

STATE OF RHODE ISLAND  
RHODE ISLAND DEPARTMENT OF EDUCATION

J.Y. DOE by his Parent,	:
Constance Young,	:
Petitioner,	:
	:
VS.	:
	:
PROVIDENCE PUBLIC	:
SCHOOL DEPARTMENT,	:
PROVIDENCE SCHOOL	:
COMMITTEE	:
Respondent.	:

PETITION FOR INTERIM ORDER

NOW COMES Petitioner, J.Y. DOE, (“J”) by and through his mother, Constance Young, and requests an Interim Order in accordance with RIGL § 16-39-3.2 to ensure J receives education in accordance with applicable state and federal laws and regulations during the pendency of the underlying due process complaint by requiring the Providence School Department and/or Providence School Committee (“District”) to immediately comply with its obligation to provide J with a free and appropriate education (FAPE). Specifically, J respectfully requests an Interim Order requiring the District to provide him with transportation to and from school, with necessary support staff, in accordance with his IEP. As grounds for this Petition, Petitioner relies upon the within factual background and legal arguments.

Factual Background

J.Y. (“J”) is twelve years old and a resident of Providence, Rhode Island. He is a seventh grader at Nathanael Greene Middle School in Providence. J is a student with a disability who qualifies for special education services. J is entitled to special education and related services in

accordance with his IEP, as amended, which is effect until February 13, 2019. See Exhibit A-1 and Exhibit A-2.

J's primary diagnosis is bilateral schizencephaly and spastic quad cerebral palsy and he suffers from seizures. J has complex medical, mobility, and academic needs and requires the use of a wheelchair at all times. In accordance with his IEP, the District is required to provide him door-to-door transportation with a lift bus and appropriate staff. See Exhibits. A-1, 2. Due to J's medical needs, a nurse has accompanied J to and from school since the beginning of June of 2018.

As reported in various news outlets, the District has publicly admitted it is not currently transporting any of its students, including those with disabilities for whom transportation is specified as a related service in their IEPs. In a September 28, 2018, letter to parents of children with IEPs/504s, the District stated that "due to an ongoing labor dispute . . . transportation service for many families has been disrupted." See Exhibit B. In J's case, the lack of transportation is not merely a "disruption" but rather a major impediment to accessing his education.

J's mother does not own a vehicle and cannot transport him herself. Although she never agreed to arrange for transportation on her own, absent any alternatives from the District, J's mother searched for other ways to get J to school. This task entailed more than simply calling a cab company since J requires a vehicle with a chair lift, which is in short supply and more costly than a typical cab. Her efforts paid off and she rather quickly located a private company. However, she could not afford to pay each day and wait for later reimbursement as the District instructed.

J's mother was very frustrated and her story appeared in the local news. Upon hearing of J's predicament, a Good Samaritan offered to advance the cost for the private transport for one week. That kind gesture was gratefully accepted and afforded J the opportunity to attend school. During that week, however, not only did the District fail to arrange or pay for transportation, but it has also failed to provide a nurse to ride with J. Before the strike, a nurse traveled with J each day to and from school to assist with his medical needs. When the District decided to temporarily wash its hands of transporting kids with disabilities during the strike, it also neglected to provide J with a nurse to ride with him to and from school. Absent the nurse, J's mother and three year old sibling have traveled with him in the cab, to and from school, necessitating a second set of round trips and higher cost for the multiple trips. Although the generosity of a stranger was a welcome band-aid, it is not a long term solution. That offer is set to expire and there is no end in sight for the strike.

The District's refusal to take any action during the strike to provide J with transportation is an unlawful abdication of its obligations under IDEA. Not only has the District failed to provide J with a vehicle, it has also failed to provide the necessary support staff required by his IEP. In addition, the District's approach of compensating J, after the fact, for missed school time, ignores the fact that whenever J misses chunks of time or an entire day, it becomes much harder to keep or catch up. Last week, J was forty five minutes tardy because another student requires the same equipment at the same time. As such, either J or the other student has been forced to arrive late, or leave early, so that both children can access the vehicle on the same day. Instead of waiting until the strike is over, the District should, at a minimum, determine, contemporaneously, whether it can provide J with the material and instruction he misses as a result of the alternate transportation. Not only is the District obligated to coordinate services,

staff and schedules, it is also in a better position than individual parents to do so. To provide J with FAPE, the District should be communicating and contracting with the private cab company directly and adjust J's schedule during the strike, as necessary, to accommodate the availability of the cab.

