug Kliethermes, one of the owners of D&K Bus Service, which has a contract to provide bus transportation to Blair Oaks students. Mother asked his opinion of having a bus stop on Route M at their driveway, specifically in reference to transporting her other children to summer school. On May 25, 2015, Kliethermes wrote a response to her:

I absolutely feel that the stop at this address is a very dangerous stop and refuse to allow our drivers to make a stop on route M at this location.

Being a former resident of , I am very familiar with this area of Route M, across from Bode Ferry Rd. I know that there have been several accidents and several near misses through the years, at this location of route M.

I would be more than happy to discuss alternate pickup and drop off locations with you.

Ex. M at 98.

40. Mother changed jobs in January 2016. She now takes Student to a friend's house every morning at 6:45 a.m. where Student waits until the bus picks him up at 7:35. In the afternoon, the bus drops Student off at Blair Oaks high school, where Mother picks him up.

41. Mother requested again in 2016 that Student's transportation be changed from curb to curb, to door to door. By NOA dated February 11, 2016, the IEP team again refused the request. The reasons stated were substantially similar to those stated in the previous NOA.

42. Haner issued all of the NOAs, but other MSSD staff assisted her in drafting them, including Baugher, Downing, and others, most of whom were not members of Student's IEP team. In Haner's experience, this type of review and collaboration from MSSD management is not typical for the NOA process.

Conclusions of Law

This Commission has jurisdiction over matters relating to identification, evaluation, placement or the provision of FAPE to students with disabilities. Section 162.961, RSMo Cum. Supp. 2013. The burden of proof in an administrative hearing challenging an IEP is on the party seeking relief, in this case the Petitioners. *Schaffer v. Weast*, 546 U.S. 49, 51 (2005).

Under the IDEA, all children with disabilities are entitled to FAPE designed to meet their unique needs. 20 U.S.C. § 1412. The IDEA defines FAPE as individualized special education and related services that: have been provided at public expense, under public supervision and direction, and without charge; meet the standards of the state educational agency; include an appropriate preschool, elementary school, or secondary school education in the state involved; and are provided in conformity with the Student's IEP. *See* 20 U.S.C. § 1401(9). The IDEA does not prescribe any substantive standard regarding the level of education to be accorded to disabled children. *Board of Education of Hendrick Hudson Central School District, Westchester County, et al. v. Rowley*, 458 U.S. 176, 189, 195 (1982). Rather, a local educational agency ("LEA") fulfills the requirement of FAPE "by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." *Id.* at 203.

The primary vehicle for carrying out the IDEA's goals is the IEP. 20 U.S.C. § 1414. An IEP is a specialized course of instruction developed for each disabled student, taking into account that child's capabilities. 20 U.S.C. § 1414(d)(1)(A). The IEP is not required to maximize the educational benefit to the child, or to provide each and every service and accommodation that could conceivably be of some educational benefit. *Rowley*, 458 U.S. at 199; *Fort Zumwalt Sch. Dist. v. Clynes*, 119 F.3d 607, 612 (8th Cir. 1997) (IDEA does not require a school district to maximize a student's potential or provide the best education possible). An IEP

may also include related services, including transportation, to enable a child to access FAPE. 34 C.F.R. § 300.34(c)(16).

If a child's special education program or placement, as defined in the child's IEP, is disputed by the child's parents, the IDEA provides for a review procedure. 20 U.S.C. § 1415(a), (b), (d); 34 C.F.R. §§ 300.500–.580. Mother availed herself of that review procedure by filing this due process complaint.

The issue in this case is whether MSSD has failed to provide FAPE to Student by refusing to provide him with door-to-door transportation. While it is clear that the IDEA mandates that transportation be provided to eligible students, few reported cases discuss issues like this one, and the statutory and regulatory authority is scant. We have reviewed those authorities, as well as letters from the Office of Special Education Programs (OSEP) and administrative cases from other jurisdictions. In doing so, we have found several analyses of similar issues that we find persuasive, and discuss them below. To arrive at our determination in this case, we must first review several basic principles of the IDEA.

Student's IEP Team is responsible for
determining his transportation needs.

The key inquiry in determining whether a district is providing FAPE is to assess “whether a proposed IEP is adequate and appropriate for a particular child at a given point in time.” *Town of Burlington v. Dep't of Educ.*, 736 F.2d 773, 788 (1st Cir. 1984), *aff'd*, 471 U.S. 359 (1985).

The standard to judge whether an IEP is appropriate under the IDEA is whether it offers instruction and supportive services reasonably calculated to provide some educational benefit to the student for whom it is designed. *Gill v. Columbia 93 Sch. Dist.*, 217 F.3d at 1027, 1035 (8th Cir. 2000). Then the IEP must be substantially implemented. *See J.L. v. Francis Howell R-3 School Dist.*, 693 F. Supp.2d 1009, 1033 (E.D. Mo. 2010).

