



The University of the State of New York

The State Education Department

State Review Officer

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No. 12-095

**Application of the BOARD OF EDUCATION OF THE
VALLEY STREAM UNION FREE SCHOOL DISTRICT NO.
30 for review of a determination of a hearing officer relating to
the provision of educational services to a student with a
disability**

Appearances:

Keane & Beane, PC, attorneys for petitioner, Suzanne E. Volpe, Esq., of counsel

Carrieri & Carrieri, PC, attorneys for respondents, Ralph R. Carrieri, Esq., of counsel

DECISION

I. Introduction

This proceeding arises under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482) and Article 89 of the New York State Education Law. Petitioner (the district) appeals from a decision of an impartial hearing officer (IHO) which determined that the services recommended by its Committee on Special Education (CSE) for the student for the 2011-12 school year were not appropriate. The appeal must be dismissed.

II. Overview—Administrative Procedures

When a student in New York is eligible for special education services, the IDEA calls for the creation of an individualized education program (IEP), which is delegated to a local Committee on Special Education (CSE) that includes, but is not limited to, parents, teachers, a school psychologist, and a school district representative (Educ. Law. § 4402; *see* 20 U.S.C. § 1414[d][1][A]-[B]; 34 CFR 300.320, 300.321; 8 NYCRR 200.3, 200.4[d][2]). If disputes occur between parents and school districts, incorporated among the procedural protections is the opportunity to engage in mediation, present State complaints, and initiate an impartial due process hearing (20 U.S.C. §§ 1221e-3, 1415[e]-[f]; 34 CFR 300.151-300.152, 300.506, 300.511; Educ. Law § 4404[1]; 8 NYCRR 200.5[h]-[l]).

New York State has implemented a two-tiered system of administrative review to address disputed matters between parents and school districts regarding "any matter relating to the

identification, evaluation or educational placement of a student with a disability, or a student suspected of having a disability, or the provision of a free appropriate public education to such student" (8 NYCRR 200.5[i][1]; see 20 U.S.C. § 1415[b][6]-[7]; 34 CFR 300.503[a][1]-[2], 300.507[a][1]). First, after an opportunity to engage in a resolution process, the parties appear at an impartial hearing conducted at the local level before an IHO (Educ. Law. § 4404[1][a]; 8 NYCRR 200.5[j]). An IHO typically conducts a trial-type hearing regarding the matters in dispute in which the parties have the right to be accompanied and advised by counsel and certain other individuals with special knowledge or training; present evidence and confront, cross-examine, and compel the attendance of witnesses; prohibit the introduction of any evidence at the hearing that has not been disclosed five business days before the hearing; and obtain a verbatim record of the proceeding (20 U.S.C. § 1415[f][2][A], [h][1]-[3]; 34 CFR 300.512[a][1]-[4]; 8 NYCRR 200.5[j][3][v], [vii], [xii]). The IHO must render and transmit a final written decision in the matter to the parties not later than 45 days after the expiration period or adjusted period for the resolution process (34 CFR 300.510[b][2],[c], 300.515[a]; 8 NYCRR 200.5[j][5]). A party may seek a specific extension of time of the 45-day timeline, which the IHO may grant in accordance with State and federal regulations (34 CFR 300.515[c]; 8 NYCRR 200.5[j][5]). The decision of the IHO is binding upon both parties unless appealed (Educ. Law § 4404[1]).

A party aggrieved by the decision of an IHO may subsequently appeal to a State Review Officer (SRO) (Educ. Law § 4404[2]; see 20 U.S.C. § 1415[g][1]; 34 CFR 300.514[b][1]; 8 NYCRR 200.5[k]). The appealing party or parties must identify the findings, conclusions, and orders of the IHO with which they disagree and indicate the relief that they would like the SRO to grant (8 NYCRR 279.4). The opposing party is entitled to respond to an appeal or cross-appeal in an answer (8 NYCRR 279.5). The SRO conducts an impartial review of the IHO's findings, conclusions, and decision and is required to examine the entire hearing record; ensure that the procedures at the hearing were consistent with the requirements of due process; seek additional evidence if necessary; and render an independent decision based upon the hearing record (34 CFR 300.514[b][2]; 8 NYCRR 279.12[a]). The SRO must ensure that a final decision is reached in the review and that a copy of the decision is mailed to each of the parties not later than 30 days after the receipt of a request for a review, except that a party may seek a specific extension of time of the 30-day timeline, which the SRO may grant in accordance with State and federal regulations (34 CFR 300.514[c]; 8 NYCRR 200.5[k][2]).