Although it is the District's responsibility to provide transportation to J, regardless of the circumstances, J's mother has gone so far as to obtain an offer by the private cab company to bill periodically instead of requiring payment every day. The District's offer to process reimbursements after the strike is over, whenever that may be, is an obstacle to this solution. Although alternative transportation is available for J, the District has failed to investigate or consider it. Essentially, the District is asking J's mother for a loan, but she cannot afford to be the District's lender. As a result, J has missed at least three full days of school and has lost other educational time while his mother continues to struggle to find ways to get him to school. The District should be ordered, among other directives as noted herein, to immediately communicate and contract with the private cab company J's mother has located.

#### Legal Authority for Interim Order in this matter

In accordance with RIGL § 16-39-3.2. the Commissioner has the:

power to issue any interim orders pending a hearing as may be needed to ensure that a child receives education in accordance with applicable state and federal laws and regulations during the pendency of the matter. Hearings on these interim orders shall be conducted within five (5) working days of a request for relief and the decision shall be issued within five (5) working days of the completion of the hearing. These interim orders shall be enforceable in the superior court at the request of any interested party.

Under IDEA, all children with disabilities are entitled to a free and appropriate public education (FAPE) "that emphasizes special education and related services designed to meet their

unique needs . . ." 20 U.S.C. § 1400(d)(1)(A). "IDEA provides that transportation is a related service that a public school system is required to provide as part of its obligation to provide a free, appropriate public education for students with disabilities." *Petties v District of Columbia*, 888 F. Supp. 165 (D.D.C. 1995)(citing 20 U.S.C. § 1401(a)(17); 34 C.F.R. § 300.16. "The term 'related services' means transportation, and such [ ] other supportive services . . . designed to enable a child with a to receive [FAPE] as described in the [IEP]." 20 U.S.C. 1401(26)(A). The regulations further define transportation as including "[t]ravel to and from school" and "specialized equipment (such as special or adapted buses, lifts, and ramps)". 34 C.F.R. § 300.34 (c)(16).

A child's IEP "set out the child's present educational performance, establishes annual and short-term objectives for improvements in that performance, and describes the specially designed instruction and services that will enable the child to meet those objectives." *See Honig v. Doe*, 484 U.S. 305, 311 (1988). In accordance with RI Regulations related to the education of students with disabilities, Section 300.902, "All students with disabilities who need special transportation as a related service and as determined by the evaluation process and described in the individual education program (IEP) shall be provided such service." It is obvious that "provision of special education and related services is a key component of FAPE." *Dragoo, Kyrie E., The Individuals with Disabilities Education Act (IDEA), Part B: Key Statutory and Regulatory Provisions*, (Congressional Research Service, June, 2017).  
<https://fas.org/sgp/crs/misc/R41833.pdf>.

The District's plan of future reimbursement and compensatory education does not fulfill the mandate under IDEA to "provide" transportation or FAPE. In *Petties, supra*, a case in which

the Court entered a preliminary injunction in favor of a class of students and their parents, the Court stated:

If the District of Columbia chooses to furlough school bus drivers as a part of its effort to ameliorate the fiscal crisis, it is free to do so. But in order to meet its statutory obligations under the IDEA, it must provide alternative transportation for special education students until the end of each student's school year. It may only be relieved of this obligation if it provides the requisite administrative hearing required before a placement can be changed or modified.