Student's IEP team must make the determination as to whether Student requires transportation as a related service to obtain access to FAPE. 34 C.F.R. §§ 300.34(c)(16) and 300.324(a)(1). If an IEP team determines that an eligible student requires transportation as a related service, the type of transportation services must be based on the student's individualized needs and made on a case-by-case basis by the members of the student's IEP team. 34 C.F.R. § 300.324(a)(1)(iv).

Student's IEP team determined that Student requires transportation as a related service. Neither Downing nor Baugher was a member of Student's IEP team. When Mother asked for Student's transportation to be changed from curbside to door-to-door, Downing told Haner, a member of Student's IEP team, that the current bus stop arrangement was safe and advised her that she needed to "support this MSSD administrative decision as BA @ Kirchner School." After that, Haner stopped trying to make arrangements for door-to-door transportation, and she issued the first of four NOAs to Mother denying her request for door-to-door service on October 29, 2014.

There is nothing inappropriate about MSSD management participating in a decision about a change in Student's transportation that has fiscal implications. But here, MSSD appears to have actually made the IEP team's decision for it without considering Student's unique needs. Such a decision-making process violates the IDEA.

Student's unique needs must be considered in determining appropriate transportation for him.

If a student's disability presents the student with a unique need with regard to transportation, the district must consider that need in addressing the student's transportation requirements. The decision whether to provide Student with curbside or door-to-door service must be made on an individual basis by Student's IEP team. A school district may refuse

to provide requested transportation for a student when the parent's request is based on her convenience or personal preference. *Fick v. Sioux Falls School Dist.*, 337 F.3d 968, 970 (8th Cir. 2003). It may not do so, however, if the requested transportation is necessary to meet a student's educational needs. *District of Columbia v. Ramirez*, 377 F.Supp.2d 63, 70 (D.D.C. 2005).

Student's IEP team was presented with a letter from Student's doctor dated March 4, 2015, that indicated Student had light sensitivity and difficulty regulating his body temperature that put him at very high risk for vomiting and aspiration. This letter was not the only indication that Kirchner had of Student's difficulty with an outdoor environment. Tammy Love, a former Kirchner paraprofessional who worked closely with Student for several years, testified that she had seen the physical reactions caused by Student's environmental sensitivities that prevented him from participating in activities outdoors. Kirchner's staff was obviously familiar with Student's disabilities and medical issues.

In *Los Angeles Unified Sch. Dist.*, 48 IDELR 83 (SEA CA 2007), a state administrative law judge (ALJ) considered Student's wheelchair use, sloping street, and obstacle-filled streets and sidewalks in determining that the District had to provide Student with door-to-door transportation, despite the fact that even the District's smaller, wheelchair-accessible school buses could not turn around on Student's street. In *M.L. v Bourbonnais Sch. Dist.* 53, 2010 WL 1050237, 54 IDELR 88 (C.D. Ill. 2010), the court considered Student's mental impairments, autism, and history of elopement, and the fact that the bus stop was not visible from his house, in determining that Student was entitled to door-to-door transportation. In *Anchorage School District v. N.S.*, 2007 WL 8058163 (D.Alaska 2007), the court considered a student's wheelchair use, seizure disorder, and cognitive impairments, as well as the fact that his guardians worked during the day and could not always be home to push the student up the driveway and ramp into

the house, to determine that the district was required to provide him with door-to-door, rather than curb-to-curb, transportation.

Student is non-ambulatory. He cannot traverse the driveway on his own, and it is difficult for Mother to push him its full length. Student's poor muscle tone and light and environmental sensitivities also make it hazardous and inappropriate for him to travel its full length in the wheelchair on a daily basis.

The letter from Student's doctor was accepted by Student's IEP team, and in the NOA dated May 20, 2015, the concerns related to Student's exposure to the environment are noted and acknowledged. However, Student's IEP team determined that Mother's voluntary alternate pick-up location at the Special Learning Center and transportation to and from that location in Mother's car was sufficient to protect Student from exposure to the environment. Substantially the same reason was given in the NOA dated February 11, 2016. The family vehicle in which Mother transports Student is not accessible and so requires Mother to lift student in and out of the vehicle. Mother has also had to depend on friends to provide Student with a safe and temperature-controlled place to be picked up by the bus. In short, Student's unique needs are not currently being addressed by MSSD; rather, MSSD is relying on Mother to address them.

The bus stop meets legal standards, but it is not safe.