III. Facts and Procedural History

The student has received diagnoses of an autistic disorder and a language disorder, and a rule-out diagnosis of an attention deficit hyperactivity disorder (ADHD) (Dist. Exs. 12; 13 at pp. 3-4; 15 at p. 3).¹ The student has been in the physical custody of a foster parent (the parent) since November 2008 (Tr. pp. 228-29, 289). The student was first enrolled in a district school during the 2010-11 (first grade) school year, prior to which he attended a Board of Cooperative Educational Services (BOCES) program (Tr. pp. 229-30, 292-94; Dist. Ex. 4). A private foster

¹ I note that the district included exhibits with the hearing record that were not admitted into evidence at the impartial hearing (Dist. Exs. 7-8; see Tr. pp. 5-6). As the district provides no reason these exhibits could not have been offered into evidence during the impartial hearing and I find them to be unnecessary to my decision, I have not considered them.

care agency (the agency) is the student's legal custodian and placed the student with the parent (Tr. pp. 289).²

On May 31, 2011, the CSE convened to develop the student's IEP for the 2011-12 school year (Dist. Ex. 2).³ The CSE recommended that the student attend a 12:1+2 classroom at his neighborhood school and receive related services including occupational therapy (OT), speech-language therapy, and parent counseling and training (*id.* at p. 5). With respect to extended school year (ESY) services during summer 2011, the CSE recommended that the student attend a 12:1+4 program at a private school located in another district and receive OT and speech-language therapy services (*id.* at p. 6). For the student's ESY program, the CSE specified that the student required door-to-door special transportation to meet needs related to his disability (*id.* at p. 7).

The agency subsequently requested that the CSE review the student's program to consider adding door-to-door transportation to his May 2011 IEP for the 10-month school year as well as for his ESY program, in response to which the CSE reconvened on October 27, 2011 (Tr. pp. 174-76, 298-99; Dist. Ex. 1). In addition to the materials reviewed at the May 2011 CSE meeting, the October 2011 CSE considered an October 24, 2011 progress report from the student's special education teacher at the district's school (Dist. Exs. 1 at p. 1; 10). The October 2011 IEP was substantially similar to the May 2011 IEP, with the addition of short-term objectives to the IEP's measurable annual goals and a notation that the student would participate in alternate assessment (Dist. Ex. 1 at pp. 4-7, 9).⁴ By written notice dated the day of the CSE meeting, the district informed the parent that it did not recommend that the student receive door-to-door transportation for the 10-month school year "since an alternate placement was not appropriate" (Dist. Ex. 25 at p. 1).

A. Due Process Complaint Notice

By due process complaint notice dated November 3, 2011, the agency requested an impartial hearing on behalf of the parent (IHO Ex. I at pp. 1-2).⁵ The agency and parent asserted that the district had failed to offer the student a free appropriate public education (FAPE) because of its failure to provide the student with door-to-door transportation from his home to his neighborhood school during the 2011-12 10-month school year (*id.* at pp. 2-3).

² The due process complaint notice states that legal custody of the student is held by a public child welfare agency that is not involved in this dispute (IHO Ex. I at p. 1).

³ The student's eligibility for special education and related services as a student with autism is not in dispute in this proceeding (Tr. pp. 14, 16; Dist. Exs. 1-2; see 34 CFR 300.8[c][1]; 8 NYCRR 200.1[zz][1]). He was previously determined to be eligible as a student with multiple disabilities (34 CFR 300.8[c][7]; 8 NYCRR 200.1[zz][8]; Dist. Exs. 3-4).

⁴ I also note that one motor skills annual goal contained on the May 2011 IEP was not carried over to the October 2011 IEP, and that the criteria for success for two of the annual goals were modified (compare Dist. Ex. 2 at p. 5, with Dist. Ex. 1 at pp. 6-7).

⁵ The due process complaint notice requested an impartial hearing on behalf of the student and his older brother, also in the parent's foster care and in the agency's legal custody (IHO Ex. I). The cases were later severed, and the district's appeal from the decision of an IHO regarding the older brother was previously decided by this SRO (see Application of the Bd. of Educ., Appeal No. 12-082).