888 F. Supp. at 167.

The District stated it is “doing everything in [its] power to assist in resolving this matter between the union and First Student.” *See* Exhibit B. Although the District is affected by the strike, it is not a party to the negotiations. As such, its efforts to assist in resolving that dispute, though laudable and understandable as a long term goal, are misplaced and do not meet its statutory obligation under IDEA. The District should instead focus on resolving the impact on the students, like J, who cannot get to school unless the District becomes more proactive in providing transportation. “Transportation providers play an integral role in the school lives of many children, including children with disabilities. Effective communication between schools and transportation providers is essential, including communication about transportation needs and potential problems of children with disabilities.” *Questions and Answers on Serving Children with Disabilities Eligible for Transportation* (OSERS Q&A, Nov. 2009) at D-1. [https://sites.ed.gov/idea/files/OMB\\_08-0101\\_Transportation-11-4-09\\_FINAL-1.pdf](https://sites.ed.gov/idea/files/OMB_08-0101_Transportation-11-4-09_FINAL-1.pdf).

This matter presents a clear cut issue. The District is obligated to provide J with transportation in accordance with his IEP. The District has publicly admitted in press conferences and letters to parents and the ACLU and other concerned agencies that it is not providing transportation to students with disabilities and has no intention of doing so until the

strike is over. The District's decision to handle this situation by foisting its legal obligation upon the parents of students with disabilities is a clear violation of its legal duties under IDEA for which it must be held accountable. Instead of figuring out how to get J to school during the strike, it appears the District has thrown in the towel on finding alternate transportation during the strike. The District's faulty plan to fulfill its obligations under IDEA is limited to picking up the pieces after the strike is over, which by all accounts, is not imminent.

The District's plan has resulted in loss of educational time and access for J. Immediate relief is required under the circumstances. In *Nieves-Marquez v Commonwealth of Puerto Rico*, 353 F. 3d 108 (1<sup>st</sup> Cir., 2003), a similar issue of preliminary injunctive relief was at issue. In that case, the school district acknowledged its obligation to provide a sign language interpreter, and, like the District in this case, acknowledged its failure to find a provider. In that case, the district suggested preliminary injunctive relief should be denied because it intended to provide an interpreter as soon as one was available and thus, the district argued, the student was not irreparably harmed. The Court disagreed and found that, "without a sign language interpreter and with no immediate prospects of one, [the student] would suffer irreparable harm." *Id.* at 122(citing *Blackman v. Dist. of Columbia*, 185 F.R.D. 4, 7 (D.D.C. 1999) (finding irreparable harm in that case because "at the rate at which a child develops and changes, especially one at the onset of biological adolescence . . . , few months can make a world of difference" in harm to a child's educational development). In this case, there is no end in sight for the strike and the District has clearly stated its intention not to offer, find or fund alternate transportation until the strike is over. J has already missed school and should not have to wait until some unspecified future date to receive FAPE.

The District's failure to locate and timely fund transportation for J "violates the [District's] statutory duty under the IDEA to continue to provide students who have disabilities with a free, appropriate education." *Petties v. District of Columbia*, 888 F. Supp. 64, 65 (D.D.C. 1995). In *Petties*, the District admitted it failed to timely pay for out-of-district placements due to financial constraints. The Court found that the student's right to receive FAPE "cannot be constricted by monetary limitations." *Id.* at 67 (DCDC 1995)(citing *Cox v. Brown* 498 F.Supp. 823, 830 (D.D.C. 1980 and *Fisher v. Dist. Columbia*, 828 F.Supp. 87, 88-89 (D.D.C. 1993)). The Court also found that the District's failure to timely remit tuition interrupted enrollment and therefore, amounted to a unilateral change of placement. As in *Petties*, the District's current "payment practices have led to the termination or interruption of placements of or related services to numerous [ ] students" like J who require specialized transportation to get to school and cannot afford to front the cost for alternate transportation. *Id.* Following that court's analysis, the District's failure to transport J has, or is likely to, result in a unilateral home instruction placement for J without due process.

