

STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION

In Re: Student/ School District

IDPH-FY-15-09-008

DECISION

INTRODUCTION

A Pre-Hearing Conference was held on October 28, 2014. A copy of the Pre-Hearing Order is affixed hereto and incorporated herein. The sole issue to be determined at the Due Process Hearing involved the issue of transportation, i.e. whether the School District must provide transportation for the Student to the Charter School and back, and whether the School District must reimburse the Parents for the transportation expenses incurred during the school year. Subsequent to the Hearing which was held on November 13, 2014, the Hearing Officer received a Motion to Dismiss for Mootness filed by the School District asserting that the Student was no longer enrolled at the Charter School and was back in District; and, as such, the matter should be dismissed because the issue in this case was moot. The Parents objected and the Motion to Dismiss was denied. While clearly there was no issue regarding transportation expenses going forward for the remainder of the school year since the Student is no longer enrolled at the Charter School, the Parents, from the beginning, have requested reimbursement for their expenses involved in transporting the Student.

DISCUSSION

The Parents presented their case first. The first witness was Special Education Teacher. identified the Student's IEP as currently in place (Parent Exhibit 1, Page 30). The primary disability is autism. Transportation is addressed at Page 41 of

Exhibit 1, and the IEP calls for transportation to be provided ten (10) times per week the entire life of the IEP.

An IEP meeting was held on August 28, 2014. The written prior notice is at Page 5 of Exhibit 1. That indicates that Student does not meet the criteria for a Student requiring special education transportation (Profound physical impairment, severe medical condition necessitating special education transportation or violent and behaviorally impaired in a way that prevents the student from accessing general transportation) (See Page 5 of Exhibit 1). was asked to comment on the Bureau of Special Education Question and Answers relative to charter schools dated November 19, 2012, which is Page 60 – 63 of Exhibit 1. That provides at Page 61 that:

If the child requires transportation to and/or from the chartered public school before, after or during the day in order to receive special education related services as provided in the IEP, the child's resident District shall provide transportation for the child.

was not a part of the decision to stop the transportation.

On cross-examination, the witness testified that the Student does not require special education transportation.

was the second Parent witness. was at the August 28 meeting and inquired as to whether transportation had been arranged to take the Student to the Charter School as opposed to (the local school). said that it was not because the Student would be attending a charter school. There was no other discussion of transportation at that meeting. The same day, mailed, via email, a copy of the Special Education Memo regarding charter schools and transportation. On September 2, received the written prior notice with proposed IEP that eliminates transportation as a related service. In opinion, this violates the procedural safeguards, and referenced several

portions of the Code of Federal Regulations in support of argument. further testified that the written prior notice does not comply with the "Guidance for Written Prior Notice" memo issued by the Bureau of Special Education (Parent Exhibit 13). also referenced the NH Special Education Procedural Safeguards Handbook and indicated that the School District could not eliminate bus transportation for the Student that was in the existing IEP without going to a Due Process Hearing. There was cross and redirect and re-cross, which was brief and not meaningful. There appears to have been no agreement as to what the purpose of the Team Meeting was on August 28, 2014, and indicated that notified the School District of decision regarding the child attending the Charter School in early August.

The School District called as its first witness. is employed at the and has known the Student for five (5) years. was at the Team Meeting when the decision was made not to provide transportation, and. agreed with the decision. understood that transportation would not be provided to the Charter School. On cross examination, agreed that there was no discussion relative to transportation, but merely a decision made by the Team that the School District would not provide it. This witness was also a member of the Team that approved the proposed IEP, which provided for transportation as a related service (at the time, the Student was to be attending the).

, Principal of the , testified as the second witness.

The Student was transported to because the Student was not in the catchment area, and the Student would not have required special education transportation. On cross-examination, agreed that was not a Team member for the IEP.

testified as the next School District witness. attended the August 28, 2014 meeting. learned in mid-August that the Student would be attending the Charter

School, and this was later confirmed at the end of the month. Transportation for the Student at the _____ was by special placement from the _____ was a member of the Team that decided not to provide transportation to the Charter School because the Student did not require special education transportation to the Charter School because _____ did not meet the criteria (which the Hearing Officer referred to at the beginning of this Discussion portion of the Decision). The District is providing special education services to the Student at the Charter School. On cross-examination, the witness reiterated the criteria for transportation of a student to or from the charter school which is addressed earlier.

_____, testified as the final witness. If a family elects to have _____ attend the Charter School, the family is making a unilateral placement and must provide its own transportation. There was no significant cross-examination. The School District rested at the end of _____ testimony.

REQUEST FOR FINDINGS OF FACT AND RULINGS OF LAW

The Parents submitted a Request for Findings of Fact numbered 1 through 20. They are ruled upon as follows:

Request numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, 13, 15, 16 and 20 are granted. Request numbers 10, 11 and 12 are neither granted nor denied in that the Hearing Officer is ruling that the School District is not obligated to provide transportation for the Student to the Charter School, and as such, the reimbursement rates and hourly bus driver payment rates as well as the time for the Parents to transport the child are all not relevant. Request numbers 17, 18 and 19 are granted; however, the Parents have not established that this child did not receive FAPE as a result of any procedural violation related to the inadequacy of the written prior notice.

The District submitted Findings of Fact numbered 1 through 14. Numbers 1, 2, 3, 5, 6, 7, 8, 9, 12 and 13 are granted. Number 4 is neither granted nor denied, as it calls for a conclusion. Numbers 10 and 11 are neither granted nor denied, both to the extent that they are not consistent with the decision below, are deemed to be denied. Number 14 is denied as the issue of the reimbursement rate for mileage is not relevant given the underlying decision.

The Parents submitted Requests for Rulings of Law numbered 21 through 39. Requests for Rulings of Law numbers 21, 22, 23, 24, 25, 26, 27, 28, 29 are granted. Request numbers 30, 31, 32, 33, 34, 37 and 38 are denied. Request numbers 35 and 36 are neither granted nor denied, in that any failure of the written prior notice to comply with procedural requirements under the Code of Federal Regulations did not result in the denial of FAPE to the Student. Request number 39 is neither granted nor denied as it is moot, given that the Student is no longer attending the Charter School. The School District submitted Requests for Findings and Rulings numbered 1 through 8, and all are granted.

DECISION

The Hearing Officer finds that any procedural violations relative to written prior notice in August and September of 2014 did not result in the denial of FAPE to the Student. In addition, the testimony was clear that the special education services that the Student was in need of during attendance at the Charter School were being provided by the District at the Charter School. As such, there was no need to transport the Student to or from the Charter School to receive special education services. In addition, the Student does not meet the criteria for a Student requiring special education transportation (profound physical impairment, severe medical conditions necessitating special education transportation or violent and behaviorally impaired in a way that prevents the Student from accessing general transportation).

The IEP that provided for transportation as a related service was in place when the Student was attending the local school (). The Parents made a unilateral change in placement, which is their right; however, the District then chose to delete transportation from the IEP because there is no requirement for transportation to the Charter School given the unilateral placement made by the Parents.

For the foregoing reasons, Hearing Officer finds that the Parents have failed to meet their burden of proof in that the School District appropriately decided to eliminate transportation as a result of the Parents' unilateral placement of the child at the Charter School out of District.

APPELLATE RIGHTS

If either party is aggrieved by the Decision of the Hearing Officer set forth above, either party may appeal this Decision to a Court of appropriate jurisdiction. The Parent has the right to obtain a transcription of the proceedings from the Department of Education. The District shall notify the Commission of Education when either the District or the Parent seeks judicial review of the Decision.

If neither party appeals this Decision to a Court then the District shall within ninety (90) day provide to the Office of Legislation and Hearing (Department of Education) and the Hearing Officer a written report describing the implementation of this Decision and provide a copy to the Parents. If the Parents do not concur with the District's report, the Parents shall submit their own report through the Commission of Education.

SO ORDERED:

Dated: December 11, 2014


John P. LeBrun, Esquire
Hearing Officer