Much of MSSD's support for its position in offering curb-to-curb service for Student rests on the premise that the current bus stop is safe. Despite the fact that this rationale does not address the unique needs of Student, we address it here. State law and local policy largely determine the appropriate safety procedures for transporting students with disabilities. *See Letter to McKaig*, 211 IDELR 161 (OSEP 1980). The legality of the bus stop under Missouri law is well established in the record. But if the bus stop selected by a district is unsafe for the student, the school district may have to select a less hazardous location. *See, e.g., Los Angeles Unified*

Sch. Dist. The dispute here is whether the bus stop is a safe and appropriate location for transportation services for Student. Downing admitted at the hearing that safe and legal are not “necessarily” synonymous. Tr. 111.

Section 304.050.4, RSMo 2000, states in relevant part that no:

passengers [shall] be taken on or discharged while the vehicle is upon the road or highway proper unless the vehicle so stopped is plainly visible for at least five hundred feet in each direction to drivers of other vehicles in the case of a highway with no shoulder and a speed limit greater than sixty miles per hour and **at least three hundred feet** in each direction to drivers of other vehicles upon other highways...

(Emphasis added.) The speed limit on Highway M, where Student’s bus stop is located, is 55 miles per hour. The sight distance from the bus stop was measured at both 358 feet and 440 feet; we presume it lies between those two distances.

It requires two or three minutes to unload Student from the bus,³ so there is a strong probability that motor vehicles will sometimes back up behind the bus. Lance testified that if more than one or two cars were stopped behind the school bus while loading or unloading Student, the sight distance would be insufficient for a safe stop. Motor vehicles traveling on this stretch of road routinely exceed the speed limit. Finally, while one of the two school bus companies serving this area rates Student’s stop as moderately safe, the other considers it completely unsafe. MSSD’s sole support for determining the stop to be safe is Skain’s evaluation of the bus stop. Skain completed a sight distance check to determine the stop’s legality and eligibility for signing, but he did not express an opinion on the stop’s safety. In short, MSSD presented no evidence that the bus stop was safe for Student – only that it met legal standards.

³ We presume it would take an equal amount of time to load him on to the bus in the morning.

Based on the nature of the stop, the time it takes to load Student and his wheelchair on the bus, and the concerns expressed by Mother, the Blair Oaks superintendent, the Missouri Highway Patrol officers, and school bus operators, and the absence of evidence to the contrary, we find the current bus stop to be an unsafe location at which to provide transportation services to Student. An unsafe bus stop is not an “appropriate” bus stop.

MSSD is responsible for providing Student with free, appropriate transportation.

It is the policy of the State of Missouri that all children with disabilities between the ages of three and twenty-one have a right to FAPE. *Missouri’s State Plan for Special Education, Part B 2013 (State Plan), Regulation IV*, at 39. The local school district or special school district in which a child with a disability resides is responsible for implementation of FAPE. *Id.* at 40. In this case, that school district is MSSD.

If transportation is identified in an IEP as a related service, the school district must provide that service to all eligible students with disabilities at no cost to their parents. This is implied not only by the basic mandate of the IEP – a *free* appropriate public education – but reinforced by guidance from OSEP. *See Letter to Hamilton*, 25 IDELR 520 (OSEP 1996). If a child’s IEP team determines that supports or modifications are needed in order for the child to be transported so that the child can receive FAPE, the child must receive the necessary transportation and supports at no cost to the parents. *Comments to 2006 final IDEA regulations*, 71 Fed. Reg. 46,576 (2006). Student’s IEP team determined Student was entitled to transportation as a related service and acknowledged his unique need to be protected from the outdoor environment.

MSSD contends that it cannot provide Student with door-to-door service because the full size bus currently in use on Student’s route cannot turn around in the driveway and MSSD is not

“in the practice of paying for additions to existing properties to accommodate the bus or in ongoing maintenance of a driveway that may be damaged from the bus.” A school district’s responsibilities do not change simply because an access road leading to a residence is poorly maintained and may be difficult for travel. *See Los Angeles Unified Sch. Dist.*, 48 IDELR 83 (SEA CA 2007). The primary consideration must be given to the student’s unique needs, which take precedence over unfavorable road conditions. *Id.* A school district may be required to drive school vehicles down a private road even if state law and local policies regulating this area do not authorize that for other students; the transportation provided to a student pursuant to an IEP must meet the student’s unique transportation needs. *Letter to Smith*, 211 IDELR 191 (OSEP 1980). If damage to personally owned equipment or property occurs while the school is transporting a student with a disability, schools may have to cover the resulting repair or replacement costs where they have been placed on notice that damage is likely. *See East Windsor Bd. Of Educ.*, 20 IDELR 1478 (SEA NJ 1994).

Concerns similar to those of MSSD were expressed by the district in *Bourbonnais School District*, in which the District Court not only affirmed a hearing officer’s order to provide door-to-door transportation, but quoted extensively from it.