After-the fact remedies and eventual payment do not exonerate the District from its obligation to provide J with FAPE. In *Zearley v. Ackerman*, 116 F. Supp. 2d 109 (D.D.C. 2000), the district admitted it did not timely fund services required by the student's IEP. The Court found that although payments "were eventually made," this did not alter the fact that the district's "failure to make payments on a timely schedule threatened [the student's] continued education and forced the [parents] to privately subsidize portions of that education." *Id.* The Court found the District "failed to provide a timely placement for [student] . . . , to pay in a timely fashion for a placement found by the [parents], and to perform basic administrative tasks regarding [student]'s case." *Id.* at 113. The court held the District's "actions constitute a failure



to both provide and maintain a placement that meets the needs identified in [the student's] Individualized Education Program ("IEP") and are therefore in violation of 20 U.S.C. § 1415." *Id.* Likewise, in this case, the District's plan to process reimbursement requests after the strike is over is tantamount to asking J's mother to subsidize its obligation to provide FAPE. As in *Zearley*, the District has failed to perform basic administrative tasks regarding J, such as coordinating with, and providing for, a nurse for transportation during the strike, communicating with J's mother about alternative options and ways to avoid lost educational time, and developing a process for remitting payment concurrently, not after the fact, directly to an alternate transportation company.

#### Conclusion and Proposed Resolution


The District's failure to transport J during the strike, which is now in its third week, is an ongoing violation of his right to a free and appropriate education (FAPE) and related services. An interim order is necessary to prevent the District from washing its hands of the needs of students with disabilities during the strike. For the reasons stated herein, Petitioner respectfully requests an interim order to ensure J continues to receive FAPE and access to education, including transportation, supports during transportation, and all the services, supports and special education required by his IEP.

Specifically, Petitioner respectfully requests that the Commissioner issue an Interim Order directing and requiring the District to:

- a. Immediately provide J with transportation in accordance with his IEP;
- b. Accept financial responsibility for alternate transportation currently secured by J's mother, without requiring J or his family to prepay for such services and coordinate directly with any such provider;
- c. Remit payment to J's mother in an amount equal for all costs incurred to date for which is obligated or has incurred, including her travel time, on an expedited basis;

- d. Immediately seek to convene an IEP within two days, with J's mother waiver of a ten-day notice period, to discuss potential schedule changes necessary to provide J with FAPE during the strike as well as to discuss compensatory education due to date;
- e. Immediately provide a nurse to ride with J to and from school;
- f. Designate an individual to coordinate and communicate daily with J's mother, the nurse, and the alternate transportation company to ensure J is transported to and from school every day during the strike;
- g. Develop a plan to avoid missed educational time resulting from the alternate transportation and/or strike;
- h. Review and correct, to the extent necessary, J's attendance record to note any and all absences, tardy or early dismissal entries as excused from the date of the strike until such time as the District restores transportation; and
- i. Order such additional relief as the facts may dictate and that is deemed appropriate under the circumstances.

Respectfully submitted by Petitioner  
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Through their Attorneys,

  
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FOUNDATION OF RHODE ISLAND  
Cooperating Counsel

**STATE OF RHODE ISLAND  
RHODE ISLAND DEPARTMENT OF EDUCATION**

J.Y. DOE by his Parent,	:
Constance Young	:
Complainant,	:
	:
VS.	:
	:
PROVIDENCE PUBLIC	:
SCHOOL DEPARTMENT,	:
PROVIDENCE SCHOOL	:
COMMITTEE	:
Respondent.	:

**COMPLAINT AND REQUEST FOR  
IMPARTIAL DUE PROCESS HEARING**

1. J.Y. ("J") is twelve years old and a resident of Providence, Rhode Island.
2. J is a student with a disability.
3. J's primary diagnosis is bilateral schizencephaly and spastic quad cerebral palsy and suffers from seizures. J has complex medical, mobility, and academic needs and requires the use of a wheelchair at all times.
4. J lives in Providence with his mother, Constance ("Parent"), and a younger sibling.
5. J is in the seventh grade at Nathanael Greene Middle School in Providence.
6. J is eligible for special education services pursuant to his current IEP, which is in effect through February 13, 2019.
7. In accordance with his IEP, the District is required to provide him door-to-door transportation with a lift bus and appropriate staff.
8. Due to J's medical needs, a nurse has accompanied J to and from school since June, 2018.
9. Upon information and belief, the District contracts with a private vendor to transport its students.