B. Impartial Hearing Officer Decision

An impartial hearing was convened on February 6, 2012 and concluded the next day (Tr. pp. 1-337).⁶ In a decision dated March 26, 2012, the IHO found that the district had denied the student a FAPE by not providing him with door-to-door transportation for the 10-month portion of the 2011-12 school year (IHO Decision at pp. 9-12).⁷ Specifically, the IHO found that the student's communication, intellectual functioning, and attention deficits required that the district provide him with transportation (*id.*).

IV. Appeal for State-Level Review

The district appeals, arguing that the IHO erred in finding that the student required door-to-door transportation for the 10-month portion of the 2011-12 school year in order to receive educational benefits from the program recommended in the October 2011 IEP. Specifically, the district contends that the IHO failed to properly weigh the evidence supporting the CSE's determination not to offer special transportation to the student and asserts that because the student's disabilities did not prevent him from walking to school accompanied by an adult or being driven to school, as were other district students his age, he was not entitled to special transportation. Furthermore, the district contends that the student was making progress in school without special transportation, indicating that he did not require transportation to receive educational benefits. The district also asserts that the IHO erred in considering the transportation needs of the student's brother when determining the student's transportation needs and in stating *sua sponte* that the district's transportation policy may violate § 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act. The district further contends that respondents did not meet their burden of proof with respect to whether the student required special transportation.⁸ Respondents answer and assert that the IHO's determination that the student requires door-to-door transportation should be upheld.

⁶ The district asserts that in addition to a prehearing conference held on December 8, 2011 with respect to the student and his older brother prior to severing of the impartial hearings—the transcript for which is included in the hearing record as an appendix to the district's post hearing brief—two additional prehearing conferences were held on December 16, 2011 and January 24, 2012 (Pet. ¶ 32). No indication that either of these latter two conferences was held is contained in the hearing record, and I remind the IHO that State regulations require an IHO to enter either a transcript or a written summary of the prehearing conferences into the hearing record (8 NYCRR 200.5[j][3][xi]).

⁷ I remind the IHO to document each extension he grants in writing and include the documentation in the hearing record (8 NYCRR 200.5[j][5][i], [iv]). Additionally, the IHO indicated that the "parties agreed to have this matter heard after the hearing regarding [the student's older brother]" when efforts to consolidate the two students' hearings into one proceeding were unsuccessful (IHO Decision at p. 2 n.4). I remind the IHO that an IHO has an independent obligation to ensure compliance with the timelines for issuing a decision and that extensions of the impartial hearing timeline may be granted only after consideration of the relevant regulatory factors; agreement of the parties "is not a sufficient basis for granting an extension" (8 NYCRR 200.5[j][5][iii]; *see* 200.5[j][5][ii]).

⁸ I note that in the case involving the student's older brother, the district had argued that the parent and the agency lacked standing to bring the complaint (*see Application of the Bd. of Educ.*, Appeal No. 12-082); however, it elected not to raise that argument in this case.

V. Applicable Standards

Two purposes of the IDEA (20 U.S.C. §§ 1400-1482) are (1) to ensure that students with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; and (2) to ensure that the rights of students with disabilities and parents of such students are protected (20 U.S.C. § 1400[d][1][A]-[B]; see Forest Grove v. T.A., 557 U.S. 230, 239 [2009]; Bd. of Educ. v. Rowley, 458 U.S. 176, 206-07 [1982]).

A "FAPE" is defined as special education and related services: (1) that meet state standards; (2) include an appropriate preschool, elementary, or secondary school education; and (3) that are provided at public expense and in conformity with an IEP (20 U.S.C. § 1401[9]; see Irving Indep. Sch. Dist. v. Tatro, 468 U.S. 883, 889 [1984]; Rowley, 458 U.S. at 203 [explaining that a school district offers a FAPE "by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction"]). Pursuant to the IDEA and its implementing regulations, a district is required to develop an IEP with a written statement of the special education and related services to be provided to a student with a disability (20 U.S.C. § 1414; 34 CFR 300.320[a][4]). "Special education" means specially designed instruction, provided at no cost to parents, to meet the unique needs of the student (20 U.S.C. § 1401[29]; see 34 CFR 300.39[a][1]). The term "related services" includes transportation and other services as may be required to assist a student to benefit from special education (20 U.S.C. § 1401[26], see 34 CFR 300.34[a]).

