

**COMMONWEALTH OF MASSACHUSETTS**  
**DIVISION OF ADMINISTRATIVE LAW APPEALS**  
**BUREAU OF SPECIAL EDUCATION APPEALS**

**In Re: Hudson Public Schools**

**BSEA #1600764**

**DECISION**

This decision is issued pursuant to the Individuals with Disabilities Education Act or IDEA (20 USC Sec. 1400 et seq.); Section 504 of the Rehabilitation Act of 1973 (29 USC Sec. 794); the Massachusetts special education statute or “Chapter 766,” (MGL c. 71B) the Massachusetts Administrative Procedures Act (MGL c. 30A) and the regulations promulgated under these statutes.

On July 23, 2015 Parent filed a hearing request alleging that the Hudson Public Schools (Hudson or School) had denied Student a free, appropriate public education (FAPE) during the summer of 2015 by unilaterally changing Student’s transportation drop off and pick up location from the entrance to her apartment building to a location outside of the building. Hudson filed a timely response in which it denied Parent’s claims that its transportation procedure had denied Student a FAPE. Hudson further asserted that it had provided Student with appropriate transportation services.

The parties requested and were granted several postponements of hearing dates for good cause, for example, for purposes of discovery and to attempt resolution. Attempts at resolution were not successful.

The BSEA held an evidentiary hearing on October 21, 2015 at the Hudson Public Schools’ administrative offices in Hudson, MA. Parent was represented by an advocate and the School was represented by counsel. Both parties had an opportunity to examine and cross-examine witnesses as well as submit documentary evidence for consideration by the Hearing Officer. The parties requested and were granted a postponement until November 4, 2015 for submission of written closing arguments and the record closed on that day.

The record in this case consists of the Parent’s exhibits P-1 through P-4,<sup>1</sup> the School’s exhibits S-1 through S-14, and approximately two hours of recorded testimony.

Those present for all or part of the proceeding were the following:

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<sup>1</sup> With permission of the Hearing Officer, Parent submitted P-4, consisting of photographs of the parking lot, playground and driveway area near Student’s apartment complex. At the request of the School, the captions accompanying the photos are not included in the record.

Parent

|                |  |
|----------------|--|
| Cathy Kilcoyne | Director of Student Services, Hudson Public Schools  |
| Rachel Scanlon | Assistant Principal, Farley School, Hudson           |
| Diane Salman   | School Psychologist, Hudson                          |
| Bryan Hauver   | Extended School Year (ESY) Coordinator, Hudson       |
| Karen Patry    | ABA Therapist, Mulready School, Hudson               |
| Shelly Martin  | Preschool Special Education Teacher, Farley School   |
| Cindy Prockett | Preschool Special Education Teacher, Mulready School |

|                         |                      |
|-------------------------|----------------------|
| Jorge Teixeira          | Advocate for Parent  |
| Felicia Vasudevan, Esq. | Attorney for Hudson  |
| Sara Berman             | BSEA Hearing Officer |

### **ISSUES PRESENTED**

The sole issue presented at the hearing was whether Hudson was required to provide door-to-door transportation during the summer of 2015 for Student's ESY program.

### **POSITION OF PARENT**

Under "stay put" principles Student was entitled to door-to-door transportation to and from her ESY program for the summer of 2015 because Hudson had provided such transportation during the preceding academic year (2014-2015) and resumed such transportation at the start of the 2015-16 school year. Moreover, the Team decision not to include door-to-door transportation in Student's IEP was incorrect. In light of Student's young age and disability-related behavior, such transportation was required ensure her safety.

### **POSITION OF SCHOOL**

Student is not entitled to door-to-door transportation under "stay put" principles because her IEP has never provided for such transportation. Moreover, even if Student had received "de facto" door to door transportation, such a service was not a central component of Student's IEP; therefore, "stay put" does not apply. Finally, Student does not require door-to-door transportation to access her educational program.

### **SUMMARY OF THE EVIDENCE**

1. Student is a three year old child who is a resident of Hudson, MA. The parties do not dispute Student's eligibility for special education services from the Hudson Public Schools pursuant to federal and state special education laws as well as her rights under Sec. 504 of the Rehabilitation Act of 1973. As of the hearing date Student was attending a pre-kindergarten (Pre-K) program located at the Farley elementary school in Hudson, MA.

2. Student's special education eligibility is based on undisputed diagnoses of an autism spectrum disorder and communication disorder. Student's disabilities significantly affect her receptive and expressive language skills and she communicates primarily with single words, gestures and some phrases. (S-1) Student also has numerous strengths. She is curious, has several age-appropriate interests, and attempts to share her interests with others despite her communication challenges. Her fine and gross motor skills are age-appropriate. (S-1) She is generally well-behaved in the school setting although she has some interfering behaviors such as tantrums, hitting, pushing and throwing objects when denied access to preferred activities or objects. Parent has expressed concerns about bolting behavior; however, neither Early Intervention (EI) staff nor Hudson's staff has observed Student to engage in bolting in the school setting. (S-9, S-10) Student receives ABA therapy and other services to address these behaviors as well as to increase her ability to communicate appropriately. (S-1, S-11, Prockett)
3. Before her third birthday, Student participated in EI programming which included home-based individual services and a toddler group. Student turned three years old in late May 2015. In preparation for the transition from EI to public school, Hudson evaluated Student in January and February 2015. (S-11, 12, 13) Hudson convened a Team meeting on March 9, 2015 to consider the evaluations. On March 18, 2015 Hudson issued a proposed IEP and placement for Student consisting of a full-day, full-week placement in the Farley Child Developmental Preschool. Student's time would be divided approximately evenly between an integrated setting and a substantially-separate classroom where she would receive discrete trial training. The IEP also called for Extended School Year (ESY) services for the summer of 2015. Parent accepted the IEP and placement in full on March 25, 2015 (S-1)
4. The accepted IEP specified "special transportation" on a "regular transportation vehicle with the following modifications and/or specialized equipment and precautions: seat belts, monitor." (S-1) The vehicle in question was a small bus which Hudson considers to be a "type of regular transportation." The IEP did not specify "door to door" transportation. (S-10)
5. The Team had discussed transportation at the meeting of March 9, 2015 and determined that the transportation safety measures required for Student included a seat belt and a bus monitor. It is not clear from the record whether the Parent or School-based Team members specifically addressed door-to-door transportation at the initial Team meeting. School witnesses testified, however, that the School did not offer such transportation in the IEP because Student was fully ambulatory with no physical constraints and because her interfering behaviors (tantrums, throwing objects, hitting) did not give rise to the need for door-to-door transportation for safety reasons. Neither EI staff nor the ABA provider indicated that Student engaged in bolting behavior. (Kilcoyne, Salman, Martin)
6. Student began attending the preschool program on or about May 20, 2015. The school bus picked Student up and dropped her off at the entrance to her apartment building. (Parent, Kilcoyne)

7. In an email dated June 4, 2015, the Farley Elementary School assistant principal, Rachel Scanlon, notified Parent that Student screaming and repeatedly trying to unbuckle her seat belt during transportation. (P-3, Scanlon, Martin) On June 10, 2015, with Parent's agreement, Hudson issued an IEP amendment calling for use of a "buckle buddy" on Student's seat belt. Parent accepted this amendment in full on June 17, 2015. (S-2) After the first week or two of Student's school attendance there were no further reports of transportation-related behavior problems during the remainder of the 2014-2015 school year. (Martin) Within the school program, Student was generally happy, well-behaved and engaged. She sought out and greeted peers and adults. Her behavior was very similar to that of a typically developing three-year-old. She showed no running or bolting behavior within the building or getting on or off the school bus. (Martin)

8. Pursuant to her accepted IEP, Student attended a six-week ESY program from July 6 through August 13, 2015 at the Mulready Elementary School in Hudson. Before the ESY program started, Parent learned that the school bus would be picking Student up on a road or driveway in front of her apartment complex rather than the door to the building. In an email dated July 2, 2015 to Catherine Kilcoyne, Hudson's Director of Student Services, Parent stated the following:

...I have been having issues with the Bus as they are telling me that they will pick up [Student] at the main road at [ ] rather than the usual pick up at the door. She is a runner and I don't have a car to contain her in while waiting for the bus...why can't they go door to door. Is there any reason why this change? Could you please address this issue: (P-2, p. 3)

9. Ms. Kilcoyne responded in an email dated July 6, 2015 as follows:

Your child's IEP does not have door to door transportation as part of the transportation accommodations. During the school year your child attends the Farley preschool program. Since there are no other students at your address that attend the program with its specific time...the bus swings by your apartment. During the Summer...[w]e have other students attending the ESY programs at Mulready so there [is] one stop that is centrally located at the top of the driveway situated between the apartment buildings. (P-2, P. 4; Kilcoyne)

10. There is a U-shaped driveway in front of the 3-building apartment complex where Student lives. During the first day or two of the ESY program, the vehicle picked up and dropped off Student and other children at the bottom end of the driveway, near the road. Subsequently, the pick-up/drop-off point was moved to the top of the U-shape, nearer the apartment buildings. Some days later, the vehicle began to drop off and pick up Student and other children at the entrance to a fenced playground area

located approximately 500 feet from the apartment complex. (Parent, Kilcoyne, Martin, Patry)

- 11.** During the summer ESY session of 2015, Parent walked with Student from her apartment building to the playground and waited with her approximately 15 minutes for the bus to arrive just outside the playground gate and pick up Student. (Parent) When the vehicle arrived, Parent then handed off Student to the bus monitor or driver, who would take Student's hand and seat her in the bus. Sometimes Student had a tantrum while getting on the bus, and an aide would pick her up and place her on the vehicle. (Parent, Patry)
- 12.** After the end of the school day, at drop-off time, parents of children on the bus typically clustered around the bus door, so that each parent could take charge of his or her child as the child exited the bus. (Patry) Karen Patry, an ABA therapist and the summer bus monitor assigned to Student's vehicle, testified that Parent sometimes stood on the outer periphery of this group of parents clustered around the bus door at pickup time.
- 13.** On one such occasion, Student wandered away from the bus before reaching Parent and walked through the parking lot by herself for until Parent intercepted her a few moments later. Apart from this incident, Student had no difficulties getting off the bus, listening to and following transportation-related directions, following rules, and holding the hand of a responsible adult. (Patry)
- 14.** During the ESY school day, Student was friendly and compliant. The ESY students took several field trips, to a swimming pool, bowling alley, and movie theatre during the summer session. Student participated in all of these field trips with no behavioral issues. She followed directions, did not bolt, and did not have tantrums. Student only missed one day of the ESY program, when she had a medical appointment. (Prockett)
- 15.** In September 2015, Student returned to her preschool program at the Farley Elementary School. The school bus resumed picking up Student at the entrance door to the apartment complex as it had done the previous academic year. (Martin, Salman, Parent)
- 16.** On September 9, 2015 Hudson convened a Team meeting to discuss Parent's concern with the summer transportation arrangements. Parent sought to have Student's IEP amended to add door-to-door transportation. At the meeting, Parent stated that she was concerned about Student's safety when waiting for the bus in the playground area, and stated that Student engaged in spinning, bolting and tantrum behaviors at home, and while waiting for the bus screams, does not sit still, and tries to climb out of her stroller. Parent also expressed that the playground site was in a dangerous area and that she had to traverse a large hill between the complex and the playground. Teachers at the meeting stated that they had not seen bolting behavior at school and that Student walked in line cooperatively. (S-11, Martin)

17. On September 9, 2015 the School issued a Notice of Proposed School District Action (N-1) denying Parent's request for door-to-door transportation without first conducting a Functional Behavioral Assessment (FBA) of transportation related behavior. Parent declined to consent to an FBA. (S-9, Prockett) Meanwhile, Student has continued to attend the Farley School program. As of the hearing date, Student was successful at that program and there were no reports of problems with transportation.

## DISCUSSION

Parent contends that Hudson has deprived Student of FAPE by its refusal to amend her IEP to specify door-to-door transportation. Parent further asserts that by moving the transportation drop-off/pick-up location from the entrance to Student's apartment building to a fenced playground area approximately 400 to 500 feet from the building, Hudson violated Student's "stay put" rights. As the moving party in this matter, Parent has the burden of proving her allegations by a preponderance of the evidence. *Schaffer v. Weast*, 126 S. Ct. 528, 441 IDELR 150 (2005). Based on the evidentiary record and applicable law, Parent cannot prevail on either of her claims. My reasoning follows.

Massachusetts special education regulations require school districts, through the Team process, to "determine whether the [eligible] student requires transportation because of his or her disability in order to benefit from special education." 603 CMR 28.05. If so, the regulation further provides that such "special transportation is a related service, and shall be provided to "any program provided by the public school in which the student participates." The regulation states that the "Team shall determine necessary modifications, special equipment, assistance, need for qualified attendants on vehicles, and any particular precautions required by the student and shall document such determinations in the student's IEP." 603 CMR 28.05(5)(b)(1) and (2). "Particular precautions" may include, for example, "assistance in or out of the home, on or off of the vehicle, and in or out of the school." 603 CMR 28.05(5)(b)(1)(b). The Team is required to consider and address transportation-related needs such as "seizures...motion sickness, behavioral concerns or communication disabilities." 603 CMR 28.05(5)(b)(1)(c).

In the instant case, the parties agree that Student is entitled to "special" transportation, albeit on a minibus designated as a "regular" vehicle.<sup>2</sup> The parties also agree that at all relevant times, Student has required, and been entitled to, a vehicle equipped with seat belts and the presence of a bus monitor. These supports were endorsed by the Team at the initial meeting held in March 2015. In determining whether to provide the seat belt and monitor, the Team considered the input of School-based evaluators, EI providers and Parent with respect to Student's behavioral and other needs. At that time, the Team did not recommend or incorporate into the IEP any additional

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<sup>2</sup> Pursuant to 603 CMR 28.05(b)(1), schools must use "regular" transportation vehicles for "special" transportation if they can do so with "specialized arrangements." 603 CMR 28.05(5)(b)(1). Student used a "regular" vehicle because the specialized arrangements she required—a monitor and seatbelt—did not require a specialized vehicle such as a wheelchair van.

modifications—such as door-to-door transportation. Parent fully accepted the IEP, including the transportation provisions.

When the School and Parent learned that Student was unbuckling her seat belt while riding the bus, they agreed to installation of a “buckle buddy” to address the problem. Again, Parent accepted the IEP amendment incorporating this accommodation, and the parties do not dispute its appropriateness.

Although Student’s IEP has never specified door-to-door transportation, this did not become an area of contention until the ESY program started in July 2015 because before that time, Hudson was picking Student up and dropping her off at the entrance to her apartment building despite the absence of an IEP provision for door-to-door services. Thus, when Hudson changed the pick-up/drop-off location to the fenced playground area in July 2015, Parent objected based on “stay put” grounds.

The “stay put” principle contained in federal and state special education law provides that pending a dispute between the parties, a student remains in his or her last agreed-upon placement. The purpose of “stay put” is to ensure the stability of an eligible student’s services and placement pending resolution of disputes between the parties.<sup>3</sup> Depending on individual circumstances, a student’s “stay put” placement may be in the same location as designated by the last agreed-upon IEP or in a different location. In resolving disputes over what constitutes “stay put” for a particular student, courts determine the “operative placement” that is “actually functioning at the time the dispute first arises,”<sup>4</sup> as well as whether there is a “fundamental change in...a basic element of the educational program...”<sup>5</sup>

In the instant case, Parent’s “stay put” argument cannot prevail, either on the basis of Student’s IEP or on the basis of Student’s “operative placement.” First, the last accepted IEP did not entitle Student to door-to-door transportation. As stated above, the decision to provide such specialized accommodations or arrangements as door-to-door service is made through the Team process. In this case, the Team produced an IEP that did not specify door-to-door transportation and Parent accepted that IEP; therefore Hudson was not required to provide the service. Parent is not entitled to “stay put” with respect to a service to which she had no entitlement under the last accepted IEP.

Notwithstanding the clear provisions of the IEP, I must examine whether the practice of Hudson in picking Student up and dropping her off at the entrance to her apartment building during the 2014-15 and 2015-16 academic years created a situation where Student’s “operative placement” includes door-to-door transportation. I conclude that Hudson’s academic year transportation practice does not trigger “stay put” rights according to this analysis. The record shows that the School’s decisions as to drop-

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<sup>3</sup> 20 USC Sec. 1415(j); 34 CFR Sec. 300.514, *Honig v. Doe*, 484 US 305 (1988); *Verhoven v. Brunswick School Committee*, 207 F. 3d 1, 10 (1<sup>st</sup> Cir. 1999)

<sup>4</sup> *Drinker v. Colonial School District*, 73 F.3d 859 (1996), *In re Student v. Agawam Public Schools & Melmark-New England*, BSEA No. 1504888 (Ruling on Motion for Stay Put) (Berman, 2015)

<sup>5</sup> *Sherri A.D. v. Kirby*, 975 F.2d 193, 206 (5<sup>th</sup> Cir. 1992).

off/pick up locations were not based on an assessment of Student's individual needs, but on transportation efficiency. As Ms. Kilcoyne testified, the vehicle picked up Student at her apartment building during the school year because she was the only child being transported to the Farley School at the relevant time. During the summer, Student was one of several children needing transportation from the apartment complex to the Mulready School, making the playground drop-off/pick-up location more practical for the bus driver. A transportation drop-off/pick-up location chosen for administrative efficiency does not become an "operative placement" under the circumstances of the instant case.

Moreover, the change in drop-off/pick-up location during the ESY period did not constitute a "fundamental change in...a basic element of the educational program." *Sherri A.D. v. Kirby, supra*. On the contrary, the basic elements of Student's transportation services—a vehicle with a seat belt, "buckle buddy," and monitor—have not changed. Further, the change in location did not cause Student to miss any of her ESY sessions. With the exception of one absence due to an appointment, Student had perfect attendance.

Parent's argument that Student needs door-to-door transportation for safety reasons also fails. In September 2015, the Team convened to discuss transportation issues, including Parent's concerns about safety. At the Team meeting Parent reported unsafe behavior by Student while waiting for the bus on the playground, including trying to climb out of her stroller, screaming, and refusing to sit still, as well as bolting behavior at home. School personnel reported that they had not seen such behavior, stating that for the most part Student was well-behaved both in school and during the transportation process. To shed light on this apparent contradiction, the School proposed to conduct an FBA to determine if there were transportation-related behaviors that needed to be addressed. Parent refused this assessment.

I find that Parent has not met her burden of demonstrating that Student needs door-to-door transportation to receive FAPE. Other than assertions made at Team meetings, Parent has provided no specific descriptions of behavior that would trigger a need for this services, and has provided no information—either from her own observations or from an evaluator-- to counter the School's evaluations and observations. Moreover, Parent further undermines her claim by her refusal to consent to an FBA, which would be an objective means of determining what additional needs, if any, that Student might have relative to transportation.

## **CONCLUSION AND ORDER**

For the reasons stated above, I find that Parent has not met her burden of demonstrating that Hudson either violated Student's "stay put" rights or denied Student a FAPE by changing the her summer transportation drop-off/pick-up location or by refusing to provide Student with door-to-door transportation. Parent's concern for the safety of her vulnerable three-year-old child during transportation to and from school is



fully understandable; however, Parent is advised to consent to the suggested FBA as a step in addressing that concern.

By the Hearing Officer:

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Sara Berman

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Date: December 14, 2015