10. J's mother received a letter from the District dated September 28, 2018, from a representative of the District.
11. In the September 28, 2018, letter the District acknowledged that J's IEP provides for transportation to and from school as a related service.
12. In the September 28, 2018, letter the District, acknowledged it was not providing transportation "due to an ongoing labor dispute between the Teamsters Union representing school bus drivers and our transportation contractor, First Student."
13. In the September 28, 2018, letter the District offered to process reimbursement requests for parents who choose to transport their children on their own "after the strike has concluded."
14. The District has not offered J any alternative form of transportation.
15. The District has not collaborated with J's mother to locate and fund alternate means of transportation.
16. J's mother has not agreed to transport J on her own.
17. J's mother does not own a vehicle and cannot afford to prepay for an accessible vehicle to transport J for the duration of the strike and await later reimbursement.
18. J missed two days of school at the outset of the strike while his mother was forced to seek alternative means of transportation.
19. A Good Samaritan heard about J's plight via the news and assisted J's mother in locating a private cab company that could provide an accessible vehicle to transport J to and from school.
20. J's mother contacted the private company and confirmed that it could begin transporting J the week of October 1<sup>st</sup>, but required payment on a daily basis.
21. Without sufficient funds of her own to front the costs, J's mother was forced to rely upon the generosity of the Good Samaritan, who paid for the transport for one week.
22. During that week, J's school days were shortened because the cab's availability was not directly aligned with his typical day.
23. J is entitled to compensatory education for the days and hours and services he has missed as a result of the District's failure to transport him to and from school.
24. To date, J has not been provided with any compensatory education or services.

25. Since the strike has begun, the District has failed to provide a nurse or any other support staff to accompany J to and from school.
26. During the strike, J's mother, along with his toddler sibling, accompanied J to and from school in a private cab company vehicle.
27. As of the date of this filing, the strike is ongoing.
28. J missed another day of school on October 9, 2018, due to the District's failure to provide transportation.
29. Upon information and belief, the private cab company that transported J during the week of October 1<sup>st</sup>, will agree to bill for its services as opposed to collecting payment up front.
30. J's mother is unable to accept financial responsibility for such an arrangement.
31. The District is required under IDEA to provide transportation and required staff to J as a related service in accordance with his IEP.
32. The District is required under IDEA to provide J with a free and appropriate education ("FAPE").
33. The District has violated, and continues to violate, its obligations under IDEA by failing to provide J with transportation since the strike began in or about the end of September, 2018 .
34. The District does not have a contingency plan in place for providing transportation to J during the pendency of the strike.
35. As a result of the District's violation of its obligations under IDEA and federal and state regulations, J has missed school entirely, received shortened days, and has effectively been denied other services and supports required by his IEP.
36. The Districts' failure to provide J with transportation has, or may, result in a unilateral change of placement to home instruction without due process.
37. As a result of the District's failure to provide transportation or a nurse to accompany J, his mother has been required to travel with him to and from school.

#### **Proposed Resolution**

For the foregoing reasons, J requests that the Hearing Officer, after conducting a hearing on the merits:

1. Find that the District has denied J a free appropriate public education.

2. Find that the District has failed to provide J with related services as required by his IEP.
3. Find that the District failed to provide J with transportation since the beginning of the strike.
4. Find that the District failed to provide a nurse to ride with J since the beginning of the strike.
5. Find that the District's failure to transport J to and from school effectively constituted a unilateral change of placement.
6. Find that J missed school and was not able to access all the supports and services to which he is entitled since the start of the strike;
7. Rule that J is entitled to compensatory education;
8. Rule that the District denied J FAPE;
9. Rule that the District unilaterally changed J's placement without due process;
10. Rule that Complainants are the prevailing party;
11. Order the District to reimburse J's mother immediately for any and all financial obligations she has incurred in relation to J's transportation during the pendency of the strike, including but not limited to, reimbursement for her travel time;
12. Order the District to calculate and provide compensatory education for the denial of a free appropriate public education for J;
13. Order the District to review and correct, to the extent necessary, J's attendance record to note any and all absences, tardy or early dismissal entries as excused from the date of the strike until such time as the District restores transportation.
14. Order such additional relief as the facts may dictate and that is deemed appropriate under the circumstances.

Respectfully submitted by Complainant,  
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Through their Attorneys,

  
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