The IDEA specifically includes transportation, as well as any modifications or accommodations necessary in order to assist a student to benefit from his or her special education, in its definition of related services (20 U.S.C. § 1401[26]; see 34 CFR 300.34[a], [c][16]). In addition, New York State law defines special education as "specially designed instruction . . . and transportation, provided at no cost to the parents to meet the unique needs of a child with a disability," and requires school districts to provide disabled students with "suitable transportation to and from special classes or programs" (Educ. Law §§ 4401[1]; 4402[4][a]; see Educ. Law § 4401[2]; 8 NYCRR 200.1[ww]). Transportation as a related service can include travel to and from school and between schools; travel in and around school buildings; and specialized equipment such as special or adapted buses, lifts, and ramps (34 CFR 300.34[c][16]). Specialized transportation must be included on a student's IEP if required to assist the student to benefit from special education (Application of a Child with a Disability, Appeal No. 03-053). The nature of the specialized transportation required for a particular student depends upon the student's unique needs, and it must be provided in the least restrictive environment (34 CFR 300.107; 300.305). If a CSE determines that a student with a disability requires transportation as a related service in order to receive a FAPE, the district must ensure that the student receives the necessary transportation at public expense (Transportation, 71 Fed. Reg. 46,576 [Aug. 14, 2006]; see 8 NYCRR 200.1[ww]). Safety procedures for transporting students are primarily determined by state law and local policy (see Letter to McKaig, 211 IDELR 161 [OSEP 1980]).

The burden of proof is on the school district during an impartial hearing, except that a parent seeking tuition reimbursement for a unilateral placement has the burden of proof regarding the appropriateness of such placement (Educ. Law § 4404[1][c]; see M.P.G. v. New York City Dep't of Educ., 2010 WL 3398256, at *7 [S.D.N.Y. Aug. 27, 2010]).

VI. Discussion

A. Related Services—Transportation

As noted above, transportation must be provided to a student with a disability if necessary for the student to benefit from special education, a determination which must be made on a case-by-case basis by the CSE (Tatro, 468 U.S. at 891, 894; District of Columbia v. Ramirez, 377 F. Supp. 2d 63 [D.D.C. 2005]; see Transportation, 71 Fed. Reg. 46576 [Aug. 14, 2006]; "Questions and Answers on Serving Children with Disabilities Eligible for Transportation," 53 IDELR 268 [OSERS 2009]; Letter to Hamilton, 25 IDELR 520 [OSEP 1996]; Letter to Anonymous, 23 IDELR 832 [OSEP 1995]; Letter to Smith, 23 IDELR 344 [OSEP 1995]). If the student cannot access his or her special education without provision of a related service such as transportation, the district is obligated to provide the service, "even if that child has no ambulatory impairment that directly causes a 'unique need' for some form of specialized transport" (Donald B. v. Bd. of Sch. Commrs., 117 F.3d 1371, 1374-75 [11th Cir. 1997] [emphasis in original]). The requested transportation must also be "reasonable when all of the facts are considered" (Alamo Heights Indep. Sch. Dist. v. State Bd. of Educ., 790 F.2d 1153, 1160 [5th Cir. 1986]).

In a guidance document, SED indicated that the CSE should consider a student's mobility, behavior, communication, physical, and health needs when determining whether or not a student requires transportation as a related service, and that the IEP "must include specific transportation recommendations to address each of the student's needs, as appropriate" ("Special Transportation for Students with Disabilities," VESID Mem. [Mar. 2005], available at <http://www.p12.nysed.gov/specialed/publications/policy/specialtrans.pdf>). Other relevant considerations may include the student's age, ability to follow directions, ability to function without special transportation, the distance to be traveled, the nature of the area, and the availability of private or public assistance (see Donald B., 117 F.3d at 1375; Malehorn v. Hill City Sch. Dist., 987 F. Supp. 772, 775 [D.S.D. 1997]). When reviewing the transportation provisions made for a student by a district, the relevant question "is whether the transportation arrangements [the district] made for [the student] were appropriate to his needs" (Application of a Child with a Disability, Appeal No. 03-054).

In making its recommendations, the October 2011 CSE considered, among other things, March 2009 speech-language, psychological, and education evaluation reports, and an October 24, 2011 progress report prepared by the student's classroom teacher (Dist. Exs. 1 at p. 1; 10; 19-21).⁹ The March 2009 psychological evaluation report indicated that upon administration of the Vineland Adaptive Behavior Scale, Second Edition (Vineland II), the student received standard

⁹ The district's interim director of special education testified that May 2011 family interview and clinical assessment reports, each of which is stamped "Received" by the district (Dist. Exs. 12-13), were considered at the May 2011 CSE meeting (Tr. pp. 168-69, 171), a fact that is not reflected on either the May 2011 or October 2011 IEPs (see Dist. Exs. 1-2). Although the district introduced into evidence a September 2010 psychological evaluation and a January 2011 OT review, each of which is also stamped "Received" by the district (Dist. Exs. 14-15), the hearing record does not indicate that these materials were considered at either the May 2011 or October 2011 CSE meetings. I caution the district that its prior written notice to the parent should have included a "description of each evaluation procedure, assessment, record, or report" used in developing the IEP and that the written notice provided, by referring only to those documents listed on the first page of the IEP, implies that no other materials were considered by the CSE (Dist. Exs. 1 at p. 1; 25; see 34 CFR 300.503[b][3]; 8 NYCRR 200.5[a][3][iv]).

scores (percentile) of 65 (1) in the areas of communication and socialization and of 68 (2) in the area of daily living skills (Dist. Ex. 20 at pp. 2, 4). In addition, the student received a composite standard score of 65, placing him in the 1st percentile for adaptive functioning and indicating that his overall adaptive level was in the low range (*id.*)¹⁰ The parent reported to the evaluator that the student could be disturbed by change and new situations, had difficulty concentrating and a tendency to wander away if not closely watched, and had frequent temper tantrums (*id.* at pp. 4-5). The March 2009 speech-language evaluation report indicated that the student was distractible, impulsive, and self-directed and required prompting and repetition to focus and follow directions (Dist. Ex. 19 at pp. 1-2). The October 2011 progress report indicated that the student could be overexcited and hyperactive, required reminders to follow directions, and was easily distractible (Dist. Ex. 10 at pp. 2-3). As discussed above, after determining that the student did not require door-to-door transportation, the district informed the parent by written notice that "[d]oor to door transportation was not approved, since an alternate placement was not appropriate," and further noted that "[t]here were no other factors relevant at this time" (Dist. Ex. 25 at p. 1).

The principal of the student's neighborhood school testified that the student had been diagnosed with an ADHD and had difficulty focusing, displayed impulsive behaviors, and was easily distracted (Tr. pp. 33, 57). The student's teacher from September to December 2010 testified that the student required "reminders throughout the day to focus and stay on task" (Tr. pp. 109-10). The teacher had observed the student to be easily excitable and distractible but generally compliant with regard to following directions (Tr. pp. 110-11, 118, 137). The teacher testified that the student had difficulties with concentration and focusing (Tr. p. 142). She also noted that the student had difficulty with generalization of information and had inconsistent knowledge retention (Tr. p. 110). The teacher indicated that the student sometimes spoke unclearly (Tr. pp. 146-47). The teacher testified that she refocused the student through the use of visual and verbal prompts (Tr. pp. 119-20, 124-26).

The principal testified that if the student had been assigned to attend a program in one of the district's other schools, he would have received transportation from his neighborhood school to the other school (Tr. pp. 25-26). The district's interim director of special education (the interim director) testified that the student was not recommended to receive door-to-door transportation because he lived within two miles of his neighborhood school and had "no physical needs for requiring transportation" (Tr. pp. 167, 174). The principal also testified that there were no students in the student's grade who walked to school independently (Tr. p. 45). The principal opined that the student could walk to school from his home with supervision (Tr. pp. 40-42). She further stated that the student had no physical needs that would necessitate the provision of door-to-door transportation, as he was "driven and picked up every day" (Tr. pp. 34, 48-49). In response to questioning from the parent's counsel regarding whether the district was placing the responsibility for transporting the student on the parent, the principal replied that the district expected "all of the parents to be responsible for our students before and after school" (Tr. pp. 89-90). The student's special education teacher during the first portion of the 2010-11 school year testified that the student was aware of his surroundings and other people; however, she also testified that the student could not safely walk to school or home by himself (Tr. pp. 126, 132, 143, 148). The principal,

¹⁰ These results are relatively consistent with the September 2010 private psychological evaluation, on which the student achieved standard scores on the Vineland II as follows: 42 in the communication domain, 53 in the daily living skills domain, 59 in the socialization domain, 54 in the motor skills domain, and 50 on the adaptive behavior composite, all of which fall below the 1st percentile (Dist. Ex. 15 at pp. 2-3).

special education teacher, and interim director each testified that they were unaware of the route between the student's home and the school (Tr. pp. 53, 136, 219). The interim director also opined that the student could not walk to school unaccompanied, but would be able to do so with supervision (Tr. pp. 178-79).

The parent testified that the student required constant supervision and was hyperactive (Tr. pp. 230-31). She further testified that the route from the parent's home to the school required crossing three streets, none of which intersections were controlled by a stop light (Tr. pp. 234-35). The parent stated that walking with the student was difficult because of his propensity toward hyperactivity, specifically his tendency to run off instead of walking with the parent and holding her hand (Tr. pp. 235-36). The parent further testified that the student did not focus while outside and was unaware of dangers (Tr. pp. 236-38). She also testified that the student could not walk to school by himself and did not know the route from home to school (Tr. pp. 240, 245). An educational advocate from the agency testified that the interim director indicated at the October 2011 CSE meeting that the student could receive travel training, which she believed would be insufficient to meet the student's needs (Tr. pp. 300-01). The advocate also testified that the student was not cognitively capable of walking to school, in addition to his distractibility and lack of awareness to danger (Tr. p. 306).

The hearing record establishes that the student has significant needs that relate to transportation, including difficulty communicating and focusing and a lack of appreciation for environmental dangers, such that it would be dangerous for him to walk to school independently. I note that all parties agree that the student is incapable of walking to school on his own and I find that he is entitled to transportation to and from school on this basis (see Weymouth Pub. Schs., 56 IDELR 117 [SEA MA 2011]; Fort Sage Unified Sch. Dist., 23 IDELR 1078 [SEA CA 1995]; Norton Sch. Dist., 21 IDELR 974 [SEA VT 1994]; Letter to Hamilton, 25 IDELR 520). Furthermore, there is no indication in this case that any district member of the October 2011 CSE considered the student's needs relating to transportation other than his ability to ambulate, including the route the student would have to take to school; moreover, none of the district's CSE members familiar with the student's functioning outside of a school setting, nor did they seek an evaluation of his need for transportation services (see Malehorn, 987 F. Supp. at 775 [transportation not required to be provided where the CSE thoroughly considered the student's ability to attend school without the provision of special transportation]; Application of a Student with a Disability, Appeal No. 08-078; Application of a Child with a Disability, Appeal No. 03-053; "Special Transportation for Students with Disabilities," VESID Mem. [Mar. 2005], available at <http://www.p12.nysed.gov/specialed/publications/policy/specialtrans.pdf>). Because the evidence in this case does not support the conclusion that the district considered the relevant factors in determining to deny the student transportation as a related service, and the hearing record contains sufficient evidence to support the IHO's determination that the student requires special transportation as a related service, there is no need to disturb his decision granting transportation to the student. I encourage the district to evaluate the student's transportation needs and consider whether travel training would be appropriate if it seems likely to enable the student to make his own way to school going forward (see 34 CFR 300.39[a][2][ii]; [b][4][ii]).

To the extent that the district intimates that the student should continue to be transported to school by the parent, I note that the district "cannot relieve itself of its obligations to provide [a] FAPE by denying services which the [p]arent later provides" (Maple Heights City Sch. Dist., 45 IDELR 201 [SEA OH 2006]; see Weymouth Pub. Schs., 56 IDELR 117 [finding that parents had

no obligation to provide transportation to a student who could not travel independently]; Montgomery County Pub. Schs., 504 IDELR 228 [SEA MD 1982] [the district "may not make the provision of special education services to the child conditional upon the parents' participation in a related service"").

Based on the evidence above, I find that the student was entitled to transportation for the 2011-12 school year.

VII. Conclusion

Although I find that the student is entitled to transportation as a related service, I express no opinion about the mode of transportation the district must provide to offer the student a FAPE, considering what constitutes suitable transportation for the student a matter best left to the CSE in the first instance (see Educ. Law § 4402[4][a]; see, e.g., Ms. K. v. City of South Portland, 2006 WL 463943, at *6 n.7 [D. Me. Feb. 24, 2006], adopted by 2006 WL 839493 [D. Me. Mar. 30, 2006]; Weymouth Pub. Schs., 56 IDELR 117 [SEA MA 2011]). I note in particular that there is no evidence in the hearing record that the student requires any particular accommodations or modifications for transportation to be suitable.

I have considered the parties' remaining contentions and find that I need not address them in light of my determinations herein.

THE APPEAL IS DISMISSED.

Dated: **Albany, New York**
 August 14, 2012

JUSTYN P. BATES
STATE REVIEW OFFICER