

STATE OF RHODE ISLAND
DEPARTMENT OF EDUCATION

RHODE ISLAND LEGAL SERVICES, ACLU of RHODE ISLAND, Gloria Santos, Waleska Padilla Colon, Jarelyn Collado, and Mary Finucane, on behalf of themselves and their minor children,

Petitioners,

v.

PROVIDENCE SCHOOL DISTRICT,

Respondent.

REQUEST FOR INTERIM PROTECTIVE ORDER

Petitioners are simultaneously filing a **Class Administrative Special Education Complaint** with the Rhode Island Department of Education (RIDE). That Complaint is attached and incorporated herein by reference.

Petitioners, RHODE ISLAND LEGAL SERVICES and ACLU of Rhode Island, are organizations filing as petitioners (as permitted per RI regulation 300.153). Named petitioners are parents of minor children, students with disabilities enrolled in the Providence School District.

As detailed in the accompanying **Class Administrative Special Education Complaint**, Petitioners allege that the Providence School District is violating the Individuals with Disabilities Education Act (IDEA) and the implementing state and

federal regulations by failing to provide to Providence Students whose Individual Education Plans (IEPs) provide for transportation, with transportation during the ongoing bus strike. As a result, such special education students are being deprived of a Free Appropriate Public Education (FAPE).

Petitioners move for an Interim Protective Order pursuant to R.I.G.L. 16-39-3.2. Petitioners seek an order that the Respondent, Providence School District, immediately:

1. Provide expedited reimbursement for families who, either transport their children to and from school, or locate and pay for alternative transportation (e.g. taxi, Uber, payments to friends). Families should be able to request reimbursement weekly, not at the end of the strike, and they should receive such reimbursement no later than one week after the reimbursement request is received by the District. In addition to being paid mileage, parents should be compensated for their time transporting or accompanying their children on transportation.¹
2. Provide payments for transportation up front for those families who cannot afford to wait for reimbursement, either by issuing payments/vouchers to the family or by creating arrangements with transportation providers to bill the District directly.²
3. Immediately (within 24 hours of this Order) provide the following information which is already within the District's possession:

¹ See, e.g., *Hurry v. Jones*, 743 F.2d 879 (1st Cir. 1984)(Ordering the Providence School District to compensate parents who transported their own special needs children when the District failed to do so both by paying for out-of-pocket expenses and by compensating parents for their time.)

² On information and belief, the Providence School District already makes such arrangements with taxi companies and similar providers when parents of children with special needs lack transportation to travel to and participate in IEP meetings.

- total number of children with mobility impairments in the District;
 - specific information about the District's inquiries *to date* regarding regional capacity for student transportation, including transportation for mobility impaired students (i.e., specifically which providers were contacted, what questions were posed and what answers received);
4. Within one week of this Interim Order, seek out and provide to the Hearing Officer and to attorneys for Petitioners, the following additional information:
- Contact, at minimum, all the providers on the attached list; seek out specific information from each which at minimum includes: provider capacity; ability to serve individuals with mobility impairments or behavioral needs; and potential for transporting students in staggered shifts (e.g. an hour later after finishing with transportation in an adjacent district);
 - Provide specific information about the number and availability of therapeutic and educational District staff able to provide in-home/homebound services, as a last resort, to class members who are unable to secure or be matched with alternative transportation.
5. Return to this Hearing Officer and the Attorneys for the Petitioners within a week of this Order with evidence of having matched as many of the children and families as possible in this class, who have not been able to arrange for alternative transportation, with alternative transportation identified above through their inquiries, and/or with in-home services as a last resort.

6. Send out a letter (draft attached) within one week of this Order, to all families of children with special needs with the related service of transportation in their IEPs, in English and Spanish (with Babel notices in five additional most frequently used languages in the District) informing families about all the transportation options discussed above, including (but not limited to): expedited reimbursement; up-front payment; available alternative providers; in-home services; and the availability of District assistance in making alternative arrangements for transportation. Contact information should include phone numbers connecting to assistance in multiple languages. This letter should also be posted on the District website. District staff responding to such calls should be prepared to match callers with appropriate providers.
7. Such other relief as is deemed just and proper.

Because the resolution of a special education complaint may take up to 60 days, and because Petitioners' legal rights continue to be violated in the interim, with potential serious detriment to their health and education and the provision of FAPE:

WHEREFORE, Petitioners request that the Commissioner of Elementary and Secondary Education issue an Interim Protective Order granting the relief specified above pending the full resolution of the above referenced Class Administrative Special Education Complaint.

Petitioners,
By and through their
Attorneys,



Veronika Kot, Esq. #6653
Rhode Island Legal Services

**ATTACHMENTS
TO
REQUEST FOR INTERIM
PROTECTIVE
ORDER**

Proposed Parent Letter

Proposed Minimum List of Providers to be Contacted by Providence

Dear Parent:

As you know, there is a transportation strike (First Student Bus Company) that has stopped bus transportation in Providence for all students.

Your child has a 504 plan or an IEP that provides for transportation. The Providence School District is required to provide you with transportation. There are several ways this can be done.

1. **You can be reimbursed for transporting your child or paying someone to do that.** For example, you can drive your child, or pay someone else to get them to school. This includes a friend, or a taxi or Uber. You can submit your cost log to the school district weekly and receive reimbursement within a week. The form is attached.
2. **If you can't afford to pay for transportation you found for your child, you can ask the school district to pay the cost directly, up-front.** A list of possible providers is attached but you can use others. Here's how to ask the District to pay up-front:
_____ (number to call to set up this service)
3. **If you cannot find your own transportation, you can ask the District to help match you to the right provider and make the arrangements.** Here's how to ask the District to help you make these arrangements: _____ (number to call to set up this service)
4. **In the rare case where neither you nor the District can find transportation for your child you can ask that the District provide in-home special education and other services for your child.** Here's how to ask the District to do this:
_____ (number to call to set up this service).
5. **After the strike ends you also have the right to ask that the District provide your child with any services they missed. However, the District is required to make all possible efforts to get your child to and from school and provide your child now with the services in his or her IEP.**

**MINIMUM LIST OF PROVIDERS
TO BE CONTACTED BY PROVIDENCE
SCHOOL DISTRICT**

1. RIDE/RIPTA routes available

2. TAXI:

Corporate Taxi

401-231-2228

Statewide (including Airport)

Economy Cab

401-944-6700

Cranston, Johnston, Providence

Orange Cab

401-841-0030

Jamestown, Middletown, Newport, Portsmouth, Tiverton

Valley Cab

401-762-5000

Cumberland, Lincoln, North Smithfield, Woonsocket

American Cab: 401-487-2111

Bussy Boy Taxi 401-442-4326

Carmelan Car Service 401-285-4900

Checker Cab: 401-944-6700

Gonzalez Cab 401-331-9560

Providence Taxi LLP 401-227-0584

Rachel's Big City Transportation: 401-219-9187

Red and White Cab 401-521-4200

Slim Taxi 401-660-8596

Yellow Cab: 401-941-1122

Additional Taxi Cab companies as listed in phone book or other internet searches.

3. Uber and similar services
4. Rental Car Companies (for parents with driver's licenses but without cars)
5. Availability of transportation capacity by school bus providers from adjacent districts (even if it is provided a little later or earlier, so as not to interfere with the other district's transportation)

6. Availability of vans, buses, and/or drivers from area programs serving children and/or adults with special needs, including but not limited to:

- Groden Center
- Tavares Center
- Van services (senior and other) listed on Accessible RI website <http://www.access-ri.org/?s=transportation&searchsubmit>

COMPLAINANTS

This **class administrative complaint** is brought by organizational complainants Rhode Island Legal Services (RILS), and American Civil Liberties Union of Rhode Island (ACLU), as well as individual complainants Gloria Santos, Waleska Padilla Colon, Jarolyn Collado, and Mary Finucane, on behalf of a class of students and families similarly situated and described below. This complaint is brought by the above complainants through their attorneys Veronika Kot, Esq. (RILS), and Ellen Saideman, Esq. (ACLU).

INSTITUTION AGAINST WHOM COMPLAINT IS BROUGHT

Providence School District
797 Westminster Street
Providence, RI 02903
(401) 456-9100

CLASS OF PERSONS INJURED

The class of persons injured consists of all Providence School District students with disabilities who have an Individualized Education Plan (IEP) that provides for transportation as a related service, and their parents or guardians.

VIOLATIONS ALLEGED

1. Failure to comply with the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, *et seq.* and the implementing state and federal regulations,¹ by failing to continue to provide the related service of transportation to class members in violation of their IEPs, for the duration of a transportation strike.
2. Failure to provide a Free Appropriate Public Education (FAPE) to class members as a result of the violation of their IEPs.

¹ 34 C.F.R. §300.1 *et seq.* RI Regulations Governing the Education of Children with Disabilities (RI Regs) §300.1 *et seq.*

FACTUAL ALLEGATIONS

1. On Thursday, September 27, 2018, the union for drivers for the transportation provider for the Providence School District (First Student) initiated a strike, resulting in the loss of transportation for all students in the District, including students with special needs whose IEPs require transportation as a related service. As of the date of the filing of this complaint, that strike continues, and, as a result, the Providence School District is not providing the IEP-mandated service of transportation to those students whose IEPs require transportation as a related service.
2. The Providence School District has not provided alternative forms of transportation for class members, resulting in the inability of many such students to access their specialized education and related services, and/or in severe personal and financial hardship for families forced to provide, and/or find and finance such transportation.
3. KS is a special education fourth grade student with significant behavioral disabilities who is placed at the Providence Center School, in Providence, by the Providence School District. Her IEP provides for transportation to and from school. Since the beginning of the transportation strike, KS has not been able to attend school on a regular basis because the family only owns one car, and her father must use that car to get to work and to transport other children in the family to school. The family is unable to front the money it would cost to transport KS to and from school by taxi or Uber on the days her father is unable to do so. As a result, KS is missing school, and her parents are concerned about behavioral regression as well as loss of academic ground. KS's parents believe that, if the Providence School District provided the money up-front, they would be able to arrange for transportation for their daughter.

4. JR is a high school student with special needs who is placed by the Providence School District at the Tides Day School in Pawtucket. His IEP provides for transportation to and from school. Since the beginning of the transportation strike, JR has not been able to attend school at all. His mother does not own a car and does not have the resources to pay up-front for a taxi or an Uber. She also does not speak English and isn't sure she could make these arrangements without assistance. Since the beginning of the strike, JR's mother has not received any notice from the School District that she could understand. She received a call from the Tides school asking why JR was not in school. She also received a telephone message she believes may have been from the School District. However, since the message was in English and she only speaks Spanish, she doesn't know what it says. JR has very significant learning and attention needs. He is already very far behind his same age peers in academic and social functioning. His mother is concerned that he will regress if he continues to be deprived of his education.
5. JC is a third grader at Asa Messer Elementary School in Providence. She has an IEP which provides for door to door transportation. Since the beginning of the transportation strike, her mother has been forced to pay a friend for transporting her daughter in the mornings because she starts work early and cannot do so herself. JC's mother must then pick up her daughter from school in the afternoons. JC's mother is a single parent with three children, and these expenses represent a significant financial hardship. JC's mother has not received any notice from the school district about potential reimbursement of her expenses. She needs an expedited reimbursement process (and the information regarding how to access such a process) in order to alleviate her financial hardship.

6. SF is a seventh grade student placed by the Providence School District at the Bradley School in Providence. Her IEP requires door-to-door transportation which she has not been receiving since the transportation strike began. SF's mother has been forced to transport her herself, incurring significant expenses. Even more importantly, because of the schedule of school drop-off and pick-up, SF's mother has been unable to work many work shifts and is losing significant income. As a single parent, she cannot afford these lost wages. She also can't leave SF alone at home in order to work because SF has autism and requires constant supervision. SF's condition means that she responds very negatively to changes in routine and is likely to regress absent daily education and related services. SF's mother needs the District to help identify, arrange for, and pay for the closely supervised transportation services to which SF is entitled according to her IEP.
7. Constance Young is the mother of JY. *She is not a named plaintiff because she is filing an individual complaint on behalf of her child. However, she has provided a statement in support of this class administrative complaint in order to illustrate the difficulties faced by many other children in Providence with mobility impairments.* (See, attached Statement of CY). JY is a child with Cerebral Palsy who attends Nathaniel Greene School in Providence. He uses a wheelchair and his IEP provides for transportation. Since the beginning of the strike, Ms. Young has only been able to get her child to school because of a generous charitable donation which has paid for a wheelchair accessible taxi for approximately a week. Once this runs out she will not be able to get her son to school because she cannot afford to pay for the taxi. She needs the District pay for those costs up-front or to arrange for a wheelchair accessible bus service. JY requires special education, OT, PT and Speech services and would regress without them.

8. The Providence School District, per its own statement, has limited its search for alternative transportation for children with special needs to transportation provider(s) who could, individually or in the aggregate, transport all 1000 such children, presumably on buses. (Letter from Supt. Maher, Exhibit 1) Having found none capable of meeting the needs of all the students, it has decided not to pursue multiple solutions which could, in fact, result in access to schools for most if not all children with special needs. Instead, it has declared its intent to excuse children with special needs from attendance if they cannot make it to school and to provide compensatory services to them upon the termination of the strike (if and when an IEP team determines that they need it). It has also stated that it will reimburse families of children with special needs for the costs of alternative transportation if they manage to arrange it, but not until the end of the strike. (Letter from Supt. Maher, and Letter to Parents, Ex. 1 and 2).
9. While claiming that this approach is necessary to avoid discriminating between groups of children with disabilities (Exhibit 1), Providence has in fact adopted an approach that is discriminatory. Families and children who can front the costs of alternative transportation until the end of the strike and are able to find such transportation are being told they can get reimbursement. Their children are able to attend school. The children of lower income families who cannot front such costs are not able to go to school. Children of families with language limitations or with children with mobility or severe behavioral issues, who may need school district assistance in locating /arranging for transportation, are also not able to get to school. (See Exhibit 3, Response to Letter from Supt.) Thus the District's approach has a discriminatory impact on special needs students from poor

families, families with limited English, and families with children with mobility needs or severe behavioral needs.

10. While the District insists that it has sent out letters to parents, many parents have, in fact, not received any such notification.
11. The District's uncertain promise of compensatory education after the strike ends (if the District decides to provide it in each individual case), is, for many children, too little and too late. A child who needs physical therapy daily or a child with autism who needs educational routines to avoid regressing cannot be adequately compensated a month later by receiving doubled up services, any more than a child who needs medicine can remain without it for a month and then double up the dosage. Without the services these children need, provided promptly, they are likely to suffer irreparable harm.²

RELIEF REQUESTED

1. An order finding that the District's failure to provide transportation for children with special needs whose IEPs provide for the related service of transportation constitutes a violation of the IDEA and a denial of FAPE.
2. An order requiring the School District to develop a long-term plan for future emergencies relating to transportation strikes and the continuation of transportation services for children with special needs in such cases.³
3. An order requiring expedited reimbursement for families which either transport their children or locate and pay for alternative transportation. Families should be able to

² See, e.g., *Nieves-Marquez v. Commonwealth of Puerto Rico*, 353 F.3d 108 (1st Circuit, 2003)(Time is of the essence in the provision of special education services and delay may result in irreparable harm.)

³ See, e.g., *Brooklyn Center v. Bloomberg*, 980 F. Supp. 2d 588 (Finding that City's emergency preparedness plan violated ADA and 504 by failing to plan for the needs of individuals with disabilities, and ordering the development of such a plan.)

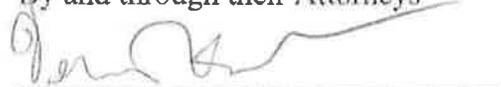
request reimbursement weekly, not at the end of the strike, and should receive such reimbursement no later than one week after the reimbursement request is received by the District. In addition, parents should be compensated for their time in transporting or accompanying their children on transportation. *See, e.g., Hurry v. Jones*, 743 F.2d 879 (1st Cir. 1984)(Ordering the Providence School District to compensate parents who transported their own special needs children when the District failed to do so both by paying for out-of-pocket expenses and by compensating parents for their time.)

4. An order requiring the Providence School District to front the payment for transportation for those families which cannot afford to wait for reimbursement, either by issuing payments/vouchers to the family or by creating arrangements with alternative transportation providers (located by the District or the family) to bill the District directly.
5. An order requiring the Providence School District to immediately provide the following information which is already within the District's possession:
 - total number of children with mobility impairments in the District;
 - specific information about the District's inquiries to date regarding regional capacity for student transportation, including transportation for mobility impaired students;
6. An order requiring the District to seek out the additional, readily available information and provide it at once to RIDE and to attorneys for Petitioners:
 - At minimum contact all the providers on the attached list and obtain and report specific information about (at minimum) their capacity, their ability to

serve individuals with mobility impairments or behavioral difficulties, and their potential for transporting students in staggered shifts (e.g. an hour later after finishing with transportation in an adjacent district);

- Obtain and report specific information about the number and availability of therapeutic and educational staff available to provide in-home/homebound services as a last resort.
7. An order requiring the District to match children who are members of the class and whose parents have not been able to independently arrange for alternative transportation, with alternative transportation identified through #5 and #6, and/or with in-home services as a last resort;
 8. Send out a letter to all families of children with special needs with the related service of transportation, in English and Spanish (with Babel notices in five additional most frequently used languages in the District) informing families about all the transportation options discussed above, including: expedited reimbursement; up-front payment; available providers; in-home services; and the availability of District assistance in making alternative arrangements for transportation. Contact information should include phone numbers connecting to assistance in multiple languages. This information should also be posted on the District website.
 9. Such other relief as is deemed just and proper.

Petitioners,
By and through their Attorneys



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Rhode Island Legal Services