The parties are in agreement that the current bus stop cannot be seen from the student’s residence on Bethany Lane. Both the grandmother and the school district concur – this essentially non-verbal mentally impaired autistic student cannot be relied upon to safely navigate a path to and from his residence to the currently designated bus stop on Latham Road. The school district asserts that it is not safe for a school bus to back up and asserts that none of its current collection of school buses can enter and leave the student’s subdivision unless that school bus backs up. However, no one from the school district has attempted such a maneuver with its smaller school bus and the grandmother of the student asserts that buses similar in size to the smaller school bus (FedEX, UPS), routinely enter and exit the subdivision, turning around in the parking area in front of her residence. **It appears clear to this hearing officer that the school district has focused on the safe**

maneuvering of its school buses rather than the safe transportation of this special education student. It is clear that the student's safety requires door-to-door transportation.

2010 WL 1050237, *3 (emphasis added).

Downing testified that her e-mail to Haner, advising Haner to support MSSD's decision to provide curb-to-curb service, was to provide clarity as to what MSSD was able to do. Underwood testified that the contract between MSSD and First Student for transportation included only curb-to-curb services and the current bus size was determined by the number of children currently on Student's route. Downing also relied on MSSD's contract with First Student, and stated MSSD would not change the route that currently serves Student. A district's decision to enter into a transportation contract with a third-party provider does not relieve it of the obligations it owes to students with disabilities. If the district discovers that the third-party transportation services are not appropriate, it must take steps to correct the problem. Those steps may include meeting with the third-party provider to discuss transportation issues, contracting with a different transportation company, or providing the student's transportation services directly. *See, e.g., Manville Bd. Of Educ.*, 36 IDELR 177 (SEA NJ 2002). Districts may also be required to reassign a student with a disability to a new vehicle if use of the current vehicle affects the student's receipt of FAPE or raises safety concerns for the particular student. *See, e.g., Chicago (IL) Pub. Schs. Dist. #299*, 56 IDELR 81 (OCR 2010).

Student's IEP team denied door-to-door transportation to him by placing the burden for accommodating Student's unique needs on Mother. In the first two NOAs, Student's IEP team maintained curb-to-curb service was sufficient because Student's parents could meet him at the curb. In the second two NOAs, the IEP team relied on Mother to provide Student with the protection from the elements he needs. If a child requires adult assistance or supervision at a bus stop as part of his specialized transportation, schools generally cannot rely on parents to

accompany and wait with their children at the bus stop. *See In re Student with a Disability*, 60 IDELR 84 (SEA NY 2012); *see also In re: Sara S.*, 507 IDELR 308 (SEA MA 1985). It is not the responsibility of parents to make necessary transportation accommodations, or to hire or beseech someone else to provide them, unless the parents desire to and voluntarily do so.

Maynard Sch. Dist., 20 IDELR 394 (SEA AR 1993). As the court stated in *Anchorage School*

District:

While it is true the guardians could hire somebody to push . home from the curb every day, this consideration is not persuasive. Financial considerations aside, a disabled child's parents *always could* hire somebody to complete the *entire* transportation transaction. Basically what the hearing officer did was to conclude that the district must *complete* the transportation transaction. Leaving . in the driveway or at another supervised location does not do that. Given the facts and circumstances here, door-to-door service is the only option in the record which allows . to enjoy the benefit of his special education.

2007 WL 8058163 at *9 (italics in original).

In this case, transportation on a full-size school bus may not be feasible for Student. Student requires door-to-door transportation, and a smaller vehicle may need to be used to provide Student with FAPE. MSSD could choose to split Student's bus route in two, or hire a separate driver with a smaller vehicle to meet Student's transportation needs. There may be other ways to accommodate Student's needs, as well. We order that Student be provided door-to-door transportation to and from Kirchner. Student's IEP team, MSSD, and Mother must agree how to provide door-to-door service in accordance with Student's unique needs. Such an agreement shall be reached and implemented within 30 days of the date of this decision.

Summary

We find that MSSD did not provide FAPE to Student during the 2014-15 and 2015-16 school years. We find that Student is entitled to door-to-door transportation services. MSSD,

Mother, and Student's IEP team shall develop a plan to meet Student's unique transportation needs, to be implemented within 30 days.

SO ORDERED on April 29, 2016.

KAREN A. WINN
Commissioner

Appeal Procedure

Please take notice that this is a final decision of the Administrative Hearing Commission and you have a right to request review of this decision. Specifically, you may request review as follows:

1. Proceedings for review may be instituted by filing a petition in the circuit court of the county of proper venue within forty-five days after the mailing or delivery of the notice of this final decision.
2. The venue of such cases shall, at the option of the plaintiff, be in the circuit court of Cole County or in the county of the plaintiff's residence.

Please take notice that you also have a right to file a civil action in federal or state court pursuant to the IDEA. See 34 C.F.R. Section 300